

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE REGISTRATION BOARD FOR PROFES- SIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

[49 PA. CODE CH. 37]

Renewal Fee

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) amends § 37.17 (relating to schedule of fees) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The increased biennial renewal fee will be implemented with the September 30, 2017, biennial renewal.

Statutory Authority

Section 9(a) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. § 156(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 expenditures over a 2-year period.

Description and Need for this Final-Form Rulemaking

Under section 9 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 shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from other fees, fines and civil penalties. If fees are inadequate to meet the minimum enforcement efforts required, section 9(b) of the act requires the Bureau of Professional and Occupational Affairs (Bureau), after consultation with the Board, to increase the fees so that adequate revenues are raised to meet the required enforcement effort.

At the Board's meeting on March 12, 2014, representatives from the Department of State's (Department) Bureau of Finance and Operations (BFO) presented a summary of the Board's actual revenue and expenses for FY (FY) 2006-2007 through FY 2012-2013 and projected revenue and expenses through FY 2026-2027. At the end of FY 2012-2013 (a nonrenewal year), the Board accrued a deficit of approximately \$660,000. The BFO projected that, without an increase in the renewal fee, at the end of FY 2016-2017 (a nonrenewal year) the accumulated deficit would swell to approximately \$2.27 million and would continue to grow thereafter. The BFO projected that the Board's biennial expenses would increase from a total of \$2.704 million in FY 2013-2014 and FY 2014-2015 to \$3.228 million in FY 2020-2021 and FY 2021-2022. With approximately 32,200 licensees at that time, the BFO projected that these expenses would increase from \$85 to over \$100 per licensee per biennium. Therefore, the Board determined that it was necessary to raise fees to meet or

exceed projected expenditures in compliance with section 9(a) of the act. As a result, the Board voted at its March 12, 2014, meeting to propose increasing the biennial renewal fees from \$50 to \$100. Three years later, the BFO now projects that the accumulated deficit at the end of FY 2016-2017 will be \$1,187,926, with an operating deficit of \$617,140 in the 2015—2017 biennium. The BFO further projects that, without an increase in the renewal fee, the operating deficit will be \$687,000 in FY 2017-2018 and FY 2018-2019 and continue to increase to \$1.426 million by FY 2025-2026 and FY 2026-2027, adding to the accumulated deficit. Without the increase, the BFO projects that the accumulated deficit will soar to \$6,416,926 by the end of FY 2026-2027.

Summary of Comments to the Proposed Rulemaking and the Board's Response

Notice of proposed rulemaking was published at 45 Pa.B. 2368 (May 16, 2015), with a 30-day public comment period. The Board received public comments from the following licensees: Bill Adams, PG, PE; Gregg A. Davis, PLS; Lee Geisler, PLS; Mark B. Ios, PG, on behalf of the Pennsylvania Council of Professional Geologists; James Mulry, PG; Michael Napolitan, PG; Kevin R. Sech, PG, PE; Timothy M. Stahl, PE; Robert O. Taylor, II, PE; and David H. Widmer, PLS. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The licensees who commented objected to an increase in the renewal fee. Many licensees pointed out that the increased renewal fee is in addition to the recently imposed cost to comply with mandatory continuing education.

Some commentators suggested that a licensee who holds multiple licenses should pay a lower renewal fee for the second license and an even lower renewal fee for a third license. For congruency, the Board has never charged differing renewal fees, whether based upon the type of license or the number of licenses held. In addition to the greater difficulty of administration, varying the fees would require the Board to weigh the relative value of each license; the Board will not perform this task. Regardless of the number of licenses held, each license authorizes the holder to practice that profession without limitation other than the holder's proficiency. A licensee who qualifies for and chooses to hold an additional license receives that same full authorization as a licensee who holds only the single license. Were the Board to authorize a lesser renewal fee based upon the classification of the license or the number of licenses held, that would reduce the amount of revenue and require the Board to increase the renewal fees elsewhere to meet expenses.

A commentator suggested that the Board assess a renewal fee on engineers-in-training (and presumably the surveyors-in-training and geologists-in-training) who are not currently assessed a renewal fee. Under sections 4.2(b)(3), 4.3(b)(2) and 4.4(d) of the act (63 P.S. §§ 151.2(b)(3), 151.3(b)(2) and 151.4(d)), after completing the required education or experience instead of education and passing the fundamentals examination, a candidate for licensure receives the "in-training" certificate that is valid without time limitation until the individual becomes licensed. The issuance of the "in-training" certificate does

nothing more than act as the starting point for calculating the years of “progressive experience” required for licensure, and the Board does not renew this certification. The holder of an “in-training” certificate is receiving no authorization or other license from the Board and thus should not be expected to share in the overall cost of operating the Board, other than payment of the costs of processing the application for the “in-training” certificate.

A commentator pointed out that paying any increased renewal fee is more difficult for those licensees who have retired. However, a licensee who is retired and not practicing need not renew and is not required to complete continuing education. A retired licensee who wishes only to hold himself out as a retired licensee may take active-retired status under section 4.5(g)(1)(iii) of the act (63 P.S. § 151.5(g)(1)(iii)) and pay the renewal fee, but is exempt from the continuing education requirement.

Almost all of the public commentators suggested that the Board should first take steps to reduce its costs before considering an increase in the renewal fee. As discussed as follows, the vast majority of the Board’s costs are for the labor of the Department employees who process applications and other paperwork in the Board’s office, investigate complaints against licensees, prosecute those complaints or perform other legal services on behalf of the Board. The Board relies upon Department managers to assure that those employees charging time to the Board are actually performing those services, the services are necessary and the services are efficiently provided.

Some public commentators suggested increasing revenue through civil penalties, essentially putting more of

the burden on those who create the need for investigation, prosecution and adjudication of violations of the act. Civil penalties are not levied as a revenue source; these financial disincentives are designed to deter the respondent licensee and others from committing violations. After years of being limited to a maximum civil penalty of \$1,000, by the act of July 17, 2009 (P.L. 95, No. 25), the General Assembly authorized the Board and other licensing boards within the Bureau to levy civil penalties of up to \$10,000 per violation. See section 5(b)(4) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(b)(4)). Yet, the civil penalty imposed in any given case must be designed for its deterrent effect and not simply to raise funds. Under section 5(b)(5) of Act 48, the General Assembly authorized boards in the Bureau to assess the costs of investigation against a respondent who has violated a law. The Board has recently seen an increase in revenue from civil penalties and costs of investigation, although it is not enough to avoid a renewal fee increase. It is worth noting that an increase in the number of complaints would be expected to increase the Board’s costs in investigating, prosecuting and adjudicating those complaints prior to an increased revenue from assessed civil penalties or costs is realized.

A public commentator suggested that the number of licensed professional land surveyors is decreasing, and spreading the same amount of costs over fewer licensees would result in a larger renewal fee even though, with fewer licensees, there should be reduced costs of regulation. The number of Board licensees has actually increased slightly in all three classes from FY 2013-2014 through FY 2016-2017, as follows:

<i>Licensees by class</i>	<i>FY 2013-2014</i>	<i>FY 2014-2015</i>	<i>FY 2015-2016</i>	<i>FY 2016-2017</i>
Professional engineer	27,786	29,286	28,653	29,937
Professional land surveyor	2,010	2,052	1,941	1,966
Professional geologist	2,240	2,312	2,204	2,282
<i>Total</i>	32,036	33,650	32,798	34,185

A public commentator suggested that the Board’s renewal fee should be kept comparable to the registration fees for a professional engineer in Ohio of \$40 per year and in Maryland of \$76 per 2 years. The biennial registration renewal fee in Delaware is \$50 for professional engineers. The biennial registration fee for professional engineers and professional land surveyors in New Jersey is \$80 (\$40 if retired). In addition to the mandatory continuing education fee of \$45, in New York the triennial renewal fee is \$210 for a professional engineer and \$210 for a professional land surveyor. The registration fee in West Virginia is \$70 biennially for professional engineers (\$30 if retired) and \$100 annually for professional land surveyors. The \$100 biennial renewal fee charged by the Board in this final-form rulemaking is not out of line with the fees charged in the surrounding states.

The HPLC requested that the Board provide the following information: major cost centers of the Board and any significant increases in its expenditures; actual revenue and expense numbers for FY 2013-2014 and an updated projection for FY 2014-2015; and any other measures the Board has considered that would help reduce the projected deficits, either reduction in expenses or increase in other forms of revenue. IRRRC also asked the Board to

provide more detailed information in the final-form rulemaking to support the need for the increased fee.

The cost centers of the Board fall into two broad categories—administrative costs and legal costs. Administrative costs include those associated with Board administration, the Commissioner of Professional and Occupational Affairs’ (Commissioner) office, the Revenue office and Departmental services (human resources, finance and operations, management information systems, press office, Legislative and policy offices, Secretary of the Commonwealth and deputies, and office of chief counsel). Legal costs include those costs associated with the legal office (prosecution division, Board counsel and services of experts), the Office of Hearing Examiners, the Professional Compliance Office and the Bureau of Enforcement and Investigation (BEI).

The largest cost center for the Board has historically been Board administration, which includes costs associated with the Board’s administrative staff, printing and mailing, publications, supplies, operating and fixed assets, and so forth. Board administration costs tend to fluctuate depending on whether a given year is a renewal year or not, as more administrative staff and resources are dedicated to the Board during a renewal year. This cost center has ranged from a low of \$315,529 during FY 2008-2009, a nonrenewal year, to a high of \$682,939 in

FY 2015-2016, a renewal year. The expenses of this cost center have averaged approximately \$499,126 per year from FY 2007-2008 through FY 2015-2016. During this time frame, this cost center has accounted for 43% of the Board's expenses.

The second largest cost center for the Board is the legal office, which includes personnel-related costs for Board counsel, prosecuting attorneys, regulatory counsel and legal support staff. It also includes direct charges such as expert witness fees and costs associated with legal notices published on behalf of the Board. Legal office costs are also dependent to a large degree on the number of complaints that are filed, investigated and prosecuted. However, it also includes costs associated with the Board's counsel and regulatory counsel, which tend to remain fairly constant unless there are significant special projects. For example, in FY 2010-2011 and FY 2011-2012, counsel prepared a final-form rulemaking to implement required continuing education, and in FY 2012-2013 and FY 2013-2014 counsel researched and prepared exposure drafts and a proposed rulemaking to address use of electronic seals and signatures. This cost center has ranged from a low of \$124,760 in FY 2008-2009 to a high of \$399,643 in FY 2013-2014, with an average cost of \$254,527 per year from FY 2007-2008 through FY 2015-2016. During this time frame, this cost center has accounted for 22% of the Board's expenses.

Another large cost center for the Board is the BEI, ranging from a low of \$78,930 in FY 2015-2016 to a high of \$157,791 in FY 2009-2010, with an average of \$129,277 from FY 2007-2008 through FY 2015-2016. These are the costs associated with investigatory services provided by the BEI to the Board and are entirely dependent upon how many complaints are filed, and how many of those complaints merit investigation. It is difficult to predict how many complaints may be filed in a given year, and historically the numbers have fluctuated dramatically, ranging from a low of 59 in FY 2004-2005 to a high of 326 in FY 2012-2013, with an average of 187 each year from FY 2007-2008 through FY 2013-2014. From FY 2007-2008 through FY 2015-2016, this cost center has accounted for 11% of the Board's expenses.

These three cost centers made up 76% of the Board's total expenses from FY 2007-2008 through FY 2015-2016. The remaining cost centers (Commissioner's office, Revenue office, Departmental services, Office of Hearing Examiners, Professional Compliance Office and Board members) comprise the remaining 24%.

In response to IRRC's request for updated financial information as the basis for the fee increase, the Board attached information prepared by the BFO to the Regulatory Analysis Form for this final-form rulemaking. This detailed information is also available upon request. The BFO reports that the Board's actual expenses were \$1,394,146 in FY 2013-2014 and \$1,227,117 in FY 2014-2015. The BFO also reports that the Board's actual revenue was \$1,787,824 in FY 2013-2014 and \$228,467 in FY 2014-2015, resulting in a biennial deficit of \$604,972. The BFO further reports that the Board's actual expenses were \$1,366,832 in FY 2015-2016 and are projected to be \$1,284,000 in FY 2016-2017 and that its actual revenue was \$1,809,692 in FY 2015-2016 and is projected to be \$224,000 in FY 2016-2017, resulting in a projected biennial operating deficit of \$617,140.

By increasing the renewal fee to \$100 beginning with the 2017—2019 biennium, the BFO projects that, following an additional operating deficit in the 2015—2017 biennium, there will be an operating surplus of \$1.022

million in the 2017—2019 biennium that will be used to recoup part of the accumulated deficit. Based upon the BFO's projections, the biennial renewal fee in this final-form rulemaking should be sufficient to recover the accumulated deficit by the end of FY 2021-2022. The BFO further projects that the amount of the operating surplus each biennium will continue to decrease as follows: \$853,000 in the 2019—2021 biennium; \$674,000 in the 2021—2023 biennium; \$484,000 in the 2023—2025 biennium; and \$283,000 by the 2025—2027 biennium. Expenditures are expected to outpace revenues and become an operating deficit during the 2027—2029 biennium or shortly thereafter. At that time, if these projections hold, the Board will be required to again evaluate the need for a fee increase.

Fiscal Impact

The increased biennial renewal fee will impact licensees of the Board. There are currently approximately 29,937 licensed professional engineers, 1,966 licensed professional land surveyors and 2,282 licensed professional geologists, a total of approximately 34,185 licensees who all will be required to pay more to renew their licenses in 2017 and thereafter. The vast majority of licensees are considered to be working for small businesses. This final-form rulemaking will have no other adverse fiscal impact on the private sector, the general public, or the Commonwealth or its political subdivisions.

Paperwork Requirements

This final-form rulemaking will require the Board to alter some of its forms to reflect the new renewal fee. However, this final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions, the regulated community or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 4, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 2368, 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, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of 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 and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 23, 2017, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 24, 2017, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Robin Shearer, Board Administrator, State Registration Board for Professional Engineers, Land Surveyors and Geologists, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-engineer@pa.gov. Reference No. 16A-4713 (renewal fee) when requesting information.

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 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 does not include amendments that enlarge the scope of the proposed rulemaking published at 45 Pa.B. 2368.

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

Order

The Board, acting under the act, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 37, are amended by amending § 37.17 to read as set forth in Annex A.

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

(c) The Board shall submit this order and Annex A to IIRC, the HPLC and the SCP/PLC as required by law.

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

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

THEODORE TESLER, PG,
President

(Editor's Note: See 47 Pa.B. 5761 (September 9, 2017) for IIRC's approval order.)

Fiscal Note: Fiscal Note 16A-4713 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 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

QUALIFICATIONS FOR LICENSURE

§ 37.17. Schedule of fees.

(a) Renewal fee. The Board will charge the following renewal fee:

Biennial renewal of registration \$100

(b) Application fees. The Board will charge the following nonrefundable application fees:

Permission to sit for examination \$50

Certification, licensure or registration \$50

Temporary permit. \$25

(c) Other fees. The Board will charge the following fees:

Certification of license, registration, permit or scores \$25

Verification of license, registration or permit. \$15

(d) Fees to testing organizations. Examination fees for state-specific examinations are established by agreement between the Commonwealth and the third-party testing

organizations that develop, administer and grade the examinations. Examination fees for the National examinations are established by NCEES or ASBOG. Examination candidates shall pay the required examination fees directly to the relevant testing organizations. Examination fees are paid separate from the application fees.

[Pa.B. Doc. No. 17-1613. Filed for public inspection September 29, 2017, 9:00 a.m.]

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Podiatrists

The Commissioner of Professional and Occupational Affairs (Commissioner) adds § 43b.27 (relating to schedule of civil penalties—podiatrists) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the Pennsylvania Bulletin and will apply to violations that occur on or after the effective date.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

Background and purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, a licensee who receives an Act 48 citation retains his due process rights to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48 authorizes the State Board of Podiatry (Board), as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on a licensee or unlicensed person who violates a provision of the Podiatry Practice Act (act) (63 P.S. §§ 42.1—42.21c) or regulations of the Board. However, section 5(a) of Act 48 limits the civil penalty that may be levied by citation to no more than \$1,000 per violation.

This is the first time that the Board will participate in the Act 48 citation program. The Commissioner and the Board believe that it is necessary to implement the civil penalties in this final-form rulemaking to streamline the disciplinary process for lapsed license and continuing education violations.

Summary and Responses to Comments

Notice of proposed rulemaking was published at 45 Pa.B. 2704 (June 6, 2015), with a 30-day public comment period. No public comments were received. The House Professional Licensure Committee (HPLC) responded on July 14, 2015, that it wishes to take no formal action

until the final-form rulemaking is promulgated. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. On August 5, 2015, the Independent Regulatory Review Commission (IRRC) submitted comments.

With regard to the proposed schedule of civil penalties for failure to complete required hours of continuing education during the 2 years preceding renewal or reactivation, IRRC asked whether the intent was to impose a civil penalty and not renew a license when a licensee fails to complete the required continuing education. Furthermore, IRRC also asked about how the Board intends to follow section 9.1 of the act (63 P.S. § 42.9a) that licensees may not renew a license if the licensee has not completed the required hours of continuing education.

The civil penalty schedule for failure to complete the required hours of continuing education in accordance with § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences) is in addition to, and not in lieu of, the statutory requirement under section 9.1 of the act that licensees may not renew a license if the licensee has not completed the required hours of continuing education. That is, the Board will not renew a license unless the licensee certifies to the Board, subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), that all required continuing education has been completed in accordance with § 29.61(c). If the licensee cannot certify that the licensee has completed 50 clock hours of continuing education in approved courses by the renewal deadline, the Board does not renew the individual's license and the license expires. Thereafter, the Board will reactivate the license only if the licensee subsequently proves compliance with the continuing education requirement. Upon review, it became apparent that because a license is not reactivated without proof of compliance, there could never be a situation when a citation would be issued for "failure to complete required hours of continuing education during the 2 years preceding... reactivation." For that reason, the final-form rulemaking was revised to delete this language and apply only to renewal.

Conversely, it is possible that after a licensee has certified compliance with the continuing education requirements and been renewed, a postrenewal audit may demonstrate that a licensee failed to complete all 50 required clock hours, or failed to complete at least 30 clock hours in courses and programs in podiatry approved by the Board or the Council on Podiatric Medical Education, or exceeded the maximum of 10 hours that may be completed in courses and programs that involve the use of the Internet or the reading of professional journals or magazine articles. See § 29.61(a). It is a postrenewal audit that identifies deficiencies that would trigger the issuance of a citation under this civil penalty schedule.

Additionally, the Commissioner is in the process of developing a system for the boards and commissions within the Bureau to track compliance with the continuing education requirements as part of the new Pennsylvania Licensing System (PALS). Initially, each licensee will be able to track completion of continuing education and upload certificates of completion to the licensee's dashboard. The Bureau's intent is that ultimately, when the continuing education modules of PALS are fully implemented, completion of the continuing education requirements will be validated up front and a licensee will be unable to renew until full compliance has been verified, in much the same way that the Bureau currently validates completion of the mandatory continuing education

in child abuse recognition and reporting required under 23 Pa.C.S. § 6383(b)(2) (relating to education and training).

With regard to the civil penalty schedule for practicing or offering to practice podiatry by a person whose license is expired, IRRC raised two concerns. First, IRRC asked whether, under a first offense, a licensee would be subject to a fine of \$500 or \$1,000 if the licensee practiced on a lapsed license for a period of 5 months and 1 day. IRRC also asked whether a month would mean a whole month and suggested that the Bureau clarify this in the final-form rulemaking. IRRC's second concern with the schedule was that first and second offenses were being treated differently so that a licensee who practiced on a lapsed license for 5 months and 1 day could receive a \$1,000 civil penalty for a first offense (5—12 months) and receive only a \$500 civil penalty for a second offense (less than 6 months). IRRC also observed that under the proposed schedule a licensee being charged with a first offense for practicing on an expired license for 3 or 4 months would pay the same civil penalty as a licensee being charged with a second offense for the same period of time (\$500). IRRC stated that it would be more reasonable if the penalties for second offenses are higher than the penalties for first offenses.

To address IRRC's two concerns regarding civil penalties for expired licenses, the Commissioner, with approval of the Board, revised the schedule of civil penalties to set the civil penalty for each month or portion of a month of practice on an expired license. For a first offense, the penalty for practicing on an expired license would be \$50 per month or portion of a month, not to exceed \$1,000. Violations exceeding 20 months would result in formal disciplinary action. For a second offense, the penalty would be increased to \$100 per month or portion of a month, not to exceed \$1,000, with violations continuing more than 10 months resulting in formal disciplinary action. Finally, for subsequent offenses, the penalty would be determined through formal disciplinary action. In this way, the civil penalties could not result in the inequities identified by IRRC in its comments.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions, and will reduce the paperwork requirements of the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations subject to the Act 48 citation process. The only fiscal impact of this final-form rulemaking will be borne by persons who violate the act or regulations of the Board and are subject to the civil penalties in § 43b.27.

Sunset Date

The Bureau and the Board continuously monitor the effectiveness of regulations. As a result, 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 May 20, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 2704, 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, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of 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 and the HPLC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 23, 2017, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 24, 2017, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting the Commissioner or the State Board of Podiatry, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-podiatry@pa.gov.

Findings

The Commissioner finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and 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 Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by adding § 43b.27 to read as set forth in Annex A.

(b) The Commissioner 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 Commissioner shall submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.

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

(e) This final-form rulemaking shall take effect on publication in the *Pennsylvania Bulletin*.

IAN J. HARLOW,

Commissioner of Professional and Occupational Affairs

(*Editor's Note:* See 47 Pa.B. 5761 (September 9, 2017) for IRRC's approval order.)

Fiscal Note: 16A-4413. 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 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.27. Schedule of civil penalties—podiatrists.

STATE BOARD OF PODIATRY

<i>Violation Under 63 P.S.</i>	<i>Violation Under 49 Pa. Code</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 42.12	Section 29.14(a)	Practicing or offering to practice podiatry by a person whose license is expired	1st offense—\$50 per month, or portion of a month, not to exceed \$1,000; over 20 months—formal action 2nd offense—\$100 per month, or portion of a month, not to exceed \$1,000; over 10 months—formal action Subsequent offenses—formal action
Section 42.9a	Section 29.61(a)	Failure to complete required hours of continuing education during the 2 years preceding renewal	1st offense—\$50 per hour of deficiency, not to exceed \$1,000; over 20 hours—formal action 2nd offense—\$100 per hour of deficiency, not to exceed \$1,000; over 10 hours—formal action Subsequent offenses—formal action

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