

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 76]

Food Employee Certification

The Department of Agriculture (Department) proposes to amend Chapter 76 (relating to food employee certification) to read as set forth in Annex A.

Statutory Authority

Chapter 65 of 3 Pa.C.S. (relating to the Food Employee Certification Act) (act) provides the legal authority for this proposed rulemaking. Sections 6503(d) and 6505 of 3 Pa.C.S. (relating to certification advisory board and programs; and rules and regulations), respectively: (1) require the Department to adopt food safety protection and training standards for the certification of supervisory employees who are responsible for the storage, preparation, display or serving of food to the public in establishments regulated by the Department or local health organizations; and (2) delegate to the Department the power to adopt regulations necessary for the proper enforcement and administration of the act. The act also requires that regulations be promulgated with the approval of the Food Employee Certification Advisory Board (Board). The Board approved this proposed rulemaking at its October 6, 2003, meeting.

Purpose

Chapter 76 took effect in October 1999. The act was subsequently amended by the act of December 20, 2000 (P. L. 934, No. 124) (Act 124) and then by the act of December 9, 2002 (P. L. 1495, No. 190) (Act 190). The purpose of the proposed rulemaking is to implement the statutory changes wrought by the amendments to the act.

Background

The act was the product of an industry-driven initiative to establish minimum food safety training requirements to be met by at least one supervisory employee in most food establishments in this Commonwealth.

Act 124 revised the act by: (1) deleting the requirement that these food safety training requirements be "industry-specific"; (2) extending the date by which food establishments must come into compliance with the act by 2 years (from July 1, 2001, to July 1, 2003); (3) exempting certain food establishments operated by charitable and nonprofit organizations from the requirements of the act; and (4) requiring the Department to develop a food safety training program for those organizations that—although exempt from the requirements of the act—elect to voluntarily seek certification under the act.

Act 190 revised the act by: (1) extending the date by which food establishments must come into compliance with the act by another year (from July 1, 2003, to July 1, 2004); (2) expanding the membership of the Board; and (3) requiring the Department to promulgate regulations (approved by the Board) by July 1, 2004, establishing training programs consistent with the revised act.

The proposed rulemaking is required to be promulgated as a final-form rulemaking by July 1, 2004. The act requires that the Department consider a number of factors in writing the rulemaking, among them: (1) the

existence and operation of Department-approved employee training programs on safe food handling; (2) the fact that some food establishments engage in only the limited handling of potentially hazardous food; (3) the number of hours necessary to train food establishment employees to handle food safely, with consideration of the "scope" of the food establishment's business; and (4) the demonstration necessary for the Department to be satisfied that a particular supervisory employee is proficient in the safe handling of food. The Department has given consideration to all of these factors in the drafting of the proposed rulemaking.

Need for the Proposed Rulemaking

This proposed rulemaking is needed to implement the changes to the act under Act 124 and Act 190.

Overview of the Major Provisions of the Proposed Rulemaking

Proposed § 76.1 (relating to compliance) specifies that the date by which compliance with the act becomes mandatory is July 1, 2004 (rather than the rescinded July 1, 2001, mandatory compliance date). It also restates the new statutory exemption for certain food establishments operated by charitable and nonprofit organizations.

Proposed § 76.2 (relating to definitions) is shortened considerably. Many of the terms defined in this section relate to industry-specific categories of food safety training programs. These industry-specific programs are no longer required, and the related defined terms are no longer needed.

Proposed § 76.3 (relating to requirements for food establishments) deletes the classification of food establishments into industry-specific categories. The section references a "general" certification category that will suffice for all certified supervisory employees. It would also afford a person the option to undergo less extensive training if the person seeks to be a certified supervisory employee at a food establishment that: (1) engages in limited, specific food processing activities; (2) engages in only the limited handling of potentially hazardous foods; or (3) is a nonprofit entity that is exempt from having to comply with the act but that seeks certification nonetheless.

Proposed §§ 76.4 and 76.10(a) (relating to eligibility to apply for certification; and applying for certification) are amended by adding language affording a prospective applicant for certification 5 years from the successful completion of an approved certification training program and certification examination within which to apply for certification. Beyond that period, it would be necessary for the prospective applicant to complete another approved certification training program to be eligible to apply. This requires prospective applicants to have relatively recent food safety training to be eligible to apply for certification. The current provision places no time restrictions on this application period.

Proposed § 76.5 (relating to certification training programs: Obtaining the Department's approval) describes four general categories of certification training programs. Training that fits within the "general" category would be acceptable for a certified supervisory employee at any type of food establishment. There are three other categories that address special circumstances when less expansive training would suffice to meet the requirements of the act.

Proposed § 76.7 (relating to certification training programs: Food safety protection and training standards) deletes detailed, industry-specific training requirements and replaces them with designations of the general subject matter to be addressed in each of the four general categories of certification training.

Proposed § 76.8 (relating to format of a certification examination) sets forth the basic requirements for passing food certification training in each of the four general categories of certification training.

The proposed rulemaking deletes § 76.18 (relating to Advisory Board), since it simply restates the provisions of the act describing the composition and function of the Board.

Affected Individuals and Organizations

The proposed rulemaking implements changes prescribed by Act 124 and Act 190. Impact upon individuals or organizations is the result of Act 124 or Act 190, and not the proposed rulemaking. Act 124 exempts certain food establishments operated by charitable and nonprofit organizations from the requirements of the act. This will result in saving these organizations the cost of obtaining previously required training and certification for a supervisory employee. For exempt organizations that elect to voluntarily comply with the act, the Department will develop and offer a training course for employees of the organizations. Act 124 also leaves open the option for the General Assembly to appropriate funds to help these organizations defray the cost of the training offered by the Department.

Fiscal Impact

Commonwealth: The proposed rulemaking imposes some costs upon the Commonwealth. The Department estimates its costs in administering the certification requirements imposed by the act at \$15,000 per year until July 1, 2004 (the date beyond which compliance with the certification requirements becomes mandatory), and \$30,000 per year starting July 1, 2004.

Political Subdivisions: The proposed rulemaking imposes no costs and has no fiscal impact upon political subdivisions.

Private Sector: The proposed rulemaking imposes no costs and has no fiscal impact upon the private sector. The changes to the act accomplished by Act 124 and Act 190 relieve food establishments operated by certain exempt charitable and nonprofit organizations from the cost of training and certification if a supervisory employee. These cost savings cannot be readily quantified, and are the product of the referenced legislation, rather than the proposed rulemaking. The overall cost of compliance with the certification requirements imposed by the act is estimated at \$2 million (approximately 100,000 affected food establishments, multiplied by the minimum \$20 fee prescribed by the act). This figure excludes the costs of obtaining the training required as a prerequisite to certification.

General Public: The proposed rulemaking imposes no costs and has no fiscal impact upon the general public. Although food establishments may incur some costs in obtaining certification for a supervisory employee, these costs are expected to be modest. Additionally, since the act has been amended to exempt more types of food establishments from its requirements, these exempt food establishments will no longer be required to bear the costs of compliance.

Paperwork Requirements

The proposed rulemaking is not expected to have an appreciable impact upon the Department's paperwork volume.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments may be submitted to the Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Martha M. Melton.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-145. (1) General Fund; (2) Implementing Year 2003-04 is \$15,000; (3) 1st Succeeding Year 2004-05 is \$30,000; 2nd Succeeding Year 2005-06 is \$30,000; 3rd Succeeding Year 2006-07 is \$30,000; 4th Succeeding Year 2007-08 is \$30,000; 5th Succeeding Year 2008-09 is \$30,000; (4) 2002-03 Program—SN/A; 2001-02 Program—SN/A; 2000-01 Program—SN/A; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

Subpart C. MISCELLANEOUS PROVISIONS

CHAPTER 76. FOOD [EMPLOYE] EMPLOYEE CERTIFICATION

§ 76.1. Compliance.

(a) *Mandatory compliance.* On or after July 1, [2001] 2004, a food establishment shall comply with the act and this chapter, unless it is exempt under subsection (d).

(b) *Interim compliance optional.* A food establishment need not comply with the act or this chapter until July 1, [2001] 2004, but is encouraged to do so in advance of that date.

(c) *Benefit of interim compliance.* If a food establishment that voluntarily complies with the act and this chapter is the subject of an action to recover fines or penalties for a violation of the Food Act, and the violation occurs prior to July 1, [2000] 2004, the voluntary compliance of the food establishment will be considered a mitigating factor in determining whether the food establishment shall be assessed more than the minimum fine or civil penalty required by law.

(d) *Exemption for certain types of food establishments.* The following food establishments are exempt from the requirements of the act and this chapter:

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(4) A food establishment managed by an organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)).

(5) A food establishment managed on a not-for-profit basis by an organization which is a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of those associations.

(6) A food establishment managed by an organization which is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis.

§ 76.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless, otherwise defined in [the most current FDA Food Code] Chapter 46 (relating to food code):

Act—3 Pa.C.S. Chapter 65 (relating to the Food [Employee] Employee Certification Act).

[*Adulterated food*—Food that is considered adulterated under section 8 of the Food Act (31 P. S. § 20.8).

Adulteration—An action that creates adulterated food.]

Advisory Board or Board—The Food [Employee] Employee Certification Advisory Board.

[*Air dry*—The exposure of wet articles to air for the purpose of drying through evaporation.

Air gap—The vertical distance between the point where water enters a plumbing fixture—such as a sink—and the level at which the plumbing fixture would overflow.

Asymptomatic—Presenting no symptoms of disease.

Backflow device—A device that prevents liquid from flowing back or moving toward the source from which the liquid was introduced.]

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[*Bacteria growth*—Multiplication of bacteria through cell division.

Bakery—A food establishment in which baked products (breads, rolls, cakes, doughnuts, biscuits,

pies, macaroni, spaghetti, noodles, and the like) are manufactured for human consumption.

Bleach—Sodium hypochlorite, a chemical sanitizer.]

CFP or Conference for Food Protection—An independent, National voluntary nonprofit organization to promote food safety and consumer protection.

(i) Objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

(ii) Participants include Federal, State, and local regulatory agencies, several universities, test providers, certifying organizations, consumer groups, food service and retail store trade associations and operators.

[*CIP or cleaned in place*—

(i) Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(ii) The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place cleaning without the use of a CIP system.]

Certificate—A document issued by the Department to a particular person to evidence that the named individual has demonstrated adequate food protection knowledge and is certified for purposes of section 6503(d) of the act (relating to certification advisory board and programs) [with respect to an industry-specific category of food establishment].

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Certification category—A designation of one of the four types of Department-approved certification training programs, indicating the depth of food safety training received by a person who successfully completes such a program. The four certification categories are as follows:

- (i) General certification category.
- (ii) Process-specific certification category.
- (iii) Modified certification category.
- (iv) Nonprofit certification category.

Certified supervisory [employe] employee—A supervisory [employe] employee holding a valid certificate.

[*Cleanability*—The property of being cleanable or accessible for cleaning.]

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[*Communicable disease*—An infectious disease transmissible to persons or animals by direct or indirect means.

Confirmed disease outbreak—A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism and epidemiological analysis implicates food as the source of the illness.

Contamination—Soiling, staining, corrupting or infecting by contact or association.

Critical control point—A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

Critical item—An action which violates a food sanitation standard and which may contribute to food contamination, illness or environmental health hazard.

Cross-contamination—The transfer of bacteria or other microorganisms from one source to another.]

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[**Detergent**—A cleaning agent.

Easily cleanable—

(i) A characteristic of a surface that:

(A) Allows effective removal of soil by normal cleaning methods.

(B) Is dependent upon the material, design, construction and installation of the surface.

(C) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use.

(ii) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (i) to different situations in which varying degrees of cleanability are required, such as one of the following:

(A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining.

(B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

Escherichia coli or **E. coli**—Gram-negative rod-shaped bacteria normally present in the intestines of man and animals, which may be pathogenic and are indicative of fecal contamination when found in food or water.

FDA Food Code—A publication of recommendations by the United States Food and Drug Administration (FDA) for safeguarding public health and ensuring safe food.]

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Food Code—Chapter 46.

[**Food contact surface**—One of the following:

(i) A surface of equipment or a utensil with which food normally comes into contact.

(ii) A surface of equipment or a utensil from which food may drain, drip or splash into a food or onto a surface normally in contact with food.]

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[**Food processor**—A food establishment that manufactures foods using methods such as cutting, grinding, chipping, peeling, baking, dicing, shredding, extrusion, drying, whipping, blanching, heating, extraction, smoking, freezing, fermenting, mix-

ing or dehydrating, or that packages, cans, jars or otherwise places food in containers.

Food service—A food establishment that prepares food for the consumer, or serves foods to the consumer, or both. This category of food establishment includes restaurants, hotels, auction house stands, hot dog vendors, flea market stands, nursing home kitchens, school cafeterias, college/university cafeterias, roadside stands, hand-dipped ice cream and yogurt sellers, college snack bars, stands at fairs and carnivals, caterers, snow-cone stands, camp kitchens, church kitchens, private clubs and associations, and food vendors at stadiums, racetracks, parks and public charity events.

Foodborne disease outbreak—The occurrence of two or more cases of a similar illness resulting from ingestion of a common food.]

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[**Fungi**—A division of lower plant life which includes yeasts, molds, mildew and mushrooms.

HACCP—Hazard Analysis Critical Control Point—A system that identifies and monitors specific foodborne hazards (biological, chemical or physical properties) that can adversely affect the safety of the food product.

Handwash sink—A sink specifically designated for hand washing.

Hazard—A biological, chemical or physical property that may cause an unacceptable consumer health risk.

Hepatitis A infection—A viral foodborne illness that can be transmitted from an infected person, through food, to another person.

Hermetically sealed container—A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

Highly susceptible population—A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

Infection—A disease or condition due to the growth of microorganisms in a host.

Intoxication—Illness caused by ingestion of food containing a bacterial toxin.

Lag phase—The time period needed for bacteria to acclimate to a new environment, during which bacterial growth is limited or nonexistent.]

Limited handling of potentially hazardous foods—Food handling activities that are limited to the placement of a potentially hazardous food on or into a warming, heating or cooking unit. The term includes such activities as placing a hot dog on a roller, placing a pizza in a cooking/warming unit or warming a pre-made sandwich in a microwave oven.

[*Log phase*—The time period which follows the lag phase and during which bacteria undergo accelerated growth.

MSDS or Material Safety Data Sheet—A data sheet supplied by manufacturers of hazardous chemicals which gives proper labeling of the product, hazard warnings and the name of the manufacturer.

Nonfood contact surface—Exposed surfaces which do not, under normal use, come into contact with food.

pH—The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

ppm—Parts per million, or milligrams per liter (mg/l).

Parasite—A living organism which derives its nourishment from another living organism.

Pathogenic organism—A disease-producing organism.]

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[*Plan review*—The process by which plans and specifications for the construction, remodeling or alteration of a food establishment are reviewed for conformance to specified standards.

Poisonous or deleterious substance—A substance that would be considered poisonous or deleterious under section 11 of the Food Act (31 P. S. § 20.11).

Potable water—Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).]

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[*Product protection*—Safety measures used to prevent food contamination.]

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[*Quaternary ammonium compound*—A chemical sanitizer which is a derivative of ammonium hydroxide or its salts.

Ready-to-eat food—

(i) Food that is in a form that is edible without washing, cooking or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.

(ii) The term includes:

(A) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food.

(B) Raw, washed, cut fruits and vegetables.

(C) Whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet.

(D) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks or shells are removed.

Reduced oxygen packaging—

(i) The reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combina-

tion of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen.

(ii) The term includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen and vacuum packaging including sous vide.

Retail food store—A food establishment or a section of a food establishment where food and food products are offered to the consumer and intended for off-premises consumption.

Salmonella enteritidis—Pathogenic Salmonella bacteria found in food which, if ingested in sufficient numbers, may cause salmonellosis in humans.

Salmonellosis—Foodborne disease caused by pathogenic Salmonella strains.

[*Sanitization*] *Sanitizing*—The application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

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[*Slacking*—The process of moderating the temperature of food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to -4°C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

Staphylococcus—Spherical bacteria which occur in grape-like clusters, certain types of which cause food poisoning by releasing toxins.]

Supervisory [employe] employee—An owner or a person employed by or designated by the business owner to fulfill the requirements of the act, and who has supervisory authority and is responsible for the storage, preparation, display or serving of foods to the public in establishments regulated by the Department or local health organizations.

[*Temperature danger zone*—The temperature range which is favorable for the growth of many types of pathogenic organisms in potentially hazardous foods.

Test strips—Indicator papers which, when immersed, assume a color that can be compared to a known color standard to measure sanitizer strength.]

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[*Toxin*—A poisonous substance produced by pathogenic organisms.

Transmissibility—The ability of a disease to be conveyed person-to-person, organism-to-person, food-to-person, person-to-food.

Virus—An intracellular, parasitic microorganism that is smaller than a bacterium.

Warewashing—The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

Water activity—A measure of the free moisture in a food. The term is the quotient of the water vapor pressure of the substance divided by the vapor

pressure of pure water at the same temperature, and is indicated by the symbol AW_w .]

§ 76.3. Requirements for food establishments.

(a) [*Industry-specific categories of food establishments.* A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall be classified under one or more of the following industry-specific categories:

(1) A food processor that manufactures potentially hazardous foods.

(2) A food service that prepares potentially hazardous foods for the consumer, or serves potentially hazardous foods to the consumer, or both.

(3) A bakery that processes potentially hazardous foods.

(4) A retail food store that offers potentially hazardous food that is not exempt under § 76.1(d) to the consumer.

(5) A frozen dessert manufacturer.] *General requirement.* A food establishment that is not exempt from compliance under § 76.1(d) (relating to compliance) shall comply with the act and this chapter.

(b) *Certified supervisory [employe] employee.* A food establishment shall employ or designate at least one certified supervisory [employe who is certified with respect to the industry-specific category of the food establishment. If a food establishment falls within more than one of the industry-specific categories in subsection (a), the food establishment shall employ or designate one or more certified supervisory employees so that, in the aggregate, there is a certified supervisory employee who is certified with respect to each of the applicable industry-specific categories of the food establishment] employee who holds a valid certificate issued by the Department under authority of the act and this chapter. The certificate shall be in the general certification category unless one of the following is accurate:

(1) The food establishment engages only in one or more specific, identified food processing activities (such as making cider or preparing frozen desserts), in which case a certificate in the process-specific certification category, pertinent to the processing conducted at the food establishment, shall suffice.

(2) The food establishment's personnel engage only in the limited handling of potentially hazardous foods (such as persons who handle food products that do not require any preparation by the food establishment other than to place the food on or in a cooking or warming unit), in which case a certificate in the modified certification category, pertinent to the food handling conducted at the food establishment, shall suffice.

(3) The food establishment is a nonprofit entity that, although otherwise exempt from compliance under § 76.1(d) voluntarily seeks certification under section 4(c)(2) of the act (relating to certification of employees), in which case a certificate in the nonprofit certification category shall suffice.

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(d) [*Employee turnover.* If a food establishment loses its only certified supervisory [employe]

employee through [employe] employee turnover or for any other reason, the food establishment shall comply with subsection (b) within 3 months of the date it lost its previous certified supervisory [employe] employee.

(e) *Certification records.* A food establishment shall maintain, at the food establishment site, a list of certified supervisory [employes] employees under its employment during the last 4 months including: name, certificate number, certification category, issuance date, expiration date, date employment began and date employment terminated.

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(g) *Posting of certificate.* A food establishment shall post the original certificate of its certified supervisory [employe] employee in public view at its business location.

(h) *Return of certificate.* A certificate is the property of the Department and is issued to the individual person identified on its face. A food establishment shall promptly deliver the certificate to a certified supervisory [employe] employee who leaves the employ of the food establishment or who otherwise ceases to be a certified supervisory [employe] employee with respect to that establishment.

§ 76.4. Eligibility to apply for certification.

(a) *Training program required.* A person shall successfully complete an approved certification training program [and obtain a score of 70% or higher on an approved certification examination in order], including a certification examination, to be eligible to apply to the Department for certification.

(b) *Timeliness of training.* A person is not eligible to apply to the Department for certification unless the certification examination was administered within 5 years preceding the date the application is delivered to the Department.

(c) *Exception to examination requirement.* Subsection (a) notwithstanding, a certification examination is not required when a person is applying for certification in the nonprofit certification category.

§ 76.5. Certification training programs: Obtaining the Department's approval.

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(b) *General requirements for approval.*

(1) *Approval of program.* The Department will approve a certification training program if it [addresses at least one industry-specific category of food establishment described in § 76.3(a) (relating to requirements for food establishments),] meets the food safety protection and training standards described in § 76.7 (relating to certification training programs: Food safety protection and training standards), fits within one of the certification categories described in paragraph (2) and has been recommended for approval by the Advisory Board. [A single certification training program may be approved with respect to more than one industry-specific category of food establishment.]

(2) *Certification categories.* The Department may approve a certification training program in one of four certification categories. These categories, and

the requisites for inclusion of a certification training program within each, are as follows:

(i) *General certification category.* The Department will approve a certification training program in the general certification category if one of the following applies:

(A) The training program addresses the topics set forth in § 76.7(a).

(B) The training program is a Federally-mandated HACCP training program for juice, seafood, meat or poultry.

(ii) *Process-specific certification category.* The Department will approve a certification training program in the process-specific certification category if the following apply:

(A) The subject matter of the training program relates to one or more specific, identified food processing activities (such as making cider or preparing frozen desserts).

(B) The training program addresses the topics in § 76.7(a) in a manner specifically directed to the food processing activities that are the identified subject matter of the training program.

(iii) *Modified certification category.* The Department will approve a certification training program in the modified certification category if both of the following are accurate:

(A) The subject matter of the training program is addressed to persons who handle potentially hazardous food on only a limited basis (such as persons who handle food products that do not require any preparation by the food establishment other than to place the food on or in a cooking or warming unit).

(B) The training program addresses the topics in § 76.7(a) in a manner specifically directed toward persons who handle potentially hazardous food on only a limited basis, and in a less-comprehensive manner than a certification training program in the general certification category.

(iv) *Nonprofit certification category.* The Department will approve a certification training program in the nonprofit certification category if either of the following apply:

(A) The training program is developed and administered by the Department under authority of section 4(g)(2) of the act (relating to certification of employees), and meets the course content requirements in § 76.7(b).

(B) The training program is developed and administered by an entity other than the Department, and meets the requirements referenced in clause (A).

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(d) *Contents: application for certification training program approval.* The application form for certification training program approval shall require the following information:

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(2) A course syllabus demonstrating that the program would meet the [**minimum hour and**] course content requirements in § 76.7.

(3) [**The industry-specific category or categories of food establishment, as described in § 76.3(a), to be addressed by the certification training program**] A designation of the certification category (whether general, process-specific, modified or non-profit), as described in subsection (b)(2), with respect to which approval of the training program is sought.

(4) **One of the following:**

(i) A copy of the examination to be administered at the conclusion of the certification training program, together with an answer key for that examination, if these documents are available.

(ii) **The name of the CFP-accredited examination to be administered at the conclusion of the certification training program.**

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(7) If the certification program is a home study program, the proposed site and date the approved certification examination is to be administered, if available.

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§ 76.7. Certification training programs: Food safety protection and training standards.

(a) [*Minimum hours of instruction/overview of topics.* A certification training program shall consist of at least 15 hours of instruction relevant to the industry-specific category with respect to which certification is sought. As described in detail in subsections (b)—(h), a] *Content in general.* A certification training program in the general certification category, the process-specific certification category or the modified certification category shall contain instruction in the following topics [**for the minimum hours indicated**]:

- (1) Foodborne illness [: **2 hours**].
- (2) Time and temperature [: **2 hours**].
- (3) Relationship between personal hygiene and food safety [: **3 hours**].
- (4) Food safety tracking system [: **3 hours**].
- (5) Cleaning and sanitizing [: **2 hours**].
- (6) Facilities and equipment layout [: **2 hours**].
- (7) Statutory and regulatory requirements [: **1 hour**].

(b) [*Topic: Foodborne illness.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of foodborne illness relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

(1) **Terms and definitions necessary to an understanding of foodborne illness. At a minimum, this shall include the following terms:**

- (i) **Bacteria.**
- (ii) **Communicable disease.**
- (iii) **Confirmed disease outbreak.**
- (iv) **Fungi.**
- (v) **Potentially hazardous foods.**
- (vi) **Infection.**

- (vii) Intoxication.
- (viii) Parasite.
- (ix) Pathogenic organism.
- (x) Time and temperature.
- (xi) Virus.
- (2) Microorganisms that commonly cause foodborne infection or intoxication.
- (3) The process by which microorganisms cause foodborne illness.
- (4) The definition, characteristics and recognition of potentially hazardous foods.
- (5) Factors that contribute to foodborne illness.
- (6) Prevention of food contamination from employees, equipment, premises, utensils and consumers.
- (7) Prevention of food contamination from chemicals.
- (8) Emerging pathogens.]

Content for courses in the nonprofit certification category. A certification training program in the nonprofit certification category shall contain instruction in the following topics:

(1) Food safety, with a portion addressing food safety considerations in the context of fund-raising events.

(2) Foodborne illness.

(3) Food safety tracking system.

[(c) *Topic: Time and temperature.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of time and temperature relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of time and temperature requirements. At a minimum, this shall include the following terms:

- (i) Bacteria growth.
- (ii) Contamination.
- (iii) Critical control point.
- (iv) Critical item.
- (v) Cross-contamination.
- (vi) Food contact surface.
- (vii) Hermetically sealed container.
- (viii) Lag phase.
- (ix) Log phase.
- (x) Ready-to-eat foods.
- (xi) Reduced oxygen packing.
- (xii) Slacking.
- (xiii) Temperature danger zones.
- (xiv) Water activity.

(2) Prime factors which control the growth, survival and toxin production rate of pathogenic microorganisms in food during receiving, storing, cooking, thawing, cooling, preparation, holding/displaying, serving, freezing, transporting, reheating and storing after production.

(3) The types, uses and calibration of food thermometers.

(4) Proper food temperatures during refrigeration, freezing, cooling, hot holding, cooking, reheating, thawing and preparation.

(d) *Topic: Relationship between personal hygiene and food safety.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of the relationship between personal hygiene and food safety relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the relationship between personal hygiene and food safety. At a minimum, this shall include the following terms:

- (i) Asymptomatic.
- (ii) Escherichia coli.
- (iii) Hepatitis A infection.
- (iv) Highly susceptible group.
- (v) Pathogenic organism.
- (vi) Salmonella enteritidis.
- (vii) Staphylococcus.
- (viii) Transmissible.

(2) Prevention of food contamination by food establishment employees, including the following subjects:

- (i) Handwashing techniques and frequency.
- (ii) Relationship of hand contact to foodborne illness.
- (iii) Contamination by poor hygienic practices such as sneezing, coughing and scratching.
- (iv) Clothing.
- (v) Fingernails.
- (vi) Eating, drinking or using tobacco.
- (vii) Hair restraint.
- (viii) Animals in the workplace.

(3) Employee health, including the following subjects:

(i) Infections or diseases which can be transmitted by open wound, sinus infection, virus or sore throat.

(ii) Identifying employees who may transmit infection or disease.

(iii) High risk groups.

(iv) Imposition and removal of employee exclusions and restrictions.

(v) Mandatory and voluntary reporting of foodborne illness.

(4) Preventive measures such as training, written cleaning and sanitation schedules and procedures, self-inspection, integrated pest management and preventative maintenance.

(e) *Topic: Food safety tracking system.* At least 3 hours of the instruction in a certification training program shall pertain to the topic of food safety tracking systems relevant to the industry-specific

category with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of a food safety tracking system. At a minimum, this shall contain the following terms:

- (i) Adulteration.
- (ii) Contamination.
- (iii) Critical control point.
- (iv) Cross-contamination.
- (v) HACCP.
- (vi) Product protection.

(2) Receiving food, including the following subjects:

- (i) Approved sources.
- (ii) Condition of food.
- (iii) Thermometers and temperature checks.
- (iv) Rejection for adulteration, temperature violations, distressed merchandise or condition of carrier.

(3) Safe storage of food, including the following subjects:

- (i) Dry storage temperature and practices.
- (ii) Refrigeration and freezer holding temperatures and product protection.
- (iii) Shelf life.
- (iv) Cross-contamination and adulteration.
- (v) Product protection in retail service/display areas and storage areas.
- (vi) Product labeling.
- (vii) Labeling of poisonous or toxic materials.
- (viii) Original containers.
- (ix) Working containers.
- (x) Food storage prohibitions, including locker rooms, toilet rooms, garbage rooms and under sewer lines.

(4) Preparation and processing of food, including the following subjects:

- (i) Personal hygiene.
- (ii) Practices regarding disposable gloves.
- (iii) Contamination by chemical or physical additives.
- (iv) Cross-contamination.
- (v) Equipment/utensils.
- (vi) Hazards to humans in using equipment.
- (vii) Machine guards, slicer blades and protective light shields.
- (viii) Corrective actions.
- (ix) Potentially hazardous foods.
- (x) HACCP.
- (xi) Critical control point.

(f) *Topic: Cleaning and sanitizing.* At least 2 hours of the instruction in a certification training program shall pertain to the topic of cleaning and sanitizing relevant to the industry-specific category

with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of cleaning and sanitizing procedures. At a minimum, this shall contain the following terms:

- (i) Adulteration.
- (ii) Air dry.
- (iii) Bleach.
- (iv) CIP.
- (v) Cleaning.
- (vi) Contamination.
- (vii) Cross-contamination.
- (viii) Detergent.
- (ix) Easily cleanable.
- (x) Food contact surface.
- (xi) Nonfood contact surface.
- (xii) pH.
- (xiii) ppm.
- (xiv) Sanitization.
- (xv) Test strips.
- (xvi) Warewashing.
- (xvii) Quaternary ammonium compound.

(2) MSDS Fact Sheets.

(3) Proper use of hot water or chemicals in sanitizing.

(4) The difference between cleaning and sanitizing.

(5) Types of sanitizers, their usage and the use of test strips.

(6) Detergents.

(7) Procedures to wash-rinse-sanitize.

(8) The frequency with which food contact surfaces, utensils, equipment and nonfood contact surfaces should be sanitized.

(9) Equipment.

(10) Manual warewashing.

(11) Mechanical warewashing.

(12) The proper use of cleaning methods such as air drying, wiping cloths, CIP and water temperature.

(g) *Topic: Facilities and equipment layout.* At least 2 hours of a certification training program shall pertain to the topic of facilities and equipment layout relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the proper layout of equipment and facilities. At a minimum, this shall contain the following terms:

- (i) Air gap.
- (ii) Backflow device.
- (iii) Cleanability.
- (iv) Potable water.
- (v) Handwash sink

- (vi) Plan review.
- (2) Proper equipment design and location.
- (3) Construction of floors, walls and ceilings.
- (4) Design of equipment such as refrigeration, hot holding, heating, ventilation, pest control, lighting and freezer equipment, and design of the buildings in which the equipment is located.
- (5) Acceptable water sources, water quality and quantity and water distribution systems.
- (6) Plumbing design, construction, location, materials and operation.
- (7) Management of solid and liquid waste, recyclables, refuse and returnables.
- (8) Review of plans for equipment and building layout and design.

(h) *Topic: Statutory and regulatory requirements.* At least 1 hour of a training program shall pertain to the topic of statutory and regulatory requirements relevant to the industry-specific category with respect to which certification is sought. This instruction shall address the following:

(1) Terms and definitions necessary to an understanding of the requirements imposed by the act and this chapter. At a minimum, this shall contain the following:

- (i) The act.
- (ii) The certificate.
- (iii) The certified supervisory employe.

(2) Statutes and regulations relevant to the industry-specific category of food establishment that is the subject of the approved certification program.]

§ 76.8. [Format of a certification examination]
Certification examination requirements.

[Although it is recommended that a certification examination consist of at least 100 questions, under no circumstances may a certification examination consist of fewer than 80 questions. The questions shall adequately test food protection knowledge with respect to an industry-specific category of food establishment described in § 76.3 (a) (relating to requirements for food establishments).]

A certification examination shall be administered at the conclusion of an approved certification training course, except for a training course in the "nonprofit" certification category. The examination shall adequately test food protection knowledge with respect to the certification category of the approved certification training course.

(1) If the certification category of the approved certification training course is the "general" certification category described in § 76.5(b)(2) (relating to certification training programs: Obtaining the Department's approval), the examination shall consist of at least 80 questions (100 questions being the recommended minimum), and the minimum passing score shall be 75%. If the examination is accredited by CFP, or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of ques-

tions and passing score shall be as determined by the body that prepared the examination.

(2) If the certification category of the approved certification training course is the "process-specific" certification category described in § 76.5(b)(2), the examination shall consist of at least 80 questions, and the minimum passing score shall be 75%. If the examination is accredited by CFP or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(3) If the certification category of the approved certification training course is the "modified" certification category described in § 76.5(b)(2), the examination shall consist of at least 40 questions, and the minimum passing score shall be 75%. If the examination is accredited by CFP or is an examination administered as a requirement for passing a Federally-mandated HACCP training program for juice, seafood, meat or poultry, the examination format, number of questions and passing score shall be as determined by the body that prepared the examination.

(4) If the certification category of the approved certification training course is the "nonprofit" certification category, an examination shall not be required.

§ 76.9. Reporting results of a certification examination.

(a) *Reporting results to the program participant.* A person who proctors a certification examination shall, within 30 calendar days of proctoring the examination, mail or deliver written confirmation of the following to any person who took the examination [written confirmation of that]:

(1) That person's examination score, [the] expressed as the percentage of correct answers.

(2) The date and location of the examination [and the industry-specific category of food establishment addressed in the examination. The examination score shall be expressed as the percentage of correct answers].

(3) The name of the course instructor.

(4) If the approved certification training program preceding the examination required a specific level of food-safety-related education or experience as a prerequisite to participating in the training program, confirmation that this requirement was met.

(b) *Reporting results to the Department.* Within [that same] the 30-day time period described in subsection (a), the proctor shall mail the same information to the Department at the address in § 76.16 (relating to contacting the Department), using either a form provided by the Department upon request, or a copy of the written confirmation it provided the person who took the examination.

§ 76.10. Applying for certification.

(a) *Application required.* A person who has [attained a score of 70% or higher] completed an approved certification training course and attained a score

equal to or higher than the minimum passing score required under § 76.8 (relating to certification examination requirements) on a certification examination administered within 5 years preceding the date the application is delivered to the Department may apply to the Department for certification. Certification is granted through issuance of the certificate described in § 76.11 (relating to certificate).

(b) *Form of application.* A person seeking certification under the act, or any other person, may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The application form requires the following information:

* * * * *

(4) [**The industry-specific food establishment category (as described in § 76.3(a) (relating to requirements for food establishments)) with respect to which certification is sought.**] The certification category of the approved certification training program (as described in § 76.5 (relating to certification training programs: Obtaining the Department's approval))—whether general, process-specific, modified or nonprofit.

* * * * *

(d) *Department action on application.* The Department will mark or stamp the date of receipt upon each application it receives and will, within 30 days of receiving an application and the application fee, mail the applicant a certificate, a disapproval notice or a request for additional clarification or documentation.

§ 76.11. Certificate.

(a) *Contents of certificate.* A certificate will bear the following information:

* * * * *

(2) The [**industry-specific category of food establishment, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the person is certified**] certification category of the approved certification program (as described in § 76.5 (relating to certification training programs: Obtaining the Department's approval))—whether general, process-specific, modified or nonprofit.

* * * * *

(6) A statement that the Department has determined the person identified on the certificate to possess adequate food protection knowledge [**and to be a certificateholder with respect to the industry-specific category of food establishment designated on the certificate**].

* * * * *

(b) *Ownership of certificate.* A certificate issued by the Department will remain the property of the Department. A certificateholder, certified supervisory [**employee**] **employee**, food establishment or other person having physical possession of a certificate shall, upon written notice from the Department, surrender and return the certificate to the Department.

(c) *Obligation to allow display.* A certified supervisory [**employee**] **employee** shall allow his employer to dis-

play the certificate issued by the Department, as required in § 76.3(g) (relating to requirements for food establishments). Upon termination of a certified supervisory [**employee's**] **employee's** employment, the employer shall surrender the certificate to the certificateholder named on the certificate.

* * * * *

§ 76.12. Renewal of certification.

(a) *General requirement.* A certificateholder shall [**obtain at least 7.5 hours of approved continuing education in the area of food safety and sanitation**] **complete an approved certification training program** every 5 years, commencing with the date the certificate is issued. [**An approved continuing education course**] **The approved certification training program** will not require a written examination as a condition of completion. If a certificateholder fails to obtain this approved continuing education and deliver a complete certification renewal application to the Department prior to the expiration date of the certificate, the certificate shall expire and the certificateholder shall successfully complete an approved certification program and a certification examination before certification will be granted. **A person who seeks to change the certification category with respect to which that person is currently certified may not do so through the certification renewal process described in this section, but shall follow the training and application procedure for initial certification.**

(b) *Application for renewal.* A person seeking renewal of certification under this section, or any other person, may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The form requires the following information:

* * * * *

(3) [**The industry-specific food establishment category or categories, as described in § 76.3(a) (relating to requirements for food establishments), with respect to which the applicant is certified.**] **The certification category appearing on the applicant's current certificate.**

* * * * *

§ 76.13. Obtaining Departmental approval of a continuing education course.

* * * * *

(b) *General requirements for approval.* The Department will approve a continuing education course, **and the certification category of that course**, if [**it**] **the course** instructs participants in current food protection practices, **fits within the certification category with respect to which approval is sought** and has been recommended for approval by the Advisory Board.

(c) *Application for approval.* A person seeking the Department's approval of a continuing education course under this section may obtain an application form from the Department at the address in § 76.16 (relating to contacting the Department). The applicant shall complete the form and return it to that same address. The form shall require the following information:

* * * * *

(6) **The certification category with respect to which approval is sought.**

(7) Other information the Department might reasonably require in evaluating whether to approve the continuing education course.

* * * * *

§ 76.16. Contacting the Department.

A person seeking applications or information relating to the act or this chapter shall forward the request, in writing, to the following address:

ATTN: Food [**Employe**] **Employee** Certification
Department of Agriculture
Bureau of Food Safety and Laboratory Services
2301 North Cameron Street
Harrisburg, [**PA**] **Pennsylvania** 17110-9408

§ 76.17. Preemption and local governmental authority.

(a) *General.* The regulation of food safety protection and training standards for [**employes**] **employees** of food establishments is preempted by the Department except that, in accordance with section 6503(f) of the act (relating to certification advisory board and programs), a food [**employe**] **employee** certification program established by a county, city, borough or incorporated town or township prior to September 1, 1994, may remain in effect.

(b) *Limitation of local certification.* If a county, city, borough, incorporated town or township elects to operate a food [**employe**] **employee** certification program that was in existence prior to September 1, 1994, the certification of persons under that local program shall be valid only within the geographic boundaries of the local government unit. This program validity may be extended to other states or local government units through agreements among other states, or local government units which operate food [**employe**] **employee** certification programs that predate September 1, 1994.

(c) *Option of certain local government units.* A county, city, borough, incorporated town or township having a food [**employe**] **employee** certification program that was in effect prior to September 1, 1994, may apply to the Department in accordance with the procedure in § 76.5 (relating to approved certification training programs: [**obtaining**] **Obtaining** the Department's approval) to become an approved certification training program with respect to one or more [**industry-specific categories of food establishments**] **certification category, as described in § 76.5(b)(2).**

(d) *Effect of a local government unit's decision with respect to exercising option.* If a county, city, borough, incorporated town or township having a food [**employe**] **employee** certification program which was in effect prior to September 1, 1994, does not exercise the option described in subsection (c) or does not obtain Departmental approval of its certification training program [**with respect to any particular industry-specific category of food establishment**], the unit of local government shall retain exclusive responsibility for certification of the food [**employes who would otherwise fall into that industry-specific category**] **employees.**

§ 76.18. [Advisory Board] (Reserved).

[(a) *Purpose.* The Advisory Board shall review and recommend Departmental approval of indus-

try-specific certification programs which meet the requirements of the act and this chapter.

(b) *Composition.* The Advisory Board will be appointed by the Secretary and consist of at least 21 members. The membership of the Advisory Board is as follows:

(1) The Secretary, or a designee, who will serve as chairperson.

(2) The Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.

(3) The Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.

(4) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the Senate, or a designee.

(5) The Minority Chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives, or a designee.

(6) A consumer representative.

(7) Two representatives of production agriculture.

(8) At least one person recommended by each of the following:

(i) The Pennsylvania Association of Milk Dealers.

(ii) The Pennsylvania Restaurant Association.

(iii) The Pennsylvania Food Merchants Association.

(iv) The Pennsylvania Convenience Store Council.

(v) The Pennsylvania Bakers Association.

(vi) The Pennsylvania Food Processors Association.

(vii) The Pennsylvania Veterinary Medical Association.

(viii) The County Commissioners Association of Pennsylvania.

(ix) The Pennsylvania League of Cities and Municipalities.

(x) The Pennsylvania State Association of Boroughs.

(xi) The Pennsylvania State Association of Township Commissioners.

(xii) The Pennsylvania State Association of Township Supervisors.

(xiii) The Pennsylvania School Food Service Association.

(9) At least one of the Advisory Board members described in paragraph (8) shall have experience in the field of public health.

(c) *Terms of appointees.* Advisory Board members described in subsection (b)(1), (2), (3), (4) or (5) shall be ex officio members. The terms of the initial appointees of the Secretary under subsection (b)(6)—(8) will be 2, 3 or 4 years, as determined by the Secretary, and will be staggered so that the terms of approximately 1/3 of these initial appointees expire in each of the 2nd, 3rd and 4th years of the Advisory Board's existence. Thereafter, the term of each of these appointees shall be 3 years. The

term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Persons may be appointed to successive terms.

(d) Quorum. A simple majority of the Advisory Board membership shall constitute a quorum of that body. A simple majority of a quorum is required for any formal action of the Advisory Board.]

§ 76.19. Civil penalties.

* * * * *

(c) *Time for correction of condition giving rise to civil penalty.* If the Department assesses a civil penalty against a food establishment for failing to have the required certified supervisory [**employe**] **employee**, it will allow the food establishment 90 days from the violation giving rise to the initial civil penalty before it may assess another civil penalty. During that 90-day period, the food establishment shall comply with the act and this chapter.

[Pa.B. Doc. No. 04-234. Filed for public inspection February 13, 2004, 9:00 a.m.]

**DEPARTMENT OF
TRANSPORTATION**

[67 PA. CODE CH. 103]

Vehicles Required to Stop at Railroad Grade Crossings

The Department of Transportation (Department), Bureau of Highway Safety and Traffic Engineering (Bureau), under the authority in 75 Pa.C.S. §§ 6103, 6105, 6121, and 6122, proposes to delete Chapter 103 (relating to vehicles required to stop at railroad grade crossings) to read as set forth in Annex A.

Purpose of this Chapter

Chapter 103 describes the type of motor vehicles required to stop at crossing where a railroad track crosses a highway at grade. Chapter 103 was mandated by 75 Pa.C.S. § 3342(d) (relating to vehicles required to stop at railroad grade crossings).

Purpose of this Proposed Rulemaking

The purpose of this proposed rulemaking is to delete Chapter 103. Chapter 103 is no longer needed because 75 Pa.C.S. § 3342(d) was amended by the act of December 21 1998 (P. L. 1126, No. 151) and no longer requires the Department to adopt regulations describing the vehicles which must comply with the stopping requirements at railroad grade crossings. Section 3342(d) of 75 Pa.C.S. now mandates that the Department publish, as a notice in the *Pennsylvania Bulletin*, a list of the vehicles that must stop at railroad grade crossings.

On February 17, 2001, the Department, acting through the Bureau, and in compliance with 75 Pa.C.S. § 3342(d), published a notice at 31 Pa.B. 1007 (February 17, 2001) designating the vehicles which must comply with the stopping requirements in 75 Pa.C.S. § 3342. In the course of determining the types of vehicles to be included in the list, the Department adopted the same criteria as contained in 49 CFR 392.10 (relating to railroad grade

crossings; stopping required). Prior to publication, the Bureau circulated the proposal internally within the Department, with the Pennsylvania State Police, Bureau of Patrol, and the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety.

Persons and Entities Affected

This proposed rulemaking affects Commonwealth law enforcement, the motoring public and the operators of buses and commercial motor vehicles that, in accordance with the regulations of the United States Department of Transportation, as contained in 49 CFR 392.10 (relating to railroad grade crossings; stopping required), are required to stop at railroad grade crossings.

Fiscal Impact

Deleting Chapter 103 will not impose any increased costs on private persons, State or local governments. This action will not occasion the development of any additional reports or other paperwork.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Date

The Department is not establishing a sunset date for this proposed rulemaking since Chapter 103 is being deleted as no longer needed to administer provisions required under 75 Pa.C.S. (relating to the Vehicle Code).

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Arthur H. Breneman, P. E., Chief, Traffic Engineering and Operations Division, Bureau of Highway Safety and Traffic Engineering, Commonwealth Keystone Building, 6th Floor, 400 North Street Harrisburg, PA 17120 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about the proposed rulemaking is Arthur H. Breneman, P. E., Chief, Traffic Engineering and Operations Division, Bureau of Highway Safety and Traffic Engineering, Commonwealth Keystone Building, 6th Floor, 400 North Street, Harrisburg, PA 17120, (717) 787-3620.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-387. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 103. [VEHICLES REQUIRED TO STOP AT RAILROAD GRADE CROSSINGS] (Reserved)

§ 103.1. [Purpose] (Reserved).

[This chapter describes the vehicles which shall stop at railroad grade crossings as required in 75 Pa.C.S. § 3342 (relating to vehicles required to stop at railroad crossings). The chapter has been developed in conjunction with the Pennsylvania Public Utility Commission and the Urban Mass Transportation Authority.]

§ 103.2. [Types of vehicles] (Reserved).

[The following types of vehicles shall comply with 75 Pa.C.S. § 3342 (relating to vehicles required to stop at railroad crossings):

(1) *Buses.* Buses designed for carrying more than ten passengers and engaged in the carriage of persons as passengers of a transportation service.

(2) *Nonprofit organization and local government vehicles.* Vehicles owned or operated by private nonprofit corporations and associations; municipalities, counties or their instrumentalities; or by the Commonwealth or its agencies or instrumentalities, when the vehicles are engaged in the carriage of persons as passengers of a transportation service.

(3) *Hazardous substances.* Vehicles transporting hazardous substances and displaying one of the following placards required by Chapter 403 (relating to Hazardous Substances Transportation Board):

- (i) Explosives A.
- (ii) Explosives B.
- (iii) Poison gas.
- (iv) Flammable solid W.
- (v) Oxidizers.
- (vi) Nonflammable gas.
- (vii) Corrosives.
- (viii) Flammable gas.
- (ix) Radioactive.
- (x) Dangerous.
- (xi) Chlorine.
- (xii) Flammable.
- (xiii) Blasting agent.
- (xiv) Poison.
- (xv) Oxygen.
- (xvi) Combustible.
- (xvii) Flammable solid.
- (xviii) Organic peroxide.

(4) *Chlorine.* Motor vehicles transporting a quantity of chlorine.

(5) *Vehicle used for hazardous substances.* Cargo tank motor vehicle, whether loaded or empty, used for the transportation of a hazardous material as defined in the Hazardous Materials Regulations of the United States Department of Transportation, 49 CFR Parts 106—179 (relating to transportation and pipeline safety; and hazardous materials regulations).

(6) *Commodity having temperature above its flash point.* Cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flash point as determined by the hazardous materials regulations of the United States Department of Transportation, 49 CFR 173.115 (relating to flammable, combustible, and pyrophoric liquids; definitions and preparation).

(7) *Commodity transported under special permit.* Cargo tank motor vehicle, whether loaded or empty, transporting a commodity under special permit under the Hazardous Materials Regulations of the United States Department of Transportation, 49 CFR 170.103 (relating to application for exemption).]

[Pa.B. Doc. No. 04-235. Filed for public inspection February 13, 2004, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 147]

Annual Audited Insurers' Financial Report Required

The Insurance Department (Department) proposes to amend Chapter 147 (relating to annual audited insurers' financial report required) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department; sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P. S. §§ 443, 764a, 967 and 991.2452) relating to the authority of the Insurance Commissioner to require insurance companies, associations, exchanges, fraternal benefit societies and preferred provider organizations to file statements concerning their affairs and financial condition; sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701 (relating to reports and examinations; reports and examinations; and regulation); sections 11 and 14 of the HMO Act (40 P. S. §§ 1561 and 1564); sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3207 and 3225) which, respectively, relate to the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan, the Pennsylvania Professional Liability Joint Underwriting Association, hospital plan corporations, professional health service corporations, beneficial associations, health maintenance organizations and continuing care providers.

Purpose

The purpose of this proposed rulemaking is to update Chapter 147, commonly referred to as the CPA Audit Rule. Chapter 147 requires insurers to have annual

audits of their year-end financial statements performed by independent certified public accountants (CPA). The annual audited financial reports are required to be filed with the Department by June 1 of each year. Chapter 147 was adopted in 1979 and is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC). The model is included in the NAIC Financial Regulation Standards and Accreditation Program (NAIC Program), which was established in 1989 to set minimum standards for state regulation of the financial solvency of the insurance industry. The Department has been accredited by the NAIC for compliance with the standards since 1994. Chapter 147 was last amended in 1995 to bring it into compliance with changes to the NAIC model. The NAIC model was again revised in 2002 to address concerns about the use of indemnification clauses in the engagement of CPAs for the annual audits. In 2003, an additional revision was made to specifically require CPAs to adhere to applicable NAIC instructions and procedures in conducting audits. The updates in this proposed rulemaking include the 2002 and 2003 revisions to the NAIC model, as well as other revisions to improve the clarity of Chapter 147, particularly with respect to its applicability to continuing care providers.

Significant Provisions

Section 147.2 (relating to definitions) is being amended to add definitions of "domestic insurer" and "foreign insurer" to clarify the meaning of these terms for purposes of the chapter. In addition, the definition of "independent certified public accountant" and § 147.13(i) (relating to effective date and exemption) are being amended to clarify the current reference to "Canadian and British companies." The definition of "insurer" is being updated to reflect statutory changes relating to the types of entities regulated by the Department; add preferred provider organizations, employers' mutual liability insurance associations and the Pennsylvania Professional Liability Joint Underwriting Association; and delete the general reference to other entities acting as insurers. These changes are needed to clearly apply Chapter 147 to all types of insurers.

Sections 147.3(a) and (d) and 147.4(b)(2) (relating to filing and extensions for filing of annual audited financial report; and contents of annual audited financial report) and § 147.13(f)(1) are being amended to recognize movement toward electronic filings with the Department and the NAIC. A related amendment to § 147.11(c) (relating to definitions, availability and maintenance of independent certified public accountant workpapers) refers to the Department's ability to make and retain electronic copies of audit workpapers when conducting onsite financial examinations of insurers. In addition, § 147.4(d) is being amended to clarify what is required when errors are discovered after an annual audited financial report has been filed. Finally, § 147.4(e) is being added to outline the requirements for nonprofit and for-profit continuing care providers under generally accepted accounting principles.

Other amendments to clarify requirements relating to continuing care providers include the addition of § 147.5(d) (relating to designation of independent certified public accountant), the expansion of § 147.7(c) (relating to consolidated or combined audits), the addition of § 147.8(c) (relating to scope of audit and report of independent certified public accountant) and amendments to § 147.9(a) (relating to notification of adverse financial condition). These amendments are needed to recognize the differences in accounting and financial reporting requirements for insurers and continuing care providers.

Section 147.6 (relating to qualifications of independent certified public accountant) is being amended to include provisions consistent with the 2002 revisions to the NAIC model. The amendments prohibit a CPA from being recognized by the Department as qualified to conduct audits if the CPA's engagement with the insurer includes an agreement of indemnity, or other release from liability, that would shift, transfer or limit the CPA's potential liability for failure to adhere to applicable auditing or professional standards based on a defense that misrepresentations were made by the insurer. Also consistent with the changes made to the NAIC model is a related amendment to add § 147.6(g) permitting an insurer and a CPA to agree to have disputes resolved by mediation or arbitration, except that the agreement may be disavowed in a receivership proceeding. These amendments to the NAIC model were supported by the insurance industry and are being considered for inclusion in the NAIC Program. The new provisions are similar to United States Securities and Exchange Commission requirements that already apply to publicly held stock insurers. Therefore, the amendments to § 147.6 will establish consistent requirements for all types of insurers. Finally, a reference to the Public Company Accounting Oversight Board (Board) has been added to § 146.6(a)(2). The Board was created by the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies.

Section 147.8 is being amended to strengthen requirements relating to the procedures followed by CPAs in conducting audits. The amendments are consistent with revisions made in 2003 to the NAIC model. These changes require a CPA to follow or consider NAIC instructions and procedures relating to the scope of an audit and data testing procedures. The amendments are needed to assure that consistent, up-to-date procedures are followed in the conduct of audits.

Section 147.10(a) (relating to report on significant deficiencies in internal controls) is being amended to clarify the time frame for providing the Department with reports describing any significant deficiencies in an insurer's internal control structure. The reports are required to be filed "concurrently with the filing of the annual audited financial reports" as stated in the beginning of subsection (a). The amendment clarifies the requirement by deleting the last sentence of subsection (a), which refers to a 60-day time frame.

Section 147.11(b) is being amended to delete the requirement that the engagement letter include the CPA's agreement to make workpapers available to the Department as required under § 147.11. This requirement is not needed in addition to the requirement in § 147.15(4) (relating to letter of qualifications of independent certified public accountant) that the CPA's consent to comply with § 147.11 be included in the letter of qualifications furnished to the insurer. Requiring the CPA's consent to these requirements in the letter of qualifications is consistent with the NAIC model.

Section 147.13 is being amended to update references to other sections in the chapter to reflect the impact of the proposed amendments. In addition, § 147.13(e) is being amended to replace "not transacting the business of insurance outside of this Commonwealth" with the clearer phrase "not insuring or reinsuring risks located outside of this Commonwealth" and to reflect the new definitions for "domestic insurer" and "foreign insurer." Section 147.13(i) and (j) is being deleted. These subsections established time frames for achieving compliance with the chapter when it was amended in 1995 and are no longer needed.

External Comments

In drafting this proposed rulemaking, the Department requested comments from The Insurance Federation of Pennsylvania, Inc., The Pennsylvania Association of Mutual Insurance Companies, the Managed Care Association of Pennsylvania, the Pennsylvania Fraternal Congress and consultants to the fraternal industry, the Pennsylvania Association of Nonprofit Homes for the Aging, the Pennsylvania Institute of Certified Public Accountants, Highmark, Inc., Capital Blue Cross, Independence Blue Cross and Blue Cross of Northeastern Pennsylvania. The comments received in response to the Department's request were considered in the development of this proposed rulemaking.

Affected Parties

The chapter applies to all types of insurers and continuing care providers licensed to transact business in this Commonwealth and the CPAs retained by these entities to conduct audits of their annual financial statements.

*Fiscal Impact**State Government*

The proposed rulemaking will clarify and strengthen existing regulatory requirements. There will be no increase in cost to the Department as a result of this proposed rulemaking.

General Public

The proposed rulemaking has no fiscal impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the proposed rulemaking.

Private Sector

The strengthened requirements in this proposed rulemaking are consistent with NAIC standards and will impose no significant costs on insurers and continuing care providers in obtaining annual audits of their financial statements.

Paperwork

The proposed rulemaking will not impose additional paperwork on the Department and affected parties. The rulemaking may reduce paperwork to the extent that it provides for the filing of documents in electronic form.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking should be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, psalvatore@state.pa.us within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), the Department is required to write to all commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determi-

nation that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-217. No fiscal impact; (8) recommends adoption.

(Editor's Note: For a document related to this proposal, see 34 Pa.B. 850.)

Annex A**TITLE 31. INSURANCE****PART VIII. MISCELLANEOUS PROVISIONS****CHAPTER 147. ANNUAL AUDITED INSURERS' FINANCIAL REPORT REQUIRED****§ 147.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Domestic insurer—An insurer incorporated or organized under the laws of the Commonwealth.

Foreign insurer—An insurer not incorporated or organized under the laws of the Commonwealth.

Independent certified public accountant—

* * * * *

(ii) For [**Canadian and British companies, a Canadian-chartered or British-chartered**] insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, a chartered accountant.

Insurer—

(i) The term includes any of the following licensed to transact business in this Commonwealth:

* * * * *

(D) [**A hospital plan corporation**] **A nonprofit health plan corporation, whether operating a hospital plan or a professional health services plan, or both.**

(E) [A professional health services plan corporation] An employers' mutual liability insurance association.

* * * * *

(H) [Another person, corporation, company, partnership, association or other entity acting as an insurer] A preferred provider organization.

(I) A joint underwriting association under section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731).

* * * * *

§ 147.3. Filing and extensions for filing of annual audited financial report.

(a) Every insurer, unless exempted by the Commissioner under § 147.13 (relating to effective date and exemption), shall have an annual audit performed by an independent certified public accountant and shall file [with] as instructed by the Commissioner an audited financial report for that year on or before June 1 for the year ending December 31 immediately preceding unless an extension is granted under subsection (b). The Commissioner may require an insurer to file an audited financial report earlier than June 1 by providing 90 days' advance notice to the insurer. The Commissioner may require audited financial reports and related information required under this chapter to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

* * * * *

(d) Audited financial reports filed [with] as instructed by the Commissioner will be open to the public for examination and inspection.

§ 147.4. Contents of annual audited financial report.

* * * * *

(b) The annual audited financial report shall, at a minimum, include the following:

* * * * *

(2) Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statements filed with the Department, with a written description of the nature of these differences, particularly with respect to surplus or stockholder equity and the results of operations. The insurer shall file an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the audited statutory financial statement and the annual statement filed with the Department within 60 days of the filing date of the audited financial report. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners [on diskettes or other electronic information storage devices] in a form of electronic transmission acceptable to the Commissioner.

* * * * *

(d) If an error is discovered after a report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report to the insurer and to the Department within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error. To the extent that the error requires an amendment to the insurer's annual financial statement filed with the Department, the insurer shall file, within 60 days of the date the corrected report is issued, an amendment [under subsection (b)(2)] to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the corrected audited statutory financial statement and the annual statement filed with the Department and including reconciling notes as required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(e) Subsections (a)—(d) do not apply to continuing care providers. The annual audited financial report for a continuing care provider shall comply with the following:

(1) The annual audited financial report for a nonprofit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its activities, cash flows and changes in net assets for the fiscal year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of activities, cash flows, changes in net assets and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(2) The annual audited financial report for a for-profit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its operations, cash flows and changes in shareholder's equity for the year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet,

statements of net income, cash flows, shareholder's equity and comprehensive income, and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(3) If an error is discovered after an annual audited financial report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error.

§ 147.5. Designation of independent certified public accountant.

* * * * *

(d) Subsection (b) does not apply to continuing care providers. A continuing care provider shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, stating that the independent certified public accountant is aware of the provisions of the Commonwealth's statutes and regulations that relate to accounting and financial matters applicable to continuing care providers and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity with generally acceptable accounting principles.

§ 147.6. Qualifications of independent certified public accountant.

(a) The Commissioner will not recognize a person or firm as a qualified independent certified public accountant [who is not licensed, or a firm which is not registered, to practice and is not in good standing under the laws of the Commonwealth or of a state with licensing requirements similar to the Commonwealth or who is not in good standing with the American Institute of Certified Public Accountants, Inc., and in good standing in all states in which the accountant is licensed or the firm is registered to practice, or, for a Canadian or British company, who is not a chartered accountant.] under any of the following conditions:

(1) The person is not licensed, or the firm is not registered, to practice and is not in good standing under the laws of the Commonwealth or of a state with licensing requirements similar to the Commonwealth.

(2) The person or firm is not in good standing with the American Institute of Certified Public Accountants, Inc. and, if applicable, the Public Company Accounting Oversight Board.

(3) The person or firm is not in good standing in all states in which the person is licensed, or the firm is registered, to practice.

(4) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in

whole or in part from misrepresentations made by the insurer or its representatives.

(b) For an insurer organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent public accountant under any of the following conditions:

(1) The person or firm is not a chartered accountant.

(2) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(c) Except as otherwise provided in this section, the Commissioner will recognize an independent certified public accountant [will be recognized] as independent and qualified who conforms to the standards of the profession as contained in the "Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc." and The C.P.A. Law (63 P. S. §§ 9.1—9.16b) or similar laws.

[(c)] (d) * * *
* * * * *

[(d)] (e) * * *
* * * * *

[(e)] (f) * * *

(g) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. In the event of a receivership proceeding commenced against the insurer under Article V of The Insurance Department Act (40 P. S. §§ 221.1—221.63), the mediation or arbitration agreement may be disavowed by the statutory receiver.

[(f)] (h) * * *

[(g)] (i) Within 60 days of receipt of notice from the Commissioner of a finding under subsection [(f)] (h) that an audit contains a material departure from generally accepted auditing standards, the insurer for which the audit was performed shall register with the Commissioner the name and address of a qualified independent certified public accountant retained by the insurer to perform an audit in compliance with this chapter for the year for which the finding was made. The audited financial report for the year for which the finding was made shall be filed within a time period to be determined by the Commissioner.

§ 147.7. Consolidated or combined audits.

* * * * *

(c) [This section] Subsection (a) does not apply to continuing care providers. A continuing care provider may make written application to the Commissioner for approval to file consolidated or combined financial reports in lieu of separate annual audited financial reports if the continuing care provider is part of a group of affiliated entities. A columnar

consolidating or combining worksheet, setting forth the amounts shown for each individual entity on the consolidated or combined audited financial report and including explanations of consolidating and eliminating entries, shall be filed with the report. Consolidated or combined audited financial reports shall be prepared as set forth in § 147.4(e) (relating to contents of annual audited financial report).

§ 147.8. Scope of audit and report of independent certified public accountant.

(a) The annual financial statements filed by an insurer with the Department shall be audited by an independent certified public accountant. The audit of the financial statements of the insurer shall be conducted in accordance with generally accepted auditing standards. [Consideration should also be given to other procedures illustrated in the *Financial Condition Examiner's Handbook* contained in the examiners handbook adopted by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary. The Commissioner may from time to time prescribe that additional auditing procedures be observed by the independent certified public accountant in the audit of the financial statements of insurers under this chapter.]

(b) The scope of the audit and data testing procedures shall be conducted as required by the appropriate *Annual Statement Instructions* adopted by the National Association of Insurance Commissioners. Consideration shall also be given to other procedures in the *Financial Condition Examiner's Handbook* adopted by the National Association of Insurance Commissioners.

(c) Subsection (b) does not apply to continuing care providers.

(d) The Commissioner may from time to time prescribe that additional auditing procedures be observed by the independent certified public accountant in the audit of the financial statements of insurers under this chapter.

§ 147.9. Notification of adverse financial condition.

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within 5 business days to the board of directors or audit committee of the insurer, [a determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or of a determination that the insurer does not meet its capital and surplus requirement calculated in accordance with Pennsylvania insurance statutes as of that date.] any of the following:

(1) A determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently being audited.

(2) A determination by the independent certified public accountant that the insurer does not meet its capital and surplus requirement, or that the continuing care provider does not meet its liquid

reserve requirement, under laws and regulations relating to the insurer or continuing care provider as of the balance sheet date currently being audited.

* * * * *

§ 147.10. Report on significant deficiencies in internal controls.

(a) Concurrently with the filing of the annual audited financial reports, each insurer shall furnish the Commissioner with a written report prepared by the independent certified public accountant describing significant deficiencies in the insurer's internal control structure noted by the independent certified public accountant during the audit. The Statement of Auditing Standard No. 60, *Communication of Internal Control Structure Matters Noted in an Audit* (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants, Inc.) requires an independent certified public accountant to communicate significant deficiencies, known as "reportable conditions," noted during a financial statement audit to the appropriate parties within an entity. A report should not be issued if the independent certified public accountant does not identify significant deficiencies. [If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within 60 days after the filing of the annual audited financial report.]

* * * * *

§ 147.11. Definitions, availability and maintenance of independent certified public accountant workpapers.

* * * * *

(b) Every insurer required to file an annual audited financial report under this chapter shall require [within the engagement letter the agreement of] the independent certified public accountant to make available, through the insurer, for review by Department examiners workpapers prepared in the conduct of the audit, as well as communications related to the audit between the independent certified public accountant and the insurer, including the engagement letter, at the offices of the insurer, at the offices of the independent certified public accountant, at the offices of the Department or at another reasonable place designated by the Commissioner. The insurer shall require that the independent certified public accountant retain the audit workpapers and communications for at least 7 years after the period reported on and agree to make a partner or manager available to the Department upon reasonable request.

(c) In the conduct of the periodic review by Department examiners described in subsection (b), electronic copies or photocopies of pertinent audit workpapers may be made and retained by the Department.

* * * * *

§ 147.13. Effective date and exemption.

* * * * *

(b) For those insurers retaining an independent certified public accountant on November 11, 1995, the 7-year period of service referred to in § 147.6 [(c)] (d) (relating to qualifications of independent certified public accountant or other person responsible for rendering the annual audited financial report was first retained or assigned that responsibility. The requirement that an

insurer retain the services of a new independent certified public accountant in order to comply with the 7-year rotation provision in § 147.6 [(c)] (d) shall become effective November 11, 1997.

(c) Foreign [or alien] insurers having direct premiums written in this Commonwealth less than \$1 million in a calendar year and having fewer than 1,000 policyholders or certificateholders of directly written policies in this Commonwealth at the end of that calendar year shall be exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Foreign insurers having assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

* * * * *

(e) [Insurers domiciled in this Commonwealth and not transacting the business of insurance outside] Domestic insurers not insuring or reinsuring risks located outside of this Commonwealth having total admitted assets less than \$10 million and either direct premium written of less than \$1 million in a calendar year or fewer than 1,000 policyholders or certificateholders of directly written policies at the end of that calendar year are exempt from this chapter for that year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(f) Foreign [or alien] insurers filing annual audited financial reports in another state, pursuant to that state's requirements for annual audited financial reports whose requirements have been found by the Commissioner to be substantially similar to the requirements of this chapter, are exempt from this chapter if the insurer meets the following conditions:

(1) A copy of the annual audited financial report, report of evaluation of accounting procedures and system of internal controls, report on significant deficiencies in internal controls, and the independent certified public accountant's letter of qualifications which are filed with the other state are filed [with] as instructed by the Commissioner in accordance with the filing dates specified in this chapter. Canadian insurers may submit independent certified public accountant's reports as filed with the Canadian Dominion Department of Insurance.

* * * * *

(i) [Domestic insurers retaining an independent certified public accountant on November 11, 1995, shall comply with this chapter for the year ending December 31, 1995, and each year thereafter unless the Commissioner permits otherwise.

(j) Foreign insurers shall comply with this chapter for the year ending December 31, 1995, and each year thereafter, unless the Commissioner permits otherwise.

(k) [In the case of [Canadian and British] insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the annual audited financial report is defined as the annual statement of total business on the form filed by the insurers with their domiciliary supervision authority, audited by an independent chartered accountant. For these insurers,

the letter required in § 147.15 (relating to letter of qualifications of independent certified public accountant) shall state that the independent certified public accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner under § 147.3 (relating to filing and extensions for filing of annual audited financial reports) and shall affirm that the opinion expressed is in conformity with those requirements.

[Pa.B. Doc. No. 04-236. Filed for public inspection February 13, 2004, 9:00 a.m.]

[31 PA. CODE CH. 151] Continuing Care Providers

The Insurance Department (Department) proposes to amend Chapter 151 (relating to continuing care providers) to read as set forth in Annex A. The rulemaking is proposed under the authority of the Continuing-Care Provider Registration and Disclosure Act (act) (40 P. S. §§ 3201—3225).

Purpose

The purpose of this proposed rulemaking is to update and clarify Chapter 151 with respect to the requirements for annual audits of financial statements filed by continuing care providers with the Department. This proposed rulemaking is a companion to Insurance Department Fiscal Note 11-217, which is being proposed, to clarify the requirements in Chapter 147 (relating to annual audited insurers' financial report required) with respect to audits of nonprofit and for-profit continuing care providers. Chapter 151 was adopted in 1985 to implement the act. Chapter 147 was last amended in 2001 and prescribes requirements for annual audits of all types of licensed insurers and continuing care providers. Therefore, the provisions in Chapter 151 relating to annual audits are outdated and not needed in addition to the requirements in Chapter 147.

Significant Provisions

Section 151.7(d) (relating to disclosure statements) is being amended to replace out-dated, incomplete requirements for audited financial statements with a reference to the requirements in Chapter 147. This amendment, together with the amendments to Chapter 147, is needed to establish up-to-date, detailed financial reporting requirements for nonprofit and for-profit continuing care providers under generally accepted accounting principles.

External Comments

The Department requested comments from the Pennsylvania Association of Nonprofit Homes for the Aging in drafting this proposed rulemaking and the companion rulemaking to update Chapter 147. The comments received in response to the Department's request were considered in the development of this proposed rulemaking.

Affected Parties

Chapter 151 applies to continuing care providers licensed to transact business in this Commonwealth. The provisions relating to annual audits also apply to the certified public accountants retained to conduct audits of financial statements filed by continuing care providers with the Department.

Fiscal Impact

State Government

The proposed rulemaking will update and clarify existing regulatory requirements. There will be no increase in cost to the Department as a result of this proposed rulemaking.

General Public

The proposed rulemaking has no fiscal impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the proposed rulemaking.

Private Sector

The updates in this proposed rulemaking will impose no significant costs on continuing care providers.

Paperwork

The proposed rulemaking will not impose additional paperwork on the Department and affected parties.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking should be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, psalvatore@state.pa.us within 30 days following the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), the Department is required to write to all commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-220. No fiscal impact; (8) recommends adoption.

(Editor's Note: See 34 Pa.B. 846 for a proposal related to this proposal.)

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 151. CONTINUING CARE PROVIDERS

§ 151.7. Disclosure statements.

* * * * *

(d) The certified financial statements required to be contained in disclosure statements, under section 7(a)(9) of the act (40 P. S. § 3207(a)(9)), shall be prepared in accordance with **[generally accepted accounting principles and shall be signed by an independent certified public accountant in accordance with generally accepted auditing standards. The certified financial statements shall include the following as of the end of the providers two most-recent fiscal-years, or the period of time that the provider has been in existence, whichever is shorter.**

(1) A balance sheet showing the assets, liabilities and equity.

(2) Statements of income, retained earnings or equity and changes in financial position.] Chapter 147 (relating to annual audited insurers' financial report required).

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[Pa.B. Doc. No. 04-237. Filed for public inspection February 13, 2004, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Approval of Diploma Programs in Transition to Degree-Granting Status

The State Board of Nursing (Board) proposes to amend § 21.51 (relating to establishment) governing the establishment of approved programs of nursing for professional nurses (registered nurses (RNs)) to read as set forth in Annex A.

A. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

Section 6.1 of the Professional Nursing Law (act) (63 P. S. § 216.1) requires the Board to establish standards for the operation and approval of nursing education programs for the preparation of RNs. The Board is authorized to establish rules and regulations for the practice of professional nursing and the administration of the act under section 2.1(k) of the act (63 P. S. § 212.1(k)). Section 6 of the act (63 P. S. § 216) requires that every applicant for examination for licensure as an RN successfully complete an approved program of professional nursing. Prior to June 29, 2002, three classes of approved programs were listed under section 6 of the act: baccalaureate degree, associate degree and diploma programs. Under the act of June 28, 2002 (P. L. 651, No. 99)

(Act 99) (effective September 29, 2002), section 6 of the act was amended to include "programs in transition from approved diploma to degree granting programs."

C. *Background and Purpose*

This proposed rulemaking was initially generated by the Board in the fall of 2001 after it considered a request by the Lancaster Institute for Health Education to approve the transition of a hospital-based nursing program to a degree-granting program, where the nursing school would no longer be under the auspices of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Under current § 21.51(a), the Board was unable to approve the request or assist a diploma nursing education program in this type of transition. A draft of this proposed rulemaking was sent on October 1, 2001, to 27 agencies, associations, health care entities and individuals who have been identified as interested parties or who have expressed an interest in proposed rulemakings by the Board. The Board reviewed their comments at its meetings of November 29-30, 2001, and January 10-11, 2002. Act 99 was subsequently enacted and explicitly includes programs in transition from approved diploma to degree granting programs in the category of Board-approved programs of professional nursing.

The Board seeks in this proposed rulemaking to accomplish the legislative intent of Act 99, which is to increase flexibility for hospital-based diploma programs to transition to degree-granting programs. At the same time, the Board seeks to set parameters for that transition to assure that students receive an educationally sound nursing education while maintaining eligibility for a license.

D. *Description of Amendments*

Under current § 21.51(a), a school of nursing to educate RNs must be developed under the authority of a regionally accredited university or college or a hospital approved by the JCAHO. Three types of programs currently exist to educate RNs: diploma programs, associate degree programs and baccalaureate degree programs. Diploma granting nursing education programs are conducted by hospitals, while associate and baccalaureate degree granting programs are conducted by regionally accredited universities or colleges. Hospitals wishing to establish their own degree-granting nursing education programs are unable to gain approval by the Board to operate a program until the school receives regional accreditation from the Department of Education (Department). However, a school of nursing may not receive regional accreditation until it graduates its first class. Moreover, it may take up to 6 years for an institution to gain regional accreditation from the Department. Nurses educated in this Commonwealth must satisfactorily complete a Board-approved nursing education program in order to sit for the nursing licensure examination. Thus, unless a hospital-based diploma program teams with an already-accredited college or university, it is unable to smoothly transition to degree-granting status and retain Board approval for its nursing education program.

The Board proposes to allow hospital-based diploma programs to transition to degree-granting status under the authority of a university or college pursuing regional accreditation, provided the controlling institution has begun the process of regional accreditation, in that it has been given initial approval by the Department to seek degree-granting status and shows that it continues to pursue regional accreditation. Only diploma programs

which are in good standing with the Board, maintaining full approval status under § 21.33 (relating to types of approval) for at least 3 years prior to the transition, may undertake to establish a degree-granting nursing education program. The Board proposes 3 years as a reasonable time period in which a diploma program must attain and maintain acceptable standards and adhere to the policies and regulations of the Board to undertake the transition. It is in the best interests of students and the public to ensure that the program undertaking the transition to a degree-granting nursing education program is stable, established and has maintained acceptable standards for a minimum time period.

A program wishing to transition from diploma to degree-granting status must comply with all other Board regulations pertaining to nursing education programs and submit annual progress reports to the Board. The Board does not intend to single out nursing education programs in transition for increased monitoring, but will monitor the programs to ensure that the transition is occurring smoothly and to ensure the quality of the education program. To that end, the program in transition must undergo a site visit and review by a nursing education advisor after the first class graduates and results of the licensing examination have been received. This requirement is consistent with the current practice for any new nursing education program approved by the Board, where the nursing education program is established within an existing college or university. Section 21.33 gives the Board the authority to grant initial approval status to new schools with evidence that acceptable standards are being met, for a period of time necessary to evaluate the results of the licensing examination taken by the first graduates of the school. Presuming it meets all other requirements of the regulations, the program in transition will be maintained on initial approval status for a maximum of 6 years or until it receives full approval from the Department, whereupon it may be granted full approval by the Board. The Board bases this 6-year time frame on information it received from the Department indicating that an institution may need up to 6 years to achieve full approval for regional accreditation. The Board wishes to emphasize the importance of the role of the Department in approving institutions for degree-granting status. The Board does not intend in any way to usurp the duties and powers of the Department, and, in fact, in this proposed rulemaking defers to the requirements that the Department has established for degree-granting institutions.

While the Board does not anticipate a rush by hospital-based diploma programs to begin their own degree-granting schools of nursing, the Board wishes to remove unnecessary restrictions which impede that transition, while ensuring that the quality of nursing education remains high.

E. *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no fiscal impact and will not impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions. The proposed rulemaking will have no fiscal impact on programs seeking to transition and will impose only minimal additional paperwork on those programs beyond what is already required for establishment of a nursing education program.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Martha Brown, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference (16A-5118) Programs in Transition when submitting comments.

JANET HUNTER SHIELDS, MSN, CRNP, CS,
Chairperson

Fiscal Note: 16A-5118. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

**Subchapter A. REGISTERED NURSES
APPROVED PROGRAMS OF NURSING**

§ 21.51. Establishment.

(a) A nursing program shall be developed under the authority of a regionally accredited university or college, or hospital approved by the Joint Commission on Accreditation of Hospitals, and under the leadership of a registered nurse [.], **except as follows:**

(1) A Board-approved hospital-based diploma nursing education program wishing to transition to an associate or baccalaureate degree nursing education program may be developed under the authority of a university or college pursuing regional accreditation, if:

(i) The university or college has initial approval for degree-granting status from the Department of Education.

(ii) The university or college provides documentation of its pursuit of regional accreditation.

(iii) The hospital-based diploma nursing education program has maintained full approval status under § 21.33 (relating to types of approval) for at least 3 years prior to the transition.

(2) A nursing education program wishing to transition under paragraph (1) shall:

(i) Comply with all other Board regulations pertaining to nursing education programs.

(ii) Submit annually to the Board a written report of its progress and may be asked to appear before the Board to respond to questions or concerns which arise from the annual progress report.

(iii) Be reviewed onsite, after the first class has completed the new program and the results of the licensing examination taken by the first graduates within 1 year of graduation have been received.

(iv) Continue on initial approval under § 21.33 until the university or college has full approval for degree-granting status from the Department of Education or for 6 years, whichever occurs first.

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[Pa.B. Doc. No. 04-238. Filed for public inspection February 13, 2004, 9:00 a.m.]

STATE POLICE

[37 PA. CODE CH. 42]

Use of Unmarked Vehicles

The act of June 26, 2001 (P. L. 734, No. 75) (Act 75) requires the State Police, in consultation with the Department of Transportation (Department), to promulgate regulations for the use of unmarked vehicles by police officers. The effective date of Act 75 was August 25, 2001. The proposed rulemaking requires officers using unmarked vehicles to carry identification and display it upon request, unless it would jeopardize their safety. Officers using unmarked vehicles for patrol duties must be in uniform; officers using unmarked cars for duties that are likely to involve vehicle stops shall wear clothing bearing the specific name of the law enforcement agency or task force. When making a stop in an unmarked vehicle, the officer shall choose the safest location possible. In a vehicle pursuit, officers in an unmarked vehicle shall have audible and visual signals that comply with regulations of the Department, and unmarked vehicles shall relinquish the lead in pursuit as soon as marked vehicles are available.

Effect

The proposed rulemaking will affect all Commonwealth law enforcement agencies that use unmarked vehicles.

Fiscal Impact

The proposed rulemaking will have a minimal fiscal impact.

Paperwork Requirements

The proposed rulemaking will not require the completion of additional forms, reports or other paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 2004, the State Police submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate

Law and Justice Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the State Police, the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Date

No sunset date has been assigned. However, every facet of the proposed rulemaking will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of citizens of this Commonwealth.

Public Comment/Contact Person

Interested parties wishing to comment are invited to submit a written statement within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written statements must include the name, address and telephone number of the interested party and a concise statement with sufficient detail on the subject. Written statements should be sent to Syndi L. Guido, Policy Director, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-0905. Persons with a disability who require an alternative format of this proposed rulemaking (for example, large print, audio tape or Braille), should contact Syndi L. Guido to make the necessary arrangements.

COL. JEFFREY B. MILLER,
Commissioner

Fiscal Note: 17-65. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 42. USE OF UNMARKED VEHICLES

GENERAL PROVISIONS

Sec.	
42.1.	Purpose.
42.2.	Policy and effect.
42.3.	Definitions.

PROCEDURES

42.21.	Identification and uniform requirements.
42.22.	Vehicle stops and pursuits.

GENERAL PROVISIONS

§ 42.1. Purpose.

This chapter governs the use of unmarked vehicles. It is necessary to establish uniformity in the use of unmarked vehicles for the purpose of law enforcement.

§ 42.2. Policy and effect.

The policy of the Commonwealth is to permit the use of unmarked vehicles for law enforcement. Failure to comply with this chapter does not affect the legality of any arrest or citation, nor will it be grounds for the suppression of evidence.

§ 42.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Light bar assembly—A device designed and constructed to display two or more steady burning, flashing or revolving beams of light with 360° visibility.

Marked police vehicle—A police vehicle that is equipped with at least one light-bar assembly and displays graphics, markings or decals identifying the agency or department on a minimum of three sides (front, rear, left or right).

Official identification—Identification issued, designated or approved by the individual law enforcement agency or municipality.

Official uniform—Any attire designated or approved by the individual law enforcement agency or municipality.

Unmarked police vehicle—A police vehicle not equipped with a roof mounted light-bar assembly. The vehicle may display graphics, markings or decals identifying the agency or department.

PROCEDURES

§ 42.21. Identification and uniform requirements.

(a) *Identification.* Officers using an unmarked vehicle shall ensure they are carrying official identification, other than their uniform, to verify their identity, unless it would jeopardize the officers' safety due to their work assignment. Officers shall be prepared to display their official identification upon request. Officers shall honor the requests when the request is reasonable and the officers' safety has been ensured. If the officer does not carry official identification, the officer should not attempt to stop traffic law violators, unless there is immediate threat to public safety.

(b) *Uniforms.* Officers assigned to use an unmarked vehicle to perform patrol duties shall be attired in an official uniform. Officers assigned other duties that are likely to include or require traffic stops shall wear an official uniform or alternative attire, such as a police raid jacket, that bears the name of a specific law enforcement agency or task force. Markings on alternative attire should be visible from the front and back.

§ 42.22. Vehicle stops and pursuits.

(a) *Stopping suspected violators while operating an unmarked vehicle.* Officers stopping suspected violators shall attempt to ascertain the safest available location for the officer and the motorist, consistent with the need for prompt action. Officers shall take into consideration the road and weather conditions, terrain, lighting, traffic and the nature of the violation. The officer shall also attempt to choose a location that will afford both the driver and the officer a sense of safety.

(b) *Use of audible and visual signals required while operating an unmarked vehicle.* Audible and visual signals meeting the requirements and standards set forth in 67 Pa. Code Chapter 173 (relating to flashing or revolving lights on emergency and authorized vehicles) shall be utilized when officers stop suspected violators.

(c) *Unmarked vehicle pursuits.* Officers engaged in a pursuit using an unmarked vehicle shall relinquish their role as the primary pursuit vehicle and permit officers in marked units to assume the role of the primary unit when that assistance is available.

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