

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

### Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking corrects a minor discrepancy in the description of the slow, no wake zone on the Beaver River in Beaver County and removes a 10 horsepower restriction at the former Connoquenessing Creek Dam in Beaver County. The proposed rulemaking also establishes a 45 mph speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day on Harveys Lake in Luzerne County.

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendments to §§ 111.4 and 111.40 (relating to Beaver County; and Luzerne County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

#### E. *Summary of Proposals*

(1) *Section 111.4.* A review of the Commission's regulations uncovered a minor discrepancy in the description of the special regulation for the Beaver River. The section establishes a slow no wake zone for a length of 2 miles, but the section also references River Mile 0.0 and River Mile 2.3, a distance of 2.3 miles. The proposed amendments correct this discrepancy to clarify that the slow no wake zone extends for 2.3 miles.

The Connoquenessing Creek Dam was a wicket dam located near Ellwood City. The dam was originally built by the Country Club Colony in 1942 to provide water for its golf course. It was made of sheet steel that could be raised to make a small pool about 3 feet deep. In its early life, the pool was used by locals for waterskiing under very strict regulations. These regulations were removed in the mid-1980s, and a 10 horsepower restriction was applied to allow limited use. However, the permit for this

dam issued by the Department of Environmental Protection specifically prohibited the operation of motorboats on the impoundment. As a result, Commission regulations allowing waterskiing and motorboat operations were in conflict with this permit.

Currently, the dam no longer exists as an operational structure. If the regulation is removed, the creek will revert to general unlimited horsepower, but because the unimpounded depth of the river is insufficient to support power boats, the amendment will have no impact on current or potential motor boating activities. Without the dam creating an impoundment, there is no reason to retain the current 10 horsepower restriction.

The Commission proposes that § 111.4 be amended to read as set forth in Annex A.

(2) *Section 111.40.* The Commission received a petition from the Harveys Lake Protective Association to amend its regulations to establish a 45 mph speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day. The Commission reviewed the petition to ensure that it met the requirements of § 51.6 (relating to petitions or requests for regulations) and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, the petitioner was afforded an opportunity to make a presentation at a Commission meeting. The Commission accepted the petition for further review and directed staff to prepare the appropriate report and recommendations for further Commission consideration.

At the October 2004 Commission meeting, the Commission granted staff an additional period of 90 days to gather information regarding the use of radar to enforce speed limits on Commonwealth waters. Commission staff therefore polled other states and found that relatively few states use radar extensively. The states that do, Maryland, Florida and Missouri, primarily use radar on waters with narrow channels or rivers where the boat traffic is relatively constrained. All admit to the limitations for use of radar on open waters with heavy boat traffic.

A speed limit on Harveys Lake may be difficult to enforce using radar. Nonetheless, speed limits often act as a social and psychological deterrent and thus may have some value. Accordingly, the Commission decided to seek public comments and approved the publication of a notice of proposed rulemaking containing the amendments to read as set forth in Annex A.

#### F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

#### G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

#### H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
Executive Director

**Fiscal Note:** 48A-165. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 111. SPECIAL REGULATIONS  
COUNTIES**

**§ 111.4. Beaver County.**

(a) *Beaver River.* Boats are limited to slow, no wake speed from the mouth [ **of the Beaver River (Mile 0.0) to a point 2 miles upstream (Mile 2.3) upstream to Mile 2.3.** ]

(b) [ *Connequenessing Creek Dam.*

**(1) The use of motors in excess of 10 horsepower is prohibited.**

**(2) The speed of boats is restricted to slow, no wake speed upstream from a marked point 8/10 of a mile above the Route 65 bridge.**

(c) ] \* \* \*

[ (d) ](c) \* \* \*

**§ 111.40. Luzerne County.**

\* \* \* \* \*

(f) *Harveys Lake.*

**(1) The speed of boats is limited to 45 miles per hour from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day.**

**(2) The speed of boats is limited to slow, no wake speed between sunset and sunrise.**

[Pa.B. Doc. No. 05-762. Filed for public inspection April 22, 2005, 9:00 a.m.]

**[58 PA. CODE CHS. 61, 65 AND 69]  
Fishing**

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 65 and 69 (relating to seasons, sizes and creel limits; special fishing regulations; and fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to seasons, sizes and creel limits for various species on the Delaware River and River Estuary, the West Branch of the Delaware River in Wayne County and the Conowingo Reservoir. The proposed rulemaking also reduces the size limit and increases the number of walleye that may be taken from Lake Erie and its tributaries.

*A. Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

*B. Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

*C. Statutory Authority*

The proposed amendments to §§ 61.2, 61.4 and 69.12 (relating to Delaware River and River Estuary; Conowingo Reservoir; and seasons sizes and creel limits—Lake Erie and Lake Erie tributaries) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The proposed amendment to § 69.33 (relating to use of trap nets) is published under the statutory authority of section 2903 of the code (relating to boats and net licenses for boundary lakes).

*D. Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

*E. Summary of Proposals*

(1) *Sections 61.2 and 65.24.* Three jurisdictions, New York, New Jersey and the Commonwealth, work in a cooperative fashion in setting regulations for the Delaware River and the West Branch because both are border waters. Differences in the rulemaking processes, license years and fisheries within different reaches may result in regulations being out of synchrony for a year or so. However, the jurisdictions attempt to provide consistency for the anglers on these waterways. In the past few months, Commission staff have worked with fisheries personnel from New York and New Jersey regarding changes for 2006. These changes include:

*Northern Pike.* In the past few years, there have been occasional catches of northern pike from the Delaware River. These fish most likely originate from a few naturalized populations occurring in the drainage. Currently, regulations on northern pike do not exist. While the Commission does not intend to foster increases of this esocid in the river, it is likely that a low density northern pike population will persist requiring regulation. The Commission proposes a 24-inch minimum length limit, a two fish daily creel limit and a year-round season. This change will provide consistency with New Jersey's regulations. For simplification, the Commission proposes a river wide approach.

*Trout.* New York is seeking a 15-day extension to the trout season as part of refining trout regulations State-wide. Currently, the season on the main stem and the West Branch closes at midnight September 30 when a catch-and-release artificial-lures-only begins on the West Branch. The Commission proposes that the regular season be extended 15 days on both waterways. This will provide additional angling opportunity with harvest of one trout per day upstream of I-84, five per day downstream of I-84 and two per day on the West Branch.

*Black Bass (largemouth and smallmouth).* Currently a year-round season with a 12-inch minimum length limit and five bass per day applies to the Delaware River and Estuary. Regulation changes recently adopted and effective January 2005 by New Jersey for the Delaware River are similar to Commonwealth inland regulations and are more conservative with respect to harvest during the black bass spawning period. The Commission proposes that the New Jersey/Pennsylvania portion of the river (downstream of I-84) be regulated: (1) to impose a catch-and-immediate release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. the first Saturday after June 11; and (2) to provide an opportunity for competitive anglers to have "paper" or catch-measure- immediate release tournaments during the catch-and-release season. This change will provide consistency with New Jersey's regulations.

*Striped Bass.* The upstream point of tidal influence at Trenton Falls is used as the boundary for separating freshwater and marine regulations. Use of a more readily identifiable descriptor would be easier for both anglers and law enforcement personnel. The Commission proposes the Calhoun Street Bridge as a more recognizable limit. The extension is approximately 0.5 mile upstream. The Commission proposes that §§ 61.2 and 65.24 be amended to read as set forth in Annex A.

(2) *Section 61.4.* By virtue of an agreement between Maryland and the Commonwealth, the Commonwealth will establish regulations for the Youghiogheny River Lake and Maryland will do the same for the Conowingo Reservoir, being that waters from both occur in both jurisdictions. Maryland's fisheries staff recently notified Commission staff that the Commonwealth regulations for Conowingo Reservoir are not current with ones promulgated by Maryland over the past few years. Thus, the Commission proposes to amend § 61.4 to read as set forth in Annex A so that the Commonwealth's regulations are consistent with those of Maryland.

(3) *Sections 69.12 and 69.33.* Currently, an 18-inch minimum length and four per day creel limit are in effect for walleye taken from the Commonwealth waters of Lake Erie, Presque Isle Bay and peninsular waters. This regulation went into effect on January 1, 2004, and was designed to rebuild Lake Erie walleye populations, which had dipped to the lowest levels since the late 1970s. A relatively strong year class in 2001 was followed by a very poor year class in 2002, and protection was needed to ensure that walleye numbers did not reach dangerously low levels.

In 2003, the largest year class of walleyes in 2 decades was produced and those fish will be 2 years old and reaching average lengths of between 15 and 18 inches in 2006. This will result in a large number of walleyes that would not be harvestable under current regulations and

would be subject to increased mortality due to culling. The purpose of the current (2004) increased size and lowered creel limit was to promote the rehabilitation of the walleye fishery. Based on the strength of the 2001 and 2003 year classes and the sacrifices made by anglers in 2004 and 2005, that objective will have been met. Lowering the minimum length to 15 inches and restoring the creel limit to six per day will allow Pennsylvania Lake Erie anglers to participate fully in the improving walleye fishery. Therefore, the Commission proposes that §§ 69.12 and 69.33 be amended to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-166. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. Fishing**

**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.2. Delaware River and River Estuary.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the first dam in Easton, Pennsylvania:

<i>SPECIES</i>	<i>SEASONS</i>
TROUT	8 a.m., first Saturday after April 11 to midnight, [ <b>September 30</b> ] <b>October 15</b>

<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
North of I-84: 14 inches	North of I-84: 1 (combined species)
South of I-84: no minimum	South of I-84: 5 (combined species)
West Branch Delaware River: *12 inches	West Branch Delaware River: *2 (combined species)

\* \* \* \* \*

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
BASS Largemouth Smallmouth	<b>North of I-84:</b> Open year-round	12 inches	5 (combined species)
	<b>South of I-84:</b> <b>January 1 to midnight the day before the opening day of trout season in April and October 1 to midnight December 31</b>	<b>12 inches</b>	<b>5 (combined species)</b>
	<b>12:01 a.m. the opening day of trout season in April to 12:01 a.m. the first Saturday after June 11</b>	<b>NO HARVEST - Catch and immediate release only</b>	
	<b>12:01 a.m. the first Saturday after June 11 to midnight September 30</b>	<b>12 inches</b>	<b>5 (combined species)</b>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS	<b>Open year-round</b>	30 inches	2 (combined species)
	* * * * *		
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to <b>[ Trenton Falls ] Calhoun Street Bridge</b> : March 1 until March 31, and June 1 until December 31	28 inches	2
	From <b>[ Trenton Falls ] Calhoun Street Bridge</b> upstream: open year-round		
	* * * * *		
<b>PIKE Northern</b>	<b>Open year-round</b>	<b>24 inches</b>	<b>2</b>

**§ 61.4. Conowingo Reservoir.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Conowingo Reservoir, which includes the Susquehanna River from the Maryland State Line upstream to Holtwood Dam:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * * * *		
PIKE Northern	Open year-round	<b>[ 24 inches ] 30 inches</b>	2 (combined species)
	* * * * *		
STRIPED BASS and STRIPED BASS/WHITE BASS HYBRIDS	Open year-round	<b>[ 20 inches ] 18 inches</b>	2 (combined species), <b>only one of which may exceed 30 inches in length</b>
	* * * * *		
SUNFISH[ , YELLOW PERCH, CRAPPIES, ROCK BASS, CATFISH, SUCKERS, EELS, CARP ] (BLUE GILL and ROCK BASS)	Open year-round	No minimum	<b>[ No daily limit ] 15 (combined species)</b>
CRAPPIES	Open year-round	No minimum	15
CARP	Open year-round	No minimum	15
CHANNEL CATFISH	Open year-round	No minimum	5
SUCKERS	Open year-round	No minimum	30
EELS	Open year-round	6 inches	25
YELLOW PERCH	Open year-round	No minimum	No daily limit
BAIT FISH		No minimum	No daily limit
FISH BAIT, <b>except</b>			
MADTOMS			
MADTOMS		No minimum	35

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * * * *
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October [ 1 ] 16 until midnight of the Friday before opening day of trout season. During the no-harvest artificial lures only season:
		* * * * *

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.12. Seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries.**

\* \* \* \* \*

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
		* * * * *	
WALLEYE	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31	[ 18 inches ] 15 inches	[ 4 ] 6
		* * * * *	

**Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS**

**§ 69.33. Use of trap nets.**

\* \* \* \* \*

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
		* * * * *
Walleye ( <i>Stizostedion vitreum</i> )	[ 18 inches ] 15 inches	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in may to December 31. This season will close when the total allowable catch for walleye is taken.
		* * * * *

[Pa.B. Doc. No. 05-763. Filed for public inspection April 22, 2005, 9:00 a.m.]

**[58 PA. CODE CH. 75]  
Fishing; Endangered Species**

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking adds the eastern spadefoot toad and eastern pearlshell to the list of endangered species, moves the rough green snake from the list of threatened species to the list of endangered species and updates the scientific names of certain listed species.

**A. Effective Date**

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication of an order in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

**C. Statutory Authority**

The proposed amendments to §§ 75.1—75.3 (relating to endangered species; threatened species; and candidate species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

**D. Purpose and Background**

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to endangered, threatened and candidate species. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

### E. Summary of Proposals

(1) Eastern Spadefoot Toad (*Scaphiopus holbrookii*): The eastern spadefoot toad is an inhabitant of sandy soils along the floodplains of streams and rivers and in temporary depressions in agricultural fields. Reproduction occurs within 1 or 2 nights during and after heavy rain events, concentrated in vernal pools, rain-filled depressions in farm fields and along streams.

Two extant breeding populations of eastern spadefoot toads are currently reported in this Commonwealth in Northumberland and Bucks Counties. Several years of herpetological inventory in this Commonwealth have failed to turn up additional records of the toads. Reports of occasional encounters in Franklin County remain unconfirmed. According to Hulse (2003), there were historical unvouchered reports of spadefoot toads in the Delaware Valley from Philadelphia to Monroe County, but these areas have since been heavily developed and industrialized.

The species ranges from southern New England to the Florida Keys and west to eastern Louisiana, but this Commonwealth forms a break between the New England populations and Maryland. The status of the spadefoot toad in the states surrounding this Commonwealth is as follows: it is listed as endangered in Ohio, considered a species of concern in New York, "declining" in New Jersey, rare in West Virginia, threatened in Massachusetts and endangered in Connecticut.

Given that spadefoot toads occur in floodplains and valleys, they are threatened by habitat destruction from residential and industrial development, as well as habitat alteration and changes in water chemistry from agricultural practices. The water in which they breed can be temporary pools, which are not necessarily delineated wetlands. Thus, wetland regulations cannot be relied upon to provide sufficient protection for this species.

The Pennsylvania Biological Survey (PABS) Amphibian and Reptile Technical Committee recommended the eastern spadefoot toad be listed as a State endangered species in 2002. Because there are only two known occurrences of this species in this Commonwealth and current survey efforts have failed to find additional occurrences, the Commission proposes that the eastern spadefoot toad be added to the Pennsylvania list of endangered species.

(2) Eastern Pearlshell (*Margaritifera margaritifera*): The eastern pearlshell is a freshwater mussel found in cold water trout streams and small rivers in softwater (acidic) conditions that have low levels of calcium. This is the only species of Pennsylvania mussel that is distributed beyond the North American continent. It occurs in the northeast from this Commonwealth north to Canada, as well as northern Europe.

Historically in the early 1900s, the eastern pearlshell occurred in several tributaries of the Little Schuylkill River, including Locust Creek, Panther Creek, Indian Run and Cold Run. However, impacts to water quality from coal mining in the Little Schuylkill drainage have eradicated the eastern pearlshell from all but Locust Creek, based on Statewide surveys from 1991 to 1995. While the population in Locust Creek is locally abundant, based on a 2003 survey, two dams on the creek restrict the pearlshell to 7 miles of stream with little likelihood of dispersal.

Two large eastern pearlshell mussels were collected in the Delaware River in recent years as part of extensive mussel surveys in the Upper Delaware. This species is documented to live over 100 years, and these specimens

were determined to be extremely old. Based on the failure to find additional specimens during the ongoing collection efforts in the Upper Delaware or its tributaries, these specimens appear to represent a remnant population that is no longer reproducing.

The eastern pearlshell is listed as a species of concern in New York, Rhode Island and Connecticut, while it is threatened in Vermont. Additionally, the International Union for Conservation of Nature and Natural Resources has given it endangered status primarily due to threats to the European populations. Primary threats to the persistence of the eastern pearlshell are degradation of water quality, alteration of pH, eutrophication and temperature increases in the streams.

The PABS Bivalve Subcommittee of the Invertebrate Technical Committee recommended the eastern pearlshell be listed as a State endangered species in 2003. The restriction of a reproducing population of the eastern pearlshell mussel to only one small stream in this Commonwealth makes it very vulnerable to extirpation from activities that could adversely impact Locust Creek. Therefore, the Commission proposes that the eastern pearlshell be added to the Pennsylvania list of endangered species.

(3) Rough Green Snake (*Opheodrys aestivus*): The rough green snake is an arboreal species most often associated with wetland and riparian areas. The rough green snake is common in southern states from Texas to Florida, with this Commonwealth being the northern limit of its range. It has been known from only two isolated locations in this Commonwealth in Greene and Chester Counties. Thus, the Commission listed the rough green snake as a threatened species in 1979.

Several historic specimens or reports of this species are known from other counties. However, the only known locality of this species that has been confirmed as a reproducing population since 1939 is one in Chester County. The Greene County occurrence has not been seen since 1924 and is presumed extirpated. One additional sighting has been recorded from Lancaster County near the Maryland line, but the identification was not confirmed and no evidence of a population was documented. A Statewide Herpetological Atlas project failed to find any additional populations.

The rough green snake is a species of concern in Ohio and is rare in Delaware and West Virginia. This snake species is threatened primarily by habitat alteration from residential and industrial development.

The PABS Amphibian and Reptile Technical Committee recommended the rough green snake be listed as a State endangered species in 2002. Because there is only one known occurrence of this species in this Commonwealth and current survey efforts have failed to find additional occurrences, the Commission proposes that the rough green snake be moved from the list of Pennsylvania threatened species to the list of endangered species.

(4) Update Scientific Names: The Commission proposes that § 75.1 be amended to change the name of *Clemmys muhlenbergii* (bog turtle) to *Glyptemys muhlenbergii*. Recent molecular data and genetic studies have resulted in a split in the genus *Clemmys*. Based on morphological data, Holman and Fritz (2001) split *Clemmys* as follows: *Clemmys guttata* was retained as the only member of the genus; *Clemmys insculpta* and *C. muhlenbergii* were placed in the genus *Glyptemys*. An independent analysis by Feldman and Parham (2002) supported this conclusion. Therefore, the species formerly named *Clemmys muhlenbergii* is now assigned to *Glyptemys muhlenbergii*.

The name change has been adopted by NatureServe, an international biological conservation group that tracks rare and endangered species, as well as the Center for North American Herpetology (CNAH), the National herpetological group that tracks name changes.

The Commission also proposes that § 75.3 be amended to change the name of *Emydoidea blandingii* (Blandings Turtle) to *Emys blandingii*. Recent molecular and genetic studies (Feldman and Parham (2002)) have resulted in a rearrangement of several turtle groups, including the grouping of *Emydoidea blandingii* with *Emys orbicularis* in the genus *Emys*. The name change has been adopted by NatureServe and the CNAH.

The Commission further proposes that § 75.1 be amended to change the name of *Rana utricularia* (Coastal Plain Leopard Frog) to *Rana sphenoccephala*. Literature referring to this species from 1974 to 1992 used the old name *Rana utricularia* based on a morphological study by Pace (1974). However, in 1992 the International Commission on Zoological Nomenclature ruled that the name of this frog would return to *Rana sphenoccephala*, which it had been given in more recent references.

The Commission proposes that §§ 75.1–75.3 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DOUGLAS J. AUSTEN, Ph.D.,  
Executive Director

**Fiscal Note:** 48A-167. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 75. ENDANGERED SPECIES**

**§ 75.1. Endangered species.**

\* \* \* \* \*

(b) *Fish*. The following species are endangered:

\* \* \* \* \*

**(32) Eastern pearlshell mussel, *Margaritifera margaritifera*.**

(c) *Reptiles and amphibians*. The following species are endangered:

(1) Bog Turtle, [***Clemmys***] ***Glyptemys muhlenbergii***.

\* \* \* \* \*

(3) Coastal Plain Leopard Frog, *Rana* [***utricularia***] ***sphenoccephala***.

\* \* \* \* \*

**(7) Eastern Spadefoot Toad, *Scaphiopus holbrookii*.**

**(8) Rough Green Snake, *Opheodrys aestivus*.**

**§ 75.2. Threatened species.**

\* \* \* \* \*

(c) *Amphibians and reptiles*. The following species are threatened:

\* \* \* \* \*

**[ (3) Rough Green Snake, *Opheodrys aestivus*. ]**

**§ 75.3. Candidate species.**

\* \* \* \* \*

(c) *Amphibians and reptiles*.

(1) Blandings Turtle, [***Emydoidea***] ***Emys blandingii***.

\* \* \* \* \*

[Pa.B. Doc. No. 05-764. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE BOARD OF  
COSMETOLOGY**

**[49 PA. CODE CH. 7]**

**Biennial Renewal Fee Increase**

The State Board of Cosmetology (Board) proposes to amend § 7.2 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for all classes of licenses issued by the Board.

*Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning February 1, 2006.

*Statutory Authority*

The proposed rulemaking is authorized under section 16 of the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) (63 P. S. § 522). It requires the Board to fix fees by regulation for the biennial renewal of licenses and to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

*Background and Need for Amendment*

The Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 16 of Act 86, if the

revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Board must increase fees by regulation so that its projected revenues will meet or exceed projected expenditures.

The Board raises virtually all of its operating revenue (except application and services fees) through biennial renewal fees. The biennial license renewal fee is the most substantial revenue-generating fee of all the fees charged by the Board. The Board's current biennial license renewal fees for cosmetologists, manicurists, teachers, cosmetology shops and cosmetology schools were established by regulation in 1986, while the current biennial renewal fees for cosmeticians and cosmetician or manicurist shops were established by regulation in 1991.

At the Board's December 6, 2004, meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004 and projected revenue and expenses for FYs 2004-2005 through 2010-2011. The summary, presented in the following table, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 16 of Act 86. The BFO projected a deficit of \$286,531.06 in FY 2007-2008, a deficit of \$1,073,531.06 in FY 2008-2009, a deficit of \$1,662,531.06 in FY 2009-2010 and a deficit of \$2,606,531.06 in FY 2010-2011. Therefore, the BFO recommended that the Board raise fees to meet projected expenditures, in compliance with section 16 of Act 86.

2001-2002 beginning balance	\$1,718,075.05
FY 01-02 revenue	2,229,690.06
Prior year returned funds	146,300.49
FY 01-02 expenses	2,376,000.00
Remaining balance	1,718,065.60
2002-2003 beginning balance	1,718,065.60
FY 02-03 revenue	1,959,902.11
Prior year returned funds	0.00
FY 02-03 expenses	2,583,000.00
Remaining balance	1,094,967.71
2003-2004 beginning balance	1,094,967.71
FY 03-04 revenue	2,199,623.23
Prior year returned funds	0.00
FY 03-04 expenses	2,533,000.00
Remaining balance	761,590.94
2004-2005 beginning balance	761,590.94
FY 04-05 projected revenue	1,950,000.00
Prior year returned funds (estimated)	902,878.00
FY 04-05 projected expenses	2,569,000.00
Remaining balance	1,045,468.94
2005-2006 beginning balance	1,045,468.94
FY 05-06 projected revenue	2,230,000.00
FY 05-06 projected expenses	2,505,000.00
Remaining balance	770,468.94
2006-2007 beginning balance	770,468.94
FY 06-07 projected revenue	1,950,000.00
FY 06-07 projected expenses	2,580,000.00
Remaining balance	140,468.94
2007-2008 beginning balance	140,468.94
FY 07-08 projected revenue	2,230,000.00
FY 07-08 projected expenses	2,657,000.00
Remaining balance	(286,531.06)
2008-2009 beginning balance	(286,531.06)
FY 08-09 projected revenue	1,950,000.00
FY 08-09 projected expenses	2,737,000.00
Remaining balance	(1,073,531.06)

2009-2010 beginning balance	(1,073,531.06)
FY 09-10 projected revenue	2,230,000.00
FY 09-10 projected expenses	2,819,000.00
Remaining balance	(1,662,531.06)
2010-2011 beginning balance	(1,662,531.06)
FY 10-11 projected revenue	1,950,000.00
FY 10-11 projected expenses	2,904,000.00
Remaining balance	(2,616,531.06)

As the previous table indicates, the BFO estimates that at the close of FY 2007-2008, the Board's expenses will exceed its revenues by \$286,531.06. The BFO anticipates that in subsequent FYs, the deficit will increase proportionally. Without an increase, the projected deficit in FY 2010-2011 would be \$2,616,531.06.

The increases in the Board's biennial expenses occurred primarily in the area of investigative and inspection costs, attributable to increased numbers of complaints being filed and the accompanying increased number of investigations and enforcement actions (citations for minor violations under the act of July 2, 1993 (P. L. 345, No. 48)) initiated by inspectors and investigators on behalf of the Board. For example, investigative expenditures increased from \$808,769.05 in FY 2002-2003 to approximately \$977,912.05 in FY 2003-2004. Because investigative and inspection costs are largely driven by the number of complaints received and the number of inspections performed (a number dependent in part on the number of new applications filed with the Board), the Board has little control over these expenses.

There were also increases in Legal Office costs related to prosecuting and adjudicating many more cases than in prior years, which contribute to the need to raise biennial renewal fees. In FY 2003-2004, the Board imposed 632 disciplinary sanctions, which was significantly more than in any prior FY. The FY 2003-2004 figure is in comparison to 386 disciplinary sanctions imposed in FY 2002-2003, 370 in FY 2001-2002, 393 in FY 2000-2001 and 310 in FY 1999-2000. Additionally, the Board imposed more serious sanctions than in any prior year, 17 in FY 2003-2004, as opposed to 9 in FY 2002-2003, 11 in FY 2001-2002, 3 in FY 2000-2001 and 3 FY 1999-2000. Finally, the Board closed more cases in FY 2003-2004 than in any prior year, closing 962 cases as compared with 580 cases in FY 2002-2003, 675 in FY 2001-2002, 740 in FY 2000-2001 and 529 in FY 1999-2000. As of December 9, 2004, there were 395 cases currently open, as opposed to 220 cases open as of December 9, 2003.

The Board carefully reviewed several options in fee increases to ensure the most reasonable fee increase possible while keeping the Board out of a long run deficit. Additionally, in developing this proposed rulemaking, the Board reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage to the Commonwealth. The Board also determined that making fees uniform across comparable license classes would be more equitable and would promote ease of administration. Consequently, the Board made the renewal fees for all individual license classes equal, with the exception of cosmetology teacher licenses, as it did with the renewal fees for the various shop licenses.

*Description of Proposed Amendments*

Based upon the previous expense and revenue estimates provided to the Board, the Board proposes to amend its fee schedule in § 7.2(c) to increase the fee for biennial renewal of licenses for cosmeticians from \$21 to



\$35; for cosmetologists from \$23 to \$35; for cosmetology teachers from \$36 to \$55; for manicurists from \$21 to \$35; for cosmetician shops from \$25 to \$60; for cosmetology shops from \$41 to \$60; for manicurist shops from \$25 to \$60; and for cosmetology schools from \$66 to \$150.

The proposed rulemaking also deletes a reference in § 7.2 to a cosmetology manager's license, based on the amendments to Act 86 made by the section 3 of the act of June 29, 2002 (P. L. 645, No. 98) (63 P. S. § 510.4), which removed the requirement that a cosmetology shop owner employ a licensed manager if the owner does not manage his own shop.

*Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fee for all classes of Board licensees. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

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

*Sunset Date*

Act 86 requires that the Board monitor its revenue and expenses on an FY and biennial basis. 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 April 13, 2005, 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 Senate Consumer Protection and Professional Licensure Committee and the House 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, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Linda Dinger, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,  
*Chairperson*

**Fiscal Note:** 16A-4512. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 7. STATE BOARD OF COSMETOLOGY GENERAL PROVISIONS**

**§ 7.2. Fees.**

Fees charged by the Board are as follows:

\* \* \* \* \*

Biennial renewal of manicurist's license . . . . .	\$ [ 21 ] 35
Biennial renewal of cosmetician's license . . . . .	\$ [ 21 ] 35
Biennial renewal of cosmetologist's license . . . . .	\$ [ 23 ] 35
Biennial renewal of [ cosmetology shop manager's or ] cosmetology teacher's license	\$ [ 36 ] 55
Biennial renewal of cosmetology shop's license . . . . .	\$ [ 41 ] 60
Biennial renewal of cosmetician or manicurist shop's license . . . . .	\$ [ 25 ] 60
Biennial renewal of cosmetology school's license . . . . .	\$ [ 66 ] 150

\* \* \* \* \*

[Pa.B. Doc. No. 05-765. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**[49 PA. CODE CH. 39] Biennial Renewal Fees**

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.72 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fee for nursing home administrators from \$108 to \$297.

*Effective Date*

The new fees will be effective upon final-form publication in the *Pennsylvania Bulletin* and will apply to the biennial renewal beginning July 1, 2006.

*Statutory Authority*

Section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P. S. § 1107.1(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

*Background and Need for Amendments*

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa.B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support

its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The biennial renewal fees fund nearly all of the Board's costs.

At Board meetings in July and December 2004, the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through 2003-2004, and projected revenue and expenses through FY 2010-2011. The BFO projected a deficit of \$128,711.53 in FY 2004-2005, a deficit of \$125,711.53 in FY 2005-2006, a deficit of \$319,711.53 in FY 2006-2007, a deficit of \$331,711.53 in FY 2007-2008, a deficit of \$541,711.53 in FY 2008-2009, a deficit of \$569,711.53 in FY 2009-2010 and a deficit of \$795,711.53 in FY 2010-2011. The BFO recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 7.1(a) of the act.

The Board's review of its actual and projected expenses for the past 5 years revealed significant shortfalls in the areas of enforcement and investigation, legal office expenses and legislative and regulatory analysis. For example, despite annual increases in projected expenses, actual enforcement and investigation costs were \$13,242.21 from FY 2002-2003 to 2003-2004. The actual expenses for the legal office and legislative and regulatory analysis increased \$18,879.37 and \$7,975.38, respectively, from FY 2002-2003 to 2003-2004. Overall increased expenditures in these program areas have resulted from a steady increase in the number of complaints opened each year regarding nursing home administrators and, therefore, greater investigative, enforcement and legal activity. At the same time, the Board's licensee population has declined by 400 licensees over the past 5 years, decreasing the Board's biennial revenue. The BFO anticipates that the proposed new biennial renewal fees will enable the Board to recapture the current deficit and meet its estimated expenditures for at least 10 years. Biennial renewal fees were last raised from \$85 to \$108 at 24 Pa.B. 6564. The 1994 increase was first applied to the 1996 biennial renewal.

In determining the fee, the Board also considered the renewal fees charged to nursing home administrators in the six surrounding states. The Board found that the proposed increase to \$297 would be lower than two fees and higher than four fees charged by contiguous states, and therefore consistent with the renewal fees charged in the surrounding states.

*Description of Proposed Amendments*

The proposed rulemaking would increase the biennial renewal fee for all nursing home administrators from \$108 to \$297. The BFO anticipates that the proposed new fees will enable the Board to recapture the current deficit and meet its estimated expenditures through the 2010-2011 biennial cycle.

The proposed fees will affect a total licensee population of approximately 1,826 nursing home administrators. The Board estimates these fees will generate \$572,322 in biennial revenue. If the proposed rulemaking is effectuated for the July 1, 2006, renewal, the revenue would be used to recapture projected deficits totaling \$795,711.53 by the end FY 2010-2011 and to fund anticipated expenditures from FY 2005-2006 through at least FY 2010-2011.

*Fiscal Impact*

The proposed rulemaking will increase the biennial renewal fee for nursing home administrators. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fee. However, the proposed rulemaking should not create additional paperwork for the private sector.

*Sunset Date*

The act requires that the Board monitor its revenue and costs on a FY and biennial basis. 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 March 29, 2005, 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 Senate Consumer Protection and Professional Licensure Committee and the House 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, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6210 (Biennial Renewal Fees) when submitting comments.

BARRY S. RAMPER, II,  
*Chairperson*

**Fiscal Note:** 16A-6210. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**RENEWAL**

**§ 39.72. Fees.**

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

Biennial renewal of nursing home administrators license ..... § [ 108 ] 297

\* \* \* \* \*

[Pa.B. Doc. No. 05-766. Filed for public inspection April 22, 2005, 9:00 a.m.]

# STATE BOARD OF LANDSCAPE ARCHITECTS

## [49 PA. CODE CH. 15] General Revisions

The State Board of Landscape Architects (Board) proposes to amend §§ 15.2, 15.11, 15.14, 15.16, 15.18, 15.23, 15.32—15.34, 15.36, 15.41, 15.54, 15.56, 15.72, 15.73, 15.76 and 15.79 and to delete §§ 15.19, 15.20 and 15.37 (relating to consideration and approval of application; Recording Board action; and public information) to read as set forth in Annex A. The proposed rulemaking amends registration without examination provisions and makes general editorial changes.

### *Effective Date*

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

### *Statutory Authority*

The proposed rulemaking is authorized under section 4(9) of the Landscape Architects' Registration Law (act) (63 P. S. § 904(9)).

### *Background and Purpose*

The purpose of the proposed rulemaking is to amend the existing regulations to do the following: delete references to the specific Board approved licensure examination; amend provisions regarding Board procedures to conform to actual Board procedures; delete unnecessary provisions and clarify existing provisions; and clarify the Board's process regarding issuing licenses without examination.

### *Description of Proposed Amendments*

Section 15.2 (relating to Board proceedings and meetings) would be amended by making the conduct of Board meetings according to Roberts' Rules of Order permissive rather than mandatory.

Section 15.11(a) (relating to filing procedures) would be amended by deleting the reference to the Board's address. The Board's address has changed recently and including the address in the regulations is unnecessary since the application itself will provide the Board's address.

Section 15.14 (relating to retention of documents) would be amended to delete the option of an applicant to submit copies of documents rather than the original documents. To evaluate an applicant for licensure, the Board believes that the original document is the best display of the applicant's work product.

Section 15.16(b) (relating to references) would add a sentence clarifying that the references should be sent to the Board by the individual writing the reference rather than by the applicant. Subsection (d) would delete the requirement that a reference attest to the applicant's moral character since the accuracy of an individual attesting to one's moral character is hard to measure.

Section 15.18 (relating to certification) would be amended to delete the temporary certification process, as it is no longer necessary. Currently, once a license is approved, it is automatically considered active and notification of the approval is listed on the Board's website. In addition, the licensee receives the permanent certificate in about 2 weeks following approval.

The Board is proposing to delete §§ 15.19 and 15.20 because, under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), all formal action is required to be voted on in public session. Also, all formal action is required to be recorded in the Board's minutes. Therefore, these provisions are unnecessary.

Section 15.23(a) (relating to practice by out-of-State landscape architects) would be amended by reflecting the exact language of the act.

Section 15.32 (relating to change of name or address; fee) would delete the reference to "fee" in the title because this section does not address a fee.

Section 15.33(c) and (d) (relating to seals) would be amended by deleting the requirement that a registrant provide the Board with an imprint of the stamp or an impression of the seal. The Board has found that this requirement is difficult to enforce. Rather, the Board will provide a sample seal, as part of this rulemaking, to use as an example of the kind of stamp or seal to be used by registrants.

Subsection 15.34(b) (relating to biennial registration, inactive status and expired certificates) would be amended by deleting the requirement that an applicant who wishes to return to active status after being inactive must provide a notarized affidavit of nonpractice. The Board has not been requiring a notarized affidavit. Instead, the Board's application requires the applicant to indicate whether the applicant has practiced landscape architecture in this Commonwealth during inactive status.

Section 15.36 (relating to permitted practices) would be amended by deleting the procedures for filing papers regarding establishing a corporation. Because subsection (a) already states that a landscape architect may practice with other persons through the formation of an association or corporation so long as the arrangement is permitted by law, and because the Corporation Law dictates the requirements for filing these arrangements, the Board's regulations are unnecessary.

Section 15.37 would be deleted because the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.9), known as the Right-to-Know Law, already covers what information is considered to be public.

Section 15.41(d) (relating to general requirements) would clarify that professional experience gained while pursuing an undergraduate degree in landscape architecture or first professional degree will not be considered acceptable experience for purposes of becoming licensed. The Board adds the term "first professional degree" because some landscape architect programs are a combination of undergraduate and master's degree programs.

Section 15.54(a) (relating to registration by examination) would be deleted because it merely restates the requirement in the act. Also, subsection (b) would be amended to make the provision more readable.

Section 15.56(b) (relating to registration without examination) would be amended to provide notice to applicants for registration without examination as to what the Board is looking for by way of an interview. The Board has

developed a list of work samples that an applicant would be required to bring to the interview. The Board believes that this list would allow the Board to determine whether an applicant has a sufficiently well-rounded background in landscape architecture so that he would be able to perform all aspects of landscape architecture permitted through licensure.

Section 15.72 (relating to requirement for biennial renewal) would be amended to permit the Board to exempt from the continuing education requirement a licensee who received a license within 2 years preceding the licensee's first application for biennial renewal because the licensee may not have adequate time to complete the continuing education. Subsection (c) would be added to require a licensee who wishes to reactivate a lapsed license or who has been on inactive status to have completed 10 hours of continuing education in the 2-year period immediately prior to reactivation.

Section 15.73(c) (relating to acceptable continuing education courses) would be amended by permitting up to 5 clock hours per biennium of continuing education courses to be acquired through correspondence courses.

Section 15.76 (relating to sources of continuing education courses) would be amended by clarifying that the Board's list of acceptable entities for providing continuing education courses are those entities where the courses are provided, approved, sponsored or co-sponsored by the entity. This list would be amended to reflect the accurate names of these entities and that the chapters of these entities would also be approved. Paragraph (9) would be amended to clarify that the only courses in accredited landscape architect programs or programs in fields related to landscape architecture in colleges and universities would be deemed approved. The Council of Landscape Architects Registration Board or its successor would also be added to the list of sources of continuing education courses.

Section 15.79 (relating to reporting of hours spent in continuing education) would be amended by deleting the reference to "Board-provided forms" pertaining to submission of continuing education hours.

*Fiscal Impact*

The proposed rulemaking will have no fiscal impact on the Board or its licensees. The proposed rulemaking should have no fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

The proposed rulemaking 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)), on March 29, 2005, 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 Senate Consumer Protection and Professional Licensure Committee and the House 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, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Shirley Klinger, Administrative Assistant, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking. Reference No. 16A-618 (General Revisions) when submitting comments.

RICHARD G. STAUFFER,  
*Chairperson*

**Fiscal Note:** 16A-618. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 15. STATE BOARD OF LANDSCAPE ARCHITECTS**

**GENERAL PROVISIONS**

**§ 15.2. Board proceedings and meetings.**

\* \* \* \* \*

(b) Five members of the Board constitute a quorum. Board meetings [ **will** ] **may** be conducted according to Roberts' Rules of Order.

\* \* \* \* \*

**APPLICATION PROCEDURES**

**§ 15.11. Filing procedures.**

(a) An application for registration shall be submitted to the State Board of Landscape Architects [ , **Box 2649, Harrisburg, Pennsylvania 17105-2649** ].

\* \* \* \* \*

**§ 15.14. Retention of documents.**

The Board reserves the right to retain as a permanent part of the application documents submitted which shall be properly marked for identification and ownership. [ **Photocopies of original documents may be submitted for documentary evidence if notarized as true copies.** ]

**§ 15.16. References.**

\* \* \* \* \*

(b) The applicant shall provide three references on the application and shall forward forms to the references to be completed and mailed directly to the Board by the references. **The Board will return completed reference forms sent by the applicant.**

\* \* \* \* \*

(d) A reference shall attest that [ **he** ] **the reference is familiar with the applicant's professional work [ and the applicant's moral character. The Board will accept additional references pertaining to the applicant's moral character from individuals who are**

not design professionals if the professional references do not have personal knowledge of the applicant's moral character ] .

§ 15.18. Certification.

[ (a) ] An applicant granted registration will be issued a permanent certificate of registration.

[ (b) Prior to issuance of a permanent certificate, the letter from the Board advising the landscape architect that he has been granted registration will serve as a temporary certificate of registration. ]

§ 15.19. [ Consideration and approval of application ] (Reserved).

[ Applications shall be considered individually by the Board and passed or rejected on a roll call vote. Approval of an application shall be by a majority vote of the Board. ]

§ 15.20. [ Recording Board action ] (Reserved).

[ The action taken by the Board on an application will be recorded in the minutes. ]

§ 15.23. Practice by out-of-State landscape architects.

(a) An out-of-State landscape architect may [ obtain approval from the Board to ] practice landscape architecture in this Commonwealth for a period not exceeding 30 days in the aggregate in 1 calendar year by submitting proof that:

\* \* \* \* \*  
ADMINISTRATION

§ 15.32. Change of name or address [ ; fee ].

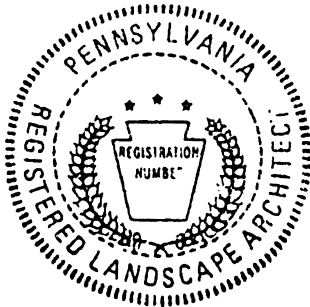
\* \* \* \* \*

§ 15.33. Seals.

\* \* \* \* \*

(c) A registrant shall be required to obtain the authorized seal or a rubber stamp [ and to furnish the Board with an imprint of the stamp or an impression of the seal ]. A sample seal is as follows:

[ (d) Renewal of a license will not be granted unless this requirement is fulfilled. ]



Landscape Architect

§ 15.34. Biennial registration, inactive status and expired certificates.

\* \* \* \* \*

(b) *Inactive status and registration renewal.* A landscape architect who is not engaged in the practice of landscape architecture may request the Board, in writing, to place the landscape architect's name on inactive status. The landscape architect shall notify the Board, in writing, of the landscape architect's desire to reregister. The landscape architect shall comply with the requirements for the renewal of a license that exist at the time the landscape architect applies to become currently registered. There is no fee or penalty for preceding biennial periods in which the landscape architect did not engage in practice in this Commonwealth. The landscape architect applying to return to active status shall submit to the Board an application form prescribed by the Board [ , a notarized affidavit ] stating that the applicant has not practiced landscape architecture in this Commonwealth during inactive status [ , ] and the current renewal fee.

\* \* \* \* \*

§ 15.36. Permitted practices.

\* \* \* \* \*

(b) [ When landscape architecture is practiced through a corporation, a copy of the articles of incorporation and registry statement of the proposed corporation shall be filed with the Board at the time of filing with the Corporation Bureau of the Department of State.

(1) If a name is chosen which does not contain the names of all the licensed professionals with an ownership interest in the practice, the Board shall be supplied with the list of these persons.

(2) A landscape architect incorporating under the terms of this section shall notify the Board of any changes in the name or ownership of the corporation ] .

[ (c) ] A landscape architect, partnership, professional corporation, association or other group practice may do business under a fictitious name and advertise in any medium if the name and the advertisement are not misleading, deceptive or fraudulent [ on their face by inference or by actual effect.

(1) A copy of the fictitious name registration shall be filed with the Board at the time of submission to the Corporation Bureau.

(2) A fictitious name will be approved by the Board. A list of the landscape architects with ownership interest in the practice shall be submitted to the Board concurrently with the fictitious name registration. The Board will notify the landscape architect of its approval or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing a fictitious name registration.

(3) A landscape architect practicing under the terms of this section shall notify the Board of changes in the name or ownership of the business, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure.

(d) A landscape architect shall sign documents which arise out of the rendering of professional services. If the landscape architect practices in association with others, his name shall appear with the name of the association on documents not signed by him. ]

§ 15.37. [ Public information ] (Reserved).

[ The following information may be released by the Board:

(1) Whether or not a person is registered and in good standing, and the date of original registration of each person.

(2) The address of record of the registrant.

(3) Whether registration was granted by examination, reciprocity or by statutory exemption.

(4) Information the Board determines is required to release under the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4), known as the Right-to-Know Act.

(5) Grades as requested by CLARB, other state registration boards or by examinees requesting their own test results. ]

EXPERIENCE

§ 15.41. General requirements.

\* \* \* \* \*

(d) Professional experience gained while pursuing an undergraduate degree in landscape architecture or first professional degree will not be considered by the Board as an acceptable experience.

EXAMINATIONS

§ 15.54. Registration by examination.

[ (a) Registration may be granted to an applicant who has successfully passed the examination as prescribed by the Board.

(b) ] An applicant who meets one or more of the following requirements is eligible [ to sit for the ] for licensure by written examination:

\* \* \* \* \*

§ 15.56. Registration without examination.

\* \* \* \* \*

(b) Procedure.

(1) Prior to issuing a license without examination, the Board will require the applicant to appear before representatives of the Board for an interview. The applicant will be required to submit the following work samples to the representatives during the interview:

- (i) Site and development plans.
- (ii) Specifications and drawings.
- (iii) Grading and drainage plans.
- (iv) Layout plans.
- (v) Planting plans.
- (vi) Stormwater management plans and calculations.
- (vii) Site construction details and specifications.
- (viii) Photographs of completed projects.

(ix) Evidence of cost estimating and supervision of construction.

(x) A variety of project types including experience with residential subdivision, commercial land developments, environmental projects and park and recreation projects.

(2) Prior to issuing a license without examination, the Board will review the applicant's qualifications, and by a majority vote approve or disapprove the application.

[ (2) ](3) \* \* \*

CONTINUING EDUCATION

§ 15.72. Requirement for biennial renewal.

(a) As a condition of biennial renewal commencing with the 2003 biennium and continuing thereafter, licensees shall have completed during the preceding biennium 10 clock hours of continuing education in acceptable courses approved under this subchapter.

(b) The Board will exempt from the continuing education requirement a licensee who received a license within 2 years preceding the licensee's first application for biennial renewal.

(c) A licensee who wishes to reactivate a lapsed license or who has been on inactive status shall have completed 10 hours of continuing education in the 2-year period immediately prior to reactivation.

§ 15.73 Acceptable continuing education courses.

\* \* \* \* \*

(c) A maximum of 5 clock hours per biennium will be accepted in courses consisting of satellite seminars [ and ], electronic presentations and correspondence courses.

§ 15.76. Sources of continuing education courses.

The Board finds the courses provided, approved, sponsored or co-sponsored by the following entities meet the standards of the act and this subchapter:

(1) The American Society of Landscape Architects and its [ affiliates ] chapters.

(2) [ The American Nurserymen's Association ] The American Nursery & Landscape Association and its [ affiliates ] chapters.

(3) The American Planning Association and its [ affiliates ] chapters.

(4) The American Institute of Architects and its [ affiliates ] chapters.

(5) The National Society of Professional Engineers and its [ affiliates ] chapters.

(6) The National Recreation and Parks Association and its [ affiliates ] chapters.

\* \* \* \* \*

(9) Accredited landscape architect programs or programs in fields related to landscape architecture in colleges and universities [ which offer courses in landscape architecture or related fields ].

\* \* \* \* \*

(11) The Council of Landscape Architects Registration Boards (CLARB) or its successor.

**§ 15.79. Reporting of hours spent in continuing education.**

An applicant for license renewal shall provide the following information for each course attended [on Board-provided forms ]:

\* \* \* \* \*

[Pa.B. Doc. No. 05-767. Filed for public inspection April 22, 2005, 9:00 a.m.]

## STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Protest Proceedings

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend § 19.3 (relating to applicability of general rules) and to add §§ 19.31—19.38 (relating to protest proceedings) to read as set forth in Annex A.

*Effective Date*

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

*Statutory Authority*

The proposed rulemaking is authorized under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (act) (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

*Background and Need for the Amendment*

The act authorizes a dealer holding a franchise with a manufacturer or distributor to file a protest with the Board of the manufacturer/distributor's termination of the dealer's franchise under section 13 of the act, the establishment or relocation of a franchise for the same line-make within the dealer's relevant market area under section 27 of the act or any alleged violation of the act by the manufacturer/distributor under section 8(d) of the act. Section 8(b) of the act requires the Board to follow 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP) in conducting hearings and existing § 19.3 incorporates the GRAPP into all proceedings before the Board. Because the GRAPP cannot completely set forth all procedures that are appropriate for the Board to follow in protest matters, the orderly administration of justice requires that the Board set forth rules of procedure. Currently, the Board's protest counsel issues an order setting forth procedures in each protest matter that is filed with the Board. The adoption of regulations regarding protest proceedings will provide uniform rules of procedure and give needed guidance to affected dealers and their representatives who anticipate filing protests with the Board and to manufacturers, distributors and their representatives.

*Description of the Proposed Amendments*

Under current practice, because of the strict time limitation in adjudicating protest matters under section 8(a) of the act, all papers are filed with the Board's protest counsel. By contrast, all papers in all other

matters that the Board adjudicates are filed with the prothonotary for the Department of State. Because the parties generally waive that time limitation until a date certain to permit timely adjudication by the Board, the Board has found that any time saved by filing papers in a protest matter with protest counsel is negligible. Therefore, to be consistent and to provide for greater assurance of the integrity of filed papers, proposed § 19.31 (relating to filing of papers) would require that all papers to be filed in a protest matter be filed with the prothonotary and that a copy be served upon the Board's protest counsel.

Because a protest by definition is a complaint by a dealer about an action taken by the manufacturer/distributor, proposed § 19.32 (relating to initiation of a protest) would require the dealer to append to its protest petition a copy of any notice of the manufacturer's/distributor's action and to serve a copy of the protest on the representative of the manufacturer/distributor who provided that notice. In general and in the absence of an entry of appearance by counsel, the Board will serve its order for stay and mediation under section 11(a)(3) of the act upon the person who provided the notice and upon whom the protesting dealer served a copy of the protest.

In matters protesting the establishment or relocation of a franchise, the dealer who is to be awarded the franchise or relocate generally has an interest in the outcome of that protest that would qualify that dealer for intervenor status. Proposed § 19.33 (relating to intervention) would permit that dealer to intervene upon the filing of a notice of intervention. All other parties seeking to intervene will have to continue to follow the procedures of the GRAPP in 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Section 11(a) of the act requires a dealer to demand mediation prior to bringing a protest matter, except for dealers of motorcycles, and the Board must stay proceedings in a protest matter for the parties to engage in mediation. Because the majority of protest matters are resolved during mediation, the Board has not required a manufacturer/distributor to answer the protest during mediation. Instead, unless mediation is not required, the Board has waited until it is notified by the parties that mediation has been unsuccessful before issuing a scheduling order. Proposed § 19.34 (relating to time for adjudication) would continue this practice, with the Board setting the scheduling order so that it will be able to issue its adjudication within the time limitations of section 8 of the act. The parties may waive these time limitations, and the Board will treat a waiver as a request for a continuance. Proposed § 19.34 will also require a party requesting a continuance or extension of time to file a waiver of the time limitations sufficient to permit the Board to adjudicate the matter consistent with the requested extension. Because the time limitations are for the benefit of the manufacturer/distributor, the Board cannot grant a request for extension of time or continuance for which the manufacturer does not sign the waiver, but the Board may grant a request for which the protesting dealer does not sign the waiver.

Additionally, while the parties engage in mediation, there is no need for the respondent to file an answer to the protest. Under proposed § 19.35 (relating to subsequent pleadings), the Board's scheduling order will direct the respondent, and an intervenor on behalf of the respondent, when to file an answer. The protestant, and an intervenor on behalf of the protestant, may reply to the new matter within 10 days of service of the answer.

Because protest matters are quite complex and involve many documents and expert witnesses, in every case to be heard the Board will schedule a prehearing conference and require the parties to file prehearing statements. Proposed § 19.36 (relating to prehearing statements) would set forth the requirements for prehearing statements, including statements of facts and relevant law, as well as identification of all anticipated witnesses, including a report and curriculum vitae of any expert witness who is to testify, and copies of all anticipated exhibits. A party will be permitted to supplement its prehearing statement any time prior to the prehearing conference, but may not present any documentary exhibit or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown. Additionally, a party that failed to timely file a prehearing statement in accordance with § 19.36 would be subject to sanctions. These sanctions may include preclusion from offering evidence that should have been presented in the prehearing statement.

Proposed § 19.37 (relating to prehearing conference) would follow the current practice of conducting the prehearing conference by telephone initiated by protest counsel. Additionally, because a prehearing conference is a legal proceeding under the direction of protest counsel without members of the Board present, proposed § 19.37 would confirm that protest counsel has all authority of a presiding officer at a prehearing conference under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

Finally, proposed § 19.38 (relating to posthearing briefs) would require posthearing briefs to conform to the requirements of the GRAPP in 1 Pa. Code § 35.192 (relating to content and form of briefs). Because the Board must reproduce for all its members for their review the entire transcript and all exhibits, as well as the briefs, § 19.38 would prohibit posthearing briefs from including copies of the transcript or exhibits. Consistent with the GRAPP in 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed), the general practice of the Board has been to require the simultaneous filing of posthearing briefs, and § 19.38 would permit parties to file a reply brief within 7 days of the filing of an opposing party's posthearing brief.

#### *Public Input*

The Board solicited input from and provided an exposure draft of this proposed rulemaking to industry organizations, including those involved in prior protest matters before the Board. In addition, the Board considered the impact the regulations would have on the regulated community and on public health, safety and welfare. The Board finds that the proposal addresses a compelling public interest as described in this preamble.

#### *Fiscal Impact and Paperwork Requirements*

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

#### *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 March 29, 2005, 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 Senate Consumer Protection and Professional Licensure Committee and the House 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, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-608 (protest proceedings), when submitting comments.

EDWIN K. GALBREATH, Jr.,  
*Chairperson*

**Fiscal Note:** 16A-608. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS**

#### **GENERAL PROVISIONS**

#### **§ 19.3. Applicability of general rules.**

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) (**general rules**), is applicable to the activities of and proceedings before the Board. **Sections 19.31—19.38 (relating to protest proceedings) supplement the general rules.**

#### **PROTEST PROCEEDINGS**

#### **§ 19.31. Filing of papers.**

(a) *Place of filing.* Every pleading and other paper in a protest matter shall be filed with the prothonotary for the Department of State at One Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649.

(b) *Copies.* An original and one copy of each paper shall be filed with the prothonotary. A copy of each paper shall be served on each party to the protest. An additional copy of each paper shall be served on the Board's counsel for protest matters (protest counsel) at One Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, Pennsylvania 17105-2649.

#### **§ 19.32. Initiation of a protest.**

(a) *Protest petition.* The protest must be in petition form and set forth in numbered paragraphs the material



facts sufficient to justify relief to the protestant, in accordance with 1 Pa. Code § 35.17 (relating to petitions generally).

(1) The protest shall have appended to it a copy of any demand for mediation required by section 11(a) of the act (63 P. S. § 818.11(a)).

(2) A protest filed under section 8(d) of the act (63 P. S. § 818.8(d)) shall have appended to it a copy of any notice of the action that is being protested.

(3) A protest filed under section 13 of the act (63 P. S. § 818.13) shall have appended to it a copy of any notice of intent to terminate a franchise.

(4) A protest filed under section 27 of the act (63 P. S. § 818.27) shall have appended to it a copy of any notice of establishment or relocation of a franchise.

(b) *Service of the protest.* A copy of the protest shall be served on the representative of the manufacturer or distributor (respondent) who provided any notice, as set forth in subsection (a), of the action that is being protested. If notice was not provided, a copy of the protest shall be served on a managerial representative of the respondent whose responsibilities include the subject of the protest.

#### § 19.33. Intervention.

(a) *Intervention as of right.* In any protest matter filed under section 27 of the act (63 P. S. § 818.27), the existing dealer who seeks to relocate a franchise or the additional dealer to whom the respondent seeks to award a franchise may intervene on behalf of the respondent upon the filing of a notice of intervention setting forth its right to intervene under this subsection. Any party intervening as of right on behalf of the respondent under this subsection shall file an answer to the protest contemporaneously with the filing of the notice of intervention or as directed in the scheduling order, whichever is later.

(b) *Intervention by permission.* Any other person seeking to intervene shall petition to intervene in accordance with 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

#### § 19.34. Time for adjudication.

(a) *Scheduling order.* Upon receipt from one or more parties of notice that mediation required by section 11(a) of the act (63 P. S. § 818.11(a)) was not successful, protest counsel will prepare and issue a scheduling order. The scheduling order will set forth the dates by which the answer, requests for subpoenas, prehearing statements and posthearing briefs shall be filed, as well as the date and time for the prehearing conference and the location and beginning date and time of the hearing. The dates will be determined to permit the Board to issue its adjudication in compliance with the time requirements of section 8 of the act (63 P. S. § 818.8).

(b) *Waiver.* The parties may waive the time for adjudicating a protest matter in section 8 of the act (63 P. S. § 818.8). A waiver must be in writing, specifying the time period that is to be waived, and signed on behalf of all parties joining in the waiver. Unless otherwise specified in the filing, the Board will treat the filing of any waiver as a request for a continuance through that time period and will issue an amended scheduling order accordingly.

(c) *Extension of time.* Any request for an extension of time or continuance that would delay the filing of posthearing briefs shall be accompanied by a waiver through the second monthly meeting of the Board following the date posthearing briefs are to be filed as if the

request were to be granted. The Board may grant a request for extension of time or continuance for which the protestant, or an intervenor on behalf of the protestant, does not also sign the waiver.

#### § 19.35. Subsequent pleadings.

(a) *Answer.* The respondent, and any intervenor on behalf of the respondent, may not file an answer to a protest until directed to do so by a scheduling order issued by the Board. An answer must either admit or deny each numbered paragraph of the protest, in accordance with 1 Pa. Code § 35.35 (relating to answers to complaints and petitions), and may contain averments of new matter.

(b) *Reply to new matter.* The protestant, and any intervenor on behalf of the protestant, may reply within 10 days to an answer that sets forth new matter.

#### § 19.36. Prehearing statements.

(a) *Filing of prehearing statement.* Each party to a protest shall file a prehearing statement in accordance with the scheduling order.

(b) *Content of prehearing statement.* A prehearing statement must contain:

(1) A concise statement of the facts that will be offered by oral or documentary evidence at the hearing and a statement of any unusual questions of evidence anticipated with respect to the proof of such facts.

(2) A statement of any questions of law anticipated with respect to the issues in the case. The questions shall be presented with a statement of authority supporting the position taken.

(3) The names and addresses of all persons who may be called as witnesses. The identification of a witness does not create any obligation to call the witness or to procure the witness's attendance at the hearing.

(4) The report and curriculum vitae of any expert whose opinion will be offered into evidence at the time of hearing. The report must include the findings and conclusions of the expert.

(5) A list of all exhibits and copies of the exhibits that a participant intends to use at the hearing.

(6) An estimate of the length of time that will be required to present the party's case in chief.

(c) *Sanctions.* Failure to file a prehearing statement as required by this section and within the time specified in the scheduling order may subject a party to sanctions, including being precluded from presenting evidence.

(d) *Supplement.* A party may supplement its prehearing statement at any time prior to the prehearing conference. A party may not present any documentary evidence or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown.

#### § 19.37. Prehearing conference.

(a) *Prehearing conference.* A representative of each party to a protest shall participate in a prehearing conference under 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings) as directed by the scheduling order. Unless otherwise ordered by the Board, the prehearing conference will be telephonic and will be initiated by protest counsel.

(b) *Authority of protest counsel.* In connection with the prehearing conference, protest counsel shall have all

authority of a presiding officer under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

**§ 19.38. Posthearing briefs.**

(a) *Posthearing briefs.* Posthearing briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs), except that a brief may not have appended to it any copy of an exhibit or any notes of testimony.

(b) *Reply briefs.* A party may file a reply brief no later than 7 days after an opposing party's filing of a posthearing brief.

[Pa.B. Doc. No. 05-768. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE REAL ESTATE  
COMMISSION**

**[49 PA. CODE CH. 35]**

**Biennial Renewal Fee Increases**

The State Real Estate Commission (Commission) proposes to amend § 35.203 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the following renewal fees:

- Biennial renewal for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or offices for a partnership association or corporation from \$84 to \$126.
- Biennial renewal for cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons or campground membership salespersons from \$64 to \$96.
- Annual renewal of registration of promotional property from \$75 to \$113.
- Annual renewal of approval of real estate education providers from \$250 to \$375 plus an increase from \$10 to \$15 for each satellite location, course or instructor.

*Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning June 1, 2006.

*Statutory Authority*

The proposed rulemaking is authorized under section 407 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.407). It requires the Commission to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Commission expenditures.

*Background and Need for Amendment*

Fees to renew real estate licenses were last increased in 1994. The Commission is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 407(a) of the RELRA, if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Commission must increase its revenue.

The Commission raises virtually all of its operating revenue (exclusive of application and services fees) through renewal fees. The license renewal fees are the most substantial revenue-generating fee of all the fees

charged by the Commission. The Commission's current license renewal fees were established by regulation at 24 Pa.B. 2613 (May 21, 1994).

At its January 25-26, 2005, Commission meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Commission's revenue and expenses for Fiscal Years (FY) 2001-2002 and 2003-2004 and projected revenue and expenses for FYs 2003-2004 through 2010-2011. The summary, presented in the following table, demonstrated that the Commission must raise fees to meet or exceed projected expenditures to comply with section 407(a) of the RELRA through FY 2004-2005. The Offices of Revenue and Budget projected a deficit of \$30,802.97 in FY 2004-2005 and continuing thereafter. The BFO recommended that the Commission raise fees 50% to meet or exceed projected expenditures in compliance with section 407(a) of the RELRA.

2001-2002 beginning balance	\$95,833.32
FY 01-02 revenue	3,130,883.12
Adjusted for prior year expenses	140,136.82
Prior year returned funds	0.00
FY 01-02 expenses	2,223,000.00
Remaining balance	863,579.62
2002-2003 beginning balance	\$863,579.62
FY 02-03 revenue	1,387,457.66
Prior year returned funds	0.00
FY 02-03 expenses	2,312,000.00
Remaining balance	(60,962.72)
2003-2004 beginning balance	\$(60,962.72)
FY 03-04 revenue	3,559,203.99
FY 03-04 expenses	2,372,000.00
Remaining balance	1,126,241.27
2004-2005 beginning balance	\$1,126,241.27
FY 04-05 projected revenue	1,400,000.00
Prior year returned funds	697,359.12
Adjusted for prior year expenses	322,403.36
FY 04-05 projected expenses	2,932,000.00
Remaining balance	(30,802.97)
2005-2006 beginning balance	(30,802.97)
FY 05-06 projected revenue	3,500,000.00
FY 05-06 projected expenses	2,900,000.00
Remaining balance	479,197.03
2006-2007 beginning balance	479,197.03
FY 06-07 projected revenue	1,400,000.00
FY 06-07 projected expenses	3,080,000.00
Remaining balance	(1,200,802.97)
2007-2008 beginning balance	(1,200,802.97)
FY 07-08 projected revenue	3,500,000.00
FY 07-08 projected expenses	3,172,000.00
Remaining balance	(872,802.97)
2008-2009 beginning balance	(872,802.97)
FY 08-09 projected revenue	1,400,000.00
FY 08-09 projected expenses	3,267,000.00
Remaining balance	(2,739,802.97)
2009-2010 beginning balance	(2,739,802.97)
FY 09-10 projected revenue	3,500,000.00
FY 09-10 projected expenses	3,365,000.00
Remaining balance	(2,604,802.97)
2010-2011 beginning balance	(2,604,802.97)
FY 10-11 projected revenue	1,400,000.00
FY 10-11 projected expenses	3,466,000.00
Remaining balance	(4,670,802.97)

Under the current fee structure, the BFO estimates that at the close of FY 2004-2005, the Commission's

expenses will exceed its revenues by \$30,522.66. By FY 2010-2011, BFO anticipates that the deficit will increase to \$4,670,802.97.

The increases in the Commission's biennial expenses occurred primarily in the Bureau of Enforcement and Investigation (BEI) and Board Administration. Nontravel BEI expenditures were budgeted at \$799,500 in FY 2003-2004 but will increase to a projected expense of \$1,043,399.34, a difference of \$243,899.34 from budgeted. Board administration was budgeted at \$580,000 in FY 2003-2004 but increased to a projected 664,651.95, a difference of \$84,651.95.

The BEI projected expense increase occurred as a result of the increased number of investigations and inspections in FY 2003-2004. Based on an average of the BEI's expenditures for the past 3 years, the BEI was allocated 1,559.33 investigative and inspection activities with 9,942.31 hours in performance time for FY 2003-2004. In actuality, 1,761 investigative and inspection activities were performed, totaling about 11,840.5 hours, putting the BEI over the projection by 201.67 activities and 1,898.19 hours. In 2002-2003, the BEI spent 9,354.92 hours on investigations and inspections. In FY 2001-2002, the BEI spent 10,603.3 hours on investigations and inspections. In FY 2000-2001, the BEI spent 9,868.70 hours on investigations and inspections.

The increase in the Commission's administration costs can be attributed to the following:

1. Wages increased by approximately \$27,000 due to overtime costs to process renewal applications.

2. FY 2003-2004 health benefits increased \$68.35 per employee. Also, each agency was assessed a one-time charge of \$942 per employee to be deposited into the Pennsylvania Employees Benefit Trust Fund (PEBTF). The Commission's share of the increased benefit costs and the one-time PEBTF payment was approximately \$30,000.

3. The Commission's share of FY 2003-2004 rent of real estate costs increased approximately \$19,000. This increase is a result of a full year of rent paid at a higher rate for Penn Center that at the Pine Street location. In FY 2002-2003, only 2 months rent was paid at the higher rate.

4. The Commission's FY 2003-2004 share of the Bureau of Professional and Occupational Affairs' (BPOA) data powerhouse costs (servers for License 2000) increased by approximately \$12,000. This is a result of the increase in the BPOA's FY 2003-2004 monthly data powerhouse assessment and for a one-time balloon payment of approximately \$50,000. The Commission's share of these assessments is based on licensee population.

The Commission reviewed various alternative fee structures to ensure the lowest fee increase possible while at the same time insuring the Commission's solvency. Although the Commission is looking at ways to streamline procedures to cut costs, the fee increases are still necessary to maintain a positive balance in the Commission account. Finally, in developing the proposed rulemaking, the Commission reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage to the Commonwealth.

#### *Description of Proposed Rulemaking*

Based upon the previous expense and revenue estimates provided to the Commission, the Commission proposes to amend § 35.203 to increase the fee for biennial

renewal of licenses for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or officers for a partnership association or corporation from \$84 to \$126 and cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons or campground membership salespersons from \$64 to \$96 as well as increase the annual renewal registration of promotional property from \$75 to \$113 and the renewal of approval of real estate education provider from \$250 to \$375 plus \$15 for each satellite location, course and instructor instead of \$10. By this increase, the Commission will recoup the FY 2004-2005 projected deficit and enable the Commission's account to carry a positive balance by FY 2005-2006.

#### *Fiscal Impact*

The proposed rulemaking will increase the renewal fees for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or officers of a partnership association or corporation, cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons, campground membership salespersons, promotional property registration, approval of real estate education providers, satellite locations, courses and instructors. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

#### *Paperwork Requirements*

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

#### *Sunset Date*

The RELRA requires that the Commission monitor its revenue and expenses on an FY and biennial basis. 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 April 13, 2005, 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 Senate Consumer Protection and Professional Licensure Committee and the House 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, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Debi Sopko, Administrator, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BEVERLY BROOKS,  
Chairperson

**Fiscal Note:** 16A-5612. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 35. STATE REAL ESTATE COMMISSION**

**Subchapter B. GENERAL PROVISIONS**

**§ 35.203. Fees.**

The following fees are charged by the Commission:

\* \* \* \* \*

Biennial renewal of license of broker, cemetery broker, branch office, rental listing referral agent[ , ] or broker of record, partner or officer for a partnership, association or corporation ..... \$[ **84** ] **126**

Biennial renewal of cemetery company registration or license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson ..... \$[ **64** ] **96**

\* \* \* \* \*

Annual renewal of registration of promotional real estate ..... \$[ **75** ] **113**

\* \* \* \* \*

Annual renewal of approval of real estate education provider ..... \$[ **250** ] **375** plus \$[ **10** ] **15** for each satellite location, course and instructor

\* \* \* \* \*

[Pa.B. Doc. No. 05-769. Filed for public inspection April 22, 2005, 9:00 a.m.]

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