Regulatory Analysis Form

(Completed by Promulgating Agency)

IRRC

Independent Regulatory Review Commission

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INDEPENDENT REGULATORY REVIEW COMMISSION

SECTION I: PROFILE

(1) Agency:
Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry

(2) Agency Number: 16A

Identification Number: 4620

IRRC Number: 2794

(3) Short Title:

Clinical Examinations

(4) PA Code Cite:
49 Pa. Code § 33.103

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

Primary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State
(717) 783-7220; fax (717) 787-0251; email: cymontgome@state.pa.us

Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State
(717) 783-7200; fax (717) 787-0251; email: jmckeever@state.pa.us

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

(All Comments will appear on IRRC'S website)

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

X 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)

The proposed rulemaking would permit applicants for licensure by examination to pass any one of the five clinical examinations administered by a regional testing agency, thereby expanding the number of qualified individuals that could be licensed by examination, provide increased access to care for residents of Pennsylvania, and allow for increased mobility and flexibility for dentists and dental hygienists.

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

A. The date by which the agency must receive public comments: To be determined once a delivery date has been established. (30 days after publication in the Pennsylvania Bulletin)

B. The date or dates on which public meetings or hearings will be held: The Board will consider comments on the proposed rulemaking at a regularly scheduled board meeting after publication as proposed. The Board's public meeting schedules are available on the Bureau's website at www.dos.state.pa.us/bpoa.

C. The expected date of promulgation of the proposed regulation as a final-form regulation: Anticipated spring of 2010.

D. The expected effective date of the final-form regulation: Upon publication of the final form rulemaking in the Pennsylvania Bulletin – Anticipated spring of 2010.

E. The date by which compliance with the final-form regulation will be required: Upon publication of the final form rulemaking in the Pennsylvania Bulletin – Anticipated spring of 2010.

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 Board continually monitors the effectiveness of its regulations on at least an annual basis.

SECTION II: STATEMENT OF NEED

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

The proposed rulemaking is authorized by section 3(c), (d), (e) and (o) of the Dental Law, 63 P.S. § 122(c), (d), (e) and (o). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board "to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board."

(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 regulation is not mandated by any 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.

The regulation is needed to increase the number of available clinical licensure exams, to permit more qualified individuals to obtain Pennsylvania licensure, to increase access to dental care for Pennsylvania residents, and to allow dentists and dental hygienists more flexibility and mobility.

Anyone who applies for licensure as a dentist or dental hygienist in this Commonwealth will benefit from the regulation. The Board estimates that approximately 700 individuals apply for licensure as a dentist or dental hygienist per year. All will benefit by the increased selection of available clinical examinations.

The citizens of the Commonwealth will benefit by an increased pool of available dentists and dental hygienists.

(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.

No scientific data, studies or references are being used to justify this regulation.

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

The Board is unaware of anyone who will be adversely affected by the regulation.

(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.

Anyone who applies for licensure by examination will be required to comply with the regulation. The Board estimates that approximately 700 individuals apply for licensure as a dentist or dental hygienists per year.

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.

There are no direct costs to the regulated community related to the proposed rulemaking. There may be savings if an applicant is able to take an exam that proves to be more cost-effective, considering the fee for the exam and costs related to travel, lodging, etc. It is impossible to estimate what those savings, if any, may be.

(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 this proposed rulemaking.

Regulatory Analysis Form

(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.

Costs associated with examinations will be borne by the candidates for licensure, therefore there will be no direct costs to the Board associated with the proposed 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.

	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	**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**

Regulatory Analysis Form

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

Program	FY –06-07 Actual	FY –07-08 Actual	FY –08-09 Projected	Current FY – 09-10 Budgeted
State Board of Dentistry	$1,353,841.41	$1,416,691.21	$1,517,000.00	$1,563,000.00

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

The benefits of increasing the number of available clinical licensure exams, permitting more qualified individuals to obtain Pennsylvania licensure, increasing access to dental care for Pennsylvania residents, and allowing dentists and dental hygienists more flexibility and mobility far outweigh any negligible costs that may be associated with the rulemaking.

(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.

An exposure draft of the proposal was sent out to interested parties and stakeholders in March of 2009. The Board received comments from the Pennsylvania Dental Association, the Pennsylvania Dental Hygienists' Association, nine dentists and one dental hygienist. Comments received were considered in drafting the proposed rulemaking. In addition, the Board meets in public session eight times a year at which time its regulatory proposals are discussed. Comments from the public are always welcomed.

(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 considered the alternative regulatory scheme that was suggested by the Pennsylvania Dental Association, but rejected it. PDA suggested that instead of listing the regional testing agencies, the Board consider defining the criteria by which it would consider an exam valid and reliable. The Board rejected this approach because the board members are not psychometricians, nor are they trained in education measurement or quantitative psychology and are not able to determine whether a particular exam is psychometrically sound, valid, reliable and legally defensible. The Board will rely on the regional testing agencies to assure their exams meet these requirements. The Board has reviewed each of the exams and has determined that they are substantially similar. Four of the examining agencies have been providing clinical exams for dentists and dental hygienists since the 1960's or 1970's.

(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.

There are no applicable federal standards.

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

The NERB/ADLEX exam is accepted for initial licensure in 40 states. The SRTA exam is accepted in 26 states. The WREB exam is accepted in 30 states. The CITA exam is accepted in 17 states. The CRDTS exam is accepted in 40 states. Pennsylvania currently only accepts the NERB/ADLEX exam for licensure by examination. Expanding the number of acceptable regional clinical exams will make Pennsylvania more competitive in attracting qualified dentists and dental hygienists to the Commonwealth.

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

No.

(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.

The Board anticipates no reporting, recordkeeping or paperwork requirements will change.

(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 particular needs of any affected group have been identified.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

SEP 04 2009
DATE OF APPROVAL

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

State Board of Dentistry
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4620

DATE OF ADOPTION: _____

BY: _____
John V. Reitz, D.D.S.

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: _____
Andrew C. Clark

AUG 7 2009
DATE OF APPROVAL

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

[ ] Check if applicable
Copy not approved.
Objections attached.

[ ] Check if applicable.
No Attorney General approval or objection within 30 day after submission.

NOTICE OF PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY
49 PA. CODE, CHAPTER 33
§ 33.103

CLINICAL EXAMINATIONS

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations), to read as set forth in Annex A.

Effective Date

The regulation will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

The proposed rulemaking is authorized by section 3(c), (d), (e) and (o) of the Dental Law, 63 P.S. § 122(c), (d), (e) and (o). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board "to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board."

Background and Purpose

Currently, the Board requires that applicants for licensure as a dentist or dental hygienist take and pass the National Board Dental or Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations, Inc. (written examination) and the clinical examination administered by the Northeast Regional Board of Dental Examiners, Inc. (NERB). Over the last few years, the Board has been, and will continue to be involved in the efforts to adopt a national clinical examination, but to date, it has not come to fruition. In the absence of a national clinical examination, the Board has determined that applicants for licensure by examination should be able to take any of the five regional clinical examinations, that is, those examinations administered by NERB, the Southern Regional Testing Agency, Inc. (SRTA), the Western Regional Examining Board (WREB), the Central Regional Dental Testing Service, Inc. (CRDTS), or the Council of Interstate Testing Agencies, Inc. (CITA).

In March of 2009, the Board solicited comments from stakeholders and interested parties regarding the proposal to expand the list of acceptable clinical examinations to include those administered by each of these five regional examining agencies. All of the commentators agreed in theory with the proposal to expand the list of acceptable examinations. However, the Pennsylvania Dental Association (PDA) suggested that the Board consider, instead of listing the five regional

testing agencies, defining the criteria by which a clinical examination will be considered valid and reliable. However, the Board believes that, while many of the board members are experienced dentists and dental hygienists, they are not psychometricians, nor are they trained in education measurement or quantitative psychology. Therefore, the Board is not able to evaluate whether a particular examination is psychometrically sound, valid, reliable or legally defensible. The Board currently relies on NERB to develop and administer an examination that is valid, reliable and legally defensible. The Board will continue to rely on each of the regional testing agencies to defend their examinations if challenged. The Board, however, has reviewed the content of the examinations, and finds them to be substantially similar. In addition, the American Dental Association (ADA) has advocated that each state dental board consider accepting all of the examinations administered by the various regional testing agencies, all of which, with the exception of CITA, have been in existence for decades.

PDA also noted that the proposed rulemaking does not address state administered clinical examinations, nor does it include the American Board of Dental Examiners' ADLEX (dental) or ADHLEX (dental hygiene) examinations. The examinations administered by the five regional testing agencies, in combination, are accepted in all but a few states that administer their own examinations. In addition, some states that administer their own examinations also accept the results of at least one of the regional examinations. If an applicant for Pennsylvania licensure has not passed an examination administered by one of the five regional testing agencies as proposed by this rulemaking, that individual could still apply for licensure under § 33.107 (relating to licensure by criteria approval). Therefore, the Board determined that it would not address state administered examinations in this proposal. In addition, the ADLEX/ADHLEX examinations are not administered by the American Board of Dental Examiners (ADEX), but by a regional testing agency. In fact, NERB currently administers the ADLEX examination. To the Board's knowledge, no regional testing agency currently administers the ADHLEX examination. Therefore, the Board determined that it was not necessary to address these examinations in the proposed rulemaking at this time.

The Board did not make any changes to the proposed rulemaking based on the PDA's comments. In general the Board has determined that it was most prudent at this time to look to the existing regional examining agencies as a means of opening up the possibility of licensure in Pennsylvania to as many qualified individuals as possible. Most of the interested parties that commented on the proposal indicated that this is a positive step to permit more qualified individuals to obtain Pennsylvania licensure, to increase access to dental care for Pennsylvania residents, and to allow dentists and dental hygienists more flexibility and mobility.

Description of Proposed Amendments

The Board proposes to amend § 33.103 to provide that applicants for licensure by examination may take and pass a clinical examination administered by any of the five regional examining agencies.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with examinations will be borne by candidates for licensure. The proposed amendments should not have an adverse fiscal impact on applicants because the fees for the various regional examinations are comparable and an applicant could chose the most cost-effective examination to take.

The proposed amendments should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on September 16, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and 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 must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations and objections by the Board, the Governor and the General

review of comments, recommendations and objections by the Board, the Governor and the General Assembly, prior to final publication of the rulemaking.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P.O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking.

John V. Reitz, D.D.S.
Chairperson
State Board of Dentistry

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS

§ 33.103. Examinations.

(a) *Dentists*. Candidates for licensure shall pass the National Board Dental Examination (written examination) and the [Northeast Regional Board (NERB) Dental Examination (clinical examination)] dental clinical examination administered by one of the following:

(1) The Northeast Regional Board of Dental Examiners, Inc. (NERB).

(2) The Southern Regional Testing Agency, Inc. (SRTA).

(3) The Western Regional Examining Board (WREB).

(4) The Central Regional Dental Testing Service, Inc. (CRDTS).

(5) The Council of Interstate Testing Agencies, Inc. (CITA).

(b) *Dental hygienists*. Candidates for licensure shall pass the National Board Dental Hygiene Examination (written examination) and the [NERB Dental Hygiene

Examination (clinical examination)] dental hygiene clinical examination administered by one of the following:

(1) The North East Regional Board of Dental Examiners, Inc. (NERB).

(2) The Southern Regional Testing Agency, Inc. (SRTA).

(3) The Western Regional Examining Board (WREB).

(4) The Central Regional Dental Testing Service, Inc. (CRDTS).

(5) The Council of Interstate Testing Agencies, Inc. (CITA).

* * * * *

(d) *Additional requirement.* The Board will recognize successful completion of the [NERB Dental Examination or NERB Dental Hygiene Examination] dental or dental hygiene clinical examinations or the expanded function dental assistant examination approved by the Board for up to 5 years from the date scores are reported to the Board. After 5 years, the Board will accept passing scores on the examinations only if the candidate has been engaged in postgraduate training or in the practice of dentistry, as a dental hygienist or as an expanded function dental assistant in another jurisdiction.

* * * * *

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7162

September 16, 2009

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

Re: Proposed Regulation
State Board of Dentistry
16A-4620: Clinical Examinations

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Dentistry pertaining to Clinical Examinations.

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

Sincerely,

John V. Reitz, D.D.S.
Chairperson
State Board of Dentistry

JVR/CKM:pah
Enclosure
cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Sr., Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Christopher P. Grovich, Counsel
State Board of Dentistry
State Board of Dentistry

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 16A-4620

SUBJECT: CLINICAL EXAMINATIONS

AGENCY: DEPARTMENT OF STATE
STATE BOARD OF DENTISTRY

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
2009 SEP 16 AM 10:10
INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9-16-09	Kristin [signature]	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN Michael P. McGeehan
9/16/09	Mary Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN Robert Tomlinson
9/16/09	Kathy Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
9/16/09	N. [signature]	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 9, 2009