

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 27]

Disclosure of Material Transactions

The Insurance Department (Department) adopts Chapter 27 (relating to disclosure of material transactions) to read as set forth in Annex A.

Insurers transacting business in this Commonwealth are required to file financial statements with the Department on at least an annual basis. At the discretion of the Insurance Commissioner (Commissioner), insurers may be required to file additional statements concerning their affairs and financial condition. These regulations require domestic insurers to file interim statements disclosing specific material transactions to allow the Department to better monitor the financial condition of the insurers.

Statutory Authority

These regulations are adopted under the authority of section 320 of The Insurance Company Law of 1921 (40 P. S. § 443) (act).

Comments

Notice of proposed rulemaking was published at 26 Pa.B. 752 (February 24, 1996) with a 30-day public comment period.

No comments were received from the standing committees. Comments were received during the 30-day public comment period from The Insurance Federation of Pennsylvania, Inc. (IFP) and the Pennsylvania Association of Mutual Insurance Companies (PAMIC). On April 24, 1996, the Independent Regulatory Review Commission (IRRC) submitted its comments and recommendations to the Department. The following is a summary of the comments and the Department's response in its final rulemaking.

IFP Comments

During the 30-day public comment period, the IFP expressed support for the regulations and stated that IFP members look forward to seeing it approved at the earliest possible date. Upon enactment of the act of June 18, 1997 (P. L. 221, No. 20) (Act 20), the IFP subsequently commented that the provisions of § 27.5 (relating to confidentiality of statements disclosing material transactions) should be amended to be consistent with Act 20. In response, the Department withdrew its final-form rulemaking for further amendments to § 27.5 as described in item 1 of the Department's response to comments submitted by IRRC.

PAMIC Comments

The PAMIC requested additional clarification of language in proposed § 27.6(a) describing a material acquisition or disposition of assets as "a transaction that is nonrecurring and not in the ordinary course of business." IRRC agreed that this phrase, as well as the phrase "series of related" transactions, needed further clarification, either through definitions or rewording, and provided suggested language. IRRC also recommended that § 27.4(d) be merged with § 27.6(a). The PAMIC specifically asked whether ordinary investment activity is excluded from reporting.

In response to these comments and recommendations, the Department has amended the language in proposed § 27.6(a) as set forth in Annex A in § 27.3(a) (relating to disclosure of material acquisitions of assets or material dispositions of assets). The Department has adopted IRRC's suggested language with the following modifications:

(a) IRRC's language states that a material transaction shall be reported if all of the listed criteria apply. The use of the word "material" in this context implies that there are other transactions that may have a material effect on the financial condition of an insurer but that are not required to be reported. However, in fact, "materiality" is defined by the listed criteria. The purpose of the regulation is to provide for disclosure of transactions that are material and that are not otherwise being timely reported to the Department. The Department believes its language more accurately reflects that purpose.

(b) IRRC deleted the language in proposed § 27.6(a) that identifies the insurer's total admitted assets as that amount reported in the insurer's most recent annual statutory financial statement filed with the Department. The Department believes this language is needed to clearly identify the specific number to which the 5% threshold should be applied and, therefore, has retained it in this final-form rulemaking.

(c) In referring to the PAMIC's comments, IRRC incorrectly quoted the phrase "a transaction that is nonrecurring and not in the ordinary course of business" as "a transaction that is nonrecurring and not in the normal course of business." The term "normal" is also used in IRRC's suggested language. The Department has retained the term "ordinary" in its final form-rulemaking. The Department believes that the phrase "ordinary course of business" is standard, commonly understood business phraseology. This phrase is used in the model legislation developed by the National Association of Insurance Commissioners (NAIC) and recommended for adoption by the states. The Department believes that substituting the term "normal" for "ordinary" in this regulation would not improve the clarity of the regulation but would instead create uncertainty about whether the Commonwealth's regulation requires the reporting of the same type of transactions contemplated by the model and required to be reported in other states. Therefore, the Department has not reworded or defined this phrase in its final form-rulemaking.

The Department has reworded the language referring to a "series of related" acquisitions or assets or dispositions of assets as recommended by IRRC. The amended language remains consistent with the NAIC model legislation and requirements in other states. The regulation refers to a series of related transactions in addition to a single transaction because a material financial transaction may consist of, or could be broken down into, a series of smaller transactions that, considered as a whole, involve more than 5% of the insurer's total admitted assets. The Department believes the reference to a single transaction, or a series of related transactions, is also commonly understood and does not require further definition.

(d) Proposed § 27.4(d) has been moved to § 27.3(e), rather than merged with proposed § 27.6(a) as recommended by IRRC. Proposed § 27.6(a), now found in § 27.3(a), defines the types of acquisitions of assets or

dispositions of assets that are required to be reported under the regulation. Proposed § 27.4(d), now found in § 27.3(e), is an example of how to report a series of related transactions, as opposed to a single transaction, within the time frame established by proposed § 27.4(c), now found in § 27.3(d). The Department believes that the example of how the 30-day filing requirement works for a series of related transactions (§ 27.3(e)) should follow rather than precede the provision that establishes the 30-day time frame (§ 27.3(d)). In consideration of IRRC's comments, the Department has made editorial changes to the language in § 27.3(d) and (e) for clarification purposes.

(e) In response to the PAMIC's question, "ordinary" investment activity would be considered in the ordinary course of business, and therefore would be excluded by definition from reporting under the regulation. For example, the purchase or sale of United States Treasury Notes would be considered ordinary investment activity and would not be required to be reported under the regulations.

IRRC Comments

1. Confidentiality of Statements Disclosing Material Transactions.

Proposed § 27.5(a) provided for statements obtained by or disclosed to the Department under this chapter to be treated confidentially unless any of the following occurred: (1) the insurer gave its prior written consent to publish the information; (2) the Commissioner, after giving the insurer notice and an opportunity to be heard, determined that the interest of policyholders, shareholders or the public would be served by the publication of the statements; (3) the statements were subpoenaed.

Proposed § 27.5(b) provided for the Department's ability to share statements obtained by or disclosed to the Department with the National Association of Insurance Commissioners (NAIC) and with insurance departments of other states or jurisdictions if those parties demonstrate the necessary authority and intent to provide the statements with the same confidential treatment required by this chapter.

In response to IRRC's specific comments regarding the clarity of language in § 27.5(a)(2), the Department has revised the proposed language to read as follows:

(a) Statements filed under this chapter shall be given confidential treatment, unless any of the following occur:

* * * * *

(2) The Commissioner exercises discretion and determines that all of any part of the information related to the transaction be published. Prior to making a determination to publish all of any part of the information, the Commissioner will notify the affected insurer of the right to request a confidential review by the Commissioner. At the review, the affected insurer shall have an opportunity to demonstrate why the transaction and related information should remain confidential. After the review, the Commissioner may order some, all or none of the information related to the transaction be made public. Any of the Commissioner's responsibilities may be delegated to a designee.

The Department also amended § 27.5(b) to address IRRC's concerns with the clarity of the regulations. The final-form rulemaking was filed on July 8, 1997. In response to subsequent comments from the IFP, the final-form rulemaking was withdrawn on August 4, 1997, for further amendments to § 27.5 consistent with Act 20.

Act 20 authorizes the Commissioner to maintain the confidentiality of documents received from other regulatory or law enforcement officials or from the National Association of Insurance Commissioners (NAIC). Act 20 also authorizes the Commissioner to share confidential documents with other regulatory or law enforcement officials, as long as those parties demonstrate, by written statement, the necessary authority and intent to provide the information with the same confidential treatment required by Act 20. Finally, Act 20 authorizes the Commissioner to grant access to confidential information to the NAIC, if that organization also demonstrates by written statement the intent to provide the information with the same confidential treatment required by Act 20.

The Department has amended § 27.5(b) to replace references to this chapter with references to Act 20. Act 20 provides that confidential information obtained by, or shared with, other regulatory or law enforcement officials or the NAIC may not be subject to subpoena. Therefore, these final amendments are needed to clarify that (1) only statements filed by domestic insurers under the regulation are subject to subpoena; and (2) statements filed under the regulation are only subject to a subpoena served directly upon the Department, not upon any other party with which the statements may have been shared under § 27.5(b).

2. Structural clarity.

IRRC provided a recommended structure for the regulations to consolidate it into two primary sections. Specific structural changes made in response to IRRC's recommendations and in Annex A are as follows:

(a) Proposed § 27.2 (relating to purpose) and proposed § 27.3 (relating to application) have been replaced by a new § 27.2 (relating to scope).

(b) Proposed § 27.4 (relating to statements disclosing material transactions) has been eliminated. The language in proposed § 27.4(a) has been deleted. The language in proposed § 27.4(b) now appears in § 27.3(f) and § 27.4(h). Proposed § 27.4(c) now appears in § 27.3(d) and § 27.4(g). Proposed § 27.4(d) now appears in § 27.3(e).

(c) Proposed § 27.5 (relating to confidentiality of statements disclosing material transactions) has been moved to just prior to new § 27.6 (relating to penalties).

(d) Proposed §§ 27.6 and 27.7 (relating to nature and scope of material acquisitions and dispositions of assets; and content of statements of material acquisitions or disposition of assets) have been combined under new § 27.3 (relating to reporting of material acquisitions of assets or material dispositions of assets). Proposed § 27.6(b) and (c) have been moved to § 27.1 (relating to definitions). As noted in item (b), proposed § 27.4(b), (c) and (d) are now in § 27.3.

(e) Proposed §§ 27.8—27.10 (relating to nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to property and casualty insurers; nature and scope of material nonrenewals, cancellations or revisions of ceded reinsurance agreements with respect to life insurers; and contents of statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements) have been combined under new § 27.4. As noted in item (b), § 27.4(b) and (c) are now in this section. Sections 27.8(b) and (c) have been reordered as § 27.4(a)(2) and (b). Subsections 27.9(b) and (c) have been reordered as § 27.4(c)(2) and (d).

3. *Clarity of §§ 27.6(a) and 27.4(d).*

The Department's response to IRRC's comments relating to these subsections is included in the response to the PAMIC's comment.

4. *Unnecessary or redundant language, or both.*

In response to IRRC's comments, the following phrases have been deleted throughout the regulations:

- (a) "Notwithstanding this section"
- (b) "one or more" (This phrase has been replaced by "any.")
- (c) "For purposes of this chapter," "subject to this chapter," "under this chapter," "under this section."

In addition, the Department has also deleted proposed § 27.6 (relating to penalties) as unnecessary and redundant. The applicable penalties are clearly set forth in the authorizing statute. See section 320 of the act.

5. *Clarity of the term "licensed."*

In response to IRRC's comments, the Department has included a definition of "licensed" in § 27.1 and has used the defined term consistently throughout the regulations.

6. *Material acquisitions "and/or" dispositions of assets.*

In response to IRRC's comments, the Department has amended the regulations to consistently use the conjunction "or" to clarify that acquisitions of assets and dispositions of assets are to be treated as separate transactions.

7. *Clarity of conditions in § 27.8(b)(2) and § 27.9(b)(2).*

In response to IRRC's comments, the Department has inserted the word "and" in new § 27.4(b)(2)(i) and (d)(2)(i) to clarify that both conditions are necessary.

8. *Reporting on a consolidated versus nonconsolidated basis.*

IRRC recommended that proposed § 27.10(b) be broken down into two subsections and that the two conditions under which statements may be prepared on a consolidated basis be written as a list. The Department has made the recommended changes in new § 27.4(f); except that the section has not been broken down into two subsections. Since statements must be prepared on a nonconsolidated basis except when the insurer meets the two listed conditions, the Department believes it is clearer to present the two conditions in the same subsection as a limited exception to the rule. The Department has made additional editorial changes to the language in this section to parallel language used throughout the regulations.

9. *Clarity of proposed § 27.4(b).*

Consistent with IRRC's comments, proposed § 27.4(b) now appears in § 27.3(f) and § 27.4(h). The language has been reworded as recommended by IRRC; except the phrase "material transactions" has been replaced with "acquisition or disposition of assets" in § 27.4(c) and with "statements disclosing material nonrenewals, cancellations or revisions of ceded reinsurance agreements" in § 27.4(h). The Department believes it is important to identify these specific types of material transactions to clearly distinguish them from other types of material transactions required to be reported under other laws.

10. *Parallel language in § 27.5(a).*

In response to IRRC's comments, the Department has amended this subsection to consistently use the word "insurer" and has eliminated the modifying language.

11. *Definition of "insurer."*

As recommended by IRRC, the Department has recited the statutory language for the definition of "insurer" in § 27.1.

12. *Format of § 27.9.*

In response to IRRC's comment, the provisions of proposed § 27.9 have been redesignated as § 27.4(c) (2) and (d).

Fiscal Impact

The reporting requirements in the regulations will impose no significant costs on domestic insurers. Review of reports filed under the regulations will not have a measurable impact on Department costs associated with the analyses of financial statements filed by domestic insurers. The regulations have no impact on costs to political subdivisions. While the regulations have no immediate fiscal impact on the general public, the general public will benefit to the extent that adoption of the regulations enhance the ability of the Department to monitor the financial solvency of domestic insurers.

Paperwork

The regulations require additional reporting by domestic insurers to disclose material transactions that occur between financial statement filing dates. The additional disclosure is necessary for the Department to determine whether these material transactions may have an adverse impact on the interests of policyholders or on the financial stability of the insurer.

Persons Regulated

The regulations apply to all domestic insurers licensed by the Commissioner to transact business in this Commonwealth.

Contact Person

Any questions regarding these regulations, should be directed to: Peter Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120 (717) 787-4429.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 8, 1996, the Department submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 752 (February 24, 1996) to IRRC and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public. These final-form regulations were deemed approved by the House and Senate Committee, on April 13, 1998. In accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), IRRC met on April 23, 1998, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Commissioner finds that:

- (1) Public notice of intention to adopt this rulemaking as amended 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 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:

(a) The regulations of the Department, 31 Pa. Code, are amended by adding §§ 27.1—27.5 and Appendix A, to read as set forth in Annex A.

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

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

(d) The regulations adopted by this order shall take effect upon publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

(Editor's Note: The proposal to add §§ 27.6—27.10, included in the proposed rulemaking at 26 Pa. B. 752, has been withdrawn by the Department.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa. B. 2189 (May 9, 1998).)

Fiscal Note: Fiscal Note 11-132 remains valid for the final adoption of the subject regulations.

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.	Scope.
27.3.	Disclosure of material acquisitions or dispositions of assets.
27.4.	Disclosure of material nonrenewals, cancellations or revisions of ceded reinsurance agreements.
27.5.	Confidentiality of statements disclosing material transactions.

§ 27.1. Definitions.

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

Acquisition of assets—The purchase, lease, exchange, succession or other acquisition of assets, other than the following:

(i) 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.

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

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

Association—Individuals, partnerships or associations of individuals, authorized to engage in the business of insurance in this Commonwealth as insurers on the Lloyds plan.

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Disposition of assets—The 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.

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

Exchange—Individuals, partnerships and corporations, authorized by the laws of the Commonwealth to exchange with each other inter-insurance or reciprocal insurance contracts.

Insurer—A stock or mutual insurance company (including title insurance companies), association or exchange.

Licensed—Currently authorized by the Commissioner to transact the business of insurance in this Commonwealth under the act, as evidenced by a certification issued by the Commissioner.

§ 27.2. Scope.

(a) 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.

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

(c) 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 cessations.

§ 27.3 Disclosure of material acquisitions or dispositions of assets.

(a) An insurer shall file a statement disclosing an acquisition of assets or disposition of assets if the following apply:

(1) A single transaction, or a series of related transactions during a 30-day period, involves more than 5% of the insurer's total admitted assets as reported in the insurer's most recent annual statutory financial statement filed with the Department.

(2) The transaction is nonrecurring.

(3) The transaction is not in the ordinary course of business.

(b) Statements of material acquisitions or dispositions of assets as required under subsection (a) 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 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 by an officer of the insurer as provided in Appendix A (relating to certification for statement disclosing material transaction).

(c) Insurers shall prepare statements disclosing material acquisitions and dispositions of assets as required under subsection (a) on a nonconsolidated basis.

(d) An insurer shall file a statement disclosing a material acquisition or disposition of assets consisting of a single transaction as required under subsection (a) with the Department within 30 days after the date on which the transaction was closed.

(e) An insurer shall file a statement disclosing a material acquisition or disposition of assets consisting of a series of related transactions as required under subsection (a) within 30 days after the closing date of any transaction within a 30-day period that results in the aggregate of related transactions within that 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.**

Series of Related Transactions

<i>Closing Date</i>	<i>Amount</i>	<i>30-Day Total</i>	<i>% of 30-Day Assets</i>	<i>30-Day Total</i>	<i>Filing Required</i>
1 — Jan. 1	\$50,000	\$	1%		No
1 — Jan. 15	100,000	150,000	2%	3%	No
2 — Jan. 21	200,000	250,000	4%	7%	Yes-1
2 — Feb. 8	25,000	325,000	5%	6.5%	Yes-2

Filing 1 shall be made within 30 days of January 21.

Filing 2 shall be made within 30 days of February 8.

(f) A filing is not required if statements disclosing the acquisition of assets or disposition of assets have been submitted to the Department under other laws, regulations or requirements.

§ 27.4. Disclosure of material nonrenewals, cancellations or revisions of ceded reinsurance agreements.

(a) A property and casualty insurer shall file:

(1) A statement disclosing 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—if it relates to reinsurance cessions which generate any of the following.

(i) 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.

(ii) Fifty percent or more of the insurer's total ceded indemnity loss and loss adjustment expense reserves.

(2) A statement disclosing a 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—if any of the following events occur:

(i) 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.

(ii) 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.

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

(b) A property and casualty insurer is not required to file a statement under subsection (a) if any 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: The replacement reinsurer is licensed or on the Department's list of qualified reinsurers and 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 inter-company pooling reinsurance agreement among affiliated insurers.

(c) A life insurer shall file:

(1) A statement disclosing a nonrenewal, cancellation or revision of a ceded reinsurance agreement with respect to life, annuity and accident and health business if the transaction 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.

(2) A statement disclosing a revision of a ceded reinsurance agreement with respect to life, annuity and accident and health business if any of the following events occur:

(i) A reinsurer that represents more than 10% of a total cession and that is either licensed or included on the Department's list of qualified reinsurers is replaced by any reinsurers that are neither licensed nor on the Department's list of qualified reinsurers.

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

(d) A life insurer is not required to file a statement under subsection (c) if any 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 that is nonrenewed or canceled is replaced under the following conditions: The replacement reinsurer is either licensed or on the Department's list of qualified reinsurers and 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 intercompany pooling reinsurance agreement among affiliated insurers.

(e) Statements of material nonrenewal, cancellation or revision of ceded reinsurance agreements as required under this section 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).

(f) Statements disclosing material nonrenewals, cancellations or revisions of ceded reinsurance agreements as required under this section shall be prepared on a nonconsolidated basis; except that statements may be prepared on a consolidated basis if the insurer meets the following requirements:

(1) The 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.

(2) The insurer ceded substantially all of its direct and assumed business to the pool. 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.

(g) An insurer shall file a statement disclosing a material nonrenewal, cancellation or revision of a ceded reinsurance agreement as required under this section with the Department within 30 days after the date on which the transaction was closed.

(h) A filing is not required under this section if statements disclosing material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Department under other laws, regulations or requirements.

§ 27.5. Confidentiality of statements disclosing material transactions.

(a) Statements filed under this chapter shall be given confidential treatment, unless any of the following occur:

(1) The insurer gives its prior written consent that the information may be published.

(2) The Commissioner exercises discretion and determines that all or any part of the information related to the transaction be published. Prior to making a determination to publish all or any part of the information, the Commissioner will notify the affected insurer of the right to request a confidential review by the Commissioner. At the review, the affected insurer shall have an opportunity to demonstrate why the transaction and related information should remain confidential. After the review, the Commissioner may order some, all or none of the information related to the transaction be made public. Any of the Commissioner's responsibilities may be delegated to a designee.

(3) The statements are subpoenaed. The Department will notify the insurer prior to providing the information subject to subpoena, unless otherwise prohibited by statute or rule of court.

(b) The Department may share statements filed under this chapter with regulatory or law enforcement officials of this Commonwealth or other jurisdictions, as long as, prior to the Department's disclosure, those officials or jurisdictions demonstrate by written statement the authority and intent to provide the same confidential treatment required by Article II-A of The Insurance Department Act of 1921 (40 P. S. §§ 65.1A and 65.2A) regarding authority to share confidential information with other Jurisdictions (Act 20 of 1997). The Department may also share statements filed under this chapter with the National Association of Insurance Commissioners, or successor organization, if that organization agrees in writing prior to receiving the information to provide to it the same confidential treatment as required by Act 20 of 1997.

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. 98-811. Filed for public inspection May 22, 1998, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Examinations, Repeals and Editorial Changes

The State Board of Psychology (Board) amends §§ 41.1, 41.41, 41.52, 41.54 and 41.61 to read as set forth in Annex A.

The amendments update existing language to reflect the new names for the Council on Postsecondary Accreditation and the American Association of State Psychology Boards. The amendments also delete § 41.54 (relating to licensure of master's degree candidates) because the Board's statutory authority to license master's degree candidates expired December 31, 1995.

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), because the Board has, for good cause, determined that notice of proposed rulemaking is unnecessary. The amendments seek only to delete provisions which are no longer enforceable and to update language to reflect the new names for the Council on Postsecondary Accreditation and the American Association of State Psychology Boards.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered the purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulations are in compliance with Executive Order 1996-1.

Statutory Authority

The amendments are adopted under the authority of section 3.2(2) of the Professional Psychologists Practice Act (63 P. S. § 1203.2(2)).

Fiscal Impact and Paperwork Requirements

The amendments should have no negative fiscal impact on the Commonwealth, its political subdivisions or the general public, and should result in no additional paperwork requirements.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5.1(c)), on April 13, 1998, a copy of the amendments was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of

the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. A copy of the amendments was submitted on the same date to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the amendments were deemed approved by the House and Senate Committees on May 3, 1998, and were approved by IRRC on May 7, 1998.

Additional Information

Individuals who desire information are invited to submit inquiries to Melissa Wilson, Board Administrator, State Board of Psychology, Post Office Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

Findings

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), has been omitted under the authority contained in section 204(3) of the CDL because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary. The provisions deleted under § 41.54 are no longer enforceable. The amendments to §§ 41.1, 41.41, 41.52 and 41.61 simply update existing language to reflect the new names for the Council on Postsecondary Accreditation and the American Association of State Psychology Boards.

(2) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending §§ 41.1, 41.41, 41.52 and 41.61 and deleting § 41.54 to read as set forth in Annex A with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

(Editor's Note: A proposal to amend § 41.1 (relating to definitions) amended in this document, remains outstanding at 28 Pa.B. 1421 (March 21, 1998).)

YVONNE E. KEAIRNS, Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2463 (May 23, 1998).)

Fiscal Note: 16A-634. No fiscal impact; (8) recommends adoption.

Annex A

MISCELLANEOUS

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

§ 41.52. Persons licensed in other states.

PART I. DEPARTMENT OF STATE

(a) A person who holds a current license or certificate to practice psychology issued by a statutory board of psychologist examiners of a state with requirements for licensure which are deemed by the Board to be equivalent to those of the Commonwealth may be exempt from examination. Application for licensure under these circumstances shall be made on forms supplied by the Board and shall be accompanied by the initial application fee specified in § 41.12 (relating to fees).

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

(b) An applicant who has passed the written examination prepared by the Association of State and Provincial Psychology Boards with a score equivalent to or higher than the passing score then prevailing in this Commonwealth will not be required to repeat this examination.

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

GENERAL

(c) In accordance with section 3(7) of the act (63 P. S. § 1203(7)), a psychologist licensed for independent practice by a statutory board of psychologist examiners of another state or a province of Canada, whose license is current and in good standing, may practice psychology on temporary assignment in this Commonwealth for up to 6 months, after written notification to the Board and receipt from the Board, in writing, of temporary permission to practice. The Board will grant no more than one extension of the 6-month period, the extension not to exceed an additional 6 months. Requests for extensions shall be made to the Board in writing. A psychologist on temporary assignment in this Commonwealth for an aggregate of no more than 14 days is exempted from the notification requirement.

§ 41.1. Definitions.

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

Accredited college or university—An institution which is recognized as an institution of higher education under 22 Pa. Code (relating to education) or which is accredited by a regional accrediting association recognized by the Commission on Recognition of Postsecondary Accreditation (CORPA).

* * * * *

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which is accredited by the American Psychological Association (APA) or which is designated by the Association of State and Provincial Psychology Boards (ASPPB) or by other designating groups acceptable to the Board; which is approved by the Board under § 41.31(b)(3); or which meets the following criteria:

* * * * *

EXAMINATIONS

§ 41.54. (Reserved).

CODE OF ETHICS

§ 41.41. Examinations.

(a) The Board has adopted the written examination developed by the Association of State and Provincial Psychology Boards, which is given at regularly scheduled times and places specified by the Board. Applicants shall obtain a passing score as established by the Board to qualify for licensure. Information about the content of the examination is available from the Board office.

§ 41.61. Code of Ethics.

* * * * *

Principle 2. Competency.

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(b) The Board reserves the right to direct the professional testing organization responsible for administering its examination to adopt alternative or additional examination procedures such as simulation techniques; other written examinations; essay or oral examinations; submission of work samples to demonstrate knowledge or skills in specified areas of psychology; and demonstration of familiarity with ethical, statutory or regulatory requirements bearing on the practice of psychology. The Board will exercise this right only in conformity with section 812.1 of the act of April 9, 1929 (P. L. 177, No. 175), known as the Third-Party Testing Law (71 P. S. § 279.3a(a)). Notice of substantive changes in the licensing examination will be given at least 6 months before the first administration of the new examination.

(d) Psychologists accurately represent their competence, education, training and experience. They claim as evidence of psychological educational qualifications only those degrees obtained from institutions accredited by a regional accrediting association approved by the Commission on Recognition of Postsecondary Accreditation (CORPA). Degrees earned from foreign colleges and universities may be represented only if they are determined to be equivalent to the degrees conferred by these accredited institutions. Determinations of equivalency shall be made by an agency acceptable to the Board, subject to the Board's final approval. Representations of nonpsychological earned academic degrees are not prohibited, if the degrees are from accredited schools. If these degrees are generic, such as Ph.D., Ed.D., M.S., M.A. and M.Ed., the holder may represent them, but shall specify the discipline in which each particular degree was earned.

* * * * *

(c) It is the policy of the Board to accommodate persons with handicapping conditions who qualify to take the licensing examination.

[Pa.B. Doc. No. 98-812. Filed for public inspection May 22, 1998, 9:00 a.m.]