

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF COSMETOLOGY [49 PA. CODE CH. 7]

Deletion of Examination Fees

The State Board of Cosmetology (Board) amends §§ 7.2, 7.31, 7.32a and 7.32g to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Section 11 of the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) (63 P. S. § 517) authorizes the Board to promulgate regulations for “the examination and licensing of applicants to practice or teach cosmetology . . . and generally for the conduct of persons, copartnerships, associations or corporations” affected by Act 86.

Section 12 of Act 86 (63 P. S. § 518) prescribes the time, place and materials for examinations for licensure. Section 13(b) of Act 86 (63 P. S. § 519(b)) requires the Bureau of Professional and Occupational Affairs to contract with a professional testing organization to prepare and administer examinations in accordance with section 812.1(a) of The Administrative Code of 1929 (71 P. S. § 279.3a(a)). Under section 812.1(b) of The Administrative Code of 1929, each board has the discretionary power to charge a fee for the administration of and cost of each examination. Section 812.1(c) of The Administrative Code of 1929 defines cost as “all contractual charges relating to the preparation, administration, preparing, administering, grading and recording of the examination.”

C. *Background and Need for the Final-Form Rulemaking*

The final-form rulemaking deletes references to the fees for the theory and performance examination for cosmetologists, cosmeticians, manicurists and teachers and the theory examination for managers. These fees are set by the administrators of the examinations, not by the Board. To avoid the necessity of amending the regulations whenever the examination administrator changes the fees, the Board is deleting the examination fees from its schedule of fees. In addition, references to the examination fees contained in other sections were amended to clarify that applicants are still required to submit the examination fees set by the professional testing organization with their applications.

D. *Description of Amendments*

Section 7.2 (relating to fees) has been amended to delete references to the fees for the theory and performance examination for cosmetologists, cosmeticians, manicurists and teachers and the theory examination for managers. These fees are set by the professional testing organizations.

Section 7.31 (relating to examination prerequisite for licensure; exception) has been amended to clarify that applicants are required to pass the examination required by the Board, rather than given by the Board. The Board

contracts with a professional testing organization to give the various licensure examinations.

Sections 7.32a and 7.32g (relating to contents of examination application; and issuance of temporary licenses to qualified examination applicants) have been amended to make it clear that the applications are to be accompanied by the examination fee set by the professional testing organization.

E. *Comment and Regulatory Review of the Proposed Rulemaking*

Publication of proposed rulemaking at 31 Pa.B. 5713 (October 13, 2001) was followed by a 30-day public comment period during which the Board received no public comments. One public comment supporting the proposed rulemaking was received during the pre-draft period.

Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee or the House Professional Licensure Committee.

The following are the Board’s responses to the comments submitted by IRRC.

1. IRRC pointed out that § 7.32a requires applications to include the examination fees prescribed by § 7.2. In response to IRRC’s comment, the Board has amended this section to eliminate the cross reference to the examination fees in § 7.2 and to require the application to include the examination fee set by the professional testing organization. Applicants will continue to submit the examination fees to the Board with their applications.

2. Section 7.32g(a) requires payment of the examination and license fees prescribed in § 7.2. This section has been amended to eliminate the cross reference to the examination fees in § 7.2 and to clarify that the applicant needs to pay the examination fee set by the professional testing organization. IRRC suggested that the Board delete the references to examination fees throughout the entire chapter. However, the Board believes it is necessary to clarify through regulation that satisfaction of the examination fee is still required before a license may be issued.

3. IRRC also noted that § 7.31(a) requires applicants to “pass the examination given by the Board for that license.” IRRC suggested that, as the professional testing organization gives the examination and charges the fees for that service, that the subsection should be rewritten to read “. . . shall pass the examination required by the Board for that license.” The Board agrees and has amended the subsection as suggested.

F. *Fiscal Impact and Paperwork Requirements*

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

G. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulation. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 27, 2001, the Board submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 5713, to IRRC and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees 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 Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 16, 2003, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 18, 2003, and approved the final-form rulemaking.

I. *Contact Person*

Further information may be obtained by contacting Sara Sulpizio, Board Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649, ssulpizio@state.pa.us.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and 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 does not enlarge the purpose of proposed rulemaking published at 31 Pa.B. 5713.

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

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 7, are amended by amending §§ 7.2, 7.31, 7.32a and 7.32g 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 to 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 on publication in the *Pennsylvania Bulletin*.

FRANKLIN K. SCHOENEMAN,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 134 (January 3, 2004).)

Fiscal Note: Fiscal Note 16A-4510 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 7. STATE BOARD OF COSMETOLOGY
GENERAL PROVISIONS

§ 7.2. **Fees.**

Fees charged by the Board are as follows:

Licensure of cosmetologist, manicurist or cosmetician	\$10
Licensure of cosmetology shop manager or cosmetology teacher	\$10
Licensure of cosmetology shop, manicurist shop or cosmetician shop	\$55
Licensure of cosmetology school	\$160
Licensure by reciprocity	\$20
Registration of cosmetology apprentice	\$70
Biennial renewal of manicurist's license	\$21
Biennial renewal of cosmetician's license	\$21
Biennial renewal of cosmetologist's license	\$23
Biennial renewal of cosmetology shop manager's or cosmetology teacher's license	\$36
Biennial renewal of cosmetology shop's license ..	\$41
Biennial renewal of cosmetician or manicurist shop's license	\$25
Biennial renewal of cosmetology school's license .	\$66
Approval of cosmetology school supervisor	\$20
Change in cosmetology, cosmetician or manicurist shop (inspection required)	\$55
Change in cosmetology, cosmetician or manicurist shop (no inspection required)	\$15
Reinspection of cosmetology, cosmetician or manicurist shop or cosmetology school	\$40
Certification of student or apprentice training hours	\$30
Verification of license, registration, permit or approval	\$15

EXAMINATIONS

§ 7.31. **Examination prerequisite for licensure; exception.**

(a) Except as provided in subsection (b), an individual who wants to obtain a teacher's, manager's, cosmetologist's, cosmetician's or manicurist's license listed in §§ 7.12—7.15 shall pass the examination required by the Board for that license.

(b) An individual who meets the criteria for licensure by reciprocity under section 9 of the act (63 P. S. § 515) may obtain a license without examination.

§ 7.32a. **Contents of examination application.**

(a) The application of a first-time examinee shall include the following:

(1) Proof of having met the requirements for the examination applied for as set forth in §§ 7.32b—7.32f.

(2) A physician's certification that the applicant is free from contagious, communicable or infectious diseases.

(3) The examination fee set by the professional testing organization and the license fee prescribed in § 7.2 (relating to fees).

(b) The application of a reexaminee shall be accompanied by the examination fee set by the professional testing organization.

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

(a) A temporary license may be issued to an applicant who is eligible for admission to the cosmetologist's or manicurist's examination and who pays the examination fee set by the professional testing organization and the

license fee prescribed in § 7.2 (relating to fees). The purpose of a temporary license is to allow an otherwise qualified applicant to practice pending the applicant's scoring a passing grade on the examination.

(b) A temporary license is valid for 9 months or until the next examination, whichever comes first.

(c) The holder of a temporary cosmetologist's license shall practice under the supervision of a licensed teacher, manager or cosmetologist. The holder of a temporary manicurist's license shall practice under the supervision of a licensed teacher, manager or cosmetologist.

[Pa.B. Doc. No. 04-810. Filed for public inspection May 7, 2004, 9:00 a.m.]