

RULES AND REGULATIONS

Title 22—EDUCATION

PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

[22 PA. CODE CH. 237]

Definitions of Statutory Terms

The Professional Standards and Practices Commission (Commission) adopts amendments to Chapter 237 (relating to definitions of statutory terms). The final-form rulemaking is made under the authority of sections 5(a)(11) and 9.2 of the Professional Educator Discipline Act (act) (24 P. S. §§ 2070.5(a)(11) and 2070.9b).

The Commission was created by the act of December 12, 1973 (P. L. 397, No. 141) as amended by the act of November 21, 2000 (P. L. 918, No. 123) (Act 123). By virtue of the act, the General Assembly has empowered the Commission to discipline professional educators and charter school staff members. In addition, the General Assembly directed the Commission to establish definitions consistent with its authority to discipline under sections 5(a)(11) and 9.2 of the act. Accordingly, the Commission promulgated definitions in Chapter 237 in May of 1994. The Commission now adopts a final-form rulemaking to amend the definitions found in Chapter 237.

Notice of proposed rulemaking was published at 32 Pa.B. 2994 (June 22, 2002) with an invitation to submit written comments within 30 days. On September 9, 2002, the Commission voted to adopt the rulemaking as proposed. On November 7, 2002, the Independent Regulatory Review Commission (IRRC) voted to approve the rulemaking as proposed.

Purpose

Chapter 237 establishes definitions under sections 5(a)(11) and 9.2 of the act. The act recently was amended by Act 123 and this final-form rulemaking reflects the amendments to the act.

Summary of Regulations

The most significant new requirements under the final-form rulemaking are:

1. The recognition of the extended jurisdiction of the Commission to discipline charter school staff members, as well as professional educators, as contemplated by the recent amendments to the act.

2. The standard for "morals of a community" within the definition of immorality has been changed from a local standard to a Statewide standard to comport with the overall mission of the Commission.

3. A definition for the term "surrender in lieu of discipline" has been added to this chapter to reflect the recent amendments to the act, which designated a surrender in lieu of discipline as a specific type of discipline. The most significant impact of this designation is that surrenders in lieu of discipline are now considered public under the act.

Public Comments

The Commission received no public comments during the official public comment period. In addition, neither the House Education Committee nor the Senate Educa-

tion Committee submitted comments. The Commission did consider the comments submitted by IRRC on August 22, 2002.

In its comments, IRRC objected to the phrase "morals of the Commonwealth" within the definition of "immorality" in § 237.3 (relating to immorality) as vague and undefined. The Commission is entrusted with the responsibility of determining the present, continuing and future fitness and ability of a person to serve as a professional educator in this Commonwealth. In exercising its responsibilities, the Commission must consider the Statewide impact and effect of its decisions, as distinguished from individual employment or contractual discipline imposed by a local school entity. The vagaries of any one community's standards within this Commonwealth cannot be allowed to determine the level and extent of discipline against Commonwealth issued certification. Accordingly, the Commission decided that the appropriate moral standard should emanate from the Commonwealth community at large and not the community attendant to the educator's place of employment.

While the concept of the "morals of the Commonwealth," as well as the "morals of the community," is not defined specifically, the concepts have acquired a well-established construction through judicial and Commission decisions. The construction of the concept, as applied by the courts and the Commission, does not lend itself to definitive explication. As is true with any adjudicatory matter, professional discipline should be decided on a case-by-case basis, after consideration of all relevant facts and circumstances as presented in a due process hearing. The nature of the conduct within any particular context is critical to the Commission's determination in each case. In the judgment of the Commission, it would be inappropriate and imprudent, not to mention nearly impossible, to condense the breadth of the concept into any single comprehensive statement. The Commission thus respectfully disagrees with IRRC that the phrase "morals of the Commonwealth" needs further clarification.

With respect to § 237.9 (relating to crimes involving moral turpitude), IRRC had two comments. First, IRRC suggested that the Commission include specific examples or descriptions of actions that constitute "moral turpitude" within the definition. As with the concept of "morals of the Commonwealth," the Commission does not believe that the inclusion of specific examples within the definition is warranted. To the contrary, the Commission believes that the inclusion of examples might actually prove misleading and may lead to unintended limitations of the Commission's adjudicatory discretion.

In addition, specific applications of the definition of "moral turpitude" can be found in countless judicial decisions in this Commonwealth as well as in the adjudications of the Commission. The Commission does not wish to replace well-established judicially crafted definitions with specific examples.

Finally, IRRC commented on § 237.9(c), which sets forth the mechanism for the Commission to consider crimes added or deleted from section 111(e) of the Public School Code of 1949 (code) (24 P. S. § 1-111(e)) to determine if the crimes involve moral turpitude per se. IRRC advised the Commission to include the criteria for determining whether a crime involves moral turpitude within the definition.

The Commission believes that Chapter 237 already establishes the criteria for the moral turpitude determination. Section 237.9 specifically mandates that the Commission, in determining whether a specific crime involves moral turpitude, limit its consideration to the elements of the crime as juxtaposed against the stated definition of "moral turpitude." The underlying facts of each case are not relevant. Under § 237.1 (relating to purpose), the Commission may look to judicial interpretations and decisions of the Secretary of Education for guidance in the prescribed analysis. It is the opinion of the Commission that the moral turpitude determination does not need further elaboration.

IRRC also queried how the Commission will notify the public of its decisions relating to crimes that are added to or deleted from section 111(e) of the code. The Commission's decisions are made in public at its regularly scheduled and advertised meetings. In addition, its written decisions are available to the public with the exception of those decisions that remain confidential under the act. The Commission agrees that its decisions, in this area as well as in others, should be more readily accessible to the public. To that end, the Commission will publish in its Annual Report a more comprehensive summary of its decisions, including the grounds for discipline, the level of discipline imposed and the crimes that have been determined to involve moral turpitude. The Commission does not believe, however, that the regulations need to specify the particular means of communicating its decisions to the public.

Affected Parties

Chapter 237 primarily affects all professional educators who have been certified by the Department of Education, as well as charter school staff members, who are employed by a charter school in a position for which Commonwealth certification would be required in a public school other than a charter school, but who are not required to hold State certification under section 1724-A of the code (24 P. S. § 17-1724-A).

Cost and Paperwork Estimates

The final-form rulemaking will not create any additional costs or paperwork for affected parties, which include professional educators, charter school staff members, local school districts and the Department.

Effective Date

This final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

The Commission will review the effectiveness of Chapter 237 on an ongoing basis. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 8, 2002, the Commission submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 2994, to IRRC and to the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Commission has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 28, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 7, 2002, and approved the final-form rulemaking.

Contact Person

Questions or comments should be directed to Carolyn Angelo, Executive Director, Professional Standards and Practices Commission, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-6576. Alternative formats of the final-form rulemaking (for example, Braille, large print or cassette tape) can be made available to members of the public upon request to Carolyn Angelo at the previous telephone number.

Findings

The Commission finds that:

(1) Public notice of the intention to adopt the regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) The regulations are necessary and appropriate for the administration of the act.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 22 Pa. Code Chapter 237, are amended by amending §§ 237.1—237.4, 237.8 and 237.9; by deleting § 237.6; and by adding § 237.10 to read as set forth at 32 Pa.B. 2994.

(b) The Executive Director of the Commission shall submit this order and 32 Pa.B. 2994 to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Executive Director of the Commission shall certify this order and 32 Pa.B. 2994 and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order will take effect upon publication in the *Pennsylvania Bulletin*.

CAROLYN ANGELO,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 5816 (November 23, 2002).)

Fiscal Note: Fiscal Note 6-274 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 02-2270. Filed for public inspection December 20, 2002, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. CODE CH. 93]

Corrective Amendment to 25 Pa. Code § 93.9w

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25

Pa. Code § 93.9w (relating to Drainage List W), as deposited with the Legislative Reference Bureau and as published at 30 Pa.B. 6059, 6105 (November 18, 2000), and the official text as published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 315), and as currently appearing in the *Pennsylvania Code*. The amendments made by the Department at 30 Pa.B. 6059, 6105 were codified incorrectly.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legisla-

tive Reference Bureau a corrective amendment to 25 Pa. Code § 93.9w. The corrective amendment to 25 Pa. Code § 93.9w is effective as of February 3, 2001, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 93.9w appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS
ANTIDegradation Requirements**

§ 93.9w. Drainage List W.

**Ohio River Basin In Pennsylvania
Ohio River**

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1—Ohio River	Main Stem, Confluence of Allegheny and Monongahela Rivers to PA-OH State Border	Beaver	WWF, Add N	See Orsanco, Pollution Control Standards
2—Unnamed tributaries to Ohio River	Basins, Confluence of Allegheny and Monongahela Rivers to PA-Ohio State Border	Allegheny-Beaver	WWF	None

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[Pa.B. Doc. No. 02-2271. Filed for public inspection December 20, 2002, 9:00 a.m.]

**INSURANCE DEPARTMENT
UNDERGROUND STORAGE TANK
INDEMNIFICATION BOARD
[25 PA. CODE CH. 977]
Fees and Collection Procedures**

The Insurance Department (Department) and the Underground Storage Tank Indemnification Board (Board) amend §§ 977.12 and 977.33 (relating to owner and operator fees; and fund coverage and exclusions) to read as set forth in Annex A. Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) provide the Insurance Commissioner with the authority to promulgate regulations governing the enforcement of the laws relating to insurance. Section 705 of the Storage Tank and Spill Prevention Act (act) (35 P. S. § 6021.705) provides the Board with the authority to promulgate regulations concerning the establishment of fees to be paid by participants in the Underground Storage Tank Indemnification Fund (Fund). Public notice of this amendment is impractical and unnecessary because the proposed changes are needed to ensure the solvency of the Fund and any input from the public would not decrease the necessity to increase the fees collected.

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769,

No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). In accordance with section 204(3) of the CDL, notice of proposed rulemaking may be omitted when the agency for good cause finds that public notice of its intention to amend an administrative regulation is, under the circumstances, impracticable and unnecessary.

Purpose

The amendments will bring the regulation's fees to the appropriate levels as recommended by an actuarial report that was completed on September 12, 2002. After reviewing this report, the Board determined that this increase is necessary to maintain the solvency of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by MMC Enterprise Risk Consulting, Inc., determined that an increase in the gallon and capacity fees was necessary to maintain the actuarial soundness of the Fund in the future.

Explanation of Regulatory Requirements

Section 977.12 is being changed to reflect the fees that the Board approved after extensive review and discussion of the report.

Section 977.33 is being changed to reflect the changes made to the act by the amendments contained in the act of December 13, 2002 (P. L. 900, No. 99). These amendments increase the limits of liability for corrective action

costs and bodily injury and property damage claims that may occur from an underground release.

Fiscal Impact

An owner or operator transacting business in this Commonwealth will be affected by these amendments. The fee increases approved by the Board are significant; however, despite these increases, the fees are only half as much as they were when the program began in 1994.

The costs that the 2,045 local governments/school districts are currently paying will increase by approximately \$482 per quarter or \$1,928 per year for each municipality/school district.

State-owned tanks are exempt from all Fund fees.

General Public

Because the public is a consumer of goods and services provided by owners and operators of an underground storage tank (UST) or a heating oil tank (HOT), any increase to the fees could result in higher prices to consumers. However, it is expected that this increase in fees will result in an additional \$.81 per month to motorists, in accordance with a survey on vehicle fuel consumption and expenditures by United States' households, conducted by the Energy Information Administration, Office of Energy Markets and End Use.

This increase is proposed to keep the Fund solvent after an actuarial study completed in September 2002 indicated the need for additional revenue to maintain the Fund's actuarial soundness.

Effectiveness/Sunset Date

This final-omitted rulemaking will become effective January 1, 2003.

Paperwork

Adoption of this final-omitted rulemaking should not require significant paperwork for the owners or operators of USTs or HOTs. The paperwork necessary after the increase is expected to be the same as before the increase was implemented.

Persons Regulated

This final-omitted rulemaking applies to owners or operators of USTs and HOTs in this Commonwealth.

Contact Person

Questions regarding the final-omitted rulemaking may be addressed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 25, 2002, the Department and the Board submitted a copy of this rulemaking with the proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(d) of the Regulatory Review Act, this final-omitted rulemaking was deemed approved by the Senate and House Committees on No-

vember 14, 2002. The Attorney General approved this final-omitted rulemaking on November 8, 2002. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 21, 2002, and approved this final-omitted rulemaking.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to amend §§ 977.12 and 977.33 effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of these regulations would be impractical and not serve the public interest. Under section 204(3) of the CDL, there is no purpose to be served by deferring the effective date. An immediate effective date will best serve the public interest by ensuring that fees have the full potential that the actuarial study predicted.

(2) There is good cause to forego public notice of the intention to amend §§ 977.12 and 977.33 because notice of proposed rulemaking under the circumstances is unnecessary and impractical because the changes proposed are necessary to ensure the solvency of the Fund and any input from the public would not decrease the necessity to increase the fees collected.

Order

The Insurance Commissioner, acting under the authority in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929, orders that:

(1) The regulations of the Department, 25 Pa. Code Chapter 977, are amended by amending §§ 977.12 and 977.33 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to form and legality as required by law.

(3) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect January 1, 2003.

M. DIANE KOKEN,
Insurance Commissioner
E. BRUCE SELLER,
Chairperson
Underground Storage Tank Indemnification Board

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 6016 (December 7, 2002).)

Fiscal Note: 11-216. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION.

PART VIII. UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD

CHAPTER 977. UNDERGROUND STORAGE TANK INDEMNIFICATION FUND

Subchapter B. FEES AND COLLECTION PROCEDURES

§ 977.12. Owner and operator fees.

* * * * *

(b) *Tank and gallon fees.* A UST owner or operator storing gasoline, new motor oil, hazardous substances,

gasohol, aviation fuel, mixture, farm diesel and other types of substances based on the tank registration information maintained by the DEP may be assessed the following fees:

* * * * *

(2) *Gallon fee.* A gallon fee on all regulated substances entering a UST of \$.01 per gallon. (For example, 10,000 gallons at \$.01 per gallon equals \$100).

* * * * *

(d) *Capacity fee.* An owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by the DEP may be assessed a capacity fee of \$.075 per gallon of capacity, which amount is established in accordance with section 705(d)(2) of the act (35 P. S. § 6021.705(d)(2)). (For example, 10,000 gallons at \$.075 per gallon equals \$750).

Subchapter C. COVERAGE AND CLAIMS PROCEDURES

§ 977.33. Fund coverage and exclusions.

(a) *Fund coverage.*

* * * * *

(4) *Limits of liability.* Payment of corrective action costs and bodily injury and property damage claims (See section 704 of the act (35 P. S. § 6021.704)) are subject to the following limits of liability:

(i) Payments for reasonable and necessary corrective action costs, and bodily injury or property damage may not exceed a total of \$1.5 million per tank per occurrence and may not exceed the annual aggregate limit.

(ii) Payments may not exceed:

(A) An annual aggregate of \$1.5 million for each owner and operator of 100 or less USTs or an owner or operator of 100 or less HOTs.

(B) An annual aggregate of \$3 million for each owner or operator of 101 or more USTs or an owner or operator of 101 or more HOTs.

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[Pa.B. Doc. No. 02-2272. Filed for public inspection December 20, 2002, 9:00 a.m.]
