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INDEPENDENT REGULATORY REVIEW COMMISSION

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

July 1, 2009

Robert C. Grubic, PE. PLS, Chair
State Registration Board for Professional Engineers, Land Surveyors and Geologists
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4710 (IRRC #2762)
State Registration Board for Professional Engineers, Land Surveyors and Geologists
Continuing Education

Dear Mr. Grubic:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

wbg

Enclosure

cc: Honorable Robert M. Tomlinson, Chair, Senate Consumer Protection and Professional
Licensure Committee
Honorable Lisa M. Boscola, Chair, Senate Consumer Protection and Professional Licensure
Committee
Honorable Michael P. McGeehan, Chair, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Chair, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission



State Registration Board for Professional Engineers, Land Surveyors and Geologists Regulation #16A-4710 (IRRC #2762)

Continuing Education

July 1, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the May 2, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) to respond to all comments received from us or any other source.

1. Fiscal impact; paperwork requirements.

The Preamble states that the rulemaking should not have an adverse fiscal impact and will not impose additional paperwork requirements on the Commonwealth or the private sector. This statement appears to conflict with the Board's own analysis provided in responses to questions 17 and 27 of the Regulatory Analysis Form. In response to question 17, concerning costs to the regulated community, the Board estimates that each of the approximately 37,200 licensees affected by the proposed regulation will have to spend up to \$1,000 to pay the tuition costs associated with completing the biennial continuing education requirements for a total of \$18,600,000 per year. In its response to question 27 pertaining to additional reporting, recordkeeping or other paperwork, the Board notes that licensees will have to keep proof of completion of continuing education requirements for five years and the Board will audit a percentage of licensees for compliance. The Preamble to the final-form regulation should include a detailed description of the fiscal impact of and recordkeeping requirements imposed by the regulation.

2. Implementation procedures.

The Board anticipates that licensees will be required to comply with this rulemaking beginning in September of 2009. If this rulemaking is not completed by September of 2009, will the Board modify the compliance date? If so, will the revised compliance date be the first full biennial renewal period after publication of the final-form regulation?

3. Section 37.1. Definitions. – Reasonableness; Clarity.

“Hour of continuing education” is defined as “Sixty minutes of actual instruction in an approved course of continuing education.” Commentators have stated that the more accepted standard is 50 minutes, not 60 minutes. We note that several of the business related boards that fall under the jurisdiction of the Department of State’s Bureau of Professional and Occupational Affairs define continuing education hours as 50 minutes. Has the Board considered defining an hour of continuing education as 50 minutes instead of 60 minutes? If not, why?

4. Section 37.19. Biennial renewal of licensure status. – Reasonableness; Clarity.

Subsection (c)(4) requires licensees to disclose any “criminal charges” when they are renewing their licenses. Does the term “criminal charges” include misdemeanors and summary offenses? We suggest that the final-form regulation include more specific language on what must be disclosed to the Board.

5. Section 37.111. Credit hour requirements. – Need; Reasonableness; Clarity.

Subsection (b)

Under this subsection, what is the need for the phrase “or as directed by the Board” and how will the Board implement this provision? If the phrase is not needed, it should be deleted. If it is needed, the regulation should include more detail on how it will administer this provision. Further, the Board should justify its authority for this language.

Subsection (d)

This subsection provides for a six-month period for licensees to make up deficiencies in continuing education credits for the previous biennial renewal cycle. The Board should explain the status of a license between the end of a biennial period when a license would expire and the point in time a licensee provides satisfactory proof of attendance at continuing education courses.

Additionally, the Board should explain how it will implement penalties during the six-month make up period. Will the Board immediately impose the discipline and civil penalties on the licensee or will the Board delay imposing them pending completion of credit hours during the six month make up period?

Subsection (e)

Licensees seeking a waiver under Section 4.5(c) of the Act may do so under this subsection. Section 4.5(c) of the Act pertains to waivers for serious illness, military service or other demonstrated hardship. We recommend that this

subsection of the regulation be amended to alert the regulated community that waivers relate to serious illness, military service and demonstrated hardships.

6. Section 37.112. Reporting completion of continuing education. – Clarity

What is meant by the phrase “certified continuing education record”? Who certifies the record? We note that this phrase is also used in § 37.115(e)(6), pertaining to approval of continuing education courses upon application. This phrase should be defined in the final-form regulation.

7. Section 37.114. Approval of continuing education courses. – Clarity.

A commentator has suggested that the regulation specifically state that licensees can take advantage of on-line and distance learning to meet their continuing education requirements. Will these types of continuing education be allowed? If so, what number of credits could be earned via these two methods? The final-form regulation should clarify the Board’s position with regard to on-line and distance learning.

8. Section 37.115. Approval of continuing education courses upon application. – Clarity.

Subsection (a)

This subsection references “forms provided by the Board.” The final-form regulation should specify where these forms are available, such as the Board’s website.

Subsection (f)

This subsection requires the Board to maintain a list of approved courses “in a form accessible to licensees and the public.” We suggest that one method of accessing the information be the Board’s website and recommend that this provision be amended to reflect that fact. Any other means of access to the list should also be included in the regulation.

Subsection (g)

The process to be used by a licensee seeking approval of continuing education course is the addressed under this subsection. How will the Board administer the last sentence of this subsection, which states, “The Board will not collect more than one fee from attendees for review of applications for approval of the same course”?

9. Miscellaneous clarity.

- The statutory authority cited in the Preamble contains typographical errors. The Board should ensure that the statutory citations included in the final-form submittal are accurate.

- Under the definition of “practice building” under § 37.1, we recommend that Subsection (i) be amended to be gender-neutral.
- We recommend that § 37.111 (c)(1) and (c)(2) be combined to improve clarity.
- Subsection 37.115(c) references § 37.115(f). The reference should be to § 37.115(e).

Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: July 1, 2009
Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Registration for Professional Engineers, Land Surveyors & Geologist's regulation #16A-4710 (IRRC #2762). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Pat Hipple **Date:** 7/1/09