

Regulatory Analysis Form

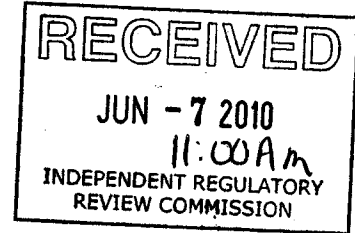
(Completed by Promulgating Agency)



IRRC

INDEPENDENT REGULATORY REVIEW COMMISSION

SECTION I: PROFILE



(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Veterinary Medicine

(2) Agency Number:

Identification Number:

16A-5723

IRRC Number:

2788

(3) Short Title:

Biennial renewal fees

(4) PA Code Cite:

49 Pa. Code § 31.41

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Teresa Lazo, assistant counsel, Department of State;**

(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tlazo@state.pa.us

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State**

(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; jmckeever@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Veterinary Medicine**

(717)783-7134; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-veterinary@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Final Regulation

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The rulemaking would initially increase the biennial renewal fee from \$300 to \$345 for veterinarians and from \$75 to \$85 for certified veterinary technicians (CVTs) for the biennial renewal period commencing on December 1, 2010. Thereafter, the biennial renewal fees would increase to \$360 for veterinarians and \$100 for CVTs for the biennial renewal period commencing on December 1, 2012. The new fees are necessary to cover the costs of sustaining the Board's operations.

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

- | | |
|---|-----------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publication.</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>By September 1, 2010</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication.</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>December 1, 2010</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

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

The Board continually reviews the efficacy of its regulations. The Board reviews its regulations at regularly scheduled public meetings, generally every other month. More information can be found on the Board's website (www.dos.state.pa.us/). Additionally, the Department of State, Bureau of Finance and Operations, makes annual financial reports to the Board. With this input, the Board regularly considers whether to amend its renewal fees.

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SECTION II: STATEMENT OF NEED

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

This rulemaking is authorized by section 13 of the Veterinary Medicine Practice Act (act) (63 P.S. § 485.13).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes. The Board is required by section 13(b) of the act (63 P.S. § 485.13(b)) to set fees to raise sufficient revenue to meet expenditures. The proposed rulemaking is not mandated by any other federal or state law or court order or federal regulation.

(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.

Nonregulation would adversely impact the fiscal integrity of the Board.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

This rulemaking is based upon financial reports made by the Department of State's Bureau of Finance and Operations. This proposed rulemaking is not based upon any other scientific data, studies, or references.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

Licensees will pay higher biennial renewal fees. The Board does not foresee any other groups being adversely affected by the rulemaking.

(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.

All licensed veterinarians and CVTs will be required to comply with the rulemaking. The Board licenses 4,282 veterinarians and 1,749 CVTs.

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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.

The cost in the first biennial period of implementation will be \$192,690 for veterinarians and \$17,490 for CVTs by raising the renewal fee by \$45 and by \$10, respectively. In the second biennial renewal period costs will increase an additional \$64,230 for veterinarians and \$26,235 for CVTs by raising the renewal fees by \$15. There are no other costs or savings to the regulated community associated with compliance with the rulemaking.

(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 Board will not incur only minor administrative costs in implementing the rulemaking, as it will be required to update its computer-based and paper applications for biennial license renewal to reflect the increased fees. There are no other costs or savings to state government associated with compliance with the proposed rulemaking.

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

	Current FY 09-10	FY +1 10-11	FY +2 11-12	FY +3 12-13	FY +4 13-14	FY +5 14-15
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community		\$210,180		\$300,645		\$300,645
Local Government						
State Government						
Total Costs		\$210,180		\$300,645		\$300,645
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	NA	NA	NA	NA	NA	NA

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

Program	FY -3 (FY 06-07)	FY -2 (FY 07-08)	FY -1 (FY 08-09)	Current FY (FY 09-10)
Pa. State Board of Veterinary Medicine	\$646,855	\$534,176	\$638,284	\$758,000

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

The regulatory amendment is mandated by section 13 of the act (63 P.S. § 485.13) and is necessary to assure the fiscal integrity of the Board.

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(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board received input from one member of the public and the Pennsylvania Veterinary Medical Association in response to the publication of the proposed rulemaking.

(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.

The Board carefully considered reports and recommendations from the Department's Bureau of Finance and Operations, and a recommendation from the House Professional Licensure Committee to consider graduated fee increases, in developing its rulemaking. The Board concludes that this rulemaking is the least burdensome acceptable alternative.

(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.

No federal standards apply.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The proposed renewal fees are higher than those in most of the surrounding states. The biennial renewal fees in those states are:

	Veterinarians	CVTs
Delaware	\$114	\$71
Maryland	\$280	\$40
New Jersey	\$250	\$110
New York	\$210	\$80
Ohio	\$225	\$95
West Virginia	\$450	\$120

The rulemaking will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect other regulations of the Board or other state agencies.

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(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This rulemaking will not require any additional recordkeeping or other paperwork.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

FEE REPORT FORM

Agency: State - BPOA

Date: May 6, 2010

Contact: Basil Merenda

Commissioner, Bureau of Professional and Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

FISCAL YEAR 10/11

Veterinarian Biennial Renewal Fee:	\$345.00
Veterinary Technician Biennial Renewal Fee:	\$85.00

Estimated Biennial Revenue:

Veterinarian - \$1,477,290.00 (4,282 renewals x \$345.00)

Veterinary Technician - \$148,665.00 (1,749 renewals x \$75.00)

Total Estimated Biennial Revenue: \$1,625,955.00

Fee Title, Rate and Estimated Collections:

FISCAL YEAR 12/13

Veterinarian Biennial Renewal Fee:	\$360.00
Veterinary Technician Biennial Renewal Fee:	\$100.00

Estimated Biennial Revenue:

Veterinarian - \$1,541,520.00 (4,282 renewals x \$360.00)

Veterinary Technician - \$174,900.00 (1,749 renewals x \$100.00)

Total Estimated Biennial Revenue: \$1,716,420.00

Fee Description:

The fee will be charged biennially to every applicant for license renewal.

Fee Objective:

The fee should defray a substantial portion of the State Board of Veterinary Medicine's administrative overhead, specifically the difference between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

Fee-Related Activities and Costs:

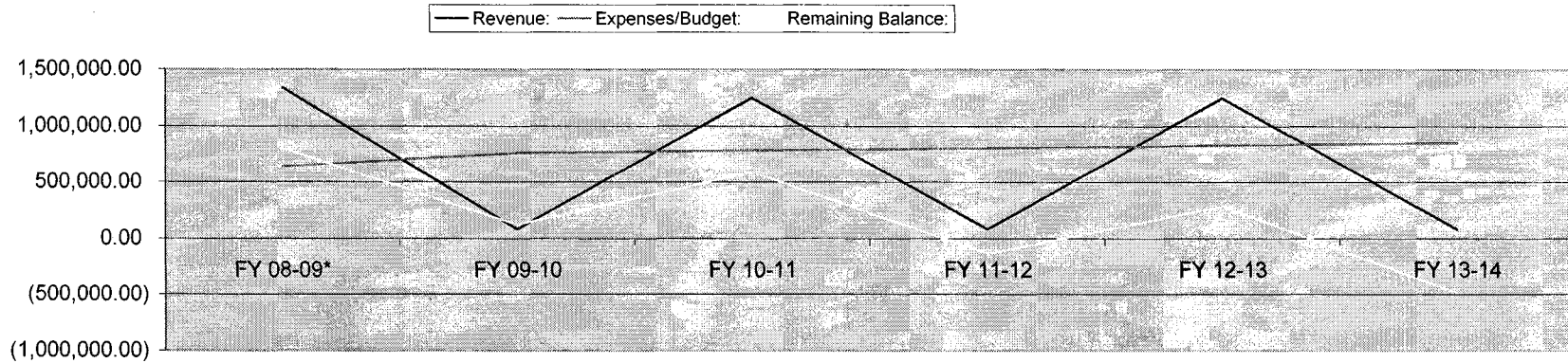
Estimated balance at end of 09/10 cycle:	121,713.96
FOR BIENNIAL CYCLE 7/01/10-6/30/11	
Estimated non-renewal revenue:	57,500.00
Estimated renewal revenue @ above rates:	1,528,500.00
Total revenue available:	1,707,713.96
Estimated expenditures:	781,000.00
Estimated ending balance on 6/30/11:	926,713.96
Estimated balance at end of 11/12 cycle:	261,713.96
FOR BIENNIAL CYCLE 7/01/12-6/30/13	
Estimated non-renewal revenue:	57,500.00
Estimated renewal revenue @ above rates:	1,613,500.00
Estimated expenditures:	861,000.00
Estimated ending balance on 6/30/13:	1,071,713.96

Analysis, Comment, and Recommendation:

It is recommended that the above renewal fees be established to cover projected funding shortfalls between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

STATE BOARD OF VETERINARY MEDICINE CURRENT FINANCIAL STATUS

Current Financial Status



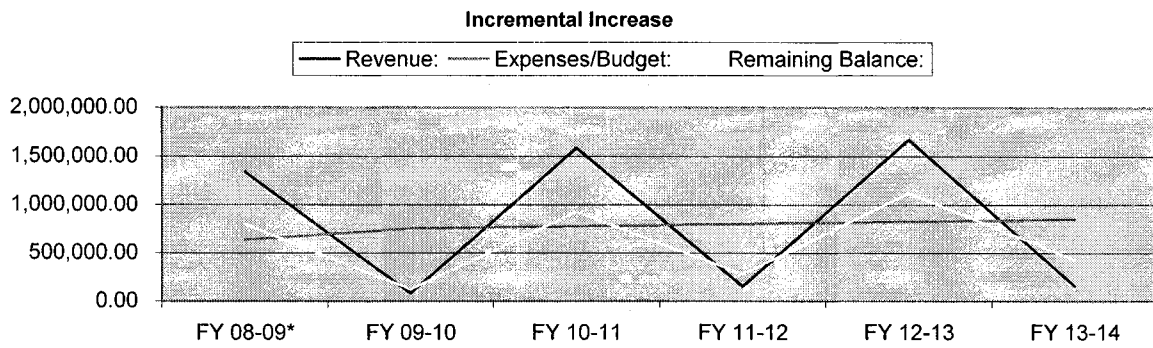
FINANCIAL STATUS	Actual FY 08-09*	Projected FY 09-10	Projected FY 10-11	Projected FY 11-12	Projected FY 12-13	Projected FY 13-14
Beginning Balance:	98,645.33	799,713.96	121,713.96	590,713.96	(133,286.04)	288,713.96
Revenue:	1,339,352.69	80,000.00	1,250,000.00	80,000.00	1,250,000.00	80,000.00
Total Available:	1,437,998.02	879,713.96	1,371,713.96	670,713.96	1,116,713.96	368,713.96
Expenses/Budget:	638,284.06	758,000.00	781,000.00	804,000.00	828,000.00	853,000.00
Remaining Balance:	799,713.96	121,713.96	590,713.96	(133,286.04)	288,713.96	(484,286.04)

*Estimated

**STATE BOARD OF VETERINARY MEDICINE
PROPOSED BIENNIAL RENEWAL FEE INCREASE
INCREMENTAL INCREASE**

4/29/2010

LICENSE CLASSES	LICENSE COUNT	CURRENT RENEWAL FEE	TOTAL RENEWAL FEES	FY 10-11 PROPOSED RENEWAL FEE 15% increase	TOTAL REVENUE	FY 11-12 PROPOSED RENEWAL FEE \$15 increase	TOTAL REVENUE
Veterinarian	4,282	\$ 300.00	\$ 1,284,600.00	\$ 345.00	\$ 1,477,290.00	\$ 360.00	\$ 1,541,520.00
Veterinary Technician	1,749	\$ 75.00	\$ 131,175.00	\$ 86.00	\$ 150,414.00	\$ 101.00	\$ 176,649.00
	<u>6,031</u>						
TOTAL RENEWAL REVENUE:			\$ 1,415,775.00		\$ 1,627,704.00		\$ 1,718,169.00
TOTAL NON-RENEWAL REVENUE:			\$ 115,000.00		\$ 115,000.00		\$ 115,000.00
TOTAL BOARD REVENUE:			\$ 1,530,775.00		\$ 1,742,704.00		\$ 1,833,169.00



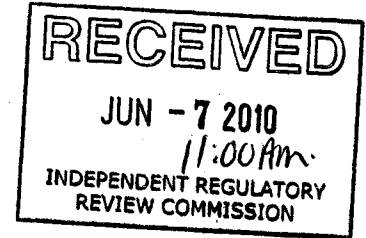
LICENSE CLASS	LAST FEE INCREASE
All Classes	2006
Expiration Date: All Classes - 11/30 even-numbered year	

FINANCIAL STATUS	Actual FY 08-09*	Projected FY 09-10	Projected FY 10-11	Projected FY 11-12	Projected FY 12-13	Projected FY 13-14	Projected FY 14-15	Projected FY 15-16
Beginning Balance:	98,645.33	799,713.96	121,713.96	928,713.96	279,713.96	1,124,713.96	432,713.96	1,227,713.96
Revenue:	1,339,352.69	80,000.00	1,588,000.00	155,000.00	1,673,000.00	161,000.00	1,673,000.00	161,000.00
Total Available:	1,437,998.02	879,713.96	1,709,713.96	1,083,713.96	1,952,713.96	1,285,713.96	2,105,713.96	1,388,713.96
Expenses/Budget:	638,284.06	758,000.00	781,000.00	804,000.00	828,000.00	853,000.00	878,000.00	904,000.00
Remaining Balance:	799,713.96	121,713.96	928,713.96	279,713.96	1,124,713.96	432,713.96	1,227,713.96	484,713.96

* Estimated

Prepared by:
Bureau of Finance and Operations
Division of Fiscal Management

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU



(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Veterinary Medicine
(AGENCY)

BY:
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-5723

JUN - 4 2010

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY:
Robin J. Bernstein, Esquire

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

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
- 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
STATE BOARD OF VETERINARY MEDICINE
49 Pa. Code, §§ 31.41
BIENNIAL RENEWAL FEES

Report of the State Board of Veterinary Medicine: Response to IRRC's Order Disapproving Final Rulemaking 16A-5723 (Biennial Renewal Fees)

The State Board of Veterinary Medicine (Board) published proposed rulemaking on September 19, 2009, in the Pennsylvania Bulletin, which proposed increases to the biennial renewal fees for veterinarians and certified veterinary technicians (CVTs). At the time the Board developed the proposal, the Department's Bureau of Finance and Operations (BFO) indicated that the fee for veterinarians should be increased from \$300 to \$450 and the fee for CVTs should be increased from \$75 to \$115 in order to cover deficits anticipated to arise in FY 2007-2008 and to maintain adequate funds for the continued operation of the Board. Over several years, during its review of biennial renewal fee increases for various licensing boards, the House Professional Licensure Committee (HPLC) had suggested that the boards consider more frequent smaller increases to licensing fees rather than imposing larger, one-time increases on a more infrequent basis.

In response to the Committee's concerns, the Board in this rulemaking proposed an initial increase from \$300 to \$360 for veterinarians and from \$75 to \$90 for CVTs, with an additional 5% per year increase established over the next 5 biennial renewal periods. In its comments, the HPLC noted that it appreciated the graduated increase as being far easier for the Board's licensees, and urged the Board to closely monitor its expenses and the renewal fees. In its comments, the Independent Regulatory Review Commission (IRRC) stated that it did not question the policy behind an incremental fee increase, but asked the Board to further explain its statutory authority to automatically increase fees that may or may not be needed 10 years in the future. Finally, IRRC asked

whether the fees would be decreased if the Board's financial condition improved. The Board responded to the comments made by the HPLC and IRRC in the preamble to its final-form rulemaking. The HPLC approved the final-form rulemaking at its meeting on March 24, 2010.

On April 22, 2010, IRRC voted to disapprove the final-form rulemaking. On April 28, 2010, IRRC delivered its disapproval order to the Board. In its order, IRRC opined that the Board's proposal was inconsistent with the intention of the General Assembly. Specifically, IRRC referenced section 13(b) of the Veterinary Medicine Practice Act, 63 P.S. § 485.13(b), which requires the Board to increase fees by regulation so that the projected revenues will meet or exceed projected expenditures "[i]f the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two year period." IRRC determined that "the General Assembly's intent was to require the Board to evaluate its revenues and expenditures, *and adjust those revenues and expenditures*, more frequently than once every ten years." "Accordingly," stated IRRC, "we believe that a regulatory scheme of incremental fee increases over any period beyond two years is a decision that should be made by the General Assembly."

Finally, IRRC opined that the Board's proposal was "not in the public interest because of the potential fiscal impact it could have on the regulated community." The Board agrees that its proposal would have had a fiscal impact on the licensees subject to the fees. The Board's authorizing statute requires that its operations be supported through biennial renewal fees paid by its licensees. Therefore, the entire fiscal impact of any fee increase falls on the Board's licensees.

The Board disagrees that section 13(b) prohibits an incremental approach to increasing biennial renewal fees for professional licensees beyond a period of two years. Section 13(a) of the act specifically grants the statutory authority to the Board to fix fees for the renewal of licenses by regulation. Section 13(b) is a statutory mandate that if the Board finds that the revenue during a given 2-year period is insufficient to meet expenditures, the Board is required to increase fees. In fact, if the Board were to fail to increase its fees, section 13(c) authorizes the Bureau to do so. The General Assembly references a 2-year period because license renewal fees are collected biennially; therefore, the Board can only accurately gauge its revenue and expenses by looking at a given 2-year period. Section 13(b) does not limit the Board to looking only 2 years into the future when determining the need for adjustments to its fees. The act requires the Board to provide for its continued operations, a provision that, in light of the 18 to 24 months needed to promulgate a regulation, necessitates basing biennial renewal fees on a period beyond 2 years. Moreover, continuously promulgating new fee regulations would be an inefficient expenditure of licensee funds. Finally, the Board notes that neither the legislature nor the Attorney General raised any objections to the Board's interpretation of its statutory authority in proposing a graduated fee increase over a number of biennial renewal periods.

The policy underlying the Board's proposal was to mitigate the impact of a necessary fee increase on its licensees by spreading the fee increase out over three biennial periods. This approach was suggested by the HPLC. The Board determined that it should continue the incremental increases for three more biennial periods. This determination was made after considering 10 years of expense history. In addition, the

Board must provide for a reasonable surplus of funds to cover unforeseen circumstances. The Board monitors its income and expenditures on at least an annual basis and will continue to do so. Had the proposal proven to raise excessive surplus funds, the Board was committed to reducing the fee through regulation, an approach taken recently by the State Board of Osteopathic Medicine.

Considering IRRC's concerns over the length of time encompassed by the proposed increases and balancing the Board's need to provide for its continued operations and protect the public, the Board, in consultation with the Department of State Bureau of Finance and Operations (BFO), has amended its proposal. BFO met with the Board on May 6, 2010, and provided the Board with updated budget projections, which demonstrate that the Board's financial position has improved somewhat based on actual revenue and expenditures for the 2008-2009 fiscal year – revenue was higher than anticipated and expenditures were lower than the amount budgeted. BFO recommended either a one-time fee increase to \$360 for veterinarians and \$90 for CVTs; or an increase to \$345 for veterinarians and \$86 for CVTs followed by a one-time, incremental increase to \$360 for veterinarians and \$101 for CVTs. The Board discussed the merits of the two proposals with BFO and voted to amend its fee proposal to provide for an increase to \$345 for veterinarians and \$85 for CVTs followed by a one-time, incremental increase to \$360 for veterinarians and \$100 for CVTs. According to BFO's projections, these increases should carry the Board through at least FY 2015-2016. As noted earlier, the Board reviews its budget with BFO every year and can make adjustments if necessary to support its operations.

The Board respectfully submits this report under section 7(c) of the Regulatory Review Act and encloses a copy of the revised final form rulemaking and the findings of the Commission. The Board requests that IRRC approve the rulemaking as revised. The Board believes that the revised rulemaking is authorized by the Veterinary Medicine Practice Act and is in the public interest.



Robin J. Bernstein, Esq., Chair
State Board of Veterinary Medicine

The State Board of Veterinary Medicine (Board) hereby amends §§ 31.41 (relating to fees) to read as set forth in Annex A. The amendments increase the Board's biennial renewal fees for the upcoming renewal period commencing on December 1, 2010, and provide for an additional increase for the next biennial renewal period. The Board's original proposal, which provided for a new fee for the initial biennial period commencing on December 1, 2010, followed by five incremental increases, was disapproved by the Independent Regulatory Review Commission on April 22, 2010, with delivery of the disapproval order on April 28, 2010.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin. The new fee will be instituted for the upcoming biennial renewal cycle, which will commence on December 1, 2010. An incremental increase will be instituted commencing with the December 1, 2012 biennial renewal cycle.

Statutory Authority

Section 13(b) of the Veterinary Medicine Practice Act (act) (63 P.S. § 485.13(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures. In its 2007 and 2008 annual reports to the Board, the Department's Bureau of Finance and Operations (BFO) reported significant anticipated deficits requiring an increase in fees. In response to suggestions by the House Professional Licensure Committee, the Board proposed to raise fees incrementally. The fees proposed by the Board were based on estimates from BFO and were intended to ensure the continued operation of the Board in accordance with its statutory mandate.

In its disapproval order, IRRC opined that the General Assembly did not intend for the Board to set fees on an incrementally increasing basis. The Act specifies only that the Board must increase fees so that its projected revenues meet or exceed its projected expenditures. The Act directs the Board to consider its revenues and expenditures on a biennial basis because fees are collected biennially. The Board disagrees that the Act prohibits an incremental approach to biennial renewal fees so long as that approach is based on projected revenues and expenditures. Nevertheless, the Board respects IRRC's position and has amended its final rulemaking based on more recent projections by BFO.

Summary of Comments and the Board's Response

The Board received one comment from an individual member of the public and a comment from the Pennsylvania Veterinary Medical Association (PVMA). The individual commented that he was opposed to the fee increase because "many complaints and issues before the board are based on disputes over fees and concern about paying bills." The Board does not have jurisdiction over fee disputes and any complaints regarding fees are closed at a very early

stage; therefore, any costs associated with these types of complaints are minimal. Rather, the Board attributes the increases in expenditures to increased regulatory efforts and an increase in practice-related complaints.

PVMA wrote to state that it had no objections to the proposed fee increases in light of the past deficits and projected future deficits. PVMA also noted its willingness to work with the Board to educate the veterinary profession and potentially help decrease the number of complaints and therefore, the need to raise fees. The Board appreciates PVMA's demonstrated willingness to educate the veterinary profession, particularly with regard to the Board's recent rulemakings related to recordkeeping and professional conduct.

The House Professional Licensure Committee (HPLC) questioned how the new projected expenditures over the next six biennial renewal periods for veterinarians and veterinary technicians were determined to assure that the fee increases will adequately meet their intended goal. BFO bases its calculations on income and expenses for the past 3 years and also considers any particular items identified by the Board that may alter the estimates. The Board's expenses have risen dramatically over the past 10 years, requiring several fee increases, so this historic trend was also considered. The Board has had an increase in practice issue cases, which require greater resources. The Board has also undertaken a more ambitious regulatory agenda, including regulations to effectuate section 27(a)(2) of the act (63 P.S. § 485.27(a)(2)), which requires the Board to inspect all animal hospitals or veterinary establishments, including mobile clinics, at least biennially. BFO considered all of this information when it proposed fees to the Board. The Board, cognizant of the expense of repeatedly promulgating fee regulations and the disruption to licensees caused by unpredictable fees, determined that it should round BFO's proposals up slightly.

The HPLC urged the Board to closely monitor its expenses to determine the adequacy of the increase over the proposed period and beyond so if a change in fees is needed, it will be realized as soon as possible. The Board has always monitored its budget on a fiscal and biennial basis and will continue to do so, especially since the proposal has now been limited to the next two biennial renewal periods. The Board will request information from the groups that provide services to the Board and will endeavor to ensure that expenses do not increase unnecessarily.

Finally, the HPLC noted that it appreciated the graduated increase as being easier for the Board's licensees. The Board agrees that the graduated increase will be easier for its licensees to plan for and manage their budgets.

The Independent Regulatory Review Commission (IRRC), noted that while it did not question the policy behind the incremental fee increases, it asked the Board to explain how the increase conform to the intent of the General Assembly and section 13 of the act (63 P.S. § 485.13). IRRC asked the Board to explain its statutory authority for automatic increases that may or may not be needed 10 years in the future and asked if the financial condition of the Board

improves, would the fees be decreased accordingly? Section 13(b) of the act requires the Board to increase its biennial renewal fees if the Board's revenues are not sufficient to meet expenditures over a 2-year period. The General Assembly references a 2-year period because license renewal fees are collected biennially; therefore, the Board can only accurately gauge its revenue and expenses by looking at a given 2-year period. Section 13(b) does not limit the Board to looking only 2 years into the future when projecting a budget surplus or shortfall. It is simply a legislative mandate to increase fees at the point that biennial revenue is inadequate to fund the Board's projected expenditures over a biennial period to provide for the continued operations of the Board. For this reason, the Board voted to continue with its plan to incrementally increase biennial renewal fees, albeit over only the next two renewal periods, adjusted to reflect BFO's updated projections.

The House Professional Licensure Committee approved the final rulemaking package. As noted above, IRRC disapproved the final rulemaking package. Following the disapproval, the Board requested that representatives from BFO appear at its May 6, 2010, meeting to update the Board on its projected budget and to present alternatives to the proposed rulemaking. The Board considered the information presented by BFO and adopted BFO's proposed initial fee increase followed by an incremental increase in the following biennial period. The Board believes that this approach addresses IRRC's concerns about raising fees ten years out, while still incorporating HPLC's suggestion of smaller, more frequent changes to the biennial renewal fees.

Fiscal Impact and Paperwork Requirements

The regulation will increase the biennial renewal fee to \$345 for veterinarians and \$85 for veterinary technicians for the biennial period beginning December 1, 2010; and to \$360 for veterinarians and \$100 for veterinary technicians beginning December 1, 2012. The regulation should have no other fiscal impact on the private sector, the general public or political subdivisions. The regulation will require the Board to alter some of its forms to reflect the new biennial renewal fees: however, the regulation should not create additional paperwork for the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa. B. 5436 (September 19, 2009), to IRRC and the Chairpersons of the House Professional Licensure Committee

(HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 24, 2010, the final-form rulemaking was approved by the HPLC. On April 22, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC disapproved the final-form rulemaking and delivered notice of its disapproval on April 28, 2010.

The Board amended its final rulemaking package and submitted a report to IRRC and the Chairmen of the HPLC and SCP/PLC. Following submission of the report, IRRC met on July 15, 2010, and approved the amended final rulemaking.

Findings

The Board 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), (45 P.S. §§ 1201 – 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 – 7.2.
2. A public comment period was provided as required by law and all comments were considered.
3. This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

The Board, acting under its authorizing statute, orders that:

- (A) The regulations of the Board at 49 Pa. Code § 31.41 (relating to schedule of fees) are amended to read as set forth in Annex A.
- (B) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

- (C) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Robin J. Bernstein, Esquire
Board Chairman

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

FEEES

§31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

[Veterinarians] Veterinarian fees for services:

* * * * *

[Biennial renewal.....\$300]

* * * * *

Veterinarian biennial renewal:

Biennial renewal fee for biennial period December 1, 2010 – November 30,

2012.....~~\$360~~ \$345

Biennial renewal fee for biennial period December 1, 2012 – November 30,

2014.....\$400 \$360

Biennial renewal fee for biennial period December 1, 2014 – November 30,

2016.....\$440

Biennial renewal fee for biennial period December 1, 2016 – November 30,

2018.....\$490

Biennial renewal fee for biennial period December 1, 2018 – November 30,

2020.....\$540

Biennial renewal fee for biennial period December 1, 2020 – November 30,

2022.....\$590

* * * * *

Veterinary [technicians] technician fees for services:

[Biennial renewal.....\$75]

* * * * *

Veterinary technician biennial renewal:

Biennial renewal fee for biennial period December 1, 2010 – November 30,

2012.....\$90 \$85

Biennial renewal fee for biennial period December 1, 2012 – November 30,

2014.....\$100

Biennial renewal fee for biennial period December 1, 2014 – November 30,

2016.....\$110

Biennial renewal fee for biennial period December 1, 2016 – November 30,

2018.....\$120

Biennial renewal fee for biennial period December 1, 2018 – November 30,

2020.....\$130

Biennial renewal fee for biennial period December 1, 2020 – November 30,

2022.....\$140

* * * * *



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@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

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

April 28, 2010

Robin J. Bernstein, Esq., Chair
State Board of Veterinary Medicine
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-5723 (IRRC #2788)
State Board of Veterinary Medicine
Biennial Renewal Fees

Dear Ms. Bernstein:

The Independent Regulatory Review Commission disapproved your regulation on April 22, 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 me at 783-5506.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held April 22, 2010

Arthur Coccodrilli, Chairman
George D. Bedwick, Vice Chairman
S. David Fineman, Esq.
Silvan B. Lutkewitte, III
John F. Mizner, Esq.

Regulation No. 16A-5723 (#2788)
State Board of Veterinary Medicine
Biennial Renewal Fees

On September 2, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Veterinary Medicine (Board). This rulemaking amends 49 Pa. Code § 31.41. The proposed regulation was published in the September 19, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 11, 2010.

This rulemaking would provide for incremental biennial license renewal fee increases for veterinarians and veterinary technicians for the next six biennial renewal cycles. The current renewal fee for veterinarians is \$300 and the current renewal fee for veterinary technicians is \$75. The renewal fees at the end of the 2020-2022 biennial period will be \$590 for veterinarians and \$140 veterinary technicians.

Subsections 13 (a), (b) and (c) of the Veterinary Medicine Practice Act (Act) (63 P.S. § 485.13 (a), (b) and (c)) establish the Board's authority for setting and raising fees. Those sections state the following:

- a) The board shall, by regulation, fix the fees required for examination, licensure, certification, registration, renewal of licenses and registrations, renewal of certificates and temporary permits.
- (b) If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures **over a two-year period**, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures. (Emphasis added.)
- (c) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board pursuant to subsections (a) and (b) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board, shall increase the fees by regulation so that adequate revenues are raised to meet the required enforcement effort.

In our comments on the proposed rulemaking, we asked the Board to explain how the increases conform to the intent of the General Assembly and Section 13 of the Act. We also questioned the Board's statutory authority for automatic fee increases that may or may not be needed to meet expenditures ten years in the future. The Board responded, "Section 13 (b) does not limit the Board to looking only 2 years into the future when projecting a budget surplus." In

addition, we asked the Board if its financial condition improves, will the fees be decreased accordingly? The Board responded, "The Board will carefully monitor its expenditures and will stabilize or decrease the fees by regulation if they are needed."

Based on this response and the Board's explanation at our public meeting, we have concluded that this regulation is not consistent with the intention of the General Assembly. We do not believe the Board's proposal for incremental biennial renewal fees over six renewal cycles is consistent with the intent of the Act. By imposing a two-year time period in statute, we believe the General Assembly's intent was to require the Board to evaluate its revenues and expenditures, *and adjust those revenues and expenditures*, more frequently than once every ten years. In addition, we believe that the two-year statutory time period reflects the General Assembly's intent that Board fee adjustments be reviewed by this Commission and by the General Assembly more frequently than once every ten years. Accordingly, we believe that a regulatory scheme of incremental fee increases over any period beyond two years is a decision that should be made by the General Assembly.

In addition, we find promulgation of this regulation is not in the public interest because of the potential fiscal impact it could have on the regulated community. Based on numerous factors, the projections that formed the basis for this proposed rulemaking could be understated or overstated. If they are overstated, the fees collected could lead to a large surplus and the Board has no statutory obligation to readjust the fees in favor of the regulated community. While we commend the Board for committing to monitoring its expenditures and adjusting the fees accordingly, we believe any potential surplus should be in the hands of the veterinarians and veterinary technicians instead of the Board.

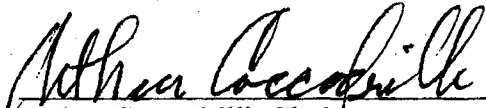
BY ORDER OF THE COMMISSION:

The regulation # 16A - 5723 (IRRC # 2788) from the State Board of

Veterinary Medicine; Biennial Renewal Fees

was disapproved on April 22, 2010




Arthur Coccodrilli, Chairman

**Commenters on State Board of Veterinary Medicine Regulation 16A-5723, Biennial
Renewal Fees**

Lisa Murphy, VMD
PVMA
12 Briar Crest Square
Hershey, PA 17033

Kevin Ramcy, DVM
drvctnmomrn@msn.com

The comments are posted on the website of the Independent Regulatory Review
Commission.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF VETERINARY MEDICINE
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

June 7, 2010

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

Re: Final Regulation
State Board of Veterinary Medicine
16A-5723: Biennial Renewal Fees

Dear Chairman Coccodrilli:

On April 22, 2010, the Independent Regulatory Review Commission disapproved final form rulemaking of the State Board of Veterinary Medicine related to biennial renewal fees. In accordance with the mandates of the Regulatory Review Act, I am enclosing the Board's response to the Commission's disapproval order and a copy of the amended final form rulemaking package. I understand that the Commission will consider the amended final form rulemaking at its meeting on July 15, 2010.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robin J. Bernstein".

Robin J. Bernstein, Esquire, Chairperson
State Board of Veterinary Medicine

RJB/TL:rs

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

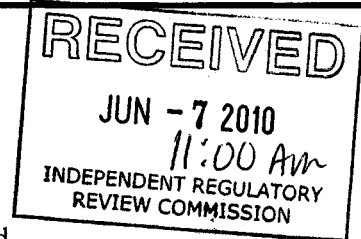
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Teresa Lazo, Counsel
State Board of Veterinary Medicine
State Board of Veterinary Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-5723
 SUBJECT: BIENNIAL RENEWAL FEES
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF VETERINARY MEDICINE

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



FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/7/2010	<i>Claudia A. Nichols</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
6/7/10	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Robert M. Tomlinson</u>
6/7/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)