

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 27]

Disclosure of Material Transactions

The Insurance Department (Department) proposes to adopt Chapter 27 (relating to disclosure of material transactions), to read as set forth in Annex A. These regulations are proposed under the authority of section 320 of The Insurance Company Law of 1921 (act) (40 P. S. § 443). Under section 320 of the act, insurers transacting business in this Commonwealth are required to file financial statements with the Department on at least an annual basis, and the Department has the discretion to require additional statements as necessary. The proposed regulations would require domestic insurers to file interim statements relating to specific transactions in order to allow the Department to monitor better the financial condition of the insurers.

Purpose

The Department is primarily responsible for regulation of the financial solvency of insurers domiciled in this Commonwealth. Under section 320 of the act, insurers transacting business in this Commonwealth are required to file financial statements with the Department on at least an annual basis. Section 320 of the act further provides the Department with the discretion to require insurers to file additional statements concerning their affairs and financial condition.

This proposed rulemaking would require domestic insurers to file with the Department interim statements of specific transactions that may have a material effect on their financial condition. Unless otherwise excluded from the filing requirement under the proposed regulations, the general types of transactions required to be filed are:

(1) Acquisitions and dispositions of assets (as described in § 27.6 (relating to nature and scope of material acquisitions and dispositions of assets)) that are nonrecurring and not in the ordinary course of business and involve more than 5% of the reporting insurer's total admitted assets.

(2) Nonrenewals, cancellations or revisions of ceded reinsurance agreements (as described in § 27.8 (relating to nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to property and casualty insurers)) that relate to reinsurance cessions which generate either: 50% or more of the insurer's ceded written premiums as reported in the most recent annual statutory financial statement filed by the insurer; or 50% or more of the insurer's total ceded indemnity loss and loss adjustment expense reserves.

Without knowledge of these types of extraordinary transactions as they occur, the Department is at a disadvantage in monitoring the financial condition of domestic insurers. Therefore, the regulations are needed to enable the Department to better monitor insurer solvency between annual financial statement filing dates.

Explanation of Regulatory Requirements

Section 27.1 (relating to definitions) contains definitions of "domestic" and "insurer" as key terms used in identifying the types of insurance entities that fall within the scope of the proposed regulations. Section 27.3 (relating to application) specifies that the proposed regulations

apply to those insurers required to file financial statements under section 320 of the act. Section 27.3 also clarifies that the proposed regulations do not affect a separate statute which requires insurers to provide prior notice to the Department of certain transactions involving disposals of assets or reinsurance cessions.

Section 27.4 (relating to statements disclosing material transactions) identifies the general types of transactions that must be reported under the proposed regulations and establishes a 30-day time frame for filings. This section also provides an example of how the 30-day filing requirement is applied to a series of related material acquisitions or dispositions of assets.

Section 27.5 (relating to confidentiality of statements disclosing material transactions) provides for confidential treatment to be given to statements filed under the proposed regulations, except that the Department may share information with the National Association of Insurance Commissioners (NAIC) and other states or jurisdictions if those parties can and will protect its confidentiality. This section protects the confidentiality of information which would not otherwise be reported in public documents while providing the Department with the discretion to share information with the NAIC and other regulators when appropriate, particularly in situations involving domestic insurers that have a significant number of policyholders in other states.

Section 27.6 (relating to nature and scope of material acquisitions and dispositions of assets) establishes the parameters for material acquisitions and dispositions of assets that fall within the scope of the proposed regulations and provides examples of specific types of transactions that are required to be reported. Section 27.7 (relating to content of statements disclosing material acquisitions or dispositions of assets) lists the information that must be included in statements of material acquisitions or dispositions of assets.

Section 27.8 (relating to nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to property and casualty insurers) defines the type of nonrenewals, cancellations or revisions of ceded reinsurance agreements that are required to be reported by property and casualty insurers. This section also provides exemptions for certain transactions that meet the definition but are not required to be filed. In general, the exemptions include transactions (1) where the amount of premium ceded to reinsurers is less than 10% of the insurer's total premiums; and (2) where existing reinsurance is replaced with an agreement with another licensed or qualified reinsurer and there is no significant increase in the amount of risk retained by the ceding insurer. Revisions to inter-company pooling reinsurance agreements among affiliated insurers are also exempted from the filing requirement.

Section 27.9 (relating to nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to life insurers) includes provisions for life insurers comparable to provisions in § 27.8 for property and casualty insurers for reporting of material transactions relating to reinsurance agreements. Section 27.10 (relating to contents of statements disclosing material nonrenewal, cancellation or revision of ceded reinsurance agreements) lists the information that must be included in statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements filed

by both property and casualty insurers and life insurers. This section also permits reporting on a consolidated basis when the reporting insurer is part of a group of insurers which utilizes a pooling arrangement or 100% reinsurance agreement.

Section 27.11 (relating to penalties) provides for penalties consistent with the authorizing statute for failure to file or for willfully filing a false statement. Finally, Appendix A (relating to certification for statement disclosing material transaction) is a certification form to be executed by an officer of an insurer filing a statement disclosing a material transaction.

Fiscal Impact

State Government

Review of reports filed under these proposed regulations will not have a measurable impact on Department costs associated with the analyses of financial statements filed by domestic insurers.

General Public

The proposed regulations have no immediate fiscal impact on the general public. However, the general public will benefit to the extent that adoption of the proposed regulations enhance the ability of the Department to monitor the financial solvency of domestic insurers.

Political Subdivisions

The proposed regulations have no impact on costs to political subdivisions.

Private Sector

The reporting requirements in these proposed regulations will impose no significant costs on domestic insurers.

Paperwork

The proposed regulations require additional reporting by domestic insurers. However, the disclosure requirements established by the proposed regulations are necessary in order for the Department to determine whether material transactions may have an adverse impact on the interests of policyholders or on the financial stability of a domestic insurer.

Effectiveness/Sunshine Date

The proposed regulations will become effective upon publication in the *Pennsylvania Bulletin* as final rule-making. The regulations will be monitored annually. No sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rule-making may be addressed in writing to Elaine M. Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 787-8840, within 30 days following publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed regulations on February 8, 1996, 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. In addition to submitting these proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Execu-

tive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed regulations, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the regulations by the Department, the General Assembly and the Governor of objections raised.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-132. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart B. SECURITIES AND STOCK TRANSACTIONS

CHAPTER 27. DISCLOSURE OF MATERIAL TRANSACTIONS

- Sec. 27.1. Definitions.
- 27.2. Purpose.
- 27.3. Application.
- 27.4. Statements disclosing material transactions.
- 27.5. Confidentiality of statements disclosing material transactions.
- 27.6. Nature and scope of material acquisitions and dispositions of assets.
- 27.7. Content of statements disclosing material acquisitions or dispositions of assets.
- 27.8. Nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to property and casualty insurers.
- 27.9. Nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to life insurers.
- 27.10. Contents of statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements.
- 27.11. Penalties.

§ 27.1. Definitions.

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

Act—The Insurance Company Law of 1921 (40 P. S. §§ 341—991.1718).

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Domestic—Incorporated or organized under the laws of the Commonwealth.

Insurer—A company, association or exchange as defined in section 101 of the act (40 P. S. § 361).

§ 27.2. Purpose.

Section 320 of the act (40 P. S. § 443), requires every stock and mutual insurance company, association and exchange doing business in this Commonwealth to file a financial statement with the Department on at least an annual basis and further provides the Department with the discretion to require insurers to file additional statements concerning their affairs and financial condition. The Department is primarily responsible for regulation of the financial solvency of insurers domiciled or organized

in this Commonwealth. This chapter provides for the interim filing of statements of transactions that may have a material effect on the financial condition of a domestic insurer. The filing of statements disclosing material transactions will provide the Department with significant information needed to monitor domestic insurer solvency on a timely basis.

§ 27.3. Application.

(a) This chapter applies to licensed domestic insurers subject to section 320 of the act (40 P. S. § 443) relating to filing of statements of financial condition.

(b) This chapter does not supersede or in any way affect an insurer's duty to comply with the act of July 31 1968 (P. L. 941, No. 288) (40 P. S. §§ 995.1—995.4), relating to prior notice to the Commissioner of disposal of assets and certain reinsurance cessions.

§ 27.4. Statements disclosing material transactions.

(a) Insurers subject to this chapter shall file statements with the Department disclosing the following material transactions:

- (1) Acquisitions and dispositions of assets.
- (2) Material nonrenewals, cancellations or revisions of ceded reinsurance agreements.

(b) Notwithstanding subsection (a), if statements disclosing material transactions have been submitted to the Department for review, approval or informational purposes under other laws, regulations or requirements, no filing is required under this chapter.

(c) A statement disclosing a material transaction shall be filed with the Department within 30 days after the date on which the transaction was closed.

(d) When a statement is required as the result of a series of related material acquisitions or dispositions of assets during a 30-day period, the statement shall be filed within 30 days after any transaction within a 30-day period which results in the aggregate of transactions within that 30-day period involving more than 5% of the reporting insurer's total admitted assets as reported in that insurer's most recent annual statutory financial statement filed with the Department. For example:

Company A has total admitted assets of \$5 million.
Threshold for Filing Statement: \$250,000.

<i>Closing Date</i>		Series of Related Transactions				<i>Filing Required</i>
		<i>Amount</i>	<i>30-Day Total</i>	<i>% of Assets</i>	<i>30-Day Total</i>	
1	Jan. 1	\$ 50,000	\$	1%		No
	Jan. 15	100,000	150,000	2%	3%	No
2	Jan. 21	200,000	350,000	4%	7%	Yes-1
	Feb. 8	25,000	325,000	.5%	6.5%	Yes-2

Filing 1 must be made within 30 days of January 21.
Filing 2 must be made within 30 days of February 8.

§ 27.5. Confidentiality of statements disclosing material transactions.

(a) Statements obtained by or disclosed to the Department under this chapter shall be given confidential treatment, unless one or more of the following occur:

(1) The insurer to which the information pertains gives its prior written consent that the information may be disclosed.

(2) The Commissioner, after giving the affected insurer notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public would be served by the publication, in which event the Commissioner may publish all or any part thereof in a manner that the Commissioner deems appropriate.

(3) The statements are subpoenaed. The Department will notify the affected insurer prior to providing the information subject to subpoena.

(b) Notwithstanding this section, the Department may share statements obtained by or disclosed to the Department under this chapter with the National Association of Insurance Commissioners and with insurance departments of other states or jurisdictions, as long as, prior to the Department's disclosure, those parties demonstrate the necessary authority and intent to provide the same confidential treatment required by this chapter.

§ 27.6. Nature of scope of material acquisitions and dispositions of assets.

(a) For purposes of this chapter, a material acquisition (or the aggregate of a series of related acquisitions during a 30-day period) or a material disposition (or the aggregate of a series of related dispositions during a 30-day period) is a transaction that is nonrecurring and not in the ordinary course of business and involves more than 5% of the reporting insurer's total admitted assets as reported in that insurer's most recent annual statutory financial statement filed with the Department.

(b) Acquisitions of assets subject to this chapter include every purchase, lease, exchange, succession or other acquisition, other than the following:

(1) The purchase, construction or development of real property occupied or to be occupied by the insurer for the transaction of its business or the acquisition of materials for that purpose.

(2) Electronic data processing hardware and operating software acquired by the insurer to support the transaction of its business.

(c) Dispositions of assets subject to this chapter include every sale, lease, transfer, exchange, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, alienation or other conveyance of an interest in assets.

§ 27.7. Content of statements of material acquisitions or disposition of assets.

(a) Statements of material acquisitions or dispositions of assets shall include the following information:

- (1) The dates of the transactions.
- (2) The manner of acquisition or disposition.
- (3) A description of the assets involved.
- (4) The nature and amount of the consideration given or received.
- (5) The purpose of or reason for the transactions.
- (6) The manner by which the amount of consideration was determined.
- (7) The gain or loss recognized or realized as a result of the transaction.
- (8) The name of the person from whom the assets were acquired or to whom they were disposed.
- (9) The name, title, address and telephone number of the individual to whom notices and correspondence concerning the statements should be addressed.
- (10) A certification of an officer of the insurer as provided in Appendix A (relating to certification for statement disclosing material transaction).

(b) Material acquisitions and dispositions of assets shall be reported on a nonconsolidated basis.

§ 27.8. Nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to property and casualty insurers.

(a) For purposes of this chapter, a nonrenewal, cancellation or revision of a ceded reinsurance agreement with respect to property and casualty business—including accident and health business written by a property and casualty insurer—is material if it relates to reinsurance cessions which generate one or more of the following:

- (1) Fifty percent or more of the insurer's ceded written premiums as reported in the most recent annual statutory financial statement filed by the insurer.
- (2) Fifty percent or more of the insurer's total ceded indemnity loss and loss adjustment expense reserves.

(b) Notwithstanding subsection (a), a statement under this chapter is not required if one or more of the following conditions are met:

(1) The total ceded written premium of a property and casualty insurer represents, on an annualized basis, less than 10% of the sum of the insurer's total written premium for direct and assumed business as reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) A ceded reinsurance agreement which is nonrenewed or canceled is replaced under the following conditions:

- (i) The replacement reinsurer is licensed or on the Department's list of qualified reinsurers.
- (ii) The percentage increase in the net aggregate retention by the domestic ceding insurer is less than 50%.

(3) A revision to a ceded reinsurance agreement does not increase the ceding insurer's retention of risk or exposure to loss.

(4) A revision is made to an intercompany pooling reinsurance agreement among affiliated insurers.

(c) A material revision of a ceded reinsurance agreement shall be reported if one or more of the following events occur:

(1) A reinsurer which represents more than 10% of a total cession and which is licensed to transact business in this Commonwealth or included on the Department's list of qualified reinsurers is replaced by one or more reinsurers that are neither licensed nor on the Department's list of qualified reinsurers.

(2) Previously established collateral requirements have been reduced or waived for one or more reinsurers that are neither licensed nor on the Department's list of qualified reinsurers, representing collectively more than 10% of a total cession.

(3) The percentage increase in the net aggregate retention by the domestic ceding insurer is equal to or greater than 50%.

(d) Statements filed under this section shall be prepared in compliance with § 27.10 (relating to content of statements disclosing material nonrenewal, cancellation or revision of ceded reinsurance agreements).

§ 27.9. Nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to life insurers.

(a) For purposes of this chapter, a material nonrenewal, cancellation or revision of a ceded reinsurance agreement with respect to life, annuity and accident and health business written by a life insurer is a transaction that affects more than 50% of the total reserve credit taken for business ceded as reported in the insurer's most recent annual statutory financial statement filed with the Department.

(b) Notwithstanding subsection (a), a statement under this chapter is not required if one or more of the following conditions are met:

(1) The total reserve credit taken for business ceded represents less than 10% of the amount of gross reserves reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) A ceded reinsurance agreement which is nonrenewed or canceled is replaced under the following conditions:

(i) The replacement reinsurer is licensed or on the Department's list of qualified reinsurers.

(ii) The percentage increase in the amount of reserve credit taken by the domestic ceding insurer under the replacement agreement does not exceed 50% of the reserve credit which was taken under the agreement being replaced.

(3) A revision to a ceded reinsurance agreement does not increase the ceding insurer's retention of risk or exposure to loss.

(4) A revision is made to an inter-company pooling reinsurance agreement among affiliated insurers.

(b) A material revision of a ceded reinsurance agreement shall be reported if one of the following events occur:

(1) A reinsurer which represents more than 10% of a total cession and which is licensed to transact business in this Commonwealth or included on the Department's list of qualified reinsurers is replaced by one or more reinsurers that are neither licensed nor on the Department's list of qualified reinsurers.

(2) Previously established collateral requirements have been reduced or waived with regard to one or more reinsurers that are neither licensed nor on the Department's list of qualified reinsurers, representing collectively more than 10% of a total cession.

(c) Statements filed under this section shall be prepared in compliance with § 27.10 (relating to contents of statements disclosing material nonrenewal, cancellation or revision of ceded reinsurance agreements).

§ 27.10. Contents of statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements.

(a) Statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements shall include the following information:

(1) The effective date of the nonrenewal, cancellation or revision.

(2) A description of the transaction.

(3) Identification of the party which initiated the transaction.

(4) The purpose of or reason for the transaction.

(5) The identity of replacement reinsurers, if applicable.

(6) Quantification of additional risk to the insurer resulting from the transaction.

(7) The name, title, address and telephone number of the individual to whom notices and correspondence concerning the statements should be addressed.

(8) A certification of an officer of the insurer as provided in Appendix A (relating to certification for statement disclosing material transaction).

(b) Material nonrenewals, cancellations or revisions of ceded reinsurance agreements shall be reported on a nonconsolidated basis. If the reporting insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100% reinsurance agreement which affects the solvency and integrity of the reporting insurer's reserves and that insurer ceded substantially all of its direct and assumed business to the pool, material nonrenewals, cancellations or revisions of ceded reinsurance agreements may be reported on a consolidated basis. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1 million total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus as reported in its most recent annual statutory financial statement filed with the Department.

§ 27.11. Penalties.

(a) An insurer that neglects to make and file a statement in the form or within the time required by this chapter shall be subject to the penalty for late filing of statements concerning its financial condition and affairs as provided in section 320(e)(1) of the act (40 P. S. § 443(e)(1)).

(b) For willfully filing a false statement required by this chapter, an insurer and the persons making oath to or subscribing the statement shall be subject to the penalties as provided in section 320(e)(2) of the act (40 P. S. § 443(e)(2)).

APPENDIX A

CERTIFICATION FOR STATEMENT DISCLOSING MATERIAL TRANSACTION

CERTIFICATION

The undersigned deposes and says that (s)he has executed the attached Statement of Material Transaction dated _____, _____, for and on behalf of (NAME OF INSURER); that (s)he is the (TITLE OF OFFICER) of such company and that (s)he is authorized to execute and file the attached statement on such company's behalf. Deponent further says that (s)he is familiar with the statement and the contents thereof, and that the facts therein set forth are true and correct to the best of her/his knowledge, information and belief.

(SEAL)

(SIGNATURE OF OFFICER)
(NAME AND TITLE)

Attest:

(SIGNATURE OF OFFICER)
(NAME AND TITLE)

[Pa.B. Doc. No. 96-242. Filed for public inspection February 23, 1996, 9:00 a.m.]

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

Termination of Proposed Rulemaking: Integrated Resource Planning for Water Utilities (52 Pa. Code § 65.21); Doc. No. L-00930077

Commissioners Present: John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka; Robert K. Bloom

Public meeting held
July 20, 1995

Opinion and Order

By the Commission:

On February 12, 1988, the Commission promulgated regulations for the purpose of implementing a lease cost planning strategy in the electric and gas industry. On April 2, 1993, the Commission issued an Order requesting comments on initial draft regulations for integrated resource planning (IRP) for water utilities. In the Commission's judgment, there were reasons to inquire whether a similar strategy for the water industry would be appropriate.

One of the underlying premises was that IRP as applied to the electric and gas utilities was easily transferred to water utilities. Based on the comments received in this docket, we now conclude that this premise was not accurate.

The development of the IRP principles for the electric and gas industry was undertaken to achieve certain objectives in consideration of characteristics unique to those two industries. The water industry differs in many ways to those industries.

One of the main reasons for the IRP in the electric and gas industry was to control rapid growth in a cost effective manner. Over the past two decades, the water industry has actually experienced a decline in per cus-

tomers water demand. Further, unlike the electric industry there are no new water consuming products introduced in the home or industry creating additional water requirements such that new source development would be necessary. In fact, the water industry is experiencing a decline in water usage on a per capita basis due to conservation efforts and the increasing availability and use of water efficient fixtures such as dishwashers, shower heads and low consumption water closets.

The investment in the quality of the product differs from the electric and gas industries. The major challenge for the water industry is upgrading treatment and distribution facilities for existing customers rather than building new supplies to meet growth in per customer demand. The difficulty is that water must be treated to exacting standards so as to comply with the Safe Drinking Water Act.

The Commission is not in a position to effectively implement a comprehensive, Statewide IRP since its jurisdiction does not extend to all water suppliers. There are also many regulatory agencies with broad jurisdictional responsibilities for water resource management that are in a better position to review components of an IRP. These agencies include the United States Environmental Protection Agency, the Delaware River Basin Commission, the Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection which have the legislative and regulatory responsibilities to manage and control water withdrawal of all users. There is the potential for redundancy and/or conflict between the Commission and the other regulatory agencies. It would be inappropriate for this Commission to impose IRP requirements on the regulated water utilities in a manner that may not be consistent with IRP policies and guidelines for regulatory agencies which have broader jurisdictional authority and greater responsibility for total water management.

The IRP goal states that the filing of planning information will provide to the Commission information that is needed for the Commission to evaluate the needs of water utilities. The proposed regulations will not provide this information. An effective IRP must include all jurisdictional water companies. The small, troubled water companies are the companies that the Commission needs such planning information to enable better regulation. However, the smaller companies are exempt from the proposed regulations because of their size and the cost associated with compliance with the proposed regulations. The water companies that fall under the proposed regulations have planning staffs and must answer to shareholders for deficiencies in their systems.

With that goal in mind, the cost associated with reporting requirements is not justified. Given the limited resources of the Commission, the money would be better spent focusing on the small troubled water companies that are exempt from the proposed regulations. The Commission already has in place several task forces and working groups that are examining the plight of the troubled water companies.

Based on the discussion above, we shall terminate the rulemaking in this docket. Accordingly, under 66 Pa.C.S. §§ 308, 501, 504, 523 and 1501, and the Commonwealth Document Law (45 P.S. § 1201, *et seq.*) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we find that the IRP regulations at 52 Pa. Code § 65.21 are not warranted and are rejected; *Therefore,*

It Is Ordered:

1. That the rulemaking proceeding at this docket number is hereby terminated.

2. That this Order shall be published in the *Pennsylvania Bulletin*.

3. That a copy of this Order shall be served upon the Office of Consumer Advocate, the Department of Environmental Protection, the Delaware and Susquehanna River Basin Commissions, the Office of Small Business Advocate, the Office of Trial Staff, the Pennsylvania Emergency Management Agency, the Department of Community Affairs, all jurisdictional Class A water utilities, and all parties who submitted comments to the advance notice of proposed rulemaking.

4. That the Secretary shall duly certify this Order and deposit it with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. Alternate formats of this document are available to persons with disabilities and may be obtained by contracting Shirley M. Leming, Regulatory Coordinator, Law Bureau, at (717) 772-4597 or through AT&T Relay Center at 1 (800) 654-5988. The contact persons are Stanley E. Brown, Assistant Counsel, Law Bureau, (717) 783-3968, and Thomas Heck, Bureau of CEEP, (717) 783-1985.

6. That the docket at L-00930077 is closed.

JOHN G. ALFORD,
Secretary

[Pa.B. Doc. No. 96-243. Filed for public inspection February 23, 1996, 9:00 a.m.]

STATE BOARD OF MEDICINE AND STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CHS. 18 AND 25]

Respiratory Care Practitioners

By this combined proposal, the State Board of Medicine and State Board of Osteopathic Medicine (the Boards) propose to amend Chapters 18 and 25, as set forth in Annex A. These proposed regulations will add new subchapters pertaining to the certification and practice of respiratory care practitioners in this Commonwealth.

In 1993, the Legislature amended both medical practice acts to create a new certification class of practitioners regulated by the Boards to be known as respiratory care practitioners. Under the amendatory acts, respiratory care practitioners may obtain certifications from either Board.

The Boards have elected to promulgate the proposed new Subchapters F and I (relating to respiratory care practitioners) jointly inasmuch as the amendments to both Boards' practice acts regarding respiratory care certification are substantially identical.

Statutory Authority

The regulations are proposed under the authority of sections 13.1(c) and 36.1 of the Medical Practice Act of

1985 (MPA) (63 P. S. §§ 422.13a(c) and 422.36a) and sections 10.1(c) and 10.2 of the Osteopathic Medical Practice Act (OMPA) (63 P. S. §§ 271.10a(c) and 271.10b), added by the act of July 2, 1993 (P. L. 424, No. 60) and the act of July 2, 1993 (P. L. 418, No. 519) respectively. These sections require that the Boards issue certificates and temporary permits to individuals meeting the qualifications set forth in the MPA and the OMPA to practice or offer to practice respiratory care in this Commonwealth. Under section 13.1(a) of the MPA and section 10.1(a) of the OMPA, on and after June 30, 1995, an individual may not practice, hold himself out to the public to practice or offer to practice as a respiratory care practitioner unless that individual holds a valid, current temporary permit or certificate issued by either Board. See section 3 of the act of July 2, 1993, section 13.1(a) of the MPA, section 3 of the act of July 2, 1993 and section 10.1(a) of the OMPA.

Under section 13.1(c) of the MPA and section 10.1(c) of the OMPA, the Boards are authorized to promulgate regulations to establish procedures for application, credentials, verification, examination, certification and fees.

Persons Affected

Persons who practice or who seek to practice respiratory care in this Commonwealth on and after June 30, 1995, must obtain a permit or a certificate in accordance with the provisions of this proposal.

Summary of Provisions

Major features of the new subchapters as proposed are summarized as follows.

§§ 18.302 and 25.293. Definitions.

These proposed sections would define words and phrases used in the subchapters. The National uniform examination adopted by the Boards is the CRTT, the entry level respiratory care examination of the National Board for Respiratory Care (NBRC). The Boards also recognize as the accrediting agency for acceptable respiratory care educational programs the Joint Review Committee on Respiratory Therapy Education (JRCRTE).

§§ 18.303 and 25.924. Fees.

These proposed sections establish fees for obtaining a temporary permit, certification, examination and biennial renewal of certifications. Each of the fees for the issuance of a temporary permit and initial certification and for examination is based upon the costs of providing the service. The biennial renewal fee represents the estimation of the Boards of the costs of administering the certification program over a biennial period.

§§ 18.304 and 25.295. Certification of respiratory care practitioners; practice; exceptions.

Subsection (a) of each section would notify persons intending to practice respiratory care of the requirements of certification unless exempted by statute.

Subsections (b) of each section as proposed would notify persons that the words "respiratory care practitioner," the letters "R.C.P." or similar words and abbreviations, may not be used in connection with the provision of respiratory care services unless provided by a certified respiratory care practitioner under the supervision of a licensed physician.

§§ 18.305 and 25.296. Functions of respiratory care practitioners.

Proposed subsection (a) of each section states the functions that have been legislatively reserved to respiratory care practitioners. Proposed subsection (b) of each

section restates the limitation of the MPA and the OMPA that respiratory care functions may only be performed upon a physician prescription, a referral or under medical direction under standing orders or protocols in a health care facility or other health care site.

§§ 18.306 and 25.297. Temporary permits.

The MPA and the OMPA require the Boards to issue temporary permits to persons who are qualified by education to take the examination for certification. Proposed subsection (a) of each section provides that a temporary permit will be issued to applicants who submit evidence of: (1) having graduated from a respiratory care program while awaiting the results of the Board-approved examination; (2) expecting to graduate within 30 days of the date of application for temporary permit; or (3) having provided respiratory care services for at least 12-consecutive months prior to December 28, 1993, and awaiting results of the examination. Proposed subsection (b) of each section provides that a temporary permit expire in the case of failure of the examination or at the end of 12 months, whichever occurs first. Only those applicants who have not fulfilled the requirements for certification need obtain a temporary permit.

§§ 18.307 and 25.298. Criteria for certification as a respiratory care practitioner.

These proposed sections provide the criteria which the Boards will apply in the initial certification of applicants. Proposed subsection (a) of each section requires that the applicant submit evidence of: (1) having graduated from a respiratory care program and passed the Boards' examination; (2) having been credentialed as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist by the National Board for Respiratory Care; (3) holding a valid license, certificate or registration as a respiratory care practitioner in another state, territory or the District of Columbia issued based upon requirements substantially similar to those required in the Commonwealth; or (4) having provided respiratory care services for at least 12-consecutive months prior to December 23, 1993, and passed the CRTT. Proposed subsection (b) of each section requires the payment of the appropriate fee as a precondition to Board certification.

§§ 18.308 and 25.299. Renewal of certification.

As proposed, these sections establish the procedure for certificateholders to biennially renew their certifications as required under the MPA and the OMPA. Biennial review forms will be provided to certificateholders at their last mailing address on record with the appropriate Board. Certificateholders are required to inform the appropriate Board within 10 days of address changes. Certificateholders are further notified of the statutorily imposed \$5 late penalty fee required by the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. §§ 1401-101—1401-501) Subsections (e)—(h) of each section will notify certificateholders of procedures to request inactive status and to return to active status as a respiratory care practitioner in this Commonwealth.

Fiscal Impact

Commonwealth

The proposed regulations establish fees for the issuance of temporary permits, certifications and biennial renewal for respiratory care practitioners. Revenue generated from these fees will be used to cover the costs of administration of the certification program. The proposed regulations would not otherwise impose additional costs on the Commonwealth.

Political Subdivisions

The proposed regulations should not have any direct fiscal impact upon political subdivisions in this Commonwealth.

Private Sector

The proposed regulations may impose additional costs upon the private sector. In particular, entities who provide respiratory care services may incur additional costs in bringing their facilities into compliance by employing or utilizing certified practitioners. Persons wishing to obtain certification from the Boards will incur those costs associated with the administration of the certification program, as well as costs associated with the qualifying examination.

General Public

The proposed regulations should impose no additional costs upon the general public.

Paperwork Requirements

Persons seeking temporary permits or certifications will be required to obtain application forms from the Boards in order to obtain certification.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Boards submitted a copy of these proposed regulations on February 9, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition to submitting the proposal, the Boards have provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Boards in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposal, it will notify the Boards within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which are not met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulations, by the Boards, the General Assembly and the Governor.

Contact Persons

Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to either the State Board of Medicine or the State Board of Osteopathic Medicine at the following address: P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of the proposal in the *Pennsylvania Bulletin*. Procedures for filing written comments or requests for documents and additional information may be obtained by contacting Cindy Warner, Administrative Assistant for the State Board of Medicine, at (717) 783-1400, or Gina Bittner, Administrative Assistant for the State Board of Osteopathic Medicine, at (717) 783-4858.

MORRIS A. FISHMAN, D.O.,
Chairperson

VICTOR F. GRECO, M.D.,
Chairperson

Fiscal Note: 16A-532. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND VOCATIONAL AFFAIRS

CHAPTER 18. STATE BOARD OF MEDICINE

Subchapter F. RESPIRATORY CARE PRACTITIONERS

(*Editor's Note:* The following subchapter is proposed to be added. It is printed in regular type to enhance readability.)

Sec.	
18.301.	Purpose.
18.302.	Definitions.
18.303.	Fees.
18.304.	Certification of respiratory care practitioners; practice; exemptions.
18.305.	Functions of respiratory care practitioners.
18.306.	Temporary permits.
18.307.	Criteria for certification as a respiratory care practitioner.
18.308.	Change of name or address.
18.309.	Renewal of certification.
18.310.	Inactive status.

§ 18.301. Purpose.

This subchapter implements sections 13.1 and 36.1 of the act (63 P. S. §§ 422.13a and 422.36a), which were added by section 3 of the act of July 2, 1993 (P. L. 424, No. 60) to provide for the certification of respiratory care practitioners.

§ 18.302. Definitions.

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

CRTT—The entry level respiratory care examination, a National uniform examination developed and administered by the NBRC for certified respiratory care therapy technicians.

JRCRTE—The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.

NBRC—The National Board for Respiratory Care, the agency recognized by the Board to credential respiratory care practitioners.

Respiratory care practitioner—A person who has been certified in accordance with the act and this subchapter.

§ 18.303. Fees.

The following is the schedule of fees charged by the Board:

- (1) Temporary permit \$15
- (2) Initial certification \$15
- (3) Certification examination \$90
(Effective 7-96) \$100
- (4) Reexamination \$60
- (5) Biennial renewal of certification \$25

§ 18.304. Certification of respiratory care practitioners; practice; exemptions.

(a) A person may not practice or hold himself out as being able to practice as a respiratory care practitioner in this Commonwealth unless the person holds a valid, current temporary permit or certificate issued by the Board, or the State Board of Osteopathic Medicine under

Chapter 25 (relating to State Board of Osteopathic Medicine), or is exempted under section 13.1(e) of the act (63 P. S. § 422.13a(e)) or section 10.1(e) of the Osteopathic Medical Practice Act (63 P. S. § 271.10a(e)).

(b) A person may not use the words "respiratory care practitioner," the letters "R.C.P." or similar words and related abbreviations to imply that respiratory care services are being provided, unless the services are provided by a respiratory care practitioner who holds a valid, current temporary permit or certificate issued by the Board or the State Board of Osteopathic Medicine and only while working under the supervision of a licensed physician.

§ 18.305. Functions of respiratory care practitioners.

(a) Under section 13.1(d) of the act (63 P. S. § 422.13a(d)), a respiratory care practitioner may perform activities that include the following:

- (1) Administration of medical gases.
- (2) Humidity and aerosol therapy.
- (3) Administration of aerosolized medications.
- (4) Intermittent positive pressure breathing.
- (5) Incentive spirometry.
- (6) Bronchopulmonary hygiene.
- (7) Management and maintenance of natural airways.
- (8) Maintenance and insertion of artificial airways.
- (9) Cardiopulmonary rehabilitation.
- (10) Management and maintenance of mechanical ventilation.
- (11) Measurement of ventilatory flows, volumes and pressures.
- (12) Analysis of ventilatory gases and blood gases.

(b) Under section 13.1(d) of the act, a respiratory care practitioner may perform the activities listed in subsection (a) only upon physician prescription or referral or while under medical direction consistent with standing orders or protocols in an institution or health care facility.

§ 18.306. Temporary permits.

(a) A temporary permit will be issued to an applicant who submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

- (1) Has graduated from a respiratory care program approved by the JRCRTE, and is awaiting results of the CRTT.
- (2) Is enrolled in a respiratory care program approved by the JRCRTE, expects to graduate within 30 days of the date of application, and has applied to sit for the next scheduled examination.
- (3) Has provided respiratory care services for at least 12-consecutive months prior to December 28, 1993.

(b) A temporary permit shall expire upon notification of failure of the examination or 12 months from the date of issuance, whichever occurs first.

§ 18.307. Criteria for certification as a respiratory care practitioner.

The Board will approve for certification as a respiratory care practitioner an applicant who:

(1) Submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(i) Has graduated from a respiratory care program approved by the JRCRTE and passed the CRTT as determined by the NBRC.

(ii) Has been credentialed as a Certified Respiratory Therapy Technician or Registered Respiratory Therapist by the NBRC.

(iii) Holds a valid license, certificate or registration as a respiratory care practitioner in another state, territory or the District of Columbia which has been issued based on requirements substantially the same as those required by the Commonwealth, including the examination requirement.

(iv) Has provided respiratory care services for at least 12 consecutive months prior to December 28, 1993, and has passed the CRTT as determined by the NBRC.

(2) Has paid the appropriate fee in the form of a check or money order.

§ 18.308. Change of name or address.

A certificateholder shall inform the Board in writing within 10 days of a change of name or mailing address.

§ 18.309. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board and pay the required fee prior to the expiration of the next biennium.

(d) When a certification is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 18.310. Inactive status.

(a) A certificateholder who does not intend to practice in this Commonwealth and who does not desire to renew certification shall inform the Board in writing. Written confirmation of inactive status will be forwarded to the certificateholder.

(b) A certificateholder shall notify the Board, in writing, of his desire to reactivate the registration.

(c) A certificateholder who is applying to return to active status is required to pay fees which are due, submit a sworn statement stating the period of time during which the certificateholder was not engaged in practice in this Commonwealth, submit a resume of professional activities since the most recent registration and submit a letter of good standing from another state or territory where the certificateholder is currently licensed or registered to practice.

(d) The applicant for reactivation will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not engage in practice in this Commonwealth.

**CHAPTER 25. STATE BOARD OF
OSTEOPATHIC MEDICINE**
**Subchapter I. RESPIRATORY CARE
PRACTITIONERS**

(Editor's Note: The following subchapter is proposed to be added. It is printed in regular type to enhance readability.)

Sec.	
25.292.	Purpose.
25.293.	Definitions.
25.294.	Fees.
25.295.	Certification of respiratory care practitioners; practice; exemptions.
25.296.	Functions of respiratory care practitioners.
25.297.	Temporary permits.
25.298.	Criteria for certification as a respiratory care practitioner.
25.299.	Change of name or address.
25.300.	Renewal of certification.
25.301.	Inactive status.

§ 25.292. Purpose.

This subchapter implements sections 10.1 and 10.2 of the act (63 P. S. §§ 271.10a and 271.10b), which were added by section 3 of the act of July 2, 1993 (P. L. 418, No. 59) to provide for the certification of respiratory care practitioners.

§ 25.293. Definitions.

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

CRTT—The entry level respiratory care examination, a National uniform examination developed and administered by the NBRC for certification of respiratory therapy technicians.

JRCRTE—The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.

NBRC—The National Board for Respiratory Care, the agency recognized by the Board to certify respiratory care practitioners.

Respiratory care practitioner—A person who has been certified in accordance with the act and this subchapter.

§ 25.294. Fees.

The following is the schedule of fees charged by the Board:

(1) Temporary permit	\$15
(2) Initial certification	\$15
(3) Certification examination	\$90
(Effective 7-96)	\$100
(4) Reexamination	\$60
(5) Biennial renewal of certification	\$25

§ 25.295. Certification of respiratory care practitioners; practice; exemptions.

(a) A person may not practice or hold himself out as being able to practice as a respiratory care practitioner in this Commonwealth unless the person holds a valid, current temporary permit or certificate issued by the Board, or the State Board of Medicine under Chapter 18 (relating to State Board of Medicine) or is exempted under section 10.1(e) of the act (63 P. S. §§ 271.10a(e)) or section 13.1(e) of the Medical Practice Act of 1985 (63 P. S. § 422.13a(e)).

(b) A person may not use the words "respiratory care practitioner," the letters "R.C.P." or similar words and related abbreviations to imply that respiratory care ser-

vices are being provided, unless the services are provided by a respiratory care practitioner who holds a valid, current temporary permit or certificate issued by the Board or the State Board of Medicine and only while working under the supervision of a licensed physician.

§ 25.296. Functions of respiratory care practitioners.

(a) Under section 10.1(d) of the act (63 P. S. § 271.10a(d)), a respiratory care practitioner may perform activities that include the following:

- (1) Administration of medical gases.
- (2) Humidity and aerosol therapy.
- (3) Administration of aerosolized medications.
- (4) Intermittent positive pressure breathing.
- (5) Incentive spirometry.
- (6) Bronchopulmonary hygiene.
- (7) Management and maintenance of natural airways.
- (8) Maintenance and insertion of artificial airways.
- (9) Cardiopulmonary rehabilitation.
- (10) Management and maintenance of mechanical ventilation.
- (11) Measurement of ventilatory flows, volumes and pressures.
- (12) Analysis of ventilatory gases and blood gases.

(b) Under section 10.1(d) of the act, a respiratory care practitioner may perform the activities listed in subsection (a) only upon physician prescription or referral or while under medical direction consistent with standing orders or protocols in an institution or health care facility.

§ 25.297. Temporary permits.

(a) A temporary permit will be issued to an applicant who submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(1) Has graduated from a respiratory care program approved by the JRCRTE, and is awaiting results of the CRTE.

(2) Is enrolled in a respiratory care program approved by the JRCRTE, expects to graduate within 30 days of the date of application, and has applied to sit for the next scheduled examination.

(3) Has provided respiratory care services for at least 12-consecutive months prior to December 28, 1993.

(b) A temporary permit shall expire upon notification of failure of the examination or 12 months from the date of issuance, whichever occurs first.

§ 25.298. Criteria for certification as a respiratory care practitioner.

The Board will approve for certification as a respiratory care practitioner an applicant who:

(1) Submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(i) Has graduated from a respiratory care program approved by the JRCRTE and passed the CRTT as determined by the NBRC.

(ii) Has been credentialed as a Certified Respiratory Therapy Technician or Registered Respiratory Therapist by the NBRC.

(iii) Holds a valid license, certificate or registration as a respiratory care practitioner in another state, territory or the District of Columbia which has been issued based on requirements substantially the same as those required by this Commonwealth, including the examination requirement.

(iv) Has provided respiratory care services for at least 12-consecutive months prior to December 28, 1993 and has passed the CRTT as determined by the NBRC.

(2) Has paid the appropriate fee in the form of a check or money order.

§ 25.299. Change of name or address.

A certificateholder shall inform the Board in writing within 10 days of a change of name or mailing address.

§ 25.300. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board and pay the required fee prior to the expiration of the next biennium.

(d) When a certification is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each

month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 25.301. Inactive status.

(a) A certificateholder who does not intend to practice in this Commonwealth and who does not desire to renew certification shall inform the Board in writing. Written confirmation of inactive status will be forwarded to the certificateholder.

(b) A certificateholder shall notify the Board, in writing, of his desire to reactivate the registration.

(c) A certificateholder who is applying to return to active status is required to pay fees which are due, submit a sworn statement stating the period of time during which the certificateholder was not engaged in practice in this Commonwealth, submit a resume of professional activities since the most recent registration and submit a letter of good standing from another state or territory where the certificateholder is currently licensed or registered to practice.

(d) The applicant for reactivation will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not engage in practice in this Commonwealth.

[Pa.B. Doc. No. 96-244. Filed for public inspection February 23, 1996, 9:00 a.m.]