

Comments of the Independent Regulatory Review Commission



State Board of Auctioneer Examiners Regulation #16A-649 (IRRC #2982)

Schedule of Fees

May 8, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the March 9, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Auctioneer Examiners (Board) to respond to all comments received from us or any other source.

1. Comments of the House Professional Licensure Committee – Statutory authority; Economic impact.

The House Professional Licensure Committee (Committee) raised the following two issues:

- The Committee requests information pertaining to the major cost centers of the Board and any significant increases in its expenditures.
- The Committee requests further explanation on the Board's statutory authority for establishing a renewal fee for Trading Assistants. Act 89 of 2008 [Act 89] established a registration requirement, 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 established in Section 10.1. The Committee questions the Board's statutory authority to treat this biennial registration requirement as a renewal.

We agree with the Committee comments. We will review the Board's responses as part of our determination of whether the final regulation is in the public interest.

The proposed regulation adds two fees for trading assistants. There is a \$100 fee for registration and a \$130 fee for biennial renewal. Noting the statutory authority questions raised by the Committee, we further question how the Board interpreted its authority to propose adding these fees to its regulation. On the one hand, 63 P.S. § 734.6(a) states:

Setting of fees. – The license and examination fees and all other fees imposed under the provisions of this act shall be fixed by the board by regulation and

subject to review in accordance with . . . the Regulatory Review Act. (Emphasis added.)

However, subsequent to the establishment of the above statutory provision, Act 89 added 63 P.S. § 734.10.1, which established requirements for registration of trading assistants, including biennial registration of trading assistants application provisions and a registration fee of \$100. In addition, Section 7 of Act 89 states:

The board shall not promulgate regulations pertaining to Section 10.1 of the act . . .

Relating to the Committee's question on the Board's statutory authority to treat this biennial registration requirement as a renewal, we further ask the Board to explain its statutory authority to include in its regulation any provisions for fees relating to 63 P.S. § 734.10.1 and its provisions for trading assistants.

2. Fee calculations and updated information. – Economic impact; reasonableness

In response to Regulatory Analysis Form (RAF) question 19, the Board provides a breakdown of the calculated increase of \$155,220 into five fee categories. Noting the concerns with including an increase for trading assistant renewals, we question whether this information will remain accurate for the final-form regulation.

Additionally, we question the basis for the proposed 30 percent increase to the fees. How do the proposed increases correlate with the actual expenditures the Board incurs for each activity for which it is increasing a fee? Without this information, it is not clear how the proposed fee increases are reasonable.