

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### SUSQUEHANNA RIVER BASIN COMMISSION

[ 25 PA. CODE CHS. 806 AND 808 ]

#### Amendments to Project Review Regulations

*Summary:* This document contains amendments to the project review regulations of the Susquehanna River Basin Commission (Commission) including provisions restricting the use of docket reopening petitions to avoid abuses of process; amending the “Approval by Rule” (ABR) process to allow for project sponsors to utilize approved water sources at approved drilling pad sites without the need for modification of the ABR; clarifying that the public hearing requirement for rulemaking shall be applicable to the proposed rulemaking stage of that process; and further providing for the time period within which administrative appeals must be filed. These amendments were first proposed in a Notice of Proposed Rulemaking (NOPR) that appeared at 74 FR 31647 on July 2, 2009.

*Dates:* These rules are effective on November 1, 2009.

*Address:* Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

*For Further Information Contact:* Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net. Also, for further information on the final-form rulemaking, visit the Commission’s web site at www.srbc.net.

#### *Supplementary Information*

##### *Background and Purpose of Amendments*

The Commission convened public hearings on August 4, 2009, in Harrisburg, PA and on August 5, 2009, in Elmira, NY. A written comment period was held open until August 15, 2009. Comments were received at both the hearings and during the comment period. A summary of the comments and the Commission’s responses thereto follows.

##### *Comments by Section, Part 806*

##### *Section 806.4. Projects requiring review and approval.*

*Comment:* The Commission’s proposal to require review and approval for any hydroelectric project regulated by the Federal Energy Regulatory Commission (FERC) and initiating a licensing or licensing amendment is defective and should not be adopted because: 1) As currently worded, the proposed amendment to 18 CFR 806.4(a) would exceed the Commission’s project review powers under Section 3.10 of the Susquehanna River Basin Compact (Compact); 2) The proposed amendment to 18 CFR 806.4(a) would produce duplicative and redundant licensing proceedings for review of hydroelectric projects and run afoul of the intent of Congress under the Federal Power Act and paragraph (w) of the Federal Reservations to the Compact to retain sole, unimpeded licensing authority in FERC; and 3) the Commission already has sufficient powers under its existing regulations and its compact authority to review aspects of hydroelectric and nuclear projects that affect water resources, and there is

no need to single out these facilities for review in the proposed amendment to 18 CFR 806.4(a).

Despite the Commission’s claim in the Notice of Proposed Rulemaking (NOPR) that it is merely codifying its current practice, the proposal represents a break with past Commission practice regarding both hydroelectric facility and nuclear power plant review without any explanation or justification for the change, and is therefore arbitrary and capricious.

The NOPR seeks to infringe on the exclusive authority of FERC granted to it under the Federal Power Act and reserved by Congress when it consented to the Compact. Nothing in the Compact provides, or even suggests, that the United States and the other parties to the Compact intended to grant the Commission review and approval authority of licensing or license amendment proceedings before FERC.

There is no need for the additional language proposed in the NOPR in that the Commission has ample authority to review and approve “projects” that are separately undertaken and that affect the water resources of the basin under its existing regulatory program. With regard to projects regulated by the Nuclear Regulatory Commission (NRC), the Compact, the Commission’s existing regulatory program and current practices are clear enough, well-established, and fully recognized by NRC, thus questioning the need for the suggested modification.

The Commission appears to be proposing that before an application can even be submitted to FERC or the NRC, application and approval must first be obtained from the Commission, which directly and materially interferes with FERC and NRC’s procedures and processes.

*Response:* The Commission exercises concurrent jurisdiction with FERC and the NRC and believes that its exercise of same is both appropriate and authorized under the Compact. Furthermore, it has no intention of exercising that authority in a manner that conflicts or interferes with that exercised by these two Federal agencies. Nor was it the intention of the proposed change to require Commission approval prior to the submission of licensing applications to the Federal agencies. Rather, the intention was to have the initiation of Federal licensing likewise initiate project review by the Commission. As was the case in a recent hydroelectric facility licensing process, the Commission undertakes a single, coordinated review with all Federal and State resource agencies that serves both regulatory schemes.

However, it is apparent from the comments received and the Commission’s own reconsideration that the proposed changes, as drafted, do not provide the clarification originally sought. Therefore, the Commission believes it is appropriate to suspend final action on this element of the NOPR so that it can be redrafted, particularly to ensure that it does not interfere with FERC and NRC procedures. (This is especially the case with respect to the comment that the proposal could be interpreted as requiring both review and approval prior to initiating licensing actions.) The Commission will move forward with publication of a new NOPR at such time as it completes development of a revised set of proposed changes for projects involved in licensing procedures.

Licensing and licensing amendment actions are projects that often have significant effects upon the water resources of the basin and the SRBC Comprehensive Plan.

Federal Reservations, Section 2, paragraph w of the Compact, while preserving the authority of Federal licensing authorities, also makes clear that use of the waters of the basin shall be subject to approval in accordance with the terms of the Compact.

Both the Compact and the Commission's current regulations require review and approval for, but not limited to: (1) projects on or crossing the boundary between signatory states; (2) projects in one signatory state having a significant effect on the water resources within another signatory state; and (3) projects included in the Commission's Comprehensive Plan or which would have a significant effect upon the plan. All hydroelectric and nuclear facilities in the basin meet one or more of these requirements. The Commission will therefore continue, as appropriate and as it has done in the past, to exercise concurrent authority with Federal licensing authorities to review and approve such projects.

*Comment:* The deletion of the existing § 806.4(a)(8) language, which requires Commission review and approval of any natural gas well development project targeting the Marcellus or Utica shale formations and involving a withdrawal, diversion or consumptive use of water, regardless of quantity, was alarming. The Commission's acknowledgement that the deletion of § 806.4(a)(8) was a drafting error, the public recognition of the error it posted on its web site upon discovery of the error, and its willingness to correct the error at the final rulemaking stage is appreciated.

*Response:* The Commission regrets the inadvertent proposed deletion of the provision and any confusion resulting from the error. Given that the Commission is not moving forward with any revisions to § 806.4(a)(8) as a part of this final-form rulemaking action, the error is of no affect and the provision in question remains effective. At such time as the Commission moves forward with revisions to § 806.4 as part of a new NOPR, it will be certain not to repeat the error.

*Section 806.22. Standards for consumptive use of water.*

*Comment:* Deletion of the contiguous landowner notification requirement in exchange for a display ad newspaper notice would leave such landowners without direct or effective notice, nor any guarantee that newspaper notification would provide adequate time for meaningful participation in the Approval by Rule (ABR) process. Any participation in the process would be markedly diminished, even though they remain the citizens most immediately affected. Moreover, some contiguous landowners do not reside on the affected land and thus may not be reached by the general newspaper notice. And as more newspapers fold as a result of declining readership and advertisement revenue, such notice will become increasingly inadequate.

Do not eliminate the requirement that project sponsors notify contiguous landowners as part of the ABR process; it is only fair that notice be given to the persons who are directly affected by such projects, and adjacent landowners are well placed to inform the Commission about potential adverse impacts of the approval.

Contiguous landowners need to have notice concerning water withdrawals since the presence of streams, pond or wetlands, and groundwater, contributes significantly to the value of the property. They should be entitled to notice and allowed a sufficient amount of time to comment on the impact of proposed withdrawals.

If the Commission wants to enhance public transparency, it should make information concerning applications

submitted to it available on the Commission's web site. In addition to providing information on the name of applicants, amount of water requested, location of withdrawals, date, and details of final action taken by the Commission, it should also plot withdrawals on a map display so that it is easy to see how much water is being withdrawn in a given area.

*Response:* The Commission acknowledges the concerns raised in the comments, but notes that there is some confusion about the scope of the ABR process. First, the process does not involve approvals for withdrawals from surface or groundwater sources. A number of the comments received spoke to the legitimate right of contiguous landowners to receive notice of proposed withdrawals because of the potential impact of their use and enjoyment and potentially diminished value to their land. Withdrawals are regulated separately by the Commission, they require separate docket approval, and contiguous landowner notification is required in advance of any Commission action. The proposed revisions do not modify those notification provisions in any way.

The ABR process involves an administrative approval for consumptive use at the natural gas well drilling pad site and enables the Commission to track all sources of water transported to the site, the quantities used in development of the well, and the fate of flowback and produced fluids. These data are important to assess the cumulative impact of this industry's activity on the water resources of the basin. A number of the comments received, however, spoke to the appropriateness of landowner notification if well drilling and hydrofracing activity was occurring adjacent to their property. The ABR process does not involve approval to drill or hydrofrac; it is limited to regulating the consumptive use of water involved in either of those activities. Approval to drill (and to undertake the related hydrofracture development activity) is a separate governmental action undertaken by the Commission's member states in the form of gas well permitting.

The impetus behind the Commission's proposal to modify contiguous landowner notice provisions in the ABR process stem from the fact that they have been problematic, administratively burdensome, and often lead to confusion at the landowner level. And while those shortcomings are pronounced with the ABR process, given the recent level of natural gas development activity, the Commission acknowledges that a number of those shortcomings are likewise present with its contiguous landowner notification requirements for docket applications as well. Therefore, after review and consideration of the comments received, as well as its own reconsideration of the appropriate scope of amendments to its existing notification procedures, the Commission believes it is appropriate to suspend action on this element of the NOPR as part of this final-form rulemaking action. Accordingly, it will move forward with publication of a new NOPR at such time as it completes development of a revised set of proposed changes to its general application notification requirements.

With respect to public transparency, note that the Commission continues to increase the amount of information contained on its web site, [www.srbc.net](http://www.srbc.net), for the benefit of the public. Further improvements are underway, with completion anticipated by the end of 2009, that will afford greater access to approvals, requests for approval, lists of approved water sources by project sponsor, location information about approved withdrawal and consumptive use sites, and mapping features to display information to better inform the public.

*Comment:* The flexible use of approved water withdrawal sources by gas well developers at various drill pad sites without modification of their pad site ABR under proposed regulation § 806.22(f)(11) and (12) will mean that such withdrawals, and the ABR approved well pad sites they serve, will receive less regulatory scrutiny.

*Response:* All such withdrawals will have already been fully reviewed and approved by the Commission prior to any use and will have met all public notice requirements at the time of their initial approval. This means that the impacts of withdrawals will have been fully evaluated and appropriate conditions such as passby requirements included. All users of these approved sources will be subject to the same limitations and conditions contained in the approved docket.

In approving a withdrawal, the Commission exercises continuing regulatory oversight and can, at any time, reopen the docket approval and add new conditions or make further orders to meet any changed conditions and otherwise protect the public welfare and the environment. In addition, the main purpose of the proposed change is to simplify administrative procedures without compromising regulatory oversight.

Again, as noted previously, the ABR process involves an administrative approval for consumptive use at the natural gas well drilling pad site and enables the Commission to track all sources of water transported to the site, the quantities used in development of the well, and the fate of flowback and produced fluids. The substantive evaluation of withdrawals and the conditions under which they may be undertaken without impact to the environment or other users occurs under the Commission's withdrawal regulations, and not the ABR process for which changes are proposed under this NOPR.

*Comment:* The proposed changes to § 806.22(f)(11) and (12) would eliminate core safeguards for the water-related values that the Commission is committed to protect by allowing project sponsors to shift water from one project to another without even registering the transfer with the Commission.

*Response:* This is a misreading of the NOPR and implies that project sponsors will be shifting water sources from one drilling pad site to another without oversight by the Commission. To the contrary, what the Commission is proposing is a system whereby each project sponsor engaged in natural gas development will have an approved list of water sources for which it has received docket approvals, with accompanying conditions to properly limit and monitor its withdrawals from each of those sources. The sources are added to the list at the time of docket approval, which effectively registers them for use at the project sponsor's approved drilling pad sites. The Commission sees no need to require a separate registration action by the project sponsor when it can be done administratively at the time of docket approval. All other sources that the project sponsor may use at its approved drilling pad sites must first be registered or otherwise approved by the Commission.

*Comment:* The proposed changes to § 806.22(f)(12) would permit project sponsors to share and trade water sources without obtaining new or modified ABRs, and without certifying to the Commission their intention to comply with all terms and conditions of each other's ABRs, and would authorize new sources of water without modifying the existing ABRs.

*Response:* The terms and conditions incorporated into every water source approval, and every ABR issued by

the Commission, must be adhered to by project sponsors. The purposes of the proposed modifications are to facilitate efficient water use and water sharing by the natural gas industry, and to streamline administrative processes so that the Commission's resources are better focused on substantive review and management of water resources, not inefficient bureaucracy. Issuing a single approval for a given water source and allowing its use at any of the project sponsor's approved drilling pad sites, with appropriate conditions and monitoring requirements, is far preferable than requiring the project sponsor, and the Commission, to modify each and every ABR issued to the project sponsor, which could number in the hundreds over time. From a water resources management standpoint, the issue is whether the source is approvable for use without adverse effect, regardless of whether the project sponsor intends to utilize the source at one site, or multiple sites. Allowing water sharing limits the number of withdrawals across the basin and limits tanker truck traffic by allowing project sponsors to use the closest approved water source site, even if the withdrawal approval was first issued to another operator. Adherence to all docket conditions, and ABR recordkeeping and reporting conditions, will continue to be required of all project sponsors, resulting in a full daily accounting of all water withdrawn across the basin (by source, by date, by project sponsor), where it was delivered to, and quantities used onsite.

*Comment:* The new proposed § 806.22(f)(11) and (12)(ii) contain language requiring the project sponsor to obtain all necessary approvals required for the project from the state agency. However, such reference to the need for state agency approval is absent from new proposed § 806.22(f)(12)(i). For the regulation to be internally consistent and for member state agency coordination purposes, a sentence should be added at the end of § 806.22(f)(12)(i) that is similar to the one contained in § 806.22(f)(12)(ii), indicating that registrations "shall be subject to any approval or authorization required by the member State to utilize such source(s)." The proposed language would put the project sponsor on notice that it would also need State-level authorization to use such source at the time it is registered with the Commission and before its use for natural gas well development.

*Response:* The Commission agrees with the commentator and the final-form rulemaking incorporates the proffered language.

*Section 806.32. Reopening/modification.*

*Comment:* This procedural change will allow interested parties' to fully participate in Commission processes, while avoiding unnecessary or duplicative proceedings.

*Response:* The Commission agrees.

*Comment:* Due process requires that the Commission narrowly construe its proposal to prevent persons whose administrative appeals are denied from petitioning for reopening of the approval seeking the same or similar relief absent new facts not known or readily discernable at the time of the appeal. Concern is raised about the use of the term "similar" being applied in such a way as to frustrate legitimate new claims, and the term "functionally equivalent" is recommended to be inserted in its place.

*Response:* The Commission agrees and the final-form rulemaking incorporates the proffered language.

*Comment:* We oppose the proposed restrictions to petitioning and reopening a docket.

*Response:* The Commission believes that any interested party should have the right to petition for a reopening of a project approval, but believes that parties attempting to use this provision to obtain administrative review of matters for which administrative appeals were denied constitutes an abuse of process and should be restricted.

*Comments by Section, Part 808*

*Section 808.1. Public hearings.*

*Comment:* We agree that the Commission should hold at least one public hearing within a reasonable period after rules revisions are initially proposed. The rule leaves open the option of convening additional hearings if, for example, the Commission recommends substantial changes in response to comments on the initial proposed rulemaking.

*Response:* The Commission agrees with the interpretation of the commentator. As structured, the rule would require the Commission to convene at least one additional hearing in the event changes to an NOPR are substantial and result in republication.

*Section 808.2. Administrative appeals.*

*Comment:* The proposed constructive notice rule allowing the appeal period for persons other than project sponsors to run 30 days from the date of publication of the action in the *Federal Register* is respectful of due process rights and is commendable.

*Response:* The Commission agrees that this modification advances the due process rights of interested parties and has retained it in this final-form rulemaking action.

*Comment:* This procedural change will maximize interested parties' ability to fully participate in Commission processes.

*Response:* The Commission agrees.

*List of Subjects in 18 CFR Parts 806 and 808*

*Administrative practice and procedure, Water resources.*

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Parts 806 and 808 as follows:

**PART 806—REVIEW AND APPROVAL OF PROJECTS**

**Subpart C—Standards for Review and Approval**

1. The authority citation for Part 806 continues to read as follows:

**Authority:** Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. No. 91-575, 84 Stat. 1509 et seq.

2. In § 806.22, revise paragraph, (f)(11) and add paragraph (f)(12) to read as follows:

**§ 806.22—Standards for consumptive use of water.**

\* \* \* \* \*

(f) \* \* \*

\* \* \* \* \*

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any water source approved for use by the project sponsor for natural gas well development pursuant to § 806.4 or this section, at the applicable drilling pad site subject to any approval or authorization required by the member state to utilize such source(s).

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to subsection (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member state. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s).

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including, but not limited to, public water supply, wastewater discharge or other reclaimed waters, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The notice requirements related to agencies of member states, municipalities and counties contained in paragraph (f)(2) of this section, and the notice requirements contained in paragraph (f)(3) of this section, shall likewise be applicable to any request submitted hereunder.

**Subpart D—Terms and Conditions of Approval**

3. In § 806.32, revise paragraph (a) to read as follows:

**§ 806.32—Reopening/modification.**

(a) Once a project is approved, the Commission, upon its own motion, or upon petition of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders or otherwise modify or impose such additional conditions that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever a petition for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket. Notwithstanding the foregoing, any petition filed by a party who previously sought the same or functionally equivalent relief identified in the petition pursuant to the administrative appeals process under § 808.2 will not be eligible for consideration by the Commission absent new facts not known or readily discernable at the time of consideration of the petitioner's previous request for administrative appeal filed pursuant to 18 CFR 808.2.

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**PART 808—HEARINGS AND ENFORCEMENT ACTIONS**

**Subpart A—Conduct of Hearings**

4. The authority citation for Part 808 continues to read as follows:

**Authority:** Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. No. 91-575, 84 Stat. 1509 et seq.

5. In § 808.1, revise paragraphs (a)(2) and (c) to read as follows:

§ 808.1—Public hearings.

(a) \* \* \*

(2) Proposed rulemaking.

\* \* \* \* \*

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, the Commission shall convene at least one public hearing on any proposed rulemaking it approves for public review and comment. For any such hearing(s), notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register and the Federal Register, and it is sufficient that this notice appear only in the Federal Register at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

6. In § 808.2, revise paragraph (a) to read as follows:

§ 808.2—Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director may file a written appeal requesting a hearing. Except with respect to project approvals or denials, such appeal shall be filed with the Commission within 30 days of the action or decision. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the Federal Register.

Dated: September 16, 2009.

THOMAS W. BEAUDUY, Deputy Director

(Editor's Note: The regulations of the Commission, 25 Pa. Code Chapters 806 and 808, are amended by amending §§ 806.1 and 808.1 to read as set forth in Annex A.)

Fiscal Note: Fiscal Note 72-7 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IV. SUSQUEHANNA RIVER BASIN COMMISSION

CHAPTER 806. REVIEW AND APPROVAL OF PROJECTS

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 (2009) (relating to review and approval of projects) are incorporated by reference and made part of this title.

CHAPTER 808. HEARINGS AND ENFORCEMENT ACTIONS

§ 808.1. Incorporation by reference.

The regulations and procedures for hearings/enforcement actions as set forth in 18 CFR Part 808 (2009) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 09-1866. Filed for public inspection October 9, 2009, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[ 31 PA. CODE CH. 147 ]

[ Correction ]

Annual Audited Insurers' Financial Report Required

Errors occurred in the final-form rulemaking which appeared at 39 Pa.B. 5730, 5735 (October 3, 2009) in § 147.6 (relating to recognition, qualification and responsibilities of an independent certified public accountant). The correct version of § 147.6(h) and (j) is as follows, with ellipses referring to the existing text of the regulations.

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

\* \* \* \* \*

(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 (g) 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 57

(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.

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

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