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Regulatory Analysis Form		This space for use by IRRC JUL 20 11:05 REVIEW COMMISSION
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Cosmetology		
(2) I.D. Number (Governor's Office Use) 16A-4512		
		IRRC Number: 2475
(3) Short Title Biennial Renewal Fee Increase		
(4) PA Code Cite 49 Pa. Code § 7.2	(5) Agency Contacts & Telephone Numbers Primary Contact: Ruth D. Dunnewold, Senior Deputy Chief Counsel State Board of Cosmetology (717) 783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Policy Statement		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language. The regulation increases the biennial renewal fees for all classes of Cosmetology Board licensees. The new fees are needed because the current fees, established in 1986 and 1991, no longer cover the cost of sustaining the Board's operations.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The amendments are authorized under section 16(c) of the Cosmetology Law (act) (63 P.S. § 522(c)).		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Board is required by section 16(c) of the act (63 P.S. § 522(c)) to reconcile its expenses and revenue biennially and to increase fees as needed to meet or exceed projected expenditures.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Board is required by section 16(c) of the act (63 P.S. § 522(c)) to set fees to raise sufficient revenue to meet expenditures. It is anticipated that without raising fees the Board will realize a deficit of \$286,531.06 by fiscal year 2007-2008.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would adversely impact the fiscal integrity of the Board.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Recipients of cosmetology, cosmetician and manicurist services in the Commonwealth will benefit by having adequate funding for the Board to regulate the profession to insure that the appropriate standards of professional competence and integrity are maintained.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The licensee population will bear the cost of the increased fee.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All Cosmetology Board licensees seeking to renew their licenses will be required to comply with this regulation. The Board estimates about 133,790 renewals.

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(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Notice of proposed rulemaking was published at 35 *Pa.B.* 2400 (April 23, 2005). Publication was followed by a 30-day public comment period during which the Board received no public comments. Following the close of the public comment period, the Board received one comment from the House Professional Licensure Committee (HPLC). On June 22, 2005, the Independent Regulatory Review Commission (IRRC) provided one comment for the Board's consideration. The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The final rulemaking responds to the comments provided by the HPLC and the IRRC.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

The Board estimates that about 133,790 Cosmetology Board licenses will renew their licenses. Total additional cost for the entire regulated community for a biennial period is approximately \$1,890,456.00. No legal, accounting or consulting procedures will be implicated in complying with the regulatory amendments.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

The Board will not incur an increase in administrative costs by implementing the regulation. Indeed, the regulatory amendments will permit the Board to recoup the costs of its operations.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	945,228.00	945,228.00	945,228.00	945,228.00	945,228.00	945,228.00
Local Government						
State Government						
Total Costs	945,228.00	945,228.00	945,228.00	945,228.00	945,228.00	945,228.00
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The cost estimates are based upon the licensee population of 133,790 with the renewal expense spread over the 2-year biennial renewal period.

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Biennial renewals:

License class	# of Licensees	Current biennial renewal fee	Proposed biennial renewal fee	Cost of increase to license class
Cosmetician	2,597	\$21.00	\$35.00	\$36,358.00
Cosmetician Shop	681	\$25.00	\$60.00	\$23,835.00
Manicurist Shop	2,038	\$25.00	\$60.00	\$71,330.00
Cosmetology Shop	15,818	\$41.00	\$60.00	\$300,542.00
½ of all Cosmetologist licensees (expire odd year)	44,940	\$23.00	\$35.00	\$539,274.00
Manicurist	12,612	\$21.00	\$35.00	\$176,568.00
½ of all Cosmetologist licensees (expire even year)	44,940	\$23.00	\$35.00	\$539,274.00
Cosmetology Teacher	10,009	\$36.00	\$55.00	\$190,171.00
Cosmetology School	156	\$66.00	\$150.00	\$13,104.00
Total cost to all licensees				\$1,890,456.00

The figures in (20) above represent the total increase to all licensees, across all license classes, expressed as an annual expense: \$1,890,456.00 divided by 2 = \$945,228.00

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 01-02 Actual	FY -2 FY 02-03 Actual	FY -1 FY 03-04 Actual	Current FY FY 04-05 Budgeted
Cosmetology Board	\$1,843,533.68	\$2,278,868.79	\$2,486,972.00	\$2,569,000.00

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(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The amendments to the existing regulations are mandated by section 16(c) of the act (63 P.S. § 522(c)), so that Board revenues meet Board expenses.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered. See Question 21.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered. See Question 21.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal licensure standards.

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(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation will not put Pennsylvania licensees at a competitive disadvantage with other states, as the proposed fees are comparable to analogous fees in surrounding states. See the table below.

SURROUNDING STATES – BIENNIAL RENEWAL FEES

PROFESSION	PA	NJ	DE	OH	WV
COSMETOLOGIST	\$35.00	\$60.00	\$58.00	\$30.00	\$50.00
COSMETICIAN	\$35.00	\$60.00	\$58.00	\$30.00	\$50.00
MANICURIST	\$35.00	\$60.00	\$36.00	\$30.00	\$50.00
COSMETOLOGY TEACHER	\$55.00	\$60.00	\$88.00	\$30.00	\$100.00
COSMETOLOGY SHOP	\$60.00	\$60.00	\$49.00	\$50.00	\$50.00
COSMETICIAN SHOP	\$60.00	\$60.00	\$49.00	\$50.00	\$50.00
MANICURIST SHOP	\$60.00	\$60.00	\$49.00	\$50.00	\$50.00
COSMETOLOGY SCHOOL	\$150.00	\$300.00	\$59.00	\$250.00	\$500.00

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews regulatory proposals at regularly scheduled public meetings. However, in light of the statutory mandate, the Board has not scheduled public hearings or informational meetings regarding this regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No changes to reporting, record keeping, or other paperwork are required by this regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Board reviews its revenues and costs of its programs on a fiscal year and biennial basis.

FACE SHEET
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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Cosmetology
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4512

DATE OF ADOPTION: _____

BY: Susan E. Rineer
Susan E. Rineer

BY: Andrew C. Clark
ANDREW C. CLARK

9.1.05

DATE OF APPROVAL

DATE OF APPROVAL

(Deputy General Counsel
(~~Chief Counsel,~~
~~Independent Agency~~
(~~Strike-inapplicable~~
~~title~~))

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if
applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF COSMETOLOGY
49 Pa. Code, Chapter 7
BIENNIAL RENEWAL FEES

The State Board of Cosmetology (Board) amends § 7.2 (relating to fees) to read as set forth in Annex A. The regulation increases the biennial license renewal fee for all classes of licenses issued by the Board.

A. Effective Date

The amendment will be effective upon publication of the final-form regulation in the Pennsylvania Bulletin. The new fees will take effect for the biennial period commencing February 1, 2006.

B. Statutory Authority

The amendment is authorized under section 16 of the act of May 3, 1933 (P.L. 242, No. 86) (act) (63 P.S. § 522) which requires the Board to fix fees by regulation for the biennial renewal of licenses and to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

C. Background and Purpose

The Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 16 of the act (63 P.S. § 522(c)), if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Board must increase fees by regulation so that its projected revenues will meet or exceed projected expenditures.

The Board raises virtually all of its operating revenue (except application and services fees) through biennial renewal fees. The biennial license renewal fee is the most substantial revenue-generating fee of all the fees charged by the Board. The Board's current biennial license renewal fees for cosmetologists, manicurists, teachers, cosmetology shops, and cosmetology schools were established by regulation in 1986, while the current biennial renewal fees for cosmeticians and cosmetician or manicurist shops were established by regulation in 1991.

At the Board's December 6, 2004 meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years (FY) 2001-2002 through 2003-2004 and projected revenue and expenses for FY 2004-2005 through 2010-2011. The summary, presented in the following table, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 16 of the act. The BFO projected a deficit of \$286,531.06 in FY 2007-2008, a deficit of \$1,073,531.06 in FY 2008-2009, a deficit of \$1,662,531.06 in FY 2009-2010 and a deficit of \$2,606,531.06 in FY 2010-2011. Therefore, the BFO recommended that the Board raise fees to meet projected expenditures, in compliance with

section 16 of the act.

2001-2002 beginning balance	1,718,075.05
FY 01-02 revenue	2,229,690.06
Prior year returned funds	146,300.49
FY 01-02 expenses	2,376,000.00
Remaining balance	1,718,065.60
2002-2003 beginning balance	1,718,065.60
FY 02-03 revenue	1,959,902.11
Prior year returned funds	0.00
FY 02-03 expenses	2,583,000.00
Remaining balance	1,094,967.71
2003-2004 beginning balance	1,094,967.71
FY 03-04 revenue	2,199,623.23
Prior year returned funds	0.00
FY 03-04 expenses	2,533,000.00
Remaining balance	761,590.94
2004-2005 beginning balance	761,590.94
FY 04-05 projected revenue	1,950,000.00
Prior year returned funds (estimated)	902,878.00
FY 04-05 projected expenses	2,569,000.00
Remaining balance	1,045,468.94
2005-2006 beginning balance	1,045,468.94
FY 05-06 projected revenue	2,230,000.00
FY 05-06 projected expenses	2,505,000.00
Remaining balance	770,468.94
2006-2007 beginning balance	770,468.94
FY 06-07 projected revenue	1,950,000.00
FY 06-07 projected expenses	2,580,000.00
Remaining balance	140,468.94
2007-2008 beginning balance	140,468.94
FY 07-08 projected revenue	2,230,000.00
FY 07-08 projected expenses	2,657,000.00
Remaining balance	(286,531.06)

2008-2009 beginning balance	(286,531.06)
FY 08-09 projected revenue	1,950,000.00
FY 08-09 projected expenses	2,737,000.00
Remaining balance	(1,073,531.06)
2009-2010 beginning balance	(1,073,531.06)
FY 09-10 projected revenue	2,230,000.00
FY 09-10 projected expenses	2,819,000.00
Remaining balance	(1,662,531.06)
2010-2011 beginning balance	(1,662,531.06)
FY 10-11 projected revenue	1,950,000.00
FY 10-11 projected expenses	2,904,000.00
Remaining balance	(2,616,531.06)

As the previous table indicates, the BFO estimates that at the close of FY 2007-2008, the Board's expenses will exceed its revenues by \$286,531.06. The BFO anticipates that in subsequent fiscal years, the deficit will increase proportionally. Without an increase, the projected deficit in FY 2010-2011 would be \$2,616,531.06.

The increases in the Board's biennial expenses occurred primarily in the area of investigative and inspection costs, attributable to increased numbers of complaints being filed and the accompanying increased number of investigations and enforcement actions (citations for minor violations under the act of July 2, 1993 (P.L. 345, No. 48) initiated by inspectors and investigators on behalf of the Board. For example, investigative expenditures increased from \$808,769.05 in FY 2002-2003 to approximately \$977,912.05 in FY 2003-2004. Because investigative and inspection costs are largely driven by the number of complaints received and the number of inspections performed (a number dependent in part on the number of new applications filed with the Board), the Board has little control over such expenses.

There were also increases in Legal Office costs, related to prosecuting and adjudicating many more cases than in prior years, which contribute to the need to raise biennial renewal fees. In FY 2003-2004, the Board imposed 632 disciplinary sanctions, which was significantly more than in any prior fiscal year. The FY 03-04 figure is in comparison to 386 disciplinary sanctions imposed in FY 2002-2003, 370 in FY 2001-2002, 393 in FY 2000-2001 and 310 in FY 1999-2000. Additionally, the Board imposed more serious sanctions than in any prior year, 17 in FY 2003-2004, as opposed to 9 in FY 2002-2003, 11 in FY 2001-2002, 3 in FY 2000-2001 and 3 in FY 1999-2000. Finally, the Board closed more cases in FY 2003-2004 than in any prior year, closing 962 cases as compared with 580 cases in FY 2002-2003, 675 in FY 2001-2002, 740 in FY 2000-2001 and 529 in FY 1999-2000. As of December 9, 2004, there were 395 cases currently open, as opposed to 220 cases open as of December 9, 2003.

The Board carefully reviewed several options in fee increases to ensure the most reasonable fee increase possible while keeping the Board out of a long run deficit. Additionally, in developing this rulemaking, the Board reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage to the Commonwealth. The Board also determined that making fees uniform across comparable license classes would be more equitable and would promote ease of administration. Consequently, the Board made the renewal fees for all individual license classes equal, with the exception of cosmetology teacher licenses, as it did with the renewal fees for the various shop licenses.

D. Description of Amendments

Based upon the previous expense and revenue estimates provided to the Board, the Board is amending its fee schedule at § 7.2(c) (relating to fees) to increase the fee for biennial renewal of licenses for cosmeticians from \$21 to \$35; for cosmetologists from \$23 to \$35; for cosmetology teachers from \$36 to \$55; for manicurists from \$21 to \$35; for cosmetician shops from \$25 to \$60; for cosmetology shops from \$41 to \$60; for manicurist shops from \$25 to \$60; and for cosmetology schools from \$66 to \$150.

The amendment also deletes reference in § 7.2 to a cosmetology manager's license, based on the amendments to the act made by the section 3 of the act of June 29, 2002 (P.L. 645, No. 98) (63 P.S. § 510.4), which removed the requirement that a cosmetology shop owner employ a licensed manager if the owner does not manage the shop.

E. Summary of Comments and Responses to Proposed Rulemaking

Proposed rulemaking was published at 35 Pa.B. 2400 (April 23, 2005) followed by a 30-day public comment period. The Board did not receive any comments from the general public or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). However, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

Both the HPLC and IRRC noted that Act 98 of 2002 deleted the requirement that a cosmetology shop be under the direction of a manager and that this amendment to § 7.2 deletes the fee for a cosmetology shop manager license, but that elsewhere in Chapter 7 references to a cosmetology shop manager remain. Accordingly, the HPLC and the IRRC commented that the Board should review its regulations and delete all references to a cosmetology shop manager's license wherever they appear so that the regulations are consistent with the existing statute and with amended § 7.2. IRRC specifically stated that the Board should delete all references to a cosmetology shop manager's license from Chapter 7 when the Board submits the final-form regulation.

The Board is currently in the process of amending Chapter 7 to delete all references to a cosmetology shop manager and intends to send out an exposure draft to stakeholders and interested parties for comment before engaging in proposed rulemaking on the subject. Because Act 98 of 2002 changed the requirements for management of cosmetology shops from a licensed cosmetology shop manager to a "designated person in charge", the Board believes that amendment of Chapter 7 simply by deleting all references to "cosmetology shop manager" is not sufficient. The Board must also make some substantive changes to its regulations that address shop management. Accordingly, the Board does not believe that the amendment should be made through this final-form regulation, and will, instead, proceed with amending its regulations related to shop management through a separate rulemaking.

F. Compliance with Executive Order 1996-1

The requirements of Executive Order 1996-1 (February 6, 1996) for public input are not applicable to regulations relating solely to reconciliation of the Board's budget through increases in biennial renewal fees as they are required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

G. Fiscal Impact and Paperwork Requirements

The amendments will increase the biennial renewal fee for all classes of Board licensees. The amended regulation should have no other fiscal impact on the private sector, the general public or political subdivisions. The amended regulation will require the Board to alter some of its forms to reflect the new biennial renewal fees. However, the amendment should not create additional paperwork for the private sector.

H. Sunset Date

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

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2400, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other

documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

J. Contact Person

Further information may be obtained by contacting Hilarene Staller, Board Administrator, State Board of Cosmetology, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-7130.

K. Findings

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) These amendments do not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 2400.
- (4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

L. Order

The Board, acting under its authorizing statute, orders that:

- (1) The regulations of the Board, 49 Pa. Code Chapter 7, are amended by amending § 7.2

to read as set forth in Annex A.

- (2) The Board shall submit this Order and Annex A to the Office of General Counsel and to the Office of the Attorney General as required by law.
- (3) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (4) This order shall take effect upon publication in the Pennsylvania Bulletin.

Susan E. Rineer
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 7. STATE BOARD OF COSMETOLOGY

GENERAL PROVISIONS

* * *

§ 7.2. Fees.

Fees charged by the Board are as follows:

* * *

Biennial renewal of manicurist's license\$[21]35

Biennial renewal of cosmetician's license\$[21]35

Biennial renewal of cosmetologist's license\$[23]35

Biennial renewal of [cosmetology shop manager's or] cosmetology

teacher's license\$[36]55

Biennial renewal of cosmetology shop's license\$[41]60

Biennial renewal of cosmetician or manicurist shop's license\$[25]60

Biennial renewal of cosmetology school's license\$[66]150

* * *

FEE REPORT FORM

Agency: State - BPOA

Date: 12/09/2004

Contact: Basil Merenda

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Estimated Biennial Revenue:

Cosmetician -	\$90,895.00	(2,597 x \$35.00)
Cosmetician Shop -	\$40,860.00	(681 x \$60.00)
Manicurist Shop -	\$122,280.00	(2,038 x \$60.00)
Cosmetology Shop -	\$949,080.00	(15,818 x \$60.00)
Manicurist -	\$441,420.00	(12,612 x \$35.00)
Cosmetology Teacher -	\$550,495.00	(10,009 x \$55.00)
Cosmetology School -	\$23,400.00	(156 x \$150.00)
Cosmetologist -	\$3,145,765.00	(88,880 x \$35.00)

Total Estimated Biennial Revenue: \$5,364,195.00

Fee Description:

The fee will be charged biennially to every applicant for license renewal.

Fee Objective:

The fee should defray a substantial portion of the State Board of Cosmetology's administrative overhead, specifically the difference between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

Fee-Related Activities and Costs:

Estimated balance at end of 04/05 cycle:	1,045,468.94
FOR BIENNIAL CYCLE 7/01/05-6/30/06	
Estimated non-renewal revenue:	185,000.00
Estimated renewal revenue @ above rates:	2,588,197.50
Total revenue available:	3,818,666.44
Estimated expenditures:	2,505,000.00
Estimated ending balance on 6/30/06:	1,313,666.44
FOR BIENNIAL CYCLE 7/01/06-6/30/07	
Estimated non-renewal revenue:	185,000.00
Estimated renewal revenue @ above rates:	2,775,997.50
Estimated expenditures:	2,580,000.00
Estimated ending balance on 6/30/07:	1,694,663.94

Analysis, Comment, and Recommendation:

It is recommended that the above renewal fee's be established to cover projected funding shortfalls between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

The name change has been adopted by NatureServe, an international biological conservation group that tracks rare and endangered species, as well as the Center for North American Herpetology (CNAH), the National herpetological group that tracks name changes.

The Commission also proposes that § 75.3 be amended to change the name of *Emydoidea blandingii* (Blandings Turtle) to *Emys blandingii*. Recent molecular and genetic studies (Feldman and Parham (2002)) have resulted in a rearrangement of several turtle groups, including the grouping of *Emydoidea blandingii* with *Emys orbicularis* in the genus *Emys*. The name change has been adopted by NatureServe and the CNAH.

The Commission further proposes that § 75.1 be amended to change the name of *Rana utricularia* (Coastal Plain Leopard Frog) to *Rana sphenoccephala*. Literature referring to this species from 1974 to 1992 used the old name *Rana utricularia* based on a morphological study by Pace (1974). However, in 1992 the International Commission on Zoological Nomenclature ruled that the name of this frog would return to *Rana sphenoccephala*, which it had been given in more recent references.

The Commission proposes that §§ 75.1–75.3 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-167. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

* * * * *

(b) *Fish*. The following species are endangered:

* * * * *

(32) Eastern pearlshell mussel, *Margaritifera margaritifera*.

(c) *Reptiles and amphibians*. The following species are endangered:

(1) Bog Turtle, [*Clemmys*] *Glyptemys muhlenbergii*.

* * * * *

(3) Coastal Plain Leopard Frog, *Rana* [*utricularia*] *sphenoccephala*.

* * * * *

(7) Eastern Spadefoot Toad, *Scaphiopus holbrookii*.

(8) Rough Green Snake, *Opheodrys aestivus*.

§ 75.2. Threatened species.

* * * * *

(c) *Amphibians and reptiles*. The following species are threatened:

* * * * *

[(3) Rough Green Snake, *Opheodrys aestivus*.]

§ 75.3. Candidate species.

* * * * *

(c) *Amphibians and reptiles*.

(1) Blandings Turtle, [*Emydoidea*] *Emys blandingii*.

* * * * *

[Pa.B. Doc. No. 05-764. Filed for public inspection April 22, 2005, 9:00 a.m.]

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]

Biennial Renewal Fee Increase

The State Board of Cosmetology (Board) proposes to amend § 7.2 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for all classes of licenses issued by the Board.

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 February 1, 2006.

Statutory Authority

The proposed rulemaking is authorized under section 16 of the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) (63 P. S. § 522). It requires the Board to fix fees by regulation for the biennial renewal of licenses and to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Need for Amendment

The Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 16 of Act 86, if the

revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Board must increase fees by regulation so that its projected revenues will meet or exceed projected expenditures.

The Board raises virtually all of its operating revenue (except application and services fees) through biennial renewal fees. The biennial license renewal fee is the most substantial revenue-generating fee of all the fees charged by the Board. The Board's current biennial license renewal fees for cosmetologists, manicurists, teachers, cosmetology shops and cosmetology schools were established by regulation in 1986, while the current biennial renewal fees for cosmeticians and cosmetician or manicurist shops were established by regulation in 1991.

At the Board's December 6, 2004, meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004 and projected revenue and expenses for FYs 2004-2005 through 2010-2011. The summary, presented in the following table, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 16 of Act 86. The BFO projected a deficit of \$286,531.06 in FY 2007-2008, a deficit of \$1,073,531.06 in FY 2008-2009, a deficit of \$1,662,531.06 in FY 2009-2010 and a deficit of \$2,606,531.06 in FY 2010-2011. Therefore, the BFO recommended that the Board raise fees to meet projected expenditures, in compliance with section 16 of Act 86.

2001-2002 beginning balance	\$1,718,075.05
FY 01-02 revenue	2,229,690.06
Prior year returned funds	146,300.49
FY 01-02 expenses	2,376,000.00
Remaining balance	1,718,065.60
2002-2003 beginning balance	1,718,065.60
FY 02-03 revenue	1,959,902.11
Prior year returned funds	0.00
FY 02-03 expenses	2,583,000.00
Remaining balance	1,094,967.71
2003-2004 beginning balance	1,094,967.71
FY 03-04 revenue	2,199,623.23
Prior year returned funds	0.00
FY 03-04 expenses	2,533,000.00
Remaining balance	761,590.94
2004-2005 beginning balance	761,590.94
FY 04-05 projected revenue	1,950,000.00
Prior year returned funds (estimated)	902,878.00
FY 04-05 projected expenses	2,569,000.00
Remaining balance	1,045,468.94
2005-2006 beginning balance	1,045,468.94
FY 05-06 projected revenue	2,230,000.00
FY 05-06 projected expenses	2,505,000.00
Remaining balance	770,468.94
2006-2007 beginning balance	770,468.94
FY 06-07 projected revenue	1,950,000.00
FY 06-07 projected expenses	2,580,000.00
Remaining balance	140,468.94
2007-2008 beginning balance	140,468.94
FY 07-08 projected revenue	2,230,000.00
FY 07-08 projected expenses	2,657,000.00
Remaining balance	(286,531.06)
2008-2009 beginning balance	(286,531.06)
FY 08-09 projected revenue	1,950,000.00
FY 08-09 projected expenses	2,737,000.00
Remaining balance	(1,073,531.06)

2009-2010 beginning balance	(1,073,531.06)
FY 09-10 projected revenue	2,230,000.00
FY 09-10 projected expenses	2,819,000.00
Remaining balance	(1,662,531.06)
2010-2011 beginning balance	(1,662,531.06)
FY 10-11 projected revenue	1,950,000.00
FY 10-11 projected expenses	2,904,000.00
Remaining balance	(2,616,531.06)

As the previous table indicates, the BFO estimates that at the close of FY 2007-2008, the Board's expenses will exceed its revenues by \$286,531.06. The BFO anticipates that in subsequent FYs, the deficit will increase proportionally. Without an increase, the projected deficit in FY 2010-2011 would be \$2,616,531.06.

The increases in the Board's biennial expenses occurred primarily in the area of investigative and inspection costs, attributable to increased numbers of complaints being filed and the accompanying increased number of investigations and enforcement actions (citations for minor violations under the act of July 2, 1993 (P.L. 345, No. 48)) initiated by inspectors and investigators on behalf of the Board. For example, investigative expenditures increased from \$808,769.05 in FY 2002-2003 to approximately \$977,912.05 in FY 2003-2004. Because investigative and inspection costs are largely driven by the number of complaints received and the number of inspections performed (a number dependent in part on the number of new applications filed with the Board), the Board has little control over these expenses.

There were also increases in Legal Office costs related to prosecuting and adjudicating many more cases than in prior years, which contribute to the need to raise biennial renewal fees. In FY 2003-2004, the Board imposed 632 disciplinary sanctions, which was significantly more than in any prior FY. The FY 2003-2004 figure is in comparison to 386 disciplinary sanctions imposed in FY 2002-2003, 370 in FY 2001-2002, 393 in FY 2000-2001 and 310 in FY 1999-2000. Additionally, the Board imposed more serious sanctions than in any prior year, 17 in FY 2003-2004, as opposed to 9 in FY 2002-2003, 11 in FY 2001-2002, 3 in FY 2000-2001 and 3 FY 1999-2000. Finally, the Board closed more cases in FY 2003-2004 than in any prior year, closing 962 cases as compared with 580 cases in FY 2002-2003, 675 in FY 2001-2002, 740 in FY 2000-2001 and 529 in FY 1999-2000. As of December 9, 2004, there were 395 cases currently open, as opposed to 220 cases open as of December 9, 2003.

The Board carefully reviewed several options in fee increases to ensure the most reasonable fee increase possible while keeping the Board out of a long run deficit. Additionally, in developing this proposed rulemaking, the Board reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage to the Commonwealth. The Board also determined that making fees uniform across comparable license classes would be more equitable and would promote ease of administration. Consequently, the Board made the renewal fees for all individual license classes equal, with the exception of cosmetology teacher licenses, as it did with the renewal fees for the various shop licenses.

Description of Proposed Amendments

Based upon the previous expense and revenue estimates provided to the Board, the Board proposes to amend its fee schedule in § 7.2(c) to increase the fee for biennial renewal of licenses for cosmeticians from \$21 to

\$35; for cosmetologists from \$23 to \$35; for cosmetology teachers from \$36 to \$55; for manicurists from \$21 to \$35; for cosmetician shops from \$25 to \$60; for cosmetology shops from \$41 to \$60; for manicurist shops from \$25 to \$60; and for cosmetology schools from \$66 to \$150.

The proposed rulemaking also deletes a reference in § 7.2 to a cosmetology manager's license, based on the amendments to Act 86 made by the section 3 of the act of June 29, 2002 (P. L. 645, No. 98) (63 P. S. § 510.4), which removed the requirement that a cosmetology shop owner employ a licensed manager if the owner does not manage his own shop.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fee for all classes of Board licensees. 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

Act 86 requires that the Board monitor its revenue and expenses on an FY 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 April 13, 2005, 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 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 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 Linda Dinger, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,
Chairperson

Fiscal Note: 16A-4512. 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 7. STATE BOARD OF COSMETOLOGY GENERAL PROVISIONS

§ 7.2. Fees.

Fees charged by the Board are as follows:

	* * * * *
Biennial renewal of manicurist's license	\$ [21] 35
Biennial renewal of cosmetician's license	\$ [21] 35
Biennial renewal of cosmetologist's license	\$ [23] 35
Biennial renewal of [cosmetology shop manager's or] cosmetology teacher's license	\$ [36] 55
Biennial renewal of cosmetology shop's license	\$ [41] 60
Biennial renewal of cosmetician or manicurist shop's license	\$ [25] 60
Biennial renewal of cosmetology school's license	\$ [66] 150
	* * * * *

[Pa.B. Doc. No. 05-765. Filed for public inspection April 22, 2005, 9:00 a.m.]

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Biennial Renewal Fees

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.72 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for nursing home administrators from \$108 to \$297.

Effective Date

The new fees will be effective upon final-form publication in the *Pennsylvania Bulletin* and will apply to the biennial renewal beginning July 1, 2006.

Statutory Authority

Section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P. S. § 1107.1(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Need for Amendments

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa.B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support

Regulation 16A-4512

State Board of Cosmetology

PROPOSAL: Regulation 16A-4512 amends 49 Pa. Code, Chapter 7, regulations of the State Board of Cosmetology. The proposed amendment increases the biennial renewal fee for: (a) a manicurist's license; (2) a cosmetician's license; (3) a cosmetologist's license; (4) a cosmetology teacher's license; (5) a cosmetology shop's license; (6) a cosmetician or manicurist shop's license; and (7) a cosmetology school's license.

Essentially, this regulation increases the biennial renewal fee for all of the licenses issued by the State Board of Cosmetology. According to the board, the fee increase will take effect for the biennial renewal period commencing February 1, 2006. The board anticipates the notices will be delivered to licensees October or November 2005 and that final regulations will be promulgated before the next biennial renewal period begins.

Regulation 16A-4512 is proposed rulemaking which was published in the Pennsylvania Bulletin on April 23, 2005.

ANALYSIS: Section 16 of the Cosmetology Law empowers the board to fix fees for licenses. Further, Section 16 requires the board to raise fees if the revenue generated by fees, fines and civil penalties are insufficient to meet the board's expenditures.

Regulation 16A-4512 proposes to raise the fee for biennial renewal for licensees as follows:

- (1) manicurist's license \$35 (up from \$21)
- (2) cosmetician's license \$35 (up from \$21)
- (3) cosmetologist's license \$35 (up from \$23)
- (4) cosmetology teacher's license \$55 (up from \$36)
- (5) cosmetology shop's license \$60 (up from \$41)
- (6) cosmetician or manicurist shop's license \$60 (up from 25)
- (7) cosmetology school's license \$150 (up from \$66)

According to the board, virtually all of the board's revenues are raised through biennial renewal fees. Further, according to the board, the biennial renewal fee for cosmetologists, manicurists, teachers, cosmetology shops, and cosmetology schools has not been increased since 1986. Similarly, the biennial renewal fee for cosmeticians and cosmetician or manicurist shops has not increased since 1991.

Further, according to the board, the increase in the board's expenses are due to investigative and inspection costs, as well as costs relating to prosecution and adjudication. The board has indicated that there has been a marked increase in disciplinary cases and legal expenses.

The board stated that according to the Department of State's Bureau of Finance and Operations, there will be a deficit of \$280,531 in fiscal year 2007-2008, a deficit of \$1,073,531 in fiscal year 2008-2009, a deficit of \$1,666,531 in fiscal year 2009-2010, and a deficit of \$2,606,531 in fiscal year 2010-2011.

The proposed regulation also deletes the reference to the biennial renewal fee for a cosmetology shop manager. The General Assembly deleted the requirement that a cosmetology shop be supervised by a manager when it enacted Act 98 of 2002.

RECOMMENDATION: It is recommended the House Professional Licensure Committee take no formal action until final regulations are promulgated and submit the following comment:

1. The committee notes that Act 98 of 2002 deleted the requirement that a cosmetology shop be under the direction of a manager. The committee notes that the reference to the biennial renewal fee for a cosmetology shop manager has been deleted in the proposed regulation, specifically Section 7.2 Fees.

The committee notes that the regulation contains other references to a cosmetology shop manager, including the fee for a license for a cosmetology shop manager found in Section 7.2 Fees. Other references to this term are found in Section 7.11 Types of Individual Licenses and Section 7.13 Scope of Manager's License. The committee recommends the board review the regulation and delete the references to the manager's license wherever they appear so there is no conflict between the existing regulation and the proposed regulation dealing with biennial renewal fees.

House of Representatives
Professional Licensure Committee
June 7, 2005

Comments of the Independent Regulatory Review Commission

on

State Board of Cosmetology Regulation #16A-4512 (IRRC #2475)

Biennial Renewal Fee Increase

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Cosmetology (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 23, 2005. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. General. – Consistency with statute; Reasonableness; Clarity.

Section 4.4 of Act 98 of 2002 deleted the requirement that a cosmetology shop manager be licensed. Accordingly, in Section 7.2 of this regulation, the Board deleted the fee for a cosmetology shop manager license. However, elsewhere in 49 Pa. Code Chapter 7, references to the licensure of a cosmetology shop manager remain.

To be consistent with existing statute and the deletion of the fee requirement for a cosmetology shop manager's license, the Board should delete all references to a cosmetology shop manager's license from 49 Pa. Code Chapter 7 when it submits the final-form regulation.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF COSMETOLOGY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7130

September 30, 2005

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Cosmetology
16A-4512: Biennial Renewal Fees

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Cosmetology pertaining to biennial renewal fees.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


Susan E. Rineer, Chairperson
State Board of Cosmetology

SER/RDD:kmh

Enclosure

cc: Albert H. Masland, Chief Counsel
Department of State
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Ruth D. Dunnewold, Senior Deputy Chief Counsel
Department of State
State Board of Cosmetology

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4512
SUBJECT: State Board of Cosmetology: Biennial Renewal Fees
AGENCY: DEPARTMENT OF STATE

2475

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions b. Without Revisions

RECEIVED
2005 SEP 30 AM 11:04
INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/30/05	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/30/05	<i>Mary Walmsley</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9/30/05	<i>Stephen Brunt</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
9/30/05	<i>Stephen J. Hall</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 1, 2005