

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

RECEIVED

Independent Regulatory
Review Commission

September 23, 2024

IRRC Number: **3398**

Regulatory Analysis Form

(Completed by Promulgating Agency)

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

(1) Agency

Insurance Department

(2) Agency Number:

Identification Number: 11-262

(3) PA Code Cite:

31 Pa. Code § 37 [Reserved], 31 Pa. Code § 37a

(4) Short Title:

Requirements and Standards

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

Primary Contact:

Kimberly Sheaffer
Office Manager
1341 Strawberry Square
Harrisburg, PA 17120
(717) 346-1458
kimsheaffe@pa.gov

Secondary Contact:

Jennifer Brown-Sweeney
Department Counsel
1341 Strawberry Square
Harrisburg, PA 17120
(717) 705-7285
jbrownswee@pa.gov

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

Final Regulation

Proposed 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)

This final-form regulation deletes and reserves 31 Pa. Code Chapter 37 and adopts, in its place, 31 Pa. Code Chapter 37a in order to formally implement the act of December 6, 2002 (P.L. 1183, No. 147) (Act 147-2002), which incorporated provisions from the NAIC Producer Licensing Model Act (#218) (“PLMA”) and provides for licensing and regulation of insurance producers, managers and exclusive general agents; confers powers and duties on the Insurance Commissioner and Insurance Department; permits the payment of commissions and referral fees; imposes penalties; and makes repeals. Act 147-2002 codified and superseded many of the processes in Chapter 37 as well as updated terminology. This new chapter 37a will clarify several items within the statutorily-prescribed process, resulting in a modernized and streamlined experience that provides transparency and efficiency to the general public and regulated community. Since Act 147-2002 was enacted, the Department has relied on the comprehensive and specific statutory language of Act 147 to process insurance producer applications for licensure. As such, this final-form rulemaking only addresses the topics not already sufficiently addressed in the statute as it is not in the public interest to provide clarification where it is not necessary.

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

This final-form rulemaking is made under the Department’s general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), section 246 of the act of September 22, 1978 (P.L. 763, No. 143) regarding terminations of agency contracts (40 P.S. § 246), section 698-A of the act of December 6, 2002 (P.L. 1183, No. 147) regarding insurance producers, managers and general agents licensing, powers and duties of Insurance Commissioner and Insurance Department, referral fees, commissions, and penalties (40 P.S. § 310.98) and the Department’s rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1-1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Insurance Commissioner’s authority to promulgate regulations under the Unfair Insurance Practices Act).

(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.

No, the regulation is not mandated by any federal or state law or court order, or federal regulation. However, current regulations primarily deal with Article VI of the act of May 17, 1921 (P.L. 789, No. 285) which was repealed by Act 147-2002. No regulations exist for Act 147-2002, which substantially replaced the subject matter in Article VI under Act 285-1921 with Act 147-2002 and codified many of the processes in Chapter 37. Act 147-2002 adopted provisions from the PLMA and brought the state into compliance with the federal “Financial Services Modernization Act of 1999” (known as the Gramm-Leach-Bliley Act) Pub. L. No. 106-102, 113 Stat. 1338, which required states to modernize and provide uniformity in their insurance licensing procedures. These regulations will clarify the statutory processes outlined in Act 147-2002.

(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.

This final-form rulemaking is necessary to formally implement Act 147-2002. As stated above, Act 147-2002 adopted provisions from the Producer Licensing Model Act as Article VI-A and brought the state into compliance with the federal “Financial Services Modernization Act of 1999” (known as the Gramm-Leach-Bliley Act) Pub. L. No. 106-102, 113 Stat. 1338, which required states to modernize and provide uniformity in their insurance licensing procedures. Prior to this, insurance producers were subject to varying rules in each state where they transacted business. With the advent of the internet, the insurance industry was able to dramatically expand its access to consumers, and the need for a more uniform and streamlined process became necessary. Act 147-2002 provided Pennsylvania with the statutory framework to modernize and provide uniformity, thus increase efficiency in these processes. Act 147-2002 substantially replaced Article VI with Article VI-A. Current regulations address Article VI. This regulation will rescind those regulations and adopt new regulations regarding Article VI-A. By rescinding outdated and superseded provisions that still appear in the Pennsylvania Code, the insurance-consuming public, insurers, insurance producers, and regulators will have clarity when attempting to determine whether the statutory or regulatory provision is applicable. Further, where the provisions of Chapter 37 have not been superseded by statute, they are being repromulgated in Chapter 37a and reflect updated terminology and streamlined processes that provide more efficient, modern, and comprehensive guidance of the qualifications and procedures for the licensing of insurance producers. These regulations also promote consumer protection by providing further detail regarding licensing qualifications, appropriate producer behavior, and related penalties.

Currently, there are 336,290 individuals licensed through Pennsylvania as resident and non-resident producers and 22,782 entities licensed through Pennsylvania as resident and non-resident producers that will benefit from the regulation. Additionally, there are 1,724 insurer companies/carriers with the ability to make producer appointments that would be subject to the clarifying language of when a producer is acting as the representative of the insurer or the consumer and would benefit from the regulation. Pennsylvania currently has the fifth largest insurance market in the U.S. based on premium volume, serving hundreds of thousands of Pennsylvanians, so the impact of this regulation is widespread.

(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.

No, there are not any provisions more stringent than federal standards.

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

This regulation will not adversely affect Pennsylvania’s ability to compete with other states and will have no effect whatsoever on competitiveness because it preserves the status quo since Act 147-2002 was enacted. The extent this question addresses the competitive effect of Act 147-2002 itself, it is noteworthy that one of the purposes of Act 147-2002 was to adopt provisions from the Producer Licensing Model Act to provide uniformity across states. According to the NAIC State Pages Resource on the PLMA published in the Fall of 2020, Ohio, New Jersey, and Delaware have adopted previous versions of the PLMA, while New York, Maryland, and Virginia have not adopted the PLMA. However, there are only nine states in total that have not adopted provisions from the PLMA. Therefore, this regulation implementing those provisions is similar to most of the country in creating a more uniform and efficient system.

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

No. The impact of Act 147-2002 has already occurred, and so this regulation that clarifies and updates administrative processes will not impact other regulations or other agencies. Further, the Insurance Department is the only agency that regulates insurance within this Commonwealth and that regulates the individuals or entities that sell it.

(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.)

Pursuant to Executive Order 1996-1, on April 24, 2023, and September 25, 2023, respectively, the Department circulated two exposure drafts of Annex A to representatives of insurance producers, companies and carriers, including the Insurance Agents and Brokers (IAB), the Insurance Federation of Pennsylvania (IFP), and the Pennsylvania Association of Mutual Insurance Companies. Comments received were carefully considered in developing the proposed rulemaking. The Department carefully considered all input and incorporated many of the comments and suggestions into the proposed rulemaking.

Notice of proposed rulemaking was published at 54 Pa. B. 2492 (May 11, 2024), with a 30-day public comment period. IAB and IFP submitted comments during the public comment period. The Independent Regulatory Review Commission (IRRC) also submitted comments. All comments were taken into consideration.

IAB submitted a comment in support of the regulation, expressing its appreciation for the Department’s collaboration throughout the process.

IFP submitted six comments regarding potential issues, discussed in the Preamble, as well as expressed support for the regulation and indicated its appreciation for the Department’s collaboration throughout the drafting process.

IRRC submitted an 18-part comment letter raising several organizational and clarification issues. These comments are addressed in the Preamble.

(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?

This final-form rulemaking affects the Department, insurance consumers, non-resident and resident insurance producers, as well as insurer companies/carriers with the ability to obtain producer appointments. Specifically, the benefit of this regulation is that it will rescind outdated and superseded provisions that still appear in the *Pennsylvania Code*. This will provide clarity and will alleviate any confusion that may exist when the public or regulated community is attempting to determine whether the statutory or regulatory provision is applicable. To the extent that the provisions of Chapter 37 have not been superseded by statute, they are being repromulgated in Chapter 37a and reflect updated terminology and streamlined processes. Additionally, the Department is proposing further clarifications by providing examples as to determinations of worthiness of applicants and licensees and for determining whether a producer is acting on behalf of an insurer or consumer.

There are 336,290 individuals licensed through Pennsylvania as resident and non-resident producers that will be affected by the regulation. There are 22,782 entities licensed through Pennsylvania as resident and non-resident producers that will be affected by the regulation. Because the Department estimates that most of these entities would be small businesses, the Department is implementing this regulation as if every producer is a small business. All individual and entity producers will benefit by the clarity afforded by rescinding and replacing the regulations regardless of their size. There would be no detrimental effect on any entity in the Commonwealth.

There are currently 1,724 insurer companies/carriers with the ability to make producer appointments that would be subject to the clarifying language of when a producer is acting as the representative of the insurer or the consumer. These companies would be affected by the regulation.

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

Those that must comply and those affected are the same, and the Department has assumed that most insurance producers are small businesses. As stated above, there are 336,290 individuals licensed through Pennsylvania as resident and non-resident producers that must comply with the regulation. There are 22,782 entities licensed through Pennsylvania as resident and non-resident producers that must comply with the regulation.

There are 1,724 insurer companies/carriers with the ability to have producer appointments in Pennsylvania. Those that actually appoint producers and provide commissions must comply with the regulation, however there are no available statistics on that number. Each of these insurers would be subject to the regulation's clarifying language of when a producer is acting as a representative of the insurer or the consumer, and the responsibilities that flow from that determination.

(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.

As the final-form regulation formally implements Act 147-2002 and only clarifies the legislatively-described processes the Department has been following since it was enacted, the regulation itself provides no change to the financial, economic, and social impact of the public, businesses, and stakeholders.

However, the changes that were implemented over twenty years ago and are being formalized here, benefitted the Commonwealth by making the producer licensing process and related issues more uniform across the country. These changes removed barriers and made it easier for non-resident license applicants to obtain and renew licenses as well as provide insurance services to Pennsylvania residents. The legislation and this resulting regulation significantly modernizes the licensing process allowing examinations, education, applications, and renewals to occur electronically further making it easier to obtain both resident and non-resident licenses of different types.

The citizens of the Commonwealth benefitted from, and continue to benefit from, a more informed insurance producer workforce and competition among insurance producers servicing them, while still have an assurance for the level of competence of the producers required by the statute and implementing regulations.

The streamlined approach embodied in the regulation benefits the regulated community and the insurance-consuming public by eliminating unnecessary regulatory provisions and clarifying licensing processes.

This regulation does not impose any new fees. Further, all fees are currently set forth in the act and the Administrative Code of 1929, which includes a \$55 resident and \$110 nonresident application fee as well as a \$15 appointment fee, among others.

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

This final-form regulation will provide the benefits of transparency, efficiency, and clarity, by ensuring that the regulatory chapters are consistent with the act. There are no adverse effects or costs to this regulation. This regulation only clarifies the legislatively described processes the Department has been following for the last twenty years, since Act 147-2002 was enacted. Adopting the regulation provides better transparency to the public, licensees, and other stakeholders as well as provides more clarity to the process itself.

When Act 147-2002 was initially enacted, the Department had to undergo significant changes to implement it. At that time there were data conversions, new software, rate increases, and new applications and background forms required for applicants. However, at this time, the regulation is only formalizing current processes, qualifications, violations, penalties, and expectations while providing better clarification to questions the Department has received throughout the years. As such, there are no new costs or adverse effects.

(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.

This regulation will not result in any costs or savings to the regulated community. The regulation does require licensees to establish record retention procedures and retain all pertinent documents for seven years, unless otherwise required by law or contract to retain these documents longer. However, there is no change to the currently utilized systems or fees in place, therefore there should be no costs or savings associated with this regulation.

(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.

Local government is not affected by this regulation and will incur no additional costs or realize any savings.

(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.

State government will not incur any additional costs or savings as there will be no changes to the currently utilized systems, forms, employees, and fees.

(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.

There will be no new reporting, forms, or reports required for implementation of the regulation, as the regulation is just providing clarity to the process established through legislation that the Department has been utilizing for over 20 years. However, as discussed in Question 19, the regulated community will have to retain pertinent insurance documents for seven years, or longer, if otherwise required by law or contract. Consideration was given to minimize any burden imposed by these recordkeeping retention requirements as the regulation allows for these records to be maintained electronically.

(22a) Are forms required for implementation of the regulation?

There are no new forms required for implementation of the regulation, however the act that the regulations seek to clarify required new forms upon its enactment in 2002. Those forms are attached as Appendix A.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

See Appendix A.

(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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community**	0	0	0	0	0	0
Local Government*	0	0	0	0	0	0
State Government*	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:	0	0	0	0	0	0
Regulated Community**	0	0	0	0	0	0
Local Government*	0	0	0	0	0	0
State Government*	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community **	0	0	0	0	0	0
Local Government*	0	0	0	0	0	0
State Government*	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

*As explained above, there are no expected costs, savings, or revenue losses that would be incurred by local or state government or the regulated community as a result of the regulation. The regulation preserves the status quo of Act 147-2002, which has been in effect for over 20 years.

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

Program Bureau of Licensing & Enforcement	FY -2021/2022	FY -2022/2023	FY -2023/2024	Budget Current FY
Personnel Services	\$2,121,561	\$2,239,634	\$2,735,756	\$3,510,436
Operational Expenses	\$236,660	\$372,650	\$286,908	\$296,000

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

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

(a) Identification and Estimate of Small Business Subject to the Regulation

The Department reviewed standards set forth by 13 CFR § 121.201 and the U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the applicability of this rulemaking to Pennsylvania small businesses. The standards for small business classification vary by type of business written as follows:

Subsector 524 – Insurance Carriers and Related Activities

NAICS Codes	NAICS Industry Description	Size Standards in millions of dollars / Size Standards in number of employees
524113	Direct Life Insurance Carriers	\$47.0
524114	Direct Health and Medical Insurance Carriers	\$47.0
524126	Direct Property and Casualty Insurance Carriers	1,500 employees
524127	Direct Title Insurance Carriers	\$47.0

524128	Other Direct Insurance (except Life, Health and Medical) Carriers	\$47.0
524130	Reinsurance Carriers	\$47.0
524210	Insurance Agencies and Brokerages	\$15.0
524291	Claims Adjusting	\$25.0
524292	Third Party Administration of Insurance and Pension Funds	\$45.5
524298	All Other Insurance Related Activities	\$30.5

The Department does not collect information regarding the annual receipts collected by producers. However, because of the high threshold of annual receipts for producers, the Department estimates that most, if not all, Pennsylvania-based insurance producers would fall within the definition of “small business.” Therefore, the Department is implementing this regulation as if every producer is a small business.

(b) Projected reporting, recordkeeping, and other administrative costs required for compliance

The projected reporting, recordkeeping, and other administrative costs required for compliance with the regulation are not expected to increase as a result of this rulemaking. The final rulemaking imposes a recordkeeping requirement on licensees to retain all documents pertinent to the business of insurance for a minimum of seven years, or longer if otherwise required by law or contract. These recordkeeping requirements involve only basic professional skills and are not expected to result in additional costs to licensees.

(c) Probable effect on impacted small businesses

Small businesses will not be affected differently than other businesses. This regulation only clarifies the legislatively prescribed processes the Department has been following for the last twenty years. Adopting the regulation provides benefits to small businesses as well as the public in general, all licensees, and other stakeholders by providing more transparency as well as clarity to the process itself.

(d) Alternative methods

The Department is unaware of any less intrusive or less costly alternative methods for achieving the purpose of the rulemaking.

(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.

Because the Department is not aware of any alternative methods for achieving the purpose of the regulation, no provisions were developed to meet the particular needs for minorities, the elderly, small businesses, or farmers.

(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.

No alternative regulatory provisions were considered. There is no less burdensome acceptable alternative to the final regulation.

(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 performance 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.

There is no known adverse impact on small businesses.

- a) Regulatory methods were not considered that would establish a less stringent compliance or reporting requirement for small businesses as these requirements are set by statute and the regulation only clarifies these requirements. As stated above, the Department is implementing this regulation as if every producer is a small business.
- b) Regulatory methods were not considered that would establish a less stringent schedule or deadline for compliance or reporting requirements for small businesses as these requirements are set by statute and the regulation only clarifies these requirements.
- c) Regulatory methods were not considered that would consolidate or simplify compliance or reporting requirements for small businesses as the purpose of the underlying statute that these regulations clarify is to streamline the overall process for all businesses and were written specifically to address insurance producers, which are mostly small businesses. As stated in Question 19, the Department did provide consideration to any possible burdens the recordkeeping requirements may impose and allowed for these records to be maintained electronically for all licensees.
- d) Regulatory methods were not considered that would establish performance standards for small businesses to replace design or operational standards as these are not required in the regulation.
- e) Regulatory methods were not considered that would provide an exemption for small businesses from all or any part of the requirements contained in the regulation as most requirements are set by statute and this regulation only clarifies the requirements. Further, the underlying statute was written specifically to address insurance producers, the majority of which are small businesses, so its impact was considered at the time of the legislative drafting.

(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.

Data is not the basis for this rulemaking.

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

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held: None
- C. The expected date of delivery of the final-form regulation: Late Summer 2024
- D. The expected effective date of the final-form regulation: Sixty days after publication as final-form in the *Pennsylvania Bulletin*
- E. The expected date by which compliance with the final-form regulation will be required. Sixty days after publication as final-form in the *Pennsylvania Bulletin*
- F. The expected 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 Department reviews each of its regulations for continued effectiveness on a triennial basis.

Names and Addresses of Commentators Who Have Requested Additional Information Relating to the Final-Form Regulation

John Savant
Government Affairs Director
Insurance Agents & Brokers (IA&B)
650 Wilson Lane, Suite 200
Mechanicsburg, PA 17055
johns@iabforme.com

Timothy L. Knapp, Esq.
General Counsel
Insurance Federation of Pennsylvania
409 North Second Street, Suite 202
Harrisburg, PA 17101
Tknapp@ifpenn.org

List of Forms

Add/Remove Designated Licensee

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/AddRemove-DesignatedLicensee.pdf>

Add/Remove Surplus Lines Affiliation

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/AddRemove-SurplusLinesAffiliation.pdf>

Add/Remove Fictitious Name or Doing Business As Name Form

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/FictitiousName-DBAName-Form.pdf>

Add/Remove Self-Service Storage Location

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/AddRemove-SelfServiceStorageLocation.pdf>

Application and Renewal Application

- <https://www.sircon.com/landingPages/states/pennsylvania/content.jsp>
- <https://nipr.com/licensing-center>

Change of Address Form (Business)

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/ChangeAddressForm-BusinessEntity.pdf>

Change of Name (Business)

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/ChangeNameForm-BusinessEntity.pdf>

Change of Name and Address Form (Individual)

- Online:
 - <https://www.sircon.com/landingPages/states/pennsylvania/content.jsp>
 - <https://nipr.com/licensing-center>
- If unable to submit online:
 - <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/ChangeName-AddressForm-Individual.pdf>

Continuing Education Declaration

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/Title-ContinuingEducation-Declaration.pdf>

Fictitious or Business Entity Name Approval Form

- <https://www.insurance.state.pa.us/scripts/busentname2a>

Fidelity Bond Waiver for Title Agencies

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/FidelityBondWaiver.pdf>

Letter of Clearance or Voluntary Surrender Request Form

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/LetterClearance-VoluntarySurrenderRequestForm.pdf>

Monthly Appointment Activity Form

- <https://www.insurance.pa.gov/Licensees/MaintainYourLicense/Documents/MONTHLY%20APPOINTMENT%20ACTIVITY%20REPORT.pdf>

Self-Service Storage Employee/Authorized Rep. Register

- https://www.insurance.pa.gov/Documents/Self-Service_Storage_Authorized_Representative_Form_Fillable.pdf

Insurance Department

Notice of Final Rulemaking

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart C. [AGENTS AND BROKERS] INSURANCE PRODUCERS

CHAPTER 37. [Reserved]

CHAPTER 37a. REQUIREMENTS AND STANDARDS

Document/Fiscal Note No. 11-262

INSURANCE COMMISSIONER'S CERTIFICATION

I, Michael Humphreys, hereby certify that I have reviewed this Final-Form Regulation and determined that it is consistent with the principles outlined in Executive Order 1996-1.



Michael Humphreys
Insurance Commissioner

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

Independent Regulatory
Review Commission

September 23, 2024

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> 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>Insurance Department _____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-262</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY:  _____ TITLE <u>Pennsylvania Insurance Commissioner</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p> BY: _____</p> <p>Deputy General Counsel</p> <p>September 18, 2024 _____ DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**NOTICE OF FINAL RULEMAKING
INSURANCE DEPARTMENT**

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart C. [AGENTS AND BROKERS] INSURANCE PRODUCERS

CHAPTER 37. [Reserved]

CHAPTER 37a. REQUIREMENTS AND STANDARDS

RULES AND REGULATIONS
TITLE 31 - INSURANCE
INSURANCE DEPARTMENT
31 PA. CODE CHS. 37 AND 37A

Insurance Producers

[__ Pa.B. ____]

[Saturday, _____, 202_]

Preamble

The Insurance Department (Department) deletes and reserves Chapter 37 (relating to agent certificates of qualifications and broker licenses) and adopts, in its place, Chapter 37a (relating to requirements and standards) to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is made under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), section 6 of the act of September 22, 1978 (P.L. 763, No. 143) (40 P.S. § 246), section 698-A of The Insurance Department Act of 1921 (act) (40 P.S. § 310.98) and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1—1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Insurance Commissioner's authority to promulgate regulations under the Unfair Insurance Practices Act).

Background and Purpose

The purpose of this final-form rulemaking is to provide additional clarification and modernization, where necessary, regarding the implementation of the act of December 6, 2002 (P.L. 1183, No. 147) (Act 147-2002). More than 20 years ago, Act 147-2002 (which is based upon the Producer Licensing Model Act) amended the act to bring the Commonwealth into compliance with the Federal Financial Services Modernization Act of 1999, known as the Gramm-Leach-Bliley Act (GLBA) (Pub.L. No. 106-102, 113 Stat. 1338). The GLBA required states to modernize and provide uniformity in their insurance licensing procedures.

Because Act 147-2002 codified and superseded many of the processes contained in the existing regulations at that time (Chapter 37), it was not immediately necessary to promulgate regulations under Article VI-A. The Department instead relied on the specific statutory language in Act 147-2002 to process insurance producer applications for licensure and enforcement matters. This final-form regulation will clarify several items within the statutorily-prescribed process, resulting in a modernized and streamlined experience that will provide further transparency and efficiencies to the public, licensees and other stakeholders. Not every provision of Act 147-2002 requires clarification by regulation. As such, the Department did not promulgate regulations for those topics that are sufficiently and comprehensively addressed in the act.

Comments and Responses

The Insurance Federation of Pennsylvania (IFP) and the Independent Agents and Brokers (IAB) submitted comments during the public comment period. All comments were taken into consideration.

The IAB submitted a comment in support of the regulation, expressing its appreciation for the Department's collaboration throughout the process.

The IFP also expressed support for the regulation and indicated its appreciation for the Department's collaboration throughout the drafting process. The IFP brought forth six issues:

(1) The IFP raised a concern that § 37a.10(c) (relating to business entity license) could be read to conflict with § 37a.10(d) in that it could be interpreted to require each individual licensee maintain all lines of authority for which the business entity is licensed. The IFP suggested the Department clarify that each individual licensee in a business entity need not maintain every line of authority of the business entity. In response to this comment, the Department has revised § 37a.10(c) of the final rulemaking to add the word "combined" and added language to subsection (d) to clarify that the designated licensee or licensees of a business entity may hold the lines of authority "individually or in combination."

(2) With regard to § 37a.13 (relating to name on license), the IFP suggested that the Department utilize the standard found in the Fictitious Names Act (54 Pa.C.S. §§ 301—332) when a licensee is not using a proper name. In response to the IFP's comment, the Department clarified section (b) with regard to the use of a fictitious name and added section (c) to make clear that a fictitious name does not include a name that is a commonly known nickname or derivative of the name on the individual producer's license (e.g., using the name "Dave" instead of "David").

(3) The IFP suggested the Department revise § 37a.20(b) (relating to representation of insurer or consumer) to clarify that an insurer that is dealing with a consumer through a producer who is not appointed by the insurer should not be held responsible for the unaffiliated producer's actions or omissions. In response, the Department removed subsection (b) in its entirety as the

provision is duplicative of existing case law and common law contract principles. See *Transcontinental Oil Co. v. Atlas Assur. Co.*, 123 A. 497 (1924); *Sands v. Granite Mut. Ins. Co.*, 331 A.2d 711 (1974); *Triage, Inc. v. Prime Ins. Syndicate, Inc.*, 887 A.2d 303 (Pa. Super. 2005).

(4) The IFP inquired as to whether existing provisions of Pennsylvania law regarding electronic transactions apply to appointments and whether electronic transactions will satisfy the “in writing” requirement of § 37a.21(a)(1) (relating to appointments and termination of appointments). The Department agrees that an electronic submission will satisfy this requirement and has revised this section accordingly by adding subsection (f) to clarify that written notifications as to appointments and terminations may be transmitted electronically if done in compliance with the Uniform Electronic Transactions Act, 73 P.S. §§ 2260.1—2260.503. However, the Department notes that section 354.7 of the Insurance Company Law of 1921 (40 P.S. § 477b.7), pertaining to electronic delivery of information and posting of policies and endorsements, is not applicable, as this statutory provision deals only with notifications to insureds, not producers.

(5) The IFP suggested the Department delete the phrases “in a form and format approved by the department” and “at least” in § 37a.21(a)(3) to improve clarity that the insurer’s notice of appointment form must include the content set forth in the regulation and to eliminate the need for Department approval of each form. As suggested, the Department has deleted this language in the final-form regulation.

(6) Finally, the IFP suggested that the Department add a sentence to § 37a.21(b)(1) that notification of an appointment termination to a business entity shall be sufficient notification for individual producers affiliated with the business entity. The Department is unable to make this change because under section 671-A of the act (40 P.S. § 310.71), all producers (irrespective of

whether they are individual producers or business entities) are appointed separately.

Additionally, notification must be made to each producer's home address as required by section 671.1-A(d)(1) of the act (40 P.S. § 310.71a(d)(1)).

The Independent Regulatory Review Commission (IRRC) submitted an 18-part comment letter raising several organizational and clarification issues that are explained fully below.

(1) Citing compliance with Executive Order 1996-1, regarding regulatory review and promulgation, IRRC noted that the regulation is not written or organized in a fashion that would enable an applicant to easily determine requirements for initial or continued licensure, primarily because some requirements exist in the act and others in the regulation. As confirmed by both the IFP and the IAB in their comments, the Department worked extensively and collaboratively with the industry on this draft and neither stakeholder group expressed any difficulty with the structure or format of the regulation. As noted above, when Act 147-2002 was enacted, it set forth comprehensive standards for licensure of insurance producers and the then-existing regulations (Chapter 37) were not updated immediately. Act 147-2002 superseded most of the provisions in the current regulation without the need for additional detail. The necessary regulatory clarifications in this rulemaking have been organized to mirror the structure of the previous regulations in Chapter 37, ensuring continuity and ease of use for the regulated community. In response to this comment, the Department has emphasized the statutory requirements for initial licensure and renewal for both individual and business entities applicants in §§ 37a.7 and 37a.9 (relating to general application requirements; and license renewals). In addition, further descriptive changes have been made to clarify potential ambiguities in the regulations where ambiguity may exist, such as described in §§ 37a.8, 37a.10, and 37a.21 (relating to completion of application and renewal forms; business entity license; and

appointments and termination of appointments). However, completely reorganizing the rulemaking or reiterating clear statutory requirements may be redundant and potentially confusing, especially if the underlying statutes change. This would require that the Department amend the regulations, an outcome it seeks to avoid.

IRRC also notes several provisions in Act 147-2002 that are not addressed in the rulemaking. As noted above, because of the comprehensive nature of Act 147-2002, clarification is not necessary for every provision of Act 147-2002. After careful review, the Department has determined that additional regulatory clarification is unnecessary for the following topics, as they are comprehensively addressed in the act: Section 606.1A (Change of home state); Section 609-A (Temporary licensing); Section 610-A (Reciprocal licensing); Section 614-A (Reciprocity); and Section 678-A (Licensee reporting of misconduct).

With regard to the omission of a schedule of fees in the text of the regulation, the Department concurs that it may be difficult for the regulated community to locate each of the fees since most fees are included in numerous places in various statutes. Therefore, the Department has included a schedule of these fees in § 37a.3 (relating to schedule of fees). All fees are also set forth on the Department's website and are organized by subject matter area.

(2) With regard to § 37a.2 (relating to principal place of business and residence), IRRC suggests that the statutory context for the terms "principal place of business" and "principal place of residence" be included in the body of the regulations and questions why the terms are not included in § 37a.1 (relating to definitions). Section 605-A of the act (40 P.S. § 310.5) provides that an applicant with a principal place of business or residence within this Commonwealth may apply for a resident insurance producer license and, conversely, an applicant with a principal place of business or residence outside this Commonwealth may apply for a nonresident insurance

producer license. However, the act fails to define the terms “principal place of business” or “principal place of residence.” For this reason, the Department found it necessary to clarify, through these regulations, its interpretation of these terms as used throughout the act. In response to IRRC’s comment, the Department added the statutory context to § 37a.2. However, since the terms are not used in the rulemaking itself, the Department cannot include them in the definition section.

(3) IRRC suggests that language be added to § 37a.6 (relating to administration of examination) indicating that the testing vendor’s brochure is downloadable in an electronic format. The Department agrees and language has been added to the final-form regulation to clarify that the brochure will be available in a downloadable format on the vendor’s and the Department’s website.

(4) IRRC suggests that the requirements for pre-examination education and exemptions from the pre-examination education and examination requirement that are set forth in the act be included “in the final rulemaking or explain how their omission benefits the regulated community in achieving compliance.” The Department considered this comment, but suggests that clarifications are unnecessary with regard to the statutory requirements for pre-examination education or the statutory exemptions from the pre-examination education and examination requirements as set forth by the act. The statutory language of the act is exact and clear. Furthermore, if these statutory requirements or exemptions were to change, the regulations would create uncertainty as to what is actually required. The Department has instead referenced the applicable provisions of the act to ensure the information is easily located. Because reiteration of the statutory provisions in the regulations could cause confusion, and given the clarity of the act, the Department believes it unnecessary to restate them here.

(5) With regard to § 37a.8 (relating to completion of application and renewal forms), IRRC suggests that the Department add a specific time period for closing an application if information is not provided as requested by the Department. This section has been revised to add a 45-day time period and to clarify the closure of an application under this section will be treated as a withdrawal of the application by the applicant. IRRC also suggests that subsections (d) and (e) of § 37a.8 are redundant because § 37a.16(a)(3) (relating to standards for denial of license and enforcement actions) address the consequences of making a false statement or failing to provide accurate or truthful information in an application. The Department agrees, and these subsections have been modified to eliminate the redundancies, but retain the clarifications as to which licensee is responsible for accuracy and completeness of the application.

(6) IRRC suggests that the Department include the “fundamental provisions” relating to continuing education requirements, exemptions, extenuating circumstances that support the waiver of the continuing education requirements, and lapses in licensure, as well as renewal fees for resident, nonresident and lapsed licenses set forth in section 608-A of the act (40 P.S. § 310.8) in the final version of the rulemaking. The Department has updated this section to include an overview of the renewal requirements, including continuing education requirements, as well as lapses in licensure. The statute provides a comprehensive explanation regarding exemptions and extenuating circumstances. Therefore, the new language makes clear that these provisions exist but directs the reader back to the specific statutory provisions if further clarification is warranted. The fees have now been included in the aforementioned fee schedule at § 37a.3.

(7) IRRC suggests changes to § 37a.10 pertaining to a business entity’s lines of authority that are consistent with the IFP’s first comment. The IFP’s comment has been addressed above and in the revision to the final-form rulemaking.

(8) IRRC suggests that it would be beneficial to the regulatory community if the lines of authority were included in the final regulation. After review, the Department respectfully declines to make this revision, as the lines of authority are clearly and concisely presented within the definition in section 601-A of the act (40 P.S. § 310.1), and any reiteration of those concepts here may present confusion, especially if there are any statutory changes at a later date.

(9) IRRC suggests changes to § 37a.13 that are consistent with the IFP's second comment relating to the use of fictitious names. The IFP's comment has been addressed above and in the revision to the final-form rulemaking.

(10) IRRC's next comment suggests that § 37a.14 regarding notice to a licensee of a formal hearing should be incorporated into a section where such notice would be served. The Department agrees and has moved the content of proposed § 37a.14 to § 37a.17(c) (relating to revocation, suspension or nonrenewal of licenses). Section 37a.17 discusses disciplinary actions such as revocation, suspension, or nonrenewal of licenses, instances where notice would likely need to be served on licensees prior to a formal hearing.

(11) IRRC suggests changes to § 37a.15(a)(2) (relating to changes, sale and dissolution) to specify the types of personnel for which a change affecting the designated licensee would trigger a notice being sent to the Department. In consideration of this suggestion, Paragraph (2) of this section has been revised to clarify that only changes affecting a designated licensee require notice to the Department. (12) IRRC suggests, with regard to § 37a.19 (relating to exclusive general agents), that the readability of the section regarding requirements for licensure and application for exclusive general agents would be "enhanced if the statutory requirements were reiterated in the rulemaking" to make clear the distinction between the classes of applicants. The distinction between an insurance producer and an "exclusive general agent" can

be found in section 601-A of the act (40 P.S. § 310.1). Because all requirements are comprehensively set forth in sections 631-A – 635-A of the act (40 P.S. §§ 310.31 – 310.35) and they are well known to the regulated community, the Department believes no further clarification with regard to the statutory requirements for licensure of exclusive general agents is necessary.

(13) IRRC suggests, with regard to § 37a.20, that “the statutory requirements of the written agreement” between an insurance consumer and a producer “be incorporated in the final regulation because it is important consumer protection.” The Department agrees that this statutory provision is an important consumer protection, however the statute clearly sets forth that the agreement must both delineate the services to be provided and provide complete disclosure of the fee. Because all agreements could differ as to the service provided, no additional detail can be set forth by regulation and it would not serve the public interest by limiting them in regulation.

IRRC also reiterates the IFP’s third comment regarding the representation of the consumer and suggests that the Department strike language in subsection (b). The IFP’s and IRRC’s comment has been addressed above and in the revision to the final-form rulemaking removing this provision in its entirety.

(14) IRRC raised a number of concerns relation to § 37a.21. IRRC reiterates the IFP’s fourth comment regarding electronic delivery of notifications required by § 37a.21(a)(1). The IFP’s comment has been addressed above and by the Department’s addition of subsection § 37a.21(f) to the final rulemaking allowing for electronic delivery.

IRRC also suggests that the regulatory language in § 37a.21(a)(3) be revised to remove “in a form and format approved by the department” in conformance with IFP’s comment as well as to specify a timeframe for submitting the notice of appointment form to the Department. This

language has been removed as discussed above. Further, under § 37a.21(c) both appointment and termination activities must be submitted to the Department within 30 days of its effective date.

Under § 37a.21(b), IRRC suggests that the Department specify how termination notifications will be implemented in accordance with the suggestion by the IFP that one notice may be sent to the business entity listing all the producer appointment terminations. The Department cannot agree to the proposed change because every individual and business entity must be appointed separately, as different requirements apply based upon the length of time each person or entity is appointed. The revision requested would conflict with section 671-A of the act (40 P.S. § 310.71) that requires that each “producer” be notified, which includes both individuals and agencies. Moreover, including such a provision would be contrary to provisions in the Insurance Department Act of 1921 at 40 P.S. §§ 241.1 and 242, which govern the termination of agency contracts, requiring notice to each individual licensee and does not apply to agency contracts of less than 4 years.

IRRC also requested that the Department explain the rationale and need for differences in the record keeping requirements for insurers in paragraph (5) and those of licensees as proposed in § 37a.25 (relating to recordkeeping). Upon consideration of this request, Department has made the change to provide for the same record keeping requirements for both § 37a.21(b)(5) and § 37a.25.

IRRC suggests that final rulemaking should include the act’s provisions relating to ongoing notification, notification to licensee, including an opportunity for the licensee to submit comments, and reporting violations under section 671.1-A(c)-(e) (40 P.S. § 310.71a(c)-(e)), and to reiterate the requirements of 40 P.S. § 310.71(d) relating to appointment termination when an

insurance producer's license is suspended or revoked or otherwise terminated. The Department respectfully believes that restating the law on this matter may not be necessary because the law is already clear. Licensees are aware that the sale of insurance is prohibited when a license is suspended or revoked by the Department. Therefore, the Department suggests that repeating this rule does not require clarification, as it may not serve the public interest.

(15) IRRC raised two issues with § 37a.24 (relating to enforcement). First, IRRC notes that the regulatory language does not include the statutory 15-day time frame allowing for corrective action. Additionally, IRRC inquires as to whether it is the Department's intent to elevate a request for documentation to the same level of violation as for those related to an investigation. This section merely clarifies the procedure that may be utilized for bringing an action against a non-responsive licensee because cooperation is essential to the Department's enforcement of the act. The Department has revised the final-form rulemaking to include the 15-day corrective period as suggested by IRRC.

(16) IRRC suggested that §§ 37a.25 (relating to recordkeeping) and 37a.21(b)(5) be revised to make the record retention period consistent or to explain the rationale and need for differences in the record keeping requirements for insurers (5 years) and those of licensees (7 years). The Department agrees that these provisions should be consistent and has revised the time period set forth in § 37a.21(b)(5) from 5 years to 7 years, which is reflected in the final-form Annex.

(17) IRRC has requested that the Department provide an estimate of costs for implementing this regulation, noting that Act 147-2002 imposed several fees. However, this regulation does not alter any fees, which are set forth by the act. All fees have been in effect since 2002 when Act 147-2002 was passed, with the exception of appointment fees, which were

increased as authorized by the amendments to the Administrative Code of 1929 in 2003. As such, any increase in costs were realized at the time of the act's implementation. The Department does not have the ability to estimate costs or impacts to the Commonwealth, regulated community, public, or local governments from 22 years ago with the data we maintain. This final-form regulation will not affect any statutorily established fees and there will be no fiscal impact to implement the clarifications and requirements of this rulemaking.

(18) IRRC suggested that § 37a.3 (relating to purpose) be moved or deleted. The Department has removed this section from the final-form regulation. Additionally, in response to IRRC's comment, the Department has either deleted or revised the "form and manner" language in §§ 37a.13, 37a.15, 37a.21 and 37a.23 as suggested to refer to the form available on the Department's website, where applicable. Finally, the Department has confirmed that it has aligned the section numbers with the official *Pennsylvania Bulletin* version and revised the hyperlinks in Appendix A of the Regulatory Analysis Form to assure that they are working.

Affected Parties

This final-form rulemaking affects the Department, insurance consumers, nonresident and resident insurance producers, as well as insurer/carriers with the ability to make producer appointments. There are 336,290 individuals and 22,782 entities licensed through this Commonwealth, as resident and nonresident producers, that will benefit from the clarity afforded by this proposed rulemaking. There are currently 1,724 insurer companies and carriers that will be affected as they have the ability to make producer appointments in compliance with this proposed rulemaking and will be affected by the clarifications of when producers are acting as a representative of the company or of the consumer.

Fiscal Impact

Any changes to processes that were necessary to implement Act 147-2002 were made over 20 years ago when it was enacted. Any increase in costs were realized at the time of the act's implementation. The Department does not have the ability to estimate costs to the Commonwealth, regulated community, public, or local governments from that time with the data we maintain. As this rulemaking does not impose any new fees and only clarifies the specific legislative processes established by statute, there is no known fiscal impact to the Commonwealth, regulated community, general public or local governments.

State government

There will not be any fiscal impact to the Department as a result of this final-form rulemaking.

General public

This final-form rulemaking will have no fiscal impact upon the general public.

Local government

This final-form rulemaking will have no fiscal impact upon political subdivisions.

Regulated community

This final-form rulemaking will have no fiscal impact on the regulated community.

Paperwork

There are no additional legal, accounting or consulting procedures as a result of this final-form rulemaking. However, this final-form rulemaking does require licensees to establish record retention procedures and retain pertinent insurance documents for 7 years, or longer if otherwise required by law or contract.

Effective Date/Sunset Date

This final-form rulemaking will become effective 60 days after publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding this final-form rulemaking may be addressed in writing to Kimberly Sheaffer, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120.

Questions and comments may also be e-mailed to kimsheaffe@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 29, 2024, the Department submitted a copy of the proposed rulemaking, published at 54 Pa. B. 2492 (May 11, 2024), to the Independent Regulatory Review Commission (IRRC) and the chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC and House and Senate Committees were provided copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____ this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____ and approved the final-form rulemaking.

Findings

The Commissioner 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), referred to as the Commonwealth Documents Law and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments received were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 54 Pa.B. 2492.

(4) This final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 37 and 37a, are amended to read as set forth in Annex A.

(b) The Department shall submit this final-form rulemaking to IRRC and the House and Senate Committees, as required by law.

(c) The Department shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

(d) The Department shall certify this final-form rulemaking, as approved for legality and form, and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect sixty (60) days after publication in the *Pennsylvania Bulletin*.

Michael Humphreys

Insurance Commissioner

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart C. [AGENTS AND BROKERS] INSURANCE PRODUCERS

CHAPTER 37. [Reserved]

§§ 37.1 and 37.2. [Reserved].

§§ 37.5 and 37.6. [Reserved].

§§ 37.11—37.19. [Reserved].

§§ 37.21—37.27. [Reserved].

§§ 37.31—37.49. [Reserved].

§§ 37.61 and 37.62. [Reserved].

§§ 37.71 and 37.72. [Reserved].

§§ 37.81—37.84. [Reserved].

CHAPTER 37a. REQUIREMENTS AND STANDARDS

Sec.

37a.1. Definitions.

37a.2. Interpretation of the terms “[Principal] **principal** place of business” and “**principal place** of residence.”

37a.3. [Purpose.] Schedule of fees.

37a.4. Examination requirement.

37a.5. Examination fees to be paid to third parties.

- 37a.6. Administration of examination.
- 37a.7. General application requirements.
- 37a.8. Completion of application and renewal forms.
- 37a.9. License renewals.
- 37a.10. Business entity license.
- 37a.11. License determines authority.
- 37a.12. Lines of authority.
- 37a.13. Name on license.
- [37a.14. Notice of action under 1 Pa. Code § 35.14 (relating to orders to show cause).]
- 37a.15. Changes, sale and dissolution.
- 37a.16. Standards for denial of license and enforcement actions.
- 37a.17. Revocation, suspension or nonrenewal of licenses.
- 37a.18. Revocation, suspension or nonrenewal of licenses in nonresident insurance producer's state of domicile.
- 37a.19. Exclusive general agents.
- 37a.20. Representation of insurer or consumer.
- 37a.21. Appointments and termination of appointments.
- 37a.22. Producer accounts.
- 37a.23. Merger of insurance entities.
- 37a.24. Enforcement.
- 37a.25. Recordkeeping.

§ 37a.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Insurance Department Act of 1921 (40 P.S. §§ 310.1—310.99a).

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

License—A permission, in paper or electronic form, issued by the department authorizing the named recipient to sell, solicit or negotiate contracts of insurance as an insurance producer in this Commonwealth.

§ 37a.2. Interpretation of the terms “ [Principal] principal place of business” and “principal place of residence.”

Section 605-A of the act (40 P.S. § 310.5) provides that an applicant with a principal place of business or residence within this Commonwealth may apply for a resident insurance producer license and, conversely, an applicant with a principal place of business or residence outside this Commonwealth may apply for a nonresident insurance producer license. However, the act fails to define the terms “principal place of business” or “principal place of residence. [For] Therefore, for purposes of determining principal place of business and principal place of residence, the department [has clarified] **will interpret** the following terms as set forth to be applied throughout the act.

Principal place of business—The single location where an applicant or a licensee physically spends the majority of the applicant's or licensee's time conducting the business of insurance.

Principal place of residence—The location where an applicant or a licensee occupies a home for at least 183 days of the calendar year.

§ 37a.3. [Purpose.] Schedule of fees.

[The purpose of this chapter is to implement the act, by setting forth requirements and standards for the operation of a single licensing system for insurance producers in this Commonwealth.]

Biennial License Fees

<u>Resident Individual Insurance Producer License</u>	<u>\$55.00</u>
<u>Resident Entity Insurance Producer License</u>	<u>\$55.00</u>
<u>Non-Resident Individual Insurance Producer License</u>	<u>\$110.00</u>
<u>Non-Resident Entity Insurance Producer License</u>	<u>\$110.00</u>
<u>Resident Individual Limited Lines Insurance Producer License</u>	<u>\$55.00</u>
<u>Resident Entity Limited Lines Insurance Producer License</u>	<u>\$55.00</u>
<u>Non-Resident Individual Limited Lines Insurance Producer License</u>	<u>\$110.00</u>
<u>Non-Resident Entity Limited Lines Insurance Producer License</u>	<u>\$110.00</u>
<u>Resident and Non-Resident Individual Limited Lines Travel</u>	
<u>Insurance Producer License</u>	<u>\$400.00</u>
<u>Resident and Non-Resident Entity Limited Lines Travel</u>	
<u>Insurance Producer License</u>	<u>\$400.00</u>
<u>Resident and Non-Resident Individual Public Adjuster License</u>	<u>\$200.00</u>
<u>Resident and Non-Resident Entity Public Adjuster License</u>	<u>\$200.00</u>
<u>Resident Individual and Entity Title Agent License</u>	<u>\$55.00</u>
<u>Non-Resident Individual and Entity Title Agent License</u>	<u>\$110.00</u>
<u>Resident and Non-Resident Individual Surplus Lines License</u>	<u>\$200.00</u>
<u>Resident and Non-Resident Entity Surplus Lines License</u>	<u>\$200.00</u>

Annual License Fees

Resident and Non-Resident Individual Motor Vehicle Physical

Damage Appraiser License **\$55.00**

Resident and Non-Resident Individual Viatical Settlement

Broker License **\$100.00**

Resident and Non-Resident Entity Viatical Settlement Broker License **\$100.00**

Manager or Exclusive General Agent of Domestic Insurance

Company License **\$400.00**

Miscellaneous Annual Fees

Lapsed License Renewal Fee for Resident or Non-Resident

Insurance Producers **\$165.00**

Lapsed License Renewal Fee for Resident or Non-Resident Limited

Lines Insurance Producers **\$165.00**

Lapsed License Renewal Fee for Resident or Non-Resident Title Agents **\$165.00**

Lapsed License Renewal Fee for Resident or Non-Resident Public Adjusters **\$400.00**

Lapsed License Renewal Fee for Resident or Non-Resident Surplus Lines

Producers **\$400.00**

Adding a Line of Authority to an Existing Resident or Non-Resident

Insurance Producer License **\$25.00**

Adding a Line of Authority to an Existing Resident or Non-Resident Limited

Lines Insurance Producer **\$25.00**

Certified Copy of a License History **\$25.00**

Annual Appointment Fee per License **\$15.00**

§ 37a.4. Examination requirement.

(a) *Examination required.* The department or a third-party approved by the department will conduct licensing examinations for "surplus lines" licensees as defined in section 1602 of The Insurance Company Law of 1921 (40 P.S. § 991.1602) and "title insurance" agents as defined in section 724 of The Insurance Company Law of 1921 (40 P.S. § 910-24) and for each of the lines of authority as defined in section 601-A of the act (40 P.S. § 310.1) other than limited lines.

(b) *Scope and content of examination.* Examinations will be designed to test the adequacy of an applicant's knowledge of general principles of insurance and insurance laws and of particular areas of insurance practice as are pertinent to the lines of authority for which application is intended and will be specific to the laws of this Commonwealth.

§ 37a.5. Examination fees to be paid to third parties.

(a) The department will consider the following factors when establishing and updating the fee charged to producers and paid to third parties for conducting examinations:

- (1) The cost of developing and maintaining exams.
- (2) The cost of administering exams.
- (3) The frequency of exams offered.
- (4) The number of different types of exams offered.
- (5) The volume of exams taken.
- (6) The number of testing facilities.

(b) If the commissioner delegates the authority for administering and scoring the examinations under § 37a.6 (relating to administration of examination), fees shall be set by acceptance of the contract in accordance with the following requirements:

(1) The contract shall provide for the examinee to make payment of the examination fee directly to the testing vendor.

(2) The name and address of the testing vendor awarded the testing contract, the examinations and other services offered, if any, and the fees charged therefore will be published in the examination registration materials provided by the testing vendor.

(3) Examination fees are not refundable except according to the terms of the testing vendor.

§ 37a.6. Administration of examination.

(a) The commissioner may delegate to a testing vendor, by contract, the authority to administer and score examinations. The testing vendor shall ensure that the following standards are met:

(1) Examinations shall be offered at regular intervals throughout the year.

(2) Testing shall be conducted at physical locations throughout this Commonwealth and shall be available remotely.

(3) Test security shall be strictly maintained, and a set of security rules shall be developed by the testing vendor and approved by the commissioner.

(4) Bias or favoritism towards an applicant may not be permitted by the testing vendor.

(5) A comprehensive brochure describing fees, the nature of examination questions and giving sample questions shall be prepared by the vendor and be available to applicants before or at the time of registration for examination or upon request at any time. **The brochure will be available in a downloadable format on the vendor's and department's website.**

(b) An individual seeking a license shall register for examination directly with the testing vendor.

§ 37a.7. General application requirements.

(a) **Individual application.** An **individual** applicant for an insurance producer license shall [follow the procedures in sections 604-A and 605-A of the act (40 P.S. §§ 310.4 and 310.5), pertaining to license prerequisites and insurance producer license application procedures.] **electronically remit to the department through its approved vendor or authorized service a completed application, including the following:**

(1) An indication of the lines of authority for which the applicant seeks to be licensed.

(2) The required license fee in accordance with § 37a.3 (relating to schedule of fees).

(3) The applicant's fingerprints to be submitted for the department to obtain national criminal history record information, except where reciprocal licensing is permitted under section 610-A of the act (40 P.S. § 310.10a).

(4) The fee associated with obtaining the national criminal history record information, if applicable.

(5) Documentation verifying that the applicant passed the insurance producer licensing examination on the lines of authority for which the applicant desires a license or is exempt under section 604-A(d) of the act from the insurance producer licensing examination.

(b) **Prerequisites.** The **individual** applicant [will be required to take a written examination unless the requirement is waived under section 604-A(d) of the act.] **shall follow the procedures in section 604-A of the act (40 P.S. § 310.4) to obtain the license prerequisites prior to applying for licensure.**

(c) [An individual who has passed the examination or meets the requirements of an exception under 604-A(d) may apply to the department for an insurance producer license. The Certification] Examination results.

(1) Certification of the applicant's score report **for individual applicants who have passed a licensing examination** will be directly reported by the testing vendor to the department.

[(d)]**(2)** Test scores and results are valid for 1 year from the passing date of the examination. Applications received with older test results will be rejected.

(d) Business entity application. A business entity applicant, through its designated licensee, may apply to the department for an insurance producer license for the same lines of authority held by the entity's designated licensees, by electronically remitting to the department's vendor or authorized representative a completed application indicating the lines of authority for which the business entity desires to be licensed, proof of the licenses held by the designated licensees, and the required license fee set forth in § 37a.3.

(e) **Additional requirements for business entities.** An insurance producer license will not be granted to a business entity unless the business entity is eligible under section 606-A(b) of the act (40 P.S. § 310.6(b)) and individual licenses are obtained for each qualifying designated licensee or exclusive general agent in accordance with section 631-A of the act (40 P.S. § 310.31), pertaining to licensing of managers and exclusive general agents.

§ 37a.8. Completion of application and renewal forms.

(a) An applicant for an insurance producer license shall complete application and renewal forms truthfully and accurately, using the appropriate application form which may be submitted [either in paper or electronically,] **electronically through the Department's approved vendor or authorized service, or in paper form if the applicant is unable to apply online and**

submits a cover letter explaining the circumstances of the applicant's inability to apply electronically.

(b) Applications and renewal forms submitted to the department [, **electronically or through the department's licensing system,**] will be examined and, if not complete, the department will request additional information from the applicant. The applicant is required to provide the requested information to the department within 30 days of the department's request. **If the delay in providing the requested information is due to the Department's approved vendor or authorized service, upon proof of remittance to the vendor the Department will not close the application.**

(c) If the applicant fails to provide the requested information under subsection (b), the applicant will be notified that the department may close the application if the information is not provided within [a specified period of time] **45 days of the department's request for additional information.** The closure of an application **will be treated by the department as withdrawn by the applicant and** may require the applicant to retake the required test or tests if the test scores have expired or to resubmit their fingerprints. A new license application and fee may be required upon the department's request. Application fees are nonrefundable under section 605-A(c) of the act (40 P.S. § 310.5(c)).

(d) An individual applicant is responsible for the content and accuracy of the applicant's application and renewal forms. **[Failure to provide accurate or truthful information may result in the applicant being denied a license or in an enforcement action against the individual applicant.]**

(e) The designated licensee or licensees of a business entity shall be responsible for completing the application of a business entity accurately and completely. **[Making a false statement in an application may result in license denial or revocation.]**

§ 37a.9. License renewals.

(a) *Renewal generally.* A licensee seeking renewal of an insurance producer license shall electronically remit to the department through its approved vendor or authorized representative, a renewal form and the required fee set forth in § 37a.3 (relating to schedule of fees). The Department's vendor or authorized representative shall verify that the licensee has completed 24 credit hours of approved continuing education, inclusive of any specific subject matter courses required for a specific line of authority, for each license period, unless otherwise exempted from continuing education requirements under section 608-A(c) of the act (40 P.S. § 310.8(c)).

(b) *Renewal licensing period.*

(1) An **individual** insurance producer license shall be renewed biennially based on the last day of the insurance producer's month of birth. The initial license [cycle] **period** may vary to coincide with the expiration cycle of the birth month.

[(b)] **(2)** A business entity license will expire biennially based on the date of license issuance.

(c) *Lapse.* A licensee that allows its insurance producer license to lapse by failing to properly renew the license by its expiration date shall conform to one of the following:

(1) If all statutory requirements for renewal are received by the department within 60 days of the license expiration date, the licensee shall be eligible for retroactive reinstatement of the license, with the license effective on the expiration date.

(2) If all statutory requirements for renewal are received by the department more than 60 days, but less than 1 year, from the license expiration date, the licensee shall be eligible for prospective reinstatement of the license, with the license effective on the date of reinstatement.

(3) If the expiration date of the license is longer than 1 year, the licensee shall be required to reapply for a new insurance producer license in accordance with section 605-A of the act (40 P.S. § 310.5).

(d) Waiver. When extenuating circumstances exist that prevent a licensee from complying timely with the license renewal requirements, the licensee may request a waiver in accordance with section 608-A(e) of the act (40 P.S. § 310.8(e)).

§ 37a.10. Business entity license.

(a) A business entity shall follow the procedures in section 605-A(b) of the act (40 P.S. § 310.5(b)), [pertaining to business entity application] **regarding resident and nonresident business entity license applications.**

(b) A license shall be required for each business entity, other than a sole proprietorship, which has a separate Federal tax identification number and engages in the business of insurance in this Commonwealth.

(c) A license for a business entity will not be issued unless all members, partners, officers or directors or owners, with more than 10% interest or voting interest, are included on the application and all lines of authority of the business entity are also reflected on the **combined** licenses of the designated licensee or licensees thereof.

(d) [A combination of licenses of the designated licensees must include] **The designated licensee or licensees of a business entity must hold individually or in combination** all the

lines of authority held by the business entity. Partners or officers may not engage, either individually or on behalf of the business entity, in an act of an insurance producer requiring a line of authority that they do not individually hold.

(e) If a designated licensee's insurance producer license is terminated, the business entity shall designate a licensed replacement within 15 days for each line of authority affected. If all affected lines of authority are terminated, failure to do so may result in the termination of the business entity's license.

§ 37a.11. License determines authority.

An insurance producer may conduct business only for the line or lines of authority stated on the license.

§ 37a.12. Lines of authority.

(a) A business entity may only sell, solicit or negotiate a line of authority that is held by the business entity.

(b) The authority to sell the lines of authority as defined in section 601-A of the act (40 P.S. § 310.1) may be granted by the department and reflected on the license.

(c) If after meeting the appropriate requirements, an insurance producer intending to add another line or lines of authority to an existing license shall submit an application to the department and request that the new line or lines of authority be added to the insurance producer's existing license with the appropriate amended fee set forth in section 612-A of The Administrative Code of 1929 (71 P.S. § 240.12A).

(d) An insurance producer who holds a license in good standing for a line of authority is not required to complete the pre-examination education requirement described under section 604(A)(b) of the act, before taking the examination for an additional line.

§ 37a.13. Name on license.

(a) An insurance producer shall notify the department within 30 days of a legal change of name **using the form available on the department's website.** [The notice shall be in the form and manner established by the department.]

(b) A licensee that seeks to use a **fictitious** name [that does not readily identify the licensee] shall do all of the following:

(1) Register the fictitious name with the Department of State.

(2) Notify the department **using the form available on the department's website** [in the form and manner established by the department].

(c) For purposes of this section, a fictitious name does not include a name that is a commonly known nickname or derivative of the name appearing on an individual producer's license.

[§ 37a.14. Notice of action under 1 Pa. Code § 35.14 (relating to orders to show cause).

Notice of a formal hearing sent to the address on file of the insurance producer shall constitute formal legal notice to the insurance producer.]

§ 37a.15. Changes, sale and dissolution.

(a) A business entity shall notify the department[, in the form and manner established by the department] **using the form available on the department's website** within 30 business days, so that the correct information is on file with the department, when any of the following occur:

(1) A change in the name of a business entity.

(2) A change [of the personnel affecting the] **to a** designated [licensees] **licensee.**

(b) Upon a sale or dissolution of a business entity, the business entity shall notify the department if there is a change in the designated licensee, contact information or Employer Identification Number (EIN). If the EIN changes, a new application is required.

§ 37a.16. Standards for denial of license and enforcement actions.

(a) The commissioner may deny an application for an insurance producer license upon finding any of the following:

(1) The applicant has not met the license prerequisites under section 604-A of the act (40 P.S. § 310.4).

(2) The application does not meet the requirements under section 605-A of the act (40 P.S. § 310.5).

(3) The applicant has committed an act prohibited under section 611-A of the act (40 P.S. § 310.11) including considerations of whether the applicant is worthy of licensure as set forth in the examples in subsection (b).

(b) For purposes of determining whether an applicant or licensee is worthy of licensure under section 611-A(20) of the act, the commissioner may consider any of the following actions:

(1) Dishonest or fraudulent conduct.

(2) The making of knowingly false statements.

(3) Conduct demonstrating that the applicant or licensee does not possess the competence necessary to accurately and successfully ensure that an insurance transaction is properly executed.

(4) Whether the applicant or licensee has abused a relationship of trust in an insurance, financial or other context.

(5) Whether the applicant or licensee has engaged in violent conduct that could potentially jeopardize the safety of a consumer or co-worker.

(6) Criminal convictions other than those enumerated by section 611-A(14) or (15) of the act where the crime involves any of the actions in paragraphs (1)—(5) or the facts and circumstances surrounding the underlying criminal activity indicate a lack of general fitness, honesty, trustworthiness, competence or reliability.

(7) Administrative actions taken by a self-regulating non-governmental organization such as the Financial Industry Regulatory Authority or other licensing authority, board or governmental agency.

(8) Failure to comply with the requirements of sections 1601—1626 of the Insurance Company Law of 1921 (40 P.S. §§ 991.1601—991.1626), pertaining to surplus lines.

(9) Whether the applicant or licensee has violated probation or parole.

(10) Whether the applicant or licensee has not yet successfully completed their sentence or the entire term of their probation or parole for an underlying conviction that can be considered subject to paragraph (6) or section 611-A(14) or (15) of the act.

(c) The examples enumerated in subsection (b) are not exhaustive of the types of conduct relevant to a determination of whether an applicant is worthy of licensure and are not per se determinative of worthiness. The department will continue to evaluate worthiness on a case-by-case basis and will consider the facts and circumstances of each situation.

§ 37a.17. Revocation, suspension or nonrenewal of licenses.

(a) The department may revoke, suspend or refuse to renew a license upon finding that an insurance producer has engaged in conduct which would disqualify [him] **the insurance producer** from initial issuance of a license. This conduct includes the indicated bases for initial

denial of a license provided in § 37a.16 (relating to standards for denial of license and enforcement actions).

(b) Hearings related to the revocation, suspension or nonrenewal of a license will be held in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(c) Notice of a formal hearing under 1 Pa. Code § 35.14 (relating to orders to show cause) sent to the address on file of the insurance producer shall constitute formal legal notice to the insurance producer.

§ 37a.18. Revocation, suspension or nonrenewal of licenses in nonresident insurance producer's state of domicile.

A nonresident insurance producer whose Pennsylvania license was issued by the department based on a valid certificate or license from the producer's home state may be subject to suspension, revocation or nonrenewal in this Commonwealth if the producer's license is suspended, revoked or nonrenewed in the producer's home state.

§ 37a.19. Exclusive general agents.

(a) A license does not permit an insurance producer to act as an exclusive general agent. To complete the licensure process to act as an exclusive general agent, an insurance producer shall secure a written appointment from each sponsoring insurer. An insurer shall make appointments of exclusive general agents in writing to the insurance producer.

(b) An insurer may terminate an exclusive general agent's appointment in accordance with the following requirements:

(1) A termination shall be in writing and sent to the exclusive general agent prior to notification of termination to the department. If an exclusive general agent requests termination, the insurer shall process the termination within 30 days.

(2) If an insurer has entered into a contract with the exclusive general agent, the termination date of the appointment shall be the same as the termination date of the contract.

(3) The termination notice to the exclusive general agent shall contain at least the following:

(i) The name of the insurer for which the agent is being terminated.

(ii) The effective date of termination.

(iii) The lines of authority terminated.

(iv) The name and address of terminated appointee, including fictitious names used by appointee.

(v) The national producer number or Pennsylvania license number of the terminated appointee.

(vi) The names of the designated licensee or licensees if the terminated appointee is a business entity.

§ 37a.20. Representation of insurer or consumer.

(a) When an insurance producer acting as the representative of the consumer is authorized by the client to secure insurance, the producer shall be considered the legal agent of the client.

[(b) When an entity gives a policy, either new or renewal, to a producer acting as the representative of the consumer for delivery to the insured, the producer shall be considered an agent of the entity for delivery of that one policy and, since collection of the premium is implied, payment to the producer shall be payment to the entity.]

[(c)] **(b)** For purposes of section 671-A of the act (40 P.S. § 310.71) and where a determination is otherwise required under the act, whether an insurance producer is acting on behalf of or representing an insurer is based upon the facts and circumstances of the particular transaction. Factors to be considered include all of the following:

(1) Whether the insurance producer receives a commission from the insurer.

(2) The nature and existence of any agreement between the insurance producer and the insurer including any reference to:

(i) An appointment of the producer.

(ii) The provision of binding authority.

(iii) Selling, soliciting or conducting insurance business for or on behalf of the insurer.

(iv) Representation of the insurer.

(3) Whether the insurance producer has researched or obtained quotes for the policy from multiple insurers and whether the insurance producer is appointed with each of these carriers.

(4) Whether the insurance producer is given authority to do more than the mere authorization to submit proposals or applications for consideration by the insurer.

[(d)] **(c)** Except as provided by section 674-A of the act (40 P.S. § 310.74(a)) or otherwise provided by law, an insurance producer may not receive both a commission from an insurer and a fee from a consumer in a particular transaction.

§ 37a.21. Appointments and termination of appointments.

(a) To act as a representative of an insurer, an insurance producer shall secure a written appointment from each insurer it represents.

(1) An insurer shall make appointments in writing to the insurance producer.

(2) If an insurer enters into a contract with the insurance producer to act as a representative of the insurer, the effective date of the appointment shall be the same as the effective date of the contract.

(3) An insurer's **notice of** appointment form [shall be submitted by the insurer in a form and format approved by the department and] must contain [at least all of] the following:

- (i) The effective date of the appointment.
- (ii) The name and address of the appointee.
- (iii) The appointee's license number.
- (iv) The appointee's national producer number.
- (v) The insurer's NAIC number.

(b) An insurer may terminate the appointment of an insurance producer to act as the representative of the insurer in accordance with all of the following requirements:

(1) Terminations shall be in writing and sent to the insurance producer prior to or contemporaneously with notification of termination to the department. If an insurance producer requests termination, the insurance entity shall process these terminations within 30 days.

(2) If an insurer has entered into a contract with the insurance producer to act as its representative, the termination date of the appointment shall be the same as the termination date of the contract.

(3) The termination notice to the insurance producer must contain at least the following:

- (i) The name of the insurer for which the insurance producer is being terminated.
- (ii) The effective date of termination.
- (iii) The name and address of the terminated appointee.

(iv) The national producer number or Pennsylvania license number of the terminated appointee.

(v) The names of the designated licensee or licensees if the terminated appointee is a business entity.

(4) Termination initiated by an appointee shall be acted upon by an insurer within 30 days and confirmed by an insurer in its termination form and reported to the department as required under this subsection.

(5) An insurer shall maintain termination records for [5] 7 years after termination is effective.

(6) When a termination of an appointee is for cause, the insurer shall document its reasons for termination and send the paperwork electronically to the attention of the department's Chief of Enforcement.

(7) If an appointment has been terminated on the records of the department, it may not be revived. The insurer shall issue a new appointment with a new effective date in the standard appointment format.

(8) An insurer shall file a termination of an appointment when the appointee ceases to act as the representative of the insurer.

(c) Appointment and termination activity by an insurer shall be [reported] **submitted** to the department electronically **through an approved vendor or authorized service** within 30 days of the appointment or termination effective date. On a case-by-case basis, the department will continue to accept paper monthly appointment activity reports for insurance companies who have 50 or less transactions per calendar year. The report shall be in a format approved by the department. The report shall be filed within 30 days of the end of the period being reported.

(d) Appointment and termination records required under this section may be maintained in the form of electronic paperless filing systems in accordance with guidelines for record retention developed and distributed by the department.

(e) Nothing in this section may affect the insurance producer's rights under sections 1—6 of the act of September 22, 1978 (P.L. 763, No. 143) (40 P.S. §§ 241—246) regarding the termination of agency contracts.

(f) For purposes of this section, written notifications include written notifications sent electronically if in compliance with the Uniform Electronic Transactions Act (73 Pa.C.S. §§ 2260.101 – 2260.503).

§ 37a.22. Producer accounts.

(a) Insurance producers who have the express written consent of their insurance entities to mingle all funds received or collected as an insurance producer with their own funds in accordance with section 696-A of the act (40 P.S. § 310.96), regarding fiduciary capacity of an insurance producer, may do so if the following exist:

(1) Moneys held in a fiduciary capacity are reasonably ascertainable from the books of accounts and records of the insurance producers.

(2) Amounts due entities are equal to or less than the combined accounts receivable and current bank balances.

(b) Insurance producers who do not have the express consent of their insurance entities to mingle all funds received or collected as an insurance producer with their personal funds shall hold the funds separate from other funds in accordance with the following:

(1) Insurance producers who do not make prompt remittance to their insurance entities may not deposit funds received or collected as an insurance producer in office operating accounts but

shall keep the moneys in a separate bank account from which disbursement may not be made other than for the payment of premiums to the insurance entities, the return of premiums to the insured, the transfer of commissions or the withdrawal of voluntary deposits.

(2) Voluntary deposits in the account for funds received or collected as an insurance producer in excess of premiums collected and unpaid to insurance entities may be made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account or for the purpose of the payment of premiums to the insurance entities in advance of their collection. These deposits may not be withdrawn except to the extent that the remaining balance is equal to the total of net premiums collected and unpaid to insurance entities.

(3) The deposit of all funds received or collected as an insurance producer in a separate bank account may not be construed as a mingling by the producer of the net premium and of the commission portion of the premium. The commission portion of the premiums may be withdrawn from the separate bank account at the discretion of the insurance producer.

(4) The maintenance in a separate bank account of at least the net balance of premiums collected and unpaid to the insurance entities by insurance producers shall be construed as compliant with this section and section 696-A of the act, if the funds so held are readily ascertainable from the books of account and records of producers.

(5) Insurance producers who make prompt remittance of collections to their insurance entities need not maintain separate bank accounts for these collections. To constitute prompt remittance, payment to entities shall be remitted not later than the close of the fifth business day following receipt of the funds.

(6) When both an operating account and an account for all funds received or collected are maintained by insurance producers under this section for purposes of segregating premiums

collected, the funds account balance shall include moneys sufficient to pay premiums collected and any amount delinquent or in dispute with the insurer represented. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the funds account may be withdrawn as if the excess moneys had been voluntary deposits.

(7) Insurance producers may deposit funds received or collected as an insurance producer in an interest-bearing account when not required to make prompt remittance to the insurer of premium moneys, if all of the following are met:

(i) The moneys are not placed in an account upon which a penalty may be levied against the principal for early withdrawal.

(ii) The moneys are placed in an account insured by the United States Government or instruments secured by the United States Government.

§ 37a.23. Merger of insurance entities.

(a) When insurers merge, consolidate or reincorporate, the insurers have the option to transfer all or none of their insurance producer appointments to the new surviving insurer. The transfer takes place immediately after the merger transaction is effective. Additional lines of authority will not be granted to these insurance producers by means of the transaction.

(b) If the surviving insurer decides to transfer all insurance producer appointments, it shall notify the department **in writing** within 30 days of the transfer. [The notice shall be in the form and manner established by the department.]

§ 37a.24. Enforcement.

(a) An insurance producer must, within 30 days of receiving a written inquiry by the department or a request for documentation related to an application or renewal of a license or an investigation, provide a written response or produce the requested documents.

(b) An insurance producer shall cooperate with the department in any investigation related to a violation of the act or this chapter. Cooperation includes, but is not limited to, being interviewed by the department, providing a written statement to the department, providing pertinent documentation, testifying at a proceeding, and completing an authorization for release of information, as necessary, in a form specified by the [Department] **department**.

(c) If a licensee fails to respond to an inquiry as set forth in subsection (a) **and fails to correct the violation within 15 days**, the department may file an order to show cause against the licensee on that basis seeking the penalties under section 612-A(b) of the act (40 P.S. § 310.12(b)) of a fine of no more than \$100 per day in addition to the denial, suspension or revocation of a license.

§ 37a.25. Recordkeeping.

(a) A licensee shall establish, maintain and follow record retention procedures to retain all documents pertaining to the licensee's transaction of the business of insurance for 7 years from the final execution or creation of the record, whichever is longer.

(b) This section establishes only the minimum retention period and shall not affect any record retention requirements that may be in excess of this time period, including requirements imposed by any of the following:

- (i) A contractual agreement.
- (ii) The Internal Revenue Service.
- (iii) An applicable statute of limitations.
- (iv) A law, regulation or policy of the department or any other state or Federal regulatory agency.

(c) Nothing in this section prohibits a licensee from retaining a record in an electronic format, provided that all records shall be retained in a manner that preserves their authenticity and will allow for their prompt production upon request by the department or any other state or Federal regulatory agency.

(d) For purposes of this section, an employee, agent, representative or designee of an insurance producer that is a business entity is exempt from the requirement to individually retain records to the extent that these records are already maintained by the licensed business entity.



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 23, 2024

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Insurance Department Final-form Regulation No. 11-262 Rescinding
and Reserving 31 Pa. Code § 37; Adopting 31 Pa. Code 37a.

Dear Independent Regulatory Review Commission:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed, for your information and review, is final-form regulation 11-262, which proposes to rescind and reserve Chapter 37 (related to agent certificates and broker licenses) and adopt, in its place, Chapter 37a (related to producer licenses, managers and general agents, powers and duties of the Insurance Commissioner, referral fees, and penalties).

The Department received and addressed comments from the Independent Regulatory Review Commission, the Insurance Federation of Pennsylvania, and the Independent Agents and Brokers.

If you have any questions regarding this matter, please contact me at (717) 705-7285.

Sincerely yours,

A handwritten signature in blue ink that reads "Jennifer Brown-Sweeney".

Jennifer Brown-Sweeney
Department Counsel

cc: David Sumner, Executive Director, IRRC

RECEIVED

From: [Cohn, Alan J.](#)
To: [Brown-Sweeney, Jennifer](#)
Cc: [Keller, Joseph](#); [Mollah, Aliya](#)
Subject: RE: Delivery of Final-Form Regulation 11-262
Date: Monday, September 23, 2024 1:09:07 PM

Independent Regulatory
Review Commission

September 23, 2024

Received.

Thank you,

Alan J. Cohn
Senior Executive Director
House Insurance Committee (D)
House of Representatives
acohn@pahouse.net
717-787-4437

From: Brown-Sweeney, Jennifer <jbrownswee@pa.gov>
Sent: Monday, September 23, 2024 1:06 PM
To: Cohn, Alan J. <ACohn@pahouse.net>
Cc: Speaks, Kathryn <kspeaks@pa.gov>; Sheaffer, Kimberly <kimsheaffe@pa.gov>
Subject: Delivery of Final-Form Regulation 11-262
Importance: High

Mr. Cohn,

Thank you for agreeing to accept delivery of the attached final-form regulation 11-262 package.

Please provide a written email confirmation that this rulemaking has been received, at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me directly.

Jennifer Brown-Sweeney | Department Counsel
Insurance Department
Governor's Office of General Counsel
1341 Strawberry Square | Harrisburg PA 17120
jbrownswee@pa.gov | www.insurance.pa.gov | www.ogc.pa.gov

**PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT**

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of

RECEIVED

From: [Morris, Dustin](#)
To: [Brown-Sweeney, Jennifer](#)
Cc: [Speaks, Kathryn](#); [Sheaffer, Kimberly](#)
Subject: Re: Delivery of Final-Form Regulation 11-262
Date: Monday, September 23, 2024 1:05:29 PM

Independent Regulatory
Review Commission

September 23, 2024

Received.

Thanks,
Dustin

Get [Outlook for iOS](#)

From: Brown-Sweeney, Jennifer <jbrownswee@pa.gov>
Sent: Monday, September 23, 2024 1:04:26 PM
To: Morris, Dustin <dustin.morris@pasenate.com>
Cc: Speaks, Kathryn <kspeaks@pa.gov>; Sheaffer, Kimberly <kimsheaffe@pa.gov>
Subject: Delivery of Final-Form Regulation 11-262

EXTERNAL EMAIL

Mr. Morris,
Thank you for agreeing to accept delivery of the attached final -form regulation 11-262 package.
Please provide a written email confirmation that this rulemaking has been received, at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me directly.

Jennifer Brown-Sweeney | Department Counsel
Insurance Department
Governor's Office of General Counsel
1341 Strawberry Square | Harrisburg PA 17120
jbrownswee@pa.gov | www.insurance.pa.gov | www.ogc.pa.gov

**PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT**

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

This message and any attachment may contain privileged or confidential information intended solely for the use of the person to whom it is addressed. If the reader is not the intended recipient then be advised that forwarding, communicating, disseminating, copying or using this message or its attachments is strictly prohibited. If you receive this message in error,

RECEIVED

From: [David Greineder](#)
To: [Brown-Sweeney, Jennifer](#)
Cc: [Speaks, Kathryn](#); [Sheaffer, Kimberly](#)
Subject: RE: [EXTERNAL]: Delivery of Final-Form Regulation 11-262
Date: Monday, September 23, 2024 1:08:59 PM

Independent Regulatory
Review Commission
September 23, 2024

Received.

From: Brown-Sweeney, Jennifer <jbrownswee@pa.gov>
Sent: Monday, September 23, 2024 1:05 PM
To: David Greineder <Dgreineder@pahousegop.com>
Cc: Speaks, Kathryn <kspeaks@pa.gov>; Sheaffer, Kimberly <kimsheaffe@pa.gov>
Subject: [EXTERNAL]: Delivery of Final-Form Regulation 11-262
Importance: High

Mr. Greineder

Thank you for agreeing to accept delivery of the attached final-form regulation 11-262 package.

Please provide a written email confirmation that this rulemaking has been received, at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me directly.

Jennifer Brown-Sweeney | Department Counsel
Insurance Department
Governor's Office of General Counsel
1341 Strawberry Square | Harrisburg PA 17120
jbrownswee@pa.gov | www.insurance.pa.gov | www.ogc.pa.gov

**PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT**

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this information in error, please contact the sender and delete the message and material from all computers.

RECEIVED

From: [Grant, Jordan](#)
To: [Brown-Sweeney, Jennifer](#)
Cc: [Speaks, Kathryn](#); [Sheaffer, Kimberly](#)
Subject: RE: Delivery of Final-Form Regulation 11-262
Date: Monday, September 23, 2024 1:58:47 PM

Independent Regulatory
Review Commission

September 23, 2024

Thank you for sending this over, the email will serve as confirmation that our office received the final-form regulation.

Regards,

Jordan Grant
Executive Director of Banking and Insurance
Senator DiSanto
168 Main Capitol Building
Harrisburg, PA 17120-3029
Phone: 717-787-6801

From: Brown-Sweeney, Jennifer <jbrownswee@pa.gov>
Sent: Monday, September 23, 2024 1:06 PM
To: Grant, Jordan <jgrant@pasen.gov>
Cc: Speaks, Kathryn <kspeaks@pa.gov>; Sheaffer, Kimberly <kimsheaffe@pa.gov>
Subject: Delivery of Final-Form Regulation 11-262
Importance: High

ⓘ CAUTION : External Email ⓘ

Mr. Grant,

Thank you for agreeing to accept delivery of the attached final -form regulation 11-262 package.

Please provide a written email confirmation that this rulemaking has been received, at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me directly.

Jennifer Brown-Sweeney | Department Counsel
Insurance Department
Governor's Office of General Counsel
1341 Strawberry Square | Harrisburg PA 17120
jbrownswee@pa.gov | www.insurance.pa.gov | www.ogc.pa.gov

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended