

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING [49 PA. CODE CH. 21] Biennial Renewal Fees

The State Board of Nursing (Board) amends §§ 21.5, 21.147, 21.253 and 21.705. The final-form rulemaking provides for a new biennial renewal fee for licensed practical nurses (LPN), professional nurses (RN), certified registered nurse practitioners (CRNP) and licensed dietitian-nutritionists (LDN).

Effective Date

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

Statutory Authority

Section 11.2 of the Professional Nursing Law (63 P. S. § 221.2) and section 17.5 of the Practical Nurse Law (63 P. S. § 667.5) require the Board to set fees sufficient to meet expenditures.

Response to Comments

The proposed rulemaking was published at 39 Pa.B. 7105 (December 19, 2009). The Board received comments from the Pennsylvania Association of Nurse Anesthetists (PANA), the Pennsylvania Health Care Association (PHCA), Judith Giannuzzi, R. N., the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). PANA wrote that it did not have an objection to the proposed rulemaking. PHCA, an organization representing approximately 324 long-term care and senior service providers, wrote in opposition to the proposed increase in biennial renewal fees. PHCA opined that the increase could create an impediment for individuals seeking to become and to work as nurses. Judith Giannuzzi objected to the proposed increase and asked what obligations the Board could not meet without the increase and whether other cost-cutting options had been explored.

The HPLC submitted three comments. First, the HPLC requested the rationale for the proposed 45%—50% increase after 9 years without increases and after having been notified of the need for increases in the fall of 2008. Second, the HPLC recommended a duplicate listing of the fee for examination and licensure be stricken. Third, the HPLC recommended that web site references be checked and questioned the wisdom of placing web site addresses in a regulation. IRRC echoed the HPLC's second comment, recommended that the web site link be corrected but remain in the regulation and requested that the Board submit a "fee report form" for the increases in the final-form rulemaking.

In determining that a fee increase was necessary, the Board considered both its operational expenses and the ability of its licensees to pay the increased fees. The majority of the Board's expenses arise from the investigation and prosecution of individuals who have violated the nursing practice acts. Individuals who violate the nursing practice acts place patients at risk. The Board's obligation

to protect the public would be compromised if it did not have the funds necessary to investigate and prosecute violations of the nursing practice acts. The Department of State and the Bureau of Professional and Occupational Affairs have explored and implemented various cost-cutting measures over the past several years.

The HPLC requested the rationale for the amount of the increase after 9 years without increases and after having been notified of the need for an increase in the fall of 2008. The Board last increased biennial renewal fees in November 2000. The Board anticipates that the first implementation of the new fee will be in April 2011.

The Board is statutorily required to monitor revenues and expenditures and to increase fees when it appears that the Board's revenues will not meet its expenditures over a 2-year period. After monitoring revenues and expenses on a biennial basis, the Department's Bureau of Finance and Operations informed the Board, in late fall of 2008, that the Board's revenues were not projected to meet its expenses over a 2-year period. The Board began drafting its proposed rulemaking and submitted a draft for an incremental fee increase over the coming 10-year period for internal review in January 2009. The incremental increase was an approach that had been suggested by the HPLC in its review of other board's biennial renewal fee regulations, but that had not previously been adopted by another board.

Ongoing discussions ensued between the Board's regulatory officers and the Bureau of Finance and Operations regarding the uncertainty surrounding the approval of an incremental fee increase and the urgency of the Board's need to balance its budget. The Board decided to propose a traditional, one-time increase. The proposed rulemaking was published at 39 Pa.B. 7105. In accordance with the Regulatory Review Act (71 P. S. §§ 745.1—745.12), comment periods were provided for the public, the HPLC, the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and IRRC. The Board considered the comments at its meeting on April 13, 2010, and finalized a draft of the final-form rulemaking package that day.

In determining the proposed biennial fee increases, the Board also reviewed nursing salary data compiled by the Department of Labor and Industry. This data shows the average salary in this Commonwealth for an LPN is \$39,920, \$61,390 for an RN and \$44,420 for an LDN. Data from the United States Department of Labor, Bureau of Labor Statistics showed a median salary for CRNPs in 2007 was \$82,590. The increases proposed by the Board would increase the licensure fees for LDNs, LPNs and RNs by \$10 per year to \$32.50 per year. The increase proposed by the Board would increase the licensure fee for CRNPs by \$12.50 per year to \$37.50 per year. These fees are significantly lower than the nurse licensure fees charged in most of the surrounding states. The Board does not anticipate that the increases will place an undue burden on licensees or on employers who pay the fees for their employees.

Regarding the web addresses in regulations, licensing boards within the Bureau began including web addresses in regulations at the suggestion of IRRC. Although the Board questioned, as does the HPLC, the advisability of publishing web addresses, which are subject to change, in regulations, the Board agreed with IRRC that its regulations should provide as much information as possible to

licensees. The Legislative Reference Bureau has agreed to publish changes to web addresses without requiring the Board to promulgate a rulemaking to effectuate a change. On balance, therefore, it appears that the benefit to including web and e-mail addresses outweighs the possible negative effects when these addresses are changed. The Board corrected the web addresses for the Commission on Dietetic Registration and the Certification Board for Nutrition Specialists in the final-form rulemaking.

The Board deleted the repetitious provision in the fee schedule for RNs and provided the fee report forms as requested by IRRC.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have a fiscal impact on nurses and LDNs in this Commonwealth in that the final-form rulemaking increases the biennial licensure renewal fees for these licensees. The final-form rulemaking will not otherwise have fiscal impact nor impose additional paperwork on the private sector, the general public, the Commonwealth or its political subdivisions.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 7105, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 23, 2010, the final-form rulemaking was approved by the HPLC. On July 14, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments made to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking as published under section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201).

(4) The amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of RNs in this Commonwealth.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.147 and 21.253 to read as set forth at 39 Pa.B. 7105 and by amending §§ 21.5 and 21.705 to read as set forth in Annex A.

(b) The Board shall submit a copy of 39 Pa.B. 7105 and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order, 39 Pa.B. 7105 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

ANN O’SULLIVAN, Ph.D., FAAN, CRNP,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

Fiscal Note: Fiscal Note 16A-5136 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.5. Fees.

(a) The following fees are charged by the Board for services provided to licensees:

Examination and licensure	\$35
Reexamination.....	\$30
Licensure by endorsement.....	\$100
Temporary permit.....	\$35
Extension of temporary permit	\$60
Fee for review and challenge of RN exams	\$170
Application fee for out-of-State graduates.....	\$100
Verification of licensure	\$15
Reactivation of license (after 5 years or longer)	\$50
Restoration after suspension or revocation.....	\$50
Certification of scores	\$25
Certification of license history	\$40

(b) The following fees are charged by the Board to support its operations:

Biennial renewal of license	\$65
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(c) The following fees are charged by the Board for services provided to nursing education programs:

Application for approval of new nursing program ...	\$935
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(d) The following fees related to continuing education are charged by the Board:

Request, under § 21.134(b) (relating to continuing education sources) by a provider of a continuing education activity not listed in § 21.134(a) or an individual seeking credit for a continuing education activity not pre-approved by the Board, for approval of each hour of continuing education for which credit is requested . . . \$75

(e) In addition to the examination and licensure fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the registered nurse licensing examination shall also pay a fee to the National Council of the State Board of Nursing (www.ncsbn.org) to cover costs associated with the preparation and administration of the registered nurse licensing examination.

**Subchapter G. DIETITIAN-NUTRITIONISTS
GENERAL PROVISIONS**

§ 21.705. Fees.

(a) The following fees are charged by the Board for services to licensees:

Application for licensure	\$45
Reactivation of inactive or lapsed license	\$50
License verification fee	\$15
License certification fee	\$25
Restoration after suspension or revocation	\$50

(b) The following fees are charged by the Board to support its operations:

Biennial renewal of license	\$65
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(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Registration Examination for Registered Dietitians shall also pay an additional examination fee. A candidate may contact the Commission on Dietetic Registration, 120 South Riverside Plaza, Suite 2000, Chicago, IL 60606-6995, www.cdrnet.org for more information regarding the examination and examination fee.

(d) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Certification Board for Nutrition Specialists examination for Certified Nutrition Specialists shall also pay an additional examination fee. A candidate may contact the Certification Board for Nutrition Specialists, 300 South Duncan Avenue, Suite 225, Clearwater, FL 33755, www.cbns.org for more information regarding the examination and examination fee.

[Pa.B. Doc. No. 10-1519. Filed for public inspection August 20, 2010, 9:00 a.m.]

**STATE BOARD OF VETERINARY MEDICINE
[49 PA. CODE CH. 31]
Biennial Renewal Fees**

The State Board of Veterinary Medicine (Board) amends § 31.41 (relating to schedule of fees) to read as set forth in Annex A. The final-form rulemaking increases the Board's biennial renewal fees for the upcoming renewal period beginning on December 1, 2010, and provides for an additional increase for the next biennial renewal period. The Board's original proposed rulemaking, which provided for a new fee for the initial biennial period beginning on December 1, 2010, followed by five incremental increases, was disapproved by the

Independent Regulatory Review Commission (IRRC) on April 22, 2010, with delivery of the disapproval order on April 28, 2010.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fees will be instituted for the upcoming biennial renewal cycle, which will begin on December 1, 2010. An incremental increase will be instituted beginning with the December 1, 2012, biennial renewal cycle.

Statutory Authority

Section 13(b) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.13(b)) 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. In its 2007 and 2008 annual reports to the Board, the Department's Bureau of Finance and Operations (BFO) reported significant anticipated deficits requiring an increase in fees. In response to suggestions by the House Professional Licensure Committee (HPLC), the Board proposed to raise fees incrementally. The fees proposed by the Board were based on estimates from the BFO and were intended to ensure the continued operation of the Board in accordance with its statutory mandate.

In its disapproval order, IRRC opined that the General Assembly did not intend for the Board to set fees on an incrementally increasing basis. The act specifies that the Board may only increase fees so that its projected revenues meet or exceed its projected expenditures. The act directs the Board to consider its revenues and expenditures on a biennial basis because fees are collected biennially. In consideration of IRRC's concerns, and the concerns of the HPLC that licensees be subject to smaller, incremental increases, the Board amended this final-form rulemaking to provide for an initial increase to the biennial renewal fee followed by one small increase to set the new fee that will thereafter be applied. In addition, based on more recent projections by the BFO, the fees have been set at an amount lower than originally proposed.

Summary of Comments and the Board's Response

The Board received one comment from an individual member of the public and a comment from the Pennsylvania Veterinary Medical Association (PVMA). The individual commented that he was opposed to the fee increase because "many complaints and issues before the board are based on disputes over fees and concern about paying bills." The Board does not have jurisdiction over fee disputes and complaints regarding fees are closed at a very early stage; therefore, costs associated with these types of complaints are minimal. Rather, the Board attributes the increases in expenditures to increased regulatory efforts and an increase in practice-related complaints.

The PVMA wrote to state that it did not have objections to the proposed fee increases in light of the past deficits and projected future deficits. The PVMA also noted its willingness to work with the Board to educate the veterinary profession and potentially help decrease the number of complaints and, therefore, the need to raise fees. The Board appreciates the PVMA's demonstrated willingness to educate the veterinary profession, particularly with regard to the Board's recent rulemakings related to recordkeeping and professional conduct.

The HPLC questioned how the new projected expenditures over the next six biennial renewal periods for

veterinarians and veterinary technicians were determined to assure that the fee increases will adequately meet their intended goal. The BFO bases its calculations on income and expenses for the past 3 years and also considers particular items identified by the Board that may alter the estimates. The Board's expenses have risen dramatically over the past 10 years, requiring several fee increases. This historic trend was also considered. The Board has had an increase in practice issue cases, which require greater resources. The Board has also undertaken a more ambitious regulatory agenda, including regulations to effectuate section 27(a)(2) of the act (63 P. S. § 485.27(a)(2)), which requires the Board to inspect all animal hospitals or veterinary establishments, including mobile clinics, at least biennially. The BFO considered this information when it proposed fees to the Board. The Board, cognizant of the expense of repeatedly promulgating fee regulations and the disruption to licensees caused by unpredictable fees, determined that it should round the BFO's proposals up slightly.

The HPLC urged the Board to closely monitor its expenses to determine the adequacy of the increase over the proposed period and beyond so if a change in fees is needed, it will be realized as soon as possible. The Board has always monitored its budget on a fiscal and biennial basis and will continue to do so, especially since the proposed rulemaking has now been limited to the next two biennial renewal periods. The Board will request information from the groups that provide services to the Board and will endeavor to ensure that expenses do not increase unnecessarily.

Finally, the HPLC noted that it appreciated the graduated increase as being easier for the Board's licensees. The Board agrees that the graduated increase will be easier for its licensees to plan for and manage their budgets.

IRRC noted that while it did not question the policy behind the incremental fee increases, it asked the Board to explain how the increases conform to the intent of the General Assembly and section 13 of the act. IRRC asked the Board to explain its statutory authority for automatic increases that may or may not be needed 10 years in the future and asked if the financial condition of the Board improves, would the fees be decreased accordingly? Section 13(b) of the act requires the Board to increase its biennial renewal fees if the Board's revenues are not sufficient to meet expenditures over a 2-year period. The General Assembly references a 2-year period because license renewal fees are collected biennially; therefore, the Board can only accurately gauge its revenue and expenses by looking at a given 2-year period. Section 13(b) of the act does not limit the Board to looking only 2 years into the future when projecting a budget surplus or shortfall. It is simply a legislative mandate to increase fees at the point that biennial revenue is inadequate to fund the Board's projected expenditures over a biennial period to provide for the continued operations of the Board. For this reason, the Board voted to continue with its plan to incrementally increase biennial renewal fees, albeit over only the next two renewal periods, adjusted to reflect the BFO's updated projections.

The HPLC approved the final-form rulemaking package. As previously noted, IRRC disapproved the final-form rulemaking package. Following the disapproval, the Board requested that representatives from the BFO appear at its May 6, 2010, meeting to update the Board on its projected budget and to present alternatives to the proposed rulemaking. The Board considered the informa-

tion presented by the BFO and adopted the BFO's proposed initial fee increase followed by an incremental increase in the following biennial period. The Board believes that this approach addresses IRRC's concerns about raising fees 10 years out, while still incorporating the HPLC's suggestion of smaller, more frequent changes to the biennial renewal fees.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will increase the biennial renewal fee to \$345 for veterinarians and \$85 for veterinary technicians for the biennial period beginning December 1, 2010, and to \$360 for veterinarians and \$100 for veterinary technicians beginning December 1, 2012. The final-form rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions. The final-form rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the final-form rulemaking should not create additional paperwork for the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5436 (September 19, 2009), to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 24, 2010, the final-form rulemaking was approved by the HPLC. On April 22, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 22, 2010, and disapproved the final-form rulemaking and delivered notice of its disapproval on April 28, 2010.

Under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), the Board amended its final rulemaking package and submitted a report to IRRC and the Chairpersons of the HPLC and the SCP/PLC. Following submission of the report, IRRC met on July 15, 2010, and approved the amended final rulemaking. Under section 7(d) of the Regulatory Review Act (71 P. S. § 745.7(d)), the amended final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on July 29, 2010.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending § 31.41 to read as set forth in Annex A.

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

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

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

ROBIN J. BERNSTEIN, Esq.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

Fiscal Note: Fiscal Note 16A-5723 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

Veterinarian fees for services:

Table with 2 columns: Fee description and Amount. Includes Application to original, reactivated, reissued or reciprocal license (\$35), Application for continuing education program approval (\$35), Verification of licensure (\$15), Certification of scores or hours (\$25), Temporary permit (\$35), Late renewal fee per month or part of month (\$5).

Veterinarian biennial renewal:

Table with 2 columns: Fee description and Amount. Includes Biennial renewal fee for biennial period December 1, 2010—November 30, 2012 (\$345), Biennial renewal fee for biennial period December 1, 2012—November 30, 2014 (\$360).

Veterinary technician fees for services:

Table with 2 columns: Fee description and Amount. Includes Application for certification (\$35), Application for continuing education program approval (\$35), Verification of certification (\$15), Certification of scores or hours (\$25).

Late renewal fee per month or part of month \$5
Veterinary technician biennial renewal:

Biennial renewal fee for biennial period
December 1, 2010—November 30, 2012 \$85

Biennial renewal fee for biennial period
December 1, 2012—November 30, 2014 \$100

[Pa.B. Doc. No. 10-1520. Filed for public inspection August 20, 2010, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Initial Licensure Fees

The State Real Estate Commission (Commission) amends § 35.203 (relating to fees) to read as set forth in Annex A.

Summary

The final-form rulemaking amends the current fees by consolidating the initial licensure fee charged to new applicants from a two-tiered structure to a one-tier structure. Instead of charging applicants in the first year of the licensure period 100% of the biennial renewal fee and applicants who apply in the second year of the licensure period 50% of the biennial renewal fee, the final-form rulemaking consolidates these fees into one fee, which represents 75% of the biennial renewal fee.

Statutory Authority

The final-form rulemaking is authorized under sections 404 and 407 of the Real Estate Licensing and Registration Act (act) (63 P. S. §§ 455.404 and 455.407).

Response to Comments

The proposed rulemaking was published at 39 Pa.B. 7109 (December 19, 2009). Publication was followed by a 30-day public comment period during which the Board received a public comment from the Pennsylvania Association of Realtors, who remained neutral on the rulemaking. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

IRRC recommended that the Commission add builder-owner salesperson and time-share salesperson to the categories of licensees required to pay biennial renewal fees if those fees are currently being charged as the initial licensure fees include those categories of licensees. In that builder-owner salespersons and time-share salespersons pay biennial renewal fees, the Commission added both categories of licensees in the final-form rulemaking.

The HPLC questioned which licensing boards within the Bureau of Professional and Occupational Affairs are able and unable to accept online applications. All boards, except for the State Board of Cosmetology and the State Board of Barber Examiners, are able to have initial licensure applications processed electronically. However, to date, only the State Board of Vehicle Manufactures, Dealers and Salespersons, which accepts initial licensure applications for salespersons and representatives, and the State Board of Nursing, which accepts online applications for temporary and examination applications for registered and licensed professional nurses, are currently set up to

accept online applications. The State Board of Cosmetology and the State Board of Barber Examiners cannot use this system because their initial licensure applications go to their examination vendor by contract.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this final-form rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact or paperwork requirements on the Board, licensees, the Commonwealth, its political subdivisions or the public sector.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population; accordingly, a sunset date has not been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 7, 2009, the Committee submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 7109, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 9, 2010, the final-form rulemaking was approved by the HPLC. On July 14, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Patricia Ridley, Administrator, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3658.

Findings

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The amendment made to the final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 39 Pa.B. 7109.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

The Commission, under the act, orders that:

(a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended by amending § 35.203 to read as set forth in Annex A.

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

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

JOSEPH TARANTINO, Jr.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

Fiscal Note: Fiscal Note 16A-5615 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.203. Fees.

The following fees are charged by the Commission:

Review of qualifications of candidate for broker or cemetery broker licensing examination \$40

Application for standard or reciprocal licensure of:

(i) Broker, cemetery broker or rental listing referral agent \$75

(ii) Branch office \$65

(iii) Associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson, campground membership salesperson, or broker of record, partner or officer for a partnership, association or corporation \$25

(iv) Cemetery salesperson \$20

Application for registration of cemetery company . . \$25

Initial standard or reciprocal licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation \$94.50

Initial standard or reciprocal registration for cemetery company or initial standard or reciprocal licensure for associate broker, salesperson, cemetery associate broker, cemetery salesperson, builder-owner salesperson, time-share salesperson or campground membership salesperson \$72

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a AND 435a]

Definitions and Licensing Requirements

Biennial renewal of standard or reciprocal license of broker, cemetery broker, branch office, rental listing referral agent or broker of record, partner or officer for a partnership, association or corporation \$126

Biennial renewal of cemetery company registration or standard or reciprocal license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson \$96

Biennial renewal of cemetery company registration or standard or reciprocal license of associate broker, salesperson, cemetery associate broker, cemetery salesperson, campground membership salesperson, builder-owner salesperson or time-share salesperson \$64

Registration of promotional real estate \$120

Annual renewal of registration of promotional real estate \$113

Approval of real estate education provider \$120

Reinspection of real estate education provider after first failure \$65

Annual renewal of approval of real estate education provider \$375 plus \$15 for each satellite location, course and instructor

Change of name or office location of broker, cemetery broker or rental listing referral agent \$75

Change of name or address for cemetery company or change of employer, change of employer's name or change of employer's address for associate broker, cemetery associate broker, salesperson, cemetery salesperson, builder-owner salesperson, time-share salesperson, campground membership salesperson, or broker of record, partner or officer for a partnership, association or corporation . . . \$20

Reinspection after failure for change of name or office location of broker, cemetery broker or rental listing referral agent \$55

Change of ownership or directorship of real estate education provider \$75

Change of name of real estate education provider . . \$45

Change of location of real estate education provider \$70

Addition of satellite location or instructor for real estate education provider \$20

Addition of course for real estate education provider \$25

Certification of current status of standard or reciprocal licensure, registration or approval \$15

Certification of history of standard or reciprocal licensure, registration or approval \$40

Duplicate standard or reciprocal license \$5

Late renewal of standard or reciprocal license In addition to the prescribed renewal fee, \$5 for each month or part of the month beyond the renewal date

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1103, 1213, 1326 and 1603, amends Chapters 401a and 435a (relating to preliminary provisions; and employees) to read as set forth in Annex A.

Omission of Proposed Rulemaking

The Board, under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4(3) (relating to omission of notice of proposed rulemaking), finds that notice of proposed rulemaking under these circumstances is unnecessary and impractical and therefore may be omitted. The Board's justification for utilizing the proposed rulemaking omitted process is that the only changes being made in this final-omitted rulemaking are those specifically required to bring the Board's regulations into conformity with the act of January 7, 2010 (P. L. 1, No. 1) (Act 1).

Act 1 amended the definitions of "gaming employee" and "key employee" in 4 Pa.C.S. § 1103 (relating to definitions), amended 4 Pa.C.S. § 1213 (relating to license or permit prohibition) governing who may not be issued a license or permit, amended 4 Pa.C.S. § 1326 (relating to license renewals) to set forth the time period for the renewal of a license or permit and added 4 Pa.C.S. Chapter 16 (relating to junkets) to require gaming junket representatives to obtain an occupation permit. The amendments in this final-omitted rulemaking these statutory changes.

Purpose of the Final-Omitted Rulemaking

The final-omitted rulemaking amends the definitions of "gaming employee" and "key employee" and makes other amendments regarding licensing to bring the Board's regulations into conformity with the revisions made to 4 Pa.C.S. Part II (relating to gaming) by Act 1.

Explanation of Amendments to Chapters 401a and 435a

In § 401a.3 (relating to definitions), the terms "gaming employee" and "key employee" have been amended to conform to the revised statutory definitions. The principal impact of this change, which has already been implemented by the Bureau of Licensing, has been to reduce the number of employees who are required to obtain a key employee license. These former key employees now fall under the "gaming employee" definition and are now only required to obtain an occupation permit.

In § 435a.1 (relating to general provisions), subsections (f) and (g) have been added to reflect the amendments to 4 Pa.C.S. § 1213, which prohibit anyone with a felony conviction from receiving a principal or key employee license and prohibit anyone with a misdemeanor gambling offense from getting a principal or key employee license unless at least 15 years has passed since the conviction for the offense. Former subsection (f), now subsection (h), has been amended to reflect the statutory prohibition on the issuance of occupation permits to an individual convicted of a felony or misdemeanor gambling offense unless 15 years has passed since his conviction.

[Pa.B. Doc. No. 10-1521. Filed for public inspection August 20, 2010, 9:00 a.m.]

Former subsection (g), now subsection (i), has also been amended to make the language of this section consistent with the statutory amendments. Finally, subsection (j) has been added to mirror 4 Pa.C.S. § 1213(4), which specifies what will be considered to be a felony.

In § 435a.4 (related to key employee license and occupation permit term and renewal), the time period for which a license or permit will be valid has been changed from 1 to 3 years consistent with the change to 4 Pa.C.S. § 1326.

Affected Parties

Employees of slot machine licensees and applicants for licenses and permits impacted by the amendments in Act 1 are similarly impacted by this final-omitted rulemaking.

Fiscal Impact

Commonwealth

The Board does not anticipate that there will be costs or savings to the Board or any other Commonwealth agency as a result of this final-omitted rulemaking.

Political subdivisions

This final-omitted rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector

As a result of the passage of Act 1, applicants for and holders of licenses or permits will experience lower costs. This final-omitted rulemaking, which mirrors the statutory changes, will not result in additional costs or savings.

General public

This final-omitted rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

The reclassification of positions to gaming employee from key employee and the extension of the time period that a license or permit is valid from 1 year to 3 years will result in fewer and in some cases shorter applications for some applicants and individuals seeking renewals.

Effective Date

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

Contact Person

The contact person for questions about this final-omitted rulemaking is Susan Yocum, Assistant Chief Counsel (717) 703-2971.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)) on June 22, 2010, the Board submitted a copy of the final-form regulations, proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC), the Senate Community, Economic and Recreational Development Committee and the House Gaming Oversight Committee (Committees) and the Attorney General. In addition to submitting the final-omitted rulemaking, the Board also provided IRRC, the Committees and the Attorney General with a copy of a detailed Regulatory Analysis Form prepared by the Board.

Under section 5.1(j.1)—(j.3) of the Regulatory Review Act, this final-omitted rulemaking was deemed approved by the Committees on August 4, 2010. IRRC met on August 5, 2010, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Board finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Board also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this final-omitted rulemaking.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 401a and 435a, are amended by amending §§ 401a.3, 435a.1 and 435a.4 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

GREGORY C. FAJT,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4814 (August 21, 2010).)

Fiscal Note: 125-127. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Gaming employee—

- (i) An employee of a slot machine licensee, including:
 - (A) Cashiers.
 - (B) Change personnel.
 - (C) Count room personnel.
 - (D) Slot attendants.
 - (E) Dealers or croupiers.
 - (F) Machine mechanics, computer machine technicians or table game device technicians.
 - (G) Security personnel.
 - (H) Surveillance personnel.
 - (I) Personnel with SLOTS Link security administrator access and responsibilities.
 - (J) Hosts or other individuals authorized to extend complimentary services, including employees performing functions similar to those performed by a gaming junket representative.
 - (K) Promotional play supervisors, credit supervisors, pit supervisors, cashier supervisors, shift supervisors, table game managers and assistant managers and other

supervisors and managers, except for those specifically identified in this part as key employees.

- (L) Boxpersons.
- (M) Floorpersons.
- (N) Personnel authorized to issue promotional play.
- (O) Personnel authorized to issue credit.

* * * * *

(iii) Employees of a registered or certified gaming service provider, licensed manufacturer or manufacturer designee whose duties require the employee's presence on the gaming floor or in a restricted area of a licensed facility.

- (iv) Gaming junket representatives.

* * * * *

Key employee—An individual who is:

(i) Employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine or table game operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of table games operations, director of cage operations, director of credit operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who is not otherwise designated as a gaming employee and who supervises the operations of these departments or to whom these department directors or department heads report.

* * * * *

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.1. General provisions.

* * * * *

(f) A principal or key employee license will not be issued to an individual who has been convicted of a felony offense in any jurisdiction.

(g) A principal or key employee license will not be issued to an individual who has been convicted of a misdemeanor gambling offense in any jurisdiction, unless 15 years have elapsed from the date of conviction for the offense.

(h) A permit will not be issued to an individual who has been convicted of a felony offense or misdemeanor gambling offense in any jurisdiction, unless 15 years have elapsed from the date of conviction for the offense.

(i) When considering an application for a registration from an individual who has been convicted of a felony or misdemeanor gaming offense in any jurisdiction, an application for a permit from an individual who has been convicted of a felony or misdemeanor gaming offense in any jurisdiction when 15 years have elapsed from the date of the conviction for the offense, or an application for a license from an individual who has been convicted of a misdemeanor gaming offense in any jurisdiction when 15 years have elapsed from the date of the conviction for the offense, the Board will consider:

* * * * *

(j) For purposes of this section, a felony offense is any of the following:

(1) An offense punishable under the laws of this Commonwealth by imprisonment for more than 5 years.

(2) An offense which, under the laws of another jurisdiction, is either:

- (i) Classified as a felony.
- (ii) Punishable by imprisonment for more than 5 years.

(3) An offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be subject to imprisonment for more than 5 years.

* * * * *

§ 435a.4. Key employee license and occupation permit term and renewal.

(a) A key employee license or occupation permit issued under this chapter shall be valid for 3 years from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a key employee license or occupation permit.

(c) A key employee license or occupation permit for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the key employee license or occupation permit that the Board has approved or denied the key employee license or occupation permit.

[Pa.B. Doc. No. 10-1522. Filed for public inspection August 20, 2010, 9:00 a.m.]