

Regulatory Analysis Form

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IRREGULATORY REVIEW COMMISSION

(1) Agency

Insurance Department

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

11-223

IRRC Number: 2442

(3) Short Title

Public Adjuster Contracts

(4) PA Code Cite

31 Pa. Code, Chapter 115, §115.2

(5) Agency Contacts & Telephone Numbers

Primary Contact: Peter J. Salvatore, Regulatory Coordinator,
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
Secondary Contact:

(6) Type of Rulemaking (check one)

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

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

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

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

Chapter 115 was promulgated in 1980 under the authority of a prior statute. The current authorizing statute, 63 P.S. §§1601-1608, was enacted in 1983. The Department seeks to amend Chapter 115 to be more consistent with the current statute and avoid confusion with the use of terms defined differently between the statute and the regulation.

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

This regulation is being implemented under the general rulemaking authority of Sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and under the specific statutory authority of Sections 1 through 8 of the Act of December 20, 1983, P.L. 260, No. 72 (63 P.S. Sections 1601 through 1608).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

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

The Insurance Department is amending Chapter 115, §1152 to be consistent with the authorizing statute. Moreover, it is in the public interest to amend redundant and confusing regulatory requirements in order to clarify the regulation.

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

There are no public health, safety, environment or general welfare risks associated with this rulemaking.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The public will benefit from the regulation to the extent that it will be consistent with the statute and provide better understanding of the public adjuster contract.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be no adverse effects on any party as a result of the amendment of this regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulation applies to all public adjusters and public adjuster solicitors licensed to do business in the Commonwealth.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Comments regarding this regulation were omitted in the rulemaking process as there is good cause to forego public notice of the intention to amend Chapter 115, §115.2, because notice of the amendment under the circumstances is unnecessary and impractical because the changes proposed are necessary to ensure the consistency with the statute.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendment of the regulation will not have any impact on costs associated with insurance companies or public adjusters.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings associated to state government associated with this rulemaking.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

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

Amending Chapter 115, §115.2 is the most efficient method to achieve consistency with the authorizing statute. No other alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered. The amendment of the regulation is the most efficient method of updating the regulatory requirements.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states. It merely provides for consistency with the statute.

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

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendment of the regulation imposes no additional paperwork requirements on the Department, public adjusters or the general public.

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

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will take effect upon approval of the final omitted regulation by the Legislative Standing Committees, the Independent Regulatory Review Commission, the Office of the Attorney General, and upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

<p>CDL-1</p> <p style="text-align: center;">FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU</p> <p style="text-align: center;">(Pursuant to Commonwealth Documents Law)</p> <p style="text-align: right;"># 2442</p>	<p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">2004 OCT 19 PM 3:58</p> <p style="text-align: center;">LEGISLATIVE REGULATORY REVIEW COMMISSION</p> <p style="text-align: center;">DO NOT WRITE IN THIS SPACE</p>	
<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By _____ (Deputy Attorney General)</p> <p>_____</p> <p style="text-align: center;">Date of Approval</p> <p>→ Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;">Insurance Department</p> <p style="text-align: center;">(AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. _____</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u><i>M. Diane Koken</i></u> M. Diane Koken Insurance Commissioner</p> <p>TITLE: _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: <u><i>[Signature]</i></u></p> <p style="text-align: center;"><u>10.7.04</u></p> <p style="text-align: center;">DATE OF APPROVAL</p> <p>EXEC. (DEPUTY GENERAL COUNSEL) (CHIEF COUNSEL, INDEPENDENT AGENCY) (STRIKE INAPPLICABLE TITLE)</p> <p>→ Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>

NOTICE OF FINAL-OMITTED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 115
§115.2

PUBLIC ADJUSTER CONTRACTS AND LICENSING REQUIREMENTS

PREAMBLE

The Insurance Department (Department) hereby amends 31 Pa. Code, Chapter 115, Public Adjuster Contracts and Licensing Requirements, as set forth in Annex A.

Statutory Authority

The final form regulation is adopted under the authority of Sections 206, 506, 1501 and 1502 of the Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and under the specific statutory authority of Sections 1 through 8 of the Act (Act) of December 20, 1983, P.L. 260, No. 72 (63 P.S. §§1601 through 1608).

Notice of the proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) known as the Commonwealth Documents Law (CDL) (45 P.S. §1204(3)). In accordance with section 204(3) of the CDL, notice of proposed rulemaking may be omitted when the agency for good cause finds that public notice of its intention to amend an administrative regulation is, under the circumstances, impracticable and unnecessary.

Purpose

The amendment will allow the regulation to be consistent with the statute. The Department is only modifying §115.2 (relating to contents of public adjuster contracts, minimum standards) and is not amending any portion of the remainder of the regulation.

Explanation of Regulatory Requirements

Section 5 of the act allows a consumer four (4) calendar days in which the consumer can rescind a contract with a Public Adjuster. The Department, in an attempt to standardize language and be consistent from regulation to regulation, determined that business days was more consistent throughout many of the regulations. Therefore, the Department changed *calendar days* to *business days* when this regulation was promulgated in 2002.

This amendment will correct the deficiency and make consistent the terms between the regulation and the statute and thus avoid potential problems that consumers and public adjusters may have with future contracts.

Fiscal Impact

There will be minimal impact on public adjusters, as their contract will need to be revised. As many public adjusters are using computers to generate their contracts, the Department does not expect this expense to be significant.

Affected Parties

The final omitted rulemaking will affect all public adjusters who do business in the Commonwealth of Pennsylvania.

Effectiveness/Sunset Date

The rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final-form rulemaking. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act, Act 24 of 1997, the agency submitted a copy of the regulations with the proposed rulemaking omitted on October 19, 2004 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 - 732-506).

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

Findings

The Insurance Commissioner finds that:

(1) There is good cause to amend Chapter 115, §115.2, effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of these regulations would be impractical and not serve the public interest. Under section 204(3) (45 P.S. §1204(3)) of the CDL there is no purpose to be served by deferring the effective date.

(2) There is good cause to forego public notice of the intention to amend Chapter 115, §115.2, because notice of the amendment under the circumstances is unnecessary and impractical because the changes proposed are necessary to ensure the consistency with the statute.

Order

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

(1) The Regulations of the Department at 31 Pa.Code, Chapter 115, § 115.2, are amended as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

(4) The regulation adopted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. Diane Koken
Insurance Commissioner

TITLE 31. INSURANCE. PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE.
CHAPTER 115. PUBLIC ADJUSTER CONTRACTS AND LICENSING REQUIREMENTS.

GENERAL

Section

115.2.	Contents of public adjuster contracts, minimum standards.
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§ 115.2. Contents of public adjuster contracts, minimum standards.

(a) A public adjuster contract shall contain, at a minimum, the following information:

(1) The title of the contract to read: Public Adjuster Contract.

(2) The name, business name, address and telephone number of the public adjuster.

(3) The name and address of the insured.

(4) The consideration expressed as a percentage of any payments to be received on the negotiated claim, or as a maximum dollar amount.

(5) A space provided for the execution date (month, day, year) of the contract.

(6) A space provided for the signature of the insured and the public adjuster.

(7) A provision setting forth the insured's right to cancel, which shall be printed in prominent type on the first page of the public adjuster contract in substantially the following form:

Notice of Right to Cancel

You, the insured, may cancel this contract at any time prior to midnight of the fourth [**business** **calendar**] day after the execution date of this contract. If you exercise your right to cancel this contract, you will be liable for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by the public adjuster to protect the interests of the insured during the period preceding cancellation.

If you cancel this contract, anything of value given by you under the contract will be returned to you within 15 business days following the receipt by the public adjuster of your cancellation notice, and any security interest arising out of the contract will be cancelled.

To cancel this contract, mail, fax or deliver in person a signed and dated copy of this notice or any other written notice, indicating your intent to cancel and the date thereof to (name of public adjuster) at (business address of public adjuster) not later than midnight of (date).

I hereby cancel this contract.

(Date)

(Insured's signature)

(b) A public adjuster contract may not contain any contract term that:

(1) Allows the public adjuster's fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company.

(2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster.

(3) Imposes late fees or collection costs on the insured.



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT**

**SPECIAL PROJECTS OFFICE
1326 Strawberry Square
Harrisburg, PA 17120**

**Phone: (717) 787-4429
Fax: (717) 772-1969
E-Mail: psalvatore@state.pa.us**

October 19, 2004

Mr. Robert Nyce
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Final- Omitted Regulation No. 11-223, Public Adjuster Contracts and Licensing Requirements

Dear Mr. Nyce:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your information and review is final-omitted regulation 31 Pa. Code, Chapter 115, Public Adjuster Contracts and Licensing Requirements.

Section 5 of the act allows a consumer four (4) calendar days in which the consumer can rescind a contract with a Public Adjuster. In an attempt to standardize language and be consistent from regulation to regulation, the Department determined that the term business days was more consistent throughout many of the regulations. Therefore, the Department changed *calendar days* to *business days* when this regulation was promulgated in 2002. This amendment will correct the deficiency and make consistent the terms between the regulation and the statute and thus avoid potential problems that consumers and public adjusters may have with future contracts.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter J. Salvatore".

Peter J. Salvatore
Regulatory Coordinator

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

I.D. NUMBER: 11-223
 SUBJECT: Public Adjuster Contracts and Licensing Requirements
 AGENCY: DEPARTMENT OF INSURANCE

2442

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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

DATE	SIGNATURE	DESIGNATION
10/19/04	<i>Shelby Carhart</i>	HOUSE COMMITTEE ON INSURANCE
10/19/04	<i>[Signature]</i>	
10/19/04	<i>Dom L. Heru</i>	SENATE COMMITTEE ON BANKING & INSURANCE
10/19/04	<i>T. McDaniel</i>	
10/19/04	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
10-19-04	<i>M. Mummert</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)