

Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-155

IRRC Number: 2642

(3) Short Title

Objections and Procedure for Hearings on Reports of Examination

(4) PA Code Cite

31 Pa Code, Chapter 58, §§ 58.1, 58.2, 58.3

(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)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this final omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations, adopted January 11, 1974, relate to objections and hearings on reports of examinations conducted by the Insurance Department. Section 58.2 sets forth requirements that examinees must meet when filing objections to reports of examination, and § 58.3 describes the procedure for hearings on objections. The provisions of the regulations have been superseded by section 905 of the Insurance Department Act of 1921, added December 18, 1992 (40 P.S. § 323.5). In particular, section 905(b) provides that an examinee may "make a written submission or rebuttal with respect to any matters contained in the examination report." (40 P.S. § 323.5(b)). The currently effective process for hearings related to examination reports is found at section 905(c)-(e) (40 P.S. § 323.5(c)-(e)).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

There is no compelling public interest that justifies these regulations, and the Insurance Department proposes to repeal the regulations for the following reasons. The provisions of the regulations have been superseded by section 905 of The Insurance Department Act of 1921 (40 P.S. § 323.5). Section 905(b) provides that an examinee may "make a written submission or rebuttal with respect to any matters contained in the examination report." (40 P.S. § 323.5(b)). The currently effective process for hearings related to examination reports and written rebuttals is found at section 905(c)-(e) (40 P.S. § 323.5(c)-(e)), which provides only for a limited, investigatory hearing at the discretion of the Insurance Commissioner's designee. The provisions in section 905 for finalizing reports of examination through written submissions or rebuttals and a discretionary investigatory hearing are sufficient and are inconsistent with the procedure for "objections" set forth in the regulation, which was promulgated under a prior statutory procedure that was repealed and replaced by the procedure established by section 905. Therefore, the regulations have been superseded by section 905 and are no longer necessary.

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(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.

The repeal of the regulations will take effect after review and approval by the legislative standing committees, the Independent Regulatory Review Commission and the Office of Attorney General, and upon final publication in the *Pennsylvania Bulletin*.

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

The repeal of the regulations has no fiscal impact because the regulatory provisions still exist under sections 905 (c)-(e) of the Insurance Department Act (40 P.S. § 323.5(c)-(e)).

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

There are no public health, safety, environment 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.)

The insurance industry will benefit in that the inconsistency between current statute and regulation will be eliminated.

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(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.

(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.)

The regulation applies to all insurers doing business in the Commonwealth.

(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.

Comments regarding the amendment of this regulation were not solicited from the various trade associations representing the insurance industry.

(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.

There are no cost or savings associated with the repeal of this regulation to the insurance industry.

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(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 the repeal of 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 associated to state government associated with the repeal of this rulemaking.

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(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.

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(20b) Provide the past three-year expenditure history for programs affected by the regulation.
N/A.

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 repeal of this regulation.

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

Repealing Chapter 31 Pa. Code, Chapter 58 is the most efficient method to achieve consistency with the current authorizing statute.

(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 repeal of the regulation is the most efficient method of updating the regulatory requirements.

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(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.

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(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 repeal of the regulation imposes no additional paperwork requirements on the Department, insurers, 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 repeal of this 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 repeal of this rulemaking will take effect upon approval of the final-omitted regulation by the legislative standing committees, the Office of the 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.

No review is required because this is a repeal of a regulation.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

By _____
(Deputy Attorney General)

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. 11-155

DATE OF ADOPTION: _____

BY: _____
Joel Ario

Acting Insurance Commissioner

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

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

BY: _____
Andrew C. Clark

Andrew C. Clark
SEP 21 2007

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 FINAL-OMITTED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 58, §§58.1-58.3

Objections and Procedure for Hearings on Reports of Examination

PREAMBLE

The Insurance Department (Department) hereby repeals 31 Pa. Code, Chapter 58, §§ 58.1-58.3, Objections and Procedure for Hearings on Reports of Examination, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); 2 Pa. C.S. §§ 101 - 555 (relating to administrative law and procedure); and section 905 of The Insurance Department Act of 1921 (40 P.S. § 323.5).

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) known as The Commonwealth Documents Law (CDL) (45 P.S. § 1204(3)).

Purpose

The purpose of this final omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations, adopted January 11, 1974, relate to objections and hearings on reports of examinations conducted by the Department. Section 58.2 sets forth requirements that examinees must meet when filing objections to reports of examination, and section 58.3 describes the procedure for hearings on objections. The regulations have been superseded by section 905 of The Insurance Department Act of 1921, added December 18, 1992 (section 905) (40 P.S. § 323.5). In particular, section 905(b) provides that an examinee may "make a written submission or rebuttal with respect to any matters contained in the examination report." (40 P.S. § 323.5(b)). The currently effective process for hearings related to examination reports and written rebuttals is found at section 905(c)-(e) (40 P.S. § 323.5(c)-(e)), which provides only for a limited, investigatory hearing at the discretion of the Insurance Commissioner's designee. The provisions in section 905 for finalizing reports of examination through written submissions or rebuttals and a discretionary investigatory hearing are sufficient and are inconsistent with the procedure for "objections" set forth in the regulation, which was promulgated under a prior statutory procedure that was repealed and replaced by the procedure established by section 905. Therefore, the regulations have been superseded by section 905 and are no longer necessary.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the notice procedures are impracticable and unnecessary. This deletion of Chapter 58 eliminates obsolete regulations that are no longer applicable to reports of examination conducted by the Department. Furthermore, public comments cannot change the obsolete status of the regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (40 P.S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

Affected Parties

Because the regulations are obsolete, there are no parties affected by the deletion of the regulations.

Fiscal Impact

The deletion of the regulations has no fiscal impact.

Paperwork

The deletion of the regulations has no impact on paperwork.

Effectiveness/Sunshine Date

This order is effective upon publication in the Pennsylvania Bulletin. No sunset date has been assigned because the order repeals obsolete regulations.

Contact Person

Questions regarding the final omitted rulemaking may be addressed to Peter J. Salvatore, Regulatory Coordinator, Pennsylvania Insurance Department, 1326 Strawberry Square, Harrisburg, Pennsylvania 17120, phone number (717) 787-4429. Questions may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the regulations with the proposed rulemaking omitted on September 28, 2007 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 - 732-506).

In accordance with section 5(c) of the Regulatory Review Act, the regulations were deemed approved by the Senate Banking and Insurance Committee on _____, and deemed approved by the House Insurance Committee on _____. IRRC met on _____ and approved the regulations.

Findings

The Insurance Commissioner finds that:

- (1) There is good cause to amend Chapter 58, effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of these regulations would be impractical and not serve the public interest. Under Section 204(3) of the CDL there is no purpose to be served by deferring the effective date.

(2) There is good cause to forego public notice of the intention to amend Chapter 58, because notice of the amendment under the circumstances is unnecessary and impractical (45 P.S. §1204(3)) because the authorizing statute was repealed, therefore, the regulations have no effect and create confusion and contradict the current statute.

Order

The Insurance Commissioner, acting under the authority in Sections 206, 506, 1501 and 1502 of the Administrative Code of 1929, orders that:

(1) The Regulations of the Department at 31 Pa Code, Chapter 58, are amended as set forth in Annex A.

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

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

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

Joel Ario
Acting Insurance Commissioner

ANNEX A

TITLE 31. INSURANCE. PART I. GENERAL PROVISIONS. SUBPART F. RULES OF PROCEDURE. CHAPTER 58. [OBJECTIONS AND PROCEDURE FOR HEARINGS ON REPORTS OF EXAMINATION] Reserved.

Sec.

58.1.	[General provisions.] <u>Reserved.</u>
58.2.	[Requirements for making objections.] <u>Reserved.</u>
58.3.	[Hearing procedure.] <u>Reserved.</u>

§ 58.1. [General provisions.]

All organizations and entities which have been examined by the Insurance Commissioner have the privilege of objecting to the report of examination within 30 days after reception of such report. If any objection is made, the Insurance Commissioner will grant a hearing to the company before making the report available for public inspection.] Reserved.

§ 58.2. [Requirements for making objections.]

(a) The objections of an examinee to the report of examination shall be specific.

(1) If a company objects to particular figures included in the report of examination, alternate figures which the company believes to be correct shall be included. If such figures are not included, the company shall provide an explanation.

(2) If a company objects to a particular phrase appearing in a report of examination, the company shall propose alternate phrasing.

(3) If a company objects to particular recommendations or conclusions contained in the Department's original report of examination, the company shall state alternative recommendations or conclusions. The company shall also indicate the basis for such alternative recommendations or conclusions.

(4) If a company proposes that a particular recommendation be deleted, the company shall indicate the reason for its proposal.

(5) In all cases, the company shall indicate if objections are related to factual disputes, legal disputes, stylistic elements of the report, or other matters.

(6) The company shall number each objection separately and shall indicate the pages of the original report of examination to which each particular objection relates.

(b) Objections to reports of examination which fail to conform to the guidelines set out in this subsection will be returned unfiled, or, at the option of the Insurance Department, may be

accepted for filing, with particular deficiencies noted, in which case such deficiencies shall be corrected within five days.

(c) If a company does not follow the requirements of this subsection or does not correct the deficiencies as required, the company may be considered not to have made any objections, and the Commissioner will make the examination report public at his discretion.] Reserved.

§ 58.3. [Hearing procedure.

(a) Upon receiving properly filed objections to a report of examination, the Commissioner may schedule one or more prehearing conferences, for the purpose of determining whether one or more of the objections can be amicably settled, and for the further purpose of delineating whatever specific issues may continue to be in dispute. Any filed objections may be accepted by the Department, withdrawn by the company, or otherwise disposed of at this informal stage of the proceedings.

(b) If objections cannot be disposed of through prehearing conferences, the department shall schedule formal administrative hearings.

(c) Prehearing conferences and hearings will otherwise be subject to procedures set out in 1 Pa. Code §§ 35.111- 35.116, 35.121 - 35.128, 35.131 - 35.133, and Subchapters C - F (relating to prehearing conferences; hearing transcript; evidence and witnesses; motions; presiding officers; and briefs).] Reserved.



COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT

BUREAU OF ADMINISTRATION
1326 Strawberry Square
Harrisburg, PA 17120

Phone: (717) 787-4429
Fax: (717) 705-3873
E-Mail: psalvatore@state.pa.us

September 28, 2007

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Final- Omitted Regulation No. 11-155, Objections and Procedure for Hearings on Reports of Examination

Dear Mr. Kaufman:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your information and review is final-omitted regulation 31 Pa. Code, Chapter 58, Objections and Procedure for Hearings on Reports of Examination

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

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER: 11-155
 SUBJECT: OBJECTIONS AND PROCEDURE FOR HEARINGS ON REPORTS OF EXAMINATION
 AGENCY: DEPARTMENT OF INSURANCE

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INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- 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
9/28/07	<i>[Signature]</i>	HOUSE COMMITTEE ON INSURANCE
9/28/07	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>Rep. Anthony DeLuca</u>
9/28/07	<i>[Signature]</i>	SENATE COMMITTEE ON BANKING & INSURANCE
9/28/07	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>Sen. Donald C. White</u>
9/28/07	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
9/28/07	<i>[Signature]</i>	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)