

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Renewal Fees

The State Board of Osteopathic Medicine (Board) amends § 25.231 (relating to schedule of fees) by raising the biennial renewal fee for osteopathic physicians for the licensure period which commences November 1, 1996, as set forth at 26 Pa.B. 591 (February 10, 1996).

Comment

Following publication of proposed rulemaking, the Board did not receive any comment from members of the public. The Board received comments from the House Committee on Professional Licensure (House Committee) on March 19, 1996, and the Independent Regulatory Review Commission (IRRC) on April 10, 1996. Both the House Committee and IRRC requested additional information pertaining to Board expenditures for the biennial cycles 1991-93 and 1993-95.

The House Committee noted that legal office and law enforcement expenses dropped, when considered as a percentage of total Board expenses, from the biennial cycle of FY 1991-93 to FY 1993-95. The House Committee further noted that while the number of disciplinary cases closed increased from 66 in the fiscal year ending 1988 to 97 in the fiscal year ending 1995, hearing expenses dropped by \$3,115.66 from the biennial cycle 1991-93 to 1993-1995. The House Committee asked how the Board's increased disciplinary activity related to legal office and law enforcement expenses and hearing expense costs.

Spending in legal office and law enforcement dropped as a percentage of total Board expenses. However, spending within both legal and law enforcement rose by about 13% between 1991-93 and 1993-95. During the biennial cycle 1993-95 the Board recorded nine license suspensions and revocations, the highest level of such actions throughout the last four biennial cycles. The number of disciplinary actions taken during 1993-95 would have been even greater if it were not for the fire of June 16, 1994, in Board headquarters. Because of the fire legal and law enforcement staff had to spend much of their time reconstructing cases as opposed to investigating and prosecuting new cases. The reduction in costs associated with hearing expenses reflects an increase in the number of cases in which disciplinary action was imposed by means of consent agreements.

Both the House Committee and IRRC noted that the costs for Bureau of Professional and Occupational Affairs (BPOA) administration increased from \$25,270 in 1991-93 to \$66,877 in 1993-95 and costs for central support services went from \$20,750 to \$39,100. The House Committee and IRRC requested further information associated with these two cost centers.

The Board operates within its own accounting structure (See, 26 Pa.B. 591). When expenditures exceed the level of appropriations, the excess expenditure is rolled over into

the next fiscal year and is recorded as that succeeding year's expenditure. The increase in spending for BPOA administration between FY1991-93 and FY1993-95 is due to the rollover of approximately \$25,000 in Board expenses.

The increase in costs for central support services is due mainly to the reclassification of expenses attributable to the Office of Operations and Contract Management, one of the components of the central supporting services cost center. During the 1994-95 fiscal year 14 positions were transferred from BPOA appropriations to the general government operations appropriations. The movement of these positions eliminated direct personnel expenses charged to BPOA. Because these positions directly affect all Department program areas, the total payroll expenses were prorated to each of these areas by increasing the administrative reimbursement. Therefore all boards and commissions experienced increases in their administrative reimbursement expense mainly due to the transfer of these positions.

The House Committee noted that test administration expenses declined from \$5,122.75 in the biennial cycle 1991-93 to \$1,699.19 in the 1993-95 cycle. The Committee further noted that the most recent rulemaking of the Board pertaining to the Osteopathic Manipulative Therapy (OMT) examination required all fees to be submitted directly to the professional testing organization under a new contract, with neither revenue nor expenses accruing to the Board. The House Committee requested the Board to identify test administration costs which constituted Board expenses and were associated with biennial renewal fees.

Prior to the implementation of the new contract, the OMT examination had been administered by the Board. Certain expenses, such as travel, accrued in connection with that examination. Also, the contract with the American Registry of Radiologic Technologists (ARRT) for the radiology examination generated test administration expenses. This contract was formulated differently than most BPOA contracts at the request of ARRT. Under this contract, the BPOA collected all examination revenues from applicants and paid ARRT for its administrative costs. Because the BPOA made payments to ARRT, expense figures appeared in the test administration cost center.

Finally, IRRC questioned why Board administration costs rose from \$120,200.58 in biennial cycle 1991-93 to \$153,547.39 in 1993-95.

The increase is due to three factors. First, the implementation of legislatively mandated continuing medical education requirements for the 1994 renewal required multiple mailings to the licensee population to keep them informed of proposed rulemaking pertaining to continuing education. Second, the amendments to the Osteopathic Medical Practice Act (OMPA) pertaining to the certification and registration of respiratory care practitioners necessitated mass mailings to applicants to inform them of licensure requirements. (See, sections 10.1(c) and 10.2 of the OMPA (63 P. S. §§ 271.10a(c) and 271.10b) and 26 Pa.B. 757 (February 24, 1996)). Additionally, overtime costs accrued on several occasions in order to process all applications. Third, contractual pay and longevity increases for Board staff amounted to about 10% during the 1993-95 cycle.

Statutory Authority

Section 13.1(a) of the OMPA (63 P. S. § 271.13a(a)) requires the Board to establish fees by regulation. The same provision requires the Board to increase fees to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures.

Fiscal Impact

The amendment will increase the biennial renewal fee for osteopathic physicians in this Commonwealth, but should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The amendment will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the amendment should not create additional paperwork for the private sector.

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 26 Pa.B. 591, to IRRC and the House Committee on Professional Licensure and the Senate Committee on Professional Licensure and Consumer Protection.

In compliance with section 5(b.1) of the Regulatory Review Act, the Board provided IRRC and the Committees with a copy of all comments received as well as other documentation.

This final-form regulation was approved by the House Committee on June 26, 1996, and approved by the Senate Committee on June 25, 1996. IRRC met on July 3, 1996, and approved the amendment in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

Interested persons are invited to submit questions regarding this regulation to Gina Bittner, Administrative Assistant, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4848.

Findings

The Board finds that:

(1) Public notice of intention to adopt an amendment at 49 Pa. Code Chapter 25, was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2.

(2) The regulations of the Board are necessary for the administration of the OMPA (63 P. S. §§ 271.1—271.18).

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending § 25.231 to read as set forth at 26 Pa.B. 591 (February 10, 1996).

(b) The Board shall submit a copy of 26 Pa.B. 591 to the Office of General Counsel and the Office of Attorney General for approval as to legality as required by law.

(c) The Board shall certify this order and 26 Pa.B. 591 and shall deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

SILVIA M. FERRETTI, D.O.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 3492 (July 20, 1996).)

Fiscal Note: Fiscal Note 16A-536 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 96-1296. Filed for public inspection August 9, 1996, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 105]

Mechanical, Electrical and Electronic Speed-Timing Devices

The Department of Transportation, (Department) Bureau of Motor Vehicles, by this order adopts amendments to Chapter 105 (relating to mechanical, electrical and electronic speed-timing devices) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 25 Pa.B. 2993 (July 29, 1995), with an invitation to submit written comments within 30 days of publication. Two comments were received by the Department.

Comments Received

The Department received one public comment from John B. Mancke, Esquire, of Mancke, Wagner, Hershey and Tully, who requested a copy of the tests performed on the Enradd speed-timing device, Model EJU-91. The Department informed Mr. Mancke the test results are retained by the Pennsylvania State Police for their records and that he would have to contact the Pennsylvania State Police Legal Services Office which is the repository of the speed-timing device test data.

The Department received comments from the Independent Regulatory Review Commission (IRRC). IRRC pointed out an omission in Appendix A, Figure 7, and two typographical errors which resulted in the wrong words being used in § 105.56(e)(2)(ii) and (iii) (relating to manner of calibration and testing for the Enradd device). In § 105.56(e)(2)(ii) the word "measure" should read "measured" and in § 105.56(e)(2)(iii) the word "computer" should read "computed."

IRRC also requested that the Department indicate in the Figure 7 diagram where the "Chassis Ground" must be connected to the speed-timing device for the accuracy of the testing procedure.

Additional Modifications to the Proposed Rulemaking

The final text of the regulations contains modifications, deletions and additions, none of which enlarge the scope of these amendments as originally proposed, and thus may be published as final rulemaking. The following represents a summary of the changes:

1. Section 105.56(e) has been amended by correcting two typographical errors. In § 105.56(e)(2)(ii) the word "measure" should read "measured," and in § 105.56(e)(2)(iii) the word "computer" should read "computed."

2. In Figure 7, which provides the test set up for the SpeedCheck and Enradd speed-timing device, the diagram appearing therein has been amended by inserting the term "Chassis Ground" at the bottom of the drawing to indicate where the chassis ground must be connected to do the speed-timing device for the accuracy of the test procedure.

Purpose of these Amendments

The purpose of these amendments is to prescribe the method for calibrating and testing the speed-timing device, Enradd, Model EJU-91, to assure its accuracy under 75 Pa.C.S. § 3368 (relating to speed-timing devices). Further, these regulations will identify this speed-timing device as an approved device which may be used by local enforcement agencies.

The Department has classified this speed-timing device as an electronic device (nonradar), which measures elapsed time between two sensors to calculate vehicle speed on the highways. The device calculates the elapsed time between two timing strips which are spaced at a preestablished measured distance as recommended by the manufacturer's specifications. The timing strips are spaced 5 feet apart and when a vehicle passes over the strips, the unit will record the time interval between the activation of the first and second timing strips. This time interval, with the known distance between the two timing strips, is used to measure the speed of the vehicle. The speed of each vehicle is displayed by the Enradd speed-timing device in miles per hour.

The cost of the Enradd speed-timing device is approximately \$1,200, which is half the cost of other devices in the same category. A prototype of the Enradd speed-timing device was tested by the Pennsylvania State Police, Communications Division, in accordance with the manufacturer's calibration procedure. The tests were performed in a controlled laboratory environment. Additional tests were performed under practical use during inclement weather. The vehicle used during the practical tests was checked for speedometer accuracy prior to these tests.

Persons and Entities Affected

These amendments affect drivers of motor vehicles, stations which calibrate and test speed-timing devices, and local police officers.

Fiscal Impact

These amendments will not mandate any increased costs on police departments, calibration stations or operators of vehicles in this Commonwealth. Only those police departments which elect to purchase this particular device will incur any costs—approximately \$1,200 which is the purchase price of the device. These amendments will not require the development or completion of any additional forms, reports or other paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted on July 14, 1995, a copy of the notice of proposed rulemaking, published at 25 Pa. B. 2993 (July 29, 1995), to IRRC and the Chairpersons of the House and Senate Transportation Committees. In preparing these final-form regulations, the Department has considered the comments received from the Commonwealth and the public.

These final-form regulations were deemed approved by the Committees on July 21, 1996, and were approved by IRRC on July 18, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Sunset Provisions

The Department is not establishing a sunset date for these regulations since these regulations are needed to administer provisions required under 75 Pa.C.S. (relating to the Vehicle Code). The Department will, however, continue to closely monitor these regulations for their effectiveness.

Contact Person

For further information, the contact person is Mary E. Sheriff, Vehicle Control Division, Room G134, Transportation and Safety Building, Harrisburg, PA 17122, telephone (717) 787-2895.

Authority

These regulations hereby amended are amended under the authority contained in 75 Pa.C.S. §§ 3368 and 6103 (relating to speed-timing devices; and promulgation of rules and regulations by department).

Findings

The Department finds that:

(1) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 105, are amended by amending § 105.56 and Appendix A to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality, as required by law.

(c) The Secretary of the Department 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 upon publication in the *Pennsylvania Bulletin*.

BRADLEY L. MALLORY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document see 26 Pa.B. 3776 (August 3, 1996).)

Fiscal Note: Fiscal Note 18-332 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VI. OPERATION OF VEHICLES

CHAPTER 105. MECHANICAL, ELECTRICAL AND ELECTRONIC SPEED-TIMING DEVICES

Subchapter D. ELECTRONIC DEVICES (NONRADAR) WHICH MEASURE ELAPSED TIME BETWEEN TWO SENSORS.

§ 105.56. Manner of calibration and testing.

* * * * *

(e) *Enradd, Model EJU-91*—Manufactured by Y.I.S., Incorporated, 1049 Hartley Street, P. O. Box 3044, York, Pennsylvania 17404.

(1) *Required equipment.* The following equipment or an equivalent substitute is required for calibration:

- (i) Two pulse generators.
- (ii) Dual channel oscilloscope or frequency counter with interval capability.
- (iii) Power supply, + 5 volts.

(2) *Calibration procedure.* (See Appendix A, Figure 8 for interconnection diagram). Calibration procedures shall be as follows:

- (i) A single circuit to generate the signals that simulate the front wheels of a vehicle crossing the road sensor shall be set up as set forth in Appendix A, Figure 7.

(ii) The elapsed time between the pulse on Outputs 1 and 2 is measured by the Enradd using the formula $V \times T = 3408$. 3408 is the proper constant for a 5-foot timing strip spacing.

V = velocity in mph

T = time in ms

(iii) The elapsed interval time is computed by:

(A) Calculation of the equation:

$$V = 3408$$

T

(B) Comparison of the readout on the oscilloscope/frequency counter to the readout on the Enradd.

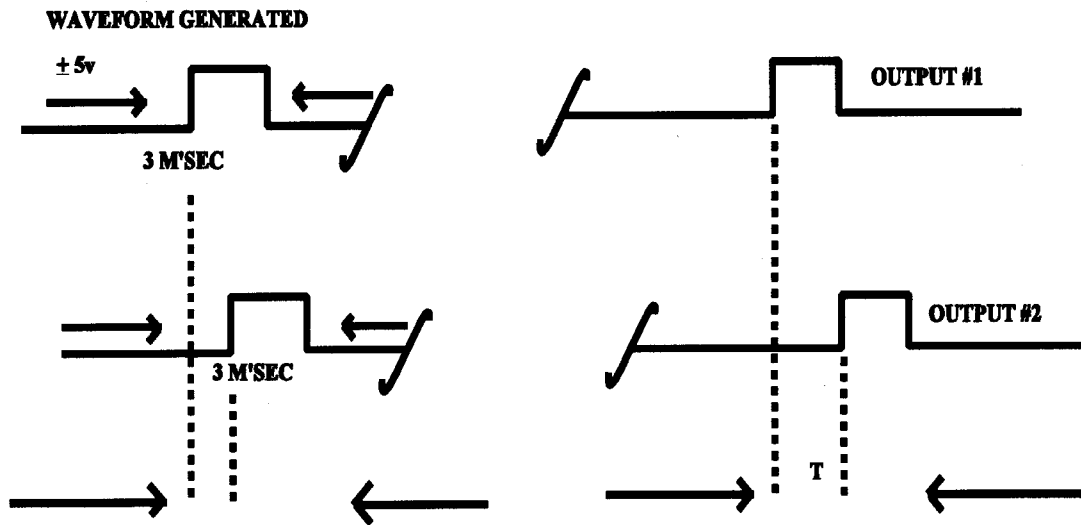
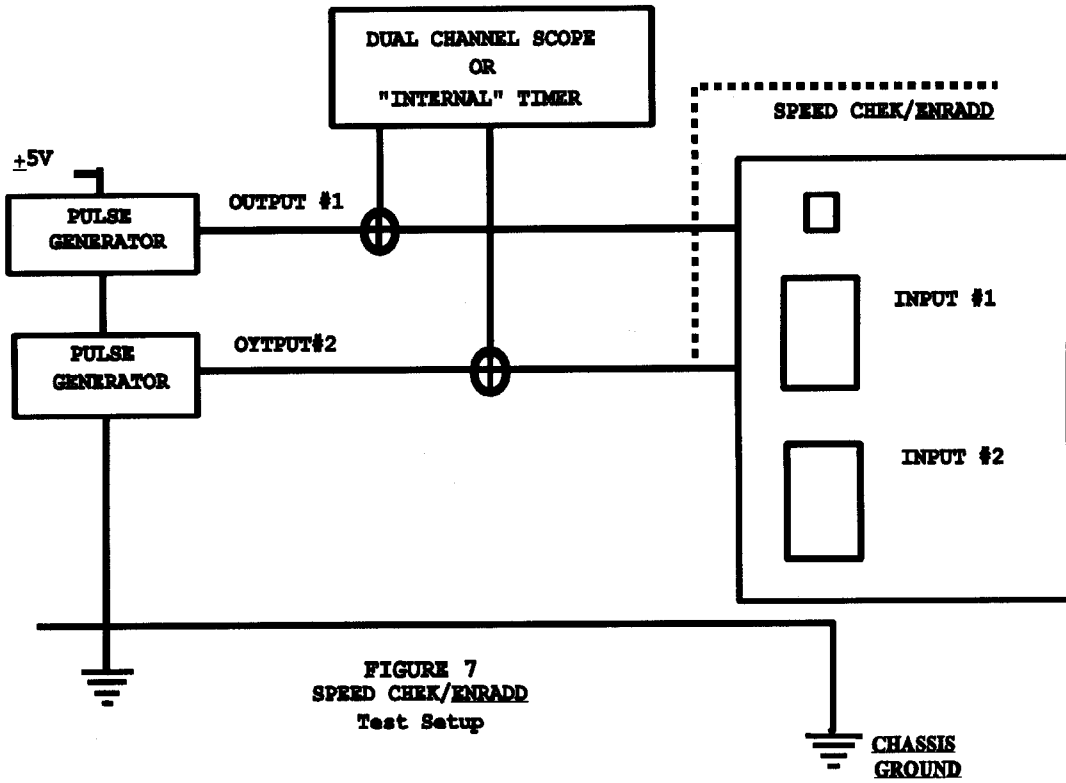
(iv) If the readout on the face of the Enradd differs by more than +/- 1 mph, the unit shall be returned to the manufacturer or to a service center approved by the manufacturer and tagged with the date tested, the serial number of the device and a notation of the general condition of the device.

(f) *Equipment, timing strips and other devices.* The calibration and testing of equipment, timing strips and other devices actually used with a particular electronic device—nonradar—shall be performed under specifications provided by the manufacturer of an approved device using equipment specified by the manufacturer or equivalent substitute equipment.

APPENDIX A

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DEPARTMENT OF TRANSPORTATION



[Pa.B. Doc. No. 96-1297. Filed for public inspection August 9, 1996, 9:00 a.m.]