

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

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## SECTION I: PROFILE

(1) Agency:

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

(2) Agency Number:

Identification Number: 16-43

IRRC Number:

2764

(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: **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 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](http://www.dos.state.pa.us/bpoa)).**

## Regulatory Analysis Form

### **SECTION II: STATEMENT OF NEED**

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

Section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) authorizes the Commissioner, after consultation with the appropriate licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards. 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 year will be identified and cited once the audit process begins.

### **SECTION III: COST AND IMPACT ANALYSIS**

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

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.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

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

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

<b>Program</b>	<b>FY -3 (2007-08)</b>	<b>FY -2 (2008-09)</b>	<b>FY -1 (2009-10)</b>	<b>Current FY (2010-11)</b>
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

## Regulatory Analysis Form

(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.**

(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.**

(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.**

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments recommendations of 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**

<b>Violation Under 63 P. S.</b>	<b>Title/Description Penalties</b>				
	*	*	*	*	*
<b>Section 479.10(b)</b>	<b>Failure to complete the required amount of continuing education</b>				<b>First offense—\$175 per hour of deficiency, not to exceed \$1,000 Second offense—formal action</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 63 P. S.</i>	<i>Title/ Description</i>	<i>Penalties</i>
	* * * * *	
<b>Section 151. 5(a)</b>	<b>Failure to complete the required amount of continuing education</b>	<b>First offense—\$50 per hour of deficiency, not to exceed \$1,000 Subsequent offense—formal action</b>

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

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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2010 SEP -3 A 10 36

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Executive or Independent  
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

AUG 25 2010

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

\_\_\_\_\_  
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 permitted to renew, but must pay a civil penalty based upon the amount of deficiency and correct the entire deficiency within 6 months. 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.

In preparing the final-form rulemaking, the Board has considered all comments received from IRRC and the HPLC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, 2010, the final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, 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 \_\_\_\_\_, 2010, and approved the final-form rulemaking.

#### 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](mailto: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**

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

**VIOLATION UNDER**

<b>49 PA. CODE CH. 37</b>	<b>TITLE/DESCRIPTION</b>	<b>PENALTIES</b>
---------------------------	--------------------------	------------------

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.	

**COMMENTATOR'S LIST REGULATION 16-43:**  
**SCHEDULE OF CIVIL PENALTIES-ENGINEERS, LAND SURVEYORS AND**  
**GEOLOGISTS**

**There were no commentators for this regulation.**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-1389

September 3, 2010

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

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

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs pertaining to Schedule of Civil Penalties-Engineers, Land Surveyors and Geologists.

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

Sincerely,

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

Basil L. Merenda  
Commissioner  
Bureau of Professional and Occupational Affairs

BLM/TAB:jls

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Steven V. Turner, 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**

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

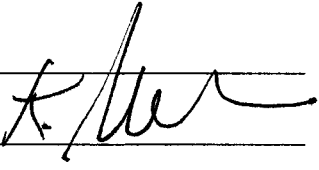
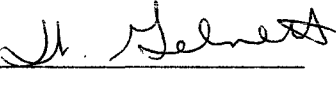
120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions                      b. Without Revisions

**RECEIVED  
IRRC  
2000 SEP - 3 A 10:36**

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
9/3		HOUSE COMMITTEE ON STATE GOVERNMENT
		MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
		SENATE COMMITTEE ON STATE GOVERNMENT
9/5	<u>Wallace</u>	MAJORITY CHAIRMAN <u>Robert M. Tomlinson</u>
9/3/10		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)