

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

**Department of State, Bureau of Professional and Occupational Affairs**

(2) Agency Number:

Identification Number: 16-47

IRRC Number: 2761

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IRRC  
2010 SEP 22 P 2:10

(3) Short Title:

**Schedule of civil penalties – funeral directors and funeral establishments**

(4) PA Code Cite:

**49 Pa. Code § 43b.6**

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Thomas A. Blackburn, Regulatory unit counsel, Department of State;**  
**(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@state.pa.us**

Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State**  
**(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; cymontgome@state.pa.us**

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Funeral Directors**

**(717)783-3397; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)705-5540; st-funeral@state.pa.us**

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

**This rulemaking amends the schedule of civil penalties of the State Board of Funeral Directors (Board) to include failure to complete the required amount of mandatory continuing education.**

(9) Include a schedule for review of the regulation including:

- |                                                                                             |                   |
|---------------------------------------------------------------------------------------------|-------------------|
| A. The date by which the agency must receive public comments:                               | June 2, 2009      |
| B. The date or dates on which public meetings or hearings will be held:                     | N/A               |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | by 2/1/12 renewal |
| D. The expected effective date of the final-form regulation:                                | Upon publication  |
| E. The date by which compliance with the final-form regulation will be required:            | Upon publication  |
| F. The date by which required permits, licenses or other approvals must be obtained:        | N/A               |

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

**The Commissioner and BPOA licensing boards continually review the efficacy of their regulations, as part of the annual review process pursuant to Executive Order 1996-1. More information can be found on the BPOA website ([www.dos.state.pa.us/bpoa](http://www.dos.state.pa.us/bpoa)).**

## Regulatory Analysis Form

### SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

**Section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) authorizes the Commissioner, after consultation with the appropriate licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards and that any such penalty shall not exceed the sum of \$1,000. Section 11(a)(6) of the Funeral Director Law (Act) (63 P.S. § 479.11(a)(6)) authorizes the Board to take disciplinary action against a licensee for violating any provisions of the Act or regulations of the Board.**

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**The rulemaking is not mandated by any federal or state law or court order.**

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

**The regulation establishes a civil penalty schedule for violations of the continuing education regulations of the Board. Consistent with the practice of other licensing boards within the Bureau, the summary process under Act 48 would be a much more efficient manner of handling violations than the formal disciplinary process, while still ensuring licensees due process.**

14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

**This rulemaking is not based upon any scientific data, studies, or references.**

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

**The Commissioner and the Board have not identified any group of individuals or entities that will be adversely affected by the rulemaking.**

## Regulatory Analysis Form

(16) 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.

**The rulemaking applies to all licensees of the Board, but it is only applicable to those licensees who violate the continuing education requirement of section 10(b) of the Act (63 P.S. § 479.10(b)). There are approximately 3,300 licensed funeral directors in this Commonwealth, with current licenses. The Bureau conducts random audits of all licensees who are subject to continuing education requirements, and the violation rate for existing boards has been on the order of 1%. The Board estimates that approximately 30 violators each biennium will be identified and cited once the audit process begins.**

### SECTION III: COST AND IMPACT ANALYSIS

(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 which may be required. Explain how the dollar estimates were derived.

**There are no costs to members of the regulated community associated with compliance with the rulemaking. Those few members of the regulated community who do not complete the required amount of continuing education on time will have a savings by being permitted to continue practicing for up to 6 months while completing the required amount of continuing education. Additionally, the Board and the Bureau and those few members of the regulated community who are charged with violating the mandatory continuing education requirements will enjoy a savings as a result of compliance with this proposed rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action.**

(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. Explain how the dollar estimates were derived.

**There are no costs or savings to local governments associated with compliance with the rulemaking.**

(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 which may be required. Explain how the dollar estimates were derived.

**The Bureau and the Board will enjoy a savings as a result of compliance with this rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action. There are no other costs or saving to state government associated with implementation of the rulemaking.**

## Regulatory Analysis Form

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

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

<b>Program</b>	<b>FY -3 2007-08</b>	<b>FY -2 2008-09</b>	<b>FY -1 2009-10</b>	<b>Current FY 2010-11</b>
<b>Pa. State Board of Funeral Directors</b>	(projected) \$986,024	(budgeted) \$928,000	(budgeted) \$1,086,000	(budgeted) \$1,168,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

**No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any costs.**

## Regulatory Analysis Form

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

**The Board did not solicit input for an exposure draft. The Board discussed the proposed rulemaking in public session during the Board's meetings in April and May, 2008. The Board discussed the final rulemaking in public session during the Board's meetings in August, 2009, and March, 2010. After disapproval by IRRC, the Board also discussed this rulemaking in public session during the Board's meeting in September, 2010. These meetings are routinely attended by members of the regulated community and representatives of their organizations.**

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

**No alternative regulatory schemes were considered.**

(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 regulations.

**The rulemaking does not overlap or conflict with any federal requirements.**

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

**All surrounding states that require continuing education for funeral directors also provide for sanction of violators. The regulation will not put Pennsylvania at a competitive disadvantage with these other states.**

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

**This rulemaking will have no effect on other regulations of the Board or other state agencies.**

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**Because the rulemaking permits the use of Act 48 citations, rather than formal disciplinary action, to sanction first-time violators of the continuing education requirements, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.**

## Regulatory Analysis Form

(28) 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 determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

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(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE


Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

Department of State, Bureau of Professional and Occupational Affairs  
(AGENCY)

BY:   
Andrew C. Clark  
SEP 21 2010

DOCUMENT/FISCAL NOTE NO. 16-47

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
DATE OF APPROVAL

\_\_\_\_\_  
DATE OF ADOPTION:

BY:   
Basil L. Merenda

(Deputy General Counsel  
(Chief Counsel,  
Independent Agency  
(State inapplicable title)

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

TITLE: Commissioner  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] 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

49 Pa. Code § 43b.6

SCHEDULE OF CIVIL PENALTIES - FUNERAL DIRECTORS AND FUNERAL ESTABLISHMENTS



The Commissioner of Professional and Occupational Affairs (Commissioner) amends § 43b.6 (relating to schedule of civil penalties – funeral directors and funeral establishments) to read as set forth in Annex A.

### Description and Need for the Rulemaking

The act of July 2, 1993 (P. L. 345, No. 48) (Act 48) authorizes agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation have the right to a hearing and retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The State Board of Funeral Directors (Board) has had an Act 48 schedule of civil penalties since 1997 (*See*, 27 Pa. B. 6467).

Section 10(b)(2) of the Funeral Director Law (the act) (63 P.S. § 479.10(b)(2)) requires licensees to complete 6 hours of mandatory continuing education during each biennial renewal period as a condition of license renewal. In accordance with section 10(b)(1) of the act (63 P.S. § 479.10(b)(1)), in 2005 the Board promulgated regulations to implement the continuing education requirement. Under the current regulations, any failure to comply with the continuing education requirements could lead to formal disciplinary action. As is being done for other licensing boards with continuing education requirements, the Commissioner proposed a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees retain their right to due process of law.

The Commissioner, in consultation with the Board, proposed for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty \$175 for each credit hour that the licensee is deficient, up to a maximum of \$1,000. Second and subsequent offenses would not be subject to an Act 48 citation, but rather, would proceed through the formal disciplinary process. Separate rulemaking proposed by the Board at 16A-4818 (continuing education enforcement) would require that licensee also make up the deficiency within 6 months or face formal disciplinary action.

### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 39 Pa.B. 2205 (May 2, 2009) with a 30-day public comment period. The Board received no written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC first noted that the amount of \$175 as the civil penalty for each hour of deficiency of required continuing education provides a significantly higher penalty than the scheduled civil penalty for practicing on a lapsed license. The HPLC and IRRC requested an explanation of how the proposed amount was determined, and the HPLC further questioned how the comparative amounts might affect compliance. The maximum civil penalty that the Board may impose by citation for a violation of the act or Board regulations is \$1,000. In order to provide a significant deterrence against failing to complete continuing education in a timely manner, the Board concluded that this maximum amount is an appropriate civil penalty for a licensee who completes none of the required continuing education. Those whose deficiency is less should be assessed a proportionately lesser civil penalty. Because 6 hours of continuing education are required, the Board calculated that the scheduled civil penalty should be \$1,000 divided by 6 hours, rounded up to \$175 per hour. The scheduled civil penalty for a first offense violation of practice on a lapsed license for more than 60 days is \$500. Because this civil penalty is less than the scheduled civil penalty for failing to complete more than 3 hours of continuing education, it might appear that the schedule provides to a licensee who has completed less than 3 hours of continuing education an incentive not to renew the license until the full amount of continuing education is completed (and continue to practice on an expired license). However, as newly provided by rulemaking 16A-4818, the Board will renew a license despite the failure to complete continuing education (premised upon payment of an appropriate civil penalty and making up the deficiency within 6 months). Also, while a licensee who has not completed the required amount of continuing education and refrains from practice may renew upon completion of the required continuing education without any penalty, failure to renew the license will not avoid prosecution for a licensee who continues to practice despite not having completed the required amount of continuing education. Accordingly, this comparison between civil penalties presents a false choice, and the schedule provides no financial incentive to avoid timely renewal of the license.

The HPLC also requested an explanation of how the schedule will work with the 6-month allowance to make up the deficiency in continuing education, as provided in rulemaking 16A-4818. Following renewal by a licensee who acknowledges failure to complete the required amount of continuing education, the Board office will collect documentation from the licensee concerning continuing education completed by the licensee. The Board office will forward this information about CE deficiency to the professional compliance office and the prosecution division for issuance of an appropriate citation. Once a citation is issued, the normal citation process will follow, and the licensee will be required to pay the citation or request a hearing and appeal as appropriate. In accordance with its standing procedures, if at the end of the process a violation is found and the licensee does not pay the civil penalty timely, the Board will suspend the licensee's license. The Board will not delay issuance of a citation until the licensee has provided documentation that the licensee made up the deficient continuing education. The Board's administrative office will monitor completion by those licensees who renew without having completed the required amount of continuing education. Because the Board office conducts the initial audit of licensees randomly selected for audit, the Board office will also contact those licensees who have renewed without having completed the required amount of continuing education and request proof of continuing education for that renewal period. If the licensee timely provides documentation showing that the licensee fully satisfied the continuing education requirement within the 6-month period, the matter

ends. If the licensee does not provide the documentation, the matter will be forwarded to the professional compliance office and the prosecution division to initiate disciplinary action.

While addressing the above questions, as well as other questions raised by the HPLC and IRRC in regard to rulemaking 16A-4818, the Board considered its audit process in more detail. In doing so, the Board realized that its regulations do not impose any specific obligation upon a licensee to comply with the audit. Accordingly, the Board has also revised § 13.402(c) to require a licensee to fully respond to an audit request within 30 days or another time period specified in the audit request. The Commissioner has now included this violation in the schedule of civil penalties. The schedule allows a first-violation civil penalty of \$100 increased to \$250 for a second violation and \$500 for a third violation and thereafter formal action. The Board envisions that a licensee who fails to comply with an audit request will be given a citation and another audit request. The process may be repeated until the licensee's fourth refusal demonstrates that the Board should consider whether to suspend the licensee's license for failure to provide proof of continuing education.

#### Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions, or the private sector.

#### Effective Date

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

#### Statutory Authority

This rulemaking is authorized by section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)).

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 22, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 2205, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

As indicated above, no comments were received from the public or the SCP/PLC. In preparing the final-form rulemaking, the Board considered all comments received from the HPLC and IRRC. On June 25, 2010, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC on August 4, 2010. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 5, 2010, and disapproved the final-form rulemaking.

The Board has not revised the final-form rulemaking in response to IRRC's disapproval. The Board redelivered the final-form rulemaking, together with the supporting report required by section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)), to IRRC, the HPLC and the SCP/PLC on September 22, 2010. Under section 7(c.1) of the Regulatory Review Act (71 P.S. § 745.7(c.1)), IRRC met on October \_\_\_, 2010, and (dis)approved the final-form rulemaking. Under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)), the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC on \_\_\_\_\_, 2010.

### Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-7200, or by e-mail at st-funeral@state.pa.us.

### Findings

The Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 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) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 39 Pa.B. 2205.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Funeral Director Law.

### Order

The Commissioner, acting under the authority provided by act of July 2, 1993 (P. L. 345, No. 48), orders that:

- (a) The regulations of the Commissioner at 49 Pa. Code Chapter 43b are amended, by amending § 43b.6 to read as set forth in Annex A.
- (b) The Bureau shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Bureau shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Basil L. Merenda  
Commissioner of Professional and Occupational  
Affairs

**ANNEX A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND**

**OCCUPATIONAL AFFAIRS**

**SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL**

**PENALTIES AND PROCEDURES FOR APPEAL**

\* \* \* \* \*

**§ 43b.6. Schedule of civil penalties – funeral directors and funeral establishments.**

**STATE BOARD OF FUNERAL DIRECTORS**

**Violation Under**

**63 P.S.**

**Title/Description**

**Penalties**

\* \* \* \* \*

Section 479.10(b)

Failure to complete the  
required amount of  
continuing education

First offense - \$175 per hour of  
deficiency, not to exceed \$1,000  
Second offense – formal action

\* \* \* \* \*

**Violation Under**

**49 Pa. Code**

**Chapter 13**

**Title/Description**

**Penalties**

\* \* \* \* \*

SECTION 13.402(C)

FAILURE TO FULLY

FIRST OFFENSE - \$100

RESPOND TO AUDIT

SECOND OFFENSE - \$250

REQUEST WITHIN

THIRD OFFENSE - \$500

APPLICABLE TIME

SUBSEQUENT OFFENSES –

FORMAL ACTION

\* \* \* \* \*

**REPORT OF THE COMMISSIONER OF  
PROFESSIONAL AND OCCUPATIONAL AFFAIRS:  
RESPONSE TO IRRC’S ORDER DISAPPROVING FINAL RULEMAKING 16-47  
(SCHEDULE OF CIVIL PENALTIES – FUNERAL DIRECTORS AND  
FUNERAL ESTABLISHMENTS)**

On June 25, 2010, the Commissioner of Professional and Occupational Affairs delivered final rulemaking 16-47 (Schedule of civil penalties – funeral directors and funeral establishments) to the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). On August 4, 2010, the HPLC and the SCP/PLC were deemed to have approved the final rulemaking. At its meeting on August 5, 2010, IRRC disapproved the final rulemaking. The Commissioner has determined that he should proceed with the final rulemaking without revision under section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) and now submits this report responding to IRRC’s disapproval order, as required by section 7(b) of the Regulatory Review Act and 1 Pa. Code § 311.3(3)).

As stated in its disapproval order of August 13, 2010, IRRC disapproved the final rulemaking upon request of the Commissioner because IRRC had disapproved companion rulemaking 16A-4818 (continuing education enforcement) of the State Board of Funeral Directors and therefore the rulemaking was not in the public interest, under section 5.2(b)(3) of the Regulatory Review Act (71 P.S. § 745.5b(b)(3)). Contemporaneously with redelivery of this rulemaking, the State Board of Funeral Directors redelivered final rulemaking 16A-4818 without revision under section 7(b) of the Regulatory Review Act. As the final rulemaking of the State



Board of Funeral Directors has been redelivered, the Commissioner requests IRRC to approve this final rulemaking.

IRRC raised no objection to the final rulemaking other than as stated above.

As discussed above, the Commissioner has not revised this rulemaking under section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) and now redelivers the original final rulemaking to IRRC, the HPLC and the SCP/PLC.

Basil L. Merenda  
Commissioner of Professional and  
Occupational Affairs

**COMMENTATOR'S LIST FOR**  
**REG. # 16-47**

There were no public commentators.

# PROPOSED RULEMAKING

## DEPARTMENT OF STATE

[ 49 PA. CODE CH. 43b ]

### Continuing Education Enforcement

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend § 43b.6 (relating to schedule of civil penalties—funeral directors and funeral establishments) to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 11(a)(6) of the Funeral Director Law (act) (63 P. S. § 479.11(a)(6)) authorizes the State Board of Funeral Directors to take disciplinary action against a licensee for violating any provisions of the act or regulations of the Board. Section 17(b) of the act (63 P. S. § 479.17(b)) authorizes the Board to levy a civil penalty of up to \$1,000 on any licensee who violates any provision of the act.

#### *Background and Need for the Amendment*

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation have the right to a hearing and retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The Board has had an Act 48 schedule of civil penalties since 1997 (See, 27 Pa.B. 6467 (December 12, 2009)).

Section 10(b)(2) of the act (63 P. S. § 479.10(b)(2)) requires licensees to complete 6 hours of mandatory continuing education during each biennial renewal period as a condition of license renewal. In accordance with section 10(b)(1) of the act (63 P. S. § 479.10(b)(1)), in 2005 the Board promulgated regulations to implement the continuing education requirement. Under the current regulations, any failure to comply with the continuing education requirements could lead to formal disciplinary action. As is being done for other licensing boards with continuing education requirements, the Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees retain their right to due process of law. Payment of the civil penalty will not relieve a licensee of the obliga-

tion to complete the required amount of mandatory continuing education. Under the separate rulemaking being proposed by the Board, a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period will also be required to complete the required continuing education during the first 6 months of the renewal period; failure to complete the required continuing education by that deadline with subject the licensee to formal disciplinary action.

#### *Description of the Proposed Amendments*

The Commissioner, in consultation with the Board, proposes for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty \$175 for each credit hour that the licensee is deficient, up to a maximum of \$1,000. Second and subsequent offenses would not be subject to an Act 48 citation, but rather, would proceed through the formal disciplinary process.

#### *Compliance with Executive Order 1996-1*

The Board considered and approved the proposed amendments at regularly scheduled public meetings. The Commissioner reviewed the proposed amendments and considered their purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions, or the private sector. Instead, the proposed rulemaking will reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

#### *Sunset Date*

Professional licensure statutes require each board to be self-supporting. Therefore, the Commissioner and the boards continuously monitor the cost effectiveness of their regulations. As a result, 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 22, 2009, the Commissioner 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, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, at P. O. Box 2649, Harrisburg, PA 17105-2649 or ST-FUNERAL@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16-47 (funeral board CE enforcement), when submitting comments.

BASIL L. MERENDA,  
*Commissioner of Professional  
and Occupational Affairs*

**Fiscal Note:** 16-47. No fiscal impact; (8) recommends adopted.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL**

**§ 43b.6. Schedule of civil penalties—funeral directors and funeral establishments.**

**STATE BOARD OF FUNERAL DIRECTORS**

Violation Under  
63 P. S.

Title/Description Penalties

Section  
479.10(b)

*	*	*	*	*
Failure to complete the required amount of continuing education	First offense—\$175 per hour of deficiency, not to exceed \$1,000	Second offense—formal action		
*	*	*	*	*

[Pa.B. Doc. No. 09-797. Filed for public inspection May 1, 2009, 9:00 a.m.]

**[ 49 PA. CODE CH. 43b ]**

**Schedule of Civil Penalties—Engineers, Land Surveyors and Geologists**

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend § 43b.13a (relating to schedule of civil penalties—engineers, land surveyors and geologists) to read as set forth in Annex A.

*Effective date*

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

*Statutory Authority*

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (the Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 4(g) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P. S. § 151(g)) authorizes the State Registration Board for Professional Engineers, Land Surveyors and Geologists to take disciplinary action against a licensee for violating any provisions of the act or regulations of the Board. Section 11(b) of the act (63 P. S. § 158(b)) authorizes the Board to levy a civil penalty of up to \$1,000 on any licensee who violates any provision of the act.

*Background and Need for the Amendment*

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The Board has had an Act 48 schedule of civil penalties since 2001 (See, 31 Pa.B. 1227 (March 3, 2004)).

Act 170 of 2006 added to the act section 4.5 (relating to mandatory continuing education). Section 4.5(a) of the act (63 P. S. § 151.5(a)) requires licensees to complete 24 hours of mandatory continuing education during each biennial renewal period as a condition of license renewal and requires the Board to promulgate regulations to enforce the continuing education requirement. The Board is proposing through a separate rulemaking regulations to implement the mandatory continuing education requirements. As is being done for other licensing boards with continuing education requirements, the Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient

# PROPOSED RULEMAKING

## DEPARTMENT OF STATE

[ 49 PA. CODE CH. 43b ]

### **Schedule of Civil Penalties—Funeral Directors and Funeral Establishments**

An error occurred in the proposed rulemaking of the Commissioner of Professional and Occupational Affairs (Fiscal Note: 16-47) which appeared at 39 Pa.B. 2205 (May 2, 2009). The heading, "Continuing Education Enforcement," was inaccurate and should have read "Schedule of Civil Penalties—Funeral Directors and Funeral Establishments."

[Pa.B. Doc. No. 09-797. Filed for public inspection May 1, 2009, 9:00 a.m.]

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ARTHUR COCCODRILLI, CHAIRMAN  
GEORGE D. BEDWICK, VICE CHAIRMAN  
S. DAVID FINEMAN, ESQ.  
SILVAN B. LUTKEWITTE III  
JOHN F. MIZNER, ESQ.  
KIM KAUFMAN, EXECUTIVE DIRECTOR  
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417  
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irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 13, 2010

Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
2601 North Third Street  
Harrisburg, PA 17110

Re: Regulation #16A-47 (IRRC #2761)  
Bureau of Professional and Occupational Affairs  
Schedule of Civil Penalties - Funeral Directors and Funeral Establishments

Dear Commissioner Merenda:

The Independent Regulatory Review Commission disapproved your regulation on August 5, 2010. Our order is enclosed and will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact Kim Kaufman, our Executive Director, at 783-5506.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee  
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held August 5, 2010

Arthur Coccodrilli, Chairman  
George D. Bedwick, Vice Chairman  
S. David Fineman, Esq.  
Silvan B. Lutkewitte, III  
John F. Mizner, Esq., by Phone

Regulation No. 16A-47 (#2761)  
Bureau of Professional and Occupational  
Affairs  
Schedule of Civil Penalties - Funeral Directors  
and Funeral Establishments

On April 22, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Bureau of Professional and Occupational Affairs (Bureau). This rulemaking amends 49 Pa. Code § 43b.6. The proposed regulation was published in the May 2, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 25, 2010.

This final regulation would establish a civil penalty schedule for violations of the continuing education requirements of the State Board of Funeral Directors (Board). This regulation is the companion piece to Regulation # 16A-4818 (IRRC # 2760) from the Board entitled: "Continuing Education Enforcement."

Thomas A. Blackburn, Regulatory Unit Counsel for the Department of State, appeared at the public meeting on August 5, 2010. Attorney Blackburn represented that he was authorized to request, on behalf of the Bureau, that the Commission disapprove this final-form regulation, given that the companion Regulation #16A-4818 (IRRC #2760) had been disapproved at the same public meeting. Without support from the promulgating Bureau, this regulation does not meet the reasonableness criterion set forth in the Regulatory Review Act and is not in the public interest. 71 P.S. § 745.5b(b)(3). Therefore, in response to the Bureau's request, we disapprove this regulation.

**BY ORDER OF THE COMMISSION:**

The regulation # 16A-47 (IRRC # 2761 ) from the Bureau of Professional  
Occupational Affairs: Schedule of Civil Penalties - Funeral Directors & Funeral  
Establishments  
was disapproved on August 5, 2010 .

  
Arthur Coccodrilli, Chairman





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
P.O. Box 2649  
Harrisburg, PA 17105-2649  
(717) 783-7200

September 22, 2010


The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, PA 17101

Re: Final Regulation  
Commissioner of Professional and Occupational Affairs  
16-47: Schedule of Civil Penalties - Funeral Directors and Funeral Establishments

Dear Chairman Coccodrilli:

Enclosed is the report of the Commissioner of Professional and Occupational Affairs prepared in accordance with section 7(b) of the Regulatory Review Act, 71 P.S. § 745.7(b), following disapproval of the final form regulation by the Independent Regulatory Review Commission. The Commissioner has not revised the final form regulation and resubmits the rulemaking for approval in accordance with the Regulatory Review Act.

Sincerely,

  
Basil L. Merenda  
Commissioner of Professional and Occupational Affairs

MJY/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Steven V. Turner, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Thomas A. Blackburn, Regulatory Unit counsel  
Department of State  
Christopher K. McNally, Board counsel  
State Board of Funeral Directors  
State Board of Funeral Directors

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

I.D. NUMBER: 16-47

SUBJECT: SCHEDULE OF CIVIL PENALTIES – FUNERAL DIRECTORS AND  
FUNERAL ESTABLISHMENTS

AGENCY: DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**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  
IRRC  
2010 SEP 22 P 2:10

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
9/22/10	<i>Claire A. McInnis</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Michael McGeehan</u>
9/22/10	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
9/22/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 22, 2010