

PROPOSED RULEMAKINGS

INSURANCE DEPARTMENT

[31 PA. CODE CH. 124] Surplus Insurance Lines

The Insurance Department (Department) proposes to amend Chapter 124 (relating to surplus lines insurance) to read as set forth in Annex A. This proposed rulemaking is under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department, and Article XVI of The Insurance Company Law of 1921 (act) (40 P. S. §§ 991.1601—991.1626), regarding surplus lines.

Purpose

The purpose of this proposed rulemaking is to update Chapter 124 in accordance with amendments made to the act in 2002, 2010 and 2011. See the act of July 10, 2002 (P. L. 749, No. 110) (Act 110); the act of March 22, 2010 (P. L. 147, No. 14) (Act 14); and the act of June 30, 2011 (P. L. 194, No. 28) (Act 28). Chapter 124 was adopted on March 17, 2000, and sets forth duties and requirements relating to surplus lines agents, writing producers and surplus lines insurers transacting business in this Commonwealth.

Explanation of Regulatory Requirements

The following is a description of the changes in this proposed rulemaking.

A proposed amendment to § 124.3(b) (relating to conditions of binding authority) deletes the requirement that an executed copy of a written contract shall be maintained by the surplus lines licensee in its office “in this Commonwealth” in accordance with amendments to section 1610 of the act (40 P. S. § 991.1610) under Act 14, which deleted this requirement.

Sections 124.4 and 124.5 (relating to evidence of insurance; and diligent search of admitted insurers) are proposed to be amended to change “producing broker” to “writing producer” in accordance with the nomenclature change in Act 14, which were precipitated to ensure consistency of terminology with the act of December 6, 2002 (P. L. 1183, No. 147).

Section 124.5 is proposed to be amended to clarify the documentation necessary to deem that a diligent search was made and to set forth the procedure for obtaining and recording declinations from admitted carriers. Section 124.5 also contains editorial and structural amendments to accommodate the proposed requirements.

Proposed amendments to § 124.6 (relating to export list coverages) revise the procedural filing requirements to accommodate electronic filings consistent with current practices. Specifically, a surplus lines licensee would file a written declaration reporting the transaction involving the placement of coverage which appears on the most recent export list on a form prescribed by the Department.

Section 124.7 (relating to unique forms of coverages) is proposed to be amended to accommodate an editorial change to make the language consistent with § 124.6.

Section 124.8 (relating to surplus lines licensee bond requirements) is proposed to be rescinded in accordance

with the elimination of the bonding and residency requirements for surplus lines agents in Act 110.

Section 124.9 (relating to requirements to qualify as an eligible surplus lines insurer) is proposed to be rescinded per amendments to section 1605 of the act (40 P. S. § 991.1605) under Act 28, which were based on the Nonadmitted and Reinsurance Reform Act of 2010 (Pub. L. No. 111-203), which sets forth standards for eligibility of nonadmitted insurers.

Section 124.10 (relating to eligible surplus lines insurer filing requirements) is proposed to be amended to modify required elements of a foreign insurer’s request to be considered for placement on the Department’s eligible surplus lines insurer list in accordance with amendments to section 1605 of the act made by Act 28.

Section 124.11 (relating to exempt commercial purchaser) is proposed to be added to require a surplus lines licensee to file with the Department a written declaration reporting transactions involving exempt commercial purchasers under section 1610(a.1) of the act, as added by Act 28.

Affected Parties

This proposed rulemaking would apply to surplus lines agents, writing producers and surplus lines insurers transacting business in this Commonwealth.

Fiscal Impact

State government

The proposed rulemaking will strengthen and clarify existing regulatory requirements. There will not be material increase in cost to the Department as a result of this proposed rulemaking.

General public

While the proposed rulemaking will not have immediate fiscal impact on the general public, the general public will benefit to the extent that the proposed rulemaking enhances the efficiency and effectiveness of the Commonwealth’s regulation of surplus lines insurance under Article XVI of the act.

Political subdivisions

The proposed rulemaking will not impose additional costs on political subdivisions.

Private sector

The proposed rulemaking will not impose significant costs on surplus lines licensees, writing producers or surplus lines insurers transacting business in this Commonwealth.

Paperwork

The proposed rulemaking will not impose additional paperwork on the Department.

Effectiveness/Sunset Date

The proposed rulemaking will become effective within 30 days after final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department,

1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 705-3873, psalvatore@state.pa.us within 30 days after the publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 22, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

MICHAEL F. CONSEDINE,
Insurance Commissioner

Fiscal Note: 11-251. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 124. SURPLUS LINES INSURANCE

§ 124.3. Conditions of binding authority.

* * * * *

(b) An executed copy of the written contract shall be maintained by the surplus lines licensee in its office [**in this Commonwealth**]. The copy shall be available at all reasonable times for examination by the Department without notice for at least 5 years following termination of the contract.

(c) If a surplus lines licensee, who is qualified under this chapter to exercise binding authority on behalf of the eligible surplus lines insurer, delegates binding authority to any other surplus lines licensee, the instrument delegating binding authority shall specifically identify the binding authority agreement between the delegating surplus lines licensee and the eligible surplus lines insurer. An executed copy of the instrument delegating binding authority shall be maintained by both the surplus lines licensee delegating binding authority and the surplus lines licensee to whom the authority is delegated in their offices [**in this Commonwealth**]. The copy shall be available at all reasonable times for examination by the Department without notice for at least 5 years following termination of the contract.

§ 124.4. Evidence of insurance.

(a) Section 1612 of the act (40 P. S. § 991.1612) requires the surplus lines licensee, upon placing surplus lines insurance, to deliver the contract of insurance to the insured or to the [**producing broker**] **writing producer**. A cover note, binder or other evidence of insurance shall be delivered by the surplus lines licensee if the contract of insurance is not immediately available.

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§ 124.5. Diligent search of admitted insurers.

Under section 1604(2)(i) of the act (40 P. S. § 991.1604(2)(i)), surplus lines insurance may be procured through a surplus lines licensee from nonadmitted insurers if a diligent search is made among the admitted insurers who are writing, in this Commonwealth, coverage comparable to the coverage being sought. The following minimum requirements and conditions apply to the conduct of a diligent search among admitted insurers under section 1604(2)(i) of the act.

(1) Under section 1609(a)(1)(i) of the act (40 P. S. § 991.1609(a)(1)(i)), the [**producing broker**] **writing producer** shall execute and forward to the surplus lines licensee a written statement, in a form prescribed by the Department, declaring that a diligent effort to procure the desired coverage from admitted insurers was made. **A diligent effort will be deemed to have been made if the writing producer has documented a declination of coverage from at least three admitted insurers which are writing, in this Commonwealth, coverage comparable to the coverage being sought. A declination may be documented by any of the following:**

[(i) **A diligent effort by the producing broker to procure the desired coverage from admitted insurers shall have been made if the producing broker declares on the prescribed form that at least three admitted insurers which are writing, in this Commonwealth, coverage comparable to the coverage being sought have declined to insure the particular risk.**

(ii) **A producing broker who obtains a declination from an admitted insurer shall either obtain the declination in writing from the admitted insurer or create a written record of an oral declination by the admitted insurer. A written record of an oral declination shall be made by the person who initially received the declination or by another person working for the business from information transmitted by the person who received the declination. A declination shall be obtained from the admitted insurer or recorded by the producing broker at or near the time of receipt of the declination and maintained in the regular course of business.**

(iii) **A written record documenting an oral declination shall include:**

(A) **The name, office location and phone number of the admitted insurer or firm acting in the capacity of underwriting manager for the admitted insurer.**

(B) **The name and position of the person contacted.**

(C) **The date of contact.**

(D) **An explanation of the declination.**

(iv) **If an admitted insurer fails to respond within 5 business days after first being contacted by the producing broker, the producing broker may assume that the insurer has declined to write the risk. The producing broker shall create a written record of the contact, including the manner in which contact was made and the information required under subparagraph (iii)(A)—(C).**

(v) **A declination of coverage by an admitted insurer shall be made by a person who is a full-time employe of the admitted insurer and who has underwriting responsibility for that admitted in-**

surer or by a full-time employe of a firm acting in the capacity of underwriting manager for the admitted insurer.]

(i) A written declination from the admitted insurer.

(ii) A written record of an oral declination made by the person who initially received the declination or by another person working for the business from information transmitted by the person who received the declination. The written record must include:

(A) The name, office location and phone number of the admitted insurer or firm acting in the capacity of underwriting manager for the admitted insurer.

(B) The name and position of the person contacted.

(C) The date of contact.

(D) An explanation of the declination.

(iii) A written record that the writing producer contacted an admitted insurer who failed to respond within 5 business days, which includes the manner in which the contact was made and the information required under subparagraph (ii)(A)—(C).

(iv) A written record that the risk does not meet the underwriting guidelines of the admitted insurer. The written record must include:

(A) The name of the admitted insurer.

(B) Reference to the underwriting guidelines upon which the declination is based.

(2) A declination shall be obtained from the admitted insurer or recorded by the writing producer at or near the time of receipt of the declination and maintained for at least 5 years following termination of the contract.

(3) A declination of coverage by an admitted insurer shall be made by a person who is a full-time employee of the admitted insurer and who has underwriting responsibility for that admitted insurer or by a full-time employee of a firm acting in the capacity of underwriting manager for the admitted insurer.

[(vi)] (4) For purposes of this [subparagraph] paragraph, the term “affiliate” is used as defined in section 1401 of The Insurance Company Law of 1921 (40 P. S. § 991.1401).

[(A)] (i) A declination may not be obtained from an admitted insurer which is an affiliate of an admitted insurer from which a declination has already been obtained.

[(B)] (ii) Surplus lines insurance may not be placed with a nonadmitted insurer that is an affiliate of an admitted insurer from which a declination has been obtained.

[(C)] (iii) The restrictions in [clauses (A) and (B)] subparagraphs (i) and (ii) do not apply if the affiliated insurers write independently of each other using separate and independently developed underwriting criteria and marketing plans, and for underwriting purposes, compete with each other for the same type of coverage or class of insurance.

[(2)] (5) Under section 1609(a)(2) of the act, the surplus lines licensee shall file with the Department a written declaration of the licensee’s lack of knowledge of how the coverage could have been procured from admitted insurers and shall simultaneously file the written declaration of the [producing broker] writing producer required under section 1609(a)(1) of the act. Under section 1609(a)(3) of the act, if the surplus lines licensee acts as both the [producing broker] writing producer and surplus lines licensee in a particular transaction, the surplus lines licensee is required to execute the declarations required under section 1609(a)(1) and (2) of the act.

§ 124.6. Export list coverages.

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(c) Within 45-calendar days after the placement of an insurance coverage which appears on the most recent export list published by the Commissioner, the surplus lines licensee shall file with the Department or its designee a [copy of the declaration page of the policy, cover note, binder or other evidence of insurance delivered by the surplus lines licensee in accordance with section 1612(a) of the act (40 P. S. § 991.1612(a)) with the word “EXPORT” stamped in red letters in the upper right hand corner] written declaration reporting the transaction on a form prescribed by the Department.

§ 124.7. Unique forms of coverages.

Under section 1604(2)(iii) of the act (40 P. S. § [1604(2)(iii)] 991.1604(2)(iii)), surplus lines insurance may be procured through a surplus lines licensee from nonadmitted insurers if the kind of insurance sought to be obtained from admitted insurers requires a unique form of coverage not available in the admitted market. Within 45-calendar days after a unique form of coverage has been placed, the surplus lines licensee shall file with the Department or its designee, a written declaration reporting the transaction [in] on a form prescribed by the Department.

§ 124.8. [Surplus lines licensee bond requirements] (Reserved).

[(a) The bond required under section 1615(b)(4) of the act (40 P. S. § 991.1615(b)(4)) to be maintained concurrent with the term of a surplus lines agent’s license shall be in the amount of at least \$50,000 for the initial term of the license.

(b) The amount of the bond required for renewal of a surplus lines agent’s license shall be based on the total taxable surplus lines premium volume of the surplus lines agent during the preceding calendar year as reported to the Department of Revenue under section 1621 of the act (40 P. S. § 991.1621) and determined by using the following table:

Total Taxable Surplus Lines Premium Volume	Required Minimum Amount of Bond
\$0—\$1,999,999	\$50,000
\$2,000,000—\$3,999,999	\$100,000
\$4,000,000—\$5,999,999	\$150,000
\$6,000,000—\$7,999,999	\$200,000

Total Taxable Surplus Lines Premium Volume \$8,000,000—and over	Required Minimum Amount of Bond 3% of the total taxable surplus lines premium volume of the surplus lines licensee during the preceding calendar year or other amount acceptable to the Commissioner.]
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§ 124.9. [Requirements to qualify as an eligible surplus lines insurer] (Reserved).

[(a) To be considered for placement on the most recent eligible surplus lines insurer list, a nonadmitted insurer shall meet the requirements of the act and this chapter. The nonadmitted insurer shall meet the following requirements:

(1) Currently licensed as an insurer in the state or country of its domicile for the kinds of insurance which it proposes to provide in this Commonwealth.

(2) Either engaged in doing the business of surplus lines insurance in one or more jurisdictions for at least 3 years immediately preceding the filing of an application to be an eligible surplus lines insurer; or an affiliate of an admitted insurer which has been so admitted for at least 3 years immediately preceding seeking approval to do business in this Commonwealth.

(b) In addition to the requirements in subsection (a), an alien insurer shall provide documentation evidencing its inclusion on the most recent quarterly listing of nonadmitted alien insurers which have met the criteria in the plan of operation adopted by the National Association of Insurance Commissioners International Insurers Department, or successor organization.]

§ 124.10. Eligible surplus lines insurer filing requirements.

(a) A request to consider a foreign [nonadmitted] insurer for placement on the Department's eligible surplus lines insurer list under section 1605(b) of the act (40 P. S. § 991.1605(b)) shall be made in writing by [a surplus lines licensee and shall] or on behalf of an insurer and include the following:

(1) [*Charter.* A copy of the charter of the nonadmitted insurer or similar document and any amendments, additions and deletions thereto certified by the corporate secretary of the nonadmitted insurer.

(2)] *Certificate of authority.* A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized.

[(3)] (2) *Financial statement.*

(i) A copy of the latest annual financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. The copy [shall] must include all supplemental reports,

exhibits and schedules required as part of the annual statement filing [and shall be certified as provided under section 1605(3) of the act (40 P. S. § 991.1605(3))].

(ii) A copy of each subsequent quarterly financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized.

[(4) *Report of examination.* A copy of the most recent report of examination of the insurer conducted by the insurance regulatory authority or similar governmental authority requiring the examination and certified by the proper official of that authority.

(5) *Biographical information.* Biographical data for each officer, director, person in managerial control, and like individual on a form provided by the Department.

(6)] (3) *Kind of insurance.* A written statement by an officer of the insurer identifying the kinds of insurance coverages the insurer intends to write and the types of risks the insurer intends to insure in this Commonwealth.

[(7) *Designee for service of process.* A written designation of the name of the individual employed by the insurer or other appropriate representative to whom all lawful process shall be mailed. The designee shall maintain a legal residence, domicile or office in the United States.

(8)] (4) *Additional information.* Additional information as may be required by the Commissioner to determine whether the insurer meets the standards and requirements of the act [and this chapter].

(b) After placement on the eligible surplus lines insurer list, a foreign insurer shall submit to the Department [through a surplus lines licensee]:

(1) [Changes or additions, or both, to the information in subsection (a)(7) within 10-calendar days of the occurrence.

(2) Changes or additions, or both, to the information in subsection (a)(1) and (5) within 30-calendar days of the occurrence.

(3) A certified] A copy of the information in subsection [(a)(3)(i)] (a)(2)(i) within 30-calendar days after the date required for filing in its domiciliary jurisdiction. [A copy of the information in subsection (a)(2) shall accompany the filing.]

[(4)] (2) A copy of the information in subsection [(a)(3)(ii)] (a)(2)(ii) within 45-calendar days from the close of the quarter for which the report is prepared.

[(5) A certified copy of the information in subsection (a)(4) within 30-calendar days of the date it became a public document.

(6)] (3) Additional items as may be required by the Commissioner to determine whether the insurer continues to meet the standards under the act.

(c) A request to consider an alien [nonadmitted] insurer for placement on the Department's eligible surplus lines insurer list under section 1605(b) of the act

shall be made in writing by [a surplus lines licensee and shall include the following:] or on behalf of an insurer and include documentation evidencing that the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

[(1) *Charter.* A copy of the charter of the insurer or similar document and any amendments, additions and deletions thereto certified by the corporate secretary of the insurer.

(2) *Certificate of authority.* A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized.

(3) *Annual financial statement.*

(i) Two copies of the latest annual financial report of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. One copy of the financial report or statement shall be expressed in language and currency of the place of incorporation, formation or organization of the insurer and the other copy prepared and expressed in the English language and United States currency at the current rate of exchange as of the statement date. Certification of the financial report or statement shall be in accordance with section 1605(3) of the act (40 P. S. § 991.1605(3)).

(ii) A copy of the latest annual financial statement of the insurer in the standard reporting format prescribed by the National Association of Insurance Commissioners' International Insurers Department, or successor organization.

(4) *Trust fund agreement.*

(i) A copy of the trust fund agreement concerning the trust fund which the insurer maintains in the United States in either a National bank or a member of the Federal Reserve System in an amount as set out in the act for the protection of all of its policyholders in the United States, consisting of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for admitted insurers authorized to write like kinds of insurance in this Commonwealth.

(ii) The trustees of the trust fund shall give written verification of the amount initially deposited and presently on deposit by the insurer in the trust fund. The trustees shall immediately give written notification to the Department at any time the trust fund deposit is less than the minimum requirement as provided for in section 1605(a)(2)(i) of the act.

(5) *Biographical sketches.* Biographical data for each officer, director, person in managerial control, and like individual on a form provided by the Department.

(6) *Kind of insurance.* A written statement by an officer of the insurer identifying the kinds of insurance coverages the insurer intends to write and the types of risks the insurer intends to insure in this Commonwealth.

(7) *Designee for service of process.* A written designation of the name of the individual employed by the insurer or other appropriate representative to whom all lawful process shall be mailed. The designee shall maintain a legal residence, domicile or office in the United States.

(8) *Additional information.* Additional information as required by the Commissioner to determine whether the insurer meets the standards and requirements of the act and this chapter.]

(d) After placement on the eligible surplus lines insurer list, [an alien insurer shall submit the following to the Department through a surplus lines licensee:] a nonadmitted insurer shall notify the Department within 10 business days if the nonadmitted insurer no longer satisfies the requirements of section 1605 of the act.

[(1) Changes or additions, or both, to the information in subsection (c)(7) and (4)(i) within 10-calendar days of the occurrence.

(2) Changes or additions, or both, to the information in subsection (c)(1) and (5) within 30-calendar days of the occurrence.

(3) A certified copy of the information in subsection (c)(3)(i) within 30-calendar days after the date required for filing in its domiciliary jurisdiction. A copy of the information in subsection (c)(2), (3)(ii) and (4)(ii) shall accompany the filing.

(4) Additional items as may be required by the Commissioner to determine whether the insurer continues to meet the standards under the act.]

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 124.11. Exempt commercial purchaser.

For the Department to determine whether a surplus lines licensee has placed business for an exempt commercial purchaser under section 1610(a.1) of the act (40 P. S. § 991.1610(a.1)), the surplus lines licensee shall file, with the Department or its designee, a written declaration reporting the transaction on a form prescribed by the Department.

[Pa.B. Doc. No. 13-398. Filed for public inspection March 8, 2013, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1 AND 5]

[L-2012-2296005]

Rules of Practice and Procedure

The Pennsylvania Public Utility Commission (Commission), on July 19, 2012, adopted a proposed rulemaking order which improves clarity and operation of Commission procedures and also reduces paper copy requirements for Commission filings.

Executive Summary

In order to facilitate a review of its Rules of Practice and Procedure, the Public Utility Commission (PUC)

convened a Procedural Rules Committee consisting of outside practitioners as well as lawyers from other agencies who practiced before the PUC and internal staff. After a period of study and discussion, the Procedural Rules Committee made a number of suggestions to the Commission's Chief Counsel as to regulations which its members agree are problematic and how those rules should be improved. All of these suggested changes are included in this Proposed Rulemaking.

The Commission's staff made a contemporaneous review of the Rules of Practice and Procedure with regard to changes made in the PUC's internal structure and to reflect a diminished need for copies of paper filings within the PUC because of advancements in electronic filings. These changes are also incorporated within this Proposed Rulemaking. The most notable change is the elimination of the filing of paper copies of pleadings before the Commission and its Administrative Law Judges with the exception of the original, signed pleading.

Public Meeting held
July 19, 2012

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

Amendment of Public Utility Commission Rules of Practice and Procedure; 52 Pa. Code Chapters 1, 3 and 5; Doc. No. L-2012-2296005

Proposed Rulemaking Order

By the Commission:

The Pennsylvania Public Utility Commission (Commission) proposes to implement changes to some of the procedural rules that govern the conduct of proceedings before the Commission and its Administrative Law Judges (ALJs). These changes to our administrative Rules of Practice and Procedure at 52 Pa. Code Chapter 1, 3 and 5 address problems identified by lawyers who represent clients before the Commission, ALJs, as well as our own internal legal staff. We are making changes to the rules in order to improve the clarity and operation of our procedures as well as to reduce paper copy requirements for Commission filings.

Background

In order to further review the Commission's Rules of Practice and Procedure and to determine whether the rules needed clarification, changes or improvements based on experience, the Commission convened a Procedural Rules Committee consisting of outside practitioners and internal staff. The membership of the Procedural Rules Committee is comprised of private attorneys who represent clients before the Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, and internal staff from the Commission's Office of Administrative Law Judge, Law Bureau and the Bureau of Investigation and Enforcement (formerly Office of Trial Staff).

After a period of study and discussion, the Procedural Rules Committee made a number of suggestions to the Commission's Chief Counsel as to regulations which its members agree are problematic and how those rules should be improved. All of the Procedural Rules Committee's suggested changes are incorporated into the rule changes contained within Annex A.

In addition to those changes proposed by the Procedural Rules Committee, Commission staff has identified some problems with the current regulations that are also

addressed in this order. Due to the recently completed reorganization of the Commission, advances in technology and the ability of many practitioners to make electronic filings at the Commission, we are eliminating the requirement to file additional paper copies of certain pleadings, beyond a signed original, before the Commission. Although this only involves two regulations, they are universal in operation and will result in savings of time and resources for both parties appearing before the Commission and our staff as well.

Proposed Rulemaking

§ 1.8. Definitions.

Our decision in Joint Application of Aqua Pennsylvania, Inc. and Country Club Gardens Water Company, Docket Nos. A-210104F0066 and A-210620F2000, 2006 Pa. PUC LEXIS 30, Opinion and Order entered April 7, 2006, made it apparent that the definition of "person" did not include "municipal corporations." In that proceeding, Aqua Pennsylvania, Inc. had petitioned for authority to acquire certain water system assets in Lehigh County owned by Country Club Gardens Water Company, Inc. (together Joint Applicants). A number of individuals, municipal entities and municipal authorities protested that petition (Joint Protesters). The Joint Applicants filed a motion to dismiss the protests that we granted in-part, particularly with respect to "municipal corporation" protesters stating:

We note that the definition of "person" in our regulations differs from the definition of "person" in our statute. Section 102, 66 Pa. C. S. § 102, excludes only "corporations" from the definition of "person" but also states that the definition of a "corporation" does not include "municipal corporations." Therefore, a "municipal corporation" is not excluded from the definition of "person" in our statute. In our regulations, Section 1.8, 52 Pa. Code § 1.8, specifically includes "corporations, partnerships and associations" in the definition of "person" but does not have any specific exclusions. It would seem, therefore, that a municipal corporation can be a "person" under both our statute and regulations. However, we believe that the mere fact that a municipal corporation can fit the legal definition of "person" is not sufficient to confer standing to protest this Application on the municipal entities and the municipal authorities in this proceeding. Therefore, we grant the Joint Protestants' Exceptions with regard to the definition of "person" as it applies to municipal corporations.

Joint Application of Aqua Pennsylvania at 7. The Procedural Rules Committee maintains that "municipal corporations" should be listed in Section 1.8 as a "person." We agree that adding "municipal corporations" to the definition of "person" would eliminate confusion as to the status of such entities although, it would not necessarily grant them a direct interest in a proceeding where appropriate.

§ 1.37. Number of copies.

As noted above, with the advent of electronic transmission, storage and filing of documents, it is now possible for the Commission to reduce the number of copies which are required to be filed and, correspondingly, the burden on persons with business before the agency. Therefore, we are eliminating the requirement to file additional copies, beyond the signed original, with regard to the Commission's rules regarding litigation conducted before us. As we continue to review our regulations, we will no doubt be eliminating other rules regarding the filing of copies of various forms and pleadings as well.

§ 1.56. *Date of service.*

The present wording of this regulation provides that the date of service of a document is when “one” of certain conditions is met. The Procedural Rules Committee proposed that rule be amended so that the date of service is the earliest date that one of the conditions is met. This eliminates any ambiguity as to which of the conditions applies.

§ 5.44. *Petitions for reconsideration from actions of the staff.*

This regulation is somewhat confusing in its present form. It deals with the procedures for obtaining an “appeal” from actions of the staff. “Appeals” generally refer to Petitions for Review that are filed before Commonwealth Court in order to obtain judicial review of a decision by the Commission. See, 2 Pa.C.S. § 702. Generally, the term “appeal” connotes a formal proceeding before another tribunal. However, Rule 5.44 deals with our procedures to be followed within the agency when seeking Commission review of a decision by its staff. In order to bring some clarity to this vagueness and reconcile the differences between seeking a formal appeal of an agency’s final decision and a review of action by our staff, we are changing the regulation to refer to obtaining “reconsideration” of an action of the staff by the Commission. In all other respects, the procedures for obtaining reconsideration remain the same.

§ 5.72. *Eligibility to intervene.*

The supersession at subsection (c) is incorrect since the existing sections are not identical to those appearing in 1 Pa. Code § 35.28 (Eligibility to intervene). 1 Pa. Code § 35.28 is part of the Commonwealth’s General Rules of Administrative Practice and Procedure. Our own regulation at section 5.72, while very similar to § 35.28, is more specifically tailored to governing persons who may wish to participate in PUC proceedings. The change to the regulation proposed by the Procedural Rules Committee would more accurately note that our regulation supersedes the more general rule at § 35.28.

§ 5.94. *Withdrawal of pleadings in a contested proceeding.*

Section 5.94 allows 20 days to file an objection to a petition to withdraw a pleading in a contested proceeding. This is inconsistent with 52 Pa. Code § 5.24, Satisfaction of formal complaints, which allows only 10 days for the filing of an objection. In order to ensure uniformity and predictability, it is preferable to make these time periods consistent. The proposed amendment would set the period of time in which to object at 10 days in both rules.

§ 5.101. *Preliminary objections.*

Apparently during the last revision of this rule in 2005, the lack of standing as a ground for a preliminary objection was eliminated without notice or discussion. Insofar as a lack of standing of a party is a reason for rejecting a claim, it would stand to reason that a party should be able to assert this defense as a preliminary objection. The legal practitioners on the Procedural Rules Committee were in agreement to reinsert standing as a basis for preliminary objection in subsection 5.101(a)(7).

§ 5.342. *Answers or objections to written interrogatories by a party.*

The Procedural Rules Committee identified an area where some attorneys may have been taking advantage of the rules to “game” the system during the preparation for hearings. Prior to a hearing, parties are able to serve

written discovery requests seeking data and documents on other parties to the case. The rules require that a party who is served with written interrogatories may object within 10 days of service of the interrogatory. 52 Pa. Code § 5.342(e). Answers to the interrogatory must be served within 20 days (Except for base rate cases). 52 Pa. Code § 5.342(d).

The problem is that some attorneys are objecting to interrogatories on day 10, but providing answers to the interrogatory on day 20. This gives the propounding counsel zero days to determine whether the answer filed is complete enough to satisfy the discovery request, or is deficient so as to warrant filing a motion to compel. One member of the Committee opined that objecting to, but then answering a discovery request was a device to limit the response to the request. The solution set forth in the proposed amendment to the regulation would eliminate the device of objecting to an interrogatory and then providing an answer. It does this by requiring that objections be served in lieu of an answer.

§ 5.365. *Orders to limit availability of proprietary information.*

The staff has identified two sections which appear to be misplaced orphans. The first section, 52 Pa. Code § 5.423 concerns proprietary information, but is contained in a group of sections labeled “Sanctions.” We believe this section more properly belongs under “TYPES OF DISCOVERY” and, therefore, we have renumbered it as 52 Pa. Code § 5.365.

§ 5.424. *Issuance of subpoenas.*

The second section, 52 Pa. Code § 5.373, “Subpoenas,” is in a group of sections which are labeled “Sanctions” and deal with that subject. All rules dealing with a single subject should be grouped together as far as practicable so that persons may find the rules they need to follow in a single place as opposed to reading through an entire chapter. We solve this problem by renumbering this rule as 52 Pa. Code § 5.424 which places it in a group of sections dealing with “SUBPOENAS.” To accommodate this change it is necessary to rename the section “Issuance of subpoenas” since 52 Pa. Code § 5.421 is already entitled “Subpoenas” and because “Issuance of subpoenas” more accurately describes the function of this subsection.

§ 5.533. *Procedure to except to initial, tentative and recommended decisions.*

As discussed above, we are eliminating the requirement to file additional copies of exceptions to our orders, beyond the signed original.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 22, 2013, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commis-

sion, the General Assembly and the Governor of comments, recommendations or objections raised.

Conclusion

The proposed amendments to the Rules of Practice and Procedure contained within our regulations and issued for comment by this order are intend to simplify practice before the Commission and to diminish the burden upon parties appearing before the Commission by reducing the amount of paper they must file with the agency. The Commission, therefore, formally commences its rule-making process to amend its existing regulations consistent with Annex A to this Order.

Accordingly, pursuant to Sections 501, 504, 523, 1301, 1501, and 1504, of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 523, 1301, 1501, and 1504, and Sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed regulations as set forth in Annex A, attached hereto; *Therefore,*

It Is Ordered That:

- 1. A proposed rulemaking be opened to consider the regulations set forth in Annex A.
- 2. The Secretary shall submit this proposed rule-making Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
- 3. The Secretary shall submit this proposed rule-making Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
- 4. The Secretary shall certify this proposed rulemaking Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
- 5. An original and 15 copies of any written comments referencing the docket number of the proposed regulations be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.
- 6. A copy of this proposed rulemaking Order and Annex A shall be served on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and jurisdictional public utility industry and licensee trade associations.
- 7. The contact person for legal matters for this proposed rulemaking is Krystle Sacavage, Assistant Counsel, Law Bureau, (717) 787-5262. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-290. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter A. GENERAL PROVISIONS

§ 1.8. Definitions.

(a) Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Person—Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities, **municipal corporations** or other political subdivisions.

* * * * *

Subchapter D. DOCUMENTARY FILINGS

§ 1.37. Number of copies.

(a) *Paper filings.* When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and [**three copies of each, including**] the cover letter[,] shall be furnished to the Commission at the time of filing, except when:

- (1) [**The document is an application or petition, one copy may be filed without exhibits.**
- (2) **The document is a complaint or petition and more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.**

(3)] The document is subject to a statutory requirement or is otherwise ordered or requested by the Commission, a different number of copies may be designated.

[(4)] (2) The document is subject to § 5.502 or § 5.533 (relating to [**copies and form of documentary evidence;**] filing and service of briefs; and procedure to except to initial, tentative and recommended decisions), the filing must conform to the requirements in the applicable section.

[(5)] (3) A filing, including attachments, exceeds 5 megabytes, in addition to filing the requisite number of hard copies in accordance with this subpart, a CD-ROM or DVD containing the filing and an index to the filing shall be filed with the Commission.

* * * * *

Subchapter F. SERVICE OF DOCUMENTS

§ 1.56. Date of service.

(a) The date of service shall be the **earliest** day when the document served meets one of the following conditions:

* * * * *

CHAPTER 5. FORMAL PROCEEDINGS
Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

PETITIONS

§ 5.44. Petitions for [appeal] reconsideration from actions of the staff.

(a) Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless [appealed to] reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

(b) An action taken by staff under delegated authority will note the parties' right to [appeal] seek reconsideration of the action under this section.

(c) Petitions for [appeal] reconsideration from the actions of the staff will be addressed by the Commission at public meeting.

* * * * *

INTERVENTION

§ 5.72. Eligibility to intervene.

* * * * *

(c) Supersession. Subsections (a) and (b) [are identical to] supersede 1 Pa. Code § 35.28 (relating to eligibility to intervene).

AMENDMENT AND WITHDRAWAL OF PLEADINGS

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within [20] 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

* * * * *

PRELIMINARY OBJECTIONS

§ 5.101. Preliminary objections.

(a) Grounds. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

* * * * *

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

(b) Notice to plead. A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection.

* * * * *

Subchapter D. DISCOVERY
TYPES OF DISCOVERY

§ 5.342. Answers or objections to written interrogatories by a party.

* * * * *

(c) Objections. An objection shall be prepared, filed and served in the same manner provided for an answer, except that an objection shall be contained in a document separate from an answer as required by the time provisions of subsection (e). An objection must:

(1) Be served instead of an answer.

(2) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.

[(2)] (3) Include a description of the facts and circumstances purporting to justify the objection.

[(3)] (4) Be signed by the attorney making it.

[(4)] (5) Not be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact.

[(5)] (6) Not excuse the answering party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

* * * * *

(g) Motion to compel. Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. The motion to compel must include the interrogatory objected to and the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

* * * * *

LIMITATIONS

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 5.365. Orders to limit availability of proprietary information.

(a) General rule for adversarial proceedings. A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should be issued, the Commission or the presiding officer should consider, along with other relevant factors, the following:

(1) The extent to which the disclosure would cause unfair economic or competitive damage.

(2) The extent to which the information is known by others and used in similar activities.

(3) The worth or value of the information to the party and to the party's competitors.

(4) The degree of difficulty and cost of developing the information.

(5) Other statutes or regulations dealing specifically with disclosure of the information.

(b) *General rule for nonadversarial proceedings.* A petition for a protective order limiting the disclosure of a trade secret or other confidential information in a non-adversarial proceeding shall be referred to the Law Bureau for recommended disposition by the Commission. The Commission will not disclose material that is the subject of a protective order under this provision during the pendency of a request.

(c) *Restrictions.*

(1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including exhibits, writings, direct testimony, cross-examination, argument and responses to discovery will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto must be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information must remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary and to challenge the admissibility of the proprietary information.

(d) *Access to representatives of parties.* Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert who is a stockholder, partner or owner of a competitor or affiliate is eligible unless the ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both. Other persons may not have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

(e) *Special restrictions.* A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties, except as permitted by subsection (c), or which provides for more restrictive rules than those permitted in subsections (b) and (c), will be issued only in extraordinary circumstances and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

(f) *Return of proprietary information.* A party providing proprietary information under this section may request that the parties receiving the information return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

(g) *Confidential security information.* Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).

SANCTIONS

§ 5.373. [Subpoenas] (Reserved).

[(a) If issuance of a subpoena is required by operation of this chapter, or because a party or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with § 5.421 (relating to subpoenas).]

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).]

Subchapter E. EVIDENCE AND WITNESSES SUBPOENAS

§ 5.423. [Orders to limit availability of proprietary information] (Reserved).

[(a) *General rule for adversarial proceedings.* A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should issue, the Commission or the presiding officer should consider, along with other relevant factors, the following:

(1) The extent to which the disclosure would cause unfair economic or competitive damage.

(2) The extent to which the information is known by others and used in similar activities.

(3) The worth or value of the information to the party and to the party's competitors.

(4) The degree of difficulty and cost of developing the information.

(5) Other statutes or regulations dealing specifically with disclosure of the information.

(b) *General rule for nonadversarial proceedings.* A petition for protective order limiting the disclosure of a trade secret or other confidential information in a nonadversarial proceeding shall be referred to the Law Bureau for recommended disposition by the Commission. The Commission will not disclose any material that is the subject of a protective order under this provision during the pendency of such a request.

(c) *Restrictions.*

(1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including, but not limited to, exhibits, writings, direct testimony, cross-examination, argument and responses to discovery, will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary, and to challenge the admissibility of the proprietary information.

(d) *Access to representatives of parties.* Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the

ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both. No other persons may have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

(e) *Special restrictions.* A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties—except as permitted by subsection (c)—or which provides for more restrictive rules than those permitted in subsections (b) and (c), will be issued only in extraordinary circumstances and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

(f) *Return of proprietary information.* A party providing proprietary information under this section may request that the parties receiving the information return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

(g) *Confidential security information.* Challenges to a public utility’s designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).]

(Editor’s Note: The following section is new and printed in regular type to enhance readability.)

§ 5.424. Issuance of subpoenas.

(a) If issuance of a subpoena is required by operation of this chapter, or because a party or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with § 5.421 (relating to subpoenas).

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

§ 5.533. Procedure to except to initial, tentative and recommended decisions.

* * * * *

(d) An original [and nine copies of the exceptions filed as paper documents] shall be filed with the Secretary under § 1.4. Filing users may file electronically as provided by § 1.37(b) (relating to number of copies).

* * * * *

[Pa.B. Doc. No. 13-399. Filed for public inspection March 8, 2013, 9:00 a.m.]

STATE BOARD OF AUCTIONEER EXAMINERS

[49 PA. CODE CH. 1]

Schedule of Fees

The State Board of Auctioneer Examiners (Board) proposes to amend § 1.41 (relating to schedule of fees) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. It is anticipated that the increased biennial renewal fees will be implemented with the February 28, 2015, biennial renewal.

Statutory Authority

Section 6(a) of the Auctioneer Licensing and Trading Assistant Registration Act (act) (63 P. S. § 734.6(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenue raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 6(a) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

The Board has not raised its biennial renewal fees since 1998, when the biennial renewal fee for apprentice auctioneers increased from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses increased from \$50 to \$200. At the time, the Board anticipated that these fees would sustain the Board for at least 10 years. At the March 12, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Year (FY) 2009-2010 and FY 2010-2011 and projected revenue and expenses through FY 2014-2015. As anticipated, the biennial renewal fees were adequate for about 10 years. However, the actual expenditures for FY 2009-2010 and FY 2010-2011 outpaced revenues during the same period by approximately \$128,400. At the current fee levels, the BFO projects revenue of approximately \$475,000 in a given 2-year period, while budgeted expenditures for the next 2 years are projected at \$532,500. The BFO projects that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$118,700 in FY 2011-2012 and a deficit of approximately \$176,200 by FY 2013-2014, necessitating a fee increase in 2015 to recoup existing deficits and to ward off further deficits. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act (63 P. S. § 734.4(b)). As a result, the Board voted at its July 9, 2012, meeting to increase biennial renewal fees by 30% to meet projected expenditures. The proposed new biennial renewal fees will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.

Description of Proposed Rulemaking

The proposed rulemaking would amend § 1.41 to increase biennial renewal fees for licenses and registrations issued by the Board to produce adequate revenue to meet projected expenditures as required under section 6(a) of the act. Specifically, the biennial renewal fees for trading assistants and apprentice auctioneers will increase from \$100 to \$130. The biennial renewal fees for auctioneers, auction houses and auction companies will increase from \$200 to \$260.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for all classes of licensees/registrants of the Board. There are currently approximately 284 apprentice auctioneers, 139 auction houses, 2,087 auctioneers, 193 auction companies and 52 trading assistants that will be required to pay 30% more to renew their licenses/registrations when they expire in 2015 and thereafter. The Board has concluded that virtually all auction houses and auction companies in this Commonwealth are small businesses. Likewise, auctioneers, trading assistants and apprentice auctioneers either are themselves small businesses or are employed by small businesses. However, whether these businesses will be adversely affected by the increase in the biennial renewal fee depends on whether the employer elects to pay the biennial renewal fees on behalf of its licensed employees. Some companies may do so, others may not. A company could avoid the adverse effect by simply requiring its employees to pay their own licensure fees. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Board Counsel, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 16A-649—Schedule of Fees on comments.

SHERMAN HOSTETTER, AU,
Chairperson

Fiscal Note: 16A-649. No fiscal impact. The fee increases are necessary to cover projected expenditures for the Board; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS

FEES

§ 1.41. Schedule of fees.

Applicants shall pay the following fees:

* * * * *

Biennial renewal fee for auctioneer license [\$200] \$260 * * * * *

Biennial renewal fee for apprentice auctioneer [\$100] \$130 * * * * *

Biennial renewal fee for auction house and auction company [\$200] \$260

Application fee for trading assistant registration \$100

Biennial renewal fee for trading assistant registration \$130 * * * * *

[Pa.B. Doc. No. 13-400. Filed for public inspection March 8, 2013, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CH. 47]

Biennial Renewal Fees

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend § 47.4 (relating to licensure fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fees for licensed social workers, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors from \$75 to \$115.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the Pennsylvania Bulletin. It is expected that the increased fees will be effective for the March 1, 2015, renewal.

Statutory Authority

Section 18(c) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act)

(63 P. S. § 1918(c)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Proposed Rulemaking

Under section 18(c) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

The Board's current biennial license renewal fees were last increased in 2008, effective with the 2009 biennial renewal. At that time, it was anticipated that the increase would be sufficient to carry the Board for at least 9 years. However, at the February 2, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Year (FY) 2009-2010 and FY 2010-2011 and projected revenue and expenses through FY 2014-2015. The BFO pointed out that as of June 2010, in spite of the increase, the Board still had a deficit of \$31,505.87. At the current renewal fee level of \$75, the Board produces approximately \$1.35 million in revenue in a given 2-year period, while expenditures for the past 2-year period equaled more than \$1.42 million. The BFO projects that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$209,434 in FY 2011-2012, and a deficit of approximately \$556,434 by FY 2013-2014, necessitating a fee increase. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures in compliance with section 18(c) of the act. As a result, the Board voted at its March 13, 2012, meeting to increase the biennial renewal fees to \$115. The proposed new biennial renewal and application fees will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.

Description of Proposed Rulemaking

The proposed rulemaking would amend § 47.4 to increase the biennial renewal fee for all classes of license (licensed social workers, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors) from \$75 to \$115.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 16,320 licensees that will be required to pay more to renew their licenses when they expire in 2015 and thereafter. Small businesses that employ licensees of the Board may be impacted if they choose to pay the biennial renewal fees on behalf of employees. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

DONNA A. TONREY,
Chairperson

Fiscal Note: 16A-6920. No fiscal impact. The fee increases are necessary to cover projected expenditures for the Board; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

GENERAL PROVISIONS

§ 47.4. Licensure fees.

(a) The fee schedule for licensure as a licensed social worker, provisional license, licensed clinical social worker, licensed marriage and family therapist or licensed professional counselor shall be as follows:

* * * * *

(2) Biennial renewal for a licensed social worker, clinical social worker, marriage and family therapist or professional counselor [\$75] \$115

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[Pa.B. Doc. No. 13-401. Filed for public inspection March 8, 2013, 9:00 a.m.]
