

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: **16-43**

IRRC Number: **2764**

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(3) Short Title:

Schedule of Civil Penalties – Engineers, Land Surveyors and Geologists

(4) PA Code Cite:

49 Pa. Code § 43b.13a

(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 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 amends the schedule of civil penalties of the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) to include failure to complete the required amount of mandatory continuing education and failure to respond to an audit request.

(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: | Publication as final |
| 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: | By renewal 9/30/11 |
| 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 their 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. Act 48 also provides that any such civil penalty shall not exceed the sum of \$1,000 per violation. Section 4(g) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. § 151(g)) authorizes the Board 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 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 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 rulemaking establishes a civil penalty schedule for violations of the continuing education regulations of the Board. Act 170 of 2006 amended the act to add a continuing education requirement for all professional engineers, land surveyors and geologists, and Act 25 of 2010 replaced this model. Consistent with the practice of other licensing boards within the Bureau, the summary process under Act 48 is 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.

The rulemaking is not based on 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 will apply to all licensees of the Board, but it would only be applicable to those licensees who violate the continuing education requirement of section 4.5 of the Act (63 P.S. § 151.5). 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 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 cycle 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.

Those 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.

(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.

Regulatory Analysis Form

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
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 (2007-08)	FY -2 (2008-09)	FY -1 (2009-10)	Current FY (2010-11)
Pa. State Reg. Bd. for Professional Engineers, Land Surveyors and Geologists	(actual) \$943,864	(projected) \$1,152,000	(budgeted) \$1,083,000	(budgeted) \$1,223,000

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

No adverse effects or increased costs have been associated with compliance with the 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.

This rulemaking has been considered along with a separate rulemaking to implement the Board's continuing education requirement (16A-4710). On August 1, 2007, the Board solicited exposure draft comments from various stakeholders who had expressed an interest in the contemplated continuing education 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. Although the Board considered all of the comments in revising its exposure draft, no commenters addressed the Act 48 civil penalty provisions.

After the rulemaking was published as proposed, the Board received various public comments. Additionally, the Board noted the proposed rulemaking in its summer, 2009, newsletter to licensees and received many more comments from licensees. The Board continued to discuss this rulemaking at its public meetings in September and November, 2009, and again at its public meetings in January and March, 2010. After passage of Act 25, the Board continued to discuss this rulemaking at its public meetings in May and July, 2010. The Board also discussed this rulemaking at its meeting November, 2010, following IRRC disapproval.

(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 engineers, land surveyors or geologists also provide for sanction of violators. The rulemaking will not put Pennsylvania at a competitive disadvantage with these other states.

Regulatory Analysis Form

(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 (except companion rulemaking 16A-4710) 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 will permit the use of Act 48 citations, rather than formal disciplinary action, to sanction first-time violators of the continuing education requirements and those who do not comply with an audit request, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.

(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.

No affected groups or persons have been identified whose particular needs would necessitate the making of special accommodations.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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(Pursuant to Commonwealth Documents Law)

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Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

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

BY: Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16-43

DATE OF APPROVAL

NOV 23 2010

DATE OF APPROVAL

DATE OF ADOPTION:

BY:

Basil L. Merenda
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.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

49 Pa. Code § 43b.13a

SCHEDULE OF CIVIL PENALTIES - ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

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

Description and Need for the Rulemaking

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) 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. It further provides that any such penalty shall not exceed the sum of \$1,000 per violation. 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 Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) has had an Act 48 schedule of civil penalties since 2001 (*See*, 31 Pa. B. 1227 (March 3, 2001)).

Section 4.5(a) of the Engineer, Land Surveyor and Geologist Registration Law (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. The Board proposed through separate rulemaking (16A-4710) regulations to implement the mandatory continuing education requirements. *See*, 39 Pa.B. 2218 (May 2, 2009). As is being done for other licensing boards with continuing education requirements, the Commissioner in this rulemaking is adopting 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 due process. Payment of the civil penalty will not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Under separate rulemaking, the Board will require a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period to complete the required continuing education during the next 6 months. Failure to complete the required continuing education by that deadline will subject the licensee to formal disciplinary action.

The Commissioner, in consultation with the Board, determined that a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period would be subject to a civil penalty of \$50 for each 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. The Board's final-form rulemaking (16A-4710) requires that the licensee also make up the deficiency within 6 months or face formal disciplinary action.

Summary of Comments and Responses to Proposed Rulemaking

The Commissioner published a notice of proposed rulemaking at 39 Pa.B. 2206 (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 noted only that the act of November 29, 2006 (P.L. 1534, No. 170) (Act 170 of 2006), which first added mandatory continuing education, required the Board to promulgate regulations implementing the continuing education requirement within 18 months of its effective date, that is, by July 28, 2008. The Board acknowledges that this date was not met. Subsequently, the act of May 12, 2010 (P.L. 192, No. 25) (Act 25), repealed this provision. Instead, under section 5 of Act 25, licensees must begin to comply with the continuing education requirement during the 2009-11 biennial renewal cycle. Because the Act 25 amendments did not become effective until July 11, 2010, approximately 8 ½ months into the 24-month 2009-11 renewal cycle, the Board concluded that it should give licensees additional time to complete the requirements for the 2009-11 cycle. As referenced above and explained in greater detail in the Board's final-form rulemaking (16A-4710), licensees who have not completed the continuing education requirement by the end of the renewal period will be subject to citation for a civil penalty based upon the amount of deficiency and be required to make up the entire deficiency within 6 months; this does not apply to a licensee who permits the license to expire and makes up the deficiency prior to reactivating the license upon documentation of making up that deficiency. The Board has determined that for the first cycle with mandatory continuing education, licensees who make up the deficiency in full within the first 6 months will not be subject to a civil penalty.

IRRC requested an explanation of how the proposed amount of civil penalty was determined. Under section 5(a) of Act 48, 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 mandatory continuing education. Those whose deficiency is less should be assessed a proportionately lesser civil penalty. Because 24 hours of continuing education are required, the Board calculated that the scheduled civil penalty should be \$1,000 divided by 24 hours, rounded up to \$50 per hour.

While addressing the above questions, as well as other questions raised by the HPLC and IRRC in regard to the Board's rulemaking (16A-4710), 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, in the separate rulemaking at § 37.111(f) (relating to continuing education), the Board requires a licensee to respond to an audit request within 30 days or another time period specified in the audit request. The Commissioner, in consultation with the Board, has added this violation to the schedule of civil penalties. The schedule provides a first-violation civil penalty of \$100, increased to \$250 for a

second violation and \$500 for a third violation and formal action for subsequent violations. 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 or impose other discipline 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. 2206 (May 2, 2009), 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 September 3, 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)), on September 21, 2010, the final-form rulemaking was disapproved by the HPLC. On October 6, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and disapproved the final-form rulemaking.

The Board did not revise 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 November 24, 2010. Under section 7(c.1) of the Regulatory Review Act (71 P.S. § 745.7(c.1)), IRRC met on December 16, 2010, and 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 February ___, 2011.

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) 783-7049, or by e-mail at st-engineer@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. 2206.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the authorizing acts set forth in this preamble.

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.13a 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.13a. Schedule of civil penalties – engineers, land surveyors and geologists.

**STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND
SURVEYORS AND GEOLOGISTS**

Violation Under

63 P.S.	Title/Description	Penalties
* * * * *		
<u>Section 151.5(a)</u>	<u>Failure to complete the required amount of continuing education</u>	<u>First offense - \$50 per hour of deficiency, not to exceed \$1,000 Subsequent offense – formal action</u>

VIOLATION UNDER

49 PA. CODE CH. 37	TITLE/DESCRIPTION	PENALTIES
SECTION 37.111(F)	FAILURE TO RESPOND	FIRST OFFENSE - \$100
	TO CE AUDIT REQUEST	SECOND OFFENSE - \$250
	WITHIN 30 DAYS, OR	THIRD OFFENSE - \$ 500
	OTHER TIME PERIOD SET	SUBSEQUENT OFFENSE –
	FORTH IN AUDIT	FORMAL ACTION
	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	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
479.10(b)		

[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

method of handling violations, while still ensuring licensees due process. 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 next 6 months; failure to complete the required continuing education by that deadline will 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 \$50 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-form 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, 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*. Reference No. 16-43 (Act 48 engineer CE), when submitting comments.

BASIL L. MERENDA,
Commissioner

Fiscal Note: 16-43. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.13a. Schedule of civil penalties—engineers, land surveyors and geologists.

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

<i>Violation Under</i>	<i>Title/</i>	<i>Penalties</i>
<i>63 P. S.</i>	<i>Description</i>	
		* * * * *
Section 151. 5(a)	Failure to complete the required amount of continuing education	First offense—\$50 per hour of deficiency, not to exceed \$1,000 Subsequent offense—formal action

[Pa.B. Doc. No. 09-798. Filed for public inspection May 1, 2009, 9:00 a.m.]

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
FAX: (717) 783-2664
irrc@lrrc.state.pa.us
<http://www.lrrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

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

October 15, 2010

Honorable Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
2601 North Third Street
Harrisburg, PA 17120

Re: Regulation #16-43 (IRRC #2764)
Department of State
Bureau of Professional and Occupational Affairs
Schedule of Civil Penalties - Engineers, Land Surveyors and Geologists

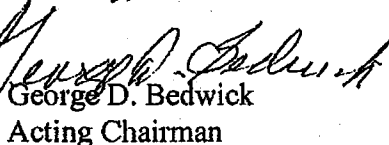
Dear Commissioner Merenda:

The Independent Regulatory Review Commission disapproved your regulation on October 7, 2010. Our order is enclosed and will be available on our website at 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,


George D. Bedwick
Acting Chairman

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 Julie Harhart, Minority Chairman, House Professional Licensure Committee

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 7, 2010

Regulation No. 16-43 (#2764)

Department of State

Bureau of Professional and Occupational

Affairs

George D. Bedwick, Acting Chairman

S. David Fineman, Esq., by Phone

Silvan B. Lutkewitte, III

Schedule of Civil Penalties - Engineers, Land

Surveyors and Geologists

On April 22, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of State (Department). This rulemaking amends 49 Pa. Code Chapter 43b. 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 September 3, 2010.

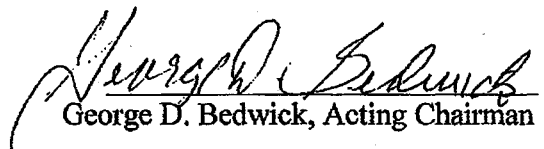
This final regulation would establish a civil penalty schedule for violations of the continuing education requirements of the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board). This regulation is the companion piece to Regulation #16A-4710 (IRRC #2762) from the Board entitled: "Continuing Education."

Thomas A. Blackburn, Regulatory Unit Counsel for the Department of State, appeared at the public meeting on October 7, 2010. Attorney Blackburn represented that he was authorized to request, on behalf of the Department, that the Commission disapprove this final-form regulation, given that the companion Regulation #16A-4710 (IRRC #2762) had been disapproved at the same public meeting. Without support from the promulgating Department, 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).

BY ORDER OF THE COMMISSION:

This regulation is disapproved.




George D. Bedwick, Acting Chairman

**REPORT OF THE COMMISSIONER OF
PROFESSIONAL AND OCCUPATIONAL AFFAIRS:
RESPONSE TO IRRC'S ORDER DISAPPROVING FINAL RULEMAKING 16-43
(SCHEDULE OF CIVIL PENALTIES – ENGINEERS,
LAND SURVEYORS AND GEOLOGISTS)**

On September 3, 2010, the Commissioner of Professional and Occupational Affairs delivered final rulemaking 16-43 (Schedule of civil penalties – engineers, land surveyors and geologists) 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 September 21, 2010, the HPLC met and approved the final rulemaking, and on October 6, 2010, the SCP/PLC was deemed to have approved the final rulemaking. At its meeting on October 7, 2010, IRRC disapproved the final rulemaking. The Commissioner has determined that he should not revise the final rulemaking and now submits this report responding to IRRC's disapproval order, as required by section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) and 1 Pa. Code § 311.3(3)).

As stated in its disapproval order of October 15, 2010, IRRC disapproved the final rulemaking upon request of the Commissioner because IRRC had disapproved companion rulemaking 16A-4710 (continuing education) of the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) 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 Board delivered revised final rulemaking 16A-4710 under section 7(c) of the Regulatory Review Act. As the Board has

delivered final rulemaking that fully responds to IRRC's disapproval order, 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

COMMENTATORS LIST
Reg. 16-43.

There were no commentators for this regulation.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-1389

November 24, 2010

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

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16-43

Dear Chairman Coccodrilli:

Enclosed are the final rulemaking and the report of the Commissioner of Bureau 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,

A handwritten signature in black ink that reads "Basil L. Merenda".

Basil L. Merenda
Commissioner
Bureau of Professional and Occupational Affairs

BLM/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 & 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**

I.D. NUMBER: 16-43

SUBJECT: SCHEDULE OF CIVIL PENALTIES – ENGINEERS, LAND SURVEYORS
AND GEOLOGISTS

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 NOV 24 AM 11

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11/24/10	<i>Michael P. McGeehan</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
_____	_____	MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
11/24/10	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE
_____	_____	MAJORITY CHAIRMAN <u>Robert M. Tomlinson</u>
11/24/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

November 23, 2010