

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independence Regulatory Review Commission

SECTION I: PROFILE

RECEIVED
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INFORMATION
REGISTRATION

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Registration Board for Professional Engineers, Land Surveyors and Geologists

(2) Agency Number:

Identification Number:

16A-4710

IRRC Number: **2762**

(3) Short Title:

Continuing Education

(4) PA Code Cite:

49 Pa. Code §§ 37.1, 37.17, 37.18, 37.19, and 37.111-37.115

(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 Registration Board for Professional Engineers, Land Surveyors and Geologists (717)783-7049; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)705-5540; st-engineer@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 implement the continuing education requirements for licensees of the State Registration Board for Professional Engineers, Land Surveyors and Geologists, as mandated by the act of November 29, 2006 (P.L. 1534, No. 170) (Act 170). Every licensee will be required to successfully complete at least 24 hours of continuing education during each biennial renewal period; holders of multiple licenses would have to satisfy the requirement for each license, but might be able to apply courses to multiple licenses where appropriate. The rulemaking sets forth standards for courses and provides, when necessary, a process for prior approval of courses of continuing education (including the fee) and identifies specific responsibilities of providers.

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

- A. The date by which the agency must receive public comments: 30 days after publ
- 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: _____
- D. The expected effective date of the final-form regulation: _____
- E. The date by which compliance with the final-form regulation will be required: _____
- F. The date by which required permits, licenses or other approvals must be obtained: _____

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

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the third Wednesday of each odd-numbered month. More information can be found on the Board's website (www.dos.state.pa.us/eng).

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

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

The proposed rulemaking would be adopted under Sections 4(l) and 4.5(a) of the Act (63 P.S. §§ 151.4(l) and 151.4.5(a)).

(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.

Yes. Act 170 added section 4.5 to the Act and required the Board to adopt regulations to implement its provisions and initiate the promulgation of regulations within 18 months of the effective date of Act 170 (January 28, 2007).

(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 General Assembly recognized the compelling public interest of ensuring that licensees obtain a minimum number of hours of continuing education in enacting the continuing education requirement of Act 170. Licensees, the public, and the Board will benefit from the increased knowledge and skills of licensees. Additionally, the providers of continuing education will benefit from the expanded market for their services.

(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?

Each licensee will be required to complete mandatory continuing education during each biennium. There are approximately 31,700 licensed professional engineers, 2,900 licensed professional land surveyors, and 2,600 licensed professional geologists in this Commonwealth, with current licenses. The Board has identified no other group of individuals or entities that will be adversely affected by the regulation.

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(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.

Each licensee will be required to complete mandatory continuing education during each biennium. There are approximately 31,700 licensed professional engineers, 2,900 licensed professional land surveyors, and 2,600 licensed professional geologists in this Commonwealth, with current licenses. The Board has identified no other group of individuals or entities that will be adversely affected by the regulation.

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.

In order to comply with this regulation, the Board estimates that each licensee will be required to spend up to \$1,000 (depending upon the provider) for tuition for continuing education during each biennial period, in addition to travel and other time lost from practice while attending continuing education. It is impossible to estimate the savings to the regulated community resulting from compliance with this regulation and improved practice by licensees.

Each member of the regulated community will be required to complete 24 hours of continuing education in each biennial renewal period. This estimate assumes that each active licensee will pay the conservative maximum tuition cost of \$1,000. This estimate also assumes that the distribution of licensees enrolled in the required continuing education will be evenly spread throughout each renewal cycle. This estimate makes no allowance for the costs of travel and time away from practice. ($\$1,000 \times 37,200 \times \frac{1}{2}$, a total of \$18,600,000 per year).

Assuming that continuing education will be required beginning October 1, 2009, the Board anticipates that there will be no costs of compliance for fiscal years through June 30, 2009, and that the costs of compliance for fiscal year 2009-2010 will be approximately $\frac{3}{4}$ the cost for any subsequent year.

Additionally, these estimates address the total cost of continuing education. Although the Board has attempted to structure the requirements for continuing education to minimize the costs to the regulated community as well to as the Board, the Board has not attempted to apportion the amount of these costs that are attributable to the Board's method of implementation of continuing education. That notwithstanding, the Board believes that the fees charged to providers of continuing education for approval and renewal of registration are the only costs identified that are attributable to the Board's method of implementation.

In addition, the Board will charge to providers a fee for reviewing applications for approval of

Regulatory Analysis Form

continuing education courses. The Board anticipates that, in each biennial renewal cycle, it will receive approximately 11,000 applications for approval of continuing education course, each with a fee of \$100, for total fees to providers of \$1,100,000.

(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 Board will audit licensees to monitor compliance with the continuing education requirements and will review and approve courses of continuing education. It is believed that the Board will not incur any additional costs in reviewing the biennial renewal applications of those licensees who have successfully completed the required amount of continuing education. It is impossible to estimate the number of licensees who might not comply with the required amount of continuing education, and therefore the Board cannot estimate any increased enforcement costs at this time. The Board anticipates that the fees to be charged to continuing education providers will cover the Board's costs of reviewing and approving these courses. There are no other costs or savings to state government associated with implementation of the proposed regulation.

(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	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community		\$13.96M	\$18.6M	\$18.6M	\$18.6M	\$18.6M
Local Government		N/A	N/A	N/A	N/A	N/A
State Government		N/A	N/A	N/A	N/A	N/A

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Total Costs	N/A	\$13.96M	\$18.6M	\$18.6M	\$18.6M	\$18.6M
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 05-06)	FY -2 (FY 06-07)	FY -1 (FY 07-08)	Current FY (FY 08-09)
Pa. State Registration Board for Professional Engineers, Land Surveyors and Geologists	\$861,352	\$942,391	(projected) \$943,864	(budgeted) \$1,152,000

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

The minimal marginal costs associated with compliance with the regulations, compared with their public safety and consumer protection benefits, indicate that adoption of the regulations would be prudent.

(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.

On August 1, 2007, the Board solicited exposure draft comments from various stakeholders who had expressed an interest in the contemplated rulemaking. The Board received comments from the Pennsylvania Society of Professional Engineers; the American Council of Engineering Companies of Pennsylvania; the Pennsylvania Society of Land Surveyors; the Department of Conservation and Natural Resources; the Pennsylvania Council of Professional Geologists; the Department of Transportation; Neil Styler, PhD, PE; Edward M. Lesny, PE; Glenn J. Eby, PE; Deborah D. Foust, PG; Rebecca A. Bowman, Esquire, PE; and Ernest Madichie, PG. In response to the comments, the Board revised its exposure draft into the proposed rulemaking. The Board subsequently discussed the proposed rulemaking at public meetings of the Board, which are routinely attended by members of the regulated community and their professional associations.

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(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, because no other regulatory schemes would effectuate the recent amendments to the Act.

(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 is not more stringent and 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?

Other states also require continuing education: the Delaware Board of Professional Land Surveyors (24 hours every 2 years), the Maryland State Board for Professional Land Surveyors (24 hours every 2 years), the New Jersey State Board of Professional Engineers and Land Surveyors (24 hours every 2 years for land surveyors), the New York State Board for Engineers and Land Surveyors (36 hours every 3 years for engineers and 24 hours every 3 years for land surveyors), the Ohio Board of Registration for Professional Engineers and Surveyors (15 hours every year for engineers and land surveyors), the West Virginia State Board of Registration for Professional Engineers (15 hours every year), the West Virginia State Board of Professional Surveyors (8 hours every year), and the Delaware State Board of Geologists (24 hours every 2 years) all require continuing education of their licensees. The Council of the Delaware Association of Professional Engineers and the Maryland State Board for Professional Engineers do not require continuing education.

The Maryland State Board for Professional Land Surveyors approves providers, and not courses, of continuing education. The New Jersey State Board of Professional Engineers and Land Surveyors approves courses of continuing education. The New York State Board for Engineers and Land Surveyors and the Ohio Board of Registration for Professional Engineers and Surveyors, the West Virginia State Board of Registration for Professional Engineers, and the West Virginia State Board of Professional Surveyors do not approve continuing education providers or courses.

The proposed regulation will not put Pennsylvania (24 hours every 2 years) 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 regulation would not affect other regulations of the Board or other state agencies.

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(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.

Licensees will be required to keep proof of completion of continuing education for five years. The Board will audit a percentage of licensees for compliance with the continuing education obligation.

(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

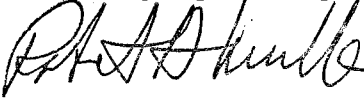
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

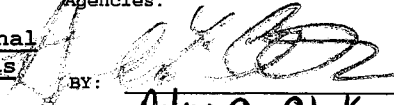
Copy below is hereby approved as to form and legality. Attorney General

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.



State Registration Board for Professional Engineers, Land Surveyors and Geologists



BY: _____
(DEPUTY ATTORNEY GENERAL)

(AGENCY)

BY: _____

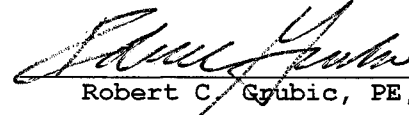
APR 09 2009
DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-4710

MAR 18 2009
DATE OF APPROVAL

DATE OF ADOPTION: _____

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

BY: 
Robert C. Gubic, PE, PLS

Check if applicable
Copy not approved.
Objections attached.

TITLE: President
(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
STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS AND GEOLOGISTS

49 Pa. Code §§ 37.1, 37.17-37.19, 37.111-37.115
CONTINUING EDUCATION

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) proposes to amend §§ 37.1, 37.17, 37.18 (relating to definitions; schedule of fees; and reactivation of licensure status) and to add § 37.19 (relating to biennial registration) and §§ 37.111-37.115 (relating to continuing education), 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*. The Board anticipates that licensees will first be required to complete continuing education during the September 1, 2009, through August 31, 2011, biennial renewal period.

Statutory Authority

This proposed rulemaking is authorized by sections 4(l) and 4.5(a) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. §§ 151.4(l) and 151.4.5(a)).

Background and Need for the Amendment

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. § 151.4.5(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.

Description of the Proposed Amendments

Proposed § 37.1 (definitions)

Existing § 37.1 would be amended to include definitions of additional terms used in the continuing education regulations. First, an hour of continuing education would be defined as 60 minutes of actual instruction in an approved course.

Section 4.5(e) of the act (63 P.S. § 151.5(e)) prohibits credit being given for any course in practice building, but the act does not define this term. Proposed § 37.1 would define the term “practice building” as marketing or any other activity having as its primary purpose increasing the business volume or revenue of a licensee or employer and does not involve the practice of engineering, land surveying or geology, as defined in section 2 of the act. However, section 2 of the act (63 P.S. § 148) defines the practice of land surveying to include “procuring or attempting to procure land surveying work” and managing any business that solicits or practices land surveying. The Board has included this activity, along with analogous activity by engineers or geologists, in the definition of practice building.

Proposed § 37.17 (schedule of fees)

Section 37.17 would be amended to provide that the fee to review an application for continuing education course approval, as described in proposed § 37.114 (relating to approval of

continuing education course) is \$100. The fee was determined as the amount necessary to recover the Board's cost of providing the service.

Proposed § 37.18 (reactivation of licensure status)

The proposed rulemaking would amend § 37.18(1) to require that a licensee applying to reactivate licensure status include proof of completion of mandatory continuing education during the prior biennium. Because continuing education is generally required as a condition of renewal, a licensee who has not completed the mandatory continuing education may, without any penalty, permit his license and registration to become inactive until the licensee completes the required amount continuing education. Proposed § 37.18(1) would permit a licensee seeking reactivation to complete the required continuing education during the current biennium, an exception to the general rule of proposed § 37.111(b) (continuing education may satisfy the credit hour requirements only for the biennium in which it was completed). Notwithstanding proposed § 37.111(d) (licensee who fails to complete mandatory continuing education may renew but must pay a civil penalty and complete the required amount of continuing education within six months, providing to the Board proof of completion), reactivation would not be granted until the licensee completes the required continuing education of the prior biennium.

Proposed § 37.19 (biennial renewal of licensure status)

The Board's current regulations do not include any provisions for biennial renewal of registration. The proposed rulemaking would add § 37.19 to set forth standard provisions for licensure renewal. Proposed § 37.19(a) would set the expiration date of each biennial renewal period would be set as September 30 of each odd-numbered year and require licensees to renew each biennial period in order to be permitted to practice. Proposed § 37.19(b) would require a licensee to notify the Board of the licensee's current address and note that, although the Board will send renewal documentation to the address of record, it is the licensee's responsibility to renew the license. A licensee may renew on-line or submit a written, paper application for renewal. Proposed § 37.19(c) would require each licensee, in applying to renew, to complete and submit the application with the required fee, disclose any other license to practice engineering, land surveying or geology, and disclose any disciplinary action taken or pending in any other jurisdiction by an appropriate licensing authority.

Specific to continuing education, proposed § 37.19(c)(4) would require the licensee to verify that the licensee has complied with the continuing education requirements or acknowledge that the licensee will be subject to the sanctions of proposed § 37.114(d).

Proposed § 37.111 (credit hour requirements)

The proposed rulemaking would add section 37.111 to set forth the general credit hour requirements. In proposed § 37.111(a), each licensee would be required to complete at least 24 hours of approved continuing education. A licensee who holds multiple licenses would have to complete the required amount of continuing education for each license. However, if a licensee completes continuing education that is appropriate to more than one licensure class, the credit could

be applied to all licenses for which the course is appropriate. Under proposed § 37.111(b), continuing education could only be applied to satisfy the requirement for the biennial period in which it was earned. However, credits made up in order to reactivate an expired license or upon Board order for missed credits may be applied to the prior biennium instead of the current biennium. Credit, of course, could not be applied more than once. Proposed § 37.111(c) would set the initial obligation to complete continuing education with the October 1, 2009, through September 30, 2011, biennial renewal period.

Under proposed § 37.111(d), a licensee who has not completed the required amount of continuing education would be required to pay a civil penalty, through 49 Pa. Code § 43b.13a (related to schedule of civil penalties – engineers, land surveyors and geologists). The civil penalty schedule for continuing education violations (first offense) will be promulgated by the Commissioner of Professional and Occupational Affairs in a separate rulemaking package. Second or subsequent offenses will subject the licensee to discipline under section 4(g) of the act (63 P.S. § 151(g), which authorizes the Board to discipline a licensee for violating the act or a regulation of the Board. A licensee who did not complete the required amount of continuing education would be required to complete the entire amount of mandatory continuing education and provide the Board with proof within six months.

Section 4.5(c) of the act (63 P.S. § 151.4.5(c)) provides that a licensee may request a waiver of the continuing education requirement due to demonstrated hardship, such as serious illness or military service. The request must be in writing, with appropriate documentation attached, and show why the licensee is unable to comply with the continuing education requirement. The Board must consider each request on a case-by-case basis and notify the licensee in writing of its decision. Because the statute addresses all substantive requirements, proposed § 37.111(e) would only require that the request be submitted at least 90 days in advance of the end of the renewal period and note that waiver may include extending the deadline to complete the required continuing education.

Proposed § 37.112 (reporting completion of continuing education)

Under proposed § 37.112(a), a licensee could prove completion of a continuing education course through a certified continuing education record, as proposed § 37.115(a)(6) requires the provider to issue to the attendee. Proposed § 37.112(b) would require licensees to maintain proof of completion of the continuing education for five years. In proposed § 37.112(c), the Board announces that it will verify compliance with the continuing education requirements by auditing licensees.

Proposed § 37.113 (credit for approved continuing education)

Proposed § 37.113 sets forth the types of courses for which a licensee may obtain credit. Under proposed § 37.113(a), credit is only available for courses either pre-approved by the board under proposed § 37.114(a) (application not required) or explicitly approved by the Board. Proposed § 37.113(b) would permit credit for continuing education in any course on any subject matter falling within the definitions of the practice of engineering, land surveying or geology in section 2 of the act, as appropriate to the license. As prohibited by section 4.5(e) of the act, credit may not be earned in any course in practice building or office management. Under proposed § 37.113(c), credit may be

awarded to an attendee for only one presentation of a particular course during a given renewal period. However, proposed § 37.113(d) would permit an instructor of continuing education to receive credit for attending the course and also to receive credit for preparing for the course – not to exceed the amount of credit available for attending. Proposed § 37.113(e) would prohibit continuing education credit for authoring an article, participating in a professional society or obtaining a patent.

Proposed § 37.114 (approval of continuing education courses)

Section 4.5(e) of the act requires that “all courses, locations, instructors and providers of mandatory continuing education shall be approved by the Board.” The Board anticipates that, for its approximately 37,000 licensees each taking 24 hours of continuing education in each renewal period, between 7,500 and 10,000 courses will be offered for licensees each year. Because the Board does not have the resources to evaluate in full this large a number of courses in advance, while still complying with the statutory commandment to approve courses etc., proposed § 37.114(a) would relieve from the obligation to apply for approval courses offered by various pre-approved providers, so long as the course is in appropriate subject matter and the course provider issues to each attending licensee a certified continuing education record. The list of pre-approved courses/providers includes: advanced level courses offered by those programs whose graduates would qualify to sit for the various licensure examinations; graduate level courses in engineering, land surveying or geology; courses offered by accredited colleges or universities that are designed for continuing education, rather than qualification for licensure; courses offered by providers certified by an organization approved by the US Department of Education to certify providers of continuing education; courses offered or approved by professional licensing authorities or organizations of professional licensing authorities; courses offered by agencies of the federal government; courses offered by agencies of the various state governments; courses offered by the various professional societies; and courses offered by organizations recognized in their field to set standards of design, construction or practice. It must be kept in mind that, as provided in proposed § 37.113, credit may be obtained only for courses in subject matter within the scope of practice of engineering, land surveying or geology, as appropriate to the license.

Proposed § 37.114(b) would provide a safety valve and permit any course offered by a provider who is not pre-approved to be reviewed and approved by the Board.

Proposed § 37.115 (approval of continuing education courses upon application)

Proposed § 37.115 sets forth the process for Board approval of courses of continuing education, which includes approval of the location, instructor and provider, for those courses and providers that are not pre-approved, as well as the obligations of providers whose courses are approved by the Board upon application. Proposed § 37.114(b) would require the filing of a completed application and payment of the required fee for Board review of the course.

Under proposed § 37.115(b), a separate application would be required for each course, including multiple presentations at various locations and multiple offerings. Significant changes to the course content or change of instructors would require Board additional approval. If the location of a course is essential to presentation of course content, such as certain geology courses, a change in

the location is a significant change in the course, and the provider must again seek approval.

Under proposed § 37.115(c), the Board notes its authority to deny course approval where the provider has previously failed or is not currently able to comply with the provider responsibilities of proposed § 37.115(e) or the course does not qualify under proposed § 37.113. The Board may deny approval where the course or application does not comply with the act or the Board's regulations. The Board may approve a portion of a course and deny the balance, i.e., approve a course for fewer hours than sought by the applicant.

If an applicant has made false statements or grounds for denial later appear, under proposed § 37.115(d) the Board would be able to terminate its prior approval of a course. A licensee who has completed a course prior to termination of the Board's approval would not lose that credit.

Proposed § 37.115(e) would set forth the responsibilities for providers of continuing education whose courses are approved by the Board upon application. A provider would be required to disclose in advance to prospective students the objectives, content, teaching method and the number of hours of continuing education credit approved by the Board; provide adequate physical facilities for the number of anticipated participants and the teaching methods to be used; provide accurate instructional materials; utilize qualified instructors who are knowledgeable in the subject matter; evaluate the program through the use of questionnaires of the participants and instructors; issue a certified continuing education record to each participant; and retain attendance records, written outlines, and a summary of evaluations for 5 years. A provider would be required to include in the continuing education record the name of the participant, the name of the provider, the date or dates of the course, the name and any Board issued approval number of the course, and the number of hours of continuing education credit.

In proposed § 37.115(f), the Board notes that it will maintain a list of approved courses in a form accessible to licensees and the public.

Because a provider might not seek Board approval for a course that is not pre-approved, but a licensee attending the course might want credit, proposed § 37.115(g) would permit a licensee to apply for course approval and to do so after the course has been given. Where more than one attendee of a course applies for approval, the Board will consolidate the applications and will not collect more than one fee for that review.

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.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. 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 24, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, 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-ENGINEER@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4710 (continuing education), when submitting comments.

Robert C. Grubic, PE, PLS
President
State Registration Board for Professional Engineers,
Land Surveyors and Geologists

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. Professional and Occupational Affairs

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL

ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

GENERAL PROVISIONS

§ 37.1. Definitions.

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

* * * * *

Hour of continuing education – 60 minutes of actual instruction in an approved course of continuing education.

Practice building – Marketing or any other activity that has as its primary purpose increasing the business volume or revenue of a licensee or employer and does not involve the practice of engineering, land surveying or geology as defined in section 2 of the Act. This terms includes “procuring or offering to procure land surveying work for himself or others; managing or conducting as managers, proprietors or agent any place of business from which land surveying work is solicited, performed, or practiced” as included in the definition of “practice of land surveying” in section 2(d) of the Act. This terms includes procuring or offering to procure engineering or geologist work for himself or others; managing or conducting as managers, proprietors or agent any place of business from which engineering or geologist work is solicited, performed, or practiced. This term does not

include education in a professional area merely because it would expand the licensee's skills enabling the licensee to practice in an additional area.

* * * * *

QUALIFICATIONS FOR LICENSURE

§ 37.17. Schedule of fees.

* * * * *

(c) *Other fees.* The Board will charge the following fees:

Certification of license, registration, permit or scores	\$25
Verification of license, registration, permit or scores	\$15
<u>Application for continuing education course approval</u>	<u>\$100</u>

* * * * *

§ 37.18. Reactivation of licensure status.

A licensed engineer, land surveyor or geologist who has allowed his licensure status to lapse by failing to register biennially with the Board may apply to the Board for reactivation of licensure status by satisfying the requirements of paragraph (1) on forms provided by the Board.

(1) A licensee applying for reactivation of licensure status is required to pay the current registration fee and submit a [notarized affidavit setting forth] reactivation application verifying the period of time in which the licensee did not practice in this Commonwealth. An application for reactivation shall also include the documentation required by § 37.112 (relating to reporting completion of continuing education) for those courses sufficient to satisfy the requirement for the immediately preceding biennium, and those courses may be completed during the current biennium. Unless excused by the Board

for good cause under section 4.5(c) of the act (63 P.S. § 151.5(c)), the Board will not reactivate any license until the required continuing education for the preceding biennium has been completed.

* * * * *

§ 37.19. Biennial renewal of licensure status.

(a) A licensee shall register each biennial period to retain the right to practice in this Commonwealth. Initial registration shall automatically occur when a license is issued. Registration for a biennial period shall expire on September 30 of every odd numbered year.

(b) If a licensee changes his mailing address of record, the licensee shall notify the Board in writing within 10 days thereafter. Notice of renewal will be forwarded to the licensee's last known address on file with the Board. Failure of the Board to send or of the licensee to receive a biennial registration application does not relieve the licensee of the biennial registration responsibility.

(c) A licensee applying for biennial license renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee as set forth in § 37.17 (relating to schedule of fees).

(2) Disclose any license to practice engineering, land surveying or geology in another state, territory, possession, or country.

(3) Disclose any disciplinary action taken or pending before the appropriate licensing authority in any other jurisdiction since the most recent application for renewal. A licensee shall disclose disciplinary action in another jurisdiction whether or not the licensee holds an active license to practice in the other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of *nolo contendere*, or other criminal conviction since the most recent application for renewal.

(5) Verify that the licensee has complied with the continuing education requirements mandated by section 4.5 of the act (63 P.S. § 151.5) during the biennial period immediately preceding the period for which renewal is sought in accordance with §§ 37.111-37.115 (relating to continuing education) or acknowledge that the licensee will be subject to the sanctions of § 37.111(d).

* * * * *

CONTINUING EDUCATION

§ 37.111. Credit hour requirements.

(a) During each biennial renewal period, a licensee shall complete 24 hours of continuing education. A licensee who holds more than one license from the Board shall complete the required hours of continuing education to renew each license. A licensee who completes a course applicable to more than one class of license may apply the credit to each license held by the licensee for which the course is applicable.

(b) Except as necessary to comply with § 37.18(1) (relating to reactivation of licensure status), as permitted by subsection (d), or as directed by the Board, continuing education may satisfy the requirement of subsection (a) only for the biennium during which it was completed. No hour of continuing education may be used to satisfy the requirement of subsection (a) for more than one biennium.

(c) The requirement of subsection (a) will first take effect as follows:

(1) During the October 1, 2009, through September 30, 2011, biennial renewal period, a license shall complete 24 hours of continuing education.

(2) During each biennial renewal period subsequent to September 30, 2011, a license shall complete 24 hours of continuing education.

(d) Unless otherwise excused by the act or this chapter, failure to complete the minimum required amount of continuing education during the applicable renewal period will subject the licensee to discipline under section 11(b) of the act (63 P.S. § 158(b)) in accordance with the schedule of civil penalties at 49 Pa. Code § 43b.13a (relating to schedule of civil penalties – engineers, land surveyors and geologists). Within 6 months after the end of the renewal period for which the required amount of continuing education was not completed, the licensee shall make up the deficiency and shall provide proof of the entire required amount of continuing education as set forth in § 37.112 (relating to proof of continuing education). In addition to any civil penalty assessed under this subsection, failure to provide the Board with proof of the required amount of continuing education within 6 months after the beginning of a biennial period for which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 4(g) of the act (63 P.S. § 151(g)). Failure to complete the required amount of continuing education within 6 months after the beginning of a biennial period for which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 4(g) of the act (63 P.S. § 151(g)).

(e) A licensee seeking waiver of the continuing education requirements under section 4.5(c) of the act (63 P.S. § 151.5(c)) shall submit the request with all supporting documentation to the Board at least 90 days prior to end of the renewal period for which waiver is sought. Waiver may

include extending the deadline by which the required continuing education must be completed.

§ 37.112. Reporting completion of continuing education.

(a) Proof of completion of a course of continuing education shall consist of a certified continuing education record issued by the course provider, including:

- (1) The name of the participant.
- (2) The name of the provider.
- (3) The date or dates of the course.
- (4) The name and any Board issued approval number of the course.
- (5) The number of hours of continuing education or academic credit.

(b) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the renewal period during which the continuing education was required, whichever is later.

(c) The Board will audit licensees to verify compliance with continuing education requirements.

§ 37.113. Credit for approved continuing education.

(a) Credit for continuing education will be granted only for courses exempt from approval under § 37.114(a) or approved by the Board pursuant to § 37.114(b).

(b) Unless limited by this section, continuing education credit may be earned in a course on any subject matter falling within the definitions of the practice of engineering, land surveying or geology in section 2 of the Act (63 P.S. § 149), as appropriate to the license. Continuing education credit may not be earned in any course in practice building or office management.

(c) A licensee may not receive credit for more than one presentation of a particular course

in a given renewal period.

(d) A licensee teaching a course of continuing education may receive the same credit that a licensee attending the course would receive and may also receive credit for time spent in preparation. Credit for time spent in preparation may not exceed the credit available for a licensee attending the course.

(e) No continuing education credit may be received for authoring an article, participating in a professional society or obtaining a patent.

§ 37.114. Approval of continuing education courses.

(a) The following continuing education courses, provided they otherwise meet the requirements of § 37.113 (relating to credit for approved continuing education) and the course provider issues to each attending licensee a certified continuing education record in accordance with § 37.112(a), are exempt from the approval requirement:

(1) Any junior/senior or above level course offered as part of a program that satisfies the educational requirements for licensure under §§ 37.31(1)(i) or (ii), 37.36(1), or 37.47(1)(i) or (ii).

(2) Any graduate course offered as part of an engineering, land surveying or geology program of an accredited college or university.

(3) Any course offered by an accredited college or university that offers a program that satisfies the educational requirements for licensure under §§ 37.31(1)(i) or (ii), 37.36(1), or 37.47(1)(i) or (ii) that is designed for continuing education and not for the educational program required for licensure.

(4) Any course offered by a provider certified by an organization approved by the

US Department of Education to certify providers of continuing education.

(5) Any course offered or approved by a professional licensing authority or national organization of professional licensing authorities or affiliate.

(6) Any course offered by an agency of the United States government.

(7) Any course offered by an agency of the government of a state or territory of the United States or the District of Columbia.

(8) Any course offered by a national professional society or affiliate or subsidiary.

(9) Any course offered by a statewide professional society or affiliate or subsidiary.

(10) Any course concerning the standards it sets by an association or other organization or its affiliate or subsidiary that is recognized in its field to set standards for design, construction, or other aspect of professional practice.

(b) The following continuing education courses are approved:

(1) Any course approved by the Board under § 37.115(a)-(f) upon application of the provider.

(2) Any course approved by the Board under § 37.115(g) upon application of an attending licensee.

§ 37.115. Approval of continuing education courses upon application.

(a) A provider of continuing education other than those in § 37.114(a) seeking approval of a course of continuing education shall apply for approval on forms provided by the Board and shall fully provide all information required by those application forms for the Board to fulfill its duties under this section. The application shall be submitted to the Board with payment of the fee as

required in § 37.17 (relating to fees).

(b) A provider shall apply for approval of each course of continuing education, which may include multiple presentations of the course at various locations and multiple offerings of the course. Prior to making any significant change in course content or using an instructor or instructors other than those described in the provider's approved continuing education application, the provider shall obtain approval from the Board for the proposed changes. If the location is essential to presentation of the course content, any change in location constitutes a change in the course, and approval must again be sought from the Board.

(c) The Board may deny approval of a course of continuing education where the provider has previously failed or is not currently able to comply with the provider responsibilities of subsection (f) or the course does not qualify under § 37.113 (relating to credit for approved continuing education). The Board may approve in part and deny in part an application for approval of a course. The Board may deny an application for course approval that does not comply with the Act or this chapter.

(d) The Board may terminate its prior approval of a course of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a course when it is later determined that the Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course completed prior to termination of approval.

(e) For each course of continuing education, the provider shall:

(1) Disclose in advance to prospective attendees the objectives, content, teaching

method and the number of hours of continuing education credit approved by the Board.

(2) Provide adequate physical facilities for the number of anticipated participants and the teaching methods to be used.

(3) Provide accurate instructional materials.

(4) Utilize qualified instructors who are knowledgeable in the subject matter.

(5) Evaluate the program through the use of questionnaires of the participants and instructors.

(6) Issue a certified continuing education record to each participant.

(7) Retain attendance records, written outlines, and a summary of evaluations for 5 years.

(f) The Board will maintain a list of approved courses in a form accessible to licensees and the public.

(g) If a course is not exempt from approval under § 37.114(a) and the provider has not separately sought approval under subsections (a)-(f), a licensee attending the course may apply for approval of a course of continuing education as set forth in subsection (a). An attendee may seek approval after completion of the course, though the Board may deny approval as otherwise provided in this subchapter. The Board may waive the requirements of subsections (b) and (e) where a licensee attending a course applies for approval. The Board will not collect more than one fee from attendees for review of applications for approval of the same course.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
**STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS AND GEOLOGISTS**

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7049

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 Registration Board for Professional Engineers, Land
Surveyors and Geologists
16A-4710: Continuing Education

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Registration Board for Professional Engineers, Land Surveyors and Geologists pertaining to Civil Penalties.

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, appearing to read "Robert C. Grubic".

Robert C. Grubic, PE, PLS, President
State Registration Board for Professional Engineers,
Land Surveyors and Geologists

RCG/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, 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
Thomas A. Blackburn, Counsel
State Registration Board for Professional Engineers, Land Surveyors and Geologists
State Registration Board for Professional Engineers, Land Surveyors and Geologists

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 16A-4710

SUBJECT: CONTINUING EDUCATION

2009 APR 22 PM 3:47

AGENCY: DEPARTMENT OF STATE - STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

INDEPENDENT REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- X 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
4/22/09	<i>Kristen Miller</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <i>Michael D. Guckes</i>
4/22/09	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <i>Robert Tomlinson</i>
4/22/09	<i>St Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
4/22/09	<i>n. Lathrop</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)