

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 147]

Annual Audited Insurers' Financial Report Required

The Insurance Department (Department) amends Chapter 147 of the Department's regulations (relating to Annual Audited Insurers' Financial Report Required) to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department; sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452) relating to the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations, exchanges, fraternal benefit societies and preferred provider organizations to file statements concerning their affairs and financial condition; and sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205—1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701 (relating to reports and examinations; and regulation); sections 11 and 14 of the HMO Act (40 P.S. §§ 1561 and 1564); sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225) which respectively, relate to the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan, the Pennsylvania Professional Liability Joint Underwriting Association, hospital plan corporations, professional health service corporations, beneficial associations, health maintenance organizations and continuing care providers.

Purpose

The purpose of this rulemaking is to update Chapter 147, commonly referred to as the "CPA Audit Rule." Chapter 147 was initially adopted in 1979 and requires insurers to have annual audits of their year-end statutory financial statements performed by independent certified public accountants (CPAs). It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) and included in the NAIC's Financial Regulation Standards and Accreditation Program.

The amendments in this rulemaking are consistent with a new version of the NAIC model adopted in 2006, entitled "Annual Financial Reporting Model Regulation" (Model Regulation 205). The revised NAIC model was developed as a result of the NAIC's review of The Sarbanes-Oxley Act of 2002, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 or the Sarbanes-Oxley Act of 2002, and includes provisions related to auditor independence, corporate governance and internal control over financial reporting. The Department expects that the proposed amendments to Chapter 147 will be required for the Department to maintain accreditation by the NAIC beginning in 2010.

Comments and Response

Notice of proposed rulemaking was published at 39 Pa.B. 841 (February 14, 2009) with a 30-day comment period. Comments were received from The Pennsylvania Association of Mutual Insurance Companies (PAMIC), The Insurance Federation of Pennsylvania, Inc. (IFP) and the Pennsylvania Institute of Certified Public Accountants (PICPA) during the 30-day comment period. The Independent Regulatory Review Commission (IRRC) submitted its comments to the Department on April 15, 2009.

The following is a discussion of all comments and changes in the final-form rulemaking.

PAMIC and PICPA expressed support of the rulemaking and noted the importance of consistency with the NAIC model. IFP also expressed strong support for the rulemaking on behalf of its members and national counterparts with recommendations for technical corrections and clarifications consistent with the NAIC model. IRRC noted the IFP's suggestions and encouraged the Department to make revisions that improve upon clarity and consistency with Nationwide standards. The Department agrees with these suggestions and has made the following revisions to the regulation.

Section 147.3a. Requirements for audit committees.

Subsection (g) provides for exemptions from certain requirements relating to audit committees. IFP recommended several revisions to improve upon the subsection's purpose, clarity and consistency with the NAIC model. Specifically, subsection (g)(1) has been revised to replace "This section does not apply" with "The requirements of subsections (b), (c), (e) and (f) do not apply." This revision is needed to clarify that every insurer required to file an annual audited financial report under the chapter is required to establish an audit committee. Subsection (g)(2) has been revised to delete the references to foreign insurers, Sarbanes-Oxley compliant entities or direct or indirect wholly-owned subsidiaries of Sarbanes-Oxley compliant entities. Foreign insurers are exempt from the entire regulation under § 147.13(f) if they file annual audited financial reports in a domiciliary state that has a substantially similar law. Sarbanes-Oxley compliant entities or direct or indirect wholly-owned subsidiaries of Sarbanes-Oxley compliant entities have been added to subsection (g)(3) to clarify that these entities have to meet the requirements of subsection (f) for audits done under statutory as opposed to GAAP accounting principles.

Section 147.4. Contents of annual audited financial report.

Subsection (b)(3) requires an annual audited financial report to include the communication of internal control related matters noted in the audit as provided under § 147.9a (relating to establishment and communication of internal control over financial reporting). The subsection has been clarified by adding "in accordance with AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants (SAS 112) *Communicating Internal Control Related Matters Identified in an Audit*, or its replacement."

Section 147.6. Recognition, qualification and responsibilities of an independent certified public accountant.

Subsection (d) has been revised to extend the 2-year disqualification period to 5 years consistent with the

NAIC model. Subsection (f)(3) has been revised to begin with “During the fiscal year in which non-audited services are provided,” to clarify the applicability of this requirement consistent with the NAIC model.

Section 147.6a. Letter of qualifications of independent certified public accountant.

In paragraphs (6) and (7), the word “declaration” has been replaced with “representation” to be consistent with the NAIC model.

Affected Parties

The chapter applies to all types of insurers and continuing care providers licensed to transact business in this Commonwealth and the accountants retained by these entities to conduct audits of their annual financial statements.

Fiscal Impact

State Government

The rulemaking will strengthen and clarify existing regulatory requirements. There will be no material increase in cost to the Department as a result of this rulemaking.

General Public

The public will benefit to the extent the rulemaking strengthens financial solvency regulatory requirements for insurers, thereby promoting the ability of the insurance industry to meet obligations under insurance policies.

Political Subdivisions

The rulemaking will not impose additional costs on political subdivisions.

Private Sector

The rulemaking would impose additional costs on insurers that are not currently subject to audit committee and internal control reporting requirements. However, the strengthened requirements are consistent with national standards to be adopted by all states participating in the NAIC Financial Regulation Standards and Accreditation Program. The rulemaking minimizes costs by including a number of exemptions for smaller insurers and insurers already subject to similar requirements under insurance holding company and SEC laws and regulations.

Paperwork

The rulemaking would not impose additional paperwork on the Department. The amendments would require insurers to file new reports relating to internal control over financial reporting; however, the rulemaking may reduce paperwork to the extent that it provides for the filing of documents in electronic form.

Effectiveness/Sunset Date

The rulemaking will become effective January 1, 2010. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Any questions regarding the final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions may be e-mailed to p.salvatore@state.pa.us or faxed to (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of these final-form regulations on July 20, 2009, to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee (Committees). In addition to the submitted regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, “Regulatory Review and Promulgation.” A copy of that material is available to the public upon request.

In preparing these final-form regulations, the Department considered all comments received from IRRC, the Committees and the public. These final-form regulations were deemed approved by the Committees on August 19, 2009. Under section 5(g) of the Regulatory Review Act, the final-form regulations were approved, effective August 20, 2009.

Findings

The Insurance Commissioner finds that:

(1) Public notice of intention to adopt these final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 147, are amended by amending §§ 147.1—147.3, 147.5, 147.8, 147.9, 147.13, 147.14; by deleting §§ 147.10, 147.12 and 147.15; and by adding §§ 147.6b, 147.9a and 147.9b to read as set forth at 39 Pa.B. 841; and by amending §§ 147.4 and 147.6 and by adding §§ 147.3a and 147.6a to read as set forth in Annex A.

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

(d) The final-form regulations adopted by this order take effect January 1, 2010.

JOEL SCOTT ARIO,
Insurance Commissioner

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 5279 (September 5, 2009).)

Fiscal Note: 11-238. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 147. ANNUAL FINANCIAL REPORTING REQUIREMENTS

§ 147.3a. Requirements for audit committees.

(a) Every insurer required to file an annual audited financial report under this chapter shall establish an audit committee.

(b) An ultimate controlling person may designate an audit committee of a controlling person to be the audit committee for one or more controlled insurers. The designation must:

- (1) Be in writing.
- (2) Identify the ultimate controlling person.

(3) Explain the basis for the designation in sufficient detail for the Department to determine compliance with this chapter.

(4) Be provided by the ultimate controlling person or the insurer to the Department and the chief insurance regulatory official of each other state in which the controlled insurers are domiciled no later than April 1 of the year in which the insurer's audited financial report is required to be filed under this chapter.

(5) Be effective upon receipt by the Department and remain in effect unless modified or rescinded by subsequent notice provided by the ultimate controlling person or the insurer as required under paragraph (4).

(c) Each member of the audit committee shall be a natural person who is either a member of the board of directors of the insurer or a member of the board of directors of a controlling person whose audit committee has been designated as the insurer's audit committee under subsection (b).

(d) If an audit committee other than the entire board of directors of the insurer has not been established by the insurer or designated by an ultimate controlling person under subsection (b), the insurer's entire board of directors shall constitute the audit committee.

(e) A proportion of an audit committee's members shall be independent in accordance with the following requirements:

(1) The proportion of an audit committee's members who shall be independent shall be calculated as follows:

(i) When an insurer's direct written and assumed premiums are less than or equal to \$300,000,000 at the end of the most recent calendar year, 0% of the members are required to be independent.

(ii) When an insurer's direct written and assumed premiums exceed \$300,000,000 but are not more than \$500,000,000 at the end of the most recent calendar year, at least 50% of members are required to be independent.

(iii) When an insurer's direct written and assumed premiums exceed \$500,000,000 at the end of the most recent calendar year, at least 75% of members of the audit committee are required to be independent.

(2) If an audit committee of a controlling person has been designated to be the audit committee for one or more controlled insurers, the proportion of audit committee members who shall be independent shall be based on the insurer in the group with the greatest direct written and assumed premium.

(3) If an insurer's direct written and assumed premiums meet or exceed the direct written and assumed premiums threshold in paragraph (1)(ii) or (iii) as of the end of a calendar year, the insurer shall comply with the required minimum proportion of independent audit committee members by January 1 following the next full calendar year, as described in the NAIC Implementation Guide.

(4) To be considered independent for purposes of this subsection, an audit committee member may not:

(i) Be an affiliate of the insurer.

(ii) Accept any consulting, advisory or other compensatory fee from the insurer or an affiliate of the insurer other than in the member's capacity as a member of the audit committee, board of directors or any other board committee.

(5) If an audit committee member ceases to be independent under this chapter, the person may remain an audit committee member until the earlier of the next annual meeting of the insurer or controlling person or 1 year from the occurrence of the event that caused the member to be no longer independent, if the insurer or ultimate controlling person provides the Department with written notice within 15 days of the occurrence of the event.

(f) The audit committee shall retain an independent certified public accountant to conduct the annual audit and issue an audited financial report under this chapter in accordance with the following requirements:

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of the independent certified public accountant and resolve disagreements between management and the independent certified public accountant relating to financial reporting for the purpose of preparing or issuing the audited financial report or related work under this chapter.

(2) The independent certified public accountant retained to conduct the annual audit under this chapter shall report directly to the audit committee. The audit committee shall require the independent certified public accountant to report to the audit committee in sufficient time to enable the committee to take appropriate action as required by Statement on Auditing Standards 114 (SAS 114), *The Auditor's Communication with Those Charged With Governance*, or successor publication and all of the following requirements:

(i) All significant accounting policies and material permitted practices.

(ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with the management of the insurer, ramifications of the use of alternative disclosures and treatments, and the treatment preferred by the independent certified public accountant.

(iii) Other material written communications between the independent certified public accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(3) The report required under paragraph (2) may be provided to the audit committee on an aggregate basis for insurers in an insurer group, if the report identifies any substantial differences in reported items among the insurers in the group.

(g) Exemptions are as follows.

(1) The requirements of subsections (b), (c), (e) and (f) do not apply to an insurer with direct written and assumed premiums less than \$500,000,000, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, which has been granted an exemption by the Department on the basis of financial or organizational hardship under § 147.13(g) (relating to effective date and exemption).

(2) This section does not apply to continuing care providers.

(3) The requirements of subsections (b)—(e) do not apply to insurers subject to section 1405(c)(4) and (5) of The Insurance Company Law of 1921 (40 P. S. § 991.1405(c)(4) and (5)), Sarbanes Oxley complaint entities or direct or indirect wholly owned subsidiaries of Sarbanes Oxley complaint entities.

(h) This section may not be interpreted to limit the Department's authority to require an insurer to take specific corrective action relating to the independence of audit committee members under sections 501—563, 501-A—515-A, and 501-B—515-B of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63, 221.1-A—221.15-A, and 221.1-B—221.15-B) (relating to suspension of business and risk-based capital requirements), 31 Pa. Code Chapter 160 (relating to standards to define insurers deemed to be in hazardous financial condition) or other provisions of law.

§ 147.4. Contents of annual audited financial report.

(a) The annual audited financial report shall reflect the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department. Statutory accounting practices are those practices and procedures prescribed by the Accounting Practices and Procedures Manuals published by the National Association of Insurance Commissioners, or as otherwise prescribed or provided by specific statutes, regulations, orders or rulings of the Commonwealth or the Department.

(b) The annual audited financial report must, at a minimum, include the following:

(1) Financial statements that present in a comparable manner, as of the end of the current and the preceding calendar year, the financial condition of the insurer, including the following:

- (i) Statement of admitted assets, liabilities, capital and surplus.
- (ii) Statement of operations.
- (iii) Statement of cash flows.
- (iv) Statement of changes in capital and surplus.

(2) Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual. The notes must include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statements filed with the Department, with a written description of the nature of these differences, particularly with respect to surplus or stockholder equity and the results of operations. The Commissioner may require the insurer to file an amendment to its annual

statement with the Department, the NAIC and other states in which the insurer is licensed, to reflect differences between the audited statutory financial statement and the annual statement filed with the Department within 60 days of the filing date of the audited financial report. The Commissioner may require amendments to financial statements to be filed with the Department and the NAIC in a form of electronic transmission acceptable to the Commissioner.

(3) The report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, communication of internal control related matters noted in the audit in accordance with AU section 325 of the Professional Standards of the American Institute of Certified Public Accountants (SAS 112) Communicating Internal Control Related Matters Identified in an Audit, or its replacement, and letter of qualifications of the independent certified public accountant.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Department, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted if sufficient detail is made available to the Department upon request. An account which represents less than 5% of the insurer's admitted assets may be aggregated for reporting purposes, except that all invested asset accounts shall be separately reported.

(d) If an error is discovered after a report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report to the insurer and to the Department within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error. To the extent that the error requires an amendment to the insurer's annual financial statement filed with the Department, the insurer shall file, within 60 days of the date the corrected report is issued, an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the corrected audited statutory financial statement and the annual statement filed with the Department and including reconciling notes as required by the appropriate National Association of Insurance Commissioners *Annual Statement Instructions and Accounting Practices and Procedures Manual*. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(e) Subsections (a)—(d) do not apply to continuing care providers. The annual audited financial report for a continuing care provider shall comply with the following:

(1) The annual audited financial report for a nonprofit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its activities, cash flows and changes in net assets for the fiscal year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of activities, cash flows, changes in net assets and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(2) The annual audited financial report for a for-profit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its operations, cash flows and changes in shareholder's equity for the year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of net income, cash flows, shareholder's equity and comprehensive income, and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(3) If an error is discovered after an annual audited financial report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error.

§ 147.6. Recognition, qualification and responsibilities of an independent certified public accountant.

(a) An annual audited financial report must be prepared by a qualified independent certified public accountant recognized by the Commissioner.

(b) Except for insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent certified public accountant nor accept an annual audited financial report prepared in whole or in part by the person or firm under any of the following conditions:

(1) The person is not licensed, or the firm is not registered, to practice and is not in good standing under the laws of the Commonwealth or of a state with licensing requirements similar to the Commonwealth.

(2) The person or firm is not in good standing with the American Institute of Certified Public Accountants, Inc. and, if applicable, the Public Company Accounting Oversight Board.

(3) The person or firm is not in good standing in all states in which the person is licensed, or the firm is registered, to practice.

(4) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(5) The person or firm employed a partner or senior manager who was involved in an audit of the insurer during the 1 year period preceding the date that the most current annual audited financial report is due and who currently serves as a member of the board of directors, president, chief executive officer, controller, chief financial officer, chief accounting officer, or in any equivalent position for the insurer.

(6) The person or firm provides to the insurer contemporaneously with the audit any of the following non-audit services:

(i) Bookkeeping or other services relating to the insurer's accounting records or financial statements.

(ii) Financial information systems design and implementation.

(iii) Appraisal or valuation services, fairness opinions or contribution-in-kind reports.

(iv) Actuarial advisory services.

(v) Internal audit outsourcing services.

(vi) Management functions or human resource services.

(vii) Broker or dealer, investment adviser or investment banking services.

(viii) Legal or expert services unrelated to the audit.

(c) For an insurer organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent public accountant nor accept an annual audited financial report prepared in whole or in part by the person or firm under any of the following conditions:

(1) The person or firm is not a chartered accountant.

(2) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(3) The person or firm meets the criteria of subsection (b)(5) or provides to the insurer contemporaneously with the audit any of the nonaudit services prohibited under subsection (b)(6) and the insurer has not been granted an exemption under subsection (h).

(d) The qualified independent certified public accountant's lead partner or other person primarily responsible for an insurer's audit may not act in that capacity for more than 5 consecutive years. Following a 5-year period of service, the person will be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for 5 consecutive years.

(e) A qualified independent certified public accountant who performs an audit for an insurer may only engage in

nonaudit services, including tax services, for the insurer if all of the following requirements are met:

(1) The services are not prohibited under subsection (b)(6).

(2) The independent certified public accountant does not function in the role of management, audit his own work or serve in an advocacy role for the insurer.

(3) The services have been approved in advance by the insurer's audit committee under subsection (f).

(f) Auditing and nonaudit services provided to an insurer by the insurer's qualified independent certified public accountant shall be preapproved in writing by the insurer's audit committee, except that preapproval of nonaudit services is not required if any of the following criteria are met:

(1) The insurer is a Sarbanes-Oxley compliant entity.

(2) The insurer is a direct or indirect wholly-owned subsidiary of a Sarbanes-Oxley compliant entity.

(3) During the fiscal year in which nonaudited services are provided, the aggregate amount of the nonaudit services constitute 5% or less of the total amount of fees paid or owed by the insurer to the qualified independent certified public accountant.

(g) An insurer's audit committee may delegate the authority to grant the preapprovals required under subsection (f) to one or more designated members of the audit committee. A decision of any member to whom this authority is delegated shall be presented to the full audit committee at the next scheduled meeting.

(h) The following provisions apply to applications for relief and exemptions.

(1) An insurer may apply to the Commissioner for relief from subsection (b)(5) or subsection (d), or both, on the basis of unusual circumstances. In determining whether relief should be granted, the Commissioner may consider the following factors:

(i) The number of partners, the expertise of the partners or the number of insurance or continuing care provider clients in the currently registered firm.

(ii) The premium volume of the insurer or revenue volume of the continuing care provider.

(iii) The number of jurisdictions in which the insurer transacts business.

(2) If relief is granted, the insurer shall include a copy of the granted relief with its audited financial report filed under § 147.3(a) (relating to filing and extensions for filing required reports and communications).

(3) An insurer with direct written and assumed premium less than \$100,000,000 in a calendar year may apply for exemption from subsection (b)(6) on the basis of financial or organizational hardship under § 147.13(g) (relating to effective date and exemption).

(4) The requirements of subsection (b)(5) and (6) and subsections (e), (f) and do not apply to continuing care providers.

(i) The Commissioner will not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by a natural person who meets one of the following conditions:

(1) The person has been convicted of fraud, bribery, a violation of 18 U.S.C.A. Chapter 96 (relating to the

Racketeer Influenced and Corrupt Organizations) or any dishonest conduct or practice under Federal or state law.

(2) The person has been found to have violated the insurance laws of the Commonwealth with respect to previous reports submitted under this chapter.

(3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(j) The Commissioner may hold a hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56 and 58 (relating to special rules of administrative practice and procedure; and publication of citations and notice of hearings) to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not independent or qualified, or both, for purposes of expressing an opinion on the financial statements in the audited financial report made under this chapter and may require the insurer to replace the certified public accountant.

(k) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a receivership proceeding commenced against the insurer under Article V of The Insurance Department Act (40 P. S. §§ 221.1—221.63), the mediation or arbitration agreement may be disavowed by the statutory receiver.

(l) If the Commissioner has reason to believe that an audit performed contains a material departure from generally accepted auditing standards, the Commissioner may refer the matter to the State Board of Accountancy and the American Institute of Certified Public Accountants, Inc., for review and determination. Upon the finding by the State Board of Accountancy or the American Institute of Certified Public Accountants, Inc., that a certified public accountant violated applicable standards relating to competence, the performance of audits, accounting principles or other professional conduct, the Commissioner will not accept the audited financial report for that audit and will no longer accept audited financial statements certified by that certified public accountant.

(m) Within 60 days of receipt of notice from the Commissioner of a finding under subsection (h) that an audit contains a material departure from generally accepted auditing standards, the insurer for which the audit was performed shall register with the Commissioner the name and address of a qualified independent certified public accountant retained by the insurer to perform an audit in compliance with this chapter for the year for which the finding was made. The audited financial report for the year for which the finding was made shall be filed within a time period to be determined by the Commissioner.

§ 147.6a. Letter of qualifications of independent certified public accountant.

The independent certified public accountant shall furnish the insurer for inclusion in the filing of the annual audited financial report a letter of qualifications that includes the following:

(1) A statement that the certified public accountant is independent from the insurer and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants, Inc. and The C.P.A. Law (63 P. S. §§ 9.1—9.16(b)) or similar laws.

(2) A general description of the independent certified public accountant's background and experience.

(3) A specific description of the insurer auditing experience of partners, senior managers, in-charge auditors or other key staff persons assigned to the engagement and a statement as to whether each staff person is an independent certified public accountant. This provision does not prohibit the independent certified public accountant from utilizing staff as the independent certified public accountant deems appropriate when consistent with the standards prescribed by generally accepted auditing standards.

(4) A statement that the independent certified public accountant understands that the annual audited financial report that the independent certified public accountant's opinion thereon will be filed in compliance with this chapter and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

(5) A statement that the independent certified public accountant consents to the requirements of § 147.11 (relating to definitions, availability and maintenance of independent certified public accountant workpapers) and that the independent certified public accountant consents and agrees to make available for review by the Commissioner, the Commissioner's designee or Department examiners, the workpapers, as defined in § 147.11.

(6) Representation that the independent certified public accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants, Inc.

(7) Representation that the independent certified public accountant is in compliance with § 147.6 (relating to recognition, qualification and responsibilities of an independent certified public accountant).

[Pa.B. Doc. No. 09-1831. Filed for public inspection October 2, 2009, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 91, 97, 101, 105, 109 and 111]

General Provisions and Boating

The Fish and Boat Commission (Commission) amends Chapters 53, 91, 97, 101, 105, 109 and 111. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments modify and update the Commission's boating regulations.

A. Effective Date

The final-form rulemaking will go into effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available electronically through the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 53.8 (relating to boats) is published under the statutory authority of section 741 of the code (relating to control of property). The amendments to §§ 91.5, 97.1, 101.5, 105.3 and 109.1 are published under the statutory authority of section 5123 (relating to general boating regulations). The amendment to § 109.6 (relating to special marine events) is published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The amendments to §§ 111.17 and 111.20 (relating to Clearfield County; and Crawford County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. On June 9, 2009, the Commission's Boating Advisory Board (BAB) considered each of the amendments and recommended that the Commission adopt the amendments as set forth at 39 Pa.B. 1870 (April 11, 2009).

E. Summary of Changes

(1) Sections 53.8 and 97.1 (relating to boats; and personal floatation devices) have been amended to clarify provisions on personal floatation devices (PFDs). Section 97.1(f) of the Commission's regulations follows the *Code of Federal Regulations* that excludes racing shells, rowing sculls and racing kayaks from the requirements for PDFa. However, this subsection provides that the exemption does not apply on Commission and State Park owned or controlled boating waters. Section 53.8 of the Commission's regulations similarly requires occupants of skulls, shells and racing kayaks to carry or wear Coast Guard approved PFDs on Commission property.

This type of boating is somewhat exclusive due to its nature. Most often, racing shells, sculls and kayaks are used by high school, college or university students or special clubs. They are, with few exceptions, very safe boaters, and the accident record for these boats do not point to a need for requiring PFDs for their occupants. Moreover, there is no support to require occupants of these boats to wear PFDs on small Commission lakes when they are not required to carry them onboard on larger waters.

Section 91.7(f) also provides detailed information on what type of PFDs must be carried by the safety boat accompanying the shells, sculls or racing kayaks. However, § 97.1(f) does not, and may not (because of the Federal regulations), require that a safety boat is present. Therefore, it does not make sense to stipulate requirements for safety boats when the safety boats are not required to be on the scene under the Federal regulations. Also, this section states that safety boats shall carry a sufficient number of Type I, II, III or V PFDs for the occupants of the racing boats that they accompany. Any PFDs required to be carried, however, should be the type that can easily be thrown to someone in the water (for example, Type IV throwable PFDs). Moreover, the accident record for these boats does not point to the need for requiring PFDs on safety boats. Accordingly, the Commission adopted the amendments to §§ 53.8 and 97.1 to read as set forth at 39 Pa.B. 1870.

(2) Section 91.5 was amended in regards to boat operation. The Commission's current regulations do not include

a provision making it unlawful for a boat owner knowingly to allow someone to operate a boat without a boating safety education certificate onboard when the individual is required to have one. The Commission's law enforcement staff has requested that this requirement be added. The Commission therefore amended § 91.5 to read as set forth at 39 Pa.B. 1870.

(3) Section 101.5 has added "upon written request" to the provision on requesting abstracts. The confidentiality of boating accident reports is covered in detail in section 5503 of the code (relating to accident reports) and in § 101.5 of the Commission's regulations. The Commission receives requests for certified abstracts for specific boating accidents. This is the only information that can be released from the Boating Accident Report (PFC-260) filed by the boat operator or owner who was involved in a reportable, recreational boating accident. Commission staff has required that such requests be in writing and has accepted e-mails as sufficient. Accordingly, the Commission amended § 101.5 to read as set forth at 39 Pa.B. 1870.

(4) Section 105.3 was amended to specify safe boating practices. The existing regulation concerning pontoon boats allows passengers to ride outside the normal passenger carrying area when the pontoon boat is travelling at slow, no wake speeds. This is an unsafe practice because the passenger can very easily fall overboard, even at the reduced, slow, no-wake speed. Because of the nature of the hull design of pontoon boats, slow, no-wake can be a faster speed than on single hull boats, such as a runabout. If the passenger is in the bow of the boat and falls overboard, he will most likely be struck by the boat's propeller with catastrophic results. This very scenario took place last year on a lake in western Pennsylvania when the pontoon boat operator unexpectedly hit a log, causing a boy, who was riding on the bow outside of the normal passenger carrying area to fall overboard and be struck by the boat's propeller.

The BAB considered the proposed amendment and recommended that the Commission's staff review the proposal to determine whether it places an unfair restriction on passengers riding in installed seating on the bow, outside the continuous railing on the boats, at slow, no-wake speed and whether an accommodation should be made to permit this practice. The proposed amendment was reviewed further and it was determined that it is not overly burdensome and sitting in seats outside the railing of pontoon boats at any speed, even slow, no-wake, is a dangerous practice and one that should not be permitted. The Commission therefore amended § 105.3 to read as set forth at 39 Pa.B. 1870.

(5) Section 109.1 of the Commission's regulations provides detailed standards for the construction of air boats. However, there is no known example of this regulation being enforced in any part by Commission officers. In fact, a recent technical inquiry by a member of the general public about this regulation could not be answered because there are no known sources for the content of this regulation. There are very few airboats in this Commonwealth, and the Commission's law enforcement staff has had few issues with operators of these unusual boats. The Commission therefore rescinded § 109.1 as set forth at 39 Pa.B. 1870.

(6) The proposal to amend § 109.6 specifies the need for proof of permission to hold marine events. Section 109.6(b)(5) of the Commission's regulations provides that the Commission will not issue a special activities permit for a marine event in a State Park unless the applicant

first obtains written permission from the Bureau of State Parks, Department of Conservation and Natural Resources (DCNR) for the event. The Commission, however, issues permits for events occurring in State Forests, not just those in State Parks. The regulation goes on to explain that applicants holding marine events on waters under the ownership or control of other Federal or State agencies must provide the Commission with evidence of permission by the controlling agency.

To simplify the regulation, the Commission proposed to revise the regulation to simply require the permission of the entity that owns or controls the waters on which the marine event will occur. The Commission routinely issues special activities for marine events that occur on private and public waters, including waters owned or controlled by the DCNR, the Pennsylvania Game Commission, the United States Army Corps of Engineers (USACOE), and county and municipal governments. The Commission therefore amended § 109.6 to read as set forth at 39 Pa.B. 1870.

(7) Section 111.17 added provisions on Curwensville Lake. Curwensville Lake is a USACOE, Baltimore District impoundment of the West Branch of the Susquehanna River in central Clearfield County. It is managed jointly by the USACOE and the Clearfield County Recreation and Tourism Authority. The lake comprises 790 acres with 19 shoreline miles and unrestricted horsepower. The lake provides open water adjacent to the dam with the majority of the water in a serpentine pattern based upon the original river contours. The lake narrows severely in its upper reaches. Use of the upper area is popular but not conducive to unrestricted horsepower boating. These upper reaches, most of which are less than 200 feet in width, have been posted and enforced as a slow, no-wake area but have never been defined by regulation. Giving clear and legal definition of the slow, no-wake area is of joint interest to the agencies and will enhance fairness in public notice and enforceability.

The USACOE has requested that the slow, no-wake area be marked in the area upriver of the cliff at Ferguson and the area between the old viaduct pillars. The Commission therefore amended § 111.17 to read as set forth at 39 Pa.B. 1870.

(8) Section 111.20 amended details on Pymatuning Lake, of Pymatuning State Park. DCNR regulates the waterway's horsepower limit and has recently set it at 20 horsepower, like several other lakes owned or controlled by the DCNR. In the past, the Commission removed all references to horsepower limits on DCNR waterways from Chapter 111 of the Commission's regulations. Removal of Pymatuning Lake will complete that process. Accordingly, the Commission amended § 111.20 to read as set forth at 39 Pa.B. 1870.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking containing the proposed amendments was published at 39 Pa.B. 1870. Prior to the public comment period, the Commission received

one public comment regarding the proposed amendments to §§ 53.8 and 97.1 suggesting different language; one comment opposing the amendments to § 91.5; and one public comment generally supporting the proposed amendment to § 105.3, but suggested alternative language. The Commission did not receive any public comments regarding the other proposed amendments. Copies of all public comments were provided to the commissioners.

Findings

The Commission finds:

(1) Public notice of intention to adopt the amendments adopted 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and all public comments received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 53, 91, 97, 101, 105, 109 and 111, are amended by amending §§ 53.8, 91.5, 97.1, 101.5, 105.3, 109.6, 111.17 and 111.20 and by deleting § 109.1 to read as set forth in 39 Pa.B. 1870.

(b) The Executive Director will submit this order and 39 Pa.B. 1870 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 39 Pa.B. 1870 and deposit them with the Legislative Reference Bureau as required by law.

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

DOUGLAS J. AUSTEN, Ph.D,
Executive Director

Fiscal Note: Fiscal Note 48A-210 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 09-1832. Filed for public inspection October 2, 2009, 9:00 a.m.]