

PROPOSED RULEMAKING

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 143]
Manufactured Housing

The Department of Community and Economic Development (Department), under the authority of section 6 of the Manufactured Housing Construction and Safety Standards Authorization Act (35 P.S. § 1656.6), proposes to amend Chapter 143 (relating to manufactured housing). The purpose of this proposed rulemaking is to establish fees charged to manufacturers and retailers to cover the costs of extraordinary/follow-up monitoring and inspections incurred by the Department beyond those covered by fees authorized by the United States Department of Housing and Urban Development (HUD) and to update the existing regulations with the term "housing standards division."

Introduction

Under the act, HUD funds the Department with a monitoring inspection fee in an amount authorized by HUD under the Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401—5424). When the Department is required to perform additional monitoring because the manufacturer or retailer fails to take appropriate corrective measures, the funds received from HUD are insufficient to cover the costs of the same. Under section 6 of the act, the proposed rulemaking establishes fees to cover the costs of extraordinary/follow-up monitoring beyond that which is presently funded.

Analysis

Sections 143.4, 143.12 and 143.13 (relating to responsibility of the Department; consumer complaints; and investigations) are amended to delete the term "division of manufactured housing" and replace it with the updated term "housing standards division."

Section 143.14 (relating to hearings) is amended to delete the word "held."

Section 143.15 (relating to fees) is added to allow the Department to charge manufacturers or retailers fees to cover the costs of extraordinary/follow-up monitoring and inspection incurred by the Department beyond those covered by fees authorized by HUD.

Fiscal Impact

Commonwealth

The additional fees allowed under this proposed rulemaking will enable the Department to recover the costs associated with extraordinary/follow-up monitoring when it is determined that either a manufactured home manufacturer or retailer fails to remediate failures to comply with applicable standards or regulations.

Political Subdivisions

There will be no fiscal impact on political subdivisions.

Public

Manufacturers and retailers of manufactured homes that fail to take corrective steps after being informed of failures to comply with applicable standards or regulations will incur the additional fees allowed under this proposed rulemaking.

Paperwork

The proposed rulemaking will not change existing paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 23, 2006, 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 Commerce Committee and the Senate Community and Economic Development 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 must 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.

Effective Date/Sunset Date

(a) The regulations will become effective 60 days after final-form publication in the *Pennsylvania Bulletin*.

(b) The regulations will be monitored on an annual basis and updated as needed.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking within 30 days of publication of this proposed rulemaking to Lisa Maiorana, Assistant Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7330; or Mark Conte, Chief, Housing Standards Division, Office of Community Development, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7416.

DENNIS YABLONSKY,
Secretary

Fiscal Note: 4-84. No fiscal impact; (8) recommends adoption.

Currently the Department is using Federal reimbursements to cover the cost of monitoring manufactured housing; however these reimbursements do not cover all of the costs associated with this function. The addition of this fee will allow the Department to recover all costs associated with these responsibilities.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART V. COMMUNITY AND ECONOMIC DEVELOPMENT

Subpart C. COMMUNITY DEVELOPMENT AND HOUSING

CHAPTER 143. MANUFACTURED HOUSING

§ 143.4. Responsibility of the Department.

The [**Division of Manufactured Housing**] **Housing Standards Division** of the Department is responsible for enforcing the manufactured home standards of the Federal act, and may join with the Department of Housing and Urban Development and other States or public or private agencies for these purposes.

§ 143.12. Consumer complaints.

Individuals alleging wrongful acts by persons involved in the manufacture or sale of manufactured homes within this Commonwealth shall contact the Department of Community and Economic Development, [**Division of Manufactured Housing, at Commonwealth Keystone Building**] **Housing Standards Division**, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. An investigation will be conducted by the Division upon the receipt of a written and signed complaint. Complaints [**shall**] **must** contain the writer's name and address, and contain sufficient detail to enable the Division to fully understand the nature and extent of the complaint. Copies of all documents shall be appended to the complaint.

§ 143.13. Investigations.

The Department, through the [**Division of Manufactured Housing**] **Housing Standards Division**, after investigation on its own initiative or upon the receipt of a verified complaint under § 143.12 (relating to consumer complaints) has the power, after notice and hearing, to order the payment of civil penalties not to exceed \$1,000 per violation for violations of this chapter, the act, the Federal act or regulations promulgated under the Federal act. The maximum civil penalty that may be imposed will not exceed \$1 million for any related series of violations occurring within 1 year from the date of the first violation.

§ 143.14. Hearings.

Hearings [**held**] under this chapter will be conducted in accordance with 1 Pa. Code Part II (relating to [**general rules of administrative practice and procedure**] **General Rules of Administrative Practice and Procedure**).

§ 143.15. Fees.

To offset the costs of follow-up monitoring or inspections incurred by the Department beyond those provided for in the monitoring inspection fees authorized by the United States Department of Housing and Urban Development, the Department may charge the manufacturer or retailer the following fees:

Follow-up inspection or monitoring services—\$400 per day or \$60 per hour.

Administrative services associated with follow-up inspection or monitoring services—\$175 per day or \$25 per hour.

Travel and per diem expenses—Current Commonwealth travel and per diem expenses.

[Pa.B. Doc. No. 06-180. Filed for public inspection February 3, 2006, 9:00 a.m.]

DEPARTMENT OF EDUCATION**[22 PA. CODE CH. 339]****Vocational Education**

The Department of Education (Department) proposes to amend Chapter 339 (relating to vocational education) to read as set forth in Annex A. This rulemaking is proposed under the authority of § 4.32(a) (relating to standards and reports), Article XII of the Public School Code of 1949 (code) (24 P. S. §§ 18-1801—18-1855), section 2603-B of the code (24 P. S. § 26-2603-B), regarding powers and duties of the State Board of Education (Board), and the act of May 29, 1931 (P. L. 210, No. 126) (24 P. S. §§ 1224—1231).

Purpose

Chapter 339 establishes regulations to define school entities eligible to receive payments on the account of pupils enrolled in vocational curriculums. This proposed rulemaking reflects current State and Federal statutory requirements and Department policies and practices.

Requirements of the Proposed Rulemaking

The proposed amendments to § 339.1a (relating to definitions) deletes the definition of "Competency-Based Vocational Education (CBVE)"; amends the definitions of "articulation," "attendance area" and "diversified occupations program"; and adds definitions of "AVTS," "action plan," "CIP Codes—Classification of Instructional Programs," "CTSOs—Career and Technical Student Organizations," "cluster vocational education," "completer," "concentrator," "Department," "Educational and Occupational Objectives for a Student Enrolled in an Approved Vocational Technical Program," "Evaluation Plan," "IEiP," "occupational program," "participant," "registered apprenticeship," "SBVE—Standards-Based Vocational Education," "School Code," "school entity," "Secretary" and "technical institute."

Section 339.2 (relating to operation) is amended to incorporate references to academic and career and technical education to reflect Chapter 4 (relating to academic standards and assessment) and Federal legislation requirements.

Section 339.3(1)(v) (relating to satellite program) is amended to reflect current language by removing the term "handicap" and including the term "disability."

Section 339.4(a)(1) (relating to program approval) is amended to reflect the current name of the Bureau of Career and Technical Education.

Section 339.4(a)(2) is amended to reflect current reapproval cycle.

Section 339.4(b)(2) states that the programs are preparing students for high priority occupations.

Section 339.4(b)(4) states that students achieve industry credentials and Pennsylvania Skills Certificates.

Section 339.4(b)(8) clarifies that special services for students is defined under other chapters of the school code.

Section 339.4(b)(10) adds further clarification as to secondary and postsecondary articulation and reference to dual enrollment.

Section 339.4(b)(13) adds a requirement that evidences sending schools and career and technical schools plan instructional program jointly.

Section 339.4(d)(1) removes minimum placement rate as means to retain program approval and adds reference to the accountability standards established by the Secretary of Education.

Section 339.4(d)(3)(i) adds accountability standards schools must meet to continue program approval.

Section 339.4(e)(1) and (iii) adds reasons why approved programs would be terminated.

Section 339.4(f) adds annual reporting requirement on attainment of secondary performance measures and standards.

Section 339.4(g) adds annual reporting requirement on student achievement.

Section 339.4(h) clarifies the requirement for students to complete the educational and occupational objectives form annually.

Section 339.13 (relating to local advisory committee) adds clarification of advisory committee membership.

Section 339.14 (relating to occupational advisory committee) clarifies occupational advisory committee membership.

Section 339.15 (relating to minutes) adds requirement to retain committee meeting minutes for a 5-year period.

Section 339.21(c) (relating to admissions) adds reference to charter schools.

Section 339.21(d) adds a requirement that guidance counselors help students to make informed decisions related to academic achievement and post-high school opportunities.

Section 339.21(e) adds opportunity for students denied admissions into an approved program to appeal decision to the Board.

Section 339.21(f) adds requirement that career and technical education staff be invited to attend Individualized Education Program meetings.

Section 339.22 (relating to program content) clarifies that purpose of approved programs is to prepare students for high priority occupations, successful employment and postsecondary education. Clarifies that programs are to be standards based and lead to industry skills certification.

Section 339.22(a)(1) updates language to reflect Chapter 4 and standards-based philosophy of the Department.

Section 339.22(a)(2) reinforces Chapter 4 and integration of academic standards into career and technical education curriculum.

Section 339.22(a)(3) reinforces that programs are identified by Classification of Instructional Programs code.

Section 339.22(a)(4) requires that planned instruction includes academics.

Section 339.22(a)(5) requires that occupational analysis leads to performance objectives and assessments.

Section 339.22(a)(6) requires students to achieve industry standards and credentials.

Section 339.22(a)(7) clarifies that students are provided work-based opportunities.

Section 339.22(a)(10) clarifies the minimum hours requirement for approved programs and removes course sequencing example and references to course length requirements.

Section 339.22(b)(5) clarifies that diversified occupations programs require a properly certified instructor.

Section 339.22(c)(1) updates the program title to reflect the current title used by United States Department of Education.

Section 339.22(c)(1)(i)(A) requires family and consumer science programs to meet the requirements of Chapter 4 by including academic standards.

Section 339.22(c)(1)(i)(B) reinforces family and consumer science programs to meet Chapter 4 by including Family and Consumer Science academic standards.

Section 339.22(c)(1)(ii) removes reference to planned course requirement for approved consumer and homemaking education programs.

Section 339.22(c)(2) removes reference to industrial arts programs.

Section 339.22(a) reinforces the requirement for schools to develop secondary and postsecondary articulations.

Section 339.23(4) (relating to vocational education safety) references the American's With Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213).

Section 339.29 (relating to cooperative vocational education) requires cooperative education programs to meet Department developed cooperative education guidelines.

Section 339.30(a) (relating to student organizations) updates titles of student organizations to reflect United States Department of Education titles.

Section 339.30(c) clarifies which student organizations are recognized by the United States Department of Education.

Section 339.30(d) clarifies that certified instructors direct student organizations and joint operating committee or school boards make the assignment.

Section 339.30(e) requires that student organizations hold a charter with the National organization and Department.

Section 339.32(1) (relating to services) requires assistance be provided to students rather than encouraging assistance to be provided.

Section 339.32(2) requires student career plans include academic and technical coursework that prepares students for postsecondary education training.

Section 339.41 (relating to certification) references the updated school code in relation to certification and preparation of professional personnel.

Section 339.51(1) (relating to learning environment) indicates that program laboratory meet industry standards and reflect occupational advisory committee recommendations.

Section 339.53 (relating to contemporary equipment) adds the requirement that equipment and facilities be comparable to industry standards or reimbursement may be withheld.

Section 339.56 (relating to technical institutes) adds technical institute standards, the process for establishing technical institutes and funding of technical institutes.

Affected Parties

The proposed rulemaking affects professional educators, public schools, teacher education programs and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools) who hold approved vocational-technical education programs.

Cost and Paperwork Estimates

Since this proposed rulemaking largely reflects existing provisions of State and Federal statutes, court decisions and regulations, the costs associated with compliance would be negligible to the school entities. Estimated cost to the Commonwealth to support the technical institutes is \$9,849,112.

Effective Date

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

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by it, the Department plans to review the effectiveness of Chapter 339 after 4 years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 19, 2006, 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 Committees on Education. 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 must 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 Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Robert G. Barlett, Director, Bureau of Career and Technical Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

GERALD L. ZAHORCHAK, D.Ed.,
Secretary

Fiscal Note: 6-298. (1) General Fund; (2) Implementing Year 2005-06 is \$0; (3) 1st Succeeding Year 2006-07 is \$0; 2nd Succeeding Year 2007-08 is \$0; 3rd Succeeding Year 2008-09 is \$549,000; 4th Succeeding Year 2009-10 is \$914,000; 5th Succeeding Year 2010-11 is \$1,300,000; (4)

2005-06 Program—\$59,600,000; 2004-05 Program—\$58,200,000; 2003-04 Program—\$56,800,000; (7) Vocational Education; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XVI. STANDARDS

CHAPTER 339. VOCATIONAL EDUCATION

VOCATIONAL EDUCATION STANDARDS

§ 339.1. Scope of applications.

[This program applies to programs for which vocational education payments are made under sections 2502.8, 2504, 2504.3, 2506.1, 2507, 2508, 2508.1—2508.4 of the Public School Code of 1949 (24 P. S. §§ 25-2502.8, 25-2504, 25-2504.3, 25-2506.1, 25-2507, 25-2508, 25-2508.1—25-2508.4) and 24 P. S. § 1707. Also included are the Federal Acts as follows: The Vocational Education Act of 1963 (20 U.S.C.A. §§ 2301—2471), section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794), Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000d—2000d-4), and Title IX of the Educational Amendments of 1972 (20 U.S.C.A. §§ 1681—implementing regulations thereto and Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap (45 CFR Part 80 Appendix B).] This chapter applies to school entities that provide vocational education programs under sections 1801-1855 of the School Code (24 P. S. §§ 18-1801—18-1855). These programs may receive:

(1) Payments on account of pupils enrolled in vocational curriculums. (See section 2502.8 of the School Code (24 P. S. § 25-2502.8).)

(2) Payments on account of students enrolled in technical institutes. (See section 2504.3 of the School Code (24 P. S. § 25-2504.3).)

(3) Payments on account of approved adult programs. (See section 2506.1 of the School Code (24 P. S. § 25-506.1).)

(4) Payments on account of approved vocational extension classes and preemployment training. (See section 2507 of the School Code (24 P. S. § 25-2507).)

(5) Payments on account of equipment purchased by area vocational-technical schools and technical institutions. (See section 2508.1 of the School Code (24 P. S. § 25-2508.1).)

(6) Payments for vocational training of recipients of public assistance and unemployment compensation. (See section 2508.3 of the School Code (24 P. S. § 25-2508.3).)

(7) Payments on account of improvements and additions in vocational-technical curriculums. (See section 2508.4 of the School Code (24 P. S. § 25-2508.4).)

(8) Payments under the Vocational and Applied Technology Act of 1998 (20 U.S.C.A. §§ 2301—2417).

§ 339.1a. Definitions.

(a) The definitions in [§ 6.1 (Reserved)] § 4.3 (relating to definitions) apply to this chapter.

(b) The following words and terms, when used in this [part] chapter, have the following meanings, unless the context clearly indicates otherwise:

AVTS—Area vocational technical school, as defined in § 4.3.

Action plan—Formal strategies and accountability plans for ensuring that all students are equipped with the academic and occupational skills they need for career success and lifelong learning.

Articulation—A planned process of curriculum development, instructional strategies and administrative procedures, which link [one or more educational departments or] educational agencies with other education [departments or] agencies or with industries. The [purpose of the linkage is to help a student to] linkage helps students make a [smooth and successful] transition from one to the other without experiencing delays in or duplication of learning.

Attendance area—A geographical area of school districts and pupils to be served by an area vocational-technical school or technical institute which has been approved by the State Board for Vocational Education. (See section 1840.1 of the School Code (24 P. S. § 18-1840.1).)

CIP Codes—Classification of Instructional Programs—A numerical coding of instructional programs developed by the United States Department of Education used to identify vocational programs within the Commonwealth.

CTSOs—Career and Technical Student Organizations—In-school organizations that provide personal and leadership development related to a career and technical program area as recognized by the United States Department of Education. (See § 339.30 (relating to student organizations).)

Cluster vocational education—A program that consists of competencies found in more than one vocational education program as defined by CIP codes. (See § 339.22(k) (relating to program content).)

Completer—A student who completes all the requirements of a vocational technical program, takes the appropriate occupational competency assessment under the Pennsylvania Skills Assessment Program, and graduates.

[**Competency-Based Vocational Education (CBVE)** —An instructional system utilizing a written planned vocational course that is based on occupational analysis and performance objectives that meet the definition in § 339.22(1)(i) (relating to program content). Instruction is derived from tasks performed in an occupation/job that have been reviewed by trade/technical and occupational advisory committees.]

Concentrator—A student who is at least 14 years of age and is enrolled full time, 360 hours per year, in a career and technical education program. Only concentrator students are counted for vocational subsidies.

Department—The Department of Education of the Commonwealth.

Diversified [occupations program] Occupations Program—A planned vocational program, which may be offered at either the area vocational-technical school or a

comprehensive high school. The program prepares [a heterogeneous group of] students from more than one vocational education area of instruction for gainful employment. The program is a [direct relationship/] partnership between a local business\ [/] and industry and the [local education agency] school entity. [Career competency and manipulative aspects of a] A full range of career competencies are developed at the job training station site. The school, in a classroom setting, provides related [general as well as] academic and technical instruction, including safety. A cooperative education certified teacher is required for such a program.

Educational and Occupational Objectives for a Student Enrolled in an Approved Vocational Technical Program—A statement of the classes or courses a student has taken or will take and expected occupational outcomes to be achieved, including graduation, postsecondary participation and employment.

Evaluation plan—A formal plan of assessing the effectiveness of vocational programs.

IEP—Individualized Education Program under § 14.131 (relating to IEP).

Occupational program—A plan to deliver rigorous workforce preparedness through knowledge, skills and attributes required for a specific or cluster occupation through completion of a vocational program.

Participant—A student who enrolls in vocational education planned instruction, but who is not a concentrator. Participants do not qualify for vocational education subsidy.

Registered apprenticeship—A plan registered with the Apprenticeship and Training Council of the Commonwealth and evidenced by a Certificate of Registration or other appropriate document as meeting the apprenticeship standards of the Council. These programs are articulated with postsecondary institutions, technical institutes and industry partners who offer registered apprenticeship, certificate or degree programs.

SBVE—Standards-Based Vocational Education—An instructional system utilizing a written, planned vocational course that is based on occupational analysis and performance objectives. Occupational tasks reviewed by an occupational advisory committee provide the basis for instruction. The instructional system also incorporates and addresses attainment of academic standards (§ 4.12).

School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

School entity—Any local public education provider (such as, public school, charter school, cyber charter school, AVTS, intermediate unit).

Secretary—The Secretary of the Department.

Technical institute—An institute established, maintained, conducted and operated for the purpose of providing technical education and training by offering nondegree-granting post high school programs and courses of not more than 2 years' duration, which shall prepare out-of-school youth and adults for technical areas leading to technical certificates. (See section 1841 of the School Code

(24 P. S. § 18-1841) regarding to establishment of schools). Technical institutes may not grant degrees, but are encouraged to develop articulation agreements with degree-granting institutions to facilitate transfer of student credit.

§ 339.2. Operation.

A board of school directors, acting individually or in conjunction with other boards of school directors, may establish, operate, maintain and conduct rigorous academic and career and technical education vocational or technical education programs or both, under the approved [long range] strategic plans.

§ 339.3. Satellite program.

A satellite vocational education program is a program established, maintained and administered by an area vocational-technical board in a participating school district facility as an integral part of the [area vocational-technical school() AVTS ()]. The requirements for satellite programs are:

(1) AVTS requirements. In school districts having approved satellite programs, the area vocational-technical board shall be required to:

* * * * *

(v) Develop recommendations that assist students in meeting their career needs without regard to [a student's] sex, race or [handicap] disability.

(vi) [Insure] Ensure that a program of safety is incorporated into the curriculum.

(2) School district requirements. School districts receiving coordination services for [their] approved satellite vocational educational program shall:

(i) Maintain budgetary control [regarding] over supplies and equipment, insurance, utilities [,] and routine upkeep [and the like].

* * * * *

§ 339.4 Program approval.

(a) General rule. New, expanded or revised programs will be approved by the Secretary prior to operation. A program will not receive vocational education payments until it has been approved by the Secretary under this chapter. Vocational education programs in existence and approved prior to September 1, [1986] 2005, [and approved prior to September 1, 1986,] will be reapproved by the Secretary as set forth in paragraph (2).

(1) New, expanded or revised programs. After September 1, [1986] 2005, new, expanded or revised programs will be approved by the Secretary prior to operation. For funding purposes, new, expanded or revised programs shall be submitted to the Bureau of [Vocational and Adult] Career and Technical Education prior to August 1 to receive full-year reimbursement.

(2) Reapproval. Previously approved vocational education programs will be reviewed for approval by the Secretary for assurance of compliance with [Chapter 6 (Reserved)] this chapter. The reviews will take place between September 1, [1986] 2005 and [August 31, 1988] June 30, 2010.

(b) Application for approval or reapproval. Programs shall be reviewed for compliance with this section. New,

expanded, [or] revised, and existing programs shall submit evidence of compliance with this chapter. [Substantial revision includes, but is not limited to: A change in the number of years a program is offered; a change in the number of hours a program is offered; a change in the objectives of the vocational planned courses; and a change in the facilities.] Application shall be made on forms supplied by the Department[. Applications shall include], which must include, but not be limited to:

(1) [Evidence of planning under § 6.12 (Reserved).]

(2) [A description of the program and how a [competency] standards-based philosophy has been incorporated as required by § 339.22 (relating to program content).]

(2) Evidence that the program prepares students for high priority occupations or other occupations supported by local labor market information and is supported by local employers.

(3) Evidence that the instructional equipment is comparable to industry needs as recommended by the Advisory Committee. Evidence may be the minutes of the Advisory Committee meetings.

(4) Student achievement of industry-based standards and Pennsylvania Skills Certificate.

[(3)] (5) The length of time students will be scheduled into a program as required by § 339.22(a)(4)(i).

[(4)] (6) * * *

[(5) Evidence that the program is justified by local labor market information and is supported by local employers.]

(6) Evidence that the instructional equipment is comparable to industry needs as recommended by the Advisory Committee. See § 6.61 (reserved). Evidence may be the minutes of the Advisory Committee meetings.]

* * * * *

(8) Assurance that support or special services are available to the [instructor] students when disadvantaged, disabled or limited English-speaking students are enrolled as required by [§ 6.31 (reserved)] Chapters 14 and 15 (relating to special education programs and services; and protected handicapped students). These students are provided with the support and assistance as written in the IEP or service agreement, and that are necessary to succeed in the vocational program.

(9) Assurance shall be given that students have the appropriate competencies in mathematics, science and English prior to entrance in a vocational training program and that subsequent instruction in these academic areas [be] is appropriate to their chosen area of occupational training.

[(i) Articulation shall be in Mathematics, Science, English, Industrial Arts and Home Economics and be incorporated into courses/credits mandated by Chapter 5 (Reserved).]

(ii) Competencies in existing planned courses shall be documented in the following areas:

(A) Mathematics applications.

- (B) Computer science.
- (C) Applied science.
- (D) Basic manipulative skills.
- (E) Measurement skills.
- (F) Communication skills.]

(10) Assurance that articulation exists between secondary and postsecondary institutions within a service area [according to § 6.12] and that a system exists promoting seamless transition to ensure the maximum opportunity for student placement including opportunities for dual enrollment and other strategies that promote acquisition of postsecondary credit while still in high school.

(11) Program sponsorship and involvement in CTSOs.

(12) Evidence, if a program submitted for reapproval is reduced in hours, that the reduction in hours will not result in a less effective education program being offered.

(13) Evidence that joint planning with sending schools around academic and other needs of attending students occurs.

(c) *Documentation.* Documentation supporting compliance with each item on the application for approval or reapproval—subsection (b)—shall be maintained at the local educational agency and shall be available for Department review. [Review includes, but is not limited to, procedures listed in § 339.61 (relating to evaluation).]

(d) *Retain approval.*

(1) [In order to] To retain program approval, it shall be necessary to achieve [a minimum placement rate—employment, military service or enrollment in postsecondary training program—within 3 years. By March 1, 1987, the Secretary will determine the minimum placement rate, and it will be published as an amendment to this section] the accountability standards established by the Secretary.

[(2) In determining compliance with the established placement rate, the Secretary will consider such factors as unemployment rates for needs students served by the program; and other characteristics, which might affect the placement rate, and may, at his discretion, waive compliance with the minimum placement rate.

(3) If a program does not meet the minimum placement rate, an additional year will be granted to permit the program to meet that rate before the program approval is withdrawn. During this period, the Department will provide assistance to the local education agency.]

(i) *Accountability standards.* School entities shall implement the following standards, which shall be subject to review by the Department:

(A) Industry assessment, industry credentials, certification or State assessment will serve as the vehicle for occupational competency testing. Student performance on occupational competency testing will be measured by the Pennsylvania Skills Certificate or other approved industry certification to define the level of occupational achievement. All completers shall complete an occupational competency evaluation.

(B) Student performance on achieving academic standards will be measured, and the Pennsylvania System of School Assessment (PSSA) will be used to define the level of academic achievement.

(C) Statewide performance measures and standards must address:

(I) Student attainment of rigorous academic and vocational skill proficiencies.

(II) Student attainment of secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.

(III) Placement in, retention in and completion of postsecondary education or advanced training (including registered apprenticeships), placement in military service, or placement and retention in employment.

(IV) Student participation in and completion of vocational education programs that lead to non-traditional training and employment.

(D) Local entities shall conduct studies to determine the effectiveness of the career and technical education program in preparing students to achieve academic and technical standards. These data shall be shared with local boards of directors or joint operating committees to ensure that students' performance correlates with current workforce needs.

(2) School entities shall submit for reapproval at least every 5 years.

(3) In addition, the Department will notify, in writing, each school entity that does not meet or exceed expectations of the standards set by the Secretary, and will require the school to submit a compliance plan to the Bureau of Career and Technical Education. Each noncomplying school entity shall develop a compliance plan and document all corrective actions taken pursuant to it. Upon its approval of the plan, the Department will continue to review the program and provide technical assistance.

(e) *Terminations.*

(1) Programs will be terminated for the following reasons:

(i) Program fails within a 3-year period to successfully meet the accountability standards established by the Secretary and may be terminated in accordance with § 339.62 (relating to noncompliance: appeal process).

(ii) School entities request termination. Before program termination, the local administrator shall secure board approval and forward a copy of the board's minutes with a letter of explanation to the Department. If the Department does not respond to the school entity's submission within 60 days, the termination shall be considered approved.

(iii) Program fails to report student enrollment for 3 consecutive school years and may be terminated in accordance with § 339.62.

(f) School entities shall report annually to the Department on the accomplishment of Secondary Performance Measures and Standards as outlined in the State plan.

(g) School entities shall report student achievement annually to the Department.

(h) Students entering career and technical education programs shall complete annually an Educational and Occupational Objectives for a Student Enrolled in an Approved Vocational Technical Program.

[(e)] (i) *Private school contracts.* Contractual arrangements may be made by public schools with approved private institutions to provide secondary or postsecondary vocational-technical instruction [**Instruction shall be limited to**] only in occupational fields [**in**] for which public school programs are unavailable. The private institutions shall meet program certification and other mandates regarding vocational education programs contained in the [**Public**] School Code [(24 P. S. §§ 1-101—27-2702)] and this title.

[(f) *Terminations.* Before program termination the local administrator shall secure board approval and forward a copy of the board's minutes with a letter of explanation to the Department. If the Department does not respond to the school entity's submission within 60 days, the termination shall be considered approved.]

PLANNING

§ 339.13. Local advisory committee.

[A local advisory committee shall include representatives of education, industry, business, community-based organizations, joint apprenticeship councils—if available—labor, management, parents and students. The committee shall advise the board and the administration concerning the general philosophy, objectives and program needs of the school. The board and the administration will make the decisions.] The local advisory committee as set forth in § 4.33(a) (relating to advisory committees) shall also include representatives authorized by the workforce investment board, civic organizations, and higher education institutions.

§ 339.14. Occupational advisory committee.

The occupational advisory committee [shall be comprised of representatives from business and industry actively engaged in the occupation for which training is being provided. Representation may also include management and labor personnel, home-makers, vocational education students, recent graduates of the program and members-at-large from the community. The occupational advisory committee shall provide advice on performance objectives to the classroom teacher. See § 339.22 (relating to program content). The classroom teacher will set performance objectives.] as set forth in § 4.33(c) (relating to advisory committees) shall also include representatives authorized by the workforce investment board, civic organizations, and higher education institutions.

§ 339.15. Minutes.

Official minutes of the advisory, occupational advisory and administrative committee meetings shall be maintained by the respective committee for 5 years from the meeting date.

CURRICULUM

§ 339.21. Admissions.

An admissions policy developed by the local education agency regarding entrance to a vocational education program [shall] must state whether enrollment is unlimited or limited. If enrollment is limited, an admissions policy shall include nondiscriminatory eligibility requirements for the purpose of predicting a student's success in a given program. When the number of students predicted to be successful in a given program is less than the number of openings available in that given program, the openings may be available to adults or students at another school district, which are predicted to be successful in that program. When the number of students predicted to be successful in a given program exceeds the number of openings available, an admissions policy [shall] must include a nondiscriminatory selection procedure, as required by current Federal and Commonwealth statutes, regulations and guidelines.

* * * * *

(2) If a school develops a recruitment program, announcements concerning vocational education [shall] must exemplify freedom from occupational stereotypes and to the extent possible the philosophy of equal access [to the following:

- (i) Females and males.
- (ii) Individuals with Disabilities.
- (iii) Disadvantaged individuals.
- (iv) Limited English speaking individuals.
- (v) Racial or ethnic groups].

(3) A student enrolled in a charter school may attend a vocational program available to students in the student's school district of residence, as defined in section 1302 of the School Code (24 P. S. § 13-1302).

(4) Guidance personnel shall provide to students the information necessary to make informed decisions regarding the selection of appropriate vocational education programs and discuss the importance of high school academic achievement and postsecondary education and training to career success.

(5) Denial of admission may be appealed to the board or joint operating board of the school making the decision. If the board refuses admission, the student may appeal its decision to the State Board of Vocational Education.

(6) With regard to the placement of students with IEPs or service agreements in vocational programming, faculty from the vocational programs in which students are recommended for placement will participate as members of the IEP and service agreement teams.

(7) IEP and service agreement team meetings, when scheduled by the school district, must give notice to the career and technical education instructor assigned and shall be attended by the program instructor to which the student is seeking admission. See § 339.22 (relating to program content).

§ 339.22. Program content.

(a) *Occupational program requirements.* The primary [objective of an occupational program is to provide

job information and help students acquire specific occupational skills, efficient work habits and positive attitudes about the personal, social and economic significance of work] objectives of an occupational program are to prepare students for high priority occupations or other occupations supported by local labor market information and is supported by local employers, and for successful employment and lifelong learning through acquisition of high-level academic, technical and career development skills, efficient work habits and attitudes about the personal, social and economic significance of work. Occupational programs include vocational agriculture, vocational business education, vocational health occupations, vocational marketing and distributive education, vocational occupational [home economics] family and consumer sciences, and vocational trade, industrial and technical education. Occupational programs [shall] must be [competency] standards-based, meet licensure or [requirements] industry skill certification or Pennsylvania Skills Certificate, as required, provide extended classroom experience, and meet minimum time requirements. The specific requirements of the foregoing elements are as follows:

(1) [Competency] Standards-based. Programs [shall] must have [competency] standards-based plans. A [competency] standards-based plan is an instructional system that is planned and managed by the teacher, based upon occupational analysis and clearly stated performance objectives that are deemed critical to successful employment as recommended by occupational advisory committees [that are deemed critical to successful employment]. The instructional process [shall] must derive its content from the task performed in each occupation and job and provide for the assessment of student performance on the basis of preset performance standards. [Competency] Standards-based plans [shall] must include:

(i) Performance objectives. A vocational education program [shall] must identify performance objectives in accordance with criteria developed by the local education agency in cooperation with the occupational advisory committee. The performance objectives [shall] consist of the following three parts:

(A) The conditions under which the task will be performed—the, materials and supplies provided.

* * * * *

(ii) Program plans. Vocational education program content shall be designed in accordance with one of the following [competency] standards-based plans:

* * * * *

(2) Pennsylvania academic standards. Pennsylvania academic standards of mathematics, language arts and science shall be integrated within the technical curriculum and instruction.

(3) CIP Code. Programs will be identified by CIP code.

(4) Planned instruction. This planned instruction must include the integration of academic, career development and technical curricula at the secondary level.

(5) Occupational analysis. The occupational analysis leads to clearly stated performance objectives deemed critical to successful employment, and assessment of student competencies based upon performance standards.

(6) Industry standards. Prepare students to meet industry-defined standards, certifications, regulations or licensing agreements demonstrated through industry assessment, industry credentials, industry certification, license or State assessment.

(7) Work-based learning. Provide students with an opportunity to acquire experiences in appropriate work situations related to their program.

(8) License requirements. Programs designed to provide students with the background to meet certification[, registration]. Registration and licensure requirements [shall] must meet the standards of the licensing agency and [shall] be supervised or administered according to the certifying or licensing agency, Part I (relating to State Board of Education) and Part II (relating to standards). Information on legal requirements or limitations relating to the occupations for which they are preparing shall be given to all students in writing.

[(3)] (9) * * *

[(4)] (10) Minimum time requirements.

(i) The [local educational agency] school entity may develop vocational education programs, to qualify for subsidy, for any time length as long as they do not go below [the minimums listed in this subsection] 360 hours per year.

* * * * *

[(ii) The following requirements shall be considered in planning vocational education programs based on the minimum time requirements listed in subparagraph (i):

(A) A planned vocational course shall be equal to 120 clock hours and is equal to one unit of credit.

(B) Vocational education credits may be given for hours spent in supervised occupational experience and cooperative and clinical experiences.

(C) A minimum of two planned courses shall be operated per year. These two planned courses shall be skilled courses.

(D) Sequences shall be offered in consecutive years and the last year of the program will conclude in the twelfth grade.

(E) Where necessary to promote the educational program, up to three planned vocational courses may be substituted for the required graduation units of credit set forth in § 5.5(b) (Reserved), except that not more than one substitution may be made in a single listed course title and no substitution may be made for the one required unit of credit in health and physical education. The school district shall verify that a relationship exists between the content learned or the skills developed in the approved vocational course and the high school graduation credit for which it is substituted. The substitution shall be reported to the Department under the process for curriculum exceptions set forth in § 5.12(a) (Reserved).

(F) Options for awarding planned course credit are explained in § 5.11 (Reserved).

(G) This section includes the minimum requirements for a program to be eligible for vocational reimbursement. It is recognized that selected vocational programs may require more than the minimum hours to offer an effective education program.

(b) *Exceptional programs requirements.* Exceptional programs could include any of the occupational areas defined in this section. See subsection (a). An exceptional program will be approved to address special needs documented by the local education agency. The program content shall be designed in accordance with one of the following competency-based plans:

(1) *Special vocational.* A plan designed to meet the vocational education requirements of special students in accordance with their individualized education programs.

(2) *Experimental.* Special pilot, experimental, exemplary or innovative programs, which do not fit within the structure of any of the plans, may be approved on an annual basis after review by the Secretary.

(c)] (b) *Diversified occupations program requirements.* Diversified occupations programs [could] may include any of the occupational areas defined in subsection (a) or other occupational areas not offered at the comprehensive high schools or [area vocational technical school] AVTS. The diversified occupations program shall be available as a 1-year or 2-year program. This program is for 11th and 12th grade students who are unable to gain admission to a vocational program due to excessive numbers of applicants, inability to meet entrance requirements for other existing vocational programs, or lack of specific vocational areas offered at the comprehensive high school or participating [area vocational-technical school] AVTS. The requirements for these programs are:

(1) One planned course—equal to one unit of credit—of general related theory or technical related content, or both, [per year] shall be offered per year.

(2) Students shall be legally employed a minimum of 15 hours a week during the school year[—these]. These hours can be other than school hours.

* * * * *

(4) A training plan and a training agreement shall be developed with the employer and shall be on file with both the school and the employer.

(5) The program is taught by a certified cooperative education teacher.

[(d)] (c) *Nonoccupational program requirements.*

(1) [Consumer and homemaking] Family and consumer sciences education programs. The [consumer and homemaking] family and consumer sciences education programs [shall] must operate in a comprehensive high school. [Only approved programs are eligible for Federal vocational funds.]

(i) *Primary objectives.* The primary objectives of [consumer and homemaking] family and consumer sciences education programs are:

(A) Pennsylvania academic standards of mathematics, language arts, and science shall be integrated within the technical curriculum and instruction.

(B) To prepare both males and females with knowledge and skills [in the five subject matter areas relating to home and family life. The areas include: food and nutrition, human development and interpersonal relationships, management and consumerism, housing and home furnishings and clothing and textiles] required to meet the approved Family and Consumer Sciences Academic Standards.

[(B)] (C) * * *

[(ii) *Requirements.* The requirements for consumer and homemaking education programs are:

(A) The minimum instructional time for an approved consumer and homemaking education program shall be equal to two planned courses—240—clock hours for a minimum of 2 years beginning in the ninth grade or any year thereafter, providing a 2-year sequence.

(B) The consumer and homemaking education program shall include content from all five subject matter areas as follows: foods and nutrition; human development; management and consumerism; housing, furnishings and equipment; and textiles and clothing. The first year of the program offering shall be broad in scope. The second year may be more advanced or concentrated in several subject matter areas. Programs are to be designed to provide students adequate learning and activities in all subject matter areas for a comprehensive program.

(2) *Industrial arts programs.* Industrial arts programs shall operate only in approved secondary schools. Only approved programs are eligible for Federal vocational funds. Upon the conclusion of grade 9, the students shall have completed a planned course, equal to one unit of credit—120 clock hours—of instruction encompassing the following minimum clustered content:

(i) *Industrial Materials—Construction; Manufacturing.*

(ii) *Visual Communications—Drafting; Graphic Arts.*

(iii) *Power Technology—Electricity/Electronics; Power Mechanics/Systems; Fluids.]*

(d) *Postsecondary education and training.* Encourage articulation of the secondary program of studies with postsecondary institutions, technical institutes and industry partners who offer registered apprenticeship, certificate or degree programs.

§ 339.23. Vocational education safety.

Vocational education shall be provided consistent with safety standards [shall be met as defined by Department guidelines] in the following areas:

(1) Safety instruction shall be practiced in the laboratory and classroom.

(2) Equipment guards and personal safety devices shall be in place and used.

(3) Class enrollment shall be safe relative to classroom or laboratory size and number of workstations.

(4) **[Work stations] Workstations** shall be barrier-free, assuring accessibility and safety under section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794) and 34 CFR 104.22(a) (relating to existing facilities) **and the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213).**

(5) Provisions **shall be** made for safe practices to meet individual educational needs of handicapped persons under section 504 of the Rehabilitation Act of 1973, 34 CFR 104.33(b) (relating to free appropriate public education), OCR Guidelines, VI and 45 CFR Part 80 (relating to nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964).

(6) Storage of materials and supplies **[meeting] must meet** 34 Pa. Code Part I (relating to Industrial Board).

(7) Safety practices **[met according to] must meet** State and Federal regulations.

§ 339.29. Cooperative vocational education.

[If cooperative vocational education is provided, it shall be planned in accordance with the stated career or occupational objectives of the student and shall include:

(1) Related learning experiences at a school-approved work station.

(2) A memorandum of understanding as defined in the Department guidelines, signed by the student, parent or guardian, school official and cooperating employer or representative.

(3) Payment of the existing legal wage when applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C.A. § 206) and The Minimum Wage Act of 1968 (43 P.S. §§ 333.101—333.115).

(4) Provision for administration and supervision by school staff members in cooperation with the employer.

(5) A minimum of one onsite student evaluation by a coordinator for on-the-job activities per month.

(6) At least 45 minutes per week, or 90 minutes every other week, for students to meet with their vocational instructor to discuss job problems and related information.

(7) Credit for cooperative vocational education work experience.

(8) A certified cooperative vocational education instructor coordinating the program.

(9) Compliance with Federal and State statutes.

(10) Insurance protection for both the school and students.] Cooperative education shall be conducted in accordance with the educational and occupational objectives for a student enrolled in an approved vocational technical program and shall meet published Department guidelines. See § 4.3 (relating to advisory committee).

§ 339.30. Student organizations.

(a) **[Recognized student organizations] CTSOs** shall be an integral part of the respective vocational education program. Instruction shall provide for the development of human relations skills; knowledge of occupations; leadership competencies and positive attitudes towards fulfilling occupational, civic, social, and community responsibilities.

(b) **[Student organizations] CTSOs** recognized in this Commonwealth are those recognized as **[vocational student organizations] CTSOs career and technical student organizations** by the United States Department of Education. **[(c)] Members of [vocational education student organizations] CTSOs** shall be under the direct supervision of professional **[vocational] career and technical** education personnel within the respective **[vocational] career and technical** education program.

(c) CTSOs in this Commonwealth include:

(1) Distributive Education Clubs of America (DECA).

(2) Future Business Leaders of America (FBLA).

(3) Family, Career and Community Leaders of America (FCCLA).

(4) Health Occupations Students Organization (HOSA).

(5) National FFA Organization (FFA).

(6) National Young Farmer Educational Association (NYFEA).

(7) SkillsUSA (formerly Vocational Industrial Clubs of America).

(8) Technology Student Association (TSA).

(9) Other organizations that are approved by the United States Department of Education in the future.

(d) Members of CTSOs shall be under the direct supervision of certified professional education personnel as assigned by the joint operating committee or school board.

(e) CTSOs shall hold a charter between their National organization and the Department.

GUIDANCE

§ 339.31. Plan.

There shall be a written plan on file, approved by the local board of school directors, for the development and implementation of a comprehensive, sequential program of guidance services for kindergarten through 12th grade. The plan **[shall] must** include procedures to provide for **[the extension of]** guidance services to **[area vocational-technical schools that service participating school districts] AVTS.** Upon request, the plan shall be submitted to the Secretary.

§ 339.32. Services.

The plan shall be designed to promote equal opportunity and include the following guidance service areas:

(1) **[Encouragement of students to select the vocational curriculum, which will meet their needs.]**

Assistance to students in selecting vocational curricula that meet their needs and address their interests.

(2) Assistance for all vocational students in making educational career plans **including, but not limited to, high school academic and technical preparation and postsecondary education and training**, and adjustments through the use of individual and group counseling and appropriate student assessment procedures.

* * * * *

(6) Support of a placement service **[which]** that is developmental and makes provisions for the transition from school to the world of work.

* * * * *

PERSONNEL

§ 339.41. Certification.

Certification requirements **[shall]** include:

(1) *Professional [employes] employees.* **[Professional personnel shall meet the standards as defined in the Department's publication, Certification and Staffing Policies and Guidelines. The publication may be obtained from the Bureau of Teacher Certification and Preparation of the Department.] Professional staff shall meet standards as defined in Chapters 49 and 354 (relating to certification of professional personnel; and preparation of professional educators) as well as certification and professional standards and requirements for teachers under sections 1201—1215 and 2070.1—2070.18 of the School Code (24 P. S. §§ 12-1201—12-1215 and 2070.1—2070.18)**

(2) **[Inservice] In-service plan.** Local education agencies shall have a plan on file that **[insures] ensures** professional personnel will keep up with the technology and remain current with practices and standards of their professional areas**[—for example, participation in professional development activities]**.

* * * * *

(4) *Chief administrator of the area school.* **[Since the Director of Vocational Education is not a commissioned school officer, the Public]** The School Code **[(24 P. S. §§ 1-101—27-2701)]** provides that area vocational-technical boards shall designate the executive director of the intermediate unit or a chief school administrator of one of the participating school districts to serve in the capacity of the chief administrator of the area school.

* * * * *

FACILITIES

§ 339.51. Learning environment.

The requirements for the learning environment are as follows:

(1) *Size of laboratory.* Shop laboratory size **[shall] must** be adequate as **[recommended by the occupational advisory committee,]** required by State licensing boards, accreditation providers and industry certification standards and take into consideration the recommendations of the occupational advisory committee.

(2) *Type of equipment [and number of work station].* Refer to **[22 Pa. Code] § [§ 6.12(b)(6), 6.63 and 339.4(10)] 339.4(b)(5)** (relating to **[Reserved; Reserved; and]** program approval) for requirements related to equipment.

(3) *Number of [work stations] workstations.* Students assigned may not be greater than the number of **[work stations] workstations** available.

* * * * *

§ 339.53. Contemporary equipment.

[Equipment needs are identified in § 6.12(b)(6) (Reserved).] The equipment and facilities must be comparable to industry standards. The Department may withhold reimbursement if equipment and facilities are not comparable to industry standards.

TECHNICAL INSTITUTES

§ 339.56. Technical institutes.

(a) Article 18 of the School Code (24 P. S. §§ 18-1801—18-1855) authorizes school boards to establish and operate technical institutes (TIs) for the purpose of offering post-high school programs to prepare out of school youths and adults for occupations requiring technical training.

(b) TIs shall be regulated by Article 18 of the School Code, this chapter and by procedural guidelines prepared by the Department and adopted by the State Board for Vocational Education.

(c) Section 1841 of the School Code (24 P. S. § 18-1841) authorizes the establishment of a TI by a majority vote in convention or by mail called for by:

(1) Boards of public education.

(2) Intermediate units' board of directors through a certified vote. (See section 1844(a) and (d) of the School Code (24 P. S. § 18-1844 (a) and (d) regarding establishment of schools and institutes.) State Vocational Board approval is required prior to the establishment of a TI.

(d) Participating school districts shall have authority to enter into written agreements establishing their rights and obligations. This agreement may not be changed without the consent of each participating school district's board of directors as determined by a majority vote, in accordance with section 1850.1(a) of the School Code (24 P. S. § 18-1850.1(a)) regarding organization and operation of schools and institutes.

(e) To be eligible for funding, an institute must have:

(1) A statement of philosophy documenting how the mission fulfills the educational needs of this Commonwealth. § 40.2 (relating to statement of philosophy, mission and need).

(2) Strategic plans, including needs assessment; action plans; coordination and articulation plans among secondary, postsecondary, adult and apprenticeship programs; professional staff development plan; written plan for job placement; and a plan for repair, replacement and addition of instructional equipment.

(3) A local advisory committee.

- (4) An occupational advisory committee.
- (5) Admissions policies.
- (6) Planned instruction and programs that have been approved under criteria established by the Secretary.
- (7) A method of compliance review to meet requirement of being evaluated every 5 years.
- (8) A compliance plan as required by formal compliance review conducted by the Department.
- (9) Contemporary equipment.
- (10) Accreditation by those recognized accrediting agencies listed for postsecondary purposes by the United States Department of Education.
- (f) Once a favorable vote takes place, a proposal to establish a TI shall be presented to the State Board for Vocational Education for its approval.
- (g) The TI board may delegate operation to:
 - (1) A joint committee elected by the participating boards in accordance with sections 1850.1—1850.3 of the School Code (24 P. S. §§ 18-1850.1—18-1850.3).
 - (2) An intermediate unit board of directors in accordance with section 1850.2 of the School Code.
- (h) The TI board has the following powers:
 - (1) Budgeting.
 - (2) Setting institute policies.
 - (3) Employing supervisors and teachers.
 - (4) Buying, building, or renting buildings and land.
- (i) The participating school districts shall be responsible for all expenses in connection with the establishment of, addition to, and improvements of TIs in the proportion agreed upon. All property of each TI shall be owned jointly by the participating school districts. (See section 18-1845 of the School Code (24 P. S. § 18-1845) regarding cost of establishment, etc., ownership of property.)
- (j) The Commonwealth will pay every school district having out of school youth or adults enrolled in a TI, for each student in average daily membership, one-third of current expense per student as provided in the approved budget, or the per student cost for current expense, whichever is less. Reimbursement will be made in the subsequent State fiscal year and based upon data supplied to the Department by the TI. The remainder of the cost of total current expense shall be borne by the district of residence, or by the district of residence and the student. The student will not bear more than one-third of the current expense per student.
- (k) TIs are not degree-granting institutions, but can offer technical certificates.
- (l) Programs may be terminated at any time by the TI board. Any student enrolled in the program being terminated shall be given a reasonable opportunity to complete it.
- (m) Instructional programs in which licensure, certifications or examinations are required or would enhance the employment of completers shall be designed to meet those requirements.
- (n) Guidance counseling, placement and financial aid information shall be available to all students.

- (o) This section applies only to the establishment of TIs as authorized by section 18-1855 of the School Code (24 P. S. § 18-18-1855).
- (p) It shall be subject to the provisions of § 339.4 (relating to program approval), and to meeting the Standards set by the Secretary.

EVALUATORS

§ 339.61. Evaluation.

(a) *General rule.* Approved vocational education curriculum shall be subject to review by the Secretary [**of Education**] to determine compliance with [**Chapter 6 (Reserved)** and] this chapter.

* * * * *

(c) [**Reserved**].

[**(d)**] *Report.* The Department evaluation team shall file a report with the board of school directors and area vocational-technical school board of directors within 30 calendar days after the on-site evaluation.

[**(e)**] (d) *Content.* The report [**shall**] **must** identify areas [**which**] **that** are not in compliance with [**Chapter 6 and**] § 339.1 (relating to scope of applications) and other applicable statutes, regulations and guidelines.

(f) *Noncompliance.* If an evaluation reveals noncompliance with this title, the school district or [**area vocational-technical school**] AVTS shall develop a compliance plan according to § [**6.42 and**] 339.62 (relating to [**Reserved; and compliance**] **noncompliances; appeal process**).

§ 339.62. [Compliance] Noncompliance; appeal process.

(a) *Plan.* If the evaluation report identifies areas of noncompliance, the board of school directors or area vocational-technical board of school directors shall file [**with the Department of Education**] a plan for correcting the noncompliance identified in the report **with the Department**.

(b) *Reevaluation.* Following a submission of the plan required in subsection (a), the Department will conduct a reevaluation to determine whether to issue, conditionally withhold, or withhold approval that will terminate State and Federal funding to the program.

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[Pa.B. Doc. No. 06-181. Filed for public inspection February 3, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 75]

[L-00050174]

Alternative Energy Portfolio Standards

The Pennsylvania Public Utility Commission, on November 10, 2005, adopted a proposed rulemaking order which promotes onsite generation by customer-generators using renewable resources and eliminates barriers which may have previously existed regarding net metering.

Executive Summary

Under 73 P. S. § 1648.5, the Public Utility Commission is required to develop regulations governing net metering within this Commonwealth through a stakeholder process. This rulemaking is the initial, formal proposed regulation resulting from the stakeholder process. The regulations govern the process by which a customer-generator, as defined by the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8), can begin net metering electric usage and production from alternative energy resources. The regulations also provide for metering capabilities that will be required and a compensation mechanism which reimburses customer-generators for surplus energy supplied to the electric grid.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 19, 2006, the Commission 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 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 must 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 Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
November 10, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick, concurring statement follows

Proposed Rulemaking Re Net Metering for Customer-Generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5; L-00050174

Implementation of the Alternative Energy Portfolio Standards Act of 2004: Net Metering; M-00051865

Proposed Rulemaking Order

By the Commission:

The Alternative Energy Portfolio Standards Act of 2004, 73 P. S. §§ 1648.1—1648.8 (Act), includes directives that the Commission develop regulations for net metering and interconnection for customer-generators. In accordance with section 5 of the Act, 73 P. S. § 1648.5, the Commission formally commences its rulemaking process to establish regulations governing net metering for customer-generators. The Commission seeks comments from all interested parties on these proposed regulations, which are found in Annex A. Additionally, the Commission will close the Net Metering sub-group as that sub-group has reached its goal by way of this proposed rulemaking Order and the companion rulemaking Order proposing regulations which set forth interconnection standards.

Background

Section 5 of the Act provides as follows:

The commission shall develop technical and net metering interconnection rules for customer-

generators intending to operate renewable onsite generators in parallel with the electric utility grid, consistent with rules developed in other states within the service region of the regional transmission organization that manages the transmission system in any part of this Commonwealth. The commission shall convene a stakeholder process to develop Statewide technical and net metering rules for customer-generators. The commission shall develop these rules within nine months of the effective date of this act.

73 P. S. § 1648.5.

On March 3, 2005, the Commission convened an Alternative Energy Portfolio Standards Working Group (AEPS WG). The AEPS WG was established to provide a forum for considering the technical standards, business rules and regulatory framework necessary for Act 213's implementation. The Net Metering sub-group was formed out of the AEPS WG and was specifically tasked with developing proposed regulations governing net metering and interconnection standards.

The Net Metering sub-group has met on several occasions since March 3 to discuss and develop a set of proposed regulations in two parts. First, the Net Metering sub-group focused on Net Metering, the purpose of this proposed rulemaking. Second, the Net Metering sub-group focused on interconnection standards, which will be the subject of a separate proposed rulemaking proceeding.

Participants in the Net Metering sub-group have included representatives from Commission Staff, the Department of Environmental Protection (DEP), the Energy Association of Pennsylvania and several of its member companies, the Pennsylvania Farm Bureau, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizens for Pennsylvania's Future, the Small Generator Coalition with the Solar Energy Industries Association and several similar entities. From the foregoing, it is clear that the Net Metering sub-group had the benefit of a wide array of interests and broad expertise as it went through the process of developing the proposed regulations.

At the initial meeting, participants were requested to discuss various issues which any net metering rulemaking would need to address. Following that meeting, Commission Staff issued a proposed issues list to the sub-group and called for comments to add any issues not already included and propose solutions. That issues list and call for comments was also posted on the Commission's web site. A second meeting was held to discuss the comments filed in response to the Staff generated issues list. On August 3, 2005, Commission Staff issued a proposed set of Net Metering regulations to the Net Metering sub-group and called for comments. The proposal was also posted on the Commission's web site.

Following the receipt of comments to the August 3, 2005 Staff proposal, Commission Staff developed the recommendation now before us. This Staff proposal was developed based upon the comments submitted through the Net Metering sub-group process, consistent with the Act's mandate that the regulations be developed through a stakeholder process.

Discussion

The Act provides a great deal of flexibility to the Commission regarding Net Metering, providing only that the regulations are to be developed through a stakeholder process and, while not mandating conformity, to the extent possible, regulations promulgated here should be "consistent with rules defined in other states" within the

transmission zones of regional transmission organizations serving Pennsylvania. As the process moved forward, the Participants reviewed Net Metering regulations in existence in New Jersey and also followed rulemaking processes ongoing in Maryland and Ohio. Regulations in existence in New York and Vermont were also instructive.

The proposed Net Metering regulations are consistent with the rules now in place in other jurisdictions within the transmission zones of regional transmission organizations serving Pennsylvania. In addition, the proposed regulations have been drafted with a view towards promoting onsite generation by customer-generators using renewable resources, consistent with the over-arching goal of the Act. Accordingly, the proposed regulations strive to eliminate barriers which may have previously existed with regard to net metering while ensuring that net metering by customer-generators will not unduly burden other customers on a particular electric distribution company's (EDC) system.

A. *General Provisions of Chapter 75 of the Public Utility Code*

The Commission will be adding Chapter 75 to the Public Utility Code, which will serve as the location for most regulations adopted pursuant to the Act. As this Order represents the first proposed rulemaking in response to the Act, Annex A includes Chapter 75's general provisions at Subchapter A. At this time, Subchapter A contains those definitions that Staff has identified as potentially having application to more than one subchapter. This includes the definitions found in the Act as well as relevant definitions from Chapter 28 of the Public Utility Code. 73 P. S. § 1648.2, 66 Pa.C.S. § 2803. Subchapter A may be supplemented as the Commission issues additional rulemakings as part of its implementation of the Act. Definitions specific to the subject of net metering are listed separately in the net metering subchapter. Where possible, the Commission has chosen to make use of already existing definitions for terms that are used in these subchapters. Examples include "Alternative energy credit," "Customer-generator," and "Electric distribution company." As we move into this new area of regulation, we have taken every effort to be as specific as possible since we are operating under both the Public Utility Code and the Act. Accordingly, the Commission has chosen to strike a cautious note to provide regulatory certainty.

B. *Scope*

This section endeavors to set forth the scope of net metering under the Act. In the initial Staff proposal, the Scope of the regulations was described as applying to residential and small commercial customers. Several Participants commented that use of the phrase "residential and small commercial customers" had the potential of excluding some agricultural customers who otherwise would be considered "customer-generators" under the Act. Other Participants suggested that a capacity limit of 40 kilowatts (kW) be used (with an exception for agricultural applications) to restrict the scope of the regulations.

After reviewing the foregoing, we believe that paraphrasing the Act is the best method of setting forth the scope of the regulations. The Act expressly provides that the Net Metering regulations are to be developed for "customer-generators." That term is defined in the Act and has specific capacity limits in place. Accordingly, the proposed Scope of the regulations provides that they apply to electric generation suppliers (EGSs) and EDCs which have customer-generators who intend to pursue net metering opportunities in accordance with the Act.

C. *Net metering definitions*

Several new definitions are set forth in Subchapter B. Definitions for "Net metering," "Avoided cost of wholesale power," "Annualized period," and "Meter aggregation" have been developed, among others. Several Participants proposed ministerial edits to definitions which provided greater clarity and they have been adopted. For example, the OSBA observed that the definition of Net Metering should clearly state that any resulting billing credits are on a kilowatt hour (kWh) basis. Similarly, DEP suggested that "equipment package" be specifically defined. The OCA suggested that "Customer-generator facility" should include a specific reference to equipment used to deliver electricity to the EDC's system.

Three particular definitions have been changed from the Staff proposal which should be highlighted. First, we have changed the definition of "Annualized period" to be consistent with "Reporting period" as that term is defined in the Act. The Staff version referenced the PJM LLC (PJM) planning year, however several EDCs are not located within the PJM system. Accordingly, it is appropriate to adopt a more generic definition. We note that "Reporting period" as defined in the Act coincides with the PJM planning year.

The second and third definitions involve meter aggregation. Several Participants, including the Farm Bureau, strongly advocated that meter aggregation be permitted for net metering customers. Several other Participants opposed the concept. In keeping with the goal of the Act, we have provided for meter aggregation in these regulations. As noted by the OSBA, one of the problems inherent in meter aggregation is the issue of which rate class an aggregated facility would belong to since many such facilities include meters rated for different classes.

To resolve this issue in a manner that has the least impact on other rate payers, we have changed the definitions of "physical meter aggregation" and "virtual meter aggregation" to provide for the aggregation of meters "within a particular rate class on contiguous and adjacent properties owned and operated by a customer-generator." Thus, as currently proposed, aggregation will only be permitted for meters within the same rate class.

D. *Net metering general provisions*

This section describes the general operation of net metering in Pennsylvania. The method of crediting customer-generators for surplus kWhs from month to month, with a pay-out at the end of the annualized period is identical to the system now in place in New Jersey. Some Participants commented that a monthly payout system would be more advantageous. However, it is our view that the credit/pay-out system as proposed will better promote customer-generators and net metering as envisioned by the Act.

Some Participants questioned whether Tier II resources should be included in net metering. The comments suggested that Tier II resources generally had capacity ratings far in excess of that contemplated by the Act for customer-generator facilities. In addition, it was suggested that limiting net metering to Tier I resources would promote cleaner self generation. The Act does not restrict net metering to Tier I resources. Also, given that the Scope of the proposed regulations limits the capacity to that found in the definition of "customer-generator," we do not see any need to be more restrictive than proposed.

Some additional comments should be addressed here. First, the OSBA observes that net metering is to be offered on a first come, first served basis and queries

what the cap would be for customer-generators desiring to net meter. As will be seen in the proposed interconnection rulemaking, there is a ceiling on the amount of generation that can be interconnected at certain points on the distribution system. Once that ceiling is reached, the integrity of the electric grid will not permit additional ties. Thus, the "cap" is found in the interconnection rulemaking. To recognize that "cap" here, we have provided that net metering shall be offered on a first come, first served basis.

Several Participants note that while EGSs are permitted to offer net metering, they are not required to do so and any terms for EGS net metering are to be decided by the EGS and its customer. In our view, a regulatory mandate to EGSs regarding a net metering service offer would be inconsistent with a free market construct. It is our hope that EGSs will compete in this area and offer a net metering product that will be attractive to customer-generators. To that end, we have expressly provided that EDCs are to develop net metering protocols for EGSs operating over their systems. However, we do not find that it is appropriate to mandate such products by EGSs.

The Staff proposal had recommended an annual report that included information concerning the total number of customer-generator facilities; the total estimated rated generating capacity of net metering customer-generators; the total estimated net kWhs received from customer-generators; and, the total amount of energy produced by customer-generators. The OCA observed that the last two items may require sub-metering to acquire the information. Upon review, we propose to require information relating to the total number of customer-generator facilities that are net metering and the total estimated rated generating capacity. That information can be readily obtained without recourse to additional metering and will serve to provide the Commission with needed information regarding the scale of net metering in the Commonwealth. We will not require the reporting of total estimated net kWhs received from customer-generators or the total amount of energy produced by customer-generators.

Several sections of the proposed regulations provide that EDCs shall not discriminate against net metering customers and shall provide net metering at rates that are identical with respect to rate structure, retail rate components and monthly charges as are charged to other customers. Several Participants have commented that these provisions will retain certain charges that current net metering customers claim destroy the economics of net metered onsite generation. We invite additional comments on this issue, particularly in view of the meter aggregation opportunities provided.

It should be noted that proposed § 75.13(k) provides that an EDC may not require insurance for a net metering customer-generator. In the proposed interconnection regulations, we have not required indemnification or liability insurance. In the proposed interconnection regulations, Staff suggests that insurance requirements, if any, should be reserved for the interconnection agreement form. We note that the Mid-Atlantic Distributed Resource Initiative model does not require specific levels of insurance but recommends that interconnection customers voluntarily obtain coverage. We invite comments on this issue.

E. Meters and Metering

In this section, we address the nature of the metering equipment to be used, meter aggregation, cost responsibility and ownership of alternative energy credits which

may be produced by customer-generator facilities. With regard to meter equipment, some Participants favored a dual meter approach; others favored a single meter approach. The Staff proposal has been clarified here to provide that a single, bi-directional meter that can measure and record the flow of energy in both directions shall be required. Upon agreement of the EDC and the customer-generator, a dual meter approach will be permitted. We note that the single, bi-directional meter requirement is consistent with the current New Jersey regulations. We specifically request comments regarding the read and record capability of the meter and whether this addresses EDC concerns regarding the single meter approach. Comments should also address any cost or technical issues raised by a read and record requirement.

The proposed regulations also provide that if a customer-generator's existing equipment does not meet the regulatory requirement, then the EDC shall provide the appropriate meter at the EDC's expense. Several Participants requested that the regulation specify that the cost of the meter would be recoverable. We have not provided that treatment in the regulation. However, that issue may be raised and deliberated in an appropriate proceeding dealing with cost recovery under the Act or applicable provisions of the Public Utility Code. We also provide that any additional metering equipment change which is brought about by the customer-generator will be completed at the customer-generator's expense.

In the event that a single, bi-directional meter as specified is not deemed to be a qualifying meter for the purpose of qualifying alternative energy credits, the proposed regulations provide that the person who desires to take title to any alternative energy credits will bear the cost of any additional metering equipment required. The regulations make it clear that the customer-generator has the principle ownership interest in any alternative energy credits produced, but he may sell that interest to any third party or renounce it in favor of the EDC. Similarly, the cost of meter aggregation is to be borne by the customer-generator who requests that treatment. For virtual aggregation, the customer-generator is to be responsible only for the incremental difference in the cost of the billing process.

F. Treatment of Stranded Costs

Clearly, the Act contemplates that a successful customer-generator will reduce the amount of electricity taken from the grid and, in some cases, may even provide a small surplus into the grid. Section 2808(a) of the Public Utility Code (Code), 66 Pa.C.S. § 2808(a), provides in pertinent part:

If a customer installs on-site generation which operates in parallel with other generation on the public utility's system *and which significantly reduces the customer's purchases of electricity through the transmission and distribution network*, the customer's fully allocated share of transition or stranded costs shall be recovered from the customer through a competitive transition charge.

66 Pa.C.S. § 2808(a). (Emphasis added).

During the Net Metering sub-group meetings and in comments, several Participants expressed concerns about the interplay of the Act and section 2808(a) of the Code. The essential concern is that it would most likely cost more to track usage for residential customer-generators than would be recovered through the resulting allocated share of stranded costs. Accordingly, while all Participants recognize the applicability of section 2808(a) of the

Code, it has been forcefully argued that for the residential class, any reduction in usage should be deemed insignificant and not subject to an allocated payment of stranded costs.

The original Staff proposal provided that any reduction in usage from the grid that was equal to or greater than 10% when compared to the prior year would trigger the application of section 2808(a) of the Code. Based upon the comments received and the discussions in the sub-group meetings, we have revised this section and propose that it apply to small commercial, commercial and industrial customer classes only.

Conclusion

The Commission welcomes the filing of comments by all interested parties on all aspects of these regulations. As previously noted, the Commission is particularly interested in comments regarding a read and record bi-directional meter capability and the effect of nondiscriminatory rate treatment and charges that existing self-generating customers find to be onerous. Comments on the treatment of stranded costs are also desired.

To the extent that a party believes any sections of these proposed regulations need revising, we ask that alternative language be suggested. This is particularly important in the area of definitions. If a party believes that additional definitions are required, specific language should be proposed. A comment period of 60 days has been provided.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501; section 5 of the Alternative Energy Portfolio Supply Act, 73 P. S. § 1648.5; sections 201 and 202 of the act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201 and 1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of The Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The proposed rulemaking will consider the regulations set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall submit this order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. An original and 15 copies of any written comments referencing the docket number of the proposed regulations be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.
6. A copy of this order and Annex A shall be served on the Department of Environmental Protection, all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Office of Trial Staff, the Office of

Consumer Advocate, the Office of Small Business Advocate and all other Participants in the Alternative Energy Portfolio Supply Working Group at M-00051865.

7. The contact persons for this proposed rulemaking are Calvin Birge, Bureau of Conservation, Economics and Energy Planning, (717) 783-1555 (technical), and H. Kirk House, Office of Special Assistants, (717) 772-8495 (legal).

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-244. No fiscal impact; (8) recommends adoption.

**Concurring Statement of Commissioner
Terrance J. Fitzpatrick**

*Implementation of the Alternative Energy Portfolio
Standards Act of 2004; Net Metering—
Notice of Proposed Rulemaking*

Public Meeting November 10, 2005
NOV-2005-OSA-0344*
M-00051865
L-00050174

Today the Commission formally commences its rulemaking process to establish regulations governing net metering for customer-generators via a Proposed Rule-making Order seeking comments from all interested parties. The proposed regulations before us were developed by Commission staff with the participation and comments of the Net Metering sub-group of the Alternative Energy Portfolio Standards Working Group.

While I support the issuance of these proposed regulations for comment, I am reserving judgment on the positions I may ultimately take concerning several issues, including cost recovery, as well as the general level of subsidies. I look forward to the comments of all interested parties on these specific issues, as well as all of the aspects of these proposed regulations.

Annex A

**TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 75. ALTERNATIVE ENERGY
PORTFOLIO STANDARDS**

Subchap.

- A. GENERAL PROVISIONS**
- B. NET METERING**

Subchapter A. GENERAL PROVISIONS

Sec.

- 75.1. Definitions.

§ 75.1. Definitions.

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

Act—Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648).

Alternative energy credit—The term has the same meaning as defined in section 2 of the act (73 P. S. § 1648.2).

Alternative energy sources—The term has the same meaning as defined in section 2 of the act.

Alternative energy system—The term has the same meaning as defined in section 2 of the act.

Competitive transition charge—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Cost recovery period—The term has the same meaning as defined in section 2 of the act.

Customer-generator—The term has the same meaning as defined in section 2 of the act.

Department—The Department of Environmental Protection of the Commonwealth.

EDC—Electric distribution company—This term has the same meaning as defined in 66 Pa.C.S. § 2803.

EGS—Electric generation supplier—This term has the same meaning as defined in 66 Pa.C.S. § 2803.

Force majeure—The term has the same meaning as defined in section 2 of the act.

kW—Kilowatt—A unit of power representing 1,000 watts. A kW equals 1/1000 of a MW.

MW—Megawatt—A unit of power representing 1,000,000 watts. A MW equals 1,000 kW.

Municipal solid waste—The term has the same meaning as defined in section 2 of the act.

RTO—Regional transmission organization—The term has the same meaning as defined in section 2 of the act.

Reporting period—The term has the same meaning as defined in section 2 of the act.

Retail electric customer—The term has the same meaning as defined in section 2 of the act.

Stranded costs—This term has the same meaning as defined in 66 Pa.C.S. § 2803.

Tier I alternative energy source—The term has the same meaning as defined in section 2 of the act.

Tier II alternative energy source—The term has the same meaning as defined in section 2 of the act.

True-up period—The term has the same meaning as defined in section 2 of the act.

Subchapter B. NET METERING

75.11.	Scope.
75.12.	Definitions.
75.13.	General provisions.
75.14.	Meters and metering.
75.15.	Treatment of stranded costs.

§ 75.11. Scope.

This subchapter sets forth net metering requirements that apply to EGSs and EDCs which have customer-generators intending to pursue net metering opportunities in accordance with the act.

§ 75.12. Definitions.

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

Avoided cost of wholesale power—The average locational marginal price of energy, or its successor, over the annualized period in the applicable EDC's transmission zone.

Annualized period—The term has the same meaning as "reporting period" as that term is defined in section 2 of the act.

Base year—For customer-generators who initiated self generation on or after January 1, 1999, the base year will be the immediate prior calendar year; for all other customer generators, the base year will be 1996.

Billing month—The term has the same meaning as set forth in § 56.2 (relating to definitions).

Customer-generator facility—The equipment used by a customer-generator to generate, manage, monitor and deliver electricity to the EDC.

Electric distribution system—That portion of an electric system which delivers electricity from transformation points on the transmission system to points of connection at a customer's premises.

Equipment package—A group of components connecting an electric generator with an electric delivery system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric source.

Meter aggregation—The combination of readings from and billing for all meters within a particular rate class on contiguous and adjacent properties owned and operated by a customer-generator. Meter aggregation may be completed through physical or virtual meter aggregation.

Net metering—A system of metering electricity in which:

(i) The EDC credits a customer-generator at the full retail rate for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period.

(ii) The EDC compensates the customer-generator at the end of the annualized period for any remaining kilowatt-hour credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

(iii) The credit or compensation mechanism between an EGS and a net metered customer-generator of an EGS shall be determined by the particular service agreement between the EGS and the customer-generator.

Physical meter aggregation—The physical rewiring of all meters within a particular rate class on contiguous and adjacent properties owned and operated by a customer-generator to provide a single point of contact for a single meter to measure electric service for that customer-generator.

Virtual meter aggregation—The combination of readings and billing for all meters in a particular rate class on contiguous and adjacent properties owned and operated by a customer-generator by means of the EDC's billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact.

§ 75.13. General provisions.

(a) EDCs shall offer net metering to customer-generators that generate electricity on the customer-generator's side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis. EGSs may offer net metering to customer-generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking service from EGSs.

(b) An EDC shall file a tariff with the Commission that provides for net metering consistent with this chapter. An EDC shall file a tariff providing net metering protocols that enable EGSs to offer net metering to customer-generators taking service from EGSs. To the extent that an EGS offers net metering service, the EGS shall

prepare information about net metering consistent with this chapter and provide that information with the disclosure information required in § 54.5 (relating to disclosure statement for residential and small business customers).

(c) If a customer-generator is a generation customer of an EDC and supplies more electricity to the electric distribution system than the EDC delivers to the customer-generator in a given billing month, the EDC shall credit the customer-generator for the excess on a kilowatt-hour for kilowatt-hour basis. The EDC shall reduce the customer-generator's bill for the next billing month to compensate for the excess electricity produced by the customer-generator in the previous billing period.

(d) An EDC shall carry over credits earned by a customer-generator from a billing month to successive billing months. Any unused credits shall accumulate until the end of the annualized period.

(e) At the end of each annualized period, the EDC shall compensate the customer-generator for excess kilowatt-hours generated at the EDC's avoided cost of wholesale power.

(f) The credit or compensation terms for excess electricity produced by customer-generators who are customers of EGSs shall be stated in the service agreement between the customer-generator and the EGS.

(g) If a customer-generator switches electricity suppliers, the EDC shall treat the end of the service period as if it were the end of the annualized period.

(h) An EDC and EGS which offer net metering shall submit an annual net metering report to the Commission. The report shall be submitted by July 30 of each year, and shall include the following information for the annualized period ending May 31 of that year:

(1) The total number of customer-generator facilities.

(2) The total estimated rated generating capacity of its net metering customer-generators.

(i) A customer-generator that is eligible for net metering owns the alternative energy credits of the electricity it generates, unless there is a contract with an express provision that assigns ownership of the alternative energy credits to another entity or the customer-generator expressly rejects any ownership interest in alternative energy credits under § 75.14(d) (relating to meters and metering).

(j) An EDC shall provide net metering at nondiscriminatory rates identical with respect to rate structure, retail rate components and any monthly charges to the rates charged to other customers that are not customer-generators. An EDC may use a special load profile for the customer-generator which incorporates the customer-generator's real time generation if the special load profile is approved by the Commission.

(k) An EDC may not charge a customer-generator a fee or other type of charge unless the fee or charge would apply to other customers that are not customer-generators. The EDC may not require additional equipment or insurance or impose any other requirement unless the additional equipment, insurance or other requirement is specifically authorized under this chapter or by order of the Commission.

(l) Nothing in this subchapter abrogates a person's obligation to comply with other applicable law.

§ 75.14. Meters and metering.

(a) A customer-generator facility used for net metering shall be equipped with a single bi-directional meter that can measure and record the flow of electricity in both directions at the same rate. If the customer-generator agrees, a dual meter arrangement may be substituted for a single bi-directional meter.

(b) If the customer-generator's existing electric metering equipment does not meet the requirements in subsection (a), the EDC shall install new metering equipment for the customer-generator at the EDC's expense. Any subsequent metering equipment change necessitated by the customer-generator shall be paid for by the customer-generator.

(c) When the customer-generator intends to take title or transfer title to any alternative energy credits which may be produced by the customer-generator's facility, the customer-generator shall bear the cost of additional net metering equipment required to qualify the alternative energy credits in accordance with the act.

(d) When the customer-generator expressly rejects ownership of alternative energy credits produced by the customer-generator's facility, the EDC may supply additional metering equipment required to qualify the alternative energy credit at the EDC's expense. In those circumstances, the EDC shall take title to any alternative energy credit produced. A customer-generator is not prohibited from having a qualified meter service provider install metering equipment for the measurement of generation, or from selling alternative energy credits to a third party other than an EDC.

(e) Meter aggregation within a particular rate class on contiguous and adjacent properties owned and operated by a customer-generator shall be allowed for purposes of net metering. Physical meter aggregation shall be at the customer-generator's expense. The EDC shall provide the necessary equipment to complete physical aggregation. If the customer-generator requests virtual meter aggregation, it shall be provided by the EDC at the customer-generator's expense. The customer-generator shall be responsible only for any incremental expense entailed in processing his account on a virtual meter aggregation basis.

§ 75.15. Treatment of stranded costs.

If a net metering small commercial, commercial or industrial customer's self-generation results in a 10% or more reduction in the customer's purchase of electricity through the EDC's transmission and distribution network for an annualized period when compared to the prior annualized period, the net metering small commercial, commercial or industrial customer shall be responsible for its share of stranded costs to prevent interclass or intraclass cost shifting under 66 Pa.C.S. § 2808(a) (relating to competitive transition charge). The net metering small commercial, commercial or industrial customer's stranded cost obligation shall be calculated based upon the applicable "base year" as defined in this chapter.

[Pa.B. Doc. No. 06-182. Filed for public inspection February 3, 2006, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31] Biennial Renewal Fees

The State Board of Veterinary Medicine (Board) proposes to amend § 31.41 (relating to schedule of fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for veterinarians from \$225 to \$300 and would increase the biennial license renewal fee for certified veterinary technicians from \$60 to \$75.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning December 1, 2006.

Statutory Authority

Section 13(a) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.13(a)) requires the Board to fix the fees for renewal of licenses and certificates by regulation. Section 13(b) of the act requires the Board to increase fees when revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures.

Background and Need for the Proposed Rulemaking

The Board's current biennial license renewal fees were established by regulation and took effect for the December 1, 2000, biennial renewal period. The Board is required by law to support its operations from revenue it generates from fees, fines and civil penalties. The act mandates that the Board protect the public by adopting rules and regulations that govern the practice of veterinary medicine and administer and enforce the laws, rules and regulations that relate to the practice of veterinary medicine.

The Board raises virtually all its revenue through fees and the biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board. If the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue.

At its March 17, 2005, Board meeting, the Offices of Revenue and Budget for the Department of State (Department) presented a summary of the Board's actual revenues and expenses for Fiscal Years (FY) 1999-2000 to FY 2002-2003 and projected revenues and expenses for FY 2005-2006 through FY 2010-2011.

At the close of FY 2003-2004, the Board's expenses exceeded its revenues by \$36,890.59. The Budget Office estimates that deficits will continue to grow, with an anticipated FY 2007-2008 deficit of \$79,890.59 and a FY 2009-2010, projected deficit of \$182,890.59. The Budget Office anticipates that the proposed new fees will enable the Board to recapture the current deficit and meet its estimated expenditures through at least FY 2010-2011.

The Board, as with other licensing boards and commissions within the Bureau of Professional and Occupational Affairs (Bureau), budgets on the basis of the following categories: Administrative Costs, broken into Board Administration (Bureau-wide operating expenses such as printed forms, office supplies and interagency billings), Commissioner's Office (staff expenses) and Departmental Services (centralized support services such as the execu-

tive office, public information office, and legislative affairs office); Legal Costs, broken into Legal Office (staff expenses), Hearing Expenses (staff of hearing examiner's office and stenographer services) and Legislative and Regulatory Analysis (staff expenses); Enforcement and Investigation Costs, broken into Non-Travel (staff expenses) and Travel expenses; Professional Health Monitoring Program Expenses (staff expenses); and Board Member Expenses (travel to meetings and accommodations, when necessary).

The increases in the Board's biennial expenses occurred due to increases in costs of both Board services and Departmental expenses. The increases experienced by the Board itself are primarily in cost centers allocated to law enforcement costs and legal office costs. These increased expenditures are directly related to increases in the number of complaints filed, number of cases prosecuted and discipline imposed, the complexity of the cases, number of regulations promulgated and, finally, number of appeals taken to Commonwealth Court.

The increased expenses in the areas of law enforcement and legal office expenses have been the most significant, as indicated by the following.

Law Enforcement Expenses

<i>Budgeted</i>	<i>Expended</i>
FY 99-00 \$99,500	\$68,941
FY 00-01 \$91,000	\$99,403
FY 01-02 \$96,000	\$148,372
FY 02-03 \$105,000	\$175,556
FY 03-04 \$170,000	\$209,209.86 (projected)

Legal Office Expenses

<i>Budgeted</i>	<i>Expended</i>
FY 99-00, \$85,500	\$62,743
FY 00-01 \$72,450	\$101,404
FY 01-02 \$95,000	\$99,995
FY 02-03 \$98,000	\$114,844
FY 03-04 \$135,000	\$129,151 (projected)

An increased number of complaints have been filed with the Board. In the 4 years leading up to the last biennial renewal fee increase, the Board averaged 99.25 complaints filed per year. From 2000 through 2003, an average of 125.75 complaints were filed each year. Each complaint filed produces costs in law enforcement and in the complaints and prosecution divisions of the legal office. Of particular note are the expenses incurred in expert review of files involving practice issues. For those cases in which formal charges are filed, additional legal expenses are incurred through the legal counsel division and hearing examiner's office. In the 4-year period from 1996-1999, an average of 5.5 disciplinary sanctions were imposed each year, with an average of one serious sanction imposed each year. In the 4-year period from 2000-2003, an average of 17.5 disciplinary sanctions were imposed each year, with an average of four serious sanctions imposed. The increase in the number of serious sanctions imposed indicates an increase in the complexity of cases before the Board, as serious sanctions are likely to be imposed only in cases involving veterinary malpractice. Serious sanctions include active suspension or revocation.

Additionally, the Board incurred unprecedented legal expenses in defending Board actions in disciplinary matters on appellate review. Only one appeal was filed in 2002 and none were filed in 2003. By comparison, four appeals were filed in 2004, and two appeals have been filed thus far in 2005.

The Board's regulatory agenda has also generated additional costs in the legal counsel division and regulatory review division. One rulemaking became final in each year from 2001 to 2003. In 2004, two rulemakings became final. The Board currently has drafts of four rulemaking packages, which will likely be proposed in 2005.

Departmental expenses allocated in part to the Board included a one-time additional charge of \$60,000 associated with its testing administration contract. In addition, during FY 2003-2004, additional costs were incurred as a result of one-time charges to the Department for personnel costs. This one time charge was split equitably within the Professional Licensure Augmentation Account and other related restricted accounts administered by the Bureau.

Description of Proposed Rulemaking

Based upon the previous expense and revenue estimates provided to the Board, the Board proposes to amend its fee schedule in § 31.41 to increase the fee for biennial renewal of licenses for veterinarians from \$225 to \$300 and increase the fee for veterinary technicians from \$60 to \$75. By this increase, the Board will recoup its deficit and offset the projected deficits.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fee for veterinarians and veterinary technicians. A veterinarian will pay an additional \$75 for biennial renewal. A veterinary technician will pay an additional \$15 for biennial renewal. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitors its revenue and cost on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P. S. § 745.5(a)), on January 26, 2006, 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.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Robert Kline, Administrator, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BRIAN V. HARPSTER, V.M.D.,
Chairperson

Fiscal Note: 16A-5717. 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 31. STATE BOARD OF VETERINARY MEDICINE

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

Veterinarians:

* * * * *

Biennial renewal **§[225] 300**

* * * * *

[Animal health] Veterinary technicians:

* * * * *

Biennial renewal **§[60] 75**

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