

Regulatory Analysis Form		RECEIVED This space for use by IRRC 99 JAN 27 PM 4:27 INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number: 1992
(1) Agency Insurance Department		
(2) I.D. Number (Governor's Office Use) 11-171		
(3) Short Title Pennsylvania Assigned Risk Plan		
(4) PA Code Cite 31 Pa. Code, Chapter 33, §33.29 and new 31 Pa. Code, Chapter 67a, §§67a.1-67a.2	(5) Agency Contacts & Telephone Numbers Primary Contact: Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429 Secondary Contact:	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The purpose of this rulemaking is to repeal 31 Pa. Code, Chapter 33, §33.29 and establish Chapter 67a, §§67a.1-67a.2, Pennsylvania Assigned Risk Consumer Protection by: 1) providing a new title and format to facilitate understanding of the terminology and the provisions set forth in the regulation; 2) adding detail for clarity; 3) eliminating those items that should not be reflected in regulation but should be addressed in the assigned risk plan rules; and 4) strengthening the provisions of the regulation continuing to ensure protections for those residents of the Commonwealth seeking automobile insurance through the market of last resort.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The Department proposes the amendments to 31 Pa. Code under the authority of the act of May 17, 1921, P.L. 682, No. 284 (40 P.S. §§341-991); the act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§1-321); sections 206, 506, 1501 and 1502 of the act of April 9, 1929, P.L. 177, No. 175 (71 P.S. §§66, 186, 411 and 412); and section 3 of the Act of February 12, 1984, P.L. 28, No. 11, known as the Pennsylvania Auto Insurance Plan.		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This proposed regulation provides producers with the proper procedures concerning placing coverage through the Pennsylvania Assigned Risk Plan and adds consumer protections measures.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All consumers will benefit from the repeal of the old regulation to the extent that the new regulation will more clearly outline the consumer protection aspects of the law.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the repeal of this regulation and adoption of the new regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All agents and brokers authorized to do business in property and casualty insurance and who are certified by the Plan.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Input in developing this proposed regulation was received by the stakeholders of the Assigned Risk Plan and the Insurance Federation of Pennsylvania, Inc.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendment of the regulation will not have any impact on costs associated with insurance companies or producers certified by the Pennsylvania Assigned Risk Plan.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
None.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of the regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Repealing Chapter 33 and revising the provisions under Chapter 67a is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. It merely provides for consistency with the statute.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendment of the regulation imposes no additional paperwork requirements on the Department, insurers, producers, or the general public.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will undergo a 30-day public comment period and will take effect upon approval of the final form regulation by the legislative standing committees, the Office of Attorney General and the Independent Regulatory Review Commission and upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

By: *Cristina S. Popson*
(Deputy Attorney General)

SEP 03 1998

Date of Approval

Check if applicable.
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-171

DATE OF ADOPTION: _____

BY: *M. Diane Koken*
M. Diane Koken
Insurance Commissioner

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

Copy below is hereby approved as to form and
legality. Executive or Independent Agencies

BY: *Tom F. Weabey*

9/23/98
DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)
(STRIKE INAPPLICABLE TITLE)

Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

Notice of Proposed Rulemaking

Insurance Department

31 Pa. Code, Chapter 33, §33.29 and
31 Pa. Code, Chapter 67a, §§67a.1-67a.2

Pennsylvania Assigned Risk Consumer Protection

PREAMBLE

The Insurance Department proposes to repeal 31 Pa. Code, Chapter 33, section 33.29 (relating to the Pennsylvania Assigned Risk Plan) and establish new provisions in 31 Pa. Code, Chapter 67a as set forth in Annex A. The Department proposes the amendments to 31 Pa. Code under the authority of the act of May 17, 1921, P.L. 682, No. 284 (40 P.S. §§341-991); the act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§1-321); sections 206, 506, 1501 and 1502 of the act of April 9, 1929, P.L. 177, No. 175 (71 P.S. §§66, 186, 411 and 412); and section 3 of the Act of February 12, 1984, P.L. 28, No. 11, known as the Pennsylvania Auto Insurance Plan.

Purpose

Chapter 33, section 33.29, was initially promulgated to address the Department's concerns regarding the method of payment and the manner in which premium monies were collected and forwarded to the Pennsylvania Assigned Risk Plan. Additionally, the Department wanted to ensure that coverage in the market of last resort is provided as expeditiously as possible so that the owners and operators of motor vehicles registered or operated in Pennsylvania can meet the requirements for compulsory automobile insurance in the Commonwealth. These guidelines were offered to assist the applicant, producer and the plan. The purpose of this rulemaking is to repeal 31 Pa. Code, Chapter 33, §33.29 and establish Chapter 67a, §§67a.1-67a.2, Pennsylvania Assigned Risk Consumer Protections by: 1) providing a new title and format to facilitate understanding of the terminology and the provisions set forth in the regulation; 2) adding detail for clarity; 3) eliminating those items that should not be reflected in regulation but should be addressed in the assigned risk plan rules; and 4) strengthening the provisions of the regulation continuing to ensure protections for those residents of the Commonwealth seeking automobile insurance through the market of last resort.

Explanation of Regulatory Requirements

The amended provisions of Section 33.29 have been moved from Chapter 33 to Chapter 67a. The format has been changed to reflect both the new definitions section and the section relating to consumer protections.

The title of the regulation "Pennsylvania Automobile Insurance Plan" has been changed to "Pennsylvania Assigned Risk Plan Consumer Protections" to more accurately describe the intent of the regulation.

Section 67a.1, Definitions, has been added to explain the meaning "*Assigned Risk Plan*", "*Producer*", "*Producer of Record*" and "*Voluntary Market*" when used in the context of the regulation.

Section 67a.2, Consumer Protections, formerly section 33.29, has been renamed providing for a more accurate description of its purpose.

Section 67a.2(a) reflects the amendments to section 33.29(a) which enhance its clarity.

Section 67a.2(b) replaced section 33.29(b). This section has been added as a consumer protection measure, ensuring that coverage in the assigned risk plan is offered to the applicant, by the producer, only after a diligent search of the voluntary market has been conducted.

Section 67a.2(c) replaced section 33.29(c). Section 33.29(c) was deleted because it contains unnecessary language regarding the administration of commissions which should be addressed in the assigned risk plan rules. Section 67a.2(c), Section 67a.2(d), and Section 67a.2(e) contain language previously found in section 33.29(d). Section 33.29(d) was split into three sections to emphasize the importance of each provision. However, these sections were modified to eliminate unnecessary reference to conformance to the assigned risk plan rules. Section 67a.2(c) was also modified to allow for the acceptance of premium using other methods of premium payment approved by the Commissioner.

Section 67a.2(f), formerly section 33.29(e) has been modified to eliminate unnecessary language referencing the assigned risk plan rules.

Section 67a.2(g) has been added to reflect case law which upholds the Department's position regarding the prohibition against producers charging referral or other fees for placing or servicing any assigned risk plan policy. See, Park v. Chronister, 617 A.2d 863 (Pa. Cmwlth. 1992).

Section 67a.2(h), formerly section 33.29(f), has been modified to clarify that the Department's authority to enforce the provisions of the assigned risk plan rules, relating to the conduct of producers, is not limited to fiduciary matters.

Fiscal Impact

The regulation will have no impact on costs associated with the Department, producers, Assigned Risk Plan, political subdivisions or the general public.

Paperwork

The regulation imposes no additional paperwork requirements on the Department, producers, Assigned Risk Plan or the general public.

Persons Regulated

The regulation applies to agents or brokers authorized by the Insurance Department to conduct business of property and casualty insurance and are certified by the Assigned Risk Plan.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)), renumbered and amended by the act of June 25, 1997 (P.L. 252, No. 24)(1997 Pa. Legis. Serv. 180-97(West)), the agency submitted a copy of this regulation on 1/27/99 to the Independent Regulatory Review Commission and to the Chairmen of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the agency within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the regulations.

M. Diane Koken
Insurance Commissioner

CONTINUATION SHEET FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
Pursuant to Commonwealth Documents Law

ANNEX A

PENNSYLVANIA REGULATIONS TITLE 31. -- INSURANCE PART I.-- GENERAL PROVISIONS. Subpart C. Agents and Brokers Chapter 33 -- LICENSING REQUIREMENTS -
- Agent Licenses

Sec.

33.29 [Pennsylvania automobile insurance plan (assigned risk)] Reserved.

§ 33.29 [Pennsylvania automobile insurance plan (assigned risk)]

(a) An agent who submits an application to the assigned risk plan through the company for which he is a licensed agent is not required to be licensed as an insurance broker in order to handle the delivery of the policy of the company to which the risk is assigned.

(b) Commissions earned on the transaction shall be considered as having been earned in the normal business of the agent with the company for which he holds an agent's license.

(c) An agent or broker through whom an assigned risk was placed is obligated to return, on a pro rata basis, his unearned commission to the insurance company to which the risk was assigned upon cancellation of a policy by the company. An agent or broker through whom an assigned risk was placed is obligated to return, on a short rate basis, as provided in the policy, his unearned commission to the insurance company to which the risk was assigned upon cancellation of a policy by an insured. In the absence of an explanation satisfactory to the Insurance Department, an agent or broker failing to return unearned commissions as provided in this subsection shall be deemed in violation of sections 633 and 639 of the Insurance Department Act of one thousand nine hundred and twenty-one (40 P.S. §§ 273 and 279) and other applicable laws and shall be subject to penalties as specified therein.

(d) Upon original applications, premium monies to the producer of record shall be in the form of a postal money order, cashier's check, certified check, or personal check made payable to the "Pennsylvania Automobile Insurance Plan." The producer of record shall speedily remit such payment in conformance with the rules of the Plan. Upon receipt of such premium monies, the producer of record shall issue a receipt, certifying the date -- day, month, and year -- and time -- hour, a.m. or p.m., the applicant's name and address, the signature of the producer, and the following statement:

"Received for the Pennsylvania Automobile Insurance Plan."

The producer of record shall maintain appropriate records of original applications, noting the time and date of coverage and shall make available for inspection or photocopying such records

by the Plan or by a company representative or the Insurance Department. A copy of such receipt will be sent to the Plan along with other forms in conformance with the rules of the Plan.

(e) If the applicant produces reasonable documentation of payment of the required premium to the producer of record and completion of an application for insurance under the Plan, payment to the producer of record shall be deemed payment to the Plan for the purposes of this subsection. Coverage shall be deemed effective as of the date and time specified in the application and according to Sections 11, 12, and 14 of the Plan.

(f) An agent or broker failing to remit premium monies received pursuant to subsection (d) of this section violates sections 633, 633.1 and 639 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P.S. §§ 273, 273.1 and 279) and any other applicable laws and shall be subject to penalties as specified therein.] Reserved.

CONTINUATION SHEET FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

Annex A

Pennsylvania Assigned Risk Plan Consumer Protections

Sec.

67a.1 Definitions

67a.2 Consumer Protections

§ 67a.1 Definitions

The following words and terms, when used in this chapter, have the following meaning:

Assigned Risk Plan - a mechanism for the equitable apportionment among insurers of good faith applicants who are unable to obtain insurance through the voluntary market.

Producer - an agent or broker authorized by the Insurance Department to conduct business and certified by the Assigned Risk Plan.

Producer of Record - The agent or broker authorized by the Insurance Department to conduct business, certified by the Assigned Risk Plan and whose signature appears on the application for insurance.

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

§ 67a.2 Consumer Protections

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

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

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

(d) Upon receipt of such premium monies for an original application, the producer of record shall issue a receipt showing the amount received, and the date and time that the money

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

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

(f) If the applicant produces reasonable documentation of payment of the required premium to the producer of record in accordance with paragraph (c) and a completed application for insurance under the Assigned Risk Plan, payment to the producer of record shall be deemed payment to the Assigned Risk Plan in accordance with the Assigned Risk Plan rules. Coverage shall be effective as of the date and time specified in the application in accordance with the Assigned Risk Plan rules.

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

(h) Producers shall comply with the Assigned Risk Plan rules. Violation of the Assigned Risk Plan rules may be construed to be a violation of Section 604 of the Insurance Department Act.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

**OFFICE OF SPECIAL PROJECTS
1326 Strawberry Square
Harrisburg, PA 17120**

**Phone: (717) 787-4429
Fax: (717) 705-3873
E-mail: psalvato@ins.state.pa.us**

January 27, 1999

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17120

Re: Insurance Department
Proposed Regulation No. 11-
171, Assigned Risk
Consumer Protections

Dear Mr. Nyce:

Pursuant to Section 5(a) of the Regulatory Review Act, (40 P.S. §745.5(a)), enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 67a, Assigned Risk Consumer Protections. Section 5(e) of the Act (40 P.S. §745.5(e)) provides that the Committees be allowed a minimum 10-day review of any regulation when the Committees are prevented from completing their 20-day review because of sine die or the expiration of the legislative session. This regulation was originally published on October 17, 1998 and the Committees' 20-day review started on November 16, 1998. The Act provides the Committees a 10-day review if the Committees had more than 10-days but less than 20-days to review the regulation from when it was originally submitted.

The Department is also submitting copies of all comments received during the 30-day public comment period that started with publication in the *Pennsylvania Bulletin* on October 17, 1998.

Chapter 33, section 33.29, was initially promulgated to address the Department's concerns regarding the method of payment and the manner in which premium monies were collected and forwarded to the Pennsylvania Assigned Risk Plan. Additionally, the Department wanted to ensure that coverage in the market of last resort is provided as expeditiously as possible so that the owners and operators of motor vehicles registered or operated in Pennsylvania can meet the requirements for compulsory automobile insurance in the Commonwealth. These guidelines were offered to assist the applicant, producer and the plan.

The purpose of this rulemaking is to repeal 31 Pa. Code, Chapter 33, §33.29 and establish Chapter 67a, §§67a.1-67a.2, Pennsylvania Assigned Risk Consumer Protections by: 1) providing a new title and format to facilitate understanding of the terminology and the provisions set forth in the regulation; 2) adding detail for clarity; 3) eliminating those items that should not be reflected in regulation but should be addressed in the assigned risk plan rules; and

January 25, 1999

Page 2

4) strengthening the provisions of the regulation continuing to ensure protections for those residents of the Commonwealth seeking automobile insurance through the market of last resort.

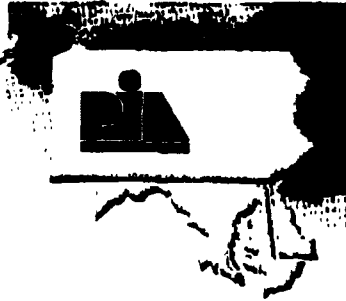
If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

11-171p sine die.doc



November 17, 1998

Via Facsimile (2 total pages) 717-772-1969

Peter J. Salvatore, Regulatory Coordinator
Office of Special Projects
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Dear Mr. Salvatore:

On behalf of the Professional Insurance Agents Association of Pennsylvania, Maryland and Delaware (PIA), I am writing concerning the Insurance Department's proposed amendments to 31 PA. Code Chs. 33 and 67a. in the October 17, 1998 *Pennsylvania Bulletin*. As the Commonwealth's largest trade association representing more than 10,000 independent agents, PIA regrets the Department's decision not to share with us an exposure draft, as it commonly does, when the nature of the rulemaking directly affects our members.

We would be remiss not to mention the matter of *Roger Weber and PIA v. Pennsylvania Insurance Department* at Docket No. FC90-01 pending since 1990 before the Insurance Commissioner. The *Weber* case challenged the legality of Assigned Plan Rule 14A which governs the take-out procedures of the Plan. Most clearly the statute at 75 Pa. C. S. Section 1741 (MVFRL) requires take-out from the Plan into the ordinary market to be effectuated by way of regulations promulgated by the Pennsylvania Insurance Department. A Joint Stipulation of Fact surrounding the mechanisms employed for take-out under the Plan was reached between counsel for the Department, the Plan and PIA. The Briefs in the case were complete as of November 1996. All parties agreed under this Stipulation that the Plan operated take-out through Plan Rule 14A and that Plan Rule 14A was not promulgated by regulation. These stipulated facts notwithstanding, the Plan and the Department argue meritless positions in an effort to avoid the obvious, that being that take-out must be by regulation.

On May 11, 1998, PIA's counsel sought the status of the Commissioner's decision in the *Weber* case and was advised via letter of May 15, 1998 from Chief Hearing Examiner Johnson that the decision would be forthcoming.

Ironically, while a substantial portion of the take-out rules which directly affect the consumer, (premium rates, length of time in Plan before take-out, notice of take-out to insureds), are not being promulgated via regulations as required by the MVFRL, the regulations proposed by the Department at Chapter 67a, which in effect, protect the Plan, not consumers, and which are not clearly authorized by statute, are being promulgated.

5050 Ritter Road
P.O. Box 2023
Mechanicsburg, PA
17055-0763
Phone (717) 795-9100
Fax (717) 795-8347

Additionally, the definition of Assigned Risk Plan (67a.1) is different from the statute. We recommend that it follow the statutory definition (75 Pa. C.S. § 1702 or § 1741).

Second, producer of record is defined, in part, as "the agent or broker authorized by the department to conduct business and..." We recommend deleting the phrase "authorized by the department to conduct business," as it is unnecessary. The Department through the issuance of either a certificate of qualification or license already authorizes an agent or broker, respectively. No additional authorization is needed.

Third, the definition of voluntary market is inconsistent with the statute (75 Pa. C.S. § 1741). The statute refers to this as the ordinary market, and for consistency, we recommend it be changed to "Ordinary" market or add the word "ordinary" before "market" in the definition.

Fourth, 67.a.2 (b) confuses us. What is the intent of introducing a requirement that the producer conduct a "reasonable search" of the ordinary market? Plan rules are void of any such requirement, and there is no statutory basis for it as well. The statute provides that the Plan is for "...applicants of motor vehicle liability insurance who are entitled to, but are unable to, procure insurance through ordinary methods." (75 Pa. C.S. § 1741) There is no statutory duty on a producing broker to make a reasonable search of the marketplace.

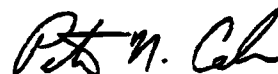
Furthermore, Section 1742 of the statute prescribes specific items that the Plan must provide. There is no reference to producers conducting a "reasonable search", therefore it can be reasonably determined that the legislature did not find this requirement necessary.

We question the Department's authority to bar an agent or broker from accepting cash under 67a.2. (c). Does the Department have a legal interpretation to support its position? Furthermore, the acceptance of cash by the producing broker is oftentimes a benefit and convenience to the consumer, not a protection. The protection here is for the Plan.

PLA strongly opposes 67a.2(d) as presently written. We objection to the requirement that an additional receipt be provided when a copy of the application would suffice.

Once again, we appreciate the opportunity to comment on the regulation. If you have any questions, please call me.

Sincerely,



Peter N. Calcara, Vice President
Government and Industry Affairs

DUANE, MORRIS & HECKSCHER

ATTORNEYS AT LAW

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600 TRAVIS, SUITE 6500
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November 16, 1998

LEWIS R. OLSHIN
DIRECT DIAL: (610) 251-6931
E-MAIL: olshin@duanemorris.com

VIA FACSIMILE & FEDERAL EXPRESS

Peter J. Salvatore, Regulatory Coordinator
Office of Special Projects
Commonwealth of Pennsylvania
Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

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NOV 17 1998

Office of Special Projects

Re: Proposed Amendments to Title 31 §33.29 of the Pennsylvania Code

Dear Mr. Salvatore:

This letter is written by me, in my capacity as counsel to the Pennsylvania Assigned Risk Plan, as part of the comment process to the proposed amendments to Title 31 §33.29, of the Pennsylvania Code. As set forth in the Explanation of Regulatory Requirements, the new provisions of §33.29 will be moved to Chapter 67a. The purpose of this letter is to comment upon §67a.2.(f).

As a result of the Act 6 Amendments, the Legislature in 75 Pa. C.S.A. §1742(4) enacted an Electronic Mail Binding procedure for the Pennsylvania Assigned Risk Plan. Recently, the Pennsylvania Superior Court decided the case of Nationwide v. Johnson, 676 A.2d 680 (Pa. Super. 1996) *affirmed per curiam*, 704 A.2d 127 (Pa. 1998), holding that the provisions of the Electronic Mail Binding System are enforceable. Accordingly, as a result of the Statute as interpreted by the Superior Court, we respectfully request that the last sentence of Chapter 67a.2.(f) be deleted and the following sentence be substituted:

"The effective date of coverage for the application will be determined in accordance with 75 Pa. C.S.A. §1742(4) and in accordance with the Assigned Risk Plan Rules."

Peter J. Salvatore, Regulatory Coordinator
November 16, 1998
Page 2

We respectfully request your consideration of the proposed change, since we believe it captures the Legislative intent as set forth in the Nationwide v. Johnson case.

Respectfully submitted,



Lewis R. Olshin
for DUANE, MORRIS & HECKSCHER LLP

LRO:mhf

cc: Thomas Lajeunesse, Chair
 Pennsylvania Assigned Risk Plan
 Governing Committee
 Anthony Madalone, Manager
 Pennsylvania Assigned Risk Plan
 Margaret R. Levy, Esquire
 Pennsylvania Assigned Risk Plan

CBK\21892.1

The Insurance Federation of Pennsylvania, Inc.

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Government Affairs

November 18, 1998

Peter J. Salvatore
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: 31 Pa. Code Section 33.29 and Chapter 67a

Dear Mr. *Salvatore* Salvatore:

The Insurance Federation supports the Insurance Department's proposed deletion of Section 33.29 and its proposed addition of Chapter 67a. As the Department notes, these changes will update the protections for consumers covered through the Assigned Risk Plan that are the purpose of the regulation.

Sincerely,

Sam Marshall

Samuel R. Marshall

c: Robert E. Nyce, Executive Director
Independent Regulatory Review Commission

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 11-171
SUBJECT: PA Assigned Risk Plan Consumer Protections
AGENCY: DEPARTMENT OF INSURANCE

99 JAN 27 PM 4: 27
INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-27-99	<i>E. Dapagan</i>	HOUSE COMMITTEE ON INSURANCE
1/27/99	<i>Denise Patton</i>	SENATE COMMITTEE ON BANKING & INSURANCE
1/27/99	<i>Kim C. Garner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

January 22, 1999