

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

#### [31 PA. CODE CH. 115]

#### Public Adjuster Contracts and Licensing

The Insurance Department (Department) amends Chapter 115 (relating to public adjuster contracts and licensing requirements) to read as set forth in Annex A.

#### *Statutory Authority*

The final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and under the specific statutory authority of sections 1—8 of the act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608) (act).

#### *Purpose*

Chapter 115 was promulgated in 1980 under the authority of a prior statute. The current authorizing statute was enacted in 1983. The Department is amending Chapter 115 for consistency with the current statute and to more effectively regulate the licensing and conduct of public adjusters and public adjuster solicitors.

#### *Comments and Response*

Notice of proposed rulemaking was published at 32 Pa.B. 609 (February 2, 2002) with a 30-day comment period. During the 30-day comment period, comments were received from the Insurance Federation of Pennsylvania, Inc. (IFP), the Pennsylvania Association of Mutual Insurance Companies (PAMIC) and the Pennsylvania Association of Public Insurance Adjusters (PAPIA).

During its regulatory review, the Independent Regulatory Review Commission (IRRC) submitted comments to the Department. The following is a response to those comments.

#### *General Comments*

The IFP generally supported the Department's specification of the licensing requirements for public adjusters and public adjuster solicitors in §§ 115.11—115.21 (relating to licensing requirements). However, the IFP recommended that the chapter be amended to require specific training and testing in estimating, general business practices, home and building construction, renovation, repairs, repair contracting practices and conditions, appraisals of real and personal property, knowledge of the restrictions of the act and the contracting practices and prohibited activities specified in the chapter.

The Department, in overseeing the licensure tests that public adjusters and public adjuster solicitors are required to pass, considers the majority of the areas mentioned by the IFP, including licensing requirements, disciplinary actions, claim settlement law and regulations, loss valuation, claims adjustment procedures and general principles of all types of property and casualty insurance. According to Experior, the Department's testing provider, for the period of April 1, 2001, to December 31, 2001, a total of 189 examinations for public adjuster and public adjuster solicitor were given to 131 candidates. The first time pass ratio was 47.4 %, with an overall pass ratio of 42.3%. These numbers are considerably lower than the pass ratio for life and health insurance agents'

examinations and only slightly higher than the pass ratio for property and casualty insurance agents' examinations. The Department believes that a passing grade on the current examination is sufficient to demonstrate knowledge in the areas mentioned by the IFP.

The IFP also suggested that there should be few, if any, exceptions to the requirements for passing an examination. The IFP questioned the rationale under proposed § 115.12 (relating to waiver of examination for resident applicants) for excusing someone whose license has expired from taking a new test. In addition, the IFP opposed reciprocity under § 115.13 (relating to examination requirements for nonresident applicants) unless the same degree of expertise is required under the other state's laws.

After considering the comments of the IFP, the Department has deleted § 115.12 from the final-form rulemaking and has appropriately renumbered the sections after § 115.12. The Department has not implemented the IFP's proposed restrictions on licensing nonresident public adjusters. Section 2 of the act (63 P. S. § 1602(c)(1)) sets forth the conditions under which the Insurance Commissioner may waive examination for nonresident applicants. None of the exceptions permit the Commissioner to examine whether the same degree of expertise is required of applicants for licensure in the other state or province. Reference to waiver of examination was deleted in § 115.17(1) (no longer in § 115.16) and changed in § 115.17(2) (now § 115.16(1) (relating to general application requirements)).

The IFP repeated the suggestion contained in its 1996 submission that the regulations impose a continuing education requirement on public adjusters. The IFP believes that there are continuing developments in repair techniques, building materials and changes in building codes and restrictions, and that a continuing education requirement would help protect the public from unknowledgeable adjusters. In addition, the IFP stated that public adjusters are not subject to the Commonwealth's bad faith statute, 42 Pa.C.S. § 8371 (relating to actions on insurance policies), that authorizes a court to award interest, punitive damages, court costs and attorney fees against an insurer. Therefore, an insured that uses a public adjuster has no action for bad faith against the public adjuster or the public adjusting firm.

The Department does not believe that any provision in the act empowers the Department to require continuing education. This is in contrast to other licensing statutes located in Title 63 of the *Purdons Statutes* that do require continuing education. See for example, 63 P. S. § 455.404a (real estate agents); 63 P. S. § 479.10 (funeral directors); and 63 P. S. § 625.507 (chiropractors).

Both the IFP and the PAMIC, on behalf of their members, suggested that the Department require that contracts between public adjusters and insureds contain a conspicuous fraud warning. The IFP suggested that the fraud warning place an equal burden on public adjusters and insureds and include the insurance fraud notice language required by the Commonwealth's insurance fraud statute, 18 Pa.C.S. § 4117(a)(3) (relating to insurance fraud).

The Department has not implemented this change because it believes that this issue is better addressed to the Attorney General's Office, Insurance Fraud Unit. Further, the Department believes that any fraud commit-

ted by public adjusters is sufficiently addressed in the statute, which allows the Department to revoke, suspend or impose civil penalties on a public adjuster who commits fraudulent practices. See section 6 of the act (63 P. S. § 1606(a)(12)). Nothing in this final-form rulemaking prohibits insurers from including a fraud warning in any correspondence that they may send to either their insured or a public adjuster.

The PAMIC suggested that § 115.3 (relating to additional procedures) be amended to require that a copy of the public adjuster contract be supplied to the insurer at the inception of the adjustment process. The PAMIC believes that bilateral disclosure would put public adjusters and insurers on the same footing because public adjusters routinely request copies of all insurance policies that may be pertinent to the claim being adjusted.

Under section 5 of the act (63 P. S. § 1605(a)), the Department requires that public adjusters submit copies of any contract forms for approval by the Department prior to being used with insureds. Once the Department approves a contract form, the public adjuster cannot substantially alter the contract form in any way without violating section 5 of the act. However, public adjusters may change the percentage and amount that they charge insureds on a case-by-case basis. The Department does not believe that requiring that insurers be notified of the terms and conditions of public adjuster contracts would noticeably enhance the consumer protections already mandated by the statute. Therefore, this suggested change was not incorporated into the final-form rulemaking.

The PAMIC also questioned use of the term "verbally" in § 115.3(a)(1), believing that the term "orally" is more clear and would prevent misunderstandings

The Department was cognizant of the difference in meaning between "verbally" and "orally" in preparing the final-form rulemaking. The Department believes that the term "orally" does not adequately address situations when speech cannot be used for communication, such as signing to a hearing impaired person. The Department believes that the term "verbally," as used here, is stronger and more accurate than the term "orally" suggested by the PAMIC, and is leaving the term unchanged in the preparation of the final-form rulemaking.

The IFP recommended that solicitation of clients by public adjusters be addressed in two ways. First, the IFP suggested that the Department extend that statutory 24 hour "cooling off period" to 72 hours to ensure that consumers may make a more informed decision on whether or not to retain a public adjuster. Second, the IFP suggested that deceptive solicitations, solicitations under false pretense (like employment offers), and solicitations initiated by unrelated third parties, being compensated by public adjusters, be defined as activities which demonstrate untrustworthiness for continued licensure under section 6(a)(13) of the act.

As to extending the statutorily required "cooling off" period, the Pennsylvania Supreme Court has ruled that the 24-hour period required by statute, section 5(a) of the act, is unconstitutional. See *Insurance Adjustment Bureau v. Insurance Com'r for Com. of Pa.*, 542 A.2d 1317 (Pa. 1988). Therefore, the Department believes that the 72-hour period recommended by the IFP would not be lawful. As to the specification of certain types of "deceptive" solicitations as evidence of untrustworthiness, the Department interprets the statute as requiring that public adjusters take all actions in a competent and trustworthy

manner. See section 6(a)(13) of the act. If specific problems occur, the Department is prepared to review the fitness of the public adjuster for continued licensure through the Department's complaint process or through an investigation by the Department's Bureau of Enforcement. Therefore, these recommendations were not incorporated into the final-form rulemaking.

The IFP stated that its member companies have encountered public adjusters who restrict inspection of damaged property to their own schedule, resulting in significant delay and exposing insurers to potential bad faith claims for untimely claims handling. The IFP suggested that the final-form rulemaking should prohibit this type of behavior and characterize it as incompetent or untrustworthy. The IFP stated that prompt inspection of property allegedly damaged or injured assures the preservation of evidence and expedites the adjustment of the claim to the insured's benefit.

The Department does not believe that any provision in the act empowers public adjusters to restrict insurers' ability to inspect insured property at the earliest opportunity. However, the insureds, who have engaged a public adjuster to help settle their claims, may want that public adjuster to be present at any inspection. This is the insureds' decision. The Department does, however, have the authority to investigate any misconduct by public adjusters in this regard and to take appropriate enforcement action.

Both the IFP and the PAMIC suggested that the Department clarify the regulations to prohibit the unauthorized practice of law by public adjusters, including citing legal precedent in communications, preventing insurers from speaking directly with insureds, dissuading or attempting to dissuade insureds from speaking directly with their insurers about the settlement or processing of a claim or taking another action designed to interfere with insurer/insured communication.

Commonwealth law already prohibits any person from the unauthorized practice of law and authorizes the imposition of criminal sanctions. See 42 Pa.C.S. § 2524 (relating to penalty for unauthorized practice of law). The Department believes that the words "any person" in the current statute are broad enough to cover public adjusters. In *Dauphin County Bar Ass'n v. Mazzacarro*, 351 A.2d 229 (Pa. 1976), the Pennsylvania Supreme Court held, under a previous version of the act, that a public adjuster had committed the unauthorized practice of law. The Department also believes that there is nothing in the regulation or statute that permits a public adjuster to practice law or to prevent or attempt to dissuade insureds from speaking with their insurers directly. The changes suggested by the PAMIC and the IFP were not incorporated into the final-form rulemaking.

The PAPIA raised concerns relating to the requirement of a maximum fee of 50% in public adjuster contracts. The PAPIA felt that the percentage was excessive and not in the best interest of public adjusters or their clients. The PAPIA stated that a cap of 20% would be fair and equitable. The PAPIA also stated that notice of cancellation in a bottom tear-off section should be sufficient without reiterating the right to cancel language in the body of the contract.

There appears to have been a misperception that the Department limits the fees that public adjusters may recover. The Department does not have this statutory authority when it pertains to public adjusters. In the past, many public adjusters have asked for a copy of a

sample contract and the Department did provide a sample that used the 50% figure as an example. Over the years, many public adjusters have used this sample contract verbatim and therefore an "unofficial" commission capping of 50% has evolved. More recently, the Department has been using the sample form; however, the basis for approval or disapproval of public adjuster contracts is whether the contract complies with the act and the regulations. The current regulation specifically states in § 115.2(4) (relating to contents of public adjuster contracts, minimum standards) "All public adjuster contracts shall contain the following minimum information . . . the consideration, expressed as a percentage and as a maximum amount." The Department has clarified the language in this section to help clarify this section. Also, the Department wants a notice for the insured's right to cancel to appear in the contract. It does not matter if this is a tear off section on the bottom of the contract, contained in the body of the contract, or at the beginning of a contract. If the contract meets the conditions stipulated in § 115.2, relating to contents of public adjuster contracts, minimum standards, and has not added ambiguous language or contradictory language to the contract then the Department would consider the contract to be in compliance with the regulation.

The IFP, the PAMIC and IRRC encouraged the Department to strengthen the final-form rulemaking so as to more completely fulfill its statutory responsibility to regulate this activity. More specifically, IRRC stated that first, commentators had suggested that the final-form rulemaking should include specific provisions and procedures for revocation or suspension of a license or for imposition of fines. These provisions are contained in section 6(a) of the act. For increased clarity, IRRC suggested that the Department consider retaining § 115.7 (relating to penalties) and adding a similar section which references the provisions of the act dealing with revocation and suspension.

IRRC also stated, that second, the Department has the statutory authority based on section 6 of the act and section 8 of the act (63 P. S. § 1608) to impose further consumer protections on public adjusters. Therefore, IRRC believes that the regulation's consumer protection could be enhanced by adding:

(1) A deadline for public adjusters to provide notification to the insurer of the public adjuster's representation to facilitate the processing of claims.

(2) A set time frame of 3 business days for public adjusters to communicate any settlement offers from an insurer to an insured in writing within 3 business days so that the insured is made aware of all of the options.

(3) A requirement that public adjusters should reply to any written or oral communication from an insurer with respect to a claim within 7 business days of receiving it if the communication solicits a reply to ensure that the claim process continues with limited interruptions.

(4) Criteria stating that public adjusters, who do not respond to communications, should be deemed to be demonstrating incompetency or untrustworthiness. This is consistent with section 6(a)(13) of the act.

The Department has adopted, in large part, the suggestions of IRRC, the PAMIC and the IFP in preparing the final-form rulemaking. The Department has decided to retain existing § 115.7. The Department has also added references to the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15) to clarify that sanctions may be imposed if a public adjuster engages in a pattern or

practice of unlawful conduct or commits a single flagrant violation of the Unfair Insurance Practices Act. The Department has also added new § 115.9 (relating to additional consumer protections), additional consumer protections. Under this section, the Department is allowing 5 business days for a public adjuster to notify an insurer of the public adjuster's representation to facilitate claims processing. The public adjuster will also be allowed 5 business days to convey any settlement offers to the insured and must reply within 5 business days to any written communication from an insurer that requires a response. A 5 day period is used throughout this section for the sake of consistency. In addition, repeated failure to respond within the specified time period in § 115.9(c) could be considered a pattern or practice in determining whether sanctions under § 115.7 are appropriate. Also, in the definition section, the Department is not deleting the term "business day." As the Department is accepting that business days are more appropriate than calendar days, the Department believes that the term needs to remain in the final-form rulemaking.

IRRC and the IFP wanted consistency with the *Pennsylvania Bulletin*. They stated that the version that was printed in the *Pennsylvania Bulletin* was not the same as the version submitted to IRRC and the committees. IRRC wanted the Department to correct references in the text of § 115.11 to "subsections (b) and (c)" and of § 115.12 to "subsection (a)."

When the Department submitted the proposed rulemaking to IRRC and the committees of the Senate and House, the licensing section was only one section with many subsections. The Legislative Reference Bureau in reformatting the long section into smaller sections created a reference that was nonexistent. The Department has made the appropriate corrections.

IRRC also wanted the Department to clarify the terms "active office" and "active partner." More specifically, the phrase "who holds a current public adjuster license and" appears in the text of both definitions. The act and proposed §§ 115.17 and 115.21 (relating to general application requirements; and partnership or corporation application procedures) contain the requirements for licensure of active officers and active partners. Because these individuals are required to obtain a license, IRRC believed that the phrase noted should be deleted from both definitions in the final-form rulemaking.

The Department has reviewed the suggestion and agrees that the phrase "who holds a current public adjuster license" is redundant. Accordingly, the Department has eliminated the phrase from definitions of both "active officer" and "active partner." The Department has further altered the definitions by replacing "a person" with "an individual." The Department did this to be consistent with language that will be in the Producer Licensing Model Act (currently SB 962). Also, the term "person," as defined in section 601 of The Insurance Department Act of 1921 (40 P. S. § 231), includes "an individual, corporation, partnership . . ." and the intent of the Department is to only include individuals.

IRRC wanted clarification in § 115.2. More specifically, subsection (a)(4) provides that the adjusters contract to include "The consideration expressed as a percentage of any payment to be received on the negotiated claim, and as a maximum dollar amount." (Emphasis added.) IRRC and the PAPIA suggested that the word "and" be replaced by the word "or."

Also, subsection (b)(3) provides that the public adjuster contract may not impose "unreasonable late fees or

collection costs on the insured." IRRC wanted the Department to provide examples of what the Department considers "unreasonable" with regard to late fees or collection cost.

The Department has modified § 115.2(a)(4) by substituting the term "or" for the term "and" in that subsection. In regards to the term "unreasonable" found in § 115.2(b)(3), the Department concurs that this term is subjective. Rather than muddying the regulation with examples that remain subjective and may not give clear guidance, the Department has deleted the term "unreasonable." This allows for greater consumer protection. The Department also believes that when checks for claims are issued in both the insured's name and the public adjuster's name, the issue of the proper amount of late fees or collection costs becomes moot. This does not preclude a public adjuster from collecting fees associated with reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster to protect the interests of the insured during the period preceding cancellation as described in § 115.2(a)(7), relating to the notice of cancellation.

IRRC questioned whether "15 calendar days" after receipt of the cancellation notice was a reasonable time period for a public adjuster to fulfill the requirements found in § 115.3.

The Department has determined, for consistency, to use business days in lieu of calendar days. Section 115.3 has been modified to now reflect "15 business days." The term "business days" is now used throughout the final-form rulemaking.

IRRC also asked for clarity in § 115.11. IRRC stated that this section requires applicants to "successfully complete an examination, except as provided for in subsections (b) and (c)." Applicants seeking a license shall apply for examination directly to the testing facility. It is not clear where the applicant may obtain an examination or how the applicant will contact the testing facility. To add clarity to this section, the Department could cross reference § 115.15(5) (now § 115.14(5)), which provides the pertinent information.

The Department has no problem with IRRC's suggestion and has added "See § 115.14 (relating to administration of examination)" to the final-form rulemaking.

IRRC requested that the Department clarify what documents or information the Department was willing to accept for a nonresident applicant for a license to "pass the appropriate examination if unable to produce documentation from the confirming regulatory authority..." in § 115.13.

The Department has replaced the term "documentation" with "a license or letter of certification of licensure" to proposed § 115.13 (now § 115.12). This should clarify the requirements.

IRRC wanted clarification to § 115.15 (relating to administration of examination). IRRC stated that this section requires an eligible delegatee to adhere to certain standards. Paragraph (2) states "Testing may be conducted in locations throughout this Commonwealth and other designated locations." IRRC had two concerns. First, if the Department requires the eligible delegatee to offer exams throughout this Commonwealth, then the word "may" should be replaced with the word "shall." Second, what "other designated locations" would not be located in this Commonwealth? The Department should provide examples of "other designated locations" in the final-form rulemaking or delete the phrase.

The Department also clarified that in proposed § 115.13 only a resident applicant needs to maintain a business or legal address in this Commonwealth. As previously written, this would have excluded a nonresident from applying if the nonresident is not able to meet the requirements in final-form § 115.12.

The Department has changed the word "may" to "shall." The Department has also added to proposed § 115.15(2) (now § 115.14(2)) the following language, "examples of other designated locations include testing facilities that the administrator of testing may have in other states, or internet testing offered by the administrator." The Department has also added § 115.14(6) which states "location of the testing facilities is available on the Department's website at [www.insurance.state.pa.us](http://www.insurance.state.pa.us) or upon request from the Department." The Department contracts for the administration of testing using the Request for Proposal method. As the administrator may change over a period of time, and from contract to contract, this new language alleviates any concern that applicants could contact the wrong party to obtain information on where testing facilities are located. The Department has also changed the term "delegee" to the more appropriate "delegatee."

*Affected Parties*

The final-form rulemaking applies to public adjusters and public adjuster solicitors doing the business of public adjusting in this Commonwealth.

*Fiscal Impact*

*State Government*

There will be no increase in cost to the Department due to the adoption of the Chapter 115.

*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 public adjusters doing the business of public adjusting in this Commonwealth.

*Paperwork*

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

*Effectiveness/Sunset Date*

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

*Contact person*

Questions 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, fax (717) 772-1969, [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us)

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 7, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 609, to IRRC and to the Chairper-

sons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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 requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 27, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 12, 2002, and approved the final-form rulemaking.

#### Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form 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 Chapter 115, are amended by amending §§ 115.1—115.3, 115.7 and 115.8; by deleting §§ 115.5 and 115.6; and by adding §§ 115.11—115.21 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 rulemaking adopted by this order shall take effect upon final-form 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 32 Pa.B. 6428 (December 28, 2002).)*

**Fiscal Note:** 11-146. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 31. INSURANCE

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

#### CHAPTER 115. PUBLIC ADJUSTER CONTRACTS AND LICENSING REQUIREMENTS

#### GENERAL

#### § 115.1. Definitions.

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

*Act*—The act of December 20, 1983 (P. L. 260, No. 72) (63 P. S. §§ 1601—1608).

*Active officer*—An individual designated by the corporation as an officer of record for the public adjuster agency license.

*Active partner*—An individual designated by the partnership as a partner of record for the public adjuster agency license.

*Business day*—A day other than a Saturday, Sunday or holiday.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Execution date*—The date that a public adjuster contract has been signed by all parties.

*Insurance company*—An insurance company, association or exchange authorized to transact insurance business in this Commonwealth.

*Resident*—A person whose business address or legal residence is located in this Commonwealth.

#### § 115.2. Contents of public adjuster contracts, minimum standards.

(a) A public adjuster contract shall contain, at a minimum, the following information:

(1) The title of the contract to read: Public Adjuster Contract.

(2) The name, business name, address and telephone number of the public adjuster.

(3) The name and address of the insured.

(4) The consideration expressed as a percentage of any payments to be received on the negotiated claim, or as a maximum dollar amount.

(5) A space provided for the execution date (month, day, year) of the contract.

(6) A space provided for the signature of the insured and the public adjuster.

(7) A provision setting forth the insured's right to cancel, which shall be printed in prominent type on the first page of the public adjuster contract in substantially the following form:

#### Notice of Right to Cancel

You, the insured, may cancel this contract at any time prior to midnight of the fourth business day after the execution date of this contract. If you exercise your right to cancel this contract, you will be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster to protect the interests of the insured during the period preceding cancellation.

If you cancel this contract, anything of value given by you under the contract will be returned to you within 15 business days following the receipt by the public adjuster of your cancellation notice, and any security interest arising out of the contract will be cancelled.

To cancel this contract, mail, fax or deliver in person a signed and dated copy of this notice or any other written notice, indicating your intent to cancel and the date thereof to (name of public adjuster) at

(business address of public adjuster) not later than midnight of (date).

I hereby cancel this contract.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Insured's signature)

(b) A public adjuster contract may not contain any contract term that:

(1) Allows the public adjuster's fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company.

(2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster.

(3) Imposes late fees or collection costs on the insured.

**§ 115.3. Additional procedures.**

(a) Each insured shall be:

(1) Verbally informed by the public adjuster at the time of signing the contract of the right to cancel.

(2) Furnished with a copy of the executed public adjuster contract.

(b) Before furnishing the approved notice to the insured setting forth the insured's right to cancel the contract, the notice shall be completed by entering the name of the public adjuster; the address of the public adjuster's place of business; the execution date of the contract; and the date, not earlier than the fourth business day following the execution date of the contract, by which the insured may give notice of cancellation.

(c) The cancellation period provided for in this chapter may not begin until the insured has been informed of the insured's right to cancel and has been provided with the approved notice setting forth the insured's right to cancel.

(d) Within 15 business days after the receipt of the cancellation notice, the public adjuster shall:

(1) Refund payments made under the contract.

(2) Cancel and return negotiable instruments executed by the insured in connection with the contract.

(3) Take action necessary or appropriate to promptly terminate any security interest created under the contract.

(e) A contract may not be negotiated, transferred, sold or assigned by the public adjuster to a finance company or other third party prior to midnight of the fifth business day following the execution date of the contract.

(f) If an insured exercises the insured's right to cancel the contract, the insured shall be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster during the period preceding cancellation.

**§ 115.5. (Reserved).**

**§ 115.6. (Reserved).**

**§ 115.7. Penalties.**

A violation of this chapter will be subject to penalties set forth in:

(1) Section 6 of the act (40 P. S. § 1606), regarding revocation, and the like, of license.

(2) Section 7 of the act (40 P. S. § 1607), regarding violations.

(3) Section 8 of the act (40 P. S. § 1608), regarding administration and enforcement.

(4) The Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15), if the public adjuster:

(i) Demonstrates a pattern or practice of violating this chapter.

(ii) Commits a single violation of this chapter, that is so flagrant in nature as to warrant sanctions.

**§ 115.8. Filing and approval of contracts.**

Applications for licensure and contract forms shall be submitted to the Insurance Department, Bureau of Producer Services, for filing and approval by the Commissioner.

**§ 115.9. Additional consumer protections.**

A public adjuster shall:

(1) Notify the insurer, within 5 business days of the execution date of the contract, of the public adjuster's representation to facilitate the processing of claims.

(2) Communicate in writing, to the insured, within 5 business days, all settlement offers from an insurer so that the insured is made aware of all the options.

(3) Reply to written communications from an insurer, with respect to a claim, in writing within 5 business days, only if the communication from the insurer requires a response.

**LICENSING REQUIREMENTS**

**§ 115.11. Examination requirement.**

Applicants for public adjuster and public adjuster solicitor licenses shall be required to successfully complete an examination, except as provided for in § 115.12 (relating to examination requirements for nonresident applicants). Applicants seeking a license shall apply for examination directly to the testing facility. See § 115.14 (relating to administration of examination).

**§ 115.12. Examination requirements for nonresident applicants.**

A nonresident applicant for a license shall:

(1) Submit, along with the application, a letter or other official document from the regulatory authority of the jurisdiction where the applicant holds a license, confirming the applicant's licensure in good standing for the same type of license for which application is being made with the Department, whether qualification is under a written examination or whether licensure preceded the requirement of a written examination.

(2) Be subject to reciprocal agreements between the Department and the regulatory authority of the confirming jurisdiction.

(3) Be required to pass the appropriate examination if unable to produce a license or letter of certification of licensure from the confirming regulatory authority which is satisfactory to the Department.

**§ 115.13. Qualifications for examination.**

An individual, or officer of a corporation, partner in a partnership or member of an association, who is 18 years of age or older, who can read and write in the English language and, for a resident applicant, who maintains a

bona fide business office or legal residence in this Commonwealth, may take a public adjuster/public adjuster solicitor examination upon payment of the applicable fee and submission of an application form.

**§ 115.14. Administration of examination.**

The Commissioner may delegate to a person or corporation, by contract, the authority for administering and scoring examinations. An eligible delegatee shall guarantee to adhere to the following standards:

- (1) Examinations shall be offered at regular intervals at least 12 times each year.
- (2) Testing shall be conducted in locations throughout this Commonwealth and other designated locations. Examples of other designated locations include testing facilities that the administrator of testing may have in other states, or Internet testing offered by the administrator.
- (3) Test security shall be strictly maintained, and a set of security rules shall be developed by the testing facility, which shall be approved by the Commissioner.
- (4) Bias or favoritism towards an applicant will not be permitted by the testing facility.
- (5) The testing facility shall develop a comprehensive brochure describing, at a minimum, applicable fees, the nature of examination questions and providing sample questions. The brochure shall be distributed to an applicant at the time of registration for examination or, upon request, at any other reasonable time.
- (6) The location of the testing facilities is available on the Department's website at [www.insurance.state.pa.us](http://www.insurance.state.pa.us) or upon request from the Department.

**§ 115.15. Scope of examination.**

Examinations shall be designed by the testing facility to test the adequacy of an applicant's knowledge of general principles of insurance, insurance laws of the Commonwealth and the business of adjusting losses.

**§ 115.16. General application requirements.**

Applicants for a license shall follow the following procedures:

- (1) An active officer of a corporation, active partner in a partnership or member of an association shall be required to take a written examination unless the requirement is waived under § 115.12 (relating to examination requirements for nonresident applicants) or unless the active officer, active partner or member is a currently licensed public adjuster.
- (2) Persons who have passed the examination may apply to the Department for a license. The applicant shall attach a certification from the testing facility attesting that the applicant passed the examination. The certification from the testing facility is not required if the testing facility reports test scores directly to the Department.
- (3) Test scores and results remain valid for 1 year from the date of the examination. Applications received with test results in excess of 1 year will be denied.

**§ 115.17. Completion of application and renewal application forms.**

Public adjusters and public adjuster solicitors shall complete application and renewal forms fully and accurately, and shall submit the required fees. Those applications and renewal forms submitted to the Department which are not complete and accurate or accompanied by required fees, will be returned for correction together

with written notice of the reason for the return of the applications or renewal forms.

**§ 115.18. Application procedures for individual persons.**

(a) An individual shall complete the application for an initial license. Accompanying the application shall be:

- (1) The appropriate application fee.
- (2) A bond as required by statute.
- (3) A receipt from the surety stating that the premium has been paid in full on the bond.
- (4) A copy of the contract to be used in this Commonwealth.
- (b) An applicant for a public adjuster solicitor license shall also obtain and present with the application a letter of intent from a licensed public adjuster to employ the applicant as a public adjuster solicitor.

(c) Applications shall be subscribed and sworn to before a notary public.

(d) Applications executed more than 3 months prior to the date of filing with the Department will not be accepted.

(e) Making a false statement in an application may constitute a ground for license denial or revocation.

(f) Initial licenses will be valid as of the date issued by the Department until the expiration date stated on the license, unless earlier revoked by the Commissioner.

(g) Before a license is granted, the applicant shall first answer and submit, in writing and under oath, interrogatories on forms prepared by the Department.

(h) When the Commissioner is satisfied that the applicant is worthy of a license, and that the applicant has passed the examination or qualified for a waiver, and has paid any appropriate fees, the Commissioner will issue a license stating that the licensee has been authorized by the Department to transact business as a public adjuster or public adjuster solicitor within this Commonwealth.

**§ 115.19. Denial of application.**

The applicant may be denied a license for any of the following reasons. The applicant:

- (1) Has provided incorrect, misleading or incomplete answers to interrogatories on forms incidental to applying for a license.
- (2) Has been denied a license or has had an existing license revoked, suspended or not renewed by the Department or a regulatory authority in another state, territory or possession of the United States, or in the District of Columbia, or the Canadian provinces.
- (3) Does not possess the professional competence and trustworthiness required to engage in the business of being a public adjuster or public adjuster solicitor.
- (4) Has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a felony in a court of competent jurisdiction, or has pleaded guilty, entered a plea of nolo contendere, or been found guilty of criminal conduct which relates to the applicant's suitability to engage in the business of being a public adjuster or public adjuster solicitor.

(i) Examples of criminal violations which the Department may consider related to the applicant's suitability to engage in the business of being a public adjuster or public adjuster solicitor including unlawful practices as set forth in sections 6(a)(1)–(3), (5)–(7) and (12) of the act (63

P. S. § 1606(a)(1)—(3), (5)—(7) and (12)), embezzlement, obtaining money under false pretenses, conspiracy to defraud, bribery or corrupt influence, perjury or false swearing, unlicensed activity or a criminal offense involving moral turpitude or harm to another.

(ii) Examples of violations or incidents which the Department will not consider related to the applicant's suitability to engage in the business of being a public adjuster or public adjuster solicitor are all summary offenses, records of arrests if there is no conviction or a crime based on the arrest, convictions which have been annulled or expunged or convictions for which the applicant has received a pardon from the Governor.

(5) Fails to comply with the insurance-related provisions in sections 320 and 603(a) of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C.A. §§ 1033 and 1034), if applicable.

(6) Has unpaid and overdue amounts, including fees and civil penalties, owing to the Department.

**§ 115.20. Partnership or corporation application procedures.**

Procedures for partnerships or corporations are as follows:

(1) Partnerships or corporations shall apply for licensure using the appropriate licensing application form. The form shall be signed in the name of the partnership or corporation by each active partner or active officer, and be accompanied by the appropriate licensing application form for each active partner or active officer who is not currently licensed. Accompanying the licensing application shall be:

- (i) The appropriate application fee.
- (ii) A bond as required by statute.
- (iii) A receipt from the surety stating the premium has been paid in full on the bond.
- (iv) A copy of the contract to be used in this Commonwealth.
- (v) A copy of the articles of incorporation as filed with the Department of State, Corporation Bureau.
- (vi) A copy of the public adjuster license of each active partner or active officer, if applicable.

(2) Employees of partnerships and corporations who apply for a license shall apply in their individual capacity.

(3) The worthiness of a partnership or corporation is determined by the worthiness of the active partner or the active officer.

(4) The application shall be subscribed and sworn to before a notary public.

(5) Applications executed more than 3 months prior to the date of filing with the Department will not be accepted.

(6) Making a false statement in an application may constitute a ground for license denial or revocation.

(7) Initial licenses will be valid as of the date issued by the Department until the expiration date stated on the license, unless earlier revoked by the Commissioner.

(8) Before a license is granted, the applicant shall first answer and submit, in writing and under oath, interrogatories on forms prepared by the Department. When the Commissioner is satisfied that the applicant is worthy of a license and has paid any appropriate fees, the Commissioner will issue a license stating that the licensee has

been authorized by the Department to transact business as a public adjuster or public adjuster solicitor within this Commonwealth.

**§ 115.21. Renewal of license.**

License renewal procedures are as follows:

(1) Mailing of a license renewal form to the last known address of the licensee will satisfy the Department's obligation to provide the appropriate forms and notices.

(2) A license can be renewed only upon submission, electronic or otherwise, of a completed renewal form, payment of the required fees and an attestation or a receipt from a surety stating the premium on the bond, as required, has been paid in full.

(3) Licenses shall be renewed annually on the anniversary of the effective date of the initial license.

(4) Corporations shall provide to the Department the names of each active officer with the renewal form to be eligible for license renewal. Partnerships shall provide to the Department the names of each active partner with the renewal form to be eligible for license renewal.

(5) Failure to complete and submit the renewal form and required fee by the expiration date shall be deemed voluntary termination by the public adjuster or public adjuster solicitor. Failure to correct and resubmit application renewal forms returned by the Department under this section, prior to the expiration date of the license, or within 15 days of the date the forms were mailed by the Department, whichever is greater, will be deemed voluntary termination by the public adjuster or public adjuster solicitor. Renewal forms received by the Department after expiration will be denied; except that renewal forms returned by the Department under this section and resubmitted as instructed by the Department after expiration but within 15 days of the date the incomplete forms were mailed by the Department to the applicant will be accepted.

[Pa.B. Doc. No. 03-85. Filed for public inspection January 17, 2003, 9:00 a.m.]

**Title 37—LAW**

**COMMISSION ON CRIME AND DELINQUENCY**

**[37 PA. CODE CH. 421]**

**Deputy Sheriffs' Education and Training Board**

The Deputy Sheriffs' Education and Training Board (Board), an advisory board within the Commission on Crime and Delinquency (Commission), amends Chapter 421 (relating to Deputy Sheriffs' Education and Training Board) to read as set forth in Annex A.

*A. Effective Date*

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

*B. Statutory Authority*

The final-form rulemaking is authorized under the Deputy Sheriffs' Education and Training Act (act) (71 P. S. §§ 2101—2109). Section 4(10) of the act (71 P. S. § 2104(10)) empowers the Board, with the review and approval of the Commission, to "make rules and regulations and perform other duties as may be reasonably necessary or appropriate to administer the education and training program for deputy sheriffs."



### C. Background and Purpose

Legislation enacted in 1984 established the Board as an advisory board to the Commission. See section 3(a) of the act (71 P.S. § 2103(a)). Among other things, the act mandates that a deputy sheriff be certified by the Board as having met all of the act's requirements to receive compensation for performing duties as a deputy sheriff. See section 7(c) of the act (71 P.S. § 2107(c)). The act originally directed the Board to set up a training program consisting of a total of 160 hours, to be determined by regulation. However, in 1998, the act was amended to direct the Board to set up a program of "not less than 160 hours, which content and hours of instruction shall be determined by the board subject to the review and approval of the commission." See section 5 of the act (71 P.S. § 2105). On July 8, 2000, the Board as an interim step published a statement of policy at 30 Pa.B. 3472 (July 8, 2000) that set the number of hours of basic training at 560 hours. With this rulemaking, the Board is setting the number of hours at no more than 760 hours, an expansion that will allow for the inclusion of additional topics to the basic training curriculum, including motor vehicle code and enforcement.

### D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 31 Pa.B. 788 (February 10, 2001). Publication was followed by a 30-day public comment period during which the Board received comments from the Independent Regulatory Review Commission (IRRC) and three public commentators: the Pennsylvania State Association of Township Supervisors (PSATS); Thomas Speers, Esquire, Solicitor for the Montgomery County Sheriff; and the Sheriffs' Association of the Commonwealth of Pennsylvania (Sheriffs' Association).

#### General Comments

The Sheriffs' Association submitted a comment in full support of the proposed rulemaking.

Comments from the PSATS and the Montgomery County Sheriff both challenged the statutory authority of the Board to promulgate a rulemaking of this scope. The PSATS noted that the Board was attempting to expand the authority of deputy sheriffs by regulation instead of legislation. According to the PSATS, this training could result in deputy sheriffs acting as municipal police officers without specific statutory authority to do so. Notwithstanding these comments, the Board is confident that section 4(10) of the act provides suitable statutory authority to expand the basic training curriculum to include the listed topics. The Board also notes that the Supreme Court of Pennsylvania has held that a deputy sheriff who has received training equivalent to that of a municipal police officer with respect to the motor vehicle code may make a valid arrest for a vehicle code charge. *Commonwealth v. Kline*, 741 A2d 1281 (Pa. 1999).

The Montgomery County Sheriff commented that the expanded training as proposed by the Board would burden counties financially because it would require new deputy sheriffs from all counties to undergo the expanded training, even those from counties that do not intend to use deputy sheriffs for vehicle patrol duties. The commentator suggested that the expanded training be made optional at the choice of the individual county or sheriff, rather than mandatory as proposed by the Board.

The Board acknowledges the added cost factors that would result from expanded basic training. However, it

notes that the training itself and most related expenses are being paid completely by the Board. Moreover, section 9 of the act (71 P.S. § 2109) requires the Commission to reimburse counties for the regular salary of deputy sheriffs in training at a 50% rate. Finally, due to other training certifications held, a large percentage of new deputies seeking Board certification are able to obtain required training through the abbreviated waiver course rather than the full basic training course. However, in response to the concerns raised, the Board asked the Commission to undertake a feasibility study regarding whether projected revenues from surcharges assessed under section 8 of the act (71 P.S. § 2108) could accommodate an increase of the 50% salary reimbursement rate. That study culminated in action taken by the Commission at its September 2001 meeting to endorse legislative action to raise the reimbursement rate to 100%.

In response to these comments, the Board reexamined its position on the issue of mandatory versus optional training. Among other things, the Board conducted a meeting on July 10, 2001, with the associations that had submitted comments on the proposed rulemaking. With its approval of this final-form rulemaking, the Board signals its continuing commitment to the concept of uniform training for all new deputies. A uniform standard of training will generate a cadre of professionals who, having undergone the expanded training, will share the same set of enhanced skills. These enhanced skills will provide each deputy with increased employment opportunities, allowing a deputy to move to a county that uses deputies for vehicle patrol even if the current employer does not do so.

The Montgomery County Sheriff also noted concern about the Board's practices regarding newly-hired deputies who were eligible for a partial waiver of basic training based on previous completion of a municipal public officers training program. At the time that the proposed rulemaking was published, the Board was requiring candidates for partial waiver to pass a Board waiver test to be able to forego full basic training and take an abbreviated waiver course instead. The commentator pointed out that the additional 200 hours training would be a particular burden for counties whose deputies did not pass the Board's waiver test and, consequently, would be required to take a 760 hour course instead of a waiver course of approximately 100 hours. The sheriff's concerns are no longer pertinent, however, because subsequent to the publication of the proposed rulemaking the Board eliminated the test requirement as a condition for entry into the waiver course.

#### Specific comments of IRRC

The Board received several comments from IRRC. The Board will address IRRC's comments in the order in which the regulatory sections appear.

#### § 421.1. Definitions

In the proposed definition of "continuing education," IRRC considered the term "periodically" too vague to describe the frequency of required training, and suggested it be replaced with "2-years." The Board sees merit in this suggestion. However, rather than specifying the time frame, the Board has chosen to redraft the definition by making reference to the applicable statutory cite. The same approach is being taken with the definition of "basic training." The proposed definitions of "school" and "waiver" are being deleted for stylistic purposes and, in

the case of "school," a substantive provision is added to § 421.31(c) (relating to reimbursement to counties) that accomplishes the purpose the Board had intended by the definition in the proposed rulemaking.

§ 421.3. *Training required.*

*Subsection (a)*

The Board had increased the basic training requirement from its original 160 hours to its current level of 560 hours by publishing a statement of policy at 30 Pa.B. 3472. In the preamble for the proposed rulemaking, the Board set forth its plan to add an additional 200 hours of law enforcement-related topics, for a total of 760 hours, but did not specify the number of hours in the proposed Annex A. The Board's intention had been to publish an updated statement of policy setting forth the new total at 760 hours. IRRC suggested that the Board reconsider and specify the number of hours in the final-form rulemaking. (The PSATS also referenced the hours' issue in its comment.) IRRC stated that use of a statement of policy might subject the 760-hour program to legal challenge, whereas use of a regulation would set a binding norm with the full force and effect of law. In response to these comments, the Board adds language to this subsection setting the course of study at "no more than 760 hours." This terminology will signify that the Board has no intention to further expand the hours of basic training, and will allow downward adjustment of the total number of hours if necessary. Enactment of this final-form rulemaking will result in the deletion of § 421.102 (relating to basic training).

*Subsection (b)*

Using the same rationale as in subsection (a), IRRC suggested that the Board include a specific number of hours in the final-form rulemaking with respect to required continuing education. The 1998 amendment to the act allowed the Board to set the number of hours at "not less than 20 hours." Although the Board sees merit in using a more specific hourly reference than that contained in the proposed rulemaking, it is reluctant to be more specific than the phrase used in the 1998 amendment. Accordingly, the Board is deleting the term "as required by the act and by this chapter in the amount of hours established by the Board" and adding the phrase "of not less than 20 hours every 2 years." Enactment of this final-form rulemaking will result in the deletion of § 421.104 (relating to continuing education).

*Subsection (c)*

The Board did not specify in the proposed rulemaking the minimum scores that must be attained on tests to complete training courses. IRRC suggested that it do so. However, this specificity would prevent the Board from making adjustments as needed to what constitutes a passing grade. Furthermore, the training incorporates certain tests from outside entities, the passing scores for which are beyond the Board's control. The test for the module on cardio-pulmonary resuscitation is one example. Because the outside entities might change the passing scores for these tests without consulting the Board, a regulation setting forth a specific passing score would be problematical. Finally, the existing regulation contains no reference to a specific numerical score. For all of these reasons, the Board declines to implement IRRC's suggestion. However, the Board will notify trainees at the beginning of each course what constitutes a passing score, and has added language to the subsection to reflect this change.

§ 421.4. *Waiver of training.*

*Subsection (a)*

The Board adopts IRRC's suggestion that the phrase "for cause shown" is vague and could benefit from specific examples of what would constitute a reason for additional time to be granted for a newly hired deputy sheriff to fulfill the basic training requirements of the act. Moreover, the Board accepts IRRC's suggestion to insert a maximum time period for a time extension.

*Subsection (b)*

IRRC suggested that the Board be specific about the criteria to be used to make a determination whether prior training and experience warrants a candidate to forego full basic training. Accordingly, the Board sets forth in the final-form rulemaking criteria relating to the waiver program. Also, the Board adds language regarding the number of hours of waiver training. Similar to language added to § 421.3(c), the Board sets forth a mechanism to notify the waiver trainee in advance of what constitutes a passing score on a test. Enactment of this final-form rulemaking will result in deletion of § 421.103 (relating to waiver of basic training).

§ 421.5. *Code of conduct.*

The Board received no comments about this new section. However, the Board sees a need to amend this section to set forth that it will make the attendance and conduct rules available to trainees prior to the start of the course. Enactment of this final-form rulemaking will result in deletion of § 421.102 (relating to basic training).

§ 421.12. *Continuing education.*

IRRC commented that the Board's proposal to determine the topics of continuing education "periodically" is vague. The Board agrees with this comment and has replaced that term with the phrase "every 2 years." IRRC also suggested that the Board provide additional explanation in this preamble about the development and availability of continuing education. Accordingly, the Board notes that it has implemented the requirements of the act by requiring deputy sheriffs every 2 years to complete a standard curriculum of courses of "not less than 20 hours" in schools that contract with the Commission to provide uniform training. Course content is reviewed every 2 years and, if necessary, adjusted to reflect changing needs and emerging issues. IRRC also suggested that the rulemaking would benefit from more specificity as to where deputy sheriffs may obtain information on adjustments to continuing education curriculum. Accordingly, the Board has included language in this section stating that, at least 14 days prior to the initial class in the current cycle of continuing education, the Board will make available to the public the list of topics to be taught in the course.

§ 421.31. *Reimbursement to counties.*

*Subsection (a)*

The Board has made a style change.

*Subsection (c)*

IRRC suggested that the Board reword the cross-reference to the definition of "school." Instead, the Board deletes the definition and adds substantive language to this subsection to make clear that the Board will provide reimbursement only for attendance at schools authorized by the Board.

*Subsection (d)*

IRRC suggested a language change to improve clarity. The Board has adopted IRRC's suggestion.

*Subsection (f)*

The Board has adopted IRRC's suggestion that it specify a time period for notifying the county about a reimbursement request that does not meet the necessary requirements. The Board also adopts the suggestion to specify the mode of delivery of the notice.

*E. Affected Persons*

Those directly affected by the final-form rulemaking will be the newly-hired deputy sheriffs who are required to undergo mandated training. As of August 2002, the Board had initially certified a total of 3,288 deputies as having completed either basic training or waiver training during the Board's 18 year existence. During the calendar year 2001, the Board trained a total of 275 new deputies. Also affected will be the sheriffs' offices and county governments in each of the 67 counties, which send new deputies to Board training and which, under section 9 of the act, are responsible for half of the regular salary of the applicable participants during the training.

*F. Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation"*

The Board reviewed this final-form rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1. The final-form rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

*G. Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector. The final-form rulemaking would have some fiscal impact on the Commonwealth and its political subdivisions. It will increase training costs borne by the Commission. Moreover, it will increase the number of hours that new deputies who take full basic training will spend in that course. Although section 9 of the act requires the Commission to reimburse each county for all of the living and travel expenses incurred by deputies at training, it requires Commission reimbursement of 50% of the deputies' regular salaries while attending school. It is anticipated that some counties will need to incur additional overtime expenses to cover for deputies away at training during the additional 200 hours. However, all of these fiscal impacts will be lessened by the fact that a large proportion of the new deputies certified each year by the Board obtain required training through the abbreviated waiver course. In 2001, 136 deputies graduated from the full 560 hour basic training course and 138 graduated from the waiver course, which is less than 100 hours in duration.

*H. Sunset Date*

The Board continually monitors the effectiveness of its regulations through communications with the regulated population. Therefore, no sunset date has been set.

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 13, 2001, the Board submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 788, to IRRC and to the Chairpersons of the House Judiciary and the Senate Local Government Committees for review and comment.

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 requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 27, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 12, 2002, and approved the final-form rulemaking.

*J. Contact Person*

Further information may be obtained by contacting Gerard M. Mackarevich, Chief Counsel, PCCD, P. O. Box 1167, Harrisburg, PA 17108-1167, (717) 705-0888 X 3034, fax (717) 214-9585, gmackarevi@state.pa.us.

*K. Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 31 Pa.B. 788.

(4) This final-form rulemaking is necessary and appropriate for administration of the Board's authorizing statute.

*L. Order*

The Board, acting under its authorizing statute, and with the approval of the Commission, orders that:

(1) The regulations of the Board, 37 Pa. Code Chapter 421, are amended by amending §§ 421.1, 421.3, 421.4, 421.11, 421.31 and 421.32; by adding §§ 421.5 and 421.12; and by deleting §§ 421.101—421.104 to read as set forth in Annex A.

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

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

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

THOMAS W. CORBETT, Jr., Esq.,

*Chairperson*  
*Commission on Crime and Delinquency*

COMMANDER CARMEN DELUCA,

*Chairperson*  
*Deputy Sheriffs' Education and Training Board*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 6428 (December 28, 2002).)

**Fiscal Note: 35-28.** (1) General Fund; (2) Implementing Year 2001-02 is \$0; (3) 1st Succeeding Year 2002-03 is \$702,199; 2nd Succeeding Year 2003-04 is \$716,243; 3rd Succeeding Year 2004-05 is \$730,568; 4th Succeeding Year 2005-06 is \$745,179; 5th Succeeding Year 2006-07 is

\$760,083; (4) Fiscal Year 2001-02 \$2,733,535; Fiscal Year 2000-01 \$1,035,204; Fiscal Year 1999-00 \$1,176,836; (7) Deputy Sheriffs' Education and Training Account; (8) recommends adoption.

**Annex A**

**TITLE 37. LAW**

**PART VI. COMMISSION ON CRIME AND DELINQUENCY**

**CHAPTER 421. DEPUTY SHERIFFS' EDUCATION AND TRAINING BOARD**

**GENERAL PROVISIONS**

**§ 421.1. Definitions.**

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

*Act*—The Deputy Sheriffs' Education and Training Act (71 P. S. §§ 2101—2109).

*Basic training*—A course of training administered by the Deputy Sheriffs' Education and Training Board under section 5 of the act (71 P. S. § 2105).

*Board*—The Deputy Sheriffs' Education and Training Board.

*Continuing education*—A course of training administered by the Board under section 6 of the act (71 P. S. § 2106).

*Deputy sheriff*—A person, whether full-time or part-time, who is titled, sworn-in or authorized to act as a deputy sheriff or who performs the duties of a deputy sheriff.

**§ 421.3. Training required.**

(a) A newly-hired deputy sheriff is required to undergo basic training of not more than 760 hours.

(b) A deputy sheriff holding Board certification is required to undergo continuing education of at least 20 hours every 2 years.

(c) To successfully complete basic training or continuing education, a deputy sheriff shall attain at least a minimum score established by the Board on each written test and shall demonstrate proficiency in all practical skills. Prior to the commencement of instruction for which a test will be administered, the Board will notify the deputy sheriff of the minimum score required.

**§ 421.4. Waiver of training.**

(a) The Board upon request and for cause shown may extend the time up to 1 year for a newly-hired deputy sheriff to fulfill the basic training requirements of the act. Examples of good cause are:

- (1) A medical problem.
- (2) A family crisis or obligation.
- (3) A conflict with other employment.

(b) The Board upon request may grant a deputy sheriff a reduction in the hours of basic training generally required. The determination will be based upon the Board's evaluation of the prior education, training or experience of the deputy sheriff under the following criteria:

(1) The Board will grant a full waiver of basic training upon application by a deputy sheriff who has served a full, 4-year term as sheriff within this Commonwealth.

(2) A deputy sheriff in one or more of the following categories may apply for a partial waiver of basic training:

(i) Trained by the State Police and previously employed as a member of the State Police.

(ii) Certified as a municipal police officer in this Commonwealth.

(iii) Graduated from a course of basic training approved by the Municipal Police Officers' Education and Training Commission.

(3) The Board will grant a partial waiver of basic training to a deputy sheriff in one or more of the categories in paragraph (2) who holds current certifications in basic first aid or its equivalent, adult/child/infant cardio-pulmonary resuscitation (CPR) and police firearms range qualification.

(4) A deputy sheriff who has been granted a partial waiver of basic training shall be required to attend a waiver course of not more than 100 hours administered by the Board, attain at least a minimum score established by the Board on each written test and demonstrate proficiency in all practical skills. Prior to the commencement of instruction for which a test will be administered, the Board will notify the deputy sheriff of the minimum score required.

**§ 421.5. Code of conduct.**

(a) The Board or school may establish reasonable rules governing attendance and conduct expected of a deputy sheriff who is attending training required under the act. The Board will provide each deputy sheriff with a copy of any rules of attendance and conduct no later than 14 days prior to the start of instruction.

(b) Violations of attendance policy or departures from the expected standards of conduct may result in the Board's imposition of disciplinary sanctions, which may include expulsion from the training or denying or withdrawing certification.

**CURRICULUM**

**§ 421.11. Basic training.**

The Board will determine the curriculum for basic training, which will include at least the following topics:

- (1) Civil law and procedure.
- (2) Communications.
- (3) Control and defensive tactics.
- (4) Courtroom security.
- (5) Crimes Code and criminal procedure.
- (6) Criminal investigation.
- (7) Criminal justice system and law enforcement.
- (8) Crisis intervention.
- (9) Cultural diversity and ethnic intimidation.
- (10) Emergency management.
- (11) Emergency vehicle operation.
- (12) Ethics and professional development.
- (13) Families in crisis and domestic violence.
- (14) Firearms.
- (15) First aid and cardio-pulmonary resuscitation.
- (16) Motor vehicle code and enforcement.
- (17) Patrol procedures and operations.

- (18) Physical conditioning.
- (19) Physical and judicial security.
- (20) Prisoner transportation.
- (21) Related social sciences.
- (22) Related legal issues.
- (23) Special needs groups.
- (24) Unified court system.

**§ 421.12. Continuing education.**

Continuing education will consist of topics to be determined every 2 years by the Board. The Board will make available to the public the list of course topics no later than 14 days prior to the commencement of course instruction.

**REIMBURSEMENT OF EXPENSES**

**§ 421.31. Reimbursement to counties.**

(a) A county shall initially pay the deputy sheriff's ordinary and necessary living and travel expenses in connection with training, except for those items that the Board provides directly to a deputy sheriff.

(b) Upon application by a county, the Commission will provide reimbursement as set forth in section 9 of the act (71 P. S. § 2109) for items paid by the county.

(c) The Commission will provide reimbursement only in connection with a deputy sheriff's attendance at a school authorized by the Board to provide basic training or continuing education.

(d) The county may apply to the Commission for reimbursement, on a form to be supplied by the Commission, at the conclusion of the required training for each deputy sheriff who has attended basic training or continuing education.

(e) Reimbursement will be limited to the following:

- (1) *Tuition.* Tuition will be provided by the Board.
- (2) *Living expenses.* Allowable subsistence and lodging shall be provided for a deputy sheriff who is not commuting to and from school. A deputy sheriff who is commuting will be allowed reimbursement only for lunch.
- (3) *Travel expenses.* A commuter is entitled to claim mileage costs for each day the commuter is required to attend the approved training course. The mileage allowance, whether commuter or noncommuter, will only be allowed to the training school from the deputy sheriff's place of employment.

(4) *Determination of expenses.* The determination of ordinary and necessary living and travel expenses will be governed by 4 Pa. Code Chapter 40 (relating to travel and subsistence).

(f) If the Commission determines that the application and request for reimbursement do not meet the requirements of the act and this chapter, the Commission's Executive Director or a designee will send written notification within 10 business days to the county by regular mail and, if feasible, electronic mail. The notification will set forth the reasons upon which the adverse determination is based.

**§ 421.32. Restrictions on reimbursement.**

(a) If a deputy sheriff has successfully completed the certified basic training course and if reimbursement for the deputy is claimed by or paid to a county, the deputy

may not again be claimed for reimbursement for repetition of the basic training course regardless of reemployment by another county.

(b) If a deputy sheriff does not successfully complete the certified basic training course and if reimbursement for the deputy is claimed by or paid to a county, the county is not eligible for further reimbursement on behalf of the deputy in the event that the deputy subsequently attends another basic training course.

(c) A county will be reimbursed once, for each deputy sheriff attending a certified continuing education course within a 2-year period.

**§§ 421.101—421.104. (Reserved).**

[Pa.B. Doc. No. 03-86. Filed for public inspection January 17, 2003, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

#### Fees for Board Services

The State Board of Certified Real Estate Appraisers (Board) amends § 36.6 (relating to fees) to read as set forth in Annex A.

The final-form rulemaking raises Board fees for application for certification as a real estate appraiser (whether on the basis of reciprocity or nonreciprocity), application for temporary practice registration, verification of certification or registration status and certification of examination scores. The final-form rulemaking also adds a new fee for application for approval as a continuing education provider and makes changes to the descriptions of certain fees and to the order in which they appear in the fee schedule.

#### *Summary of Comments and Responses to Proposed Rulemaking*

The Board published a notice of proposed rulemaking at 30 Pa.B. 5290 (October 14, 2000), with a 30-day public comment period. The Board received comments from the Pennsylvania Association of Realtors (PAR).

The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (House Committee) as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.15). The Board did not receive comments from the Senate Committee on Consumer Protection and Professional Licensure (Senate Committee), which also reviewed the amendments in proposed form under the Regulatory Review Act.

PAR questioned whether the additional revenues generated by the fees (approximately \$32,900 during each fiscal biennium) would be applied toward providing services to certificateholders and not toward adding further "bureaucratic levels" to the Board's operations. The fees are intended to recoup the Board's actual costs of providing specific services to individual certificateholders and appli-

cants; they are not intended to fund new regulatory initiatives or increases in staffing. By increasing fees to reflect the actual costs of providing the services covered by the fees, the Board ensures that the costs of providing individualized services are borne by the individuals who use those services rather than by the entire regulated community.

PAR also raised concern that the increase in the application fee for appraiser certification by examination—from \$55 to \$235—could serve as an economic “barrier” to entry into the real estate appraising profession. The Board has no evidence that an increase of \$180 in the application fee is likely to dissuade persons from considering a career in real estate appraising; no appraiser trainee or prospective applicant has raised objections to the fee increase. The Board notes that its application fee is still less than the appraiser application fees in neighboring states such as New York (\$250), New Jersey (\$225—250) and West Virginia (\$175—\$325).

IRRC asked the Board to provide a more detailed explanation of the reason for the increase in the application fee for appraiser certification by examination. The original fee of \$55 has not been increased since its adoption in 1991. Because the Board had just begun operations at the time the original fee was adopted, the cost calculations underlying the original fee were based on estimates rather than on historical cost data. As stated in the notice of proposed rulemaking, a recent systems audit of the Board’s operations conducted by the Revenue Office of the Bureau of Professional and Occupational Affairs (BPOA) determined that the \$55 application fee did not cover the Board’s actual cost of processing an application. The actual cost was calculated by multiplying the hourly compensation rate of Board personnel who review an application times the average number of minutes in the review process, plus a proportionate share of the administrative overhead. The actual costs are broken out as follows:

|   |                 |
|---|-----------------|
| Board staff (10 hours by credentials evaluator) | \$212.09        |
| Averaged Board member review                    | \$ 4.00         |
| Administrative overhead                         | \$ 19.45        |
| Total Cost                                      | <u>\$235.54</u> |

To be admitted to the appraiser certification examination, an applicant must establish compliance with Federally mandated education and experience qualifications. The credentials evaluators on the Board’s administrative staff review and evaluate the course transcripts submitted by the applicant’s education providers and, as necessary, contact the providers for additional information to verify the eligibility of the course offerings for education credit. The credentials evaluators also review a detailed log prepared by the applicant of the applicant’s experience as an appraisal assistant. The credentials evaluators select from the applicant’s experience log a representative sampling of transactions for further scrutiny; for each transaction selected, the credentials evaluators review the appraisal report that the applicant assisted in preparing as well as an appraisal assistant checklist completed by the applicant’s supervising appraiser. The credentials evaluators may seek additional verification of experience by contacting the applicant, the applicant’s supervising

appraiser and lenders and other appraisal clients who have had dealings with the applicant.

In a small number of cases, the direct involvement of Board members is required to ascertain whether the applicant has satisfied the education and experience requirements for admittance to the certification examination. Individual Board members may review the application file and interview the applicant; on occasion it may be necessary for the full Board to conduct an evidentiary hearing on the applicant’s qualifications.

IRRC also questioned the rationale for the proposed increase—from \$55 to \$235—in the application fee for certification as a certified Pennsylvania evaluator under the Assessors Certification Act (63 P. S. §§ 458.1—458.16). Upon rechecking the results of the BPOA’s systems audit of the its operations, the Board has determined that the proposed increase in the application fee for certification as a certified Pennsylvania evaluator was submitted in error. Accordingly, the Board has deleted the proposed increase from the final-form rulemaking.

IRRC also noted an error in the text of the proposed rulemaking regarding the amount of the new fee for approval of a continuing education provider. The preamble of the notice of proposed rulemaking and the fee report form identified the amount of the fee as \$85, while the text of the proposed regulation listed the fee as \$55. The final-form rulemaking reflects the correct fee of \$85. Noting that the Board’s fee schedule lists both “examination fees” and “application fees,” the House Committee and IRRC commented that the nomenclature of the application fees for certified appraisers—“application by examination” and “application by reciprocity”—is confusing because it gives the false impression that there are actually two examination fees. The House Committee and IRRC recommended that the application fees for certified appraisers be renamed “licensure application fee” and “licensure by reciprocity.” The Board does not favor the term “licensure” because the appraiser credential issued by the Board under the Real Estate Appraisers Certification Act (REACA) (63 P. S. §§ 457.1—457.19) is a certificate rather than a license. To avoid the confusion cited by the House Committee and IRRC, the Board has renamed the application fees for certified appraisers as “application (nonreciprocity)” and “application (reciprocity).”

At the suggestion of IRRC, the Board has made the category of “continuing education provider” in the fee schedule plural to be consistent with the other fee categories.

*Statutory Authority*

Section 5(6) of the REACA (63 P. S. § 457.5(6)) authorizes the Board to establish fees for its operations. Section 9 of the REACA (63 P. S. § 457.9) requires the Board to establish fees by regulation and to ensure that revenues derived from fees are adequate to cover the Board’s expenditures over a biennial period.

*Fiscal Impact*

The Board projects that the final-form rulemaking will generate additional fee revenues totaling approximately \$32,900 during each fiscal biennium. The additional biennial revenues are broken down as follows:

| <i>Service</i>  | <i>Estimated<br/>Fee-Payers</i> |   | <i>Additional Cost</i> |              | <i>Additional<br/>Revenues</i> |
|---|---------------------------------|---|------------------------|--------------|--------------------------------|
| Application for Certification as Appraiser (Nonreciprocity) | 150                             | × | \$180                  | =            | \$27,000                       |
| Application for Certification as Appraiser (Reciprocity)    | 10                              | × | \$15                   | =            | \$150                          |
| Application for Temporary Practice Registration             | 75                              | × | \$5                    | =            | \$375                          |
| Application for Approval as Continuing Education Provider   | 25                              | × | \$85                   | =            | \$2,125                        |
| Certification of Examination Scores                         | 200                             | × | \$10                   | =            | \$2,000                        |
| Verification of Certification or Registration Status        | 250                             | × | \$5                    | =            | \$1,250                        |
|   |                                 |   |                        | <b>Total</b> | <b>\$32,900</b>                |

#### *Paperwork Requirements*

The final-form rulemaking will require the Board to change certain forms to reflect the revised schedule of user fees. The final-form rulemaking will not create additional paperwork requirements for the regulated community.

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

In accordance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board, in drafting and promulgating the final-form rulemaking, considered the least restrictive alternative to regulatory costs for services requested by individual certificate holders and applicants.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 4, 2000, the Board submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 5290, to IRRC and to the Chairpersons of the House and Senate Committees for review and comment.

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 requested. In preparing this final-form rulemaking, the Board has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 21, 2002, and approved the final-form rulemaking.

#### *Additional Information*

For additional information concerning the final-form rulemaking, contact Michelle T. DeMerice, Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866, [appraise@pados.dos.state.pa.us](mailto:appraise@pados.dos.state.pa.us).

#### *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the July 31, 1968 (P. L.

469, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2

(2) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the REACA.

#### *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending § 36.6 to read as set forth in Annex A.

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

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

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

GEORGE D. SINCLAIR,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 6016 (December 7, 2002).)*

**Fiscal Note:** Fiscal Note 16A-7011 remains valid for the final adoption of the subject regulation.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS**

#### **Subchapter A. GENERAL PROVISIONS**

#### **GENERAL PROVISIONS**

#### **§ 36.6. Fees.**

*The following is the schedule of fees charged by the Board:*

|   |       |
|---|-------|
| Certification of scores .....   | \$25  |
| Verification of certification or registration.....  | \$15  |
| <i>Certified Real Estate Appraisers</i>   |       |
| Application (nonreciprocity).....   | \$235 |
| Application (reciprocity) .....   | \$40  |
| Temporary practice registration.....  | \$30  |
| Examination fee .....   | \$100 |
| Initial certification (if certified on or after 7/1 of<br>odd-numbered years or on or before 6/30 of<br>even-numbered years).....   | \$90  |
| Initial certification (if certified between 7/1 of<br>even-numbered years and 6/30 of<br>odd-numbered years.....  | \$45  |
| Biennial renewal fee .....  | \$105 |
| <i>Certified Broker/Appraisers</i>  |       |
| Application (for application period of 9/3/96 to<br>9/3/98) .....   | \$40  |
| Initial certification (if certified between 7/1/97<br>and 6/30/98) .....  | \$90  |
| Initial certification (if certified between 9/3/96<br>and 6/30/97 or if certified on or after 7/1/98, if<br>the application for initial certification was<br>submitted by 9/3/98) ..... | \$45  |
| <i>Certified Pennsylvania Evaluators</i>  |       |
| Application.....  | \$55  |
| Initial certification (if certified on or after 7/1 of<br>odd-numbered years or on or before 6/30 of<br>even-numbered years).....   | \$90  |
| Initial certification (if certified between 7/1 of<br>even-numbered years and 6/30 of<br>odd-numbered years).....   | \$45  |
| Biennial renewal fee .....  | \$105 |
| Examination.....  | \$200 |
| <i>Continuing Education Providers</i>   |       |
| Application for continuing education provider<br>approval .....   | \$85  |

[Pa.B. Doc. No. 03-87. Filed for public inspection January 17, 2003, 9:00 a.m.]

# Title 55—PUBLIC WELFARE

## DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1101]

[Correction]

### Invoicing for Services

An error occurred in the preamble to the document which appeared at 32 Pa.B. 6364 (December 28, 2002).

The correct version of the fifth paragraph of the preamble is as follows:

Under the 180-day rule, an MA provider must submit a correct original invoice to be received by the Department within 180 days of the date the provider renders service to an eligible MA recipient. If a provider other than a long-term care provider submits an invoice within the 180-day time frame, but the invoice is pended or is rejected by the Department as incorrectly completed, the provider may resubmit the claim or submit a corrected claim so long as the resubmission is received by the Department within 365 days of the date of service. See § 1101.68(b)(3). The current regulation gives long-term care providers less time than other providers to submit a “clean claim.” Section 1101.68 specifies that a long-term care provider must submit its original invoice and any resubmissions to be received by the Department within 180 days of the last day of the month in which service was provided. Id.<sup>2</sup>

FEATHER O. HOUSTOUN,  
*Secretary*

[Pa.B. Doc. No. 02-2312. Filed for public inspection December 27, 2002, 9:00 a.m.]