

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 128, 129, 131 AND 139]

Air Quality Amendments (RBI # 2)

The Environmental Quality Board (Board) proposes to amend Chapters 128, 129, 131 and 139 to read as set forth in Annex A.

The proposed rulemaking deletes portions of Chapter 128 (relating to alternative emission reduction limitations) which established alternative emission reduction limitations for certain air contamination sources. Section 129.56 (relating to storage tanks greater than 40,000 gallons capacity containing VOCs) is amended to allow owners and operators of floating roof storage tanks with capacities greater than 40,000 gallons up to 45 days to complete repairs on defective storage tank seals. An additional 30-day extension may be granted by the Department of Environmental Protection (Department) if the storage tank vessel cannot be emptied or repaired within the 45-day time frame. Section 129.67(b)(2) (relating to graphic arts systems) is amended to include the term "less water," which was erroneously deleted in a previous rulemaking. Section 129.70 is amended to delete the Department's perchloroethylene (PCE) requirements for dry cleaning facilities because PCE is no longer regulated as a volatile organic compound (VOC). The proposal also deletes the ambient air quality standards in § 131.3 (relating to ambient air quality standards) and the sampling and analytical procedures in § 139.32 (relating to sampling and analytical procedures) for sulfates (as H₂SO₄), fluorides (total soluble, as HF) and hydrogen sulfide because these standards are not required by Federal law.

This proposal was adopted by the Board at its meeting of March 17, 1996.

A. Effective Date

These amendments will be effective immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468 (717) 787-1663, or Joyce E. Epps, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464 (717) 787-7060.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available through the Department's Website (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (35 P. S. § 4005), which grants to the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

D. Background and Purpose

On August 4, 1995, Secretary Seif issued the "Directive on Review of Existing Regulations and Technical Guidance." This directive mandated an extensive review of the Department's regulations and technical guidance and provided an opportunity for public comments on the results of this Regulatory Basics Initiative (RBI). The goals of the RBI included identifying those regulations that were more stringent than Federal requirements, obsolete or redundant or no longer necessary. The RBI also required the Department to identify regulations which inhibited new green technologies and failed to encourage pollution prevention approaches.

Subsequently, the Governor signed Executive Order 1996-1 entitled "Regulatory Review and Promulgation" on February 6, 1996. The Executive Order establishes procedures for the review of existing regulations and the drafting and promulgation of new regulations. General requirements of Executive Order 1996-1 include the promulgation of regulations which have a compelling public interest, regulatory costs which do not outweigh their benefits and regulations that are no more stringent than standards imposed by Federal law unless justified by a compelling State interest.

This proposed rulemaking, consistent with the principles of Executive Order 1996-1 and the Department's RBI, deletes the obsolete alternative emission limitations in Chapter 128 as well as the redundant PCE requirements for dry cleaners in § 129.70. The volatile organic storage tank requirements in § 129.56 (relating to storage tanks greater than 40,000 gallons capacity containing VOCs) are being revised to conform to Federal requirements for repairing defective floating roof seals in volatile organic storage tanks. The proposal also deletes several ambient air quality standards and sampling and analysis techniques codified in Chapters 131 and 139 (relating to ambient air quality standards; and sampling and testing) which are no longer necessary and not required by Federal law.

The Department consulted with the Air Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) during the development of the proposed amendments to Chapters 128, 129, 131 and 139. On December 11, 1996, a majority of the members of the AWQTAC concurred with the Department's recommendation to submit the proposed amendments to the Board for consideration.

E. Summary of Regulatory Requirements

These proposed amendments delete portions of Chapter 128. Under the existing regulations, the owners and operators of air contamination sources at 12 facilities, including Andre Greenhouses, Inc., United States Steel Corporation, Scott Paper, Bethlehem Steel Corporation and Sun Refining and Marketing Company, submitted proposals to the Department to implement alternative emission reduction limitations for certain air contamination sources. Alternative emission reduction limitations for those sources were incorporated in revised operating permits, codified in the *Pennsylvania Code* and submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP). Eleven of the 12 alternative emission reduction limitations are no longer necessary due to changes in processes and equipment or the closing of the affected

facility. Consequently, the proposed amendments delete the alternate emission reduction limitations for 11 of the 12 facilities.

The proposed rulemaking includes revisions to several provisions in Chapter 129 (relating to standards for sources). Proposed revisions to § 129.56 will allow the owners and operators of volatile organic liquid storage tanks to empty the tanks and repair the seals within 45 days if the floating roof seals are defective. A 30-day extension may be requested from the Department if the request includes a demonstration that alternative storage capacity is unavailable. Section 129.56 does not presently include a time frame for repairing or emptying of defective organic liquid storage tanks. This revision ensures that § 129.56 is consistent with the Federal procedures in 40 CFR 60.113b(b)(4)(iii).

The proposed change to § 129.67(b)(2) amends the graphic arts systems requirements by adding the term "less water." This term was inadvertently omitted during a previous rulemaking (22 Pa.B. 2720 (May 23, 1992)). Addition of the term "less water" clarifies that water is not to be considered when demonstrating compliance with the requirements.

Section 129.70 will be deleted in this proposed rulemaking. In 1981, as part of its ozone strategy, the Department adopted PCE requirements for certain dry cleaning facilities which emitted more than a 100 tons per year of VOCs. The EPA no longer considers PCE to be a photochemically reactive compound and removed the compound from its listing of VOCs. Consequently, § 129.70 is no longer necessary as a result of EPA's finding. However, new and existing dry cleaning facilities in this Commonwealth with the potential to emit more than 10 tons of PCE a year must comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for PCE dry cleaning facilities published at 58 FR 49354 (September 22, 1993). The NESHAP for those PCE dry cleaning facilities specifies control of PCE emissions to the level of the maximum achievable control technology (MACT) required under section 112 of the Clean Air Act.

The proposed rulemaking also deletes the sulfate (as sulfuric acid [H₂SO₄]), fluoride (total soluble as hydrogen fluoride [HF]) and hydrogen sulfide ambient air quality standards in § 131.3 and sampling and analysis techniques for those contaminants in § 139.32. The Department will retain the ambient air quality standards for beryllium because of its extreme toxicity and the total settled particulates (TSP) standard because of its usefulness, Statewide, as an investigative tool to address citizen complaints. With the exception of beryllium, there are no Federal ambient standards for those air contaminants for which maximum ambient air concentrations were established in September 1971. The ambient air quality standards recommended for deletion are not required by Federal law and there is no compelling State interest to retain those standards. Sampling and testing requirements for those ambient air quality standards are no longer necessary because the standards are being deleted in this proposed rulemaking.

Although the sampling of hydrogen sulfide has been used in the past to investigate malodor complaints, the standard is no longer needed for investigative purposes because hydrogen sulfide levels are objectionable at concentrations lower than the 0.005 parts per million (ppm) averaged over 24 hours or the 0.1 ppm averaged over 1 hour concentrations specified in § 131.3.

Following the adoption of this proposal by the Board as final-form regulations, the Department will submit these amendments to the EPA as a revision to the SIP.

F. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

Persons affected by this rulemaking will benefit from the deletion of obsolete or redundant air quality regulations. The proposed amendment of § 129.56 will establish a time frame, consistent with Federal law, for the owners and operators of large organic liquid storage tanks to empty the storage tanks and make repairs on defective seals. The inclusion of a time frame for emptying the storage tanks and repairing the seals will also allow safer completion of repairs to defective seals on the floating roof tank.

The proposed deletion of the PCE requirements for dry cleaning facilities in § 129.70 would allow the owners and operators of PCE dry cleaning facilities to eliminate duplicate recordkeeping to demonstrate compliance with Chapter 129 requirements and the Federal NESHAP requirements for PCE dry cleaning facilities.

Compliance Costs

These proposed amendments are not expected to result in additional costs or savings to the regulated community or the general public. However, the Bureau of Air Quality could save an estimated \$34,000 to \$43,000 if sulfate analyses are no longer required for the estimated 1281 sulfate filters analyzed each year.

Compliance Assistance Plan

Proposed amendments to § 129.67 address compliance assistance by allowing the owners and operators of storage tanks of greater than 40,000 gallons capacity up to 45 days to repair the floating roof seals or empty the storage vessels. The owners and operators of the tanks may request an additional 30 days to correct defective seals in the floating storage tanks. The regulated community, generally owners and operators of large storage tanks at petroleum terminals, chemical plants and refineries, will be advised of the compliance schedule included in the regulation for emptying and repairing large storage tanks.

Paperwork Requirements

This proposal is not expected to result in increased paperwork requirements. Deletion of the sampling and analytical procedures for ambient air contaminants such as sulfates, fluorides and hydrogen sulfide reduces paperwork requirements for the regulated community since monitoring reports required under § 139.53 will not be necessary. In addition, elimination of the PCE requirements for dry cleaning facilities will also reduce paperwork requirements for the owners and operators of PCE dry cleaning facilities.

G. *Sunset Review*

These amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the amendments effectively fulfill the goals for which it was intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 16, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before publication of the final-form regulations.

I. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by September 4, 1997. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by September 4, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us. A subject heading of the proposal must be included in each transmission. Comments submitted electronically must also be received by the Board by September 4, 1997.

J. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held on the following dates and at the following locations:

- July 28, 1997 Department of Environmental Protection
Southwest Regional Office
500 Waterfront Drive
Pittsburgh, PA
- July 30, 1997 Department of Environmental Protection
1st Floor Conference Room
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA
- August 5, 1997 Department of Environmental Protection
Southeast Regional Office
Suite 6010, Lee Park
555 North Lane
Conshohocken, PA

Persons wishing to present testimony at a hearing are requested to contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Nancy Roush at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-317. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE III. AIR RESOURCES
CHAPTER 128. ALTERNATIVE EMISSION REDUCTION LIMITATIONS SPECIFIC LIMITATIONS

(Editor's Note: As part of this proposal, the Board is proposing to delete the existing text of §§ 128.11—128.20 and 128.22, which currently appear at 25 Pa. Code pages 128-2—128-12 and 128-14—128-17, serial pages (194362), (114835)—(114844) and (114846), (114847) and (128415).)

CHAPTER 129. STANDARDS FOR SOURCES
§ 129.56. Storage tanks greater than 40,000 gallons capacity containing VOCs.

* * * * *

(h) If a failure is detected during inspections required in this section, the owner or operator, or both, shall repair the items or empty and remove the storage vessel from service within 45 days. If this failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, a 30-day extension may be requested from the Department. A request for an extension shall document that alternate storage capacity is unavailable and specify a schedule of actions the owner or operator will take that will assure that the equipment will be repaired or the vessel will be emptied as soon as possible but within the additional 30-day time requested.

§ 129.67. Graphic arts systems.

* * * * *

(b) A person may not permit the emission into the outdoor atmosphere of VOCs from a rotogravure or flexographic printing press subject to this section unless one of the following limitations is met:

* * * * *

(2) The ink, as applied to the substrate, less water, contains 60% by volume or more of solid material.

§ 129.70. [Perchloroethylene dry cleaning facilities] (Reserved).

[(a) This section applies to perchloroethylene dry cleaning facilities which:

(1) Are located in the counties of Allegheny, Armstrong, Beaver, Bucks, Butler, Chester, Delaware, Lackawanna, Lehigh, Luzerne, Montgomery, Northampton, Philadelphia, Washington and Westmoreland, and in the Harrisburg Area Transportation Study area.

(2) Emit more than 100 tons of volatile organic compounds per year.

(b) Emissions of perchloroethylene to the outdoor atmosphere from a dry cleaning facility shall be vented through a properly functioning condenser or carbon adsorption system.

(c) Emissions of perchloroethylene shall also be restricted as follows:

(1) Diatomaceous earth filters shall be cooked or otherwise treated so that the residue contains no more than 25% by weight of volatile organic compounds.

(2) Wet waste material from all solvent stills shall be reduced to no more than 60% by weight of volatile organic compounds.

(3) Filtration cartridges shall be drained in the filter housing for a minimum of 24 hours before being discarded.

(4) A component including hose connections, valves, machine door gaskets, pumps, storage containers, water separators, filter sludge recovery units, distillation units, cartridge filters and lint depositories found to be leaking volatile organic compounds shall be replaced or repaired within 24 hours of discovery of such leak.]

CHAPTER 131. AMBIENT AIR QUALITY STANDARDS

§ 131.3. Ambient air quality standards.

The following standards apply and, unless otherwise stated, are maximum values that may not be exceeded:

Contaminant	Concentrations Averaged Over				
	1-Year	30-Days	[24-Hours]	[1-Hour]	
[Sulfates (as H ₂ SO ₄)]	[—]	[10 µg/m. ³]	[30 µg/m. ³]	[—]	
[Fluorides (total soluble, as HF)]	[—]	[—]	[5 µg/m. ³]	[—]	
[Hydrogen sulfide]	[—]	[—]	[.005 p.p.m.]	[.1 p.p.m.]	

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

AMBIENT LEVELS OF AIR CONTAMINANTS

§ 139.32. Sampling and analytical procedures.

(a) Sampling and analytical techniques which may be used directly or employed as reference standards against which other methods may be calibrated shall be as follows

Contaminant	Sampling Method	Analytical Method
[Sulfates (as H ₂ SO ₄)]	[High-volume filtration (7)]	[Turbidimetric (8)]
[Fluorides (total soluble, as HF)]	[Filtration plus gas absorption (9)]	[Thorium-alizarin lake titration (9)]
[Hydrogen sulfide]	[Gas absorption (18)]	[Methylene blue method (18)]

[Pa.B. Doc. No. 97-1028. Filed for public inspection June 27, 1997, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 65]
Collision Loss Settlements

The Insurance Department (Department) proposes to delete §§ 65.11—65.14 pertaining to collision loss settlements to read as set forth in Annex A. The Department is publishing the deletion of the regulations as a proposed rulemaking to provide an opportunity for public comment. The Department proposes the deletion under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and the act of June 5, 1968 (P. L. 140, No. 78) (40 P. S.

§§ 1008.1—1008.11) (Act 78). The regulations require an insurer to use actual cash value with certain adjustments as the standard for settling collision losses when adjusting total losses.

Purpose

The purpose of this rulemaking is to delete §§ 65.11—65.14, to eliminate outdated regulations which do not serve any compelling public purpose. These sections were adopted May 5, 1970, under the authority of Act 78, which governs cancellations, refusals to renew and refusals to write private passenger automobile insurance policies. The regulations define "actual cash value," the amount an insurer must pay the insured for damages to

the insured vehicle. The regulations require that collision losses involving a total loss be settled based upon the preloss fair market value of the damaged automobile plus the State Sales Tax on the cost of a replacement vehicle. The regulations further define actual cash value as the cost of repairing or replacing the damaged auto with another similar auto in the same physical condition, commonly known as replacement cost less depreciation.

After careful review, the Department proposes the deletions because they are no longer necessary. Collision loss settlements are covered more comprehensively in §§ 62.1—62.4 pertaining to motor vehicle physical damage appraisers (physical damage appraisers), adopted December 28, 1973. The collision loss settlement regulations duplicate the requirements in the physical damage appraisers regulations, which establish standards in § 62.3(f) (relating to applicable standards for appraisal) to be used to determine replacement value under the insurance policy provisions covering the total loss of a motor vehicle. The physical damage appraisers regulation in § 62.3(f)(5) also requires the applicable sales tax on the replacement cost of a motor vehicle to be included as part of the replacement value. Therefore, the deletion of these regulations does not lessen or alter the current regulatory requirements on the industry.

Fiscal Impact

The deletion of these regulations will not have any impact on costs associated with the Department, insurance companies, physical damage appraisers, political subdivisions or the general public.

Paperwork

The deletion of these regulations imposes no additional paperwork requirements on the Department, insurance companies, physical damage appraisers or the general public.

Persons Regulated

The deletion of these regulations applies to insurance companies and individuals who determine the value of a vehicle or cost of repairs to a damaged vehicle in this Commonwealth.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Chester A. Derk, Jr., Chief, Market Conduct Division, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, PA 17120, (717) 783-2627, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of this proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act

specifies detailed procedures for review, prior to final publication of the regulations by the Department, the General Assembly and the Governor of objections raised.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-151. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 65. MISCELLANEOUS PROVISIONS

Subchapter B. [COLLISION LOSS SETTLEMENTS] (Reserved)

§ 65.11. [Background] (Reserved).

[Under the standard automobile collision loss insurance policy, the insurer contracts to pay the actual cash value of the automobile at the time of a total loss by the insured. For the most part, except with a car which is brand new at the time that it is "totaled," the actual cash value will be somewhere in between the "wholesale" and the "retail" Red Book values, which vary between \$400 and \$500, regardless of the make of the automobile or its comparative age.]

§ 65.12. [Standard for settling collision losses is actual cash value] (Reserved).

[The Red Book values, as explained in § 65.11 (relating to background), shall be used by insurance companies writing automobile collision insurance as a guide only, recognizing that the Insurance Department insists that "totaled" collision losses be adjusted on the basis of fair market value plus the State tax on the cost of a replacement vehicle.]

§ 65.13. [Definition of actual cash value] (Reserved).

[When used in this subchapter, the term actual cash value is theoretically the cost of repairing or replacing the damaged property with other property of like kind and quality in the same physical condition, commonly defined as replacement cost less depreciation.]

§ 65.14. [Notice to claims forces] (Reserved).

[The provisions of this subchapter shall be brought to the attention of the claims force of each insurance company, including the home office and the field offices.]

[Pa.B. Doc. No. 97-1029. Filed for public inspection June 27, 1997, 9:00 a.m.]

[31 PA. CODE CH. 41]

Fraternal Beneficial Societies Administration

The Insurance Department (Department) proposes to delete Chapter 41 (relating to administration) to read as set forth in Annex A. The deletion is being published as a proposed rulemaking to allow an opportunity for public comment. The deletion is proposed under the authority of

sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the Fraternal Benefit Societies Code (40 P. S. §§ 1142-101—1142-701). Chapter 41 was promulgated under section 3 of the act of July 17, 1935 (P. L. 1092, No. 357) (Act 357) (40 P. S. § 1053)(now repealed). The regulation sets forth requirements that must be met in a request for waiver or extension of a meeting of a domestic fraternal beneficial society.

Purpose

The purpose of this rulemaking is to delete Chapter 41 to eliminate an obsolete, unnecessary regulation. The regulation was adopted May 18, 1943, and required that a request for waiver or extension of a meeting of a fraternal beneficial society shall be made by resolution of the board of directors or similar managing body. The resolution is required to contain six items of information listed in the regulation, including a certification that the request for waiver or extension has been approved by a majority of the subordinate lodges or bodies of the fraternal beneficial society.

Act 357 which initially authorized the regulation was transferred to 15 P. S. §§ 8501—8543 and later repealed by section 5(a)(9) of the act of November 15, 1972 (P. L. 1063, No. 271) (Act 271) 40 Pa.C.S. §§ 6501—6701. Act 271 was subsequently replaced by the act of July 29, 1977 (P. L. 105, No. 38) (Act 38)(40 P. S. §§ 1141-101—1141-1001). Finally, Act 38 was replaced by section 701 of the Fraternal Benefit Societies Code (40 P. S. § 1142-701).

Section 202 of the Fraternal Benefit Societies Code (40 P. S. § 1142-202) contains requirements relating to meetings of domestic fraternal benefit societies. The current statutory requirements relating to meetings of fraternal benefit societies are consistent with requirements relating to other types of insurers. However, Chapter 41 contains additional requirements beyond those contained in current law, which requirements are not imposed on other types of insurers. Imposing special requirements on fraternal benefit societies regarding their meetings serves no compelling public interest. The statutory requirements are sufficient. Therefore, the regulation has been superseded by the existing statutory requirements in the Fraternal Benefit Societies Code (40 P. S. §§ 1142-101—1142-616) and are no longer needed.

Affected Parties

The deletion of the regulation affects fraternal benefit societies.

Fiscal Impact

The deletion of the regulation has no fiscal impact because of the obsolescence of the regulation.

Paperwork

The deletion of the regulation would impose no additional paperwork requirements on the Department or fraternal benefit societies.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete, unnecessary regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Elaine M. Leitzel, Administrative Officer, Office of Regulation of Companies,

1345 Strawberry Square, Harrisburg, PA 17120 (717) 787-8840, within 30 days of its publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the rulemaking.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-153. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart D. FRATERNAL BENEFICIAL SOCIETIES

CHAPTER 41. [ADMINISTRATION] (Reserved)

§ 41.1 [Extension or waiver of meetings] (Reserved).

[A request for waiver or extension of meetings of fraternal beneficial societies shall be by resolution of the board of directors or similar managing body. The resolution shall be attested by the secretary of the society and shall contain all of the following information:

- (1) Identification of the convention or meeting.**
- (2) The need for waiver or extension.**
- (3) The specific provisions of the constitution and bylaws under which the society will function if the request for waiver or extension is granted.**
- (4) Certification that the request for waiver or extension has been approved by a majority of the subordinate lodges or bodies.**
- (5) A statement that a waiver or extension, if granted, will not be prejudicial to the best interests of the members.**
- (6) A statement that the convention or meeting so waived or so extended will be held within a stated time after the date of the waiver or the extension has expired.]**

[Pa.B. Doc. No. 97-1030. Filed for public inspection June 27, 1997, 9:00 a.m.]

**[31 PA. CODE CH. 103]
Uniform Bylaws for Mutual Fire Companies**

The Insurance Department (Department) proposes to delete Chapter 103 (relating to uniform bylaws for mutual fire companies) to read as set forth in Annex A. The deletion is being published as a proposed rulemaking to allow the opportunity for public comment. The deletion is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 506 of The Insurance Company Law of 1921 (40 P. S. § 636). The regulation was adopted under sections 501—553 of The Insurance Company Law (40 P. S. §§ 631—702) relating to fire and marine insurance. The regulation recommends that domestic assessment mutual fire insurance companies adopt uniform bylaws in the form attached to § 103.1 as Exhibit A. The regulation also encourages domestic assessment mutual fire insurance companies to use Pennsylvania's standard fire insurance policy.

Purpose

The purpose of this rulemaking is to delete Chapter 103 to eliminate obsolete, unnecessary, burdensome regulations.

The regulation was adopted on May 26, 1936, under sections 501—553 of The Insurance Company Law of 1921, which governs stock and mutual fire insurance companies. The regulation recommended, but did not mandate, the standardization of bylaws for one small subset of insurers—domestic mutual fire insurance companies that offer policies on an assessable basis. There is no public policy reason for standardizing the bylaws used by this type of insurer, when uniform bylaws are not imposed upon other types of fire insurance companies.

Further, the Commonwealth adopted a comprehensive corporations code at 15 Pa.C.S. (relating to Associations Code) (code) in 1988; all other types of insurers may adopt bylaws consistent with that code. Domestic mutual fire insurance companies should have the same flexibility to adopt bylaws as is available to other companies against whom they compete. In addition, Exhibit A does not completely list all provisions that a domestic mutual fire insurance company should include in its bylaws, consistent with the code. Thus, the regulation is outdated as well as incomplete.

This regulation is also unnecessary because sufficient regulatory provisions exist for reviewing bylaws under current statutes, rendering this regulation superfluous. After the deletion of this regulation, the Department will continue to have the statutory authority to review a fire insurer's bylaws at the time of its admission, during a financial examination of the company, and at any other time at the request of the Insurance Commissioner. See sections 1504(b) and 3121 of the code (relating to adoption, amendment and contents of bylaws; and bylaws); sections 903(a) and 904(b) of the Insurance Department Act of 1921 (40 P. S. §§ 323.3(a) and 323.4(b)); and section 320(a)(1) of the Insurance Company Law of 1921 (40 P. S. § 443(a)(1)). In addition, because the bylaws' provisions are encompassed within assessable policies, a mutual fire insurance company must submit its bylaws when it seeks review and approval of an assessable

insurance policy. See section 354 of the Insurance Company Law of 1921 (40 P. S. § 477b). Accordingly, the regulation is not needed to maintain appropriate regulatory scrutiny of bylaws.

Finally, the regulation was intended to facilitate the review and approval of policy forms used by domestic assessment mutual fire insurance companies. Accordingly, the regulation recommended, but did not mandate, the use of the standard fire insurance policy found at section 506 of the Insurance Company Law of 1921 (40 P. S. § 636). However, the statute itself mandates that all insurance companies issuing fire insurance policies must adhere to the standard policy provisions set forth in section 506. Therefore, the regulation duplicates existing statutory authority governing the standard policy provisions of fire insurance contracts, and inaccurately suggests that use of the standard fire policy is optional, rather than mandatory.

Affected Parties

The regulation applies to domestic assessment mutual fire insurance companies.

Fiscal Impact

The proposed deletion of the regulation has no fiscal impact because the regulation contains only advisory recommendations, and because of the obsolescence of the regulations.

Paperwork

The proposed deletion of the regulation would impose no additional paperwork requirements on the Department or mutual insurance companies.

Effectiveness/Sunset Date

This rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to repeal obsolete, unnecessary regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Elaine M. Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 787-8840, within 30 days of its publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 18, 1997, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request. If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the

Department, the Governor and the General Assembly to review these objections before final publication of the rulemaking.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-157. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VI. MUTUAL INSURANCE

CHAPTER 103. [UNIFORM BYLAWS FOR MUTUAL FIRE COMPANIES] (Reserved)

§ 103.1. [Recommendations] (Reserved).

[(a) It is recommended that all domestic assessment mutual fire insurance companies adopt the uniform bylaws attached hereto as Exhibit A and made a part of this section.

(b) It is also recommended that such companies adopt the Standard Fire Insurance Policy of the Commonwealth.

EXHIBIT A

UNIFORM BYLAWS

SECTION I. Duties of Officers:

Subsection 1. President. It shall be the duty of the President to preside at all meetings of the Company, of the Board of Directors and of the Executive Committee, to sign all policies of insurance and all papers to which the seal of the Company is affixed, and to perform such other duties as may be required of him by the Board of Directors. The President's signature to policies may be in facsimile. The President shall be ex-officio member of all committees.

Subsection 2. Vice President. The Vice President shall perform the duties of the President, in the latter's absence, and shall have such other duties as may be assigned by the Board of Directors or Executive Committee.

Subsection 3. Secretary. Subject to the provision and approval of the Board of Directors, the Secretary shall have general charge of the affairs of the Company. He shall keep a complete and accurate record of all transactions of the Company. He shall issue and sign all policies, permits and endorsements of the Company. He shall collect all assessments and any other money due the Company and shall turn same over to the Treasurer or deposit same as directed by the Treasurer. He shall make a complete and accurate report of the years' business at each annual meeting of the Company and shall perform such other duties as the Board of Directors may assign him.

Subsection 4. Treasurer. The Treasurer under the direction of the Board of Directors shall have charge of all the funds of the Company, deposit same in the name of the Company in depositories designated by the Board of Directors. He shall pay all vouchers or orders properly attested by the President and Secretary and shall make a complete

and accurate report of the finances of the Company at each annual meeting thereof or at any other time upon the request of the Board of Directors.

Subsection 5. Bonds. The Secretary and Treasurer before entering upon their respective duties shall each give bonds in such sum and in such form as the Board of Directors may require. Other officers and employes may be required to give bond at the discretion of the Board of Directors.

SECTION II. Insurance in Relation to Value:

Subsection 1. General Limits. Except as provided in Subsection 2 of this Section, the management of this Company shall exercise due care to prevent the insurance of any building, for more than three-fourths (3/4) of its cash value. Each building shall be insured for a stipulated amount and no blanket insurance shall be permitted except on the personal property within a specified group or class as designated in the policy; provided this Subsection shall not be construed to cover risks other than farm property.

Subsection 2. Special Limits on Livestock. Registered animals, and others, if desired, may be insured individually in such amount as may be approved by the management of the Company. Livestock not thus insured individually may be insured as groups or classes of animals. In the latter case a stipulated amount of insurance shall be placed on each group or class as designated in the policy. In case of loss of an animal in an insured group or class, the indemnity shall not exceed the value of the animal at the time of loss; nor shall it exceed the amount per head specified in the policy for the group or class.

SECTION III. Fees and Assessments:

Subsection 1. Policy Fee and Initial Charges. A policy fee and other initial charges to be fixed by the Board of Directors shall be paid by the applicant at the time of making application for insurance.

Subsection 2. Assessments. The Board of Directors shall levy on the policyholders such assessments as, based on the amount insured and the class or property and hazard covered, may be necessary for losses and expenses and may include reasonable additions to the safety or reserve fund.

Subsection 3. Levy and Collection of Assessments. Levy and Collection of assessments may be made annually, or oftener if required. The insured shall be sent a written or printed notice requiring the payment of such assessment.

Subsection 4. Neglect or Failure to Pay. Neglect or failure to pay an assessment within sixty days after written notice to pay same shall without further notice, render the policy void as to the interest of the insured until such payment be made, and in no case shall the Company be liable to the insured for any loss occurring during such suspension. The notice of assessment shall contain a statement to this effect. The acceptance of any delinquent assessment shall not operate to render the Company liable for any loss occurring during such suspension, nor shall such suspension relieve the insured from liability for assessment or other charges during the period of suspension.

Subsection 5. Termination of Liability. The insured shall not be liable to assessment for any losses or expenses incurred subsequent to the termination of this policy nor shall he be liable for any assessment to cover obligations of the Company while his policy was in force unless due notice of such assessment be given to him within two years from the date of termination of his policy or from the date on which such obligations were incurred, whichever date is earlier.

SECTION IV. Notice.

Notice for all purposes under this policy shall consist of written or printed notice delivered to the

insured or other person to be notified or deposited in the post office directed to his address as shown on the records of the Company.

SECTION V. Amendments.

These Bylaws may be amended by a two-thirds (2/3) affirmative vote at any meeting of the Board of Directors or by a similar vote of any annual or special meeting of members. Amendments made by membership meetings shall take precedent over amendments made by the Board of Directors.]

[Pa.B. Doc. No. 97-1031. Filed for public inspection June 27, 1997, 9:00 a.m.]
