

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

#### [31 PA. CODE CHS. 33 AND 67a]

#### Pennsylvania Assigned Risk Consumer Protection

The Insurance Department (Department) hereby amends § 33.29 (relating to the Pennsylvania Assigned Risk Plan) and establishes Chapter 67a (relating to Pennsylvania Assigned Risk Plan consumer protection) to read as set forth in Annex A.

#### *Statutory Authority*

The final-form regulations are adopted under the authority of The Insurance Company Law of 1921 (40 P. S. §§ 341—991); The Insurance Department Act of 1921 (40 P. S. §§ 1—321); sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 3 of the act of February 12, 1984 (P. L. 28, No. 11), known as the Pennsylvania Auto Insurance Plan.

#### *Comments and Response*

Notice of proposed rulemaking was published at 28 Pa.B. 5246 (October 17, 1998) with a 30-day comment period. During the 30-day comment period, comments were received from the Insurance Federation of Pennsylvania, Inc. (IFP), the Professional Insurance Agents of Pennsylvania (PIA) and Duane, Morris & Heckscher. During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to those comments.

The IFP supported the Department's efforts in revising the regulations and raised no objections.

Both Duane Morris & Heckscher, counsel for the Assigned Risk Plan (plan), and IRRC recommended that § 67a.2(f) (relating to consumer protections) refer to the recently enacted legislation that amended 75 Pa.C.S. (relating to Vehicle Code) (code). The Department agreed with this and has changed the section accordingly.

In § 67a.1 (relating to definitions), both the PIA and IRRC recommended that the Department follow the definition of "assigned risk plan" that is provided in the statute. Since this is a stylistic change, the Department has no objection to this request and has made the change accordingly.

Both the PIA and IRRC also requested a clarification to the terms "producer" and "producer of record." The Department agreed with the clarification and has revised the language to reflect that agents and brokers are "certified or licensed" by the Department. The Department issues certificates of qualification to agents, thus certifying them, and licenses to brokers. Both the PIA and IRRC also suggested that the definition of "voluntary market" include the term "ordinary," as reflected in section 1741 of the code (relating to establishment of the plan). The Department agrees with the recommendation and has made this change.

Section 67a.2 required that producers perform a reasonable search of the ordinary market prior to placing business with the plan. Both the PIA and IRRC raised the objection that the statute does not require that a reasonable search be made.

The statute provides that an agent or broker may place an insured in the plan if coverage is not available in the ordinary market. Plan applications, approved by the Department, provide that the insured and agent or broker confirm that the insured attempted to obtain the coverage through the ordinary market and could not. In light of this, the Department believes that the statutory provisions and current practices obviate the need to include an explicit requirement in the rulemaking that a reasonable search of the ordinary market be made. Consistent with the PIA and IRCC's suggestion, the Department has deleted the express requirement in the rulemaking requiring a reasonable search of the ordinary market.

The PIA objected to the requirements in § 67a.2(c) that state a producer may not accept cash as a method of payment. This objection seems tenuous, considering that the current regulations already prohibit this activity. The Department obviously believes that the current regulations are valid and enforceable; also, the prohibition against accepting cash is clearly an important tool to prevent abuse or misuse of funds. If current practice is to abide by the current regulations, then the proposed rulemaking does not place an additional burden on agents or brokers. Therefore, the Department believes that this provision should remain in the rulemaking and has retained the language in § 67a.2(c).

IRCC recommended that the rulemaking include a definition of the "Assigned Risk Plan Rules" and explain where they may be obtained. The Department does not believe that this would be of substantive or procedural benefit appropriate for inclusion in the rulemaking. The intent of Chapter 67a is to ensure consumer protection, with regard to coverage through the plan. Adding language on the availability of plan rules, and agents' access thereto, does not constitute a regulatory mandate that would enhance consumer protection. Further, the Assigned Risk Plan Governing Committee develops the rules, which are filed with, and approved by, the Department. Certified producers for the plan must have access to the rules, obtainable through the plan itself. Also, most agents know of the availability of the plan rules or access to the plan. If an agent or broker is not aware of the plan, that agent or broker usually obtains this information from either the Department, a trade association, of which the agent or broker may be a member, or experienced agents and brokers in the marketplace. Therefore, the Department has not included a definition of the "plan rules" or how the plan rules may be obtained.

#### *Affected Parties*

The final-form rulemaking applies to insurance companies doing the business of property and casualty insurance in this Commonwealth.

#### *Fiscal Impact*

#### *State Government*

There will be no increase in cost to the Department due to the adoption of Chapter 67a.

#### *General Public*

There will be no fiscal impact to the public.

#### *Political Subdivisions*

The final-form rulemaking will not impose additional costs on political subdivisions.

*Private Sector*

The final-form rulemaking will not impose additional costs on insurance companies doing the business of property and casualty insurance in this Commonwealth.

*Paperwork*

The adoption of the final-form rulemaking will not impose additional paperwork on the Department or the insurance industry.

*Effectiveness/Sunset Date*

This final-form rulemaking becomes effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned.

*Contact person*

Questions or comments regarding this final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. 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 October 5, 1998, the Department submitted a copy of this rulemaking to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when regulated. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form rulemaking was deemed approved by the House and Senate Committees on August 9, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 10, 2000, and approved the final-form rulemaking.

*Findings*

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

*Order*

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code, are amended by deleting § 33.29 and adding §§ 67a.1 and 67a.2 to read as set forth in Annex A.

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

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

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

M. DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 4480 (August 26, 2000).)*

**Fiscal Note:** Fiscal Note 11-171 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 31. INSURANCE**

**PART I. GENERAL PROVISIONS**

**Subpart C. AGENTS AND BROKERS**

**CHAPTER 33. LICENSING REQUIREMENTS**

**§ 33.29. (Reserved).**

**PART II. AUTOMOBILE INSURANCE**

**CHAPTER 67a. PENNSYLVANIA ASSIGNED RISK PLAN CONSUMER PROTECTIONS**

Sec.	
67a.1.	Definitions.
67a.2.	Consumer protections.

**§ 67a.1. Definitions.**

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

*Assigned Risk Plan*—As defined in 75 Pa.C.S. § 1702 (relating to definitions).

*Department*—The Insurance Department of the Commonwealth.

*Producer*—An agent or broker, certified or licensed, by the Insurance Department to conduct business and certified by the Assigned Risk Plan.

*Producer of record*—The agent or broker, certified or licensed, by the Department to conduct business, certified by the Assigned Risk Plan and whose signature appears on the application for insurance.

*Voluntary market*—The ordinary market where a person obtains insurance without the assistance from government and through an insurer of the consumer's own selection.

**§ 67a.2. Consumer protections.**

(a) A producer may submit an application to the Assigned Risk Plan and may deliver the policy of the company to which the risk is assigned.

(b) A producer may submit an application to the Assigned Risk Plan only after having been unable to obtain coverage for the applicant, in the voluntary market, within the time frame established by the Assigned Risk Plan rules.

(c) Upon completion of the original application, premium moneys from the applicant to the producer of record shall be in the form of a money order, cashier's check, certified check, personal check or other method approved by the Insurance Commissioner, made payable to the "Pennsylvania Assigned Risk Plan." The producer of record may not accept cash.

(d) Upon receipt of the premium moneys for an original application, the producer of record shall issue a receipt showing the amount received, and the date and time that the money was received. The receipt shall also contain

the applicant's name and address, the signature of the producer of record and a statement indicating that it was received for the Pennsylvania Assigned Risk Plan. The electronic mail reference number shall be included, if applicable.

(e) A producer of record shall maintain appropriate records of original applications, including the electronic mail reference number, noting the date and time of coverage. The producer of record shall make available for inspection these records to the Assigned Risk Plan, a representative of the assigned company or the Department.

(f) If the applicant produces reasonable documentation of payment of the required premium to the producer of record in accordance with subsection (c) and a completed application for insurance under the Assigned Risk Plan, payment to the producer of record shall be deemed payment to the Assigned Risk Plan in accordance with the Assigned Risk Plan rules. Coverage shall be effective as of the date and time specified in the application in accordance with the Assigned Risk Plan rules. See 75 Pa.C.S. § 1742(4) (relating to scope of plan).

(g) A producer may not charge referral fees or other fees for placing or servicing any coverage in the Assigned Risk Plan. A producer's remuneration shall be limited to the method of compensation established by the Assigned Risk Plan rules.

(h) Producers shall comply with the Assigned Risk Plan rules. Violation of the Assigned Risk Plan rules may be construed to be a violation of section 604 of The Insurance Department Act of 1921 (40 P. S. § 234).

[Pa.B. Doc. No. 00-1587. Filed for public inspection September 15, 2000, 9:00 a.m.]

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

#### [58 PA. CODE CHS. 63, 65 AND 111]

#### Baitfish; Special Fish Regulations; Special Boating Regulations

The Fish and Boat Commission (Commission) by this order amends Chapters 63, 65 and 111 (relating to general fishing regulations; special fishing regulations; and special regulations counties). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to fishing and boating.

##### A. Effective Date

The amendments will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

##### B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

##### C. Statutory Authority

The amendments to Chapter 63 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendments to

Chapter 65 are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The amendments to Chapter 111 are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

##### D. Purpose and Background

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

##### E. Summary of Changes

(1) *Section 63.44 (relating to illegal baitfish)*. Until 1980, when the code was recodified, it was illegal to use goldfish as a baitfish. However, during the recodification, this prohibition was inadvertently omitted. Recently, the Commission's Bureau of Fisheries took action to prohibit the sale of the four species of baitfish (specifically, Goldfish (*Carassius auratus*), Comets (*Carassius auratus*), Koi (*Cyprinus carpio*) and Common carp (*Cyprinus carpio*)) by individuals possessing a Live Bait Dealer's license. To be consistent with this current change and also correct the previous omission, the Commission added § 63.44. This section is adopted as proposed.

(2) *Section 65.24 (relating to miscellaneous special regulations)*. A recent review of the Commission's regulations revealed that there are two miscellaneous special regulations that state that the creel limit for trout is eight per day. When the Commission amended its State-wide trout regulations last year to reduce the creel limit from eight to five, these miscellaneous regulations should have been amended as well. Accordingly, the Commission adopted the amendments to this section. This section is amended as proposed.

(3) *Section 111.67 (relating to York County)*. Section 111.67(c)(3) and (d)(3) requires boaters 8 years of age and younger and nonswimmers to wear United States Coast Guard approved PFDs on Lake Redman and Lake Williams, respectively. The Commission promulgated this regulation prior to the Statewide regulation in § 97.1(h) (relating to personal flotation devices) requiring children 12 years of age and younger to wear an approved Type I, II, III or V PFD while underway on any boat 20 feet or less in length and all canoes and kayaks. To resolve this inconsistency, the Commission deleted § 111.67(c)(3) and (d)(3). The deletion is adopted as proposed.

##### F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

##### G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

##### H. Public Involvement

A notice of proposed rulemaking was published at 30 Pa.B. 2373 (May 13, 2000). The Commission did not receive any public comments regarding the proposals.

##### Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201

and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 63, 65 and 111, are amended by amending §§ 63.44, 65.24 and 111.67 to read as set forth at 30 Pa.B. 2373.

(b) The Executive Director will submit this order and 30 Pa.B. 2373 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 30 Pa.B. 2373 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-107 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 00-1588. Filed for public inspection September 15, 2000, 9:00 a.m.]

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