

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC'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

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(3) PA Code Cite: 49 Pa. Code § 1.41

(4) Short Title: Schedule of Fees

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

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(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.

(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 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. 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 proposed 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.

No.

(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 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. 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 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 regulation would 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 proposed 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 proposed rulemaking would 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.

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

Program	FY -3 FY 11-12 (actual)	FY -2 FY 12-13 (actual)	FY -1 FY 13-14 (projected)	Current FY FY 14-15 (budgeted)
State Board of Auctioneer Examiners	\$298,028.75	\$285,000.00	\$375,000.00	\$308,000.00

(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: **Fall of 2014.**

D. The expected effective date of the final-form regulation: **Upon publication as final.**

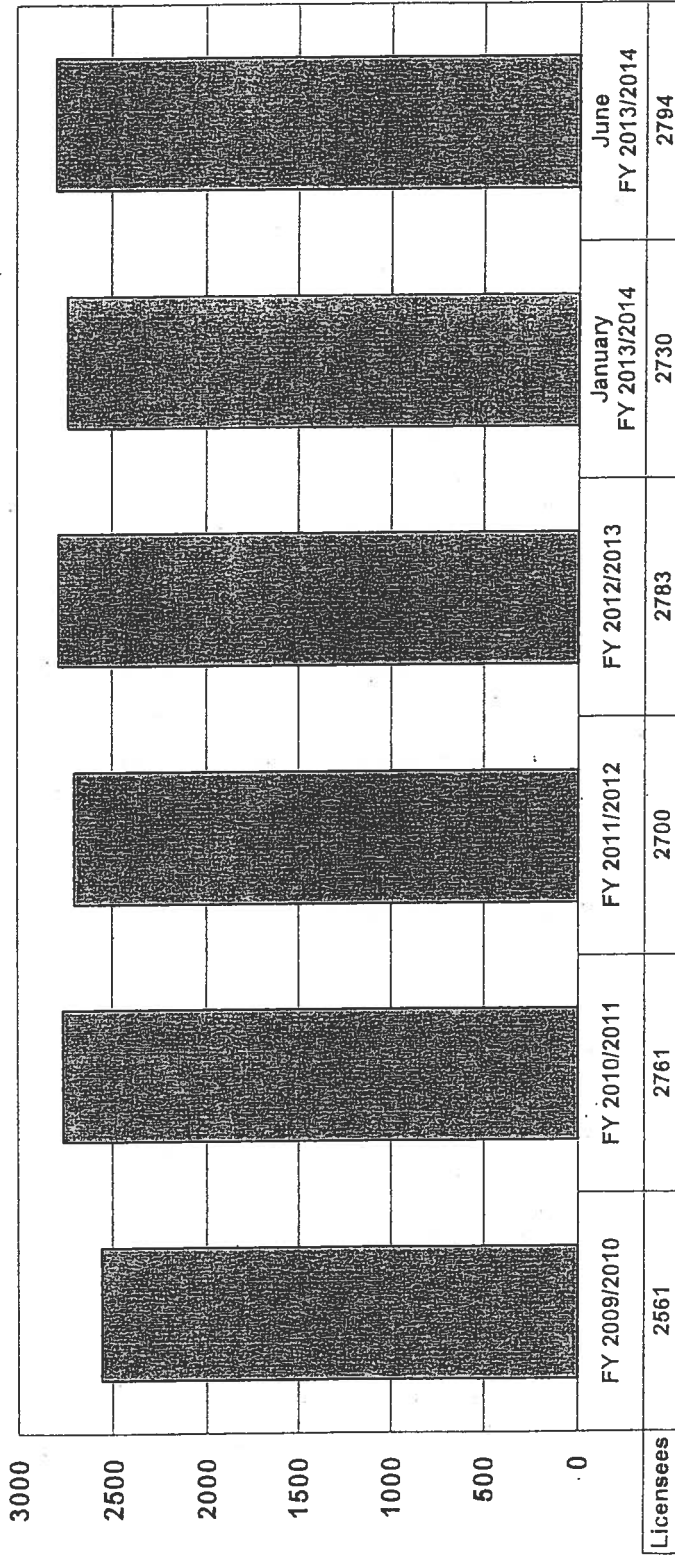
E. The date by which compliance with the final-form regulation will be required: **The increased biennial renewal fees apply to the March 1, 2015 biennial renewal.**

F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

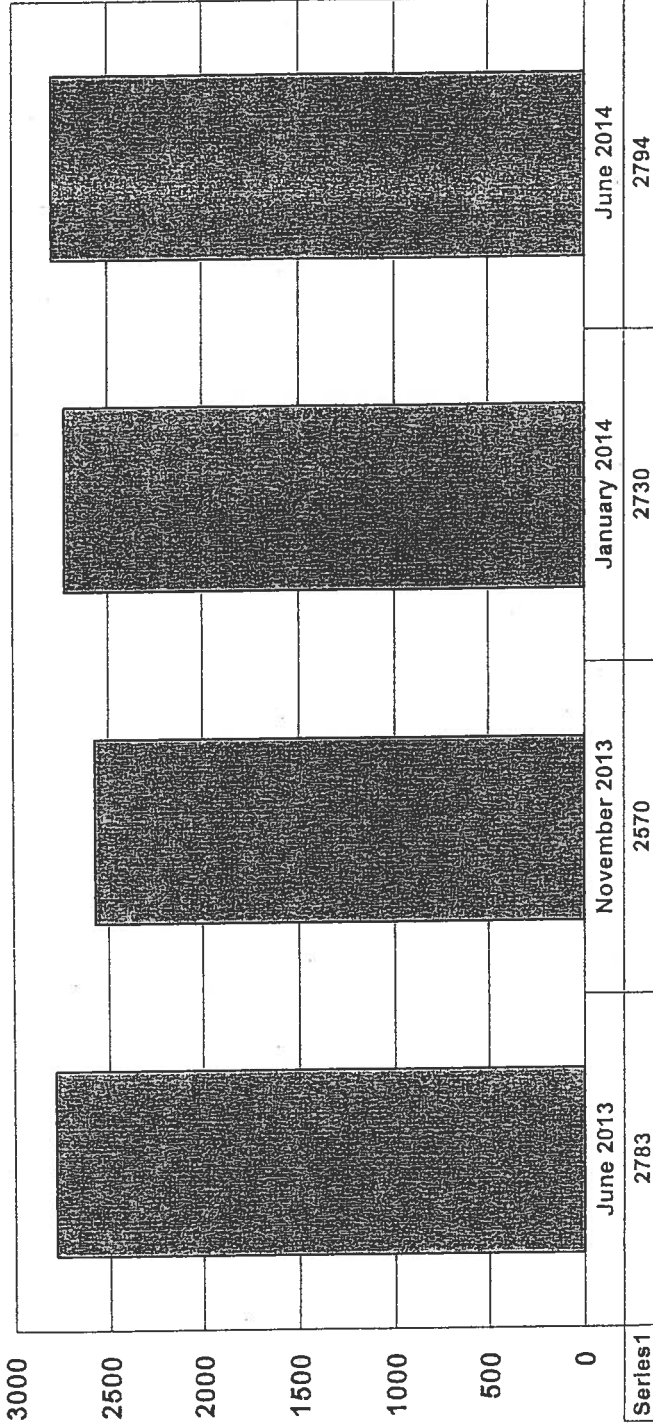
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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 remaining dates in 2014: September 8, and November 10, 2014. More information can be found on the Department's website (www.dos.state.pa.us).

STATE BOARD OF AUCTIONEERS
RENEWABLE LICENSEE COUNTS



STATE BOARD OF AUCTIONEERS RENEWABLE LICENSEE COUNTS



	January 2013	June 2013	January 2014	June 2014
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Trading Assistant	55	41	45	47
Apprentice Auctioneer	300	264	299	311
Licensed Auction House	153	133	149	157
Auctioneer	2,128	1,937	2,025	2,059
Licensed Auction Company	202	195	212	220
	2,783	2,570	2,730	2,794

State Board of Auctioneers
Expense and Revenue History

Cost Center	Renewal Yr					Renewal Yr				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Board Administration	46,699.09	100,796.46	61,630.78	71,305.76	62,554.68	68,319.72	74,362.45			
Commissioner's Office	3,090.36	4,386.89	3,305.18	2,702.86	1,578.12	2,637.27	1,755.47			
Revenue Office	1,638.84	2,762.03	864.89	1,112.22	833.81	1,115.32	872.81			
Departmental Services	8,488.59	9,380.22	10,122.04	9,636.72	9,007.35	12,173.86	12,703.51			
Legal Office	52,106.33	46,490.75	64,593.92	75,237.38	63,456.39	75,387.38	99,373.26			
Hearing Expenses	291.40	3,064.17	20,328.34	37,687.36	6,360.66	9,026.91	32,347.28			
Enforcement & Investigation	87,901.66	80,022.53	97,846.74	133,509.34	91,884.28	109,543.60	119,879.91			
Professional Compliance Office	8,624.47	6,958.20	26,737.31	25,392.84	12,986.30	13,451.12	14,828.08			
Board Member Expenses	13,653.46	15,950.21	11,606.85	8,634.73	4,448.93	6,373.57	7,136.94			
TOTAL	222,394.20	269,811.46	297,036.05	365,219.21	253,110.42	298,028.75	363,259.71			

Revenue By Source	Renewal Yr					Renewal Yr				
	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Renewals	12,399.50	461,515.00	16,320.00	465,450.00	13,235.00	472,165.00	13,120.00			
Applications	7,690.00	8,320.00	17,355.00	12,520.00	16,655.00	12,465.00	12,150.00			
Letters of Good Standing	1,295.00	935.00	1,175.00	1,035.00	825.00	625.00	975.00			
Civil Penalties	4,500.00	1,800.00	5.00	100.00	0.00	3,750.00	7,500.00			
Act 48	2,100.00	4,525.00	14,000.00	10,300.00	3,000.00	2,860.00	4,000.00			
Investigations	0.00	0.00	0.00	0.00	0.00	0.00	0.00			
Licensee Lists	3,835.98	2,856.82	2,866.82	2,861.83	3,011.11	3,004.31	3,704.52			
TOTAL REVENUE	31,820.48	479,951.82	51,721.82	492,266.83	36,726.11	494,869.31	41,449.52			

**STATE BOARD OF AUCTIONEERS
PROPOSED BIENNIAL RENEWAL FEE INCREASE
30% INCREASE**

LICENSE CLASSES	LICENSE COUNT	CURRENT RENEWAL FEE	TOTAL RENEWAL FEES	FY 14-16 PROPOSED RENEWAL FEE	TOTAL RENEWAL FEE REVENUE
Trading Assistant	47	\$ 100.00	\$ 4,700.00	\$ 100.00	\$ 4,700.00
Apprentice Auctioneer	311	\$ 100.00	\$ 31,100.00	\$ 130.00	\$ 40,430.00
Licensed Auction House Auctioneer	187	\$ 200.00	\$ 31,400.00	\$ 260.00	\$ 40,820.00
Licensed Auction Company	2,059	\$ 200.00	\$ 411,800.00	\$ 260.00	\$ 635,340.00
	220	\$ 200.00	\$ 44,000.00	\$ 260.00	\$ 67,200.00
	<u>2,784</u>				
TOTAL RENEWAL REVENUE:			\$ 623,000.00		\$ 678,490.00
TOTAL NON-RENEWAL REVENUE:			\$ 60,000.00		\$ 60,000.00
TOTAL BOARD REVENUE:			\$ 573,000.00		\$ 728,490.00

LEGISLATIVE MESSAGE
ALL CLASSES - 11/1998
Effective February 2015
 Expiration Date:
 All Classes - 2/28 odd-numbered year

FINANCIAL STATUS	Actual FY 11-12	Actual FY 12-13	Projected FY 13-14	Projected FY 14-15	Projected FY 15-16	Projected FY 16-17	Projected FY 17-18	Projected FY 18-19	Projected FY 19-20	Projected FY 20-21	Projected FY 21-22	Projected FY 22-23	Projected FY 23-24	Projected FY 23-24
Beginning Balance:	219,650.97	(41,651.67)	168,217.64	(155,782.36)	208,217.64	(52,782.36)	289,217.64	11,217.64	337,217.64	24,217.64	318,217.64	(16,782.36)	254,217.64	142,217.64
Revenue:	36,726.11	484,869.31	61,000.00	673,000.00	65,000.00	673,000.00	65,000.00	673,000.00	55,000.00	673,000.00	55,000.00	673,000.00	55,000.00	55,000.00
Total Available:	256,377.08	463,217.64	219,217.64	517,217.64	264,217.64	620,217.64	348,217.64	684,217.64	392,217.64	687,217.64	373,217.64	666,217.64	309,217.64	197,217.64
Expenses/Budget:	268,028.75	285,000.00	375,000.00	308,000.00	317,000.00	327,000.00	337,000.00	347,000.00	368,000.00	378,000.00	390,000.00	402,000.00	414,000.00	439,000.00
Remaining Balance:	(41,651.67)	169,217.64	(155,782.36)	209,217.64	(52,782.36)	293,217.64	11,217.64	337,217.64	24,217.64	318,217.64	(16,782.36)	254,217.64	(104,782.36)	142,782.36

*FY11-12 Beginning Balance contains a one time transfer of \$128,398.46 from the Auctioneer Board "Revenue Collected in Advance" Account. This account is no longer in use.

(b) *General rule for nonadversarial proceedings.* A petition for protective order limiting the disclosure of a trade secret or other confidential information in a nonadversarial proceeding shall be referred to the Law Bureau for recommended disposition by the Commission. The Commission will not disclose any material that is the subject of a protective order under this provision during the pendency of such a request.

(c) *Restrictions.*

(1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including, but not limited to, exhibits, writings, direct testimony, cross-examination, argument and responses to discovery, will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary, and to challenge the admissibility of the proprietary information.

(d) *Access to representatives of parties.* Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the

ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both. No other persons may have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

(e) *Special restrictions.* A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties—except as permitted by subsection (c)—or which provides for more restrictive rules than those permitted in subsections (b) and (c), will be issued only in extraordinary circumstances and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

(f) *Return of proprietary information.* A party providing proprietary information under this section may request that the parties receiving the information return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

(g) *Confidential security information.* Challenges to a public utility's designation of confidential security information or requests in writing to examine confidential security information in nonadversarial proceedings are addressed in Chapter 102 (relating to confidential security information).]

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 5.424. Issuance of subpoenas.

(a) If issuance of a subpoena is required by operation of this chapter, or because a party or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with § 5.421 (relating to subpoenas).

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT

§ 5.533. Procedure to except to initial, tentative and recommended decisions.

* * * * *

(d) An original [and nine copies of the exceptions filed as paper documents] shall be filed with the Secretary under § 1.4. Filing users may file electronically as provided by § 1.37(b) (relating to number of copies).

* * * * *

[Pa.B. Doc. No. 13-399. Filed for public inspection March 8, 2013, 9:00 a.m.]

STATE BOARD OF AUCTIONEER EXAMINERS

[49 PA. CODE CH. 1]

Schedule of Fees

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

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. It is anticipated that the increased biennial renewal fees will be implemented with the February 28, 2015, 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. 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 Year (FY) 2009-2010 and FY 2010-2011 and projected revenue and expenses through FY 2014-2015. 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, the BFO projects revenue of approximately \$475,000 in a given 2-year period, while budgeted expenditures for the next 2 years are projected at \$532,500. The BFO projects that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$118,700 in FY 2011-2012 and a deficit of approximately \$176,200 by FY 2013-2014, 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 (63 P. S. § 734.4(b)). As a result, the Board voted at its July 9, 2012, meeting to increase biennial renewal fees by 30% to meet projected expenditures. The proposed 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.

Description of Proposed Rulemaking

The proposed rulemaking would amend § 1.41 to increase biennial renewal fees for licenses and registrations issued by the Board to produce adequate revenue to meet projected expenditures as required under section 6(a) of the act. Specifically, the biennial renewal fees for trading assistants and apprentice auctioneers will increase from \$100 to \$130. The biennial renewal fees for auctioneers, auction houses and auction companies will increase from \$200 to \$260.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for all classes of licensees/registrants of the Board. There are currently approximately 284 apprentice auctioneers, 139 auction houses, 2,087 auctioneers, 193 auction companies and 52 trading assistants that will be required to pay 30% more to renew their licenses/registrations when they expire in 2015 and thereafter. The Board has concluded that virtually all auction houses and auction companies in this Commonwealth are small businesses. Likewise, auctioneers, trading assistants 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. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking 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, a sunset date has not 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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Board Counsel, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 16A-649—Schedule of Fees on comments.

SHERMAN HOSTETTER, AU,
Chairperson

Fiscal Note: 16A-649. No fiscal impact. The fee increases are necessary to cover projected expenditures for the Board; (8) recommends adoption.

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

FEEES

§ 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
	* * * * *	

[Pa.B. Doc. No. 13-400. Filed for public inspection March 8, 2013, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CH. 47]

Biennial Renewal Fees

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend § 47.4 (relating to licensure fees) to read as set forth in Annex A. The proposed rulemaking would increase the biennial license renewal fees for licensed social workers, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors from \$75 to \$115.

Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*. It is expected that the increased fees will be effective for the March 1, 2015, renewal.

Statutory Authority

Section 18(c) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act)

(63 P. S. § 1918(c)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Proposed Rulemaking

Under section 18(c) 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's current biennial license renewal fees were last increased in 2008, effective with the 2009 biennial renewal. At that time, it was anticipated that the increase would be sufficient to carry the Board for at least 9 years. However, at the February 2, 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 Year (FY) 2009-2010 and FY 2010-2011 and projected revenue and expenses through FY 2014-2015. The BFO pointed out that as of June 2010, in spite of the increase, the Board still had a deficit of \$31,505.87. At the current renewal fee level of \$75, the Board produces approximately \$1.35 million in revenue in a given 2-year period, while expenditures for the past 2-year period equaled more than \$1.42 million. The BFO projects that, without an increase to the biennial renewal fees, the Board will incur a deficit of approximately \$209,434 in FY 2011-2012, and a deficit of approximately \$556,434 by FY 2013-2014, necessitating a fee increase. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures in compliance with section 18(c) of the act. As a result, the Board voted at its March 13, 2012, meeting to increase the biennial renewal fees to \$115. The proposed new biennial renewal and application fees will enable the Board to recoup the projected deficits and meet its estimated expenditures for a number of years to come.

Description of Proposed Rulemaking

The proposed rulemaking would amend § 47.4 to increase the biennial renewal fee for all classes of license (licensed social workers, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors) from \$75 to \$115.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 16,320 licensees that will be required to pay more to renew their licenses when they expire in 2015 and thereafter. Small businesses that employ licensees of the Board may be impacted if they choose to pay the biennial renewal fees on behalf of employees. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

Paperwork Requirements

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

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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, 2015, 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 2015, 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. 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 on December 10, 2014, and deemed approved by SCP/PLC on December 10, 2014. Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was approved by IRRC on December 11, 2014.

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.

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

JULIE HARHART, MEMBER

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HARRISBURG, PA 17120-2183
PHONE: (717) 772-5398
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House of Representatives

Commonwealth of Pennsylvania
Harrisburg

April 24, 2013

COMMITTEES:

PROFESSIONAL LICENSURE,
MAJORITY CHAIR

TRANSPORTATION

E-MAIL: jharhart@pahousegop.com
WEBSITE: julieharhart.com
FACEBOOK: facebook.com/RepHarhart

Sherman E. Hostetter, AU, Chairperson
State Board of Auctioneer Examiners
P. O. Box 2649
Harrisburg, PA 18105-2649

Dear Mr. Hostetter,

On behalf of the House Professional Licensure Committee I am writing to inform you the Committee wishes to take no formal action on Proposed Regulation 16A-649 of the State Board of Auctioneer Examiners until final regulation is promulgated and to submit the following comments:

1. The Committee requests information pertaining to the major cost centers of the Board and any significant increases in its expenditures.
2. The Committee requests further explanation on the Board's statutory authority for establishing a renewal fee for Trading Assistants. Act 89 of 2008 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.

Sincerely,

A handwritten signature in cursive script that reads "Julie Harhart".

Julie Harhart, Majority Chair
House Professional Licensure Committee

JH/mmgw

Cc: Jack Phillips, Department of State Legislative Affairs Director
Wayne Crawford, Executive Director
Maureen Bereznak, Analyst
House Professional Licensure Committee

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LICENSING DIVISION



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
http://www.irrc.state.pa.us

AN B. LUTKEWITTE, III, CHAIRMAN
RGE D. BEDWICK, VICE CHAIRMAN
V F. MIZNER, ESQ.
RENCE J. TABAS, ESQ.
NIS A. WATSON, ESQ.
ID SUMNER, EXECUTIVE DIRECTOR
JE A. LEWIS JOHNSON, CHIEF COUNSEL

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 8, 2013

Sherman E. Hostetter, AU, Chair
State Board of Auctioneer Examiners
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-649 (IRRC #2982)
State Board of Auctioneer Examiners
Schedule of Fees

Dear Chair Hostetter:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director
sfh

Enclosure

- cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
- Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee.
- Honorable Harry A. Readshaw, Minority Chairman, House Professional Licensure Committee
- Honorable Julie Harhart, Majority Chairman, House Professional Licensure Committee
- Honorable Carol Aichele, Secretary, Department of State
- Robert A. Mulle, Esq., Office of Attorney General
- Shaun B. Smith Esq. Office of General Counsel

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.

Commentator List for Reg # 16A-649

No comments received

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~~

* * * * *



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

2982

November 10, 2014

The Honorable John F. Mizner, Esq., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, PA 17101

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

Dear Chairman Mizner:

On October 17, 2014, the State Board of Auctioneer Examiners delivered the referenced final-form rulemaking. The Board hereby withdraws that rulemaking.

In its place, the Board now delivers revised final-form rulemaking. The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

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

SEH/TAB:rs

Enclosure

cc: Travis N. Gery, Esq., Commissioner of Professional and Occupational Affairs
Patricia Allan, Director of Policy, Department of State
Kevin Schmidt, 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

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**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

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
11/10/14		MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE</i>
11-10-14		MAJORITY CHAIR <u>Robert M. Tomlinson</u>
		MINORITY CHAIR _____
11/10/14		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL</i> (for Final Omitted only)
		<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)