

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Appraisal Management Companies

The State Board of Certified Real Estate Appraisers (Board) adds Subchapter E (relating to appraisal management companies) to effectuate the Appraisal Management Company Registration Act (AMCRA) (63 P.S. §§ 457.21—457.31). This final-form rulemaking amends Chapter 36 by deleting Subchapter D and adding Subchapter E to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 4(a) of AMCRA (63 P.S. § 457.24(a)) authorizes the Board to implement, administer and enforce AMCRA, including the power to adopt rules and regulations consistent with AMCRA. Previously, the Board adopted temporary regulations in Subchapter D, which under section 4(b) of AMCRA were not subject to sections 201—203 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1203), known as the Commonwealth Documents Law, or the Regulatory Review Act (71 P.S. §§ 745.1—745.14). See 43 Pa.B. 3098 (June 8, 2013).

The Board is also authorized by 2 Pa.C.S. § 102 (relating to implementing regulations) to promulgate, amend and repeal reasonable regulations implementing 2 Pa.C.S. (relating to administrative law and procedure). Therefore, as it relates to procedures for processing applications, registering appraisal management companies (AMC), and obtaining security or satisfying claims, the Board also relies upon 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) for authority to promulgate regulations.

AMCRA is the third professional licensing statute under the Board's jurisdiction, following the Real Estate Appraisers Certification Act (REACA) (63 P.S. §§ 457.1—457.19) and the Assessors Certification Act (ACA) (63 P.S. §§ 458.1—458.16). All three statutes relate to the valuation of real property in this Commonwealth. Therefore, the Board promulgates Subchapter E to be consistent with the statutes and regulations regarding the other laws under the Board's jurisdiction.

Summary of Comments and the Board's Response

Notice of proposed rulemaking was published at 45 Pa.B. 4385 (August 8, 2015), with a 30-day public comment period. The Board received comments from the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council, The Surety & Fidelity Association of America (SFAA), the Real Estate Valuation Advocacy Association (REVA), ServiceLink Valuation Solutions, LLC (ServiceLink) and the Pennsylvania Association of Realtors (PAR). The Board also received comments from the Independent Regulatory Review Commis-

sion (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act. The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Federal Requirements

ASC is a subcommittee within the Federal Financial Institutions Examination Council that oversees the real estate appraisal regulatory framework as it relates to Federally-related transactions. ASC commented that the proposed regulations do not meet the Final Rule for Minimum Requirements for Appraisal Management Companies (AMC Final Rule) published at 80 FR 32658 (June 9, 2015). ASC commented that under the AMC Final Rule, states must have the legal authority to: 1) examine the books and records of an AMC operating in the state; 2) require AMCs to submit information to the state for inclusion on the National Registry of AMCs (AMC National Registry); 3) collect and remit AMC National Registry fees to ASC; and 4) report disciplinary action and violations of applicable appraisal-related laws, regulations or orders.

Additionally, ASC commented that the Board's definition of "appraiser panel" is more restrictive than the AMC Final Rule. IRRC reiterated ASC's comments and stated the Board should address ASC's comments in the final-form rulemaking or explain why it is unnecessary to do so.

The Board agrees with all of ASC's comments and, in response to ASC's comments, the Board revised this final-form rulemaking to address ASC's concerns. Specifically, in § 36.401 (relating to definitions) the Board revised the definition of "AMC National Registry" to describe the function of the AMC National Registry more accurately and completely. The Board also revised the definition of "appraisal panel" to address ASC's comment that the Board's definition was more restrictive than the AMC Final Rule. The Board added a definition of "ASC" for clarity. Additionally, the Board revised §§ 36.403, 36.405, and 36.424(b) (relating to application procedures; fees; and renewal of registration) and added § 36.438 (relating to AMC National Registry; reports) to address ASC's comment that the Board must have legal authority to require AMCs to submit information to the Board for inclusion on the AMC Registry, collect and remit AMC National Registry fees, and report disciplinary actions and other violations to ASC. At this time, discussed as follows, the information required for the AMC Registry has not been determined by ASC. The Board also added language to § 36.435(c) (relating to recordkeeping) to specifically require an AMC to produce its "books and records" for inspection and copying by the Board. The Board's revisions are consistent with the AMC Final Rule and REACA.

After this final-form rulemaking package was delivered to IRRC, the Final Rule for the Collection and Transmission of Annual AMC Registry Fees (AMC Registry Fee Final Rule) was published at 82 FR 44493 (September 25, 2017). ASC notified the Board that on or before November 24, 2017, it will issue a "Bulletin to States" that will address when the AMC Registry will be open for states and the reporting requirements (information required to be submitted by states to register AMCs on the AMC Registry) along with an effective date for compliance. Additionally, after this final-form rulemaking package

was delivered to IRRC, ASC published a second proposed revised policy statement at 82 FR 43966 (September 20, 2017), with a comment period ending on November 20, 2017. Therefore, after ASC issues the "Bulletin to States" and the proposed revised policy statement becomes final, the Board will receive the reporting requirements from ASC regarding the specific information required for registration on the AMC Registry.

Surety Bond or Letter of Credit

SFAA stated that it was submitting comments and making recommendations to ensure that the required surety bond is reasonably available in the market. Section 36.451(b) (relating to requirements for surety bond or letter of credit) requires that the surety bond be issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department and requires the company to have a certain rating by a Nationally-recognized statistical rating organization (NRSRO). SFAA asserted that authorization by the Insurance Department is sufficient criteria and that the Board should consider eliminating the NRSRO rating requirement. The Board considered the Insurance Department's extensive role in regulating companies that issue surety bonds and determined that an NRSRO rating requirement is unnecessary. Thus, in consideration of SFAA's comment, the Board deleted the NRSRO rating requirement for surety bonds. The Board revised §§ 36.452 and 36.455 (relating to amount of surety bond or letter of credit; and maintenance of surety bond or letter of credit) to reflect the deletion of the NRSRO rating requirement for surety bonds.

SFAA stated that § 36.451 defines "faithful performance of the registrant's obligations under AMCRA" only as unpaid civil penalties, restitution or investigation costs. However, SFAA inaccurately stated the Board's definition. The Board's proposed definition of "faithful performance of the registrant's obligations under AMCRA" was as follows: "The payment of a civil penalty, restitution or costs of investigation under AMCRA or the act of July 2, 1993 (P.L. 345, No. 48) (63 P.S. §§ 2201—2207), performance of a contractual obligation, or satisfaction of a duty owed for conduct subject to AMCRA." SFAA's concern was that the Board intended "to change the scope of the obligation of the bond and the surety's available rights and defenses." In drafting the definition of "faithful performance of the registrant's obligations under AMCRA," the Board did not intend to change the scope of the obligation of the bond or the surety's available rights and defenses. IRRC also commented on this section, questioning why the Board defined "faithful performance of the registrant's obligations under AMCRA" when it did not use the term in the text of the proposed regulations. In consideration of both comments, the Board determined that the definition is unnecessary and deleted it from this final-form rulemaking. IRRC also recommended deleting the definition of "claimant" in § 36.451 because this term was not used in the proposed regulations. The Board agrees that this definition is unnecessary and deleted it from this final-form rulemaking.

SFAA also questioned whether proposed § 36.453(a)(5) (relating to form of surety bond) requires a separate \$40,000 bond for each licensure period rather than a single bond amount available to all periods. The Board did not intend to require a separate \$40,000 for each licensure period and made appropriate revisions to § 36.453. The Board adds § 36.453(b) to reflect language in section 6(b)(2)(iv) of AMCRA (63 P.S. § 457.26(b)(2)(iv)) that the "aggregate liability of the surety shall not exceed

the principal sum of the bond." The Board also adds § 36.453(c) to clarify that the surety bond shall be continuous and remain in full force and effect until the license is terminated or not renewed or the bond is cancelled by the surety.

SFAA also commented about the Board's bond form. The bond form is not incorporated into the regulations. However, the Board made the following changes to the bond form in consideration of the comments submitted by SFAA. SFAA commented that the bond empowers any attorney to confess judgment against the surety and principal. SFAA indicated that typically a surety bond is a conditional obligation whereby the surety's obligations are triggered upon the default of the bond principal, which shall be demonstrated by the obligee. AMCRA does not contain a statutory provision requiring confession of judgment. Additionally, the Board did not include a provision such as this in the proposed regulations. Therefore, and in consideration of the comments by SFAA, the Board deleted the confession of judgment provision from the bond form. SFAA also commented that the bond form erroneously referred to section 13(c) of AMCRA. As indicated by SFAA, AMCRA does not contain a section 13(c); therefore, the reference to section 13(c) has been deleted.

Proposed § 36.455(c) required registrants to obtain additional security within 45 days when a surety or a bank makes a payment upon a bond or a letter of credit. However, section 6(b) of AMCRA requires the amount of the surety bond to be restored to the full amount within 15 days after the payment of any claim on the bond. Therefore, the Board revised subsection (c) and added subsection (d) to reflect the 15-day requirement for surety bonds.

Broker Price Opinions and Evaluations

REVAA, PAR and ServiceLink submitted comments and recommended that the Board reconsider the prohibition on broker price opinions (BPO) under § 36.434(a) and (b) (relating to broker price opinions and evaluations). IRRC reiterated the commentators' concerns in its comment and asked the Board to clarify the reasonableness of and need for § 36.434 as it relates to State and Federal laws.

BPO has been defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub.L. No. 111-203, 124 Stat. 1376). See section 1126(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C.A. § 3355(b)). The Board adopts the Dodd-Frank definition and defined a BPO as "an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an [automated valuation model]," as defined in section 1125(d) of FIRREA (12 U.S.C.A. § 3354(d)). Significantly, Dodd-Frank prohibits the use of BPOs as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by the piece of property. See section 1126(a) of FIRREA (12 U.S.C.A. § 3355(a)).

The Board considered the comments regarding BPOs and concluded that the proposed regulation prohibiting an AMC from soliciting or ordering, offering to solicit or order a BPO in non-Federal and Federally-related transactions is necessary and appropriate. BPOs are a type of service that would be rendered by individuals licensed by the State Real Estate Commission (real estate brokers and salespersons). Under the Real Estate Licensing and

Registration Act (RELRA) (63 P.S. §§ 455.101—455.902), BPOs are not recognized by and are not within the permissible scope of practice authorized by RELRA. Instead, RELRA authorizes a similar, but distinct, type of service which is termed comparative market analysis (CMA). A CMA is defined in section 201 of RELRA (63 P.S. § 455.201) as follows:

A written analysis, opinion or conclusion by a contracted buyer's agent, transactional licensee, or an actual or potential seller's agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller.

The significant distinction between a BPO and a CMA is that a CMA may only be performed to determine an offering price by an actual or potential buyer, or to secure a listing with a seller.

Under section 2 of REACA (63 P.S. § 457.2), an appraisal is a "written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property, for or in expectation of compensation." Therefore, in this Commonwealth, a BPO, as defined by Dodd-Frank and as adopted by the Board, for all intents and purposes, is an appraisal under REACA. Thus, individuals who perform a BPO in this Commonwealth would not only be engaging in practice not authorized by RELRA, but would be engaging in unlicensed practice of real estate appraising under REACA. Because BPOs are not authorized under Commonwealth law, and the Board does not have the statutory authority to "reconsider the current prohibition on BPOs," the Board determined that it is important to make it clear in the regulations that AMCs are prohibited from soliciting or ordering, or offering to solicit or order a BPO in this Commonwealth. Additionally, it is important to include the prohibition against soliciting or ordering, offering to solicit or order a BPO in non-Federal and Federally-related transactions because it clarifies any confusion that may exist regarding BPOs and reiterates the current status of Commonwealth law. The Board is aware of pending legislation that would authorize BPOs under RELRA; however, the pending legislation has not become law. If the law regarding BPOs does change, the Board will determine if regulatory amendments are necessary.

ServiceLink commented on § 36.434(c), which prohibits an AMC from soliciting, ordering, or offering to solicit or ordering an evaluation, and asked the Board reconsider the prohibition on evaluations as it pertains to both certified real estate appraisers and real estate brokers and salespersons. REVAA also commented on § 36.434(c) and suggested that the proposed regulation had the unintended consequence of prohibiting an AMC from ordering any evaluation product or service (including appraisals), regardless if done by an appraiser, broker or realtor. Thus, REVAA recommends that the Board consider revising the proposed regulation to only prohibit AMCs from soliciting, ordering, or offering to solicit or ordering an evaluation from a real estate broker or a real estate salesperson.

Neither AMCRA nor REACA defined "evaluation." Instead, evaluation is referred to and defined in Federal regulations and by the Interagency Appraisal and Evaluation Guidelines (Interagency Guidelines) published at 75 FR 77450 (December 10, 2010). Under Federal banking

regulations in 12 CFR 34.43 (relating to appraisals required; transactions requiring a State certified or licensed appraiser), a nonappraiser may perform an evaluation. However, what Federal regulations and guidelines refer to as an "evaluation" falls within the definition of an "appraisal" under section 2 of REACA. The Interagency Guidelines define "evaluation" as "a valuation permitted by the Agencies' appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption or subsequent transaction exemption."

The Interagency Guidelines also specify the content of an evaluation. This information must include the property's location, description, zoning, market, neighborhood and physical condition, as well as an account of the analytical methods used, supporting data and the work performed to complete the evaluation. According to the Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions (Interagency Advisory), issued March 4, 2016, an evaluation should contain sufficient information to allow a reader to understand the analysis that was performed to support the value conclusion and the institution's decision to engage in the transaction. Under section 2 of REACA, an appraisal is defined as a "written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property, for or in expectation of compensation." Given the Interagency Guidelines and Interagency Advisory regarding the content of an evaluation, an "evaluation" is an "appraisal" under REACA. Thus, under REACA, only an appraiser may perform an appraisal; therefore, if an AMC orders or solicits an evaluation from a real estate broker or salesperson, the AMC is asking the individual to engage in conduct that violates REACA.

Notably, the scope of practice under REACA was established by the General Assembly and serves an important and legitimate purpose of consumer protection. What the commentators proposed to offer to consumers—evaluations—does not have recognized or enforceable standards like the Uniform Standards of Professional Appraisal Practice (USPAP). More importantly, there is not an independent watchdog to vet the qualifications and background of evaluators. Under Federal regulations, only the lender or AMC decides whether a person is qualified to perform an evaluation. The Board finds the suggestion to reconsider the prohibition on evaluations disconcerting because it suggests a course of action that would circumvent the General Assembly's stated preference to require qualified individuals to appraise real estate in this Commonwealth and conduct appraisals according to recognized and tested standards. Given the lack of statutory authority, in addition to the well-documented history of the financial services industry engaging the services of unqualified individuals and even people who lost their appraisal licenses for performing fraudulent and incompetent appraisals, the Board cannot reconsider the prohibition on evaluations as it pertains to real estate brokers and salespersons.

Regarding the prohibition on AMCs ordering or soliciting evaluations as it pertains to certified real estate appraisers, the Board proposed the regulations with the intent to prohibit an AMC from ordering evaluations from anyone, including certified real estate appraisers. Commonwealth law has a mandatory licensing regime which requires a certified real estate appraiser for all appraisals, regardless of whether the transaction is Federally-related or not and regardless of whether the transaction falls within the Federal exemptions for appraisals. See

the definition of “appraisal” in section 2 of REACA and section 3 of REACA (63 P.S. § 457.3). Although Federal banking and mortgage underwriting regulations do not require an appraisal for certain exempted transactions (12 CFR 34.41—34.47, 225.61—225.67, 323.1—323.7, 564.1—564.8 and 722.1—722.7) and permit an evaluation instead of an appraisal in certain Federally-related transactions, the definition of “evaluation,” as defined by the Interagency Guidelines and Interagency Advisory, falls within the definition of “appraisal” under section 2 of REACA. Therefore, in this Commonwealth, and under REACA, valuation services, including evaluations, are appraisals, which shall be performed in accordance with USPAP. The Board’s analysis in this regard is consistent with Advisory Opinion 13 of USPAP, which states that an “evaluation, when performed by an individual acting as an appraiser, is an appraisal.”

The Board contacted REVAA regarding its comment regarding evaluations (Concern 2). REVAA expressed concern that the proposed regulation would prohibit an AMC from ordering or soliciting an appraisal from an appraiser; however, the Board is not prohibiting this conduct. The Board’s prohibition is merely recognizing that an evaluation, for all intents and purposes, does not exist because in this Commonwealth an evaluation is an appraisal. After discussing the concern with REVAA, and recognizing that an evaluation is an appraisal in this Commonwealth, REVAA communicated that its comment regarding evaluations (Concern 2) is not relevant and the Board could disregard Concern 2 of its comments.

Therefore, based upon the foregoing, § 36.434 is adopted with a clear understanding and intent that an AMC may not order or solicit BPOs or evaluations in this Commonwealth.

Requirements for Solicitation or Order of Appraisals

REVAA commented regarding proposed § 36.436(a)(2) (relating to requirements for solicitation or order of appraisals), and stated that there was no identifiable reason to require appraisers who have existing contractual agreements regarding terms of payment to restate the terms for time of payment on an order to order basis. REVAA suggests that requiring this information on an order to order basis would require significant system enhancements due to the level of customization/complexity required to accommodate individual appraiser business models. ServiceLink also recommended that the Board revise proposed § 36.436(a)(2). ServiceLink stated that it would be redundant to require a payment schedule in each order or order solicitation because most AMCs have agreements with appraisers regarding the payment schedule. The Board considered the comments and recognizes that payment terms are generally a part of an AMC’s contractual agreement with individual appraisers. Thus, the Board revised this paragraph to require terms for time of payment for appraisal services “if the terms are not identified within an existing contractual agreement between the parties.”

In Good Standing

IRRC asked the Board to explain how allowing an appraiser who is on probation or subject to a restriction ordered by the Board to be designated as “in good standing” is in the public interest.

The phrase “in good standing,” as it applies to individuals certified or licensed by the Board to perform appraisals, appears in three separate sections of AMCRA. Under section 5(b)(5)(i) of AMCRA (63 P.S. § 457.25(b)(5)(i)), an AMC must certify that it has “a system in place to verify that a person being added to an appraiser panel of the

applicant or who will otherwise perform appraisals for the applicant of property located in this Commonwealth is a certified appraiser and *in good standing* in this Commonwealth under REACA” (emphasis added). Under section 7(a)(1) and (2) of AMCRA (63 P.S. § 457.27(a)(1) and (2)), all “appraisal reviews in this Commonwealth must be conducted for an appraisal management company by: (1) a certified appraiser *in good standing* in this Commonwealth; or (2) a certified or licensed appraiser *in good standing* in another state” (emphasis added). Under section 8(b)(5) of AMCRA (63 P.S. § 427.28(b)(5)), a registrant or exempt company shall not “[e]nter into a contract or agreement with an appraiser for the performance of appraisals unless the appraiser is certified and *in good standing* with the board” (emphasis added). Additionally, the term “in good standing” appears in § 36.404 (relating to content of application). Because “in good standing” is not defined in AMCRA, the Board included a definition of “in good standing” in § 36.401 to ensure that a uniform definition will be applied to AMCRA and regulations.

When a licensing board places a licensee on a probationary status or a licensee has restrictions on a license, the licensing board has concluded that it is appropriate to place the licensee on an active license status, albeit with restrictions or on probation. Although the licensee may be subject to restrictions, the licensee is permitted to practice the profession. Defining “in good standing” in this manner is in the public interest because when a licensee is on probation, the Board has determined that the licensee is safe to practice. Thus, it is appropriate to consider the licensee in good standing. Additionally, a review of Federal law governing AMCs, discussed as follows, shows that Federal law does not prohibit AMCs from using appraisers who are on a probationary status or are subject to restrictions.

Section 1124 of FIRREA (12 U.S.C.A. § 3353) provides minimum requirements to be applied by states in the registration of AMCs, including verification by an AMC that it is using only licensed or certified appraisers. The Interagency Guidelines offer elaboration upon some of the appraisal requirements in FIRREA. Section VIII of the Interagency Guidelines addresses minimum appraisal standards, which require appraisals to be performed by state certified or licensed appraisers. The Interagency Guidelines further require confirmation that appraisers hold a valid credential from the appropriate state appraiser regulatory authority. Consistent with the Interagency Guidelines, under 12 CFR 34.213(a)(4) (relating to appraisal management company registration) states are required to verify that appraisers on AMC appraiser panels hold valid state certifications or licenses. Although Federal regulations require states to establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise and experience necessary to competently complete the appraisal assignment, they do not instruct states to prohibit AMCs from engaging an appraiser who has restrictions on a license or is on probationary status.

At least one of the provisions of the Board’s regulations may alleviate some of the concern regarding the underlying conduct of a probationary licensee. Section 36.404(b)(2) requires certification by the AMC applicant that it has a “system in place for the performance of appraisal reviews with respect to the work of appraisers who are performing appraisals for the applicant of property in this Commonwealth to determine if the appraisals are being conducted in conformance with the minimum

standards under REACA. . .” Therefore, AMCs are responsible for more than the initial inquiry of good standing. AMCs have an ongoing responsibility to ensure that its appraisers are conducting appraisals in conformance with the law.

In reviewing the definition of “in good standing,” the Board determined that further clarification was necessary. Thus, the definition of “in good standing” in § 34.401 is revised by deleting “and for the purpose of interpreting good standing in the REACA.” The Board determined that this phrase may unnecessarily limit the application of the definition to REACA. The Board’s intent is to provide a definition of good standing when used in the previously referenced provisions of AMCRA and regulations.

Content of Application

IRRC commented on proposed § 36.404(b)(2), which required the compliance person to certify that the applicant has a system in place for the performance of appraisal reviews. Under AMCRA, appraisal reviews shall be conducted on a periodic basis and whenever requested by a client. This proposed paragraph stated “unless otherwise limited by the terms of a contract between the client and the appraisal management company.” IRRC asked the Board to explain how this language is consistent with AMCRA.

The Board included the proposed language in this paragraph due, in part, to concerns of AMCs. AMCs wanted to have some predictability for conducting appraisal reviews. In consideration of IRRC’s comment, the Board agrees that further clarification is necessary. Thus, the Board revised this paragraph to clarify that the compliance person shall certify that a system is in place for the performance of appraisal reviews both on a periodic basis and upon the request of a client. The Board deleted the proposed phrase “unless otherwise limited by the terms of a contract between the client and the appraisal management company” and added “[t]his provision does not prohibit the parties (the AMC and the client) from including in their contracts terms relating to requests for appraisal reviews.” The revisions recognize that AMCs and clients may agree, in advance, to terms that govern when a client may request an appraisal review.

The revisions are consistent with AMCRA because while the statutory language is broad, it does not prohibit the client from determining in advance the criteria for which it requires an appraisal review. Allowing this flexibility is not only beneficial to AMCs, which desire some level of predictability, but it is also beneficial to the public because it helps to ensure independence, as required by Federal and State law. The revisions help ensure independence because, if negotiated in a contract, the provision may deter clients from arbitrarily requiring appraisal reviews or from attempting to use appraisal reviews to influence the results of an appraisal. In considering this regulation, the Board considered that the “client” who would be negotiating terms in a contract that determine criteria for appraisal reviews is typically going to be a sophisticated client, such as a bank or commercial lender. Because homeowners and other consumers do not typically engage an AMC for an appraisal, the Board does not have significant concerns that the “client” would not understand or would not have the ability to negotiate these terms into a contract. Thus, based upon the foregoing, the Board submits that the final-form regulation does not limit a client’s ability to request an appraisal review because the regulation does not require a client to enter

into an agreement, but rather, merely recognizes that the client and the AMC may agree upon contractual terms relating to appraisal reviews. Thus, the Board submits that the final-form regulation is consistent with AMCRA.

IRRC asked the Board to consider whether the issue relating to compensation for appraisal reviews would be more appropriately included in § 36.433 (relating to appraisal reviews) instead of § 36.404. While the issue of the lack of compensation for appraisal reviews certainly impacts an AMC and is part of the rationale for including the clause recognizing that the client and the AMC may agree upon criteria for which the client will request or require an appraisal review, compensation for those reviews is not the purpose of this provision. The purpose is to ensure that, at the time of application, the compliance person certifies the existence of a system for the performance of appraisal reviews on a periodic basis and at the request of a client. Thus, the Board believes that this provision is more appropriately situated with content of the application.

Miscellaneous Clarity

IRRC recommended some minor revisions to improve clarity. In response, the Board revised § 36.401 to include a definitions of “Mortgage Bankers and Brokers and Consumer Equity Protection Act,” “registrant” and “USPAP,” which is promulgated by the Appraisal Standards Board of the Appraisal Foundation. IRRC also recommended that the Board revise § 36.453 and § 36.454 (relating to form of letter of credit) to include subsection designators to the introductory paragraphs. The Board added subsection designators in § 36.453 because it added subsections (b) and (c) in this final-form rulemaking. However, the Board did not revise § 35.454 because under the *Pennsylvania Code & Bulletin Style Manual*, a subsection designator is not necessary when a section consists of only one paragraph. The Board also revised the definition of “exempt company” in § 34.401 by updating the citation to reflect the appropriate citation in the *Code of Federal Regulations*.

In response to IRRC’s comments regarding the Regulatory Analysis Form, the Board: replaced “. . .all of these are AMCs” with “all of these are small businesses”; deleted references to Board meetings in 2014; and revised the expected date of promulgation.

Other Revisions to this Final-form Rulemaking

Based on comments from IRRC and the public, the Board revised § 36.403 to update the Board’s web site, made some minor revisions for clarification and corrected typographical errors.

Fiscal Impact

This final-form rulemaking will minimally impact AMCs. Because Subchapter E is not substantially different from the temporary regulations in Subchapter D, and is based upon Federal requirements, the Board does not anticipate significant fiscal impact. This final-form rulemaking should have only minor fiscal impact on the private sector, the public or political subdivisions of this Commonwealth. AMCs will be fiscally impacted by the AMC National Registry fee. This is a Federal registry fee, which the Board is required to collect and transmit under Federal law. After this final rulemaking package was delivered to IRRC, the AMC Registry Fee Final Rule was published at 82 FR 44493. Under the AMC Registry Fee Final Rule, the Board must collect: 1) from AMCs that have been in existence for more than 1 year an annual registry fee of \$25 multiplied by the number of appraisers working for or contracting with the AMC in that state during the previous year; and 2) from AMCs that have

not been in existence for more than 1 year, \$25 multiplied by an appropriate number to be determined by ASC. The \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of ASC, if necessary to carry out ASC's functions under FIRREA.

Paperwork Requirements

This final-form rulemaking will only create minor additional paperwork for the Board and the private sector. This final-form rulemaking will require the Board to develop four new forms and make modifications to forms that were previously developed under the temporary regulations in Subchapter E.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. 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 July 28, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 4385, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 11, 2017, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 12, 2017, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Heidi Weirich, Board Administrator, State Board of Certified Real Estate Appraisers, P.O. Box 2649, Harrisburg, PA 17105-2649. Reference No. 16A-7021 (Appraisal Management Companies) when requesting information.

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) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law.

(3) This final-form rulemaking does not include amendments that enlarge the scope of proposed rulemaking published at 45 Pa.B. 4385.

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

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by deleting §§ 36.301—36.306, 36.311—36.315, 36.321, 36.322, 36.331—36.337, 36.341, 36.342 and 36.351—36.356 and adding §§ 36.401—36.405,

36.411—36.415, 36.421—36.424, 36.431—36.438, 36.441, 36.442 and 36.451—36.456 to read as set forth in Annex A.

(Editor's Note: Section 36.438 was not included in the proposed rulemaking.)

(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 submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.

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

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

D. THOMAS SMITH,
Chairperson

(Editor's Note: See 47 Pa.B. 6790 (October 28, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-7021 remains valid for the final adoption of the subject regulations.

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 D. (Reserved)

§§ 36.301—36.306. (Reserved).

§§ 36.311—36.315. (Reserved).

§ 36.321. (Reserved).

§ 36.322. (Reserved).

§§ 36.331—36.337. (Reserved).

§ 36.341. (Reserved).

§ 36.342. (Reserved).

§§ 36.351—36.356. (Reserved).

Subchapter E. APPRAISAL MANAGEMENT COMPANIES

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GENERAL PROVISIONS

§ 36.401. Definitions.

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

AMC National Registry—The National registry maintained by ASC of appraisal management companies that:

- (i) Meet the Federal definition of “appraisal management company” as defined in section 1121(11) of FIRREA (12 U.S.C.A. § 3350(11)).
- (ii) Are registered by a state or are Federally regulated.
- (iii) Have paid the annual AMC registry fee.

AMCRA—The Appraisal Management Company Registration Act (63 P.S. §§ 457.21—457.31).

AQB—The Appraiser Qualifications Board appointed by The Appraisal Foundation, which promulgates education, experience and other criteria for licensing, certification and recertification of qualified appraisers.

ASC—The Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

AVM—Automated valuation model—As defined by section 1125(d) of FIRREA (12 U.S.C.A. § 3354(d)), a computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.

The Appraisal Foundation—The entity identified in section 1121(9) of FIRREA.

Appraiser panel—A network or panel of certified appraisers who are independent contractors to an appraisal management company. Appraisers on an appraisal management company appraisal panel include all of the following:

- (i) Appraisers engaged by the appraisal management company.
- (ii) Appraisers accepted by the appraisal management company for consideration in future appraisal assignments.

Assignment—As defined by USPAP, an agreement between an appraiser and a client to provide a valuation service and the valuation service that is provided as a consequence of an agreement.

BPO—Broker price opinion—As defined by section 1126(b) of FIRREA (12 U.S.C.A. § 3355(b)), an estimate prepared by a real estate broker, agent or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property’s condition, market and neighborhood, and information on comparable sales, but does not include an AVM.

Bureau—The Bureau of Professional and Occupational Affairs of the Department.

CHRIA—18 Pa.C.S. Chapter 91 (relating to Criminal History Record Information Act).

Comparative market analysis—As defined in section 201 of RELRA (63 P.S. § 455.201), a written analysis, opinion or conclusion by a contracted buyer’s agent, transactional licensee, or an actual or potential seller’s agent relating to the probable sale price of a specified piece of real estate in an identified real estate market at a specified time, offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer, or for the purpose of securing a listing agreement with a seller.

Compliance person—An individual who is employed, appointed or authorized by an appraisal management company to be responsible for ensuring compliance with AMCRA and this subchapter.

Conviction—

(i) An ascertainment of guilt of the accused and judgment thereon by a court, including disposition of a criminal proceeding under the laws of the Commonwealth, or any similar disposition under the laws of another jurisdiction, by a plea of guilty, guilty but mentally ill or nolo contendere, or a verdict of guilty or guilty but mentally ill.

(ii) The term does not include an adjudication of delinquency under 42 Pa.C.S. Chapter 63 (relating to Juvenile Act).

Department—The Department of State of the Commonwealth.

Evaluation—A valuation required by regulations of Federal financial institution regulatory agencies for transactions that qualify for an exemption from the appraisal requirement under any one of the following provisions:

- (i) The Office of Comptroller of the Currency in 12 CFR 34.43(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).
- (ii) The Board of Governors of the Federal Reserve System in 12 CFR 225.63(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).
- (iii) The Federal Deposit Insurance Corporation in 12 CFR 323.3(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).
- (iv) The Office of Thrift Supervision in 12 CFR 564.3(a)(1), (5) or (7) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

(v) The National Credit Union Administration in 12 CFR 722.3(a)(1) or (5) (relating to appraisals required; transactions requiring a State certified or licensed appraiser).

Exempt company—

(i) A person that is exempt from registering under AMCRA as set forth in section 1124(c) of FIRREA (12 U.S.C.A. § 3353(c)).

(ii) This term is synonymous with “Federally regulated AMC” as defined in 12 CFR 34.211(k) (relating to definitions).

FIRREA—

(i) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub.L. No. 101-73, 103 Stat. 183).

(ii) Unless expressly stated or clearly implicit from the context, a reference to FIRREA in this subchapter includes only those provisions that relate to appraisal standards or appraisal management services.

Federally-related transaction—A real estate-related financial transaction which a Federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for or regulates which requires the services of an appraiser.

In good standing—

(i) When referring to an individual certified or licensed by the Board to perform appraisals, an individual who is authorized under REACA to perform appraisals, or to act as a licensed appraiser trainee.

(ii) The term includes an individual who has an active unrestricted certificate or license, or a certificate or license that is on probation or subject to a restriction ordered by the Board.

(iii) The term does not include an individual who holds a certificate or license that is inactive or expired, or that is suspended or revoked.

Key person—A person other than a compliance person who is a director, officer, supervisor, manager or other person performing a similar function in an appraisal management company.

Mortgage Bankers and Brokers and Consumer Equity Protection Act—63 P.S. §§ 456.101—456.3101.

NRSRO—A designated Nationally-recognized statistical rating organization of the United States Securities and Exchange Commission or its successor.

Non-Federally related transaction—A real estate-related transaction that is not a Federally-related transaction.

Order—When used in the context of the contractual relationship between an appraiser and an appraisal management company, an agreement between an appraiser and an appraisal management company that pertains to a specified valuation assignment, including a disclosure of the amount of the appraisal fee, the terms and time frame for payment, and the appraisal management company registration number.

Order solicitation—An offer to contract with an appraiser to perform an appraisal resulting in an order.

Owner—A person that owns 10% or more of an appraisal management company.

Panel solicitation—An offer to add an appraiser to the appraiser panel used by an appraisal management company.

REACA—The Real Estate Appraisers Certification Act (63 P.S. §§ 457.1—457.19).

REARA—Real Estate Appraisal Reform Amendments—

(i) Title XI of FIRREA (12 U.S.C.A. §§ 3331—3355).

(ii) Unless expressly stated or clearly implicit from the context, a reference to REARA in this subchapter includes only those provisions that relate to appraisal standards or appraisal management services.

RELRA—The Real Estate Licensing and Registration Act (63 P.S. §§ 455.101—455.902).

Real estate-related financial transaction—A transaction involving one or more of the following:

(i) Sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof.

(ii) Refinancing of real property or interests in real property.

(iii) Use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

Registrant—An appraisal management company that is registered under AMCRA.

Solicit or solicitation—An offer to contract with an appraiser to perform an appraisal or an offer to an appraiser to be included in an appraisal management company's appraiser panel.

Supervisor—An individual who is an agent of an appraisal management company and who has the authority to do one or more of the following:

(i) Enter into a contract with clients for the performance of appraisal services.

(ii) Solicit or enter into an agreement for an assignment with independent appraisers.

(iii) Direct or cause the direction of the management or policies of the appraisal management company.

TILA—

(i) The Truth in Lending Act (15 U.S.C.A. §§ 1601—1667f).

(ii) Unless expressly stated or clearly implicit from the context, a reference to TILA in this subchapter includes only those provisions that relate to appraisal standards or appraisal management services.

USPAP—The term as defined in § 36.1 (relating to definitions).

§ 36.402. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable to the activities of and proceedings before the Board.

§ 36.403. Application procedures.

(a) **Application form.** An applicant for registration as an appraisal management company shall complete and file with the Board an application in a form prescribed by the Board. The form is available on the Board's web site at www.dos.pa.gov/real and by contacting the Board at Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-4866 or ST-APPRAISE@pa.gov.

(b) Application fees.

(1) The initial application fee for registration as an appraisal management company is nonrefundable and must be in the amount in § 36.405 (relating to fees).

(2) An applicant for registration shall submit a separate payment to the board for the AMC National Registry fee under § 36.405.

(c) **Filing of application.** An application is filed with the Board on the date that it is received in the office of the Board.

(d) **Approved applications.** If the Board finds that the application is complete, does not have a basis to believe that the information in the application is not true and correct, and that the information in the application

qualifies the applicant for registration as an appraisal management company, the Board will issue a registration certificate by mail to the address of record in the application.

(e) *Disapproved applications.* If the Board finds that the application is incomplete, that there is reason to believe that the information is not true and correct, or that the applicant is not otherwise qualified for registration, the Board will notify the applicant, in writing, of all of the following:

- (1) The application has been provisionally denied.
- (2) The reason for provisional denial.
- (3) The applicant's right to appeal the provisional denial in writing and to request a hearing before the Board.
- (4) The applicant's rights under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(5) The failure to appeal the provisional denial to the Board or to request a hearing within 30 days of the date of the notice of provisional denial will result in the provisional denial of the application being deemed final.

(f) *Compliance with new requirements.* An applicant shall comply with the requirements for registration that take effect between the applicant's filing of an initial application and the issuance of registration.

§ 36.404. Content of application.

(a) An application for registration as an appraisal management company must include all of the following:

- (1) Primary information of the appraisal management company, including:
 - (i) Legal name.
 - (ii) Mailing address, which will be the address of record.
 - (iii) Street address, if different from the mailing address.
 - (iv) Primary telephone number.
- (2) Secondary information of the appraisal management company, including:
 - (i) State or place of incorporation or organization.
 - (ii) Documentation that the applicant is authorized to transact business in this Commonwealth if the applicant is not an individual and is incorporated or otherwise formed under the laws of a jurisdiction other than the Commonwealth.
 - (iii) Each fictitious name under which the applicant trades or does business in this Commonwealth.
 - (iv) Web site address.
 - (v) Primary e-mail address.
 - (vi) Fax number.
 - (vii) Each state or jurisdiction in which applicant is registered as an appraisal management company.
 - (viii) If the applicant began offering appraisal management services before June 8, 2013, the month and year on which the applicant began offering appraisal management services in this Commonwealth.

- (ix) Owner information, including for each owner:
 - (A) Legal name.
 - (B) Street address.

- (C) Telephone number.
- (D) E-mail address.
- (3) Key person information, including for each key person:
 - (i) Legal name.
 - (ii) Mailing address.
 - (iii) Street address, if different from the mailing address.
 - (iv) Telephone number.
 - (v) Title and each status that qualifies the person as a key person, including one or more of the following:

- (A) Officer.
- (B) Director.
- (C) Manager, supervisor, or similar function or title.
- (vi) E-mail address.
- (vii) Whether the key person is an owner.
- (4) Compliance person information, including:
 - (i) Legal name.
 - (ii) Mailing address, if different from the applicant's mailing address.
 - (iii) Residential address.
 - (iv) Telephone number.
 - (v) E-mail address.
 - (vi) Title.

(vii) Each certificate or license held for the practice of real estate appraising, if any, including the state or jurisdiction of issuance.

(viii) Whether the compliance person is an owner.

(5) The disciplinary history of the applicant, each owner, key person and the compliance person, including:

(i) Any discipline imposed in this Commonwealth or any other jurisdiction under any law regulating appraisers, appraisal management companies, or real estate brokers or salespersons.

(ii) Any discipline imposed in this Commonwealth or any other jurisdiction under any law regulating mortgage brokers or salespersons, the sale of securities, the practice of law or the practice of accounting.

(iii) A verification by each owner or key person subject to penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the disciplinary history is true and correct.

(6) An official criminal history record information report from the Pennsylvania State Police or other state agency for each state in which the applicant, owner, key person or compliance person has resided for the 10-year period immediately preceding the date of application.

(7) A surety bond or letter of credit in the form and the amount required under §§ 36.451—36.456 (relating to surety bonds and letters of credit).

(b) The individual designated by the applicant as compliance person shall certify that the applicant has:

(1) A system in place to verify that a person being added to an appraiser panel of the applicant or who will otherwise perform appraisals for the applicant of property in this Commonwealth is a certified residential appraiser or certified general appraiser and in good standing in this Commonwealth under REACA.

(2) A system in place for the performance of appraisal reviews with respect to the work of appraisers who are performing appraisals for the applicant of property in this Commonwealth to determine if the appraisals are being conducted in conformance with the minimum standards under REACA, both on a periodic basis and upon request of a client. This provision does not prohibit the parties (the AMC and the client) from including in their contracts terms relating to requests for appraisal reviews.

(3) A system in place to comply with § 36.435 (relating to recordkeeping).

(4) Authorized the compliance person to file the application and verify the contents of the application subject to the penalties of 18 Pa.C.S. § 4904 and 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

(c) The individual designated as the compliance person shall sign the application and verify that the contents of the application are true and correct and subject to the penalties of 18 Pa.C.S. §§ 4904 and 4911.

§ 36.405. Fees.

(a) The following is the schedule of fees charged by the Board:

Application for initial registration as an appraisal management company	\$2,000
Biennial registration renewal fee	\$1,000
Notice of change in corporate organization.....	\$35
Letter of good standing/verification of registration .	\$15
Notification of change in key person or compliance person	\$35
Late fee for reinstatement per month of delinquency	\$50

(b) The following is the schedule of fees collected by the Board:

AMC National Registry fee As prescribed by ASC

REGISTRATION

§ 36.411. Qualifications for registration as appraisal management company.

(a) An appraisal management company that is authorized to conduct business in this Commonwealth shall establish and maintain the requirements in this section during the period in which it offers or provides appraisal management services.

(b) An appraisal management company shall have a compliance person.

(c) An appraisal management company shall establish and maintain procedures that provide assurance of compliance with all of the following standards of appraisal management services:

- (1) Prevention of conduct or practices that compromise appraiser independence.
- (2) Verification of appraiser certification and qualifications.
- (3) Review of appraisal services for compliance with USPAP.
- (4) Availability of a process for resolution of consumer complaints.
- (5) Availability of a process for resolution of appraiser complaints.

§ 36.412. Qualifications of owners and key persons.

(a) A person who would be disqualified from eligibility to be certified or licensed under REACA as defined in subsection (b) may not be an owner or a key person.

(b) An individual would be disqualified from eligibility to be certified or licensed under REACA, as provided in section 8(d)(1) of AMCRA (63 P.S. § 457.28(d)(1)), if the individual had a license or certificate refused, denied, cancelled, suspended or revoked, or voluntarily surrendered a license or certificate under any of the following provisions of REACA or CHRIA, or similar provision of another jurisdiction, unless the license or certificate has been subsequently granted or reinstated to the individual:

- (1) Section 3 of REACA (63 P.S. § 457.3).
- (2) Section 6(c)(1) of REACA (63 P.S. § 457.6(c)(1)).
- (3) Section 11 of REACA (63 P.S. § 457.11).
- (4) Section 9124(c)(1) or (2) of CHRIA (18 Pa.C.S. § 9124(c)(1) and (2)) (relating to use of records by licensing agencies).

(c) Nothing in AMCRA or this subchapter may be construed as a requirement that an owner or a key person shall possess the education or experience required by the AQB or REACA for certification or licensure.

(d) A person who has been suspended or revoked, or has voluntarily surrendered a license under RELRA, 7 Pa.C.S. Chapter 61 (relating to Mortgage Licensing Act) or sections 301—318 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P.S. §§ 456.301—456.318) (repealed) may not be an owner or key person.

(e) The Board may consider a disqualifying violation described in subsection (b) if the individual's license or certificate has been subsequently reinstated or granted in determining whether the individual possesses good moral character as required under section 5(c)(4) of AMCRA (63 P.S. § 457.25(c)(4)).

§ 36.413. Qualifications of compliance person.

(a) In addition to the qualifications in § 36.412 (relating to qualifications of owners and key persons), a compliance person shall hold the qualifications in this section.

(b) A person designated as a compliance person by an appraisal management company possesses the authority to:

- (1) Enter into an agreement with the Board to bind the appraisal management company to comply with requirements of AMCRA, this subchapter, and provisions of FIRREA, REACA, REARA or TILA that relate to appraisal standards or appraisal management services.
- (2) Sign a report, application, form, notice or other document required to be filed with the Board.
- (3) Certify, verify or otherwise attest as required by law to the contents of documents or pleadings filed with the Board.
- (c) A compliance person may not have a history of:

- (1) Conviction as provided in section 10(a)(5) of AMCRA (63 P.S. § 457.30(a)(5)).
- (2) Disciplinary action or disposition of an administrative or a civil proceeding as described in section 10(a)(2), (3), (4), (6) or (7) of AMCRA, or a similar provision of a law or regulation of another jurisdiction, resulting in

refusal, denial, cancellation, restriction, probation, suspension, voluntary surrender or revocation of the authority or privilege to practice.

(d) An individual who acts as a compliance person will be deemed to have vacated the position upon any of the following conditions:

- (1) Death.
- (2) Occurrence of a disqualifying condition defined in subsection (c).
- (3) Termination of employment or contractual relationship by either the compliance person or the appraisal management company.
- (e) During a period of less than 30 days for excused illness, absence or vacation of a compliance person, an appraisal management company may designate another key person to fulfill the duties of compliance person without notice to the Board.
- (f) An absence or vacancy in the position of compliance person more than 30 days is cause for suspension of an appraisal management company's authority to conduct business until a compliance person has been designated and notice of the change has been filed with the Board as provided in § 36.414 (relating to reporting change of information.)

§ 36.414. Reporting change of information.

- (a) A registrant shall report a vacancy or change in qualifying information as required in this section on forms prescribed by the Board.
- (b) A registrant shall report a vacancy or change of compliance person within 30 days of the date that the compliance person terminates.
- (c) A registrant shall report a change in the information required under § 36.404 (relating to content of application) within 30 days, including information relating to disciplinary history or criminal history required under § 36.404(a)(5) and (6).

§ 36.415. Requirements for exempt company.

- (a) To the extent required under regulations jointly promulgated by the Federal financial institution regulatory agencies under Title XI of FIRREA (12 U.S.C.A. §§ 3331—3355), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. No. 111-203, 124 Stat. 1376), an exempt company shall comply with the requirements of AMCRA and this subchapter.
- (b) An exempt company shall report on forms prescribed by the Board information required to be submitted by the Board to the AMC National Registry under the regulations jointly promulgated by the Federal financial institution regulatory agencies.

RENEWAL OF REGISTRATION

§ 36.421. Expiration of registration.

Registration expires on the last day of June of each odd-numbered year.

§ 36.422. Early termination of registration.

- (a) A registrant may terminate registration prior to the expiration of the biennial registration period by filing with the Board a notice in a form prescribed by the Board.
- (b) A notice of termination of registration must include all of the following:
 - (1) The date on which the registrant will cease to offer or provide appraisal management services in this Commonwealth.

(2) An acknowledgment that the registrant or its successor remains subject to disciplinary action for acts, errors or omissions occurring before the termination of registration.

- (3) The signature of the compliance person.
- (4) The mailing address of the registrant.
- (5) If the registrant is terminating its existence, documentation of the dissolution, acquisition or merger of the registrant by or with another entity.

(6) If the registrant terminates registration because it has become exempt from registration under AMCRA, documentation in support of the basis for exemption.

(7) An acknowledgment that the surety bond or letter of credit will remain subject to claims in accordance with the procedures in §§ 36.451—36.456 (relating to surety bonds and letters of credit).

(c) The date on which the registrant terminates registration may not be any sooner than the date on which the notice is filed with the Board.

(d) The termination of registration by the Board upon filing of a notice will not be construed as an admission by the Board or the Commonwealth that the contents of the notice are true and correct.

(e) The Bureau may at any time after the filing of a notice of termination under this section begin a disciplinary action against a former registrant for a violation of section 3 of AMCRA (63 P.S. § 457.23), regarding registration of appraisal management companies.

(f) The surety bond or letter of credit will remain in effect after termination.

§ 36.423. Duration and validity of registration.

- (a) An appraisal management company shall register each biennial period to retain the right to provide appraisal management services in this Commonwealth.
- (b) Registration is valid throughout this Commonwealth, is not assignable or transferable, and is valid until the last date of the biennial registration period, unless terminated under § 36.422 (relating to early termination of registration).

§ 36.424. Renewal of registration.

- (a) Application for renewal of registration shall be made on forms provided by the Board and include fees prescribed by the Board in § 36.405 (relating to fees).
- (b) An applicant for renewal of registration shall submit a separate payment to the Board for the AMC National Registry fee under § 36.405.
- (c) An application for renewal must be received by the Board with the required biennial renewal fee and the AMC National Registry fee before the expiration of the previous biennial registration period.

STANDARDS OF PRACTICE

§ 36.431. Compliance with USPAP.

- (a) An appraisal management company shall require that appraisal assignments be completed in compliance with USPAP.
- (b) An appraisal management company shall establish a system to review appraisal assignments which is reasonably calculated to assure compliance with USPAP by appraisers.
- (c) An appraisal management company may not solicit, offer, accept an offer or contract for a valuation service

that it knows or has reason to know violates REACA, RELRA, FIRREA, AMCRA or this subchapter.

§ 36.432. Verification of appraiser certification.

An appraisal management company shall establish and maintain a system to verify that appraisals are completed by an appraiser who possesses a class of certification issued by the Board that authorizes appraisal of real property in this Commonwealth that is the subject of the appraisal and which is current and valid.

§ 36.433. Appraisal reviews.

(a) Appraisal reviews shall be performed in accordance with USPAP.

(b) An examination of an appraisal report for grammatical or typographical errors or for completeness is not required to comply with USPAP.

§ 36.434. Broker price opinions and evaluations.

(a) An appraisal management company may not solicit or order, nor offer to solicit or order, a BPO for use in a non-Federally related transaction.

(b) An appraisal management company may not solicit or order, nor offer to solicit or order, a BPO for use in a Federally-related transaction.

(c) An appraisal management company may not solicit or order, nor offer to solicit or order, an evaluation.

(d) A comparative market analysis is not a BPO for purposes of AMCRA, REACA or this subchapter if performed for one or both of the following purposes:

- (1) In pursuit of a listing.
- (2) To determine probable selling price.

§ 36.435. Recordkeeping.

(a) Each appraisal management company shall maintain all of the following records:

(1) A record of each assignment that it has ordered for appraisal of real property located in this Commonwealth, including:

(i) The order between the appraisal management company and the appraiser.

(ii) Each appraisal report received from an appraiser, including the original report, revised reports, and addenda or other materials furnished subsequent to the delivery of the original report.

(iii) Written communications between the appraiser and the appraisal management company and any other entity involved in the transaction.

(iv) The order engaging another appraiser for the purpose of reviewing the appraisal.

(v) A review of the appraisal performed, including any data supporting the selection of the appraisal for review, the original review report, subsequent correspondence between the reviewer and appraisal management company, and each subsequent revised review report.

(vi) Written communications related to obligations under AMCRA or this subchapter between the appraisal management company and its client, including documents supplied to that client.

(vii) A record of fees disbursed to contracted appraisers and the fee received by the appraisal management company from the appraisal management company's client.

- (2) Appraiser fee schedules, including:
 - (i) Fees paid for a defined service.

(ii) Documentation to support that the fee schedule is customary and reasonable and complies with provisions of TILA that relate to appraisal standards or appraisal management services.

(iii) Payment policies, including time for payment of appraisal fees.

(iv) Effective dates of the schedules.

(3) Panels of appraisers used for assignments in this Commonwealth, including:

(i) The name of each appraiser.

(ii) The appraiser's certificate number.

(iii) The date the appraiser was placed on the panel.

(iv) The region or area in which the appraiser's service may be used.

(v) The date and reason for removal, if the appraiser is removed from the panel.

(b) An appraisal management company shall maintain the records in subsection (a)(1) for 5 years beginning on the latest of the following:

(1) The date of final action of the assignment.

(2) The date of final disposition of the proceeding, if the appraisal management company is notified that the transaction is the subject of a court proceeding or an administrative proceeding by the Board.

(c) An appraisal management company shall produce for inspection and copying by the Board within 30 days its books and records, including any record required to be maintained by AMCRA or this subchapter.

§ 36.436. Requirements for solicitation or order of appraisals.

(a) An appraisal management company shall include in an order or order solicitation for appraisal services from a certified residential appraiser or certified general appraiser who is not an employee of the appraisal management company:

(1) The fee to be paid to the appraiser for the appraisal assignment.

(2) The terms for time of payment for appraisal services, if the terms are not identified within an existing contractual agreement between the parties.

(3) The appraisal management company's registration number.

(b) An appraisal management company may satisfy the requirements of subsection (a) by either of the following means:

(1) A legible statement of the required information on an order or order solicitation for an appraisal assignment.

(2) A legible reference to an existing written agreement between the appraisal management company and the appraiser that includes the required information.

(c) An appraisal management company shall include in an appraiser panel solicitation in this Commonwealth its appraisal management company registration number.

§ 36.437. Duties of compliance persons.

(a) An appraisal management company is subject to disciplinary action under AMCRA and this subchapter for the acts or omissions of a compliance person who fails to perform a duty in this section.

(b) A compliance person shall ensure compliance of an appraisal management company with section 8 of AMCRA (63 P.S. § 457.28).

(c) An appraisal management company, acting through its compliance person, shall report to the Bureau, directly or through another agent of the appraisal management company, a material violation as defined under section 129E(e) of TILA (15 U.S.C.A. § 1639e(e)) and corresponding regulations regarding appraisal independence requirements.

(d) A compliance person who has a reasonable basis to believe that an appraisal management company, its employee or its agent has violated appraisal independence requirements of AMCRA or this subchapter shall report the matter to the Bureau within a reasonable time after formulating the belief that a violation has occurred.

§ 36.438. AMC National Registry; reports.

(a) Appraisal management companies qualified for enrollment in the AMC National Registry shall apply for enrollment or for the renewal or reinstatement of enrollment on a Board form. The application form must be accompanied by the AMC National Registry fee referenced in § 36.405 (relating to fees).

(b) An appraisal management company shall truthfully and in good faith submit information, as required under applicable Federal laws, rules and regulations, and ASC policies and guidelines, for the AMC National Registry on forms prescribed by the Board.

(c) The Board will collect from appraisal management companies, and remit to ASC, the AMC National Registry fees.

(d) The Board will submit to ASC information required for registration on the AMC National Registry.

(e) The Board will report to ASC disciplinary action and violations of appraisal-related laws, regulations or orders.

DISCIPLINARY ACTION

§ 36.441. Prohibited acts.

(a) The Board may impose one or more sanctions authorized under AMCRA if the Board finds that an appraisal management company, key person or compliance person violated AMCRA or this chapter.

(b) The following acts, errors or omissions constitute a violation of the standards of conduct of an appraisal management company:

- (1) Violation of AMCRA or this subchapter.
- (2) Violation of FIRREA.
- (3) Violation of TILA.
- (4) Violation of a statute or regulation of another jurisdiction regulating appraisal management companies.

§ 36.442. Improper influence and other prohibited practices.

(a) The following acts constitute improper influence or a practice in violation of AMCRA and this chapter, without proof of intent of the appraisal management company or its agent:

- (1) A requirement that the appraiser collect a fee from a borrower.
- (2) A requirement that the appraiser provide access to the appraiser's digital signature.

(3) A prohibition on the appraiser to report the fee for the appraisal services.

(4) A prohibition on the appraiser to note or report real property appraisal assistance.

(5) Nonpayment of, or refusal to pay for, appraisal services rendered for a reason other than the breach of agreement or substandard performance by the appraiser.

(6) A clause or provision in an order requiring an appraiser to indemnify or hold harmless for acts or omissions of a person other than the appraiser.

(7) A clause or provision in an order requiring an appraiser to have a duty to defend the appraisal management company in a civil action or proceeding.

(8) Removal of an appraiser from the appraiser panel without notice and opportunity for rebuttal.

(9) A request to an appraiser to provide comparable properties for a specified property prior to completion of the appraisal report.

(b) The following acts, if committed with the intent to influence or attempt to influence the development, reporting, result or review of an appraisal, constitute improper influence or a practice in violation of AMCRA and this chapter:

(1) A pattern or course of conduct involving repeated review of appraisals that is not performed in accordance with the appraisal management company's policy for appraisal reviews or quality control functions.

(2) A limitation on the time of completion of an appraisal assignment that impairs the credibility of the report. For purposes of this paragraph, a time limitation or deadline established for the purpose of completing the assignment to complete a transaction by a date established by agreement of parties other than the appraisal management company does not constitute improper influence or practice in violation of AMCRA and this chapter.

(3) A delay in payment for appraisal services that violates the appraisal management company's policy for payment.

SURETY BONDS AND LETTERS OF CREDIT

§ 36.451. Requirements for surety bond or letter of credit.

(a) A registrant shall maintain a surety bond or letter of credit in the form and amount prescribed in this subchapter.

(b) A surety bond must be in the amount prescribed in § 36.452(a) (relating to amount of surety bond or letter of credit), in the form prescribed by § 36.453 (relating to form of surety bond) and issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department.

(c) A letter of credit must be in the amount prescribed in § 36.452(b), in the form prescribed by § 36.454 (relating to form of letter of credit) and payable at an office of a commercial bank in the United States. At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a B/C or better rating or 2.5 or better credit evaluation score by Fitch Ratings, as successor to the rating services of Thomson BankWatch, or the issuing bank shall have a CD or long-term issuer credit rating of BBB or better or a short-term issuer credit rating of A-2 or better by Standard & Poor's or a comparable rating by another NRSRO.

§ 36.452. Amount of surety bond or letter of credit.

(a) A registrant who maintains a surety bond to satisfy the requirements of AMCRA and § 36.451 (relating to requirements for surety bond or letter of credit) shall maintain a bond in the amount of \$40,000.

(b) A registrant who maintains a letter of credit to satisfy the requirements of AMCRA and § 36.451 shall maintain a letter of credit in the amount of \$40,000.

(c) The Board may require additional amount or form of security for the following reasons:

(1) As a penalty for a violation of AMCRA or this subchapter regarding the nonperformance of services or nonpayment of fees, or a violation of a similar law or regulation of another jurisdiction.

(2) A change in a company's authorization to transact surety business in this Commonwealth or a change in the financial strength or rating of the issuer of the letter of credit.

(3) A failure to maintain the bond or letter of credit in the minimum amount required by AMCRA or this subchapter, whichever is greater.

§ 36.453. Form of surety bond.

(a) A surety bond held by a registrant to satisfy the requirements of AMCRA and this subchapter must include all of the following:

(1) The name and mailing address of the registrant.

(2) The name and title of the compliance person.

(3) The name, mailing address, telephone number and National Association of Insurance Commissioners company code of the surety.

(4) The policy number for the surety bond.

(5) Indemnification for claims that arise or occur for the benefit of:

(i) The Commonwealth or the public for nonperformance of obligations under AMCRA or this subchapter that occur during the period of the surety bond.

(ii) An appraiser who has performed an appraisal of real property located in this Commonwealth for the registrant during the period of the surety bond for which the appraiser has not been paid.

(6) An agreement by the surety to notify the Bureau if the surety bond is cancelled or terminated.

(b) The aggregate liability of the surety may not exceed the principal sum of the bond.

(c) The surety bond must be continuous and remain in full force and effect until the license is terminated or not renewed, or the bond is cancelled by the surety.

§ 36.454. Form of letter of credit.

A letter of credit held by a registrant to satisfy the requirements of AMCRA and this subchapter must include all of the following:

(1) A provision that the letter of credit is irrevocable for a term of not less than 1 year and that the letter of credit automatically renews annually unless the letter of credit is specifically nonrenewed by the issuing bank 90 days or more prior to the anniversary date of its issuance and the issuing bank gives at least 90 days prior written notice to the Bureau and the registrant of its intent to terminate the letter of credit at the end of the current term.

(2) A provision that the Department has the right to draw upon the credit before the end of its term and to convert it into a cash collateral bond if the registrant fails to replace the letter of credit with other acceptable bond within 30 days of the bank's notice to terminate the letter of credit.

(3) The letter of credit must name the Department as the beneficiary and be payable to the Department under § 36.456 (relating to claims against surety or obligor).

(4) A letter of credit is subject to the most recent edition of the *Uniform Customs and Practices for Documentary Credits*, published by the International Chamber of Commerce, and the laws of the Commonwealth, including 13 Pa.C.S. (relating to Uniform Commercial Code).

(5) The Board will not accept letters of credit from a bank that has failed to make or delayed in making payment on a defaulted letter of credit.

§ 36.455. Maintenance of surety bond or letter of credit.

(a) If the rating of a bank that has issued a letter of credit falls below the minimum ratings required under § 36.451(c) (relating to requirements for surety bond or letter of credit), a registrant shall replace the letter of credit within 45 days from the date of the substandard rating decline with a new letter of credit that satisfies the requirements of § 36.451.

(b) If a letter of credit is not replaced within 45 days of the substandard rating decline, the Department has the discretion to draw on the letter of credit and deposit the proceeds with the State Treasurer to secure the registrant's liability and to begin proceedings under AMCRA, this subchapter and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to suspend or revoke the registrant's authority to perform appraisal management services in this Commonwealth.

(c) If a bank makes a payment upon a letter of credit issued to fulfill the requirements of AMCRA or this subchapter, the registrant shall obtain additional security within 45 days of the date of payment in the form of an additional letter of credit in an amount sufficient to maintain the minimum amount required under AMCRA or this subchapter, whichever is greater.

(d) If a surety makes a payment upon a bond issued to fulfill the requirements of AMCRA or this subchapter, the registrant shall obtain additional security within 15 days of the date of payment in the form of an additional surety bond in an amount sufficient to maintain the minimum amount required under AMCRA or this subchapter, whichever is greater.

§ 36.456. Claims against surety or obligor.

(a) The Department may make a claim to a surety or obligor to:

(1) Recover unpaid fees for appraisal services.

(2) Obtain payment for civil penalties, costs of investigation or fees payable to the Commonwealth.

(3) Obtain payment for debts arising out of the performance of appraisal management services in this Commonwealth.

(4) Obtain security as provided in § 36.455(b) (relating to maintenance of surety bond or letter of credit).

(b) The Department, in its discretion, will make a claim to a surety or obligor for a purpose in subsection (a) upon one of the following conditions:

(1) The expiration of the period of appeal from the entry of a final order issued by the Board in a proceeding under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and a determination by the Department based upon a review of its records that all or part of a civil penalty or costs of investigation levied by that order remain unpaid.

(2) The failure of a registrant to satisfy a written agreement with the Board or the Bureau to pay an amount described in subsection (a).

(3) A determination by the Prosecution Division of the Bureau upon a complaint filed with the Bureau that there is probable cause to believe that a registrant owes a sum certain for unpaid fees, civil penalties, costs of investigation, fees payable to this Commonwealth or debts arising out of the performance of appraisal management services in this Commonwealth.

(4) Violation of § 36.455.

(c) The Department will only make a claim to a surety on behalf of third parties to recover unpaid fees for appraisal services or obtain payments for debts arising out of the performance of appraisal management services in this Commonwealth if the activities involved the valuation of real estate in this Commonwealth.

[Pa.B. Doc. No. 17-2029. Filed for public inspection December 8, 2017, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 105]

Boating; Operational Conditions

The Fish and Boat Commission (Commission) amends Chapter 105 (relating to operational conditions). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendment to § 105.3 (relating to unacceptable boating practices) is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

This final-form rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the amendment is described in more detail under the summary of change. The Commission's Boating Advisory Board previously considered the proposed amendment and recommended that the Commission approve the publication of a proposed rulemaking.

E. Summary of Change

In late 2015, Volvo Penta (Volvo) approached the Commission about amending § 105.3(12) to permit boaters within this Commonwealth to utilize Volvo's new forward facing drive for wake surfing. The Commonwealth is one of three states that has regulations in place that forbid wake surfing behind inboard/outboard motors. This topic was discussed at the annual conference of the National Association of State Boating Law Administrators, at which time the safety protocols that manufacturers were held to by the United States Coast Guard (USCG) were reviewed. The consensus was that if the manufacturer was under strict guidelines from the USCG for development, states should do what they could to allow those approved developments to be used on state waters.

Before the boating season in 2016, the Commission's Bureau of Law Enforcement (BLE) reviewed this issue. This review included a review of other states' laws and regulations pertaining to the subject, as well as any accident statistics. The BLE found that most states do not have motor restrictions for wake surfing beyond using common sense. Several states that are considering regulations are not looking to limit motors such as the forward facing drive.

The Commission therefore amends § 105.3 to allow for advancements within the boating industry to be used on Commonwealth waters. The Commission amends § 105.3 to read as set forth in the proposed rulemaking published at 47 Pa.B. 3974 (July 22, 2017).

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 47 Pa.B. 3974. The Commission received three public comments supporting the proposed rulemaking. Commissioners were provided with copies of the public comments.

Findings

The Commission finds that:

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

(2) A public comment period was provided and the public comments that were received were considered.

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 105, are amended by amending § 105.3 to read as set forth at 47 Pa.B. 3974.

(b) The Executive Director will submit this order and 47 Pa.B. 3974 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 47 Pa.B. 3974 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-275 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 17-2030. Filed for public inspection December 8, 2017, 9:00 a.m.]
