

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

#### Biennial Renewal Fees and Examination Fees

The State Board of Certified Real Estate Appraisers (Board) amends § 36.6 (relating to fees) to read as set forth in Annex A.

The final-form rulemaking raises the biennial renewal fees for certified general and residential real estate appraisers and certified Pennsylvania evaluators from \$105 to \$225; establishes a biennial renewal fee of \$225 for certified brokers/appraisers; deletes the examination fees for certified general and residential real estate appraisers and certified Pennsylvania evaluators; and makes editorial changes to the description of the fees. The new biennial renewal fees will initially apply to certificateholders who renew their certifications for the biennial renewal period that begins July 1, 2003.

#### *Summary of Comments and Responses to Proposed Rulemaking*

The Board published a notice of proposed rulemaking at 32 Pa.B. 4871 (October 5, 2002) with a 30-day public comment period. The Board received comments from the Pennsylvania Association of Realtors (PAR).

The Board also received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (House Committee) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Committee on Consumer Protection and Professional Licensure (Senate Committee) as part of its review of proposed rulemaking under the Regulatory Review Act.

IRRC asked whether the Board had considered gradual fee increases, instead of a one-time fee increase, as a solution to its growing budget deficit. PAR recommended that the Board phase in the increases over the next two biennial renewal cycles.

As noted during proposed rulemaking, the Department of State's Bureau of Finance and Operations (BFO) had advised the Board that to close the widening gap between revenues and expenses, the Board needed to establish uniform biennial renewal fees in an amount between \$200 and \$250 for all certificateholders, effective with the 2003-2005 biennial renewal period. The board had opted for the midpoint fee of \$225, which, according to BFO estimates would generate sufficient revenues to permit comfortable positive balances during the next several fiscal years, thereby obviating the need for additional fee increases in the foreseeable future.

In light of the comments submitted by PAR and IRRC, the Board asked the BFO if it would be possible to have graduated fee increases while still generating sufficient revenues. In January, the BFO reported that the Board could generate the same revenues as would be realized

under the one-time fee increase if the biennial renewal fees were increased to \$200, \$225 and \$250 for the 2003-2005, 2005-2007 and 2007-2009 biennial renewal periods, respectively.

Given the temporary and relatively modest savings to certificateholders under the graduated approach, the Board believes certificateholders would prefer a one-time fee increase now rather than fee increases over the next three biennial renewal cycles, particularly since the latter would lead to higher biennial renewal fees than what were contemplated during proposed rulemaking.

IRRC also asked whether the Board's general expenses are distributed equally among its certification classes (that is, general appraiser, residential appraiser, broker/appraiser and certified Pennsylvania evaluator) and, if not, whether the biennial renewal fees could be adjusted to reflect each certification class's share of the overall expenses.

According to the BFO, it is not possible to reliably determine what portion of the Board's general expenses can be apportioned to each certification class. As a consequence, the fairest formula is to require every certificateholder, regardless of certification class, to share equally in defraying the Board's general expenses.

The House Committee asked for a detailed breakdown of the expenses that justify the imposition of new biennial renewal fees. During proposed rulemaking, the Board stated that its annual expenses have risen steadily in the nearly 12 years since its inception as a licensing board within the Bureau of Professional and Occupational Affairs (BPOA). The following information, prepared by the BFO, breaks down the Board's annual expenses of \$190,577 for FY95-96 and projected annual expenses of \$505,000 for FY02-03 by "cost center":

<i>Cost Center/Description</i>	<i>FY 95-96</i>	<i>FY 02-03</i>
<i>BPOA Administration</i> (licensee population based): BPOA expenses such as printed forms, office supplies and interagency billings	\$5,463 (2.87%)	\$9,000 (1.78%)
<i>Commissioner's Office</i> (timesheet based): Expenses (personnel, operating and fixed asset charges) relating to staff assigned to the BPOA Commissioner's office	\$1,558 (.82%)	\$7,000 (1.39%)
<i>Law Enforcement</i> (timesheet based): Expenses (personnel, operating and fixed asset charges) relating to staff assigned to Bureau of Enforcement and Investigation	\$42,586 (22.35%)	\$107,000 (21.19%)
<i>Board Member Expenses</i> (direct charges): Board member per diem, conference registration fees, travel expenses and membership dues for National Organization of State Appraiser Boards	\$12,430 (6.52%)	\$22,000 (4.36%)

<i>Cost Center/Description</i>	<i>FY 95-96</i>	<i>FY 02-03</i>
<i>Hearing Expenses</i> (timesheet based/direct charges): Expenses (personnel, operating and fixed asset charges) relating to staff assigned to Hearing Examiner's Office ( <i>Note:</i> Board-only delegates matter to Hearing Examiner's Office if hearing cannot be scheduled in connection with regular Board meeting)	\$73 (.04%)	\$2,000 (.40%)
<i>Departmental Services</i> (timesheet based): Charges for centralized support services provided by Department offices (for example, Secretary's Office, Chief Counsel, Press Office, Legislative Liaison, Human Resources, Management Information Services, BFO)	\$8,908 (4.67%)	\$22,000 (4.36%)
<i>Board Administration</i> (timesheet based/direct charges): Expenses (personnel, operating and fixed asset charges) relating to Board administrative staff and direct Board expenses	\$82,736 (43.41%)	\$158,500 (31.39%)
<i>Public Information</i> (timesheet based/direct charges): Expenses (personnel, operating and fixed asset charges) relating to staff involved in preparation of newsletters, announcements of disciplinary actions and informational brochures		\$500 (.10%)
<i>Legislative and Regulatory Analysis</i> (timesheet based): Expenses (personnel, operating and fixed asset charges) relating to legal review of regulatory and policy initiatives	\$464 (.24%)	\$2,000 (.40%)

<i>Cost Center/Description</i>	<i>FY 95-96</i>	<i>FY 02-03</i>
<i>Legal Office</i> (timesheet based/direct charges): Expenses (personnel, operating and fixed asset charges) relating to Board counsel, Board prosecutors, Complaints Office and support staff and expert consultants	\$36,360 (19.08%)	\$175,000 (34.65%)

As reflected in the previous chart, the most significant increases in the Board's expenses involve the legal and law enforcement areas. These amounts reflect substantial growth in complaint and disciplinary activity relating to the Board. From 1990—1996, the BPOA received 231 complaints alleging violations of either the Real Estate Appraisers Certification Act (REACA) (63 P. S. §§ 457.1—457.19) or the Assessors Certification Act (ACA) (63 P. S. §§ 458.1—458.16). During this period, the Board imposed seven disciplinary sanctions. From 1997—2001, the BPOA received 607 complaints regarding alleged violations of the REACA or the ACA, while the Board imposed 125 disciplinary sanctions. Whereas many of the complaints in the early years involved jurisdictional matters, a sizeable number of the more recent complaints allege violations of professional appraisal practice standards by certificateholders. These latter complaints tend to involve complex disciplinary issues, often requiring more specialized investigation or review by expert consultants.

Another significant area of increase in the Board's expenses relates to its administrative operations. This increase is attributable in large part to the higher level of training required of the Board's administrative staff as compared to administrative staff assigned to other business boards within the BPOA.

*Fiscal Impact*

According to BFO projections, the final-form rulemaking will generate approximately \$621,000 in additional biennial renewal fee revenues as follows:

<i>Certification Class</i>	<i>No. of Renewing Certificateholders</i>		<i>Fee Increase</i>	<i>Additional Revenues</i>
General Appraiser	1,088	×	\$120	\$130,560
Residential Appraiser	1,700	×	\$120	\$204,000
Certified Pennsylvania Evaluator	512	×	\$120	\$61,440
Broker/Appraiser	1,000	×	\$225	\$225,000

*Paperwork Requirements*

The final-form rulemaking will require the Board to change its biennial renewal forms to reflect the new fees. The final-form rulemaking will not create additional paperwork requirements for certificateholders.

*Effective Date*

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin* and will initially apply to certificateholders who renew their certifications for the 2003-2005 biennial renewal period.

*Statutory Authority*

Section 5(6) of the REACA (63 P. S. § 457.5(6)) authorizes the Board to establish fees for its operations.

Section 9 of the REACA (63 P. S. § 457.9) requires the Board to establish fees by regulation and to ensure that revenues derived from fees, fines and civil penalties are adequate to cover the Board's expenditures over a biennial period. Section 9 of the ACA (63 P. S. § 458.9) authorizes the Board to establish renewal and other fees relating to certified Pennsylvania evaluators by regulation.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 4871, to IRRC and to the Chairper-

sons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the House Committees and the public. The Board did not receive comments from the Senate Committee.

On March 31, 2003, the Board submitted this final-form rulemaking to IRRC and the House and Senate Committees. Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 15, 2003, this final-form rulemaking was deemed approved by the House Committee. On May 7, 2003, this final-form rulemaking was deemed approved by the Senate Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 8, 2003, and approved the final-form rulemaking.

#### *Additional Information*

Persons who require additional information about the final-form rulemaking should submit inquiries to Michelle T. DeMerice, Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866, appraise@pados.dos.state.pa.us.

#### *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2

(2) The final-form rulemaking adopted by this order are necessary and appropriate for the administration of the REACA and the ACA.

#### *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending § 36.6 to read as set forth in Annex A.

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

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

GEORGE D. SINCLAIR,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 2561 (May 24, 2003).)*

**Fiscal Note:** Fiscal Note 16A-7013 remains valid for the final adoption of the subject regulation.

## Annex A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

#### Subchapter A. GENERAL PROVISIONS GENERAL PROVISIONS

#### § 36.6. Fees.

The following is the schedule of fees charged by the Board:

Certification of scores	\$25
Verification of certification or registration	\$15
<i>Certified Real Estate Appraisers</i>	
Application (nonreciprocity)	\$235
Application (reciprocity)	\$40
Temporary practice registration	\$30
Initial certification (if certified on or after 7/1 of odd-numbered years or on or before 6/30 of even-numbered years)	\$90
Initial certification (if certified between 7/1 of even-numbered years and 6/30 of odd-numbered years)	\$45
Biennial renewal	\$225
<i>Certified Broker/Appraisers</i>	
Application (for application period of 9/3/96 to 9/3/98)	\$40
Initial certification (if certified between 7/1/97 and 6/30/98)	\$90
Initial certification (if certified between 9/3/96 and 6/30/97 or if certified on or after 7/1/98, if the application for initial certification was submitted by 9/3/98)	\$45
Biennial renewal	\$225
<i>Certified Pennsylvania Evaluators</i>	
Application	\$55
Initial certification (if certified on or after 7/1 of odd-numbered years or on or before 6/30 of even-numbered years)	\$90
Initial certification (if certified between 7/1 of even-numbered years and 6/30 of odd-numbered years)	\$45
Biennial renewal	\$225
<i>Continuing Education Providers</i>	
Application for continuing education provider approval	\$85

[Pa.B. Doc. No. 03-980. Filed for public inspection May 23, 2003, 9:00 a.m.]

# Title 67—TRANSPORTATION

## DEPARTMENT OF TRANSPORTATION

### [67 PA. CODE CH. 177]

#### Emission Inspection Program

The Department of Transportation (Department), Bureau of Motor Vehicles (Bureau), adopts amendments to Chapter 177 (relating to emission inspection program) to read as set forth in Annex A by adding provisions to include alternative final exhaust emission standards recently developed by the Federal Environmental Protection Agency (EPA).

The inspection/maintenance (I/M) program, implemented under the authority of 75 Pa.C.S. §§ 4103, 4531, 4701, 4706, 4707, 4710, 6103 and 9104, is required by the Federal Clean Air Act (Clean Air Act), as amended by Pub. L. No. 101-52, 104 Stat. 2399—2712 (42 U.S.C.A. §§ 7401—26718) and Pub. L. No. 104-59, 109 Stat. 568 (1995) (known as the National Highway System Designation Act of 1995).

Proposed rulemaking is omitted under 75 Pa.C.S. § 4706 (relating to prohibition on expenditures for emission inspection program), which exempts this final-omitted rulemaking from the proposed rulemaking provisions of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), known as the Commonwealth Documents Law, the Regulatory Review Act (71 P. S. §§ 745.1—745.12) and 75 Pa.C.S. § 4710 (relating to Vehicle Emission System Inspection Program Advisory Committee), which provides for initial submission of final regulations relating to the Vehicle Emission Inspection Program to the Office of Attorney General for review as to form and legality and thereafter to the Independent Regulatory Review Commission (IRRC) and the designated committees of the House of Representatives and the Senate, in accordance with the Regulatory Review Act.

#### *Purpose of this Chapter*

The purpose of this chapter is to implement an emissions I/M program as required by the Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and the regulations promulgated thereunder, 40 CFR Parts 51 and 85 (relating to regulations for preparation, adoption and submittal of implementation plans; and control of air pollution from mobile sources).

#### *Purpose of the Final-Omitted Rulemaking*

The purpose of the final-omitted rulemaking is to include alternative final exhaust emission standards recently developed by the EPA. By memorandum dated August 16, 2002, the EPA provided alternative final exhaust emission standards for states to consider for use in I/M programs using the Acceleration Simulation Mode (ASM) Test. The alternative exhaust emission standards were generated in response to evaluations of the original final exhaust emission standards that suggested application of the original exhaust emission standards would result in false failures. Chapter 177, Appendix A, has been amended to include the alternative final exhaust emission standards.

#### *Significant Provisions of the Final-Omitted Rulemaking*

The significant amendments to this chapter have been amended to include the alternative final exhaust emission standards.

#### *Persons and Entities Affected*

The final-omitted rulemaking will affect the owners and operators of vehicles registered in the counties in this Commonwealth in which the I/M program uses the ASM test.

#### *Fiscal Impact*

The final-omitted rulemaking may result in savings to vehicle owners in the form of a lower false failure rate of vehicles subjected to the ASM test and subsequent avoidance of possibly unnecessary repairs and retesting. The Department cannot, however, measure with any precision what costs and savings may result.

#### *Regulatory Review*

Under 75 Pa.C.S. § 4710(d), on March 28, 2003, the Department submitted a copy of this final-omitted rulemaking to the Office of Attorney General. The final-omitted rulemaking was approved as to form and legality by the Office of Attorney General on March 31, 2003. The Department submitted a copy of this final-omitted rulemaking on April 9, 2003, to IRRC and to the Chairpersons of the House and Senate Transportation Committees and to the House and Senate Environmental Resources and Energy Committees for review under the Regulatory Review Act. This final-omitted rulemaking was deemed approved by the Committees on April 29, 2003, and was approved by IRRC on May 8, 2003.

In addition to the final-form rulemaking, the Committees were provided with a copy of a detailed Regulatory Analysis Form prepared by the agency. A copy of this material is available to the public upon request.

In preparing this final-form rulemaking, the Department has considered the comments received from the EPA, the public and individuals in the business of vehicle inspection and repair.

#### *Sunset Provisions*

The Department is not establishing a sunset date for this final-omitted rulemaking since the regulation is necessary to comply with requirements of Federal laws relating to control of vehicle emissions.

#### *Contact Person*

The contact person is Peter Gertz, Vehicle Inspection Division, 4th Floor, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104, pgertz@state.pa.us.

#### *Order*

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

(a) The regulations of the Department, 67 Pa. Code Chapter 177, are amended by amending Appendix A to read as set forth in Annex A, with ellipses referring to the existing text.

(b) The Secretary of the Department shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.

*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 2561 (May 24, 2003).)*

**Fiscal Note:** 18-383. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 177. EMISSION INSPECTION PROGRAM

APPENDIX A

Acceleration Simulation Mode: Pennsylvania Procedures, Standards, Equipment Specifications and Quality Control Requirements

§ 1. ASM Exhaust Emission Standards and Calculations.

(a) ASM Emissions Standards.

(1) ASM Start-Up Standards. The following standards shall be for ASM tests performed until notice by the Department that the standards in subsection (2)(i) or (2)(ii) will apply. The exhaust emission standards for the following model years are cross-referenced by the number in the column in (a)(3) as follows:

(A) Light Duty Vehicles

Model Years	Hydrocarbons Table § 1(a)(3)(I)	Carbon Monoxide Table § 1(a)(3)(II)	Oxides of Nitrogen Table § 1(a)(3)(III)
1996+ TIER 1	1	21	41
1991-1995	2	22	42
1983-1990	4	23	43
1981-1982	4	26	43
1980	4	26	48
1977-1979	11	30	48
1975-1976	11	30	50

(B) Light Duty Trucks 1 (less than 6000 pounds GVWR).

Model Years	Hydrocarbons Table § 1(a)(3)(I)	Carbon Monoxide Table § 1(a)(3)(II)	Oxides of Nitrogen Table § 1(a)(3)(III)
1996+ TIER 1 (<3750 LVW)	1	21	41
(>3750 LVW)	2	22	42
1991-1995	5	26	43
1988-1990	7	29	44
1984-1987	7	29	49
1979-1983	11	31	49
1975-1978	12	32	50

(C) Light Duty Trucks 2 (greater than 6000 pounds GVWR).

Model Years	Hydrocarbons Table § 1(a)(3)(I)	Carbon Monoxide Table § 1(a)(3)(II)	Oxides of Nitrogen Table § 1(a)(3)(III)
1996+ TIER 1 (≤5750 LVW)	2	22	42
(>5750 LVW)	5	26	45
1991-1995	5	26	46
1988-1990	7	29	47
1984-1987	7	29	49
1979-1983	11	31	49
1975-1978	12	32	50

(2) ASM final standards.

(i) ASM equivalent test weight methodology. Upon notice by the Department in the *Pennsylvania Bulletin*, the following exhaust emission standards will be used for ASM tests performed. The exhaust emissions standards for the following model years are cross-referenced by the number in the column in subsection (a)(3) as follows:

(A) Light Duty Vehicles.

Model Years	Hydrocarbons Table § 1(a)(3)(I)	Carbon Monoxide Table § 1(a)(3)(II)	Oxides of Nitrogen Table § 1(a)(3)(III)
1996+ TIER 1	1	21	41
1983-1995	1	21	41
1981-1982	1	23	41
1980	1	23	45
1977-1979	6	27	45
1975-1976	6	27	48

(B) Light Duty Trucks 1 (less than 6000 pounds GVWR).

Model Years	Hydrocarbons Table § 1(a)(3)(I)	Carbon Monoxide Table § 1(a)(3)(II)	Oxides of Nitrogen Table § 1(a)(3)(III)
1996+ TIER 1 (≤3750 LVW)	1	21	41
(>3750 LVW)	1	21	41
1988-1995	3	24	42
1984-1987	3	24	46
1979-1983	8	28	46
1975-1978	9	29	48

(C) Light Duty Trucks 2 (greater than 6000 pounds GVWR).

Model Years	Hydrocarbons Table § 1(a)(3)(I)	Carbon Monoxide Table § 1(a)(3)(II)	Oxides of Nitrogen Table § 1(a)(3)(III)
1996+ TIER 1 (≤5750 LVW)	1	21	41
(>5750 LVW)	1	21	41
1988-1995	3	24	44
1984-1987	3	24	46
1979-1983	8	28	46
1975-1978	9	29	48

(ii) ASM vehicle engine displacement methodology. Upon notice by the Department in the *Pennsylvania Bulletin*, the Exhaust Emission Standards used for ASM tests will be performed in accordance with the following tables:

LDV Exhaust Emission Standards for the ASM 5015 test

	HC	CO	NOx
5015 LDV MY 1980 and newer	275 liters* ppm		
5015 LDV MY 1980 to 1982		1.3 liters*%	
5015 LDV MY 1983 and newer		1.1 liters*%	
5015 LDV MY 1980 only			8,500 liters* ppm
5015 LDV MY 1981 and newer			3,600 liters* ppm

**LDT Exhaust Emission Standards for the ASM 5015 test**

	<i>HC</i>	<i>CO</i>	<i>NOx</i>	<i>HC</i>	<i>CO</i>	<i>NOx</i>
5015 LDT MY 1980 to 1983	1,140 liters* ppm			5015 LDT MY 1988 to 1995		7,380 liters* ppm
5015 LDT MY 1984 to 1995	537 liters* ppm			5015 LDT MY 1996 and newer		6,150 liters* ppm
5015 LDT MY 1996 to 1998	275 liters* ppm			All 5015 cut points are applied by the following method: The vehicle's engine displacement in liters multiplied by the exhaust constituent (HC, CO, or NOx) levels in concentration (HC and NOx in ppm; CO in % ten second average values). This liter*concentration value is compared to the appropriate cut point and if the value is above the cut point the vehicle is considered to fail the test.		
5015 LDT MY 1980 to 1983		9.7 liters*%		(3) ASM 2525 and 5015 concentration tables follow (although both 2525 and 5015 standards are shown, the Pennsylvania test consists only of the 5015 mode):		
5015 LDT MY 1984 to 1995		5.4 liters*%		* * * * *		
5015 LDT MY 1996 and newer		1.1 liters*%		[Pa.B. Doc. No. 03-981. Filed for public inspection May 23, 2003, 9:00 a.m.]		
5015 LDT MY 1980 to 1987			14,145 liters*ppm			