

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### [4 PA. CODE CH. 65]

#### State Art Commission

The Department of General Services (Department) acting under sections 506 and 2402.2 of The Administrative Code of 1929 (71 P. S. §§ 186 and 631.1), section 6(e) of the Sunset Act (71 P. S. § 1795.6(e)) and section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201), known as the Commonwealth Documents Law (CDL), rescinds Chapter 65 (relating to State Art Commission).

#### *Purpose*

The State Art Commission (Commission) was terminated by section 6(e) of the Sunset Act (expired). The chapter set out the criteria the Commission used in reviewing construction projects. It further set out those submittals which must be made to the Commission. Since the Commission was sunsetted it no longer meets.

Notice of proposed rulemaking was published at 32 Pa. B. 5278 (October 26, 2002). Publication was followed by a 30-day public comment period during which the Department did not receive any comments. The Senate State Government Committee, the House State Government Committee and the Independent Regulatory Review Commission (IRRC) also had no comments.

#### *Fiscal Impact*

There will be no fiscal impact. With the sunset of the Commission in 1987, this chapter is obsolete.

#### *Paperwork Requirements*

The final-form rulemaking will impose no new or different paperwork requirements.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 9, 2002, the Department submitted a copy of this proposed rulemaking to IRRC and the Chairpersons of the House and Senate Committees.

The final-form rulemaking was included on the agenda for consideration at the IRRC meeting on November 30, 2004. Under the Regulatory Review Act, the final-form rulemaking was deemed approved by the House and Senate Committees on November 29, 2004. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective February 9, 2005.

#### *Effective Date*

This final-form rulemaking is effective as of publication in the *Pennsylvania Bulletin*.

#### *Additional Information*

Individuals who need information about the final-form rulemaking should contact Mary Benefield Seiverling, Senior Counsel, Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125.

#### *Findings*

The Department finds that:

(1) Public notice of intention to promulgate administrative regulations amended by this order has been given under sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking adopted by this order is necessary and appropriate for the performance of the Department's duties under The Administrative Code of 1929.

#### *Order*

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

(a) The regulations of the Department, 4 Pa. Code Chapter 65, are amended by deleting §§ 65.1—65.6 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form 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*.

DONALD T. CUNNINGHAM, JR.,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 35 Pa.B. 1487 (February 26, 2005).)*

**Fiscal Note:** 8-2. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 4. ADMINISTRATION

#### PART III. DEPARTMENT OF GENERAL SERVICES

#### Subpart C. CONSTRUCTION AND PROCUREMENT

#### ARTICLE II. CONSTRUCTION

#### CHAPTER 65. (Reserved)

#### §§ 65.1—65.6. (Reserved).

[Pa.B. Doc. No. 05-443. Filed for public inspection March 11, 2005, 9:00 a.m.]

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

#### [25 PA. CODE CHAPTER 86]

#### Coal Mining

The Environmental Quality Board (Board) by this order amends Chapter 86 (relating to surface and underground mining; general) to read as set forth in Annex A. The amendment addresses the extraction of coal incidental to government-financed construction projects and government-financed reclamation projects.

This order was adopted by the Board at its meeting of June 15, 2004.

#### A. *Effective Date*

This amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. *Contact Persons*

For further information contact Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or William Shakely, Assistant Chief Counsel, Office of Chief Council, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-1956. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) website at: [www.dep.state.pa.us](http://www.dep.state.pa.us), direct link: Participate.

#### C. *Statutory Authority*

This final-form rulemaking is made under the authority of section 4.2 of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. § 1396.4b(a)) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510—20).

#### D. *Background of the Final-Form Rulemaking*

The Department proposed this amendment following a request from the Department of Transportation (PENNDOT). PENNDOT asked the Department to amend Chapter 86 to exclude coal extraction on government-financed highway construction projects from regulation under the surface coal mining regulations. Prior to developing the proposed amendment, the Department reviewed the applicable provisions of the SMCRA and the Federal regulations on coal mining. The definition of "surface mining activities" in section 3 of the SMCRA (52 P. S. § 1396.3) states that "surface mining activities" do not include the "extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board." The Federal Office of Surface Mining, Reclamation and Enforcement (OSM) regulations in 30 CFR Part 707 (relating to exemption for coal extraction incidental to government-financed highway or other construction) exempt from regulation coal extraction incidental to government-financed highway or other construction. On the basis of these provisions, the Department agreed that coal extraction incidental to government-financed highway construction should not be regulated as surface coal mining and developed the proposed § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects) published at 32 Pa.B. 2217 (May 4, 2002). The proposed amendment to § 86.6 also restated the SMCRA exemption for coal extraction incidental to government-financed reclamation. The Department included government-financed reclamation in § 86.6 so that it more closely parallels the exemptions in section 3 of the SMCRA.

A 45-day public comment period was provided for the proposed rulemaking. Among the comments received was a suggestion to expand the exemption in § 86.6 to include coal extraction incidental to other types of government-financed construction, because 30 CFR Part 707 exempts those projects from regulation under the Federal act and regulations. The commentator noted that the statutory

basis for exempting other types of government-financed construction could be found in section 3 of the SMCRA, in the definition of "surface mining activities." The definition provides that surface mining activities do not include "Activities not considered to be surface mining as determined by the Office of Surface Mining, Reclamation and Enforcement and set forth in the Department regulations." See section 3 of SMCRA. The Department has revised the final-form rulemaking to exempt all coal extraction incidental to government-financed construction and reclamation projects from the requirements of the surface coal mining regulations.

While the extraction of coal as an incidental part of Federal, State or local government-financed construction and government-financed reclamation will no longer be subject to the requirements of Chapters 86—88 (relating to surface and underground coal mining; general; surface mining of coal; and anthracite coal), any potential environmental impacts from these activities are still regulated under State law and regulations. Federally funded highway construction, which includes virtually all PENNDOT highway construction projects, receives additional scrutiny under the National Environmental Policy Act of 1970 (NEPA) (42 U.S.C.A. § 4321—4370(e)), and the Commonwealth's Act 120.

The NEPA procedural requirements are very thorough and can take as long as 2 to 3 years to complete for a highway project. In general, this process requires notice to all potentially affected parties, a preliminary inter-agency "scoping" meeting to identify areas of concern, an environmental analysis, a determination of whether the project will have any significant environmental impacts, notice and opportunity to comment on that determination and consideration of the agency responses to those comments.

In addition, whether the project is partially funded by Federal tax dollars or is 100% State funded, PENNDOT must comply with Act 120. That act requires PENNDOT to "consult with appropriate officials as designated by the chief administrative officer of the... Department of Environmental [Protection] ... regarding the environmental hazards ... conservation ... recreation and social considerations that may arise by reason of the location, design, construction or reconstruction of any transportation or air facility" (71 P. S. § 512(a)(15)).

Act 120 also requires PENNDOT to follow the Federally mandated hearing procedures under Titles 23 and 49 of the *United States Code* (relating to highways; and transportation) in acquiring a new right-of-way even if no Federal funds are involved. At these hearings, PENNDOT must consider the impact of the proposed project on erosion, wildlife, the general ecology, noise, air and water pollution, and historic landmarks. PENNDOT may not proceed with the project unless it makes a written finding in the *Pennsylvania Bulletin* that there is no significant impact on the listed environmental elements or that there is no prudent alternative and steps have been taken to minimize any adverse impact.

Given the procedural requirements under the NEPA and Act 120, as well as new requirements in § 86.6(a)(4) and (5) and (c)(4) and (5) that are discussed in Section E of this order, the Department believes that it will receive adequate notice and opportunity to comment on any highway project that may impact the environmental resources of a particular area. In turn, the Department will recommend ways to protect those resources. Moreover, Federal, State and local government-financed construction projects are not exempt from the Department's

other permitting requirements and performance standards such as those in Chapters 91—96, 102 and 105. Specific provisions have been included in this final-form rulemaking to ensure that appropriate standards will be in place during the course of the project.

The proposed regulatory change was reviewed and discussed at the October 25 and November 19, 2001, Mining and Reclamation Advisory Board (MRAB) meetings. Several MRAB members noted that § 86.6 would allow coal extraction incidental to government-financed construction projects to take place in areas that have been designated unsuitable for coal mining. They expressed concern that the unique resources, particularly water resources, which led to areas being designated unsuitable for mining, will not be adequately protected. The Department agreed to establish internal notification procedures to protect the unique resources in areas designated unsuitable for mining. This was accomplished by creating a GIS layer in eFACTS Spatial, which is a mapping application that displays Department permitting information on an Internet map server. On January 3, 2002, the MRAB supported the proposed rule. This final-form rulemaking was reviewed by the MRAB on January 9 and October 23, 2003.

Section 86.6 will provide for the incidental extraction of coal on government-financed construction and reclamation projects and ensure that all environmental concerns are addressed.

#### *E. Summary of Changes to the Proposed Rulemaking*

The Board has revised proposed § 86.6, as published at 32 Pa.B. 2217, by including coal extraction incidental to other types of government-financed construction among the exemptions to the coal mining regulations provided by this section. The § 86.6 exemption for other types of government-financed construction is based on the definition of “surface mining activities” in section 3 of the SMCRA, which states that surface mining activities shall not include “Activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations.” The Federal regulations in 30 CFR 707.1(b) (relating to scope) exempt the extraction of coal incidental to government-financed construction from the Federal act and regulations.

The Board has also inserted several new provisions. New paragraphs (1), (5) and (6) were added to subsection (a) to provide opportunity for Department comment on proposed projects and require that the construction or reclamation be performed under bond, contract and specifications consistent with the environmental statutes applicable to those projects and requires Department approval when potential adverse environmental impacts may occur. New paragraph (4) added to subsection (c) requires that a person whose project will affect an area designated unsuitable for mining must maintain on site a copy of the detailed report that was developed by the Department during the designation process. A new subsection (d) affirmatively states that activities exempted from regulation as coal mining by this section must nevertheless comply with other, applicable regulations of the Department.

#### *F. Summary of Comments and Responses on the Proposed Rulemaking*

The Board adopted the proposed amendment at its meeting of March 19, 2002. The proposed amendment was published at 32 Pa.B. 2217, with a 45-day public comment period. The Game Commission and Fish and

Boat Commission, the Pennsylvania Coal Association and the Independent Regulatory Review Commission (IRRC) submitted comments. Following is a discussion of their comments and any resulting changes in the final-form rulemaking.

Two of the commentators expressed concern that the proposed rulemaking would weaken environmental protections currently placed on highway projects in the coal mining areas. They noted that highway construction projects involving cut and fill are very similar to linear surface mining operations. Both operations involve clearing the land, removing and storing topsoil and excavating and storing rock material. However, one critical difference is that in mining the permit includes plans for handling toxic and acid-producing rock strata and the affected area is reclaimed to its approximate original contour. Conversely, in the majority of highway projects open cuts remain, exposing toxic strata to weathering, and fills are constructed with little regard to special handling of toxic spoils. The commentators recommended the Board oppose this regulation until these concerns are adequately addressed.

As explained in the preamble to the proposed rulemaking and in Section D of this order, the Board believes that the Department, natural resource agencies and other interested parties have adequate opportunity to provide PENNDOT with information on environmental concerns, including the handling of toxic and acid-producing overburden, on projects under the requirements of the NEPA and Act 120. To address any lingering concerns, the Board has amended § 86.6 by inserting several new provisions. The construction or reclamation must be performed under a bond, contract and specifications consistent with the acts and regulations and be approved by the Department. For any government-financed construction or reclamation project that will extract more than 250 tons of coal or affect more than 2 acres in an area designated unsuitable for mining, the person conducting the project shall maintain onsite a copy of the Department’s detailed report on the area designated unsuitable for mining. Additionally, the Board has inserted a new subsection that requires government-financed construction and government-financed reclamation projects to comply with applicable Department water quality, erosion and sediment control and dam safety regulations.

One commentator suggested the proposed rulemaking include other types of government-financed construction beyond highway construction and reclamation. The commentator noted that exclusion (4) in the SMCRA definition of “surface mining activities” excludes activities not considered to be surface mining by the OSM provided those activities are set forth in Department regulations. The commentator argued that the SMCRA uses the words “considered to be” instead of “defined as” and defers to OSM’s “determination” on these activities; therefore, the Legislature intended to provide flexibility and to allow the Board to adopt regulations consistent with the Federal regulatory scheme.

The Board, upon further consideration of the language in section 3 of the SMCRA, agrees that these projects are not properly regulated as traditional surface mining. The Board interprets exclusion (4) to cover those activities that the OSM has determined are not subject to regulation as surface mining. The Federal Surface Mining Control and Reclamation Act and regulations specifically exempt the incidental removal of coal in government-financed highway and other construction projects from the requirements of the Federal act and regulations.

Another commentator had two comments on the proposed rule. The first one questioned why the rule did not include the exemption for other types of government-financed construction if the Federal regulations exempt those activities.

The proposed rulemaking was developed in response to a specific request from PENNDOT. It was based on exclusion (2) in the SMCRA definition of "surface mining activities," which deals solely with coal extraction incidental to government-financed highway construction. The Department has revised the regulation to exempt coal extraction incidental to government-financed construction from its coal mining regulations based on exclusion (4) in the SMCRA definition of "surface mining activities."

Second, the commentator suggested that the proposed rulemaking include references to the water quality and environmental protection regulations that will still apply to government-financed projects. The Board agrees and has inserted a new subsection (d) requiring these projects to comply with the appropriate Department regulations. The new subsection also identifies specific water resources chapters that typically apply to earth disturbance activities.

#### G. *Benefits, Costs and Compliance*

Government entities located in this Commonwealth's coal fields that are proposing construction projects or reclamation projects will benefit from the addition of § 86.6. These entities will be able to avoid additional requirements associated with complying with the coal mining regulations for nonmining activities. Furthermore, in situations where a government-financed construction project or reclamation project involving coal removal will affect an area designated unsuitable for mining, the designation will not automatically prohibit excavation or removal of coal or coal refuse. The Department and Commonwealth may also benefit through additional reclamation of abandoned mine lands if government-financed reclamation contracts involving the necessary and incidental removal of coal and coal refuse can occur in areas designated unsuitable for mining.

#### *Compliance Costs*

The change will impose no additional compliance costs on the coal mining industry, government entities or the public.

#### *Compliance Assistance Plan*

The Department will provide written notification of this rulemaking to PENNDOT, the Turnpike Commission and local government associations such as the Pennsylvania State Association of Township Supervisors and the County Commissioners Association of Pennsylvania.

#### *Paperwork Requirements*

This final-form rulemaking will not result in the need for additional forms, reports or other paperwork.

#### H. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 2002, the Department submitted a copy of the proposed rulemaking, published at 32 Pa.B. 2217, to IRRC and the Chairpersons of the

Senate and House Environmental Resources and Energy 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 all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 28, 2004, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

#### J. *Findings of the Board*

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 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed amendment published at 32 Pa.B. 2217.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

#### K. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 86, are amended by adding § 86.6 to read as set forth in Annex A.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

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

KATHLEEN A. MCGINTY,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 4528 (August 14, 2005).)*

**Fiscal Note:** 7-376. No fiscal impact; (1) General Operations; (2) Implementing Year 2003-04 is \$4,000; (3) 1st Succeeding Year 2004-05 is \$4,000; 2nd Succeeding Year 2005-06 is \$4,000; 3rd Succeeding Year is \$4,000; 4th Succeeding Year is \$4,000; 5th Succeeding Year is \$4,000; (4) 2002-03 Program—\$2,973,000; 2001-02 Program—\$1,390,00; 2000-01 Program—\$1,524,000; (8) recommends

adoption. There will be minimal savings to State government to the extent that it will be exempt from permitting requirements.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE I. LAND RESOURCES**

**CHAPTER 86. SURFACE AND UNDERGROUND COAL**

**MINING: GENERAL**

**Subchapter A. GENERAL PROVISIONS**

**§ 86.6. Extraction of coal incidental to government-financed construction or government-financed reclamation projects.**

(a) Extraction of coal incidental to government-financed construction or government-financed reclamation projects is exempt from the permitting requirements of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a) and this chapter as it relates to surface mining activities and operations, and Chapters 87 and 88 (relating to surface mining of coal; and anthracite coal) if the following conditions are met:

(1) During the project site selection process and prior to development of final construction plans or reclamation plans for projects located within coal bearing regions, the government entity financing the construction or reclamation has provided the Department with an opportunity to provide comments on the potential environmental impacts of the project.

(2) The extraction of coal is necessary to enable the construction or reclamation to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other similar construction, or within the boundaries of the area directly affected by other types of government-financed construction or government-financed reclamation, may be considered incidental to that construction or reclamation.

(3) The construction or reclamation is funded by a Federal, Commonwealth, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances the construction or reclamation.

(4) The construction or reclamation is funded 50% or more by funds appropriated from the government unit's budget or obtained from general revenue bonds. Funding at less than 50% may qualify if the construction is undertaken as a Department-approved reclamation contract or project.

(5) The construction or reclamation is performed under a bond, contract and specifications that substantially provide for and require protection of the environment, reclamation of the affected area, and handling of excavated materials in a manner consistent with the acts and regulations implementing the acts.

(6) The Department has approved the standards and specifications for protection of the environment that will apply to the project when potential adverse environmental impacts have been identified.

(b) Construction funded through government financing agency guarantees, insurance, loans, funds obtained

through industrial revenue bonds or their equivalent or in-kind payments do not qualify as government-financed construction.

(c) A person extracting coal incidental to government-financed construction or government-financed reclamation who extracts more than 250 tons of coal or affects more than 2 acres shall maintain on the site of the extraction operation and make available for inspection the following documents:

(1) A written description of the construction or reclamation project.

(2) A map showing the exact location of the construction or reclamation, right-of-way or the boundaries of the area which will be directly affected by the construction or reclamation.

(3) A statement identifying the government agency that is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

(4) When the area delineated in paragraph (2) is wholly or partially within an area designated unsuitable for mining by the EQB under § 86.130 (relating to areas designated as unsuitable for mining), a copy of the detailed report required by § 86.124(e) (relating to procedures: initial processing, recordkeeping and notification requirements).

(d) Government-financed construction projects and government-financed reclamation must comply with Chapters 91—96, 102 and 105.

[Pa.B. Doc. No. 05-444. Filed for public inspection March 11, 2005, 9:00 a.m.]

**Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS**

**STATE BOARD OF FUNERAL DIRECTORS**

**[49 PA. CODE CH. 13]**

**Limited License**

The State Board of Funeral Directors (Board) amends §§ 13.1 and 13.12 (relating to definitions; and fees) and adds § 13.77 (relating to limited license).

*Description and Need for the Amendment*

The act of June 22, 2000 (P. L. 376, No. 48) authorized the Board to enter into an agreement with the appropriate licensing authority of any other state to issue limited licenses to funeral directors licensed in that state, so long as the other state would extend similar privileges to funeral directors licensed in this Commonwealth. Acting under a limited license, an out-of-State funeral director may enter this Commonwealth for the purpose of removing, transporting and burying dead human bodies and directing funerals. A limited license does not authorize the out-of-State funeral director to maintain an establishment or to hold himself out as a funeral director in this Commonwealth. This final-form rulemaking implements limited licensure in this Commonwealth for out-of-State funeral directors.

*Summary of Comments and Responses to the Proposed Rulemaking*

The Board published notice of proposed rulemaking at 34 Pa.B. 1961 (April 10, 2004) with a 30-day public comment period. The Board did not receive any comments from the public. The Board received a single comment from the House Professional Licensure Committee (HPLC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1—745.12). The Board did not receive comments from the Independent Regulatory Review Commission (IRRC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of their review of proposed rulemaking under the Regulatory Review Act.

Section 9(c) of the Funeral Director Law (act) (63 P.S. § 479.9(c)) requires that any limited license agreement entered into by the Board must include a provision that that “any disciplinary action [taken against the holder of a limited license] shall be reported to the corresponding licensing authority [of the limited license holder’s home state].” Section 13.77(d) reads that the Board “will” report to the reciprocal state any disciplinary action taken against the holder of a limited license. The HPLC commented that because this provision imposes a duty upon the Board, the term “shall” should be used instead of “will.” In drafting this proposed rulemaking, the Board looked to section 6.8(c) of the *Pennsylvania Code and Bulletin Style Manual* of the Legislative Reference Bureau that directs agencies to use “will” when the agency pledges to act and “shall” when anyone else has a duty to act. Through this rulemaking, the Board pledges to take action, in addition to having the existing statutory duty to do so. Therefore, the Board has retained the language as proposed.

*Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*Effective date*

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

*Statutory Authority*

The final rulemaking is authorized under sections 9(c) and 16(a) of the Funeral Director Law (63 P.S. §§ 479.9(c) and 479.16(a)).

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 30, 2004, the Board submitted a copy of the notice of proposed rulemaking published at 34 Pa.B. 1961, to IRRC and the HPLC and the 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 from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 17, 2004, the final-form rulemaking was approved by the HPLC. On February 9, 2005, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective February 9, 2005.

*Additional Information*

Persons who require additional information about the final-form rulemaking should submit inquiries to Michelle T. Smey, Administrator, State Board of Funeral Directors, by mail to P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3397 or st-funeral@state.pa.us.

*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 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

*Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 13, are amended by amending §§ 13.1 and 13.12 and by adding § 13.77 to read as set forth at 34 Pa.B. 1961.

(b) The Board shall submit this order and 34 Pa.B. 1961 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 34 Pa.B. 1961 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*.

JANICE H. MANNAL, FD,  
Chairperson

*(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 35 Pa.B. 1487 (February 26, 2005).)*

**Fiscal Note:** Fiscal Note 16A-4810 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-445. Filed for public inspection March 11, 2005, 9:00 a.m.]