

# PROPOSED RULEMAKING

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

### [49 PA. CODE CH. 43b] Schedule of Civil Penalties

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b (relating to Commissioner of Professional and Occupational Affairs) to read as set forth in Annex A.

Section 5(a) of the act of June 2, 1993 (P. L. 345, No. 48) (act) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau, to adopt a schedule of civil penalties for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating a licensing board or commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

Section 5(a) of the act further requires the Commissioner to publish in the *Pennsylvania Bulletin* the schedule of penalties, guidelines for imposition and procedures for appeal of the imposition of civil penalties. Accordingly, the Commissioner published a statement of policy pertaining to the amended schedule of civil penalties at 28 Pa.B. 5883 (November 28, 1998).

Section 5(a) of the act also requires the Commissioner to promulgate regulations finalizing this amended schedule of civil penalties within 2 years of the schedule being published in the *Pennsylvania Bulletin*. Therefore, the Commissioner has until November 28, 2000, to promulgate final-form regulations. The Commissioner intends to accomplish this mandate by promulgating the amendments in Annex A.

Prior to adopting the statement of policy, the Commissioner consulted with the applicable licensing boards, notified the various professional associations and invited comments and suggestions regarding its implementation. In addition, under the Governor's Executive Order 1996-1, the Commissioner notified the individuals and associations identified by the licensing boards and commissions of the Bureau's intent to promulgate proposed regulations and offered them the opportunity to comment on this proposal. The boards considered these comments in developing the proposed schedules.

Since its implementation, sanctions imposed for relatively minor violations have been entered more quickly than it would have taken to resolve these cases under regular disciplinary procedures. Based upon the effectiveness of the implementation of the statement of policy and upon the implementation of Chapter 43b, the Commissioner proposes these regulatory amendments finalizing the schedule of civil penalties.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 10, 1999, the Commissioner submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure and to the Senate Committee on Consumer Protection and Professional Licensure. In addition

to submitting the proposed amendments, the Commissioner has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Commissioner in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Commissioner within 10 days of the close of the Committees' review 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 amendments, by the Commissioner, the General Assembly and the Governor, of objections raised.

#### *Fiscal Impact*

Professional licensing statutes require each board to be self supporting. Revenues must be generated by fees paid by licensees and must meet or exceed budgeted expenditures.

A board's disciplinary duties consist of investigating complaints, inspecting licensed facilities and meting out appropriate sanctions. Although the boards are not supported by general fund tax revenues, members of the regulated community are assessed a biennial renewal fee which finances them operations, including the disciplinary function.

Licensees are impacted individually when they are found guilty of violating a board's act and a fine is levied. Licensees who dispute charges brought against them including those filed as civil penalty citations under the act, may request a hearing before a hearing examiner or appeal a decision to the appropriate board. The more resources and time expended by personnel of the department to dispose of disciplinary cases, the greater the impact of disciplinary function upon a board's operating costs.

#### *Paperwork Requirements*

The proposed amendments will not necessitate any legal, accounting, reporting or other paperwork requirements.

#### *Statutory Authority*

The amendments are proposed under section 5(a) of the act, which gives the Commissioner the authority to adopt a schedule of civil penalties for: (1) operating without a current and valid license, registration, certification or permit; and (2) violating a licensing board or commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

#### *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Commissioner Dorothy Childress, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following the publication of the proposed amendments in the *Pennsylvania Bulletin*.

DOROTHY CHILDRESS,  
*Commissioner*

**Fiscal Note:** 16-20. 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.7. Schedule of civil penalties—pharmacists and pharmacies.

STATE BOARD OF PHARMACY

Violation Under 49 Pa. Code Chapter 27	Title/Description	Civil Penalty
	* * * * *	
Section 27.15	Sanitary standards— (a) and (b) Uncleanliness	\$250
	[ (c) ] (b) Pharmacy not in good repair	\$250
	[ (d) ] (c) Waste disposal violations	\$250
	[ (e) ] (d) Prescription area not dry, well ventilated and well lighted; not free from rodents or insects	\$250
	[ (f) ] (e) Plumbing not functional	\$250
	[ (g) ] (f) Unauthorized items in prescription area	\$250
Section 27.16	Construction requirements— (b) [ (5) ] (4) Lack of telephone	\$250
	[ (6) ] (5) Lack of required sanitary facilities	\$250
	[ (8) ] (7) Television set in prescription area not intended for pharmacy instructional use	\$500
	[ (9) ] (8) Drugs accessible to unauthorized persons; animals unrelated to pharmacy security in prescription area	\$250
	* * * * *	
Section 27.31	Biennial renewal—(c) practicing on a lapsed license or permit	0—4 months—\$50 per month; over 4 months—8 months—\$100 per month; over 9 months—12 months—\$200 per month; over 1 year—formal action
	* * * * *	

§ 43b.10a. Schedule of civil penalties—accountants

STATE BOARD OF ACCOUNTANCY

Violation under 63 P. S. Section 9.8b(b)	Title/Description	Civil Penalty
Section 9.12(a)	Completion of continuing education hours after end of reporting period but before start of next license biennium (assumes no other continuing education violation)	1st offense—\$150 2nd offense—formal action
	Unlawful use of “certified public accountant,” “CPA” or similar representation by person never licensed	1st offense—\$500* 2nd offense—formal action
	Unlawful use of “certified public accountant,” “CPA” or similar representation by person not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days—180 days past renewal deadline—\$500 2nd offense—formal action

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 9.12(c)	Unlawful use of "certified public accountant," "public accountant," "CPA," "PA" or similar representation by a firm never licensed	1st offense—\$500* 2nd offense—formal action
	Unlawful use of "certified public accountant," "public accountant," "CPA," "PA" or similar representation by a firm not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days—180 days past renewal deadline—\$500 2nd offense—formal action
Section 9.12(j)	Unlawful use of "public accountant," or "PA" or similar representation by person never licensed	1st offense \$500* 2nd offense—formal action
	Unlawful use of "public accountant," or "PA" or similar representation by person not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days—180 days past renewal deadline—\$500 2nd offense—formal action
Section 9.12(o)	Unlawful representation of membership in professional society, association, or organization of CPA's or PA's by person or firm never licensed	1st offense—\$250* 2nd offense—formal action
	Unlawful representation of membership in professional society, association, or organization of CPA's or PA's by person or firm not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days to 180 days past renewal deadline—\$250 2nd offense—formal action
Violation under 49 Pa. Code, Chapter 11		
Section 11.62(a)(2)	Failure to complete 20 hours of continuing education each year (assumes no other continuing education violation)	1st offense—\$150 2nd offense—formal action
Section 11.68(b)	Failure to timely submit documentation of continuing education during Board audit (assumes no other continuing education violation)	1st offense—\$500 2nd offense—formal action

\* The first offense provision does not apply to a situation involving multiple occurrences or a pattern or practice of misconduct

§ 43b.11a. Schedule of civil penalties—architects.

STATE ARCHITECTS LICENSURE BOARD

Proposed Schedule

Violation Under 63 P. S.	Violation Under 49 Pa. Code Chapter 9	Description Violation	Penalties
§ 34.12(a)	N/A	Architect impressing his seal or knowingly permitting it to be impressed on drawings, specifications or other design documents which were not prepared by him or under his personal supervision.	1st offense—1,000 2nd offense—formal action
§ 34.12(a)	N/A	Anyone impressing an architect's seal or knowingly permitting it to be impressed on drawings, specifications or other design documents after the architect's certificate has expired, or has been revoked, annulled or suspended.	1st offense—\$1,000 2nd offense—formal action

<b>Violation Under 63 P. S.</b>	<b>Violation Under 49 Pa. Code Chapter 9</b>	<b>Description Violation</b>	<b>Penalties</b>
§ 34.13(h)	§ 9.163	Engaging in the practice of architecture as a professional association, partnership, professional corporation, or business corporation without first receiving the written approval of the Board.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal action
§ 34.18(a) and (b)	§ 9.171	Use of the word “architect” or “architects” in the surname, word, or business title implying that an individual or business is engaged in the practice of architecture, without possessing current and proper licensing by the Board.	1st offense—\$1,000 2nd offense—formal action
§ 43b.12a. Schedule of civil penalties—auctioneers, apprentice auctioneers, auction houses and auction companies.			

## STATE BOARD OF AUCTIONEER EXAMINERS

## Proposed Schedule

<b>Violation Under 63 P. S.</b>	<b>Violations Under Title 49 Chapter 1</b>	<b>Description of Violation</b>	<b>Penalties</b>
§§ 734.3(a) and 734.20(a)(9)	N/A	Auctioneer or apprentice auctioneer operating on a lapsed license in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.3(a) and 734.20(a)(9)	N/A	Engaging in unlicensed auctioneering activities in this Commonwealth.	1st offense—\$1,000 2nd offense—formal
§§ 734.9(a) and 734.20(a)(9)	N/A	Operating an unlicensed auction house in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.10(a) and 734.20(a)(9)	N/A	Operating as an unlicensed auction company in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.9(d) and 734.20(a)(9)	N/A	A licensed auctioneer operating an unregistered auction house in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.10(d) and 734.20(a)(9)	N/A	A licensed auctioneer operating an unregistered auction company in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.9(a) and 734.20(a)(9)	N/A	Operating an auction house on a lapsed license in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.10(a) and 734.20(a)(9)	N/A	Operating an auction company on a lapsed license in this Commonwealth.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§ 734.20(a)(12)	N/A	Failure of an auctioneer to establish or maintain an escrow account.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.21 and 734.20(a)(9)	N/A	Failure of an auctioneer to immediately deposit gross auction sale proceeds into an escrow account.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.17 (a) and 734.20(a)(9)	N/A	Failure of an auctioneer to enter into a written contract with the owner or consignor of the property to be sold at auction prior to the auction sale.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.17(a) and 734.20(a)(9)	N/A	Failure of an auctioneer to keep contracts on file in the office of the auctioneer.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
§§ 734.16(b) and 734.20(a)(9)	N/A	Failure or refusal of an auctioneer to permit inspection of auction sale records at all reasonable times by BEI inspectors or investigators.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal

<b>Violation Under 63 P. S.</b>	<b>Violations Under Title 49 Chapter 1</b>	<b>Description of Violation</b>	<b>Penalties</b>
§§ 734.18(a) and 734.20(a)(9)	N/A	Failure of an auctioneer to display auctioneer license in the auctioneer's office.	1st offense—\$250 2nd offense—\$500 3rd offense—formal action
§§ 734.18(b) and 734.20(a)(9)	N/A	Failure of an apprentice auctioneer to display the apprentice auctioneer license in the apprentice auctioneer's office.	1st offense—\$250 2nd offense—\$500 3rd offense—formal action
§ 734.20(a)(10)	§§ 1.31(c) and (d)	Failure of a sponsor to either directly supervise the apprentice while the apprentice is conducting an auction or to provide for appropriate substitute supervision of the apprentice by a qualified auctioneer.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal action
§ 734.20(a)(10)	§ 1.31(e)	Apprentice auctioneer conducting an auction sale without direct supervision by either the sponsor or an authorized substitute sponsor.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal action

**§ 43b.13a. Schedule of civil penalties—engineers, land surveyors and geologists.  
STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS**

<b>Violation Under 63 P. S.</b>	<b>Title /Description</b>	<b>Penalties</b>
<b>Section 150(b)</b>	<b>Representing himself or herself to be an engineer, land surveyor or geologist without being licensed or registered by one or more of the following:</b> (1) Sign.  (2) Advertisement.  (3) Letterhead.  (4) Card.	1st offense—\$1,000 2nd offense—formal action  1st offense—\$1,000 2nd offense—formal action  1st offense—\$1,000 2nd offense—formal action  1st offense—\$1,000 2nd offense—formal action
<b>Section 151(e)</b>	<b>Biennial renewal—Practicing on a lapsed license or registration</b>	1st offense—Up thru 5 months—\$500 6 months thru 1 year—\$1,000 over 1 year—formal action 2nd offense—formal action

**§ 43b.14a. Schedule of civil penalties—dentists, dental hygienists and expanded function dental assistants.  
STATE BOARD OF DENTISTRY**

<b>Violation under 49 Pa. Code</b>	<b>Title/Description</b>	<b>Civil Penalty</b>
§ 33.105(b)	Practicing on a Lapsed license/certificate	1st offense— Dentists—\$100/month Dental hygienists—\$50/month Expanded function dental assistants—\$25/month 2nd offense—formal action

[Pa.B. Doc. No. 99-1368. Filed for public inspection August 20, 1999, 9:00 a.m.]

# FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 63 AND 65]

## Fishing Tournaments and Fishing Derbies

The Fish and Boat Commission (Commission) proposes to amend §§ 63.40 and 65.24 (relating to fishing tournaments and fishing derbies; and miscellaneous special regulations). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments relate to fishing.

### A. Effective Date

The proposed amendments, if approved on final rulemaking, will go into effect on January 1, 2000, or upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*, whichever occurs later.

### B. Contact Person

For further information on the proposed changes, contact Delano R. Graff, Director, Bureau of Fisheries, (814) 359-5154, 450 Robinson Lane, Bellefonte, PA 16823, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

### C. Statutory Authority

The proposed amendments are published under the statutory authority of sections 2102 and 2307 of the code (relating to rules and regulations; and waters limited to specific purposes).

### D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of each proposed amendment is described in more detail under the summary of proposal.

### E. Summary of Proposal

(1) *Section 63.40 (relating to fishing tournaments and fishing derbies)*. The initial development of the Commission's tournament regulations considered the fact that fishing derbies encompassing just fishing activity were not required to apply for special activity permits. Therefore, § 63.40(c)(1) currently provides that it is unlawful to conduct a fishing derby on Commonwealth waters without first obtaining a special activity permit from the Commission if the derby involves an unusual congregation of boats. Section 63.40(c)(5), however, requires all derby organizers to notify the Commission of the date, time and place of proposed fishing derbies. The easiest way for derby applicants to notify the Commission of a proposed derby is the use of the special activity permit application. Consequently, confusion exists in the Commission's Regional Offices as to when a fishing derby is actually required to apply for a special activity permit. This confusion would be eliminated by removing the phrase, "if the derby involves an unusual congregation of boats." Currently, the majority of fishing derbies apply for and receive special activity permits. Thus, removing this language will have little impact on fishing derbies. It is also proposed that the paragraph be amended to make it clear that the requirement does not apply to privately owned waters that are not open to the public.

In addition, the amendment to § 63.40(c)(1) makes subsection (c)(5) no longer necessary. Therefore, it is proposed that this paragraph be removed.

(2) *Section 65.24 (relating to miscellaneous special regulations)*. In 1989, the Commission formalized regulations regarding the taking of smelt in inland waters. This action was prompted by the establishment of a smelt population, particularly in Lake Raystown, and the popularity of this fishery. Kinzua Reservoir and its tributaries were included because efforts were underway to establish a smelt population in those waters. However, based on findings from various sampling efforts, it was determined that smelt never really took hold in Kinzua Reservoir. Thus, the Commission proposes removing the special regulations pertaining to the harvest of smelt in Kinzua Reservoir and its tributaries.

### F. Paperwork

The proposed amendments to § 65.24 will not increase paperwork and will create no new paperwork requirements. The proposed amendments to § 63.40 will slightly increase paperwork in that it will require all derby organizers to apply for special activity permits, not just those involving an unusual congregation of boats. This proposed change, however, will have little impact because currently the majority of fishing derbies apply for and receive special activity permits.

### G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The special activities permit is free of charge. Therefore, the proposed amendments to § 63.40 will impose no new costs on the private sector or the general public.

### H. Public Comments

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

Comments also may be submitted electronically at "regulations @ fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,  
*Executive Director*

(*Editor's Note:* A proposal to amend § 65.24, proposed to be amended in this document, remains outstanding at 29 Pa.B. 3631 (July 10, 1999).)

**Fiscal Note:** 48A-100. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 63. GENERAL FISHING REGULATIONS

#### § 63.40. Fishing tournaments and fishing derbies.

\* \* \* \* \*

(c) *Fishing derbies.*

(1) *General rule.* It is unlawful to conduct a fishing derby as defined in this section on Commonwealth waters [ if the derby involves an unusual congregation of boats ] without first obtaining a special activity permit from the Commission, except that this requirement does not apply to fishing derbies to be held on privately owned lakes or ponds that are not open to the public.

\* \* \* \* \*

[ (5) *Notification required.* It is unlawful to conduct a fishing derby, as defined in this section, on approved trout waters without first notifying the Commission of the date, time and place of the proposed fishing derby and whether the proposed fishing derby involves the stocking of any fish into the waters of this Commonwealth. ]

\* \* \* \* \*

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
	* * * * *	
[ Warren and McKean ]	[ Kinzua Reservoir and tributaries ]	[ Smelt may be taken from shore only by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is 200 smelt ]
	* * * * *	

[Pa.B. Doc. No. 99-1369. Filed for public inspection August 20, 1999, 9:00 a.m.]

# HUMAN RELATIONS COMMISSION

[16 PA CODE CH. 45]

## Housing Accommodations/Commercial Property

The Human Relations Commission (Commission), is proposing the following schedule of penalties, procedure for their imposition and procedures for appeal, to read as set forth in Annex A. The schedule of penalties, procedure for their imposition and procedure for appeal were originally published at 28 Pa.B. 5136 (October 10, 1998) as guidelines/statement of policy, in compliance with and under the authority of section 9.3 of the Pennsylvania Human Relations Act (act) (43 P. S. § 959.3). The schedule of penalties, procedure for their imposition and procedure for appeal was not subject to review under section 205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1205) and are effective as guidelines/statement of policy for a period not to exceed 2 years from the effective date of their publication. On or before the expiration of

the 2-year period, the schedule of penalties, procedure for their imposition and procedure for appeal will expire and will be replaced by regulations which shall have been promulgated, adopted and published as provided by law. This publication is to serve as this proposed rulemaking under section 9.3 of the act.

The purpose of these proposed regulations is to create a schedule of penalties, procedure for their imposition and procedure for appeal, for violations of section 5(h)(5) of the act (43 P. S. § 955(h)(5)), by advertisers and publishers, in instances where the complainant does not take action to secure housing accommodations or financing and is not denied housing accommodations or financing based on the alleged discriminatory language in the advertisement.

### *Fiscal Impact*

The Commission believes that the schedule of penalties, procedure for their imposition and procedure for appeal will result in no additional cost to the Commission or to the general public. Costs which arise to advertisers or publishers due to a fine imposed upon them are more than offset by the absence of costs of the current adversarial method of case processing.

### *Paperwork Requirements*

Additional paperwork created by the system will be offset by the elimination of the paperwork created by the normal case processing system.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 11, 1999, the Commission submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate Committee on Labor and Industry. In addition to submitting the proposed regulations, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative committees have objection to any portion of the proposed regulations, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed regulations, it will notify the Commission within 10 days after the close of the Committees' review 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 Commission, the General Assembly and the Governor of any objections raised.

### *Effective Date*

The schedule of penalties, procedure for their imposition and procedure for appeal shall take effect as regulations upon final publication in the *Pennsylvania Bulletin*.

### *Contact Person/Public Comments*

Interested persons are invited to submit written comments regarding the proposed schedule of penalties, procedure for their imposition and procedure for appeal in writing to Nancy L. Gippert, Assistant Chief Counsel, Human Relations Commission, 101 South Second Street, Suite 300, P. O. Box 3145, Harrisburg, PA 17101. Comments should be submitted within 30 days of publication.

HOMER C. FLOYD,  
*Executive Director*

**Fiscal Note:** 52-011. No fiscal impact; (8) recommends adoption.

*(Editor's Note: The Commission is proposing to delete the policy statement which currently appears in §§ 45.201—45.208, Pennsylvania Code pages 45-20 to 45-27, serial pages (249156) to (249163) and replace it with regulations in §§ 45.301—45.308.)*

### Annex A

## TITLE 16. COMMUNITY AFFAIRS

### PART II. GOVERNOR'S OFFICE

#### Subpart A. HUMAN RELATIONS COMMISSION

#### CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY

#### Subchapter C. CITATION PROCEDURE

#### §§ 45.201—45.208. (Reserved)

Sec.	
45.301.	Purpose.
45.302.	Initial procedure.
45.303.	Administrative procedures.
45.304.	Hearing.
45.305.	Appeals.
45.306.	Enforcement of orders/nonpayment of civil penalties/default judgment.
45.307.	Schedule of civil penalties.
45.308.	Form.

#### § 45.301. Purpose.

Advertisements covered under section 5(h) of the act (43 P. S. § 955(h)) shall be subject to a schedule of civil penalties for violation of section 5(h)(5) of the act by the advertiser and the publisher in instances when the complainant does not take action to secure housing accommodations or financing and is not denied housing accommodations or financing based on the alleged discriminatory language in the advertisement. Section 5(h)(5) states that it is an unlawful act to:

“print, publish or circulate any statement or advertisement: (i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property which indicates any preference, limitation, specification, or discrimination based upon race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association, or (ii) relating to the sale, lease or acquisition of any housing accommodation or commercial property which indicates any preference limitation, specification, or discrimination based upon use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.”

#### § 45.302. Initial procedure.

When, within 180 days of the publication of the alleged unlawful advertisement, the Commission becomes aware of an unlawful advertisement, which is subject to a citation, from sources other than aggrieved persons seeking housing or commercial property or financing in connection therewith, the following procedures shall apply:

(1) The advertisements shall be forwarded to the appropriate housing staff in their original form, when possible, with information regarding their publication.

(2) Housing staff shall complete the Commission Citation Form (see § 45.308 (relating to form)).

(i) The form shall be forwarded to appropriate housing staff for review and transmittal to the Executive Director/Designee.

(ii) The Executive Director/Designee shall review and, if approved, sign the citation.

(3) A copy of the citation and the advertising regulations shall be sent to the parties cited and when appropriate to licensing or regulatory agencies, or both. The citation letter shall set forth the following options:

(i) Admission of violation and payment of the appropriate civil penalty.

(ii) Denial of violation and request for formal hearing. Included in this option is the notice that failure to appear at the hearing will result in a default judgment.

(iii) Admission of some violations and payment of appropriate penalty and denial of others with a request for a formal hearing.

(4) Failure to respond or take any of the actions listed in this section within 15 days of service of the citation will result in a default judgment for the full amount of the penalty.

(5) Failure to pay a civil penalty could result in additional penalties, or a request for revocation, suspension or other disciplinary actions against licensees or other action including court proceedings which the Commission deems appropriate.

#### § 45.303. Administrative procedures.

(a) Upon receipt of a response to a citation, the housing staff shall record that response on the appropriate data base.

(b) Procedures will be established by the Commission to:

(1) Process checks and forward them when violations are admitted.

(2) Process checks and forward them when some violations are admitted and other violations are denied.

(c) When violations are admitted and payment is made, the following shall apply:

(1) The fact shall be noted in the record.

(2) The record shall be closed.

(3) A letter will be sent to the party cited advising of closing.

(d) When violations are denied, the following shall apply:

(1) The record shall note the denial.

(2) The hearing request will be forwarded to a citation officer.

(3) The party cited shall be advised.

(4) Staff counsel shall prepare the matter for hearing.

(e) If there is no response, a request for a default judgment shall be made to the citation officer.

(f) The conduct of the hearing by the citation officer in any of the circumstances listed in this section shall be governed by appropriate Commission regulations/requirements or these procedures, or both.



(g) All payments made as a result of a violation, whether the violation is admitted and payment made or the payment is made following an order of the citation officer, will be forwarded by the Commission to the Department of Revenue.

**§ 45.304. Hearing.**

(a) An order following a hearing shall be issued by the citation officer who may:

- (1) Order the payment of the amount of the citation.
- (2) Modify the amount of payment.
- (3) Dismiss the citation.
- (4) Order remedial actions or reasonable costs, or both.
- (5) Order other appropriate equitable relief as authorized by the act.

(b) Orders affirming two or more violations shall be referred to appropriate licensing or regulating agencies for action as they deem appropriate.

**§ 45.305. Appeals.**

A decision by the citation officer may be appealed by a party by filing an application for review with the Commission within 30 days of the mailing date of the order. An application for review shall set forth with specificity the grounds for appeal. The Commission will review the record established and in its discretion receive additional evidence.

**§ 45.306. Enforcement of orders/nonpayment of civil penalties/default judgment.**

Requests for enforcement of nonpayment of civil penalties/default judgment shall be made to the Commission and filed with the appropriate court when approved by the Commission.

**§ 45.307. Schedule of civil penalties.**

A single advertisement shall be cited as a single citation regardless of the number of unlawful words and phrases within that single advertisement. An advertisement shall be cited only once, for the publication of the same advertisement, run a reasonable number of days in the course of the contract with the newspaper or other publication for that advertisement. If the unlawful advertisement is placed again in a newspaper or other publication, or is not withdrawn reasonably upon service of citation, it may be cited a second time. Both the publisher and the advertiser are subject to liability.

(1) *Penalties.* The following penalties apply:

First Citation	\$250
Second Citation	\$500
Third Citation	Formal Process

(b) *Formal process:* When, in the Commission's judgment, the action of a party in the event of a third citation warrants, the Commission will have the following options:

- (i) To impose a maximum penalty on a multiple basis.
- (ii) To file a Commission initiated complaint.
- (iii) To seek legal recourse, including those under section 11 of the act (43 P. S. § 961).

**§ 45.308. Form.**

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION  
101 SOUTH SECOND STREET, SUITE 300  
HARRISBURG, PA 17101-2515

CITATION

RESPONDENT FIRST NAME	MIDDLE NAME	LAST NAME
1.		
RESIDENCE ADDRESS	CITY-TWP-BORO-COUNTY	STATE ZIP CODE
2.		
BUSINESS ADDRESS		
3.		
CHARGE		
4.		
DATES(S) OF PUBLICATION	MANNER OF PUBLICATION	COPY ATTACHED
5.	6.	YES_____ NO_____
STATUTE OR REGULATIONS	CIVIL PENALTY	TOTAL DUE \$
7.	8. \$	9.
I VERIFY THAT THE FACTS SET FORTH IN THIS CITATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE OR INFORMATION AND BELIEF. THIS VERIFICATION IS MADE SUBJECT TO THE PENALTIES OF SECTION 4804 OF THE CRIMES CODE (18 PA.C.S. § 4904) RELATING TOO UNSWORN FALSIFICATION TO AUTHORITIES.		
SIGNATURE		
10.	DATE_____	
REMARKS		
11.	12. CITATION NO.	



inconsistent regulations that serve no compelling interest. Under section 4(g) of The Casualty and Surety Rate Regulatory Act; and section 4(h) of The Fire, Marine and Inland Marine Rate Regulatory Act, insurance companies are permitted to charge a rate in excess of the approved rate for a specific policy. This activity is generally associated with risks for which there is difficulty locating coverage due to some unusual condition such as increased hazard. When insurance companies write a policy using the consent to rate provision, they are required to submit a filing to the Department using a "consent to rate form."

As a result of the Property and Casualty Filing Reform Act enacted in 1998, the consent to rate provision has been repealed for commercial insurance policies. The law allows insurance companies to use rates that deviate up to 25% above their approved rates without making a filing with the Department. Insurance companies can also use rates greater than 25%; however, the companies are then required to make an individual filing with the Department. The Property and Casualty Filing Reform Act made the consent to rate regulation obsolete and no longer necessary.

*Fiscal Impact*

The deletion of this subchapter will have minimal impact on the property and casualty insurance industry and the Department. Insurance companies that do business in this Commonwealth and write property and casualty insurance policies using the consent to rate provision will not be required to submit the consent to rate form to the Department, thereby saving both the companies and the Department any expense associated with preparing and filing the consent to rate form. Again, this fiscal impact is estimated to be very minimal due to the infrequent usage of this provision.

*Paperwork*

The deletion of this subchapter is expected to decrease paperwork requirements for the affected parties because the deletion eliminates unnecessary reporting requirements for the insurance industry.

*Affected Parties*

The deletion of this subchapter will affect all insurers who are licensed to sell property and casualty insurance in this Commonwealth.

*Effectiveness/Sunset Date*

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

*Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Questions or comments may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 705-3873.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 10, 1999, 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 the submitted 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, "Regulatory Review and Promulgation." A copy of that 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 10 days of the close of the Committee's review 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 regulations.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-194. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART VII. PROPERTY, FIRE, AND CASUALTY INSURANCE**

**CHAPTER 113. MISCELLANEOUS PROVISIONS**

**Subchapter A. [ CONSENT TO RATE FILINGS ]  
(Reserved)**

§ 113.1. [ **Filing procedure.** ] (Reserved).

**[ (a) Consent to Rate filings shall be submitted by fire and casualty insurance companies in duplicate not later than 30 days after the date the insured signed.**

**(b) The filing shall indicate the company name and home office address and shall be signed by an officer or authorized filing representative.**

**(c) Filed and surcharged rates of the company for each coverage afforded shall be shown on the Consent to Rate form. ]**

§ 113.2. [ **Policy declaration.** ] (Reserved).

**[ (a) A copy of the policy declaration page shall accompany each Consent to Rate filing and charges shall be included in the premium shown on the policy declaration page.**

**(b) The copy of the declaration page shall be retained by the Insurance Department. ]**

§ 113.3. [ **Filings to meet statutory requirements.** ] (Reserved).

**[ (a) Consent to Rate filings shall meet statutory requirements of the insurance laws of the Commonwealth and shall be completed before being signed by the insured.**

**(b) The signing of blank forms by the insured may not be permitted. ]**

§ 113.4. [ Filings by companies which have cancelled. ] (Reserved).

[ Consent to Rate forms shall indicate the name and address of the insurance company which has cancelled, not renewed or refused applicants insurance, and the Consent to Rate filings shall be justified by an individual inspection of the risk with a detailed written report and other pertinent information on which the excess rates are based. The material will be treated as confidential and returned to the company by the Insurance Department. ]

§ 113.5. [ Commonwealth plans. ] (Reserved).

[ (a) The applicant shall be made aware of the Pennsylvania Fair Plan before submitting a fire Consent to Rate filing on his property.

(b) The applicant shall be made aware of the Pennsylvania Assigned Risk Insurance Plan before submitting a Consent to Rate filing. ]

§ 113.6. [ Ineligibility for surcharged rates. ] (Reserved).

[ Pennsylvania Uninsured Motorist Coverage is not eligible for surcharged rates. ]

§ 113.7. [ Maintenance of statistics. ] (Reserved).

[ Separate experience and expense statistics shall be maintained and submitted within 90 days after the end of each calendar year. ]

§ 113.8. [ Fire Consent to Rate filings. ] (Reserved).

[ Exhibits A, B, C and D attached hereto and made a part of this chapter are suggested forms for fire Consent to Rate filings. ]

(Editor's Note: As part of this proposal, the Department is proposing to delete the text of Exhibits A—D which appear at 31 Pa. Code pages 113-3—113-7, serial pages (208687)—(208691).)

[ EXHIBIT A ] (Reserved)

[ EXHIBIT B ] (Reserved)

[ EXHIBIT C ] (Reserved)

[ EXHIBIT D ] (Reserved)

§ 113.9. [ Automobile Consent to Rate filings. ] (Reserved).

[ Exhibits E, F and G attached hereto and made a part of this regulation are suggested forms for automobile Consent to Rate filings. ]

(Editor's Note: As part of this proposal, the Department is proposing to delete the text of Exhibits E—G, which appears at 31 Pa. Code pages 113-8—113-11, serial pages (208692)—(208694) and (234361).)

[ EXHIBIT E ] (Reserved)

[ EXHIBIT F ] (Reserved)

[ EXHIBIT G ] (Reserved)

[Pa.B. Doc. No. 99-1371. Filed for public inspection August 20, 1999, 9:00 a.m.]

# STATE BOARD OF ACCOUNTANCY

[49 PA. CODE CH. 11]

## Peer Review

The State Board of Accountancy (Board) proposes to add §§ 11.81—11.86 (relating to peer review) to read as set forth in Annex A.

### *Background and Statutory Authority*

Section 8.9 of The CPA Law (63 P. S. § 9.8i), which was added by the act of December 4, 1996 (P. L. 851, No. 140) (Act 140), requires licensed public accounting firms, defined to include sole practitioners, that perform audit or review engagements to undergo a peer review as a condition of license renewal or initial licensure (in the case of an out-of-State firm). Section 8.9 of The CPA Law also prescribes the frequency and scope of peer reviews, grounds for exemption from peer review, confidentiality of the peer review process and procedures for Board review of firms that fail to comply with peer review remedial action. Section 8.9(c) of The CPA Law empowers the Board to promulgate regulations that (1) approve peer review programs and standards; (2) establish qualifications of peer reviewers; and (3) prohibit unauthorized disclosure of information obtained during peer review. The Board's proposal would implement the provisions of section 8.9 of The CPA Law.

### *Description of Proposed Regulations*

#### *§ 11.81 (Definitions)*

Section 11.81 would define the following terms used in the regulations: "administering organization," "firm" and "peer reviewer."

#### *§ 11.82 (Effective dates for peer review compliance; proof of compliance or exemption)*

Section 11.82(a) would establish May 1, 2000, the start of the next biennial license period, as the deadline for peer review compliance by a firm that performs an audit engagement after May 1, 1998. Section 11.82(b) would establish May 1, 2004, as the deadline for peer review compliance by a firm that performs a review engagement but not an audit engagement after May 1, 1998. Section 8.9(g) of The CPA Law sets forth grounds for exemption from peer review compliance.

In establishing peer review compliance deadlines, the Board has attempted to reconcile what it perceives to be conflicting language on the subject in The CPA Law. Section 8.9(l)(2) of The CPA Law provides: "This section [relating to peer review] shall not become applicable to firms and no firm shall be required to undergo a peer review under this section until May 1, 2000, except that this section shall not become applicable until May 1, 2004, to a firm that has not accepted or performed any audit engagements during the period May 1, 1998, through April 30, 2004." However, section 8.8(c) of The CPA Law (63 P. S. § 9.8h(c)), which relates to the licensing of firms, provides: "An initial or renewal license shall not be issued to a firm after April 30, 2000 unless the firm complies with the requirements of Section 8.9 of this act."

The Board believes the language of section 8.8(c) of The CPA Law is controlling. The Board has been advised by the prime sponsor of H. B. 1782, which was later enacted as Act 140, that the intent of the legislation was

to require peer review compliance for nonexempt firms performing audit engagements and those performing review engagements by May 1, 2000, and May 1, 2004, respectively. This interpretation is consistent with the position of the Pennsylvania Institute of Certified Public Accountants (PICPA), which spurred the introduction of H. B. 1782. Moreover, the deadlines for compliance have been well publicized by the PICPA since the enactment of Act 140, and were reiterated by the Board in its Winter 1998/99 Newsletter. Owing to the wide dissemination of the deadlines, as well as the large number of firms that currently participate in voluntary peer review programs, the Board believes that the majority of nonexempt firms that would be subject to the compliance deadline of May 1, 2000, either have already completed a peer review or have made arrangements to timely complete a peer review. For those nonexempt firms that, for good cause, are unable to complete a peer review by the May 1, 2000, deadline, the Board is prepared to grant extensions of up to 12 months as authorized by section 8.9(g)(3) of The CPA Law.

In accordance with section 8.9(a) of The CPA Law, § 11.82(c) would require that a nonexempt firm submit with its application for initial licensure or license renewal a letter from a peer review administering organization evidencing the firm's completion of a peer review.

Section 11.82(d) would require that a firm claiming an exemption from peer review submit with its application for initial licensure or license renewal information that substantiates its entitlement to an exemption under section 8.9(g) of The CPA Law. In the case of a multistate firm that claims an exemption under section 8.9(g)(1) of The CPA Law based on its having completed a peer review in another state or jurisdiction, the firm would have to submit the following: (1) a letter from the out-of-State peer review administering organization evidencing the firm's completion of a peer review (within 3 years of the date of the application) that satisfies Pennsylvania requirements; and (2) a statement that the firm's internal inspection or monitoring procedures require the firm's personnel from an out-of-State office to perform an inspection of the firm's Pennsylvania offices at least once every 3 years. This latter requirement, which is complementary of peer review goals, provides additional protection to users of attest services in this Commonwealth by ensuring that Commonwealth offices of multistate firms that elect not to complete an in-State peer review are nevertheless required to undergo periodic internal inspections for adherence to quality control procedures.

*§ 11.83 (Administering organizations for peer review; firm sponsorship not required)*

Section 11.83(a) would deem the following organizations approved to administer a peer review program: (1) the Securities and Exchange Commission Practice Section and the Private Companies Practice Section of the American Institute of Certified Public Accountants; and (2) any State society or institute that participates in the AICPA Peer Review Program. Because the AICPA Peer Review Program is widely recognized in the public accounting profession as the preeminent model for peer review, and to avoid unnecessary costs and delays in implementing the peer review requirements, the Board is willing to grant deemed approval status to those professional accounting organizations that employ the AICPA peer review model.

Section 11.83(b) would clarify that a firm subject to peer review would not be required to become a member of the AICPA or any other administering organization.

*§ 11.84 (Peer review standards)*

Section 11.84 would require that a peer review conform to the AICPA's Standards of Performing and Reporting on Peer Reviews (AICPA Standards), together with any interpretations issued by the AICPA. Under Section 8.9(d) of The CPA Law, a nonexempt firm that performs an audit engagement must complete an onsite peer review, while a nonexempt firm that performs a review engagement must complete an offsite peer review. The AICPA Standards set forth detailed procedures for performing and reporting onsite and offsite peer reviews that are consistent with section 8.9(d) of The CPA Law.

*§ 11.85 (Qualifications of peer reviewers)*

Section 11.85(a) would provide that a peer reviewer, except as provided in subsections (b) and (c), would have to possess the qualifications set forth in the AICPA Standards. Those standards require a peer reviewer (1) to be currently licensed to practice as a certified public accountant; (2) to possess current knowledge of applicable professional standards, including knowledge of current rules and regulations applicable to the industries for which engagements are reviewed; (3) to have at least 5 years' recent experience in the practice of public accounting in the accounting or auditing function, including experience in the industries for which engagements are reviewed; (4) to be currently active at the supervisory level in the accounting or auditing function of a firm that is enrolled in a peer review program; and (5) to have the competency and training to conduct a peer review. A peer reviewer who serves as captain of an onsite peer review team must also receive additional peer review training and be the owner of a firm that has received an unqualified report on the system of quality control of its accounting and auditing practice for its most recently completed peer review.

Section 11.85(b) would permit a licensed public accountant who otherwise satisfies the AICPA Standards to serve as a peer reviewer. Section 11.85(c) would permit a sole practitioner with a public accounting or auditing practice who otherwise satisfies the AICPA Standards to serve as a peer reviewer, provided the practitioner is also enrolled in a peer review program. The AICPA Standards do not reference public accountants or sole practitioners (whether public accountants or certified public accountants); however, the Board sees no reason why the individuals could not serve as peer reviewers so long as they have the requisite experience and training.

Consistent with section 8.9(c)(2) of The CPA Law, § 11.85(d) would require that a peer reviewer be independent from, and have no conflict of interest with, the firm being reviewed.

*§ 11.86 (Confidentiality of peer review reports)*

Section 11.86(a) would provide that except as authorized under section 8.9(e) and 8.9(h)(3) of The CPA Law, a peer review report and related information are confidential. Section 8.9(e) of The CPA Law permits a firm to waive confidentiality in proceedings before the Board to review the firm's noncompliance with remedial actions recommended by peer review. Section 8.9(h)(3) of The CPA Law provides that nonprivileged material includes information considered during peer review that is otherwise available to the public; information presented or considered in the peer review process that was not prepared in connection with peer review; and any administrative proceeding or related civil action brought to enforce section 8.9 of The CPA Law.

Section 11.86(b) would authorize the Board to inquire of an administering organization whether a peer review report has been accepted.

*Fiscal Impact and Paperwork Requirements*

The proposed regulations would have a fiscal impact on licensed public accounting firms subject to peer review. The Board cannot accurately estimate the cost of completing a peer review. The scope, and thus cost, of a peer review may vary widely depending on the size of the firm and the nature of the attest engagements that are being reviewed. The cost could range from less than \$1,000 for an offsite review to hundreds of thousands of dollars and more for an onsite review of the Nation's largest firms.

The proposed regulations would cause the Board to incur minor costs in processing license renewal applications and initial license applications of firms subject to peer review. The Board anticipates that these costs will be defrayed by application and renewal fees.

The proposed regulations would require firms subject to peer review to provide the Board with proof of completion of a peer review or information substantiating entitlement to an exemption. The proposed regulations also would require the Board to revise its forms for initial licensure and license renewal. The proposed regulations would not impose new paperwork requirements on the Commonwealth's other agencies or its political subdivisions.

*Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (relating to regulatory review and promulgation), the Board, in developing the proposed regulations, solicited comments from the major professional associations representing the public accounting profession in this Commonwealth.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 11, 1999, the Board submitted copies of this notice of proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Standing Committee on Consumer Protection and Professional Licensure and the House Standing Committee on Professional Licensure. The Board also provided IRRC and the Committees with copies of a regulatory analysis form prepared in compliance with Executive Order 1996-1. Copies of this form are available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 10 days following the close of the Committees' review period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures that permit IRRC, the General Assembly and the Governor to review objections prior to final adoption of the regulations.

*Public Comment*

The Board invites interested persons to submit written comments, suggestion or objections regarding the proposed regulations to Steven Wennberg, Esq., Counsel, State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS J. BAUMGARTNER, CPA,  
*Chairperson*

**Fiscal Note:** 16A-556. 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 11. STATE BOARD OF ACCOUNTANCY  
PEER REVIEW**

**§ 11.81. Definitions.**

The following words and terms, when used in §§ 11.82—11.86 (relating to peer review), have the following meanings, unless the contract clearly indicates otherwise:

*Administering organization*—An entity that meets the standards specified by the Board for administering a peer review program.

*Firm*—A licensee who is a sole practitioner or a licensee that is a qualified association as defined in section 2 of the act (63 P. S. § 9.2).

*Peer reviewer*—An individual who conducts an onsite or offsite peer review. The term includes an individual who serves as captain of an onsite peer review team.

**§ 11.82. Effective dates for peer review compliance; proof of compliance or exemption.**

(a) Unless subject to an exemption under section 8.9(g) of the act (63 P. S. § 9.8i(g)), a firm that performs an audit engagement after May 1, 1998, shall complete a peer review before the license biennium that begins May 1, 2000.

(b) Unless subject to an exemption under section 8.9(g) of the act, a firm that performs a review engagement, but not an audit engagement, after May 1, 1998, shall complete a peer review before the license biennium that begins May 1, 2004.

(c) A nonexempt firm shall submit with its application for initial licensure or license renewal a letter from the peer review administering organization that evidences the firm's completion of a peer review.

(d) A firm claiming an exemption from peer review under section 8.9(g) of the act shall submit with its application for initial licensure or license renewal information that substantiates its entitlement to an exemption. In the case of a multistate firm that claims an exemption under section 8.9(g) based on its having undergone a peer review in another state or jurisdiction, the firm shall provide the following:

(1) A letter from the out-of-State peer review administering organization evidencing the firm's completion of a peer review, within 3 years prior to the date of the application, that meets the requirements of the act and this chapter.

(2) A statement that the firm's internal inspection or monitoring procedures require that the firm's personnel from an out-of-State office perform an inspection of the firm's Pennsylvania offices at least once every 3 years.

**§ 11.83. Administering organizations for peer review; firm membership not required.**

(a) The following organizations are deemed qualified to administer peer review programs:

(1) The Securities and Exchange Commission Practice Section and the Private Companies Practice Section of the AICPA.

(2) Any State society or institute that participates in the AICPA Peer Review Program.

(b) A firm that is subject to peer review is not required to become a member of the AICPA or any other administering organization.

**§ 11.84. Peer review standards.**

A peer review shall be conducted in accordance with the "Standards for Performing and Reporting on Peer Reviews," including interpretations thereof, issued by the AICPA.

**§ 11.85. Qualifications of peer reviewers.**

(a) Except as provided in subsections (b) and (c), a peer reviewer shall possess the qualifications set forth in the "Standards for Performing and Reporting on Peer Reviews," including interpretations thereof, issued by the AICPA.

(b) A licensed public accountant who otherwise satisfies the requirements of subsection (a) shall be qualified to serve as a peer reviewer.

(c) A sole practitioner with a public accounting or auditing practice who otherwise satisfies the requirements of subsection (a) shall be qualified to serve as a peer reviewer if the practitioner is also enrolled in a peer review program.

(d) A peer reviewer shall be independent from, and have no conflict of interest with, the firm being reviewed.

**§ 11.86. Confidentiality of peer review reports.**

(a) All peer review reports and related information shall remain confidential except as provided in section 8.9(e) and (h)(3) of the act (63 P. S. § 9.8i(e) and (h)(3)) and subsection (b) of this section.

(b) The Board will have the right to inquire of an administering organization whether a peer review report has been accepted.

[Pa.B. Doc. No. 99-1372. Filed for public inspection August 20, 1999, 9:00 a.m.]

## STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

### Disclosure Summary

The State Real Estate Commission (Commission) proposes to add § 35.336 (relating to disclosure summary) to read as set forth in Annex A.

*A. Effective Date*

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

*B. Statutory Authority*

The regulation is proposed under the authority of section 608 of the Real Estate Licensing and Registration Act (63 P. S. § 455.608) (act).

*C. Background and Purpose*

This proposal implements section 608 of the act of November 25, 1999 (P. L. 908, No. 112) (Act 112), which was added to the act on November 24, 1998. Act 112

permits licensees to enter into various agency relationships with consumers. Section 608 requires the Commission to adopt a disclosure summary to be provided to the consumers at the initial interview. Section 608 of the act delineates 11 items which must be disclosed:

1. The relationships in which the consumer may engage the broker.

2. A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and the consumer.

3. A statement that a consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer, and that the fees and services to be provided are to be determined by negotiations between the consumer and the broker.

4. A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services.

5. A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction.

6. A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees.

7. A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will represent the interests of the buyer.

8. A statement that the duration of the broker's employment and the broker's fees are negotiable.

9. The purpose of the Real Estate Recovery Fund and the telephone number of the Commission at which further information about the fund may be obtained.

10. A statement that the duration of the listing agreement or contract and the broker's commission are negotiable.

11. A statement that any sales agreement must contain zoning classification of a property except in cases where the property (or each parcel thereof, if subdivided) is zoned solely or primarily to permit single-family dwellings.

*D. Description of Proposed Regulation*

Proposed subsection (a) would contain the disclosure summary form. The disclosure summary is divided into four parts: introduction, duties of licensees generally, a description of the business relationships and other information about real estate transactions.

In the first part of the disclosure, the Commission attempts to make consumers aware that to be represented by a licensee, they need to enter into a written agreement. The disclosure is also intended to caution consumers that until they have entered into such an agreement, they should not disclose any confidential information to the licensee.

The second part of the disclosure lists the duties required of all licensees by section 606.1 of the act (63 P. S. § 455.608a).

The third part of the disclosure describes the business relationships delineated in Act 112: seller agency, buyer agency, dual agency, designated agency and trans-

action licensee. The proposed regulation explains that under seller agency, the licensee and all licensees in the real estate company (except where there is designated agency) work only for the seller/landlord. Associated with this relationship are the additional duties of loyalty, confidentiality, continuous good faith effort to find a buyer and disclosure. As a seller's agent, the licensee may compensate subagents, who, with the consumer's written approval, act in the same capacity as a seller's agent, and buyer's agents and transaction licensees, who with their agreement, other licensees may serve and be paid as subagents.

The proposal further explains that under buyer agency, the licensee and all licensees in the real estate company (except where there is designated agency) work only for the buyer/tenant, regardless of by whom the licensee is paid. Buyer's agents have the same additional duties to buyers as seller's agents have to sellers.

The proposal also explains that under dual agency, the licensee acts as the agent for both the buyer and the seller in the same transaction with the written consent of all of the parties. Dual agents have the additional duties of taking no action that is detrimental to either party, making a continuous and good faith effort to find a buyer for the property and a property for the buyer, and confidentiality.

In designated agency the employing broker designates one or more licensee to exclusively represent the interests of one party and other licensees to exclusively represent the interests of the other party. Designation may take place at the time the parties enter into a written agreement or when the employing broker learns that a dual agency relationship exists. Regardless of when the designation occurs the employing broker is responsible for ensuring that confidential information is not disclosed. In addition, the employing broker must take responsibility to direct and supervise the business activities of the licensees who represent the buyer and the seller while taking no action that is adverse or detrimental to either party's interest in the transaction.

The proposed regulation also explains that a transaction licensee is not an agent or advocate for the consumer. Unlike a buyer's agent, seller's agent or dual agent, the transaction licensee only has the additional duty of limited confidentiality. Confidential information should not be divulged other than the fact that the seller will accept a price lower than the asking price, that the buyer will pay a price greater than the price submitted in a written offer, or that the seller or buyer will agree to terms other than those offered.

The last part of the disclosure delineates the four items which are negotiable in a written agreement/disclosure statement, the requirements that the sales agreement contain the zoning classification of the property, and information about the Real Estate Recovery Fund.

Proposed subsection (b) would require licensees to provide all consumers with the disclosure at the initial interview.

Proposed subsection (c) would require licensees to retain the signed acknowledgment in their files and provide a copy to the consumer. The Commission believes it is prudent to require licensees to maintain a copy of the acknowledgment as evidence that the licensee complied with section 606.1(a)(6) of the act.

#### *E. Compliance with Executive Order 1996-1*

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards

and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council.

In formulating this proposal, the Commission reviewed and considered all comments and suggestions received by these and other interested parties during the regulatory development process.

#### *F. Fiscal Impact and Paperwork Requirements*

The proposed regulation should have minimal fiscal impact on the Commonwealth. The proposed regulation would require the Commission to print the disclosure summary and make it available to all licensees. In addition to obtaining a copy from the Commission staff, the disclosure summary would be available on the Internet for downloading. This proposed regulation would also have a minimal fiscal impact on the regulated community in that licensees would incur the cost of reproducing the disclosure summary.

Additional paperwork requirements for the Commission would be limited to having copies of the disclosure summary available. Licensees would also have the additional paperwork requirement of keeping the signed acknowledgment and providing a copy of the entire disclosure to the consumer. The proposed regulation should not necessitate any legal, accounting or reporting requirements on the regulated community.

#### *G. Sunset Date*

The Commission reviews the effectiveness of its regulations on an ongoing basis. 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 August 9, 1999, the Commission submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed regulation, the Commission has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the Commission within 10 days after the expiration of the Committees' review 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 regulation, by the Commission, the General Assembly and the Governor of objections raised.

*I. Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to Judith Pachter Schulder, Counsel, State Real Estate Commission, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-567 (Disclosure Summary), when submitting comments.

RITA HALVERSON,  
*Chairperson*

**Fiscal Note:** 16A-567. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 35. STATE REAL ESTATE COMMISSION REAL ESTATE DOCUMENTS**

**§ 35.336. Disclosure summary.**

(a) The disclosure summary shall be entitled "Consumer Notice" and shall be in the following form:

**CONSUMER NOTICE**

**THIS IS NOT A CONTRACT**

Pennsylvania Law requires real estate brokers and salespersons (licensees) to advise consumers of the business relationships that a consumer may have with a licensee. This notice must be provided to the consumer at the first contact where a substantive discussion about real estate occurs.

Before you disclose any information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship will NOT be presumed.

Any licensee who provides you with real estate services owes you the following duties:

- Exercise reasonable professional skill and care.

- Deal honestly and in good faith.
- Present, in a timely manner, all offers, notices, and communications to and from the parties in writing, unless waived.
- Comply with Real Estate Seller Disclosure Act.
- Account for escrow and deposit funds.
- Disclose, in a timely manner, all conflicts of interest and financial interests.
- Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.
- Keep the consumer informed about the transaction and the tasks to be completed.

A licensee may have the following business relationships with the consumer:

***Seller Agency:***

Seller agency is a relationship where the licensee, upon entering into a written agreement, works only for a seller/landlord. Seller's agents owe the additional duties of:

- Loyalty to the seller/landlord by acting in the seller's/landlord's best interest.
- Confidentiality, except that a licensee has a duty to reveal known material defects about the property.
- Making a continuous and good faith effort to find a buyer for the property.
- Disclosure to other parties in the transaction that the licensee has been engaged as a seller's agent.

A seller's agent may compensate other brokers as subagents if the seller/landlord agrees in writing. Subagents have the same duties and obligations as the seller's agent. Seller's agents may also compensate buyer's agents and transaction licensees who do not have the same duties and obligations as seller's agents.

If you enter into a written agreement, all the licensees in the real estate company owe you the additional duties identified above under seller agency. The exception is designated agency. See the designated agency section in this notice for more information.

***Buyer Agency:***

Buyer agency is a relationship where the licensee, upon entering into a written agreement, works only for the buyer/tenant. Buyer's agents owe the additional duties of:

- Loyalty to the buyer/tenant by acting in the buyer's/tenant's best interest.
- Confidentiality, except that a licensee is required to disclose known material defects about the property.
- Making a continuous and good faith effort to find a property for the buyer/tenant.
- Disclosure to other parties in the transaction that the licensee has been engaged as a buyer's agent.

A buyer's agent may be paid fees, which may include a percentage of the purchase price, and, even if paid by the seller/landlord, will represent the interests of the buyer/tenant.

If you enter into a written agreement, all the licensees in the real estate company owe you the additional duties identified above under buyer agency. The exception is designated agency. See the designated agency section in this notice for more information.

