

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130f]

Odor Management Certification

The Department of Agriculture (Department) adopts Chapter 130f (relating to odor management certification) to read as set forth in Annex A.

Statutory Authority

The Department has authority to promulgate these final-form regulations as specifically set forth in section 508 of the act of July 6, 2005 (P. L. 112, No. 38) known as Act 38 of 2005 (act) (3 Pa.C.S. § 508 (relating to nutrient management certification program and odor management certification program)).

Section 508(a) of the act, directs the Department to "... establish, in consultation with the commission, ... an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The Department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations."

The act requires the Department to promulgate regulations establishing certification categories and criteria. In addition, section 508(d) of the act requires a person to satisfy the applicable requirements of the regulations prior to certifying an odor management plan or plan amendment. These regulations are therefore necessary to assure compliance with the edicts of the act and to allow concentrated animal operations, concentrated animal feeding operations and volunteers to comply with the odor management plan requirements set forth in section 509 of the act (relating to odor management plans).

Purpose of the Final-Form Regulation

The final-form regulations are required to establish a certification program through which persons drafting, reviewing and approving odor management plans may become certified and thereby meet the requirements of the act. The regulations set forth procedures and requirements related to the certification of individual, commercial and public odor management specialists, establish fees and delineate course and certification requirements, denote application, approval and appeal procedures for persons seeking certification, set forth criteria for recertification of odor management specialists and approval of recertification training and education programs.

Comment and Responses

Interested persons were invited to submit written comments regarding the proposed regulations within 30 days following publication at 37 Pa.B. 5793 (October 27, 2007). Only one individual commented on the proposed regulation. The person who commented during the proposed

stage of rulemaking was sent a letter informing him of his right to receive a copy of the final-form regulations. The Department also received comments from the Independent Regulatory Review Commission (IRRC). The Department will also make the regulations and comment and response document available for review on the Department's web site at www.agriculture.state.pa.us. Persons may request a hard copy of the comment and response document, by contacting the Department of Agriculture, Odor Management Certification Program, Johan Berger at (717) 772-4189.

Fiscal Impact

Commonwealth

The final-form regulations will not impose any appreciable additional fiscal impacts upon the Commonwealth. The regulations will require the Department to administer another certification training and recertification program and monitor and take appropriate State action when members of the regulated community are not complying with the statutory and regulatory mandates. The cost of administering the mandates of the act and these regulations will be covered by general government operating funds annually appropriated to the Department and augmented with the certification and testing fees set forth in the regulations.

Political Subdivisions

The final-form regulations will impose additional work and costs and have a fiscal impact upon county conservation districts that agree to certify public odor management specialists to draft or review, or both, odor management plans. The regulations will impose no additional burden of enforcement on political subdivisions.

Private Sector

The final-form regulations will impose additional costs on persons wishing to write or review and approve, or both, odor management plans, as required by the act. Those additional costs are in the form of the fees for certification, which are established in the regulations.

General Public

The final-form regulations will impose no direct costs and have no fiscal impact on the general public. Farmers required to have or seeking a voluntary odor management plan, will be affected by the mandates of the act, which require the plans and the fees charged for attaining the required certification to write or review, or both, those odor certification plans and will most likely be a small part of the fee charged to the farmer for the development of odor management plans.

Paperwork Requirements

The final-form regulations will not result in a substantial increase in paperwork. The Department will have to develop new application forms, but they will be based on current certification program forms. Review and administrative procedures will also be very similar to existing certification programs overseen by the Department.

Effective date

The final-form regulations will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Additional Information

Further information is available by contacting the Department of Agriculture, Odor Management Certification Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Johan Berger (717) 772-4189.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking published on October 15, 2007 to the IRRC and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Committees) for review and comment.

In compliance with section 5(b), the Department also provided IRRC and the Committees with copies of all comments received during the public comment period. In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the Committees on July 9, 2008, and was approved by IRRC on July 10, 2008.

Findings

The Department finds that:

(1) Public notice of intention to adopt these final-form regulations 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 attendant regulations in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 37 Pa.B. 5793.

(4) The adoption of the regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statutes, orders the following:

(1) The regulations of the Department, 7 Pa. Code, are amended by adding §§ 130f.1—130f.4, 130f.11, 130f.12, 130f.21 130f.22, 130f.31 and 130f.41 to read as set forth in Annex A.

(2) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as required by law.

(3) The Secretary of Agriculture shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

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

DENNIS C WOLFF,
Secretary

(Editor Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 4045 (July 26, 2008).)

Fiscal Note: Fiscal Note 2-155 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 7. AGRICULTURE****PART V. BUREAU OF PLANT INDUSTRY****CHAPTER 130f. ODOR MANAGEMENT CERTIFICATION**

Subch.

- A. GENERAL PROVISIONS
- B. CERTIFICATION
- C. RECERTIFICATION
- D. DENIAL, SUSPENSION, REVOCATION

Subchapter A. GENERAL PROVISIONS

Sec.

- 130f.1. Scope.
- 130f.2. Definitions.
- 130f.3. Fees.
- 130f.4. Certification authority.

§ 130f.1. Scope.

This chapter prescribes the procedures and qualifications related to certification of odor management specialists. This chapter includes the establishment of fees, delineates the requirements for certification of odor management specialists, including recertification criteria and sets forth the conditions of denial, suspension and revocation of odor management certification.

§ 130f.2. Definitions.

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

Act—Act 38 of 2005 (3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management)).

Certificate year—The period from January 1 to December 31.

Certification—The completion of the requirements of an odor management specialist contained in this chapter.

Commercial odor management specialist—A private sector person certified under this chapter to develop OMPs for another person's agricultural operation.

Commission—The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849—864).

Competency—Demonstrating a high level of technical or scientific knowledge as evidenced by successfully meeting the requirements of § 130f.11 (relating to determination of competence) for commercial and public odor management specialists, or meeting the requirements of § 130f.21 (relating to determination of competence) for individual odor management specialists.

Conservation district—A county conservation district established under the Conservation District Law.

Department—The Department of Agriculture of the Commonwealth.

Designee—A person chosen or appointed by the Secretary of the Department to carry out the Secretary's duties under this chapter.

Impacts—

(i) Conflicts arising from the offsite migration of odors from agricultural facilities.

(ii) The term does not include mental or physical health affects, or changes in property value.

Individual odor management specialist—A person certified under this chapter to develop OMPs for his agricultural operation.

Nutrient management specialist—A person satisfying the certification requirements of section 508 of the act (relating to nutrient management certification program and odor management certification program).

OMP—Odor management plan—A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

Odor BMP—Odor best management practice—A practice or combination of practices, technologies, standards and strategies to manage the potential for impacts from offsite migration of odors generated from animal housing facilities and manure management facilities that are subject to regulation under the act.

Odor management regulations—The regulations codified in 25 Pa. Code Chapter 83, Subchapter G (relating to facility odor management).

Odor management specialist—A person satisfying the certification requirements of this chapter.

Public odor management specialist—A State, Federal or other public employee certified under this chapter to review OMPs and make recommendations for approval or denial of OMPs to a conservation district or the Commission, or both.

Odor Site Index—The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, to determine the potential for impacts from the offsite migration of odors from agricultural operations.

Provisional certification—The level of certification obtained by an odor management specialist applicant who has successfully completed the required training and passed the written examination, but has not yet developed or reviewed the required number of odor management plans.

Recertification training—The completion of continuing education and training requirements in § 130f.31 (relating to recertification).

§ 130f.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The Department has established the following certification fees for each level of odor management specialist:

- (1) Individual odor management specialist—A triennial fee of \$15.
- (2) Commercial odor management specialist—A triennial fee of \$200.
- (3) Public odor management specialist—A triennial fee of \$25.

(b) *Examination fees.* Examination fees are nonrefundable. The Department has established the following examination fees for each level of odor management specialist:

- (1) Individual odor management specialist—No charge.
- (2) Commercial odor management specialist—\$30.
- (3) Public odor management specialist—\$30.

§ 130f.4. Certification authority.

(a) *Individual certification authority.* A person certified under this chapter as an individual odor management specialist is authorized to develop OMPs for his own agricultural operation. An individual odor management specialist has no authority to develop an OMP plan for another person or review and recommend action on an OMP.

(b) *Commercial certification authority.* A person certified under this chapter as a commercial odor management specialist is authorized to develop OMPs for another person's agricultural operation. A commercial odor management specialist has no authority to review or recommend action on an OMP.

(c) *Public certification authority.* A person certified under this chapter as a public odor management specialist is authorized to review OMPs and make recommendations for approval or denial of OMPs.

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

- Sec.
- 130f.11. Determination of competence.
- 130f.12. Final certification.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

- 130f.21. Determination of competence.
- 130f.22. Final certification.

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

§ 130f.11. Determination of competence.

(a) *Commercial odor management specialist.* Determination of competence for a commercial odor management specialist shall be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established under this chapter.

(1) Provisional certification requirements for a commercial odor management specialist include an orientation training course, an OMP writing course and a written examination approved by the Department.

(2) Final certification of a commercial odor management specialist requires the development of two approved OMPs as set forth in subsection (h)(1). OMPs developed under this subsection will be determined to be adequate by the Department or its designee.

(b) *Public odor management specialist.* Determination of competence for a public odor management specialist will be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a public odor management specialist include an orientation training course, an OMP review course, an OMP writing course and a written examination approved by the Department. OMP reviews completed and OMPs developed under this subsection will be determined to be adequate by the Department or its designee.

(2) Final certification of a public odor management specialist requires the approved review of one OMP and the development of one approved OMP as set forth in subsection (h)(2).

(c) *Future advancements.* As advancements in science and technology make new odor management techniques and Odor BMPs available and after these techniques and Odor BMPs are approved by the Commission, the certification requirements may include other course work related to those techniques and best management requirements, as well as, any new requirements set forth in the odor management regulations, as part of the certification course and training requirements. The new techniques and Odor BMPs will not become part of the certification requirements until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and Odor BMPs.

(d) *Provisional certification training.* The provisional certification training courses must, at a minimum, consist of the following areas of odor management planning:

(1) Understanding an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

(i) Completion and application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

(ii) Mapping principles and requirements.

(2) Understanding odor generation and transmission principles.

(3) Understanding environmental and economic impacts associated with odor management.

(4) Understanding and awareness of land use issues related to odor impact and management.

(5) Understanding OMP components and content.

(6) Understanding the technology, application and implementation of Odor BMPs.

(7) Understanding regulatory requirements of agricultural operations.

(i) Types of agricultural operations or activities/technologies that may require OMPs.

(ii) How to submit an OMP.

(iii) Other applicable laws and regulations related to or conjoined with odor management.

(8) Recordkeeping requirements.

(9) Proper OMP review procedures (public odor management specialists only).

(10) Proper OMP writing procedures (commercial and public odor management specialists only).

(11) Other areas and course work related to requirements in the odor management regulations, and determined appropriate by the Department in the manner delineated in subsection (c).

(e) *Examination.* The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to odor management planning and OMP plan development in the following areas:

(1) Application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

(2) Odor generation and transmission principles.

(3) Environmental and economic impacts associated with odor management.

(4) Land use issues related to odor impacts and management.

(5) OMP components and content.

(6) Technology, application and implementation of Odor BMPs.

(7) Odor management regulatory requirements of agricultural operations.

(8) Recordkeeping requirements.

(9) Other applicable laws and regulations related to or conjoined with odor management.

(10) Other areas related to new technology and Odor BMPs that become available and are approved by the Commission, as well as, new requirements in the odor management regulations. These other areas will not become part of the final certification requirements until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and Odor BMPs.

(f) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania Odor Management Examination, if the written examinations meet the requirements in subsection (e).

(g) *Provisional certification.* Upon the successful completion of the requirements in subsections (d) and (e), the applicant for certification as a commercial or public odor management specialist will be issued the appropriate provisional certification. The holder of a provisional certification is qualified, dependent on the type of provisional certification attained, to develop or review OMPs for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 2 years ending on the last day of the month from the date of issuance.

(h) *Final certification requirements.* Once provisional certification has been granted, the provisionally certified specialist shall complete one of the following dependent on the type of provisional certification granted and final certification sought:

(1) *Commercial odor management specialist.* To attain final certification, a provisionally certified commercial odor management specialist shall develop two OMPs which meet the requirements of section 509 of the act (relating to odor management plans). One of the required OMPs may be developed based on a scenario developed or approved by the Department. OMPs developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public odor management specialist.* To attain final certification, a provisionally certified public odor management specialist shall successfully review one OMP and develop one OMP which meets the requirements of section 509 of the act. The developed OMP may be based on a scenario developed or approved by the Department. OMP reviews completed and OMPs developed by the applicant shall be submitted to the Department or its designee for approval.

(i) *Public odor management specialist to commercial odor management specialist.* A certified public odor management specialist may obtain certification as a commercial odor management specialist. To attain this certification, a certified public odor management specialist shall develop one additional OMP in accordance with section 509 of the act. The certified public odor management specialist seeking this certification shall submit the OMP to the Department or its designee for review and approval.

(j) *Commercial odor management specialist to public odor management specialist.* A certified commercial odor management specialist who wishes to obtain certification as a public odor management specialist shall complete an OMP review course covering proper OMP review procedures and successfully review one OMP in accordance with section 509 of the act. The applicant seeking to attain this certification shall submit the OMP review to the Department or its designee for review and approval.

(k) *Nutrient management specialist to odor management specialist.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management specialist under the Department's nutrient management certification regulations (See Chapter 130b (relating to nutrient management certification.)) may obtain certification as a commercial or public odor management specialist upon meeting the requirements of this chapter for the level of certification sought.

§ 130f.12. Final certification.

(a) *Application for final certification.* Upon completion of all the provisional certification requirements of this chapter, a provisionally certified commercial odor management specialist or public odor management specialist may submit an application to the Department for final certification. The appropriate certification fee, as set forth in § 130f.3(a) (relating to fees), must accompany the application for final certification.

(b) *Eligibility for final certification.* A person is eligible to apply for final certification as a commercial or public odor management specialist upon fulfilling the applicable requirements established under § 130f.11 (relating to determination of competence). An application for final certification may be obtained from the Department.

(c) *Time period for filing application.* An application for final certification shall be filed with the Department within 120-calendar days of notification by the Department of meeting the appropriate requirements in § 130f.11. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130f.11.

(d) *Time period final certification is valid.* Final certification is valid for 3 years ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

§ 130f.21. Determination of competence.

(a) Determination of competence for an individual odor management specialist shall be based on the completion of required training which includes an orientation training course and a competency evaluation developed or approved by the Department.

(b) The orientation training course shall at a minimum consist of the same requirements as in § 130f.11 (relating to determination of competence).

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and OMP development in the following areas:

- (1) Application of the Odor Site Index.
- (2) Odor generation and transmission principles.
- (3) Environmental and economic impacts associated with odor management.
- (4) Land use issues related to odor impacts and management.
- (5) OMP components and content.
- (6) Technology, application and implementation of Odor BMPs.
- (7) Odor management regulatory requirements of agricultural operations.
- (8) Recordkeeping requirements.
- (9) Other applicable laws and regulations related to or conjoined with odor management.

(d) The Department may approve the use of written examinations other than the Pennsylvania Odor Management Examination, if the written examination meets the requirements in subsection (c).

(e) Individual odor management specialists are exempt from the OMP preparation requirements.

§ 130f.22. Final certification.

(a) A person is eligible to apply for final certification as an individual odor management specialist upon fulfilling the requirements under § 130f.21 (relating to determination of competence). An application for certification may be obtained from the Department. The appropriate fee must accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than 120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130f.21.

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

Subchapter C. RECERTIFICATION

Sec.
130f.31. Recertification.

§ 130f.31. Recertification.

(a) At intervals of 3 years, final certified commercial, public or individual odor management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in odor management planning and OMP development. Training must address the specific areas in § 130f.11 (relating to determination of competence) for commercial and public odor management specialists and § 130f.21 (relating to determination of competence) for individual odor management specialists.

(b) A person is eligible to apply for recertification as an odor management specialist upon fulfilling the requirements under subsection (c) for the appropriate certification level. An application for recertification may be obtained from the Department. The appropriate fee for the level of certification sought as set forth in section § 130f.3 (relating to fees) must accompany the specialist's application for recertification.

(c) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public odor management specialists are required to obtain six credits during the recertification interval. Individual odor management specialists are required to obtain three credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified odor management specialists, in addition to the required training in §§ 130f.11 and 130f.21. The Department will provide written notification to the certified odor management specialists of specifically required training.

(d) Training will be approved for recertification credits at the rate of one credit per hour of applicable instruction, exclusive of breaks, lunches, visits to exhibits, and the like. Credits will be assigned to each training session based upon the subjects covered and the amount of time expended on each subject. Credits assigned may be modified if either the content or length of the training substantially differs from the originally approved course.

(e) Sponsors of recertification training shall first submit a written request for course approval to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted to the Department at least 15 working days prior to the training date and include the following information:

- (1) The name and phone number of the contact person who is coordinating the training.
- (2) The specific location of the training.
- (3) The date of the training.
- (4) A list of the speakers, subject matter and time allotted to each subject.
- (5) A statement whether the training is open to the public and if there is a charge to attend.
- (f) A recertification training course will be approved if at a minimum it consists of the same requirements as set forth in § 130f.11(d) and (e) and is conducted or sponsored by an educational institution, an association, a

business, a governmental agency or other qualified source. Preapproval of recertification courses is vested solely with the Department.

(g) Falsification by a course sponsor of information required under this section may result in the withdrawal of credits or course approval, or both.

(h) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania-certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and include the name of each person attending and their certification number.

(i) If an odor management specialist allows final certification to expire and does not obtain recertification in accordance with this chapter, the final certification will be suspended and the specialist shall refrain from all duties relating to his certification until the delinquent recertification credits are acquired as described in subsections (a)—(d).

(j) If an odor management specialist whose final certification has been suspended as set forth in subsection (i) fails to complete delinquent recertification credits within 1 year from the expiration date of the final certification, the final certification will be revoked and that person shall again satisfy the requirements of §§ 130f.11 and 130f.12 (relating to final certification) for commercial and public specialists, or §§ 130f.21 and 130(f).22 (relating to final certification) for individual specialists, whichever is applicable.

Subchapter D. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

Sec.

130f.41. Denial, suspension and revocation of certificates.

§ 130f.41. Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reason therefore, deny, suspend or revoke a commercial, public or individual odor management specialist certification for any of the following:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required recertification credits.
- (3) Inconsistency or demonstration of a lack of knowledge of OMP writing and review skills.
- (4) Three or more occurrences within a 3-year period of delay or noncommunication with a landowner or review agency during plan development or review.
- (5) Falsifying information.
- (6) Misrepresentation associated with the act or its attendant regulations.
- (7) A violation of program policy established by the Department, its designee or the Commission.

(b) An applicant or odor management specialist may request a hearing, in writing, within 15 days of receipt of a notice of denial, suspension or revocation from the Department. The request shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

[Pa.B. Doc. No. 08-1927. Filed for public inspection October 24, 2008, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84b]

Actuarial Opinion and Memorandum

The Insurance Department (Department) amends Chapter 84b of the Department's regulations (31 Pa. Code Ch. 84b) (relating to actuarial opinion and memorandum) to read as set forth at 38 Pa.B. 1949 (April 26, 2008).

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) and section 301 of The Insurance Department Act (Act) (40 P. S. § 71).

Comments and Response

Notice of proposed rulemaking was published at 38 Pa.B. 1949 with a 30-day comment period. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department. During the 30-day comment period, comments were received from Sam Marshall of the Insurance Federation of Pennsylvania, Inc. (IFP). The following is a response to the comments received.

The IFP indicated that it generally supports the regulations as consistent with the NAIC's model regulations and submitted two editorial comments. First, the IFP suggested that the references to Exhibits 8 through 11 be updated to match the NAIC numbering. Because the IFP's suggestion pertained to portions of the regulations that were bracketed to be deleted by the Department, the Department determined that the exhibits need not be renumbered.

The IFP also suggested that the regulations be clarified so that the Regulatory Asset Adequacy Issues Summary is required only upon the Commissioner's request. The Department does not see a need to clarify this requirement, in that it is consistent with the NAIC model and Regulatory Asset Adequacy Issues Summary should be filed routinely by domestic life insurance companies and fraternal benefit societies.

Affected Parties

The final-form regulations will apply to life insurance companies and fraternal benefit societies doing business in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department as a result of the adoption of the amendments to Chapter 84b. As part of its solvency monitoring responsibilities, the Department currently reviews statements of actuarial opinion and supporting memoranda. Thus, these final-form regulations will not require any additional staff time or resources to perform the analysis.

General Public

Since the final-form regulations concern the solvency requirements applied to insurers, the public will benefit from a financially sound insurance industry that has the ability to fulfill its contractual obligations under life insurance policies.

Political Subdivisions

The final-form regulations will not impose additional costs on political subdivisions. However, because the final-form regulations promote stability in this Commonwealth's insurance industry, political subdivisions' tax revenues would benefit as a result of fewer insurer insolvencies. Fewer insolvencies would result in less unemployment and would also increase incentives for insurers to market new insurance products in this Commonwealth.

Private Sector

The final-form regulations may impose additional costs on insurers that are currently exempt from submitting an actuarial opinion based on an asset adequacy analysis. The amount of the additional cost will depend on the type and extent of the asset adequacy analysis that the insurer's actuary believes is necessary to submit an actuarial opinion. The final-form regulations provide the actuary flexibility to use professional judgment in performing the analysis.

Paperwork

The adoption of these final-form regulations would not impose additional paperwork on the Department. Insurers that currently do not prepare an actuarial memorandum because the actuarial opinion is not based on an asset adequacy analysis will be required to prepare an actuarial memorandum under the final-form regulation. In addition, insurers are required under the final-form regulation to submit a regulatory asset adequacy issues summary each year. The amount of additional paperwork in preparing the memorandum and summary will depend on the type and extent of the asset adequacy analysis performed.

Effectiveness/Sunset Date

The final-form regulations will become effective January 1, 2009. 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 these final-form regulations, should be directed to Peter J. Salvatore, Regulatory Coordinator, Bureau of Administration, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions may be e-mailed to psalvatore@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 agency submitted a copy of these final-form regulations on April 16, 2008, to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee (Committees). In addition to the submitted regulations, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency 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 House and Senate Committees on September 17, 2008. Under section 5(g) of the Regulatory Review Act the final-form regulations were deemed approved, effective September 17, 2008.

Findings

The 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.

(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 84, are amended by amending §§ 84b.1—84b.5, 84b.8, 84b.9 and 84b.11; and by deleting §§ 84b.6, 84b.7 and 84b.10 to read as set forth at 38 Pa.B. 1949.

(b) The Commissioner shall submit this order and 38 Pa.B. 1949 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 38 Pa.B. 1949 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, 2009.

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 38 Pa.B. 5509 (October 4, 2008).)

Fiscal Note: Fiscal Note 11-235 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-1928. Filed for public inspection October 24, 2008, 9:00 a.m.]