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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 4, 2002

Honorable M. Diane Koken, Commissioner  
Insurance Department  
1326 Strawberry Square  
Harrisburg, PA 17120

Re: Regulation #11-146 (IRRC #2246)  
Insurance Department  
Public Adjuster Contracts and Licensing

Dear Commissioner Koken:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
evp  
Enclosure

cc: Honorable Nicholas A. Micozzie, Majority Chairman, House Insurance Committee  
Honorable Anthony DeLuca, Democratic Chairman, House Insurance Committee  
Honorable Edwin G. Holl, Chairman, Senate Banking and Insurance Committee  
Honorable Jack Wagner, Minority Chairman, Senate Banking and Insurance Committee

# Comments of the Independent Regulatory Review Commission

on

## Insurance Department Regulation No. 11-146

### Public Adjuster Contracts and Licensing

April 4, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Insurance Department (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 4, 2004, the regulation will be deemed withdrawn.

#### **1. General. – Protection of the Public Welfare; Clarity.**

This proposed rulemaking amends Chapter 115 to regulate the licensing and conduct of public adjusters and public adjuster solicitors. We have two general comments for the Department regarding this regulation.

First, commentators have suggested that these regulations should include specific provisions and procedures for revocation or suspension of a license or for imposition of fines. These provisions are contained in Section 1606(a) of the Public Adjusters Act (63 P.S. § 1606(a)) (Act). For increased clarity, the Department should consider retaining Section 115.7 and adding a similar section, which references the provisions of the Act dealing with revocation and suspension.

Second, the Department has the statutory authority based on Sections 1606 and 1608 of the Act (63 P.S. §§ 1606 and 1608) to impose further consumer protections on public adjusters. Therefore, we believe that the regulation's consumer protections could be enhanced by adding:

- 1) A deadline for public adjusters to provide notification to the insurer of the public adjuster's representation to facilitate the processing of claims.
- 2) A set timeframe of three business days for public adjusters to communicate any and all settlement offers from an insurer to an insured in writing within three business days so that the insured is made aware of all the options.
- 3) A requirement that public adjusters should reply to any written or oral communication from an insurer with respect to a claim within seven business days of receiving it if the communication solicits a reply to ensure that the claim process continues with limited interruptions.
- 4) Criteria stating that public adjusters, who do not respond to communications, should be deemed to be demonstrating incompetency or untrustworthiness. This is consistent with Section 1606(a)(13) of the Act (63 P.S. § 1606(a)(13)).

#### **2. Consistency with the *Pennsylvania Bulletin*. – Clarity.**

The version of the proposed regulation submitted by the Department is inconsistent with the version published in the *Pennsylvania Bulletin*. To be consistent with the reformatting done by

the Legislative Reference Bureau, the Department needs to correct the references in the text of Section 115.11 to “subsections (b) and (c)” and of Section 115.12 to “subsection (a).”

**3. Section 115.1. Definitions. – Clarity.**

The Department has defined the terms “active officer” and “active partner” in the regulation. The phrase “who holds a current public adjuster license and” appears in the text of both definitions. The Act and Sections 115.17 and 115.21 relating to “general application requirements” and “partnership or corporation application procedures” contain the requirements for licensure of active officers and active partners. Because these individuals are required to obtain a license, we believe the phrase noted above should be deleted from both definitions in the final-form regulation.

**4. Section 115.2. Contents of public adjuster contracts, minimum standards. – Clarity.**

Subsection (a)(4) provides the adjusters contract is to include “The consideration expressed as a percentage of any payments to be received on the negotiated claim, *and* as a maximum dollar amount.” (Emphasis added.) For clarity, should the word “and” be replaced with the word “or”?

Subsection (b)(3) provides that the public adjuster contract may not impose “unreasonable late fees or collection costs on the insured.” The Department should provide examples of what it considers “unreasonable” with regard to late fees or collection costs.

**5. Section 115.3. Additional procedures. – Reasonableness.**

Subsection (d) contains requirements for the public adjuster to fulfill within “15 calendar days” after receipt of the cancellation notice. Is 15 calendar days a reasonable time period for a public adjuster to fulfill these requirements? The Department should explain.

**6. Section 115.11. Examination requirement. – Clarity.**

This section requires applicants to “successfully complete an examination, except as provided for in Subsections (b) and (c).” Applicants seeking a license shall apply for examination directly to the testing facility. It is not clear where the applicant may obtain “an examination” or how the applicant will contact “the testing facility.” To add clarity to this section, the Department could cross-reference Section 115.15(5), which provides the pertinent information.

**7. Section 115.13. Examination requirements for nonresident applicants. - Clarity.**

Paragraph (3) requires a nonresident applicant for a license to “pass the appropriate examination if unable to produce documentation from the confirming regulatory authority which is satisfactory to the Department.” The Department should elaborate upon the information that it would deem satisfactory in the final-form regulation.

**8. Section 115.15. Administration of examination. - Clarity.**

This section requires an eligible delegee to adhere to certain standards. Paragraph (2) states “Testing *may* be conducted in locations throughout this Commonwealth and other designated locations.” We have two concerns.

First, if the Department requires the eligible delegee to offer exams throughout the Commonwealth, then the word “may” should be replaced with the word “shall.”

Second, what “other designated locations” would not be located in the Commonwealth? The Department should provide examples of “other designated locations” in the final-form regulation, or delete the phrase.