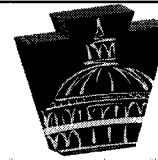


Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Funeral Directors

(2) Agency Number:

Identification Number: **16-47**

IRRC Number: **276**

RECEIVED

2009 APR 22 PM 3:49

INDEPENDENT REGULATORY REVIEW COMMISSION

(3) Short Title:

Act 48 funeral director CE

(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: **Joyce McKeever, Deputy Chief Counsel, Department of State**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; jmckeever@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 would amend 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 2/1/10 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 its annual review process pursuant to Executive Order 1996-1. More information can be found on the BPOA website (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. Section 11(a)(6) of the Funeral Director Law (Act) (63 P.S. § 479.11(a)(6)) authorizes the State Board of Funeral Directors (Board) 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.

(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 proposed 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 proposed 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 Board has 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 would apply to all licensees of the Board, but it would only be 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 less than 100 violators each year 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 six 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 proposed 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 proposed 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 proposed 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

Program	FY -3	FY -2	FY -1	Current FY
Pa. State Board of Funeral Directors	\$740,332	\$851,657	(projected) \$986,024	(budgeted) \$928,000

(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 proposed rulemaking. Therefore, the above-identified benefits would 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 this proposed rulemaking in public session during the Board's meetings in April and May, 2008.

(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 proposed 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 proposed 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 proposed 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 proposed rulemaking would permit 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

(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:

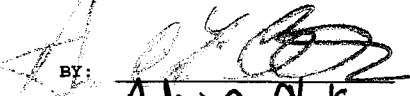
Copy below is approved as to form and legality. Executive or Independent Agencies.



BY: _____
(DEPUTY ATTORNEY GENERAL)

Department of State, Bureau of Professional and Occupational Affairs

(AGENCY)



BY: _____
Andrew C. Clark
MAR 18 2009

APR 09 2009

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16-47

DATE OF APPROVAL

DATE OF ADOPTION:

BY: 
Basil L. Merenda

(Deputy General Counsel
~~Chief Counsel,~~
Independent Agency
(Strike 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.

PROPOSED 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) 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 regulation 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 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).

Section 10(b)(2) of the act (63 P.S. § 479.10(b)(2)) requires licensees to complete six 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 obligation 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 six 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 by e-mail at 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

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
<u>Section 479.10(b)</u>	<u>Failure to complete the required amount of continuing education</u>	<u>First offense - \$175 per hour of deficiency, not to exceed \$1,000</u> <u>Second offense – formal action</u>

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF FUNERAL DIRECTORS

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3397

April 22, 2009

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Funeral Directors
16-47

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Funeral Directors pertaining to Schedule of Civil Penalties – Funeral Directors and Funeral Establishments.

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

Sincerely,

A handwritten signature in black ink that reads "Michael J. Yeosock".

Michael J. Yeosock, Chairperson
State Board of Funeral Directors

MJY:CMcN:apm

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Sr., Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Christopher McNally, 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
AGENCY: DEPARTMENT OF STATE
 COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

RECEIVED
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 DEPARTMENT OF STATE
 COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

TYPE OF REGULATION

- Proposed Regulation
- 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>4-22-09</u>	<u>[Signature]</u>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
	<u>[Signature]</u>	MAJORITY CHAIRMAN <u>Michael McGeehan</u>
<u>4/22/09</u>	<u>Mary Walmer</u>	SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
<u>4/22/09</u>	<u>[Signature]</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
<u>4/22/09</u>	<u>[Signature]</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 22, 2009