

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRRC's website)

(1) Agency  
**Department of State, Bureau of Professional and  
Occupational Affairs, State Board of Auctioneer Examiners**

(2) Agency Number: 16A  
Identification Number: 16A-649

IRRC Number: 2982

(3) PA Code Cite: 49 Pa. Code § 1.41

(4) Short Title: **Schedule of Fees**

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) [cymontgome@pa.gov](mailto:cymontgome@pa.gov).**

Secondary Contact: **Wesley Rish, Counsel, State Board of Auctioneer Examiners, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) [wrish@pa.gov](mailto:wrish@pa.gov).**

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 **FINAL REGULATION**  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

**The regulation amends § 1.41 (relating to schedule of fees) to increase biennial renewal fees for apprentice auctioneers, auctioneers, licensed auction houses and licensed auction companies, as set forth in Annex A, in order to produce adequate revenue to meet projected expenditures, as required by section 6(a) of the act (63 P.S. § 734.6(a)). Specifically, the biennial renewal fees for apprentice auctioneers will increase from \$100 to \$130; and the biennial renewal fees for auctioneers, auction houses and auction companies will increase from \$200 to \$260.**

(8) State the statutory authority for the regulation. Include specific statutory citation.

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

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(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**Except as set forth in paragraph (8), the regulation is not mandated by any Federal or State law or court order or Federal regulation.**

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

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

**The Board has not raised its biennial renewal fees since 1998, when the biennial renewal fee for apprentice auctioneers increased from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses increased from \$50 to \$200. (See, 28 Pa.B. 5869.) At the time, the Board anticipated that these fees would sustain the Board for at least 10 years. At the March 12, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 09-10 and 10-11, and projected revenue and expenses through 14-15. As anticipated, the biennial renewal fees were adequate for about 10 years. However, the actual expenditures for FY 2009-2010 and FY 2010-2011 outpaced revenues during the same period by approximately \$128,400. At the current fee levels, BFO projects revenue of approximately \$546,000 in the current biennial period (fiscal years 12-13 and 13-14) while projected expenditures are expected to be \$660,000 for the same period, a deficit of \$114,000. It is this deficit situation that necessitates a fee increase to recoup existing deficits and to ward off further deficits. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 6(a) of the act. The new biennial renewal fees will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.**

(11) 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 regulations.

**There are no Federal standards applicable to the subject matter of the regulation.**

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

**About half of the states regulate auctioneers to varying degrees. Some only require them to register as a business for tax purposes; others require auctioneers to be licensed. Of those states that require licensing, biennial renewal fees for auctioneers range from a low of \$70 to a high of \$450. For auction companies/firms, the biennial renewal fees range from a low of \$125 to a high of \$600. Most states limit apprentice licenses to one year, however those that do renew them generally renew annually at a fee of \$75 – \$150. Only one other state has a credential similar to the trading assistant registration and that is Illinois, which has an “internet auction listing service” which has a biennial renewal fee of \$450.**

**Based on this information, the Board believes the biennial renewal fees will not put Pennsylvania at a competitive disadvantage.**

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

**The rulemaking will not affect any other regulations of the Board or other state agencies.**

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

**Because an increase in fees is mandated by section 6(a) of the act, pre-draft input was not solicited. However, the proposal was discussed at public meetings of the Board, which are routinely attended by representatives of the Pennsylvania Auctioneers Association and other organizations that have an interest in the regulatory agenda of the Board. The proposal was published as proposed rulemaking and no public comments were received.**

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

**The regulation will increase the biennial renewal fees for licensees (but not registrants) of the Board. There are currently approximately 311 apprentice auctioneers, 157 auction houses, 2,059 auctioneers, and 220 auction companies that will be required to pay 30% more to renew their licenses/registrations when they expire in 2015, and thereafter.**

**According to the Small Business Administration (SBA), there are approximately 982,692 businesses in Pennsylvania; of which 978,831 are small businesses; and 3,861 are large businesses. Of the 978,831 small businesses, 236,775 are small employers (those with fewer than 500 employees) and the remaining 772,056 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses. Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of auctioneer licensees, a small business**

**in Subsector 453 (Miscellaneous Store Retailers) includes auction houses and auction companies in the category of “All Other Miscellaneous Store Retailers” (NAICS Code #453998), and is one that has average annual receipts of \$7.0 million or less. Likewise, auctioneers are included in NAICS Sector 56 (administrative and support, waste management and remediation services) under Subsector 561 (administrative and support services) in the category “All Other Support Services” (NAICS Code # 561990), which also has a small business threshold of \$7.0 million or less in average annual receipts. Therefore, for purposes of determining the economic impact on small businesses, the Board believes that a large number of its licensees either are or work for small businesses as that term is defined by the SBA and Pennsylvania’s Regulatory Review Act.**

**The Board has concluded that virtually all auction houses and auction companies in Pennsylvania are small businesses; and likewise all auctioneers and apprentice auctioneers either are themselves small businesses, or are employed by small businesses. However, whether these businesses will be adversely affected by the increase in the biennial renewal fee depends on whether the employer elects to pay the biennial renewal fees on behalf of its licensed employees. Some companies may do so, others may not. A company could avoid the adverse effect by simply requiring its employees to pay their own licensure fees.**

**(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.**

**There are currently approximately 311 apprentice auctioneers, 157 auction houses, 2,059 auctioneers and 220 auction companies that will be required to comply with the regulation.**

**(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.**

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

**The Board has not raised its biennial renewal fees since 1998, when the biennial renewal fee for apprentice auctioneers increased from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses increased from \$50 to \$200. (*See*, 28 Pa.B. 5869.) At the time, the Board anticipated that these fees would sustain the Board for at least 10 years. At the March 12, 2012, Board meeting, representatives from the Department of State’s Bureau of Finance and Operations (BFO) presented a summary of the Board’s revenue and expenses for fiscal years 09-10 and 10-11, and projected revenue and expenses through 14-15. As anticipated, the biennial renewal fees were adequate for about 10 years. However, the actual expenditures for FY 09-10 and FY 10-11 outpaced revenues during the same period by approximately \$ 128,400. At the current fee levels, BFO projects revenue of approximately \$ 546,000 in the biennial period including fiscal year 12-13 and 13-14 while budgeted expenditures for these 2 years are projected at \$ 660,000, producing a deficit of \$114,000. BFO projects that, without an increase to the biennial renewal fees, these biennial deficits will continue to mount. Therefore, the Board**

determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 6(a) of the act. As a result, the Board voted to increase biennial renewal fees by 30 % to meet projected expenditures, as set forth in Annex A. The new biennial renewal fees will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

**The regulatory amendment is mandated by section 6(a) of the act (63 P.S. § 734.6(a)) and is necessary to assure the fiscal integrity of the Board so that it may continue to carry out its mission.**

(19) 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. Explain how the dollar estimates were derived.

**The Board estimates that the increased fees will cost the regulated community approximately \$155,490 each biennial renewal period. This amount is calculated as follows:**

**311 apprentice auctioneers x \$30 increase = \$9,330**

**2,059 auctioneers x \$60 increase = \$123,540**

**157 auction houses x \$60 increase = \$9,420**

**220 auction companies x \$60 increase = \$13,200**

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**The rulemaking will not result in costs or savings to local government.**

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

**The Board will not incur an increase in administrative costs by implementing the rulemaking. Indeed, the regulatory amendment will permit the Board to recoup the costs of its operations. There are no other costs or saving to state government associated with compliance with the rulemaking.**

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**This rulemaking will not require any additional recordkeeping or other paperwork.**

(23) 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.

	<b>Current FY FY 14-15</b>	<b>FY +1 FY 15-16</b>	<b>FY +2 FY 16-17</b>	<b>FY +3 FY 17-18</b>	<b>FY +4 FY 18-19</b>	<b>FY +5 FY 19-20</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
<b>Regulated Community</b>	N/A		\$155,490		\$155,490	
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	N/A	N/A	\$155,490	N/A	\$155,490	N/A
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 FY 11-12 (actual)</b>	<b>FY -2 FY 12-13 (actual)</b>	<b>FY -1 FY 13-14 (budget)</b>	<b>Current FY FY 14-15 (proposed budget)</b>
<b>State Board of Auctioneer Examiners</b>	\$253,110	\$298,040	\$325,000	\$335,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.
- (a) Assuming that the majority of licensees either are “small businesses” or work for “small businesses” as that term is defined by the Regulatory Review Act and the SBA, there could be as many as approximately 2,436 small businesses subject to the regulation. However, some of the categories of licensees could be overlapping. For example, a licensed auctioneer could work for an auction house or auction company.
- (b) There are no projected reporting, or recordkeeping costs required for compliance. There are no additional administrative costs required for compliance. (The administrative costs would be those associated with filling out the biennial renewal form or online renewal application and either writing a check or processing the payment of the fee. These costs would be the same regardless of the increase in the fee.) Also, these fees can be avoided by the small businesses by requiring employees to pay their own biennial renewal fees.
- (c) As noted in the answer to question 7, the probable effect on impacted small businesses would be a \$30 increase in the biennial renewal fee for apprentice auctioneers, and a \$60 increase for auctioneers, auction houses and auction companies. As noted in the answer to question 19, the Board estimates that the increased fees will cost the regulated community approximately \$155,490 each biennial renewal period.
- (d) The board considered several alternatives as set forth in the answer to question 26 below and decided on a one-time 30% increase at its meeting in July of 2012. At its July meeting, the Board considered a one-time increase of 25% and a graduated fee increase over two biennial periods of 15% in 2015 and 12% in 2017. The Board dismissed these two other alternatives because the one-time 30% increase meets the statutory mandate to provide for biennial expenditures and allows the Board to recoup the existing and projected deficits at a reasonable pace.

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

**No special provisions have been developed for any affected groups or persons.**

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

**The Bureau of Finance and Operations (BFO) presented a number of scenarios for possible fee increases. Originally, when BFO first presented the possibility of a fee increase to the Board in May, a 110% increase was suggested. However, the Board pointed out to BFO that the large increase in expenditures in 2010 and 2011 appear to be an anomaly created by an influx in a particular class of disciplinary action that is not expected to be repeated. Thus, the Board asked BFO to prepare adjusted projections and return with another option. BFO returned in July and suggested either a one-time increase of 25%; a one-time increase of 30%; or a graduated fee increase over two biennial renewal periods of 15% in 2015 and 12% in 2017. The Board considered the one-time 30% increase to be the least restrictive alternative that meets the statutory mandate to provide for biennial expenditures and allows the Board to recoup the existing and projected deficits at a reasonable pace.**

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

**a & b) All licensees renew biennially. The Board did not consider less stringent reporting requirements or deadlines for small businesses or for licensees that work for small businesses.**

**c) There are no compliance or reporting requirements that could be consolidated or simplified. The biennial renewal process is the same whether a particular licensee is employed by a small business or a large business.**

**d) The regulations do not contain design or operational standards that need to be altered for small businesses.**

**e) To exclude any licensees from the requirements contained in the regulation (an increased biennial renewal fee) based on the size of their employers would not be consistent with public health and welfare because it would prevent the Board from obtaining adequate revenue to meet projected expenditures and it would not be able to carry out its legislative mandate.**

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

**No data, studies or references were used to justify the regulation.**



(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: **Within 30 days of publication as proposed.**
- B. The date or dates on which public meetings or hearings will be held: **No public hearings are scheduled. The Board discusses its regulatory proposals at regular public meetings usually held six times a year (January, March, May, July, September and November).**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Spring of 2015.**
- D. The expected effective date of the final-form regulation: **Upon publication as final.**
- E. The date by which compliance with the final-form regulation will be required: **The increased biennial renewal fees apply to the March 1, 2017 biennial renewal.**
- F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

**The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings usually held six times a year. The Board will meet on the following dates in 2015: January 14, March 9, May 18, July 13, September 14, and November 9, 2015. More information can be found on the Department's website ( [www.dos.pa.gov](http://www.dos.pa.gov) ).**

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FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

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

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

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

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Auctioneer Examiners  
\_\_\_\_\_  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-649

\_\_\_\_\_  
DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

OCT 06 2014

DATE OF APPROVAL  
(Executive Deputy General Counsel)  
(Strike inapplicable title)

BY:   
Sherman E. Hostetter, Jr., AU

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable. Copy not approved. Objections attached.
- Check if applicable. No Attorney General approval or objection within 30 day after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF AUCTIONEER EXAMINERS

49 PA. CODE, CHAPTER 1, § 1.41

SCHEDULE OF FEES

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

*Effective Date*

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin. It is anticipated that the increased biennial renewal fees will be implemented with the February 28, 2017, biennial renewal.

*Statutory Authority*

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

*Background and Need for Amendment*

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

The Board has not raised its biennial renewal fees since 1998, when the biennial renewal fee for apprentice auctioneers increased from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses increased from \$50 to \$200. *See*, 28 Pa.B. 5869. At the time, the Board anticipated that these fees would sustain the Board for at least 10 years. At the March 12, 2012, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 09-10 and 10-11, and projected revenue and expenses through 14-15. As anticipated, the biennial renewal fees were adequate for about 10 years. However, the actual expenditures for FY 09-10 and FY 10-11 outpaced revenues during the same period by approximately \$128,400. At the current fee levels, BFO projected that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$155,800 by the end of fiscal year 13-14, necessitating a fee increase in 2015 to recoup existing deficits and to ward off further deficits. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act. As a result, the Board voted at its July 9, 2012, meeting to increase biennial renewal fees by 30% to meet projected expenditures.

*Summary of Comments and the Board's Response*

The Board published a notice of proposed rulemaking in the Pennsylvania Bulletin on March 9, 2013, for thirty days of public comment. *See*, 43 Pa.B. 1279. No public comments

were received by the Board. On April 24, 2013, the House Professional Licensure Committee (HPLC) submitted two comments to the Board. First, the HPLC requested information pertaining to the major cost centers of the Board and any significant increases in its expenditures. Second, the HPLC requested further explanation on the Board's statutory authority for establishing a renewal fee for trading assistants, noting that the act of October 8, 2008 (P.L. 1080, No. 89) (Act 89 of 2008) established the registration requirement for trading assistants, specified that registration is required on a biennial basis, established that the registration fee shall be \$100, and specified that the Board shall not promulgate regulations pertaining to the registration requirement. Therefore, the HPLC questioned the Board's statutory authority to treat this biennial registration requirement as a renewal.

On May 8, 2013, the Independent Regulatory Review Commission (IRRC) submitted comments to the Board. First, IRRC agreed with the HPLC's comments and indicated that the Commission would review the Board's response to the HPLC's comments as part of the Commission's determination of whether this regulation is in the public interest. IRRC further asked the Board to explain its statutory authority to include any provisions for fees relating to trading assistants. In addition, IRRC asked for updated fee calculations and financial information and questioned the basis for the proposed 30% increase to the fees.

The Board first considered the HPLC and IRRC comments with regard to its statutory authority to include a provision for fees relating to trading assistants, to treat the registration fee for trading assistants as a "renewal" fee and to increase this fee which was initially set by statute. The Board believes that it has the authority to provide for and increase fees relating to trading assistants, which would be imposed in accordance with the provisions of the act. However, the Board has determined that, at least at this time, the costs associated with regulating the 47 licensed trading assistants did not merit an increase to the fee, as for each biennial renewal period it would raise only an additional \$1,410 (47 trading assistants x \$30 increase). The Board therefore has revised the final-form rulemaking to remove the proposed inclusion of fees concerning trading assistants. The Board notes that it will continue to charge the fee of \$100 with each application for trading assistant registration. Under section 10.1 of the act, trading assistant "[r]egistration is required on a biennial basis" and "a registration fee of \$100 shall be included with each application for registration."

The HPLC and IRRC also questioned the major cost centers of the Board and any significant increases in expenditures. The need for a fee increase at this time is not the result of significant increases in expenditures, but rather the fact that the Board has not increased its fees since 1998. At the present time, BFO projects biennial revenue of approximately \$546,000 for fiscal years 12-13 and 13-14; while projected expenditures for that same biennial period are expected to be approximately \$660,000, producing a deficit of \$114,000. It is this deficit situation that mandates that the Board raise its fees in accordance with section 6(a) of the act.

The cost centers of the Board fall into two categories: administrative costs and legal costs. Administrative costs include those associated with Board administration, the Commissioner's office, the Revenue office, and Departmental services (human resources, finance and operations, management information systems, etc.) Legal costs include costs associated with the legal office (prosecution division, board counsel, services of experts), hearing

expenses, the Professional Compliance Office, and enforcement and investigation. The largest cost center for the Board has historically been in the area of enforcement and investigation, ranging from a low of \$80,022.53 (in fiscal year 08-09) to a high of \$133,509.34 (in fiscal year 10-11), with an average of \$98,853.51 from fiscal year 06-07 through 12-13. These are the costs associated with investigatory services provided by the Bureau of Enforcement and Investigation to the Board and are entirely dependent upon how many complaints are filed, and how many of those complaints merit investigation. It is difficult to predict how many complaints may be filed in a given year, and historically the numbers have fluctuated dramatically, ranging from a low of 53 (in fiscal year 08-09) to a high of 185 (in fiscal year 10-11), with an average of 106 during the fiscal year 06-07 through 12-13 timeframe.

The second largest cost center is “Board administration,” which includes costs associated with the Board’s administrative staff, printing and mailing, publications, supplies, operating and fixed assets, and so forth. Board administration costs tend to fluctuate somewhat depending on whether a given year is a “renewal year” or a “non-renewal year,” as more administrative staff and resources are dedicated to the Board during a renewal year. This cost center has ranged from a low of \$46,699.09 (during fiscal year 07-08 – a non-renewal year) to a high of \$100,796.46 (during fiscal year 08-09 – a renewal year), but has averaged approximately \$68,945.47 during the entire fiscal year 06-07 through 12-13 timeframe.

The third largest cost center for the Board is the legal office which includes personnel related costs for the board counsel, prosecuting attorneys, regulatory counsel, and legal support staff. It also includes direct charges such as expert witness fees, and costs associated with legal notices published on behalf of the board. Legal office costs are also dependent to a large degree on the number of complaints that are filed, investigated and prosecuted. However, it also includes costs associated with the Board’s counsel and regulatory counsel, which tend to remain fairly constant. This cost center has ranged from a low of \$46,490.75 (in fiscal year 08-09) to a high of \$75,387.38 (in fiscal year 12-13), with an average cost of \$62,350.52 from fiscal year 06-07 through fiscal year 12-13. These three cost centers make up approximately 70% of the Board’s total expenses, with the remaining cost centers (Commissioner’s office, Revenue office, Departmental services, Hearing expenses, Professional Compliance Office and Board member expenses) making up the remaining 30%.

In response to IRRC’s request for updated financial information as the basis for the fee increase, the Board is attaching information prepared by BFO to the regulatory analysis form. This information is available upon request. IRRC asked for information about how the proposed increases correlate with the actual expenditures the Board incurs for each activity for which it is increasing a fee. The Board notes that biennial renewal fees are not related to a specific “activity,” but rather support all of the operations of the Board that are not otherwise funded by a specific fee. An application fee is an example of a specific fee that is designed to fund an activity – processing the application. On average, the Board receives less than \$50,000 in these targeted application fees each biennial renewal period. Biennial renewal fees produce over 90% of the Board’s revenue. The Board’s goal is to set the biennial renewal fee at a level that covers the operations of the Board, complies with section 6(a) of the act, and is reasonable for the regulated community.

*Description of amendments to the final-form rulemaking*

The Board amended its proposal to eliminate the increased fee for biennial registration of trading assistants. Therefore, in the final-form rulemaking, the result is that the biennial renewal fees for apprentice auctioneers increase from \$100 to \$130; and the biennial renewal fees for auctioneers, auction houses and auction companies will increase from \$200 to \$260, as previously proposed. The biennial registration fee for trading assistants remains at \$100.

*Fiscal Impact*

The increased biennial renewal fees will impact licensees of the Board. There are currently approximately 311 apprentice auctioneers, 157 auction houses, 2,059 auctioneers and 220 auction companies that will be required to pay 30% more to renew their licenses/registrations when they expire in 2017, and thereafter. The Board has concluded that virtually all auction houses and auction companies in Pennsylvania are small businesses; and likewise all auctioneers and apprentice auctioneers either are themselves small businesses, or are employed by small businesses. However, whether these businesses will be adversely affected by the increase in the biennial renewal fee depends on whether the employer elects to pay the biennial renewal fees on behalf of its licensed employees. Some companies may do so, others may not. A company could avoid the adverse effect by requiring its employees to pay their own licensure fees. The proposed regulation should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

*Paperwork Requirements*

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

*Sunset Date*

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 21, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1279 (March 9, 2013), to the House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the Independent Regulatory Review Commission (IRRC) for review and comment. In preparing the final-form regulation, the Board has considered all comments received from the HPLC and IRRC.

On October 17, 2014, the Board delivered final-form rulemaking to the HPLC, the SCP/PLC and IRRC. On November 10, 2014, the Board withdrew the previously delivered final-form rulemaking and delivered revised final-form rulemaking to the HPLC, the SCP/PLC

and IRRC. The General Assembly adjourned *sine die* on November 13, 2014, without the committees having the full 20-day review period. Following designation of the legislative oversight committees and publication in the Pennsylvania Bulletin on March 7, 2015, the Board again delivered the revised final-form rulemaking to the HPLC, the SCP/PLC and IRRC on March 13, 2015. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was deemed approved by the HPLC and by the SCP/PLC on April 15, 2015. Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was approved by IRRC on April 16, 2015.

#### *Contact Person*

Further information may be obtained by contacting Terrie Kocher, Board Administrator, State Board of Auctioneer Examiners, P.O. Box 2649, Harrisburg, PA 17105-2649, [rauctioneer@pa.gov](mailto:rauctioneer@pa.gov).

#### *Findings*

The State Board of Auctioneer Examiners 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) (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 as required by law and no public comments were received.

(3) The amendments to the final form rulemaking do not enlarge the purpose of proposed rulemaking published at 43 Pa.B. 1279.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

#### *Order*

The State Board of Auctioneer Examiners, acting under its authorizing statutes, orders that:

(a) The regulations of the Board at 49 Pa. Code § 1.41 are amended to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

Sherman E. Hostetter, Jr., AU  
Chairperson



ANNEX A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS**

**FEES**

**§ 1.41. Schedule of fees.**

Applicants shall pay the following fees:

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

~~Application fee for trading assistant registration ..... \$100~~

~~Biennial renewal fee for trading assistant registration ..... \$130~~

\* \* \* \* \*

Regulation 16A-649

Commentator's List

No comments were received.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF AUCTIONEER EXAMINERS

P.O. Box 2649  
Harrisburg, PA 17105-2649  
(717) 783-3397

March 13, 2015

The Honorable John F. Mizner, Esq., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Revised Final Rulemaking  
State Board of Auctioneer Examiners  
16A-649: SCHEDULE OF FEES

Dear Chairman Mizner:

On November 10, 2014, the State Board of Auctioneer Examiners delivered the referenced final-form rulemaking. Because the General Assembly adjourned *sine die* prior to the expiration of the 20-day period for review by the legislative oversight committees, the Board is resubmitting this rulemaking.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Sherman E. Hostetter, Jr.".

Sherman E. Hostetter, Jr., Chairperson  
State Board of Auctioneer Examiners

SEH/TAB:rs

Enclosure

cc: Ian J. Harlow, Acting Commissioner of Professional and Occupational Affairs  
Patricia Allan, Director of Policy, Department of State  
Steven V. Turner, Chief Counsel, Department of State  
Cynthia Montgomery, Regulatory Counsel, Department of State  
Wesley J. Rish, Counsel, State Board of Auctioneer Examiners  
State Board of Auctioneer Examiners

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

I.D. NUMBER: 16A-649  
 SUBJECT: Schedule of Fees  
 AGENCY: DEPARTMENT OF STATE  
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
 STATE BOARD OF AUCTIONEER EXAMINERS

**TYPE OF REGULATION**

- Proposed Regulation
- X 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

2015 MAR 13 AM 10:21

RECEIVED  
IRRC

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
3/13/15	<i>Michelle Warren</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE</i>
3/13/15	<i>Tomlinson</i>	MAJORITY CHAIR <u>Robert M. Tomlinson</u>
		MINORITY CHAIR _____
3/13/15	<i>K Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>