

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH; Public Hearing

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update stream quality objectives (also called "water quality criteria") for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

Dates: The public hearing will be held at 2:00 P.M. on Thursday, October 24, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Thursday, November 21, 2013. For more information regarding the procedures for the hearing and comments, see Supplementary Information.

Addresses: The public hearing will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Thursday, November 21, 2013. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "pH Rulemaking" in the subject line.

For further information: The rule text and a report entitled "pH Criteria Revision Recommendations for Interstate Waters of the Delaware River Basin: Basis & Background Document" (DRBC, March 2013) are available on the Commission's web site, www.drbc.net. Hard copies of the latter document may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Erik Silldorff at 609-883-9500 ext. 234. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

Supplementary Information

Background. The Commission in 1967 assigned stream quality objectives (also called "criteria") for pH to all tidal

and non-tidal interstate streams in the Delaware River Basin ("basin"). Since that time, scientists' understanding of natural fluctuations in freshwater and saltwater pH levels has grown. Likewise, the development and application of pH criteria have evolved, while the Commission's pH stream quality objectives have remained unchanged. Commission scientists in consultation with experts from DRBC member states and federal agencies have evaluated the pH criteria adopted by signatory states and recommended by federal agencies over the past four-and-a-half decades. They have concluded that in order to minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River, two classes of revisions to the Commission's criteria for this shared interstate waterway should be considered. The first concerns the range of pH levels deemed to comprise the numeric standard within the tidal and non-tidal zones of the main stem and tidal portions of tributaries. The second concerns excursions outside the standard range that are attributable to natural conditions. The proposed revisions were unanimously endorsed by the Commission's Water Quality Advisory Committee ("WQAC") in March 2009. The WQAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers, academicians and environmental organizations that advises the Commission on technical matters relating to water quality within the basin.

Proposed Change to Existing Criteria. The Commission's existing pH criteria applicable to the main stem are expressed as ranges. "Between 6.0 and 8.5" is the range currently assigned to all freshwater (non-tidal) zones of the main stem Delaware River—DRBC Water Quality Zones 1A through 1E. In all tidal zones—DRBC Water Quality Zones 2 through 6, which include the tidal main stem and tidal portions of its tributaries—the pH range currently in effect is "between 6.5 and 8.5." The proposed amendments would make 6.5 the lower threshold of acceptable pH conditions for all water quality zones encompassing reaches of the main stem and tidal portions of its tributaries.

Natural Conditions Clause. The proposed amendments would add a clause to the pH criteria recognizing natural deviations outside the 6.5 to 8.5 pH range in the moderately acidic waters draining the Catskill Mountains and Pocono Plateau, the high-light and high-productivity zones of the non-tidal main stem, and the acidic coastal plain tidewaters of the Delaware Estuary.

Proposed Rule Text. In accordance with these proposed changes, the pH criteria for Water Quality Zones 1A through 1E (non-tidal main stem) and 2 through 6 (tidal main stem and tidal portions of tributaries) are proposed to be amended to read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions." The affected sections of the Commission's *Water Quality Regulations* consist of subsection C.3 of each of sections 2.20.2 through 2.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there

(currently, December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

Dated: September 13, 2013

PAMELA M. BUSH, Esq.,
Secretary

Fiscal Note: 68-57. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 13-1893. Filed for public inspection October 11, 2013, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 25]

Rules and Procedural Requirements for Insurance Holding Company Systems

The Insurance Department (Department) proposes to amend Chapter 25 (relating to rules and procedural requirements for insurance holding company systems) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department, and Article XIV of The Insurance Company Law of 1921 (act) (40 P. S. §§ 991.1401—991.1413), regarding insurance holding companies.

Purpose

Chapter 25 sets forth rules and procedural requirements applicable to insurance holding company systems. The purpose of this proposed rulemaking is to update Chapter 25 in accordance with amendments made to Article XIV of the act by the act of July 5, 2012 (P. L. 1111, No. 136) (Act 136).

The proposed amendments to Chapter 25 are based upon recent amendments to the model regulation developed by the National Association of Insurance Commissioners (NAIC) entitled “Insurance Holding Company System Model Regulation with Reporting Forms and Instructions” (Model #450). This proposed rulemaking is part of the financial regulation standards the Department must meet to maintain its accreditation as a regulator by the NAIC. Thus, the Commonwealth must enact requirements substantially similar to NAIC requirements to maintain NAIC accreditation.

A copy of the copyrighted NAIC model regulation was provided to the Senate Banking and Insurance Committee, the House Insurance Committee, the Independent Regulatory Review Commission (IRRC), the Governor’s Office of Policy and Planning, the Governor’s Office of General Counsel and the Attorney General to assist in the analysis of this proposed rulemaking. Copies of NAIC model regulations are available to the general public by contacting the NAIC.

Explanation of Proposed Amendments

Section 25.8 (relating to waivers) is proposed to be amended to change “corporation” to “person” in accordance with the nomenclature change to section 1402(a)(2) of the act (40 P. S. § 991.1402(a)(2)).

Section 25.12 (relating to forms—general requirements) is proposed to be amended to: add a reference to proposed Form F (relating to enterprise risk report), which is the

form for filing an enterprise risk report as required under section 1404(k.1) of the act (40 P. S. § 991.1404(k.1)); delete “initial” as unnecessary; provide that an applicant should file a copy of its Form A (relating to statement regarding the acquisition of control of or merger with a domestic insurer) with the NAIC if it requests a hearing on a consolidated basis under section 1402(f)(2.1) of the act; and allow the electronic filing of forms in certain circumstances.

Section 25.13 (relating to forms—incorporation by reference, summaries and omissions) is proposed to be amended to add a reference to proposed Form F.

Section 25.16 (relating to acquisition of control—statement filings) is proposed to be amended to update a reference to “domestic insurer” under section 1402(a)(2)(i) of the act in accordance with the amendment of this section by Act 136.

Section 25.18 (relating to summary of registration—statement filing) is proposed to be amended to delete the requirement that a copy of Form C (relating to summary of registration statement) be filed in a jurisdiction in which an insurer is authorized to do business, if requested by the chief insurance regulatory official of the jurisdiction.

Section 25.20 (relating to disclaimers and termination of registration) is proposed to be amended to: enhance the readability of subsection (a); include clarifying language that was added by Act 136 to the definition of “control” in section 1401 of the act (40 P. S. § 991.1401); and require supporting information with disclaimers of affiliation and requests for termination of registration.

Section 25.21 (relating to transactions subject to prior notice—notice filing) is proposed to be amended to further clarify the circumstances for filing and content of management agreements, service contracts, tax allocation agreements, guarantees and cost-sharing arrangements which are required to be filed for prior approval under section 1405(a)(2)(v) of the act (40 P. S. § 991.1405(a)(2)(v)) as added by Act 136.

Proposed § 25.21a (relating enterprise risk report) sets forth the format and timing for filing the enterprise risk report required under section 1404(k.1) of the act as added by Act 136.

Section 25.22 (relating to all dividends and other distributions) is proposed to be amended to transpose the order of subsection (c)(5) and (6) to improve readability.

Form A is proposed to be amended to: delete the exemption for identifying affiliates with assets or less than 1/2 of 1% of total assets of the ultimate controlling person from the chart summarizing the applicants and affiliates; require a third-party background check upon request for individual applicants or persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant; require a 3-year financial projection of the insurer be attached as an exhibit to the Form A Filing; and add a statement recognizing the applicant’s commitment to file an enterprise risk report as required under section 1402(b)(11.1) of the act as added by Act 136.

Form B (relating to insurance holding company system annual registration statement) is proposed to be amended to: delete the exemption for affiliates with assets or less than 1/2 of 1% of total assets of the ultimate controlling person from identification on the organizational chart; clarify the differences between the procedures for the submission of biographical information by individuals and

those to be used by corporation, an organization, a limited liability company or other legal entity; delete “consolidated” as a description of tax allocation statements to maintain consistency with terminology used in the act and other portions of the regulation; clarify the requirements for submission of financial statements to be submitted when the ultimate controlling person is a corporation, an organization, a limited liability company or other legal entity and the format in which the statements should be filed; and provide for the filing of a statement of corporate governance and internal controls as required under section 1404(b)(4.2) of the act as added by Act 136.

Form D (relating to prior notice of a transaction) is proposed to be amended to: update a reference to section 1405(2)(v) of the act as added by Act 136; add a section within which the insurer will explain how the transaction meets the fair and reasonable standard of section 1405(a)(1)(i) of the act; require the insurer to file a copy of the copy of the management agreement, service contracts, tax allocation agreement, guarantee or cost-sharing arrangement as required under section 1405(a)(2)(v) of the act as added by Act 136; clarify that transactions exceeding the thresholds provided under the act are to be reported under Item 3, per section 1405(a)(2)(i) of the act, while those that do not are to be reported under Item 6 per section 1405(a)(2)(v) of the act; add reinsurance pooling agreements to Item 6 as required under section 1405(a)(2)(iii)(C) of the act as added by Act 136; and include a new section for reporting management agreements, service contracts, tax allocation agreements, guarantees and cost-sharing arrangements as required under section 1405(a)(2)(v) of the act as added by Act 136.

Form E (relating to pre-acquisition notification statement of the potential competitive impact of a proposed merger or acquisition) is proposed to be amended to add a requirement that an applicant provide a determination of whether the transaction would violate the competitive standards in section 1403 of the act (40 P. S. § 991.1403) and, if so, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in this Commonwealth.

Proposed Form F is a form through which a company can identify and report its enterprise risk as required under section 1404(k.1) of the act as added by Act 136. This form, based upon the NAIC model, lists certain areas that could produce enterprise risk to an insurer and requires an attestation by appropriate individuals that the company has identified all required risks.

External Comments

The Department circulated pre-exposure drafts of the proposed rulemaking to the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Mutual Insurance Companies and the four nonprofit health plan corporations commonly referred to as “Blue Plans.” Comments received were carefully considered and incorporated into the proposed rulemaking.

Affected Parties

This proposed rulemaking will apply to insurers authorized to do business in this Commonwealth who are members of an insurance holding company system. Additionally, certain provisions of the proposed rulemaking may apply to persons seeking to acquire an interest in a Pennsylvania domestic insurer.

Fiscal Impact

State government

The proposed rulemaking will strengthen and clarify existing regulatory requirements. There will not be material increase in cost to the Department as a result of this proposed rulemaking.

General public

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

Political subdivisions

This proposed rulemaking will not impose additional costs on political subdivisions.

Private sector

This proposed rulemaking will not impose significant costs on the transaction of business in this Commonwealth.

Paperwork

This proposed rulemaking will not impose additional paperwork on the Department.

Effective Date

This proposed rulemaking will become effective within 30 days after final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 705-3873, psalvatore@pa.gov within 30 days following the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), the Department is required to write to commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that commentators will receive a copy of the final-form rulemaking when it is made available to IRRC and the House and Senate Committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 30, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior

to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

MICHAEL F. CONSEDINE,
Insurance Commissioner

Fiscal Note: 11-252. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart B. SECURITIES AND STOCK TRANSACTIONS

CHAPTER 25. RULES AND PROCEDURAL REQUIREMENTS FOR INSURANCE HOLDING COMPANY SYSTEMS

§ 25.8. Waivers.

This chapter does not constitute a waiver by the Department of its authority, for the purpose of examining into the affairs of a [**corporation**] **person** proposing to acquire or offering to acquire voting securities of an insurer or a person which controls an insurer, to have free access to its books and papers which relate to its business, and to the books and papers kept by any of its agents. The Department may summon, and administer the oath to, and examine as witnesses, the directors, officers and agents of the person and other persons, relative to its affairs, transactions and condition.

§ 25.12. Forms—general requirements.

(a) Forms [**A—E**] **A—F** located in Appendix A are intended to be guides in the preparation of the statements required by sections 1402—1405 of the act (40 P. S. §§ 991.1402—991.1405). They are not intended to be blank forms which are to be filled in. The forms filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers are prepared in a manner that indicates clearly the scope and coverage of the items. Instructions, whether appearing under the items of the form or elsewhere therein, shall be omitted. Unless expressly provided otherwise, if an item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) Two copies of Forms A and E and one copy of Forms B—D **and F**, including exhibits and other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery, mail, facsimile or other form of electronic transmission acceptable to the Department. At least one copy shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of a person is affixed under a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the form.

(c) One of the filed copies of Form A shall be available for public inspection as of the date the [**initial**] filing is made; except that copies of personal financial statements of nonpublicly held ultimate controlling persons shall be given confidential treatment. Form A filings also may

contain or reference other materials that are confidential, proprietary or privileged under statute, regulation, case law, administrative or court order, or other authority.

(1) If a person filing a Form A wishes to assert that materials included or referenced within the filing are confidential, proprietary or privileged and should not be available for public inspection, the person shall notify the Department at the time the initial filing is made as follows:

[(1)] (i) Identify the specific information, document, report or other material that is asserted to be confidential, proprietary or privileged.

[(2)] (ii) State the basis upon which the assertion of confidentiality, proprietary or privilege is premised.

[(3)] (iii) Identify the person to whom inquiries regarding the issue of confidential treatment should be directed.

[(4)] (iv) Submit one copy of the filing with the materials asserted to be confidential, proprietary or privileged physically separate from the remainder of the filing, or as otherwise instructed by the Department.

(2) If an applicant requests a hearing on a consolidated basis under section 1402(f)(2.1) of the act, in addition to filing Form A with the Commissioner, the applicant shall file a copy of the Form A with the NAIC in electronic form.

(d) Forms shall be prepared on 8 1/2 inches x 11 inches paper and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. Copies of forms, financial statements or exhibits shall be clear, easily readable and suitable for [**photocopying**] **review and reproduction**. Debits in credit categories and credits in debit categories shall be designated so that they are clearly distinguishable on photocopies. **An insurer may request that the Department accept a form in an electronic format only. Upon the Department's request, an insurer shall prepare an electronic version of the form, which may be submitted by secure e-mail, if this option is available to a company, or on CD-ROM mailed or hand-delivered to the Department.**

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§ 25.13. Forms—incorporation by reference, summaries and omissions.

(a) Information required in Form A, B[, **D or E**] **or D—F** located in Appendix A may be incorporated by reference as provided in this subsection if the incorporation would not make the information provided in the form incomplete, unclear or confusing. Information required by an item in Form A, B[, **D or E**] **or D—F** may be incorporated by reference in answer or partial answer to another item. Information contained in a financial statement, annual report, proxy statement, statement filed with a governmental authority or another document may be incorporated by reference in answer or partial answer to an item in Form A, B[, **D or E**] **or D—F** if the document or paper is filed as an exhibit to the form. Excerpts of documents may be filed as exhibits if the

documents are extensive. Documents currently on file with the Commissioner which were filed within the immediately preceding 3 years need not be attached as exhibits if there has been no change in the information already on file. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in answer to the item.

* * * * *

§ 25.14. Forms—information unknown or unavailable and extension of time to furnish.

[(a) Information required need be given only insofar as it is known or reasonably available to the person filing the form. If required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions. The person filing shall:

- (1) Give information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.
- (2) Include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of an affiliation with the person within whose knowledge the information rests and stating the result of a request made to that person for the information.

(b)] If it is impractical to furnish required information, document or report at the time it is required to be filed, [there may] a separate document shall be filed with the Commissioner [a separate document]:

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§ 25.15. Forms—additional information and exhibits.

(a) In addition to the information expressly required to be included in Forms [A—E] A—F located in Appendix A, the person filing shall provide further material information, if any, as necessary for the completion or clarity of the information expressly required in the form. The person filing may also file exhibits as desired in addition to those expressly required by the form. The exhibits shall be marked to indicate clearly the subject matters to which they refer. The Commissioner may require the person filing the form to provide additional information as may be necessary to determine compliance with the act.

(b) Changes to [Form A, B, C, D or E shall] Forms A—F must include on the top of the first page the phrase [:] “Change No. (insert number) to” and [shall] indicate the date of the change and not the date of the original filing.

§ 25.16. Acquisition of control—statement filings.

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(f) If the person being acquired is deemed to be a “domestic insurer” under section [1402(a)(2)] 1402(a)(2)(i) of the act, the name of the domestic insurer on the first page of Forms A and E shall be indicated as follows: “ABC Insurance Company, a subsidiary of XYZ Holding Company.”

(g) If a person deemed to be a “domestic insurer” under section [1402(a)(2)] 1402(a)(2)(i) of the act is being acquired, references to “the insurer” in Forms A and E shall refer to both the domestic subsidiary insurer and the person being acquired.

§ 25.18. Summary of registration—statement filing.

An annual registration statement filed under section 1404 of the act (40 P. S. § 991.1404) shall include the information required on Form C located in Appendix A as prescribed by this chapter. [A copy of Form C shall be filed in any jurisdiction in which an insurer is authorized to do business, if requested by the chief insurance regulatory official of the jurisdiction.]

§ 25.20. Disclaimers and termination of registration.

(a) A disclaimer of affiliation under section 1404(g) of the act (40 P. S. § 991.1404(g)) or a request for termination of registration under section [1404(g) and (k) of the act (40 P. S. § 991.1404(g) and (k))] 1404(k) of the act claiming that a person does not, or will not upon the taking of some proposed action, control another person, referred to as the “subject,” within this [chapter, shall] subsection, must contain the following information:

- (1) The number of authorized, issued and outstanding voting securities of the subject.
- (2) With respect to the person whose control is denied and the affiliates of that person, the number and percentage of shares of the subject’s [voting securities] votes that shareholders would be entitled to cast in the election of directors which are held of record or known to be beneficially owned, and the number of the shares concerning which there is a right to acquire, directly or indirectly.
- (3) The material relationships and bases for affiliation between the subject and the person whose control is denied and the affiliates of that person.
- (4) A statement explaining why the person should not be considered to control the subject along with supporting information.

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§ 25.21. Transactions subject to prior notice—notice filing.

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(c) An insurer may not enter into a proposed transaction if a material change occurs in the information furnished on Form D unless the insurer has filed an amended Form D with the Department at least 30 days prior to entering into the transaction, or a shorter period the Department may permit, and the Department has not disapproved the amended transaction within that time period.

(d) New or amended management agreements, service contracts, tax allocation agreements, guarantees and cost-sharing arrangements involving a domestic insurer and a person in its insurance holding company system must:

(1) Be filed for prior approval under section 1405(a)(2)(v) of the act.

(2) At a minimum and as applicable:

(i) Identify the person providing services and the nature of the services.

(ii) Set forth the methods to allocate costs.

(iii) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the Accounting Practices and Procedures Manual.

(iv) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement.

(v) State that the insurer shall maintain oversight for functions provided to the insurer by the affiliate and that the insurer shall monitor services annually for quality assurance.

(vi) Define books and records of the insurer to include the books and records developed or maintained under or related to the agreement.

(vii) Specify that the books and records of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer.

(viii) Include standards for termination of the agreement with and without cause.

(ix) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliated providing the services.

(x) Specify that, if the insurer is placed in receivership or seized by the Commissioner under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63):

(A) The rights of the insurer under the agreement extend to the receiver or Commissioner.

(B) The books and records shall immediately be made available to the receiver or Commissioner immediately upon the receiver or the Commissioner's request.

(xi) Specify that the affiliate does not have an automatic right to terminate the agreement if the insurer is placed in receivership under Article V of The Insurance Department Act of 1921.

(xii) Specify that the affiliate will continue to maintain systems, programs or other infrastructure notwithstanding a seizure by the Commissioner under Article V of The Insurance Department Act of 1921 and shall make them available to the receiver for as long as the affiliate continues to receive timely payment for services rendered.

(e) For purposes of subsection (d), "amended" does not include:

(1) The continuation of an agreement or contract with no specified term or that is automatically renewed if provisions are not altered.

(2) The addition of an affiliate if the filing evidencing the notification of the addition is made with a domiciliary regulator in another state.

§ 25.21a. Enterprise risk report.

The ultimate controlling person of an insurer required to file an enterprise risk report under section 1404(k.1) of the act (40 P. S. § 991.1404(k.1)) shall furnish the required information on Form F as set forth in Appendix A. If the Commissioner approves a merger or acquisition of control, a revised enterprise risk report shall be filed within 30 days after the end of the month in which the acquisition of control occurs unless otherwise ordered by the Commissioner.

§ 25.22. All dividends and other distributions.

(a) Under section 1404(e) of the act (40 P. S. § 991.1404(e)) a registered insurer is required to report to the Department all dividends and other distributions to shareholders within 5 business days following the declaration thereof and at least 10 days, commencing from the date of receipt by the Department, prior to payment thereof. The report shall include the information set forth in section 1404(e) of the act and subsection [(c)(1)—(5). The] (c)(1)—(6) except that the information set forth in subsection [(c)(5)] (c)(6) is not required for dividends other than dividends reported under section 1405(b) of the act (40 P. S. § 991.1405(b)) and dividends and other distributions filed under section 337.8 of the act (40 P. S. § 459.8).

(b) Under section 337.8 of the act a domestic insurance company, association or exchange may pay dividends and other distributions to shareholders only out of unassigned funds as defined in section 337.8(e) of the act or upon approval of the Commissioner. Information filed with the Commissioner under section 337.8 of the act shall include the information set forth in subsection [(c)(1)—(5)] (c)(1)—(6).

(c) Requests for approval of extraordinary dividends or another extraordinary distribution to shareholders under section 1405(b) of the act shall include the following:

* * * * *

(5) [A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend or other distribution approval is submitted.

(6)] A statement demonstrating the transaction's compliance with section 1405(d) of the act by describing the effect of the proposed dividend or other distribution upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(6) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend or other distribution approval is submitted.

(d) Reports of dividends and other distributions under this section shall include on the top of the first page the phrase: "Notice of Dividend or Other Distribution" and the name of the insurer.

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APPENDIX A

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

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Item 2. Identity and Background of the Applicant

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C. Furnish a chart or listing clearly presenting the identities and the interrelationships among the applicant and all affiliates of the applicant. [No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of an ultimate controlling person affiliated with the applicant.] Indicate in the chart or listing the percentage of voting securities of each person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

Item 3. Identity and Background of Individuals Associated with the Applicant

Furnish a third-party background check upon request and biographical affidavit for (1) the applicant if the applicant is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Biographical affidavits filed with the Department within the immediately preceding 3 years need not be included if there has been no change in the information already on file.

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Item 12. Financial Statements and Exhibits

A. Financial statements and exhibits, and three-year financial projection of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

* * * * *

D. File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by this chapter.

Item 13. Agreement Requirements for Enterprise Risk Management

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within thirty (30) days after the end of the month in which the acquisition of control occurs and annually thereafter as long as control exists or upon request as necessary for the Commissioner to evaluate enterprise risk of the insurer unless otherwise ordered by the Commissioner.

Item 14. Signature and Certification

* * * * *

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

* * * * *

Item 2. Organizational Chart

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. [No affiliate need be shown if its total assets are equal to less than 1/2 of 1% of the total assets of an ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding \$5,000,000.] The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate.

* * * * *

Item 4. Biographical Information

[Furnish] If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of an ultimate controlling person in the form of biographical affidavits signed in the original: the individual's name and address, his or her principal occupation and all offices and positions held during the past five [5] years, and any conviction of crimes other than minor traffic violations during the past [ten] five years. If the ultimate controlling person is an individual, furnish the following information in the form of a biographical affidavit signed in the original: the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations. Biographical affidavits filed with the Department within the immediately preceding [3] three years need not be included if there has been no change in the information already on file. The Department will accept copies of original, signed biographical affidavits filed with the chief insurance regulatory official of another jurisdiction if the following conditions are met:

* * * * *

Item 5. Transactions and Agreements

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year, including extraordinary dividends and other material transactions reported

under §§ 25.21 and 25.22 of this chapter, between the Registrant and its affiliates:

* * * * *

H. [Consolidated tax] Tax allocation agreements; and

* * * * *

Item 8. Financial Statements and Exhibits

* * * * *

B. [The] If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of any ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year. Financial statements are required for an ultimate controlling person who is an individual as well as for a corporation or other type of business organization.

If a holding company system includes more than one ultimate controlling person, annual financial statements are required for each ultimate controlling person unless the Commissioner, in the Commissioner's discretion, finds that annual financial statements for one or more of the ultimate controlling persons are not necessary to carry out the act.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent that information is available. Financial statements may be prepared on either an individual basis, or unless the Commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the NAIC unless an alternative form is accepted by the Commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of an ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If an ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement [of the insurer with the chief insurance regulatory official of] filed in the insurer's domiciliary jurisdiction and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that jurisdiction.

* * * * *

Item 10. Corporate Governance and Internal Controls

The insurer shall furnish a statement that the insurer's board of directors oversees corporate gov-

ernance and internal controls and that the insurer's officers or senior management have approved, implemented and will continue to maintain and monitor corporate governance and internal control procedures.

Item 11. Signature and Certification

* * * * *

FORM D

PRIOR NOTICE OF A TRANSACTION

* * * * *

Item 2. Description of the Transaction

Furnish the following information for each transaction for which notice is being given:

A. A statement as to whether notice is being given under Section 1405(a)(2)(i), (ii), (iii), or (iv) or (v) of the act.

B. A description of the nature and purpose of the transaction, including the anticipated immediate and long-term effect of the transaction on the financial condition of the insurer.

C. A statement of how the transaction meets the fair and reasonable standard of section 1405(a)(1)(i) of the Act (40 P. S. § 991.1405(a)(1)(i)).

D. The proposed effective date of the transaction.

E. A copy of the management agreement, service contracts, tax allocation agreement, guarantee or cost-sharing arrangement.

Item 3. Sales, Purchases, Exchanges, Loans, Extensions of Credit, Guarantees, Investments, Pledges of Assets or Contributions to Surplus equal to or exceeding 3% of the insurer's admitted assets or 25% of surplus as regards policyholders reported pursuant to 40 P. S. § 991.1405(a)(2)(i).

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, investment, or pledge of assets, including assets to be received by the domestic insurer as a contribution to its surplus; whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice; a description of the terms of any securities being received, if any; and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation and supporting documentation of the basis for valuation.

* * * * *

No notice need be given under this item if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than [5%] 3% of the insurer's admitted assets or 25% of its surplus as of the 31st day of December next preceding. Please see item 6 for the reporting of matters below these thresholds.

Item 4. Loans or Extensions of Credit to a Non-Affiliate

* * * * *

No notice need be given if the loan or extension of credit is one which equals less than [5%] 3% of the insurer's admitted assets or 25% of its surplus as of the 31st day of December next preceding.

Item 5. Reinsurance

If the transaction is a reinsurance agreement or modification thereto, as described by Section 1405(a)(2)(iii) of the act or a reinsurance pooling agreement or modification thereto as described by Section 1405(a)(2)(iii)(C) of the act, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

Notice shall be given for all reinsurance pooling agreements including modifications thereto.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium [is less than 5% of the insurer's surplus as of the 31st day of December next preceding; or the change in the insurer's liabilities or any transfer of assets required to fund the transaction equals or exceeds 25% of the insurer's surplus as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer] or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding.

Item 6. Management Agreements, Service Contracts, Tax Allocation Agreements, Guarantees and Cost-Sharing Arrangements reported pursuant to 40 P. S. § 991.1405(a)(2)(v).

A. For management agreements and service contracts, furnish:

(1) A brief description of the managerial responsibilities, or services to be performed.

(2) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

B. For cost-sharing arrangements, furnish:

(1) A brief description of the purpose of the agreement.

(2) A description of the period of time during which the agreement is to be in effect.

(3) A brief description of each party's expenses or costs covered by the agreement.

(4) A brief description of the accounting basis to be used in calculating each party's costs under the agreement.

(5) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus.

(6) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable.

(7) A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.

C. For tax allocation agreements and guarantees, furnish:

(1) A brief description of the purpose of the agreement.

(2) A description of the period of time during which the agreement is to be in effect.

(3) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus.

(4) A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.

Item 7. Signature and Certification

* * * * *

FORM E

PRE-ACQUISITION NOTIFICATION STATEMENT OF THE POTENTIAL COMPETITIVE IMPACT OF A PROPOSED MERGER OR ACQUISITION

* * * * *

Item 5. Market and Market Share

State specifically what market and market share the persons identified in Item 1 and Item 2 currently enjoy in this Commonwealth in each insurance market which, under section 1403(b)(2)(v) of the act (40 P. S. § 1403(b)(2)(v)), causes the proposed merger or acquisition not to be exempted from Article XIV of the act. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past 5 years, or for the number of years the person and any predecessors thereof have been transacting business if less than 5 years, and identify the source of the data. Provide a determination as to whether the proposed acquisition or merger, if consummated would violate the competitive standards as stated in Section 1403 of the Act (40 P. S. § 991.1403(d)(1)). If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the Commonwealth.

* * * * *

(Editor's Note: The following form is new and printed in regular type to enhance readability.)

PROPOSED RULEMAKING

FORM F

ENTERPRISE RISK REPORT

Filed with the Insurance Department of _____

By

Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name Address

Date: _____, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. ENTERPRISE RISK

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in section 1401 of the act (40 P. S. § 991.1401) provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- A. Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system.
- B. Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system.
- C. Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities.
- D. Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system.
- E. Business plan of the insurance holding company system and summarized strategies for next 12 months.
- F. Identification of material concerns of the insurance holding company system raised by a supervisory college, if any, in last year.
- G. Identification of insurance holding company system capital resources and material distribution patterns.
- H. Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook).
- I. Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon.
- J. Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

ITEM 2: OBLIGATION TO REPORT.

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

ITEM 3: SIGNATURE AND CERTIFICATION

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 1404 of the act, the Registrant has caused this enterprise risk report to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, ____.

(SEAL)

Name of Registrant

By (Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached enterprise risk report dated _____, _____, for and on behalf of (Name of Company); that (s)he is the (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)

(Type or print name beneath)

[Pa.B. Doc. No. 13-1894. Filed for public inspection October 11, 2013, 9:00 a.m.]
