

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

INSURANCE DEPARTMENT

[25 PA. CODE CH. 977]

Underground Storage Tank Indemnification Fund; Owner and Operator Fees

The Insurance Department (Department) and the Underground Storage Tank Indemnification Board (Board) amend § 977.12 (relating to owner and operator fees) to read as set forth in Annex A. Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) provide the Insurance Commissioner with the authority to promulgate regulations governing the enforcement of the laws relating to insurance. Public notice of this rulemaking is impractical and unnecessary because the proposed amendment is needed to ensure the solvency of the Underground Storage Tank Indemnification Fund (Fund) and any input from the public would not decrease the necessity to increase the fees collected.

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

Purpose

The final-omitted rulemaking will bring the fees to the appropriate levels as recommended by an actuarial report that was completed on October 18, 2001. After reviewing this report, the Board determined that this increase is necessary to maintain the solvency of the Fund for the public health and safety of this Commonwealth's citizens and their environment. The actuarial study, performed by MMC Enterprise Risk Consulting, Inc., determined that an increase in the gallon and capacity fees was necessary to maintain the actuarial soundness of the Fund in the future.

Explanation of Regulatory Requirements

Section 977.12 is being amended to reflect the fees that the actuary recommended in the report.

Fiscal Impact

An owner or operator transacting business in this Commonwealth will be affected by this final-omitted rulemaking. However, any fiscal impact will be minimal, as the increases still result in very low fees in relation to the benefits provided by the Fund to the owners and operators.

The costs that local governments are currently paying will increase by approximately \$79,000 per quarter. Because local governments currently pay the gallon fee to the distributor and the capacity fee directly to the Fund, the only change will be a larger fee.

Commonwealth-owned tanks are exempt from all Fund fees.

General Public

Because the public is a consumer of goods and services provided by owners and operators of an underground storage tank (UST) or a heating oil tank (HOT), any increase to the fees could result in higher prices to consumers. However, it is expected that this increase in fees will only result in an additional 4¢ per month to motorists, in accordance with a survey on vehicle fuel consumption and expenditures by United States' households, conducted by the Energy Information Administration, Office of Energy Markets and End Use.

The increase will keep the Fund solvent after an actuarial study completed in November 2001 indicated the need for additional revenue, to maintain the Fund's actuarial soundness.

Effectiveness/Sunset Date

This final-omitted rulemaking will become effective April 1, 2002.

Paperwork

Adoption of this final-omitted rulemaking should not require any significant paperwork for the owners or operators of USTs or HOTs. The paperwork necessary after the increase is expected to be the same as before the increase was implemented.

Persons Regulated

This final-omitted rulemaking applies to all owners or operators of USTs and HOTs in this Commonwealth.

Contact Person

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

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on February 7, 2002, the Department submitted copies of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. On the same date, the final-omitted rulemaking was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, on February 27, 2002, this final-omitted rulemaking was deemed approved by the House and Senate Committees. The Attorney General approved the final-omitted rulemaking on February 26, 2002. Under section 5.1(e) of the Regulatory Review Act, on March 7, 2002, IRRC met and approved this final-omitted rulemaking.

Findings

The Commissioner finds that:

(1) There is good cause to amend § 977.12, effective upon publication with the proposed rulemaking omitted. Deferral of the effective date of the final-omitted rulemaking would be impractical and not serve the public interest. Under section 204(3) of the CDL, there is no purpose to be served by deferring the effective date. An

immediate effective date will best serve the public interest by ensuring that fees have the full potential that the actuarial study predicted.

(2) There is good cause to forego public notice of the intention to amend § 977.12 because notice of the amendment under the circumstances is unnecessary and impractical because the amendments proposed are necessary to ensure the solvency of the Fund and any input from the public would not decrease the necessity to increase the fees collected.

Order

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

(1) The regulations of the Department, 25 Pa. Code Chapter 977, are amended by amending § 977.12 to read as set forth in Annex A.

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

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

(4) This order shall take effect April 1, 2002.

M. DIANE KOKEN,
Commissioner

E. BRUCE SHELLER,
*Chair, Underground Storage
Tank Indemnification Board*

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 32 Pa.B. 1590 (March 23, 2002).)

Fiscal Note: 11-214. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART VIII. UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD

CHAPTER 977. UNDERGROUND STORAGE TANK INDEMNIFICATION FUND

Subchapter B. FEES AND COLLECTION PROCEDURES

§ 977.12. Owner and operator fees.

(a) *Annual fees.* The Board may charge fees established in this section, based on an annual actuarial review.

(b) *Tank and gallon fees.* A UST owner or operator storing gasoline, new motor oil, hazardous substances, gasohol, aviation fuel, mixture, farm diesel and other types of substances based on the tank registration information maintained by the DEP may be assessed the following fees:

(1) *Tank fee.* A tank fee of \$0 per UST per year.

(2) *Gallon fee.* A gallon fee on all regulated substances entering a UST of \$.0010 per gallon (For example, 10,000 gallons at \$.0010 per gallon equals \$10).

(c) *Nonretail bulk storage.* Total fees paid by an owner or operator of a nonretail bulk storage or wholesale distribution UST storing gasoline are established using the method described in subsection (b) and are capped at \$5,000 per UST per year in accordance with section 705(d)(3) of the act (35 P. S. § 6021.705(d)(3)).

(d) *Capacity fee.* An owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by the DEP may be assessed a capacity fee of \$.02 per gallon of capacity, which amount is established in accordance with section 705(d)(2) of the act. (For example, 10,000 gallons at \$.02 per gallon equals \$200).

[Pa.B. Doc. No. 02-455. Filed for public inspection March 22, 2002, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 65]

Charter Amendments; Financial Requirements

The Insurance Department (Department) deletes Chapter 65, Subchapter C (relating to charter amendments; financial requirements) to read as set forth at 31 Pa.B. 5552 (October 6, 2001). The chapter applies to property and casualty insurers authorized to write automobile insurance coverages under section 202(c)(11) of The Insurance Company Law of 1921 (40 P. S. § 382(c)(11)) (act). The subchapter provided for the automatic amendment of existing charters and established minimum capital and surplus requirements for domestic insurers affected by the act of November 27, 1968 (P. L. 118, No. 349) (Act 349).

Purpose

The purpose of this rulemaking is to delete Subchapter C to eliminate obsolete, unnecessary regulations. Section 202 of the act delineates the underwriting authorities of various types of insurers. Act 349 consolidated the underwriting authority to write automobile bodily injury liability and automobile property damage liability insurance coverages. The regulations were adopted May 16, 1969, to implement the provisions of Act 349 with respect to insurers writing automobile insurance coverages in this Commonwealth.

Section 65.23 (relating to charters automatically amended) provided for the automatic amendment of the existing charters of insurers that were authorized to write both of the consolidated coverages and delineated the effect of Act 349 on the authority of insurers that had one of the two consolidated underwriting powers. The GAA Amendments Act of 1990 (15 P. S. §§ 21205—21207) updated the Commonwealth's business corporation laws relating to insurance companies. The updates included the repeal of provisions in the act requiring the Department's approval of charters for the creation of insurers. As a result of these updates, insurer charters are no longer required to specify underwriting authority. Therefore, §§ 65.21 and 65.22 (relating to definition of act; and authority for writing certain policies) and § 65.23 are outdated and no longer needed.

Sections 65.24—65.26 (relating to minimum paid-up capital for stock insurers; minimum surplus for mutual insurers; and determining compliance) established minimum capital and surplus requirements for mutual insurers with the authority to write automobile liability insurance. The current minimum capital and surplus requirements for these insurers are now found in sections 206 and 601 of the act (40 P. S. §§ 386 and 721). Therefore, §§ 65.24—65.26 also are outdated and no longer needed.

Statutory Authority

This final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 202, 206 and 601 of the act; and 15 Pa.C.S. §§ 21201—21208.

Comments

Notice of the proposed rulemaking was published at 31 Pa.B. 5552 with a 30-day public comment period.

No comments were received from the public or the standing committees. On December 6, 2001, the Independent Regulatory Review Commission (IRRC) notified the Department that IRRC had no objections, comments or suggestions to offer on the proposed rulemaking.

Fiscal Impact

There is no fiscal impact as a result of the deletion of the subchapter.

Paperwork

The deletion of the subchapter would impose no additional paperwork requirements on the Department or insurers.

Persons Regulated

The deletion of the subchapter affects property and casualty insurers authorized to write automobile insurance coverages in this Commonwealth.

Contact Person

Questions regarding the final-form rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120. Questions also may be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2001, the Department submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 5552 to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Committee on Insurance for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on February 12, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act. The final-form rulemaking was deemed approved by IRRC effective February 13, 2002.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt these final-form regulations by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

(1) The regulations of the Department, 31 Pa. Code Chapter 65, are amended by deleting §§ 65.21—65.26 to read as set forth at 31 Pa.B. 5552.

(2) The Commissioner shall submit this order and 31 Pa.B. 5552 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(3) The Commissioner shall certify this order and 31 Pa.B. 5552 and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 32 Pa.B. 1362 (March 9, 2002).)

Fiscal Note: Fiscal Note 11-211 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 02-456. Filed for public inspection March 22, 2002, 9:00 a.m.]