

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### SUSQUEHANNA RIVER BASIN COMMISSION

[ 25 PA. CODE CH. 806 ]

#### Review and Approval of Projects

*Summary:* This document contains rules that amend the regulations of the Susquehanna River Basin Commission (Commission) to update the requirements and standards for review of projects, amend the rules dealing with groundwater withdrawals, and revise the regulatory triggers related to grandfathered sources.

*Dates:* This rule is effective on October 1, 2021.

*Addresses:* Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

*For Further Information Contact:* Jason E. Oyler, Esq., General Counsel and Secretary, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information, including a comment and response document, visit the Commission's website at <http://www.srbc.net>.

*Supplementary Information:* Notice of proposed rule-making was published in the *Federal Register* on March 26, 2021; *New York Register* on April 14, 2021; *Pennsylvania Bulletin* on April 10, 2021; and *Maryland Register* on April 9, 2021. The Commission held two informational webinars explaining the proposed rulemaking on April 6 and April 14, 2021. The Commission convened a public hearing held by telephone on May 6, 2021. A written comment period was held open through May 17, 2021. Concurrent with the proposed rule, the Commission also released three draft groundwater related policies for public review and comment.

Three comments were received during the comment period. One commenter appreciated the Commission's proposal to eliminate some of the triggers for the loss of grandfathering under § 806.4(a)(2) (relating to projects requiring review and approval). The commenter offered amended language for § 806.4(a)(2)(ii) and (iii) for the Commission's consideration that would change the Commission's intent and would limit any review of a grandfathered source increasing its quantity to only the increased withdrawal amount and not to the entire withdrawal. This would be a substantial change of the Commission's current practice for the loss of grandfathering triggered by an increase in quantity from a grandfathered source. The Commission declines to make this change. The preamble to the proposed rule makes the Commission's intent for the regulations clear, and the regulations reflect that intent. This rulemaking is intended to change the Commission's overall policy regarding the number and scope of the triggers for losing grandfathering; however, it is not intended to provide a permanent exemption from eventual regulation of grandfathered sources or withdrawal quantities.

A second commenter commended the Commission for acting upon the need for regulatory clarification, simplification, and recalibration of project review based on the scale and quantity (potential impact) of the project. The commenter specifically appreciated the proposed changes regarding the consideration of small and medium capacity

sources; the elimination of potential triggers for loss of grandfathered source status; the addition of the Alternative Hydrogeologic Evaluation (AHE) process; and the further development of the minor modification process. In addition, the commenter suggested that the Commission create a redefined docket appeal process under 18 CFR 808.2 and 808.3. This final aspect of the comment is outside the scope of the proposed rulemaking that was noticed and subjected to public comment. Therefore, the Commission cannot make any changes to these sections as a part of the final rule.

A third commenter expressed concerns about the addition of § 806.4(a)(3)(viii) and (ix) that would allow the diversion of drinking water or wastewater into or out of the basin without Commission approval for municipalities on the basin divide if the diversion occurs by or through a publicly or privately owned public water supplier or wastewater treatment works. The commenter opined that this change is not justified or supported by sufficient rationale. The Commission disagrees and declines to make the change requested. The regulation of into-basin diversions is focused on water quality coming into the Basin and the protection of the Basin's water resources. Drinking water quality and wastewater quality are regulated solely by partner agencies and the Commission does not have water quality standards, in an effort to not duplicate partner agency regulatory authorities. The final regulation simply exempts, from Commission review, the movement across Basin boundaries of treated public water or wastewater that has been managed for water quality concerns by partner agencies. The final regulation does not pose any new threats or exacerbate existing threats to the quality of the Basin's water resources. Withdrawals that supply out-of-basin diversions by communities straddling the Basin divide will still be subject to the Commission's review and application of its standards. Those standards, as for all withdrawals, are at 18 CFR 806.23 and are equivalent to, if not broader, than those in § 806.24. Thus, the concerns raised in the comment are addressed by the Commission's review standards to the withdrawal that supports the diversion.

#### List of Subjects in 18 CFR Part 806

*Administrative practice and procedure, Water resources.*

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 806 as follows:

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

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. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3:

a. Add in alphabetical order a definition for "Captured stormwater";

b. Remove the definition of "Hydrocarbon water storage facility"; and

c. Add in alphabetical order definitions for "Medium capacity source" and "Small capacity source".

The additions read as follows:

§ 806.3. Definitions.

\* \* \* \* \*

*Captured stormwater.* Precipitation or stormwater collected on the drilling pad site, including well cellar water, waters from secondary containment, and water collected from post construction stormwater management features.

\* \* \* \* \*

*Medium capacity source.* A ground or surface water source with a withdrawal of more than 20,000 but less than 100,000 gallons per day over a consecutive 30 day-average.

\* \* \* \* \*

*Small capacity source.* A ground or surface water source with a withdrawal of 20,000 gallons or less per day over a consecutive 30-day average.

\* \* \* \* \*

3. Revise § 806.4 to read as follows:

§ 806.4. Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) *Consumptive use of water.* Any consumptive use project described in this paragraph (a)(1) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water except a small capacity source, shall also be subject to the standards set forth in § 806.23 as the Commission deems necessary. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided in this paragraph (a)(1), agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects with pre-compact consumptive use:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its consumptive use in accordance with subpart E of this part.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(2) *Withdrawals.* Any project, including all of its sources, described in this paragraph (a)(2) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph (a)(2) shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801.

(i) Any project initiated on or after July 13, 1978 for groundwater or November 11, 1995 for surface water withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or any project initiated after January 1, 2007 withdrawing a consecutive 30-day average of 100,000 gpd or more from a combination of sources.

(ii) Any new source added to projects with previously approved withdrawals by the Commission.

(iii) Any withdrawal increased above that amount which was previously approved by the Commission.

(iv) With respect to projects with grandfathered withdrawals:

(A) Registered in accordance with subpart E of this part that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or in combination from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its withdrawals in accordance with subpart E of this part.

(v) Any project, regardless of when initiated, involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(3) *Diversions.* Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (a)(3)(i) through (iv) of this section shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (a)(3)(v) and (vi) of this section shall be subject to regulation pursuant to § 806.22(f).

(i) Any project initiated on or after January 23, 1971, involving the diversion of water into the basin by any amount, or involving a diversion of water out of the basin of an average of 20,000 gallons of water per day or more in any consecutive 30-day period.

(ii) With respect to diversions previously approved by the Commission, any project that will increase a diversion above the amount previously approved.

(iii) With respect to diversions initiated prior to January 23, 1971, any project that will increase a diversion into the basin by any amount, or increase the diversion of water out of the basin by any amount.

(iv) Any project, regardless of when initiated, involving the diversion of water into the basin by any amount or involving a diversion of water out of the basin by an average of 20,000 gallons of water per day or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the Commission approval for such project is transferred pursuant to § 806.6.

(v) The interbasin diversion of any flowback or production fluids, tophole water and captured stormwater from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f) and provided all monitoring and reporting requirements applicable to such approval are met.

(vi) The diversion of flowback or production fluids, tophole water and captured stormwater from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided all monitoring and reporting requirements applicable to the Approval by Rule are met and it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(vii) The diversion of any flowback or production fluids, tophole water and captured stormwater from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph (a)(3), provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(viii) The diversion of drinking water and/or municipal wastewater out of the basin to a municipality on or straddling the basin divide if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under this paragraph (a)(3) of this section or as a consumptive use under paragraph (a)(1) of this section.

(ix) The diversion of drinking water and/or municipal wastewater into the basin to a municipality if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member

jurisdiction shall not be subject to review and approval as a diversion under this paragraph (a)(3).

(4) *Crossing state boundaries.* Any project on or crossing the boundary between two member states.

(5) *Significant effect.* Any project in a member state having a significant effect on water resources in another member state.

(6) *Comprehensive plan.* Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(7) *Determination.* Any other project so determined by the commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

(8) *Natural gas.* Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

(9) *General permit.* Any project subject to coverage under a general permit issued under § 806.17.

(b) Any project that did not require Commission approval prior to January 1, 2007, and undergoing a change of ownership, shall be exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v), or (a)(3)(iv) of this section if it is a:

(1) Transfer of a project to the transferor's spouse or one or more lineal descendants, or any spouse of such lineal descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(s) and their spouses, continues to be 51 percent or greater; or

(2) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

4. Amend § 806.6 by revising paragraphs (a)(5) and (b) and by adding paragraph (d) to read as follows:

**§ 806.6. Transfer of approvals.**

(a) \* \* \*

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b) of this section, the transfer shall be conditioned to require the submission of a new application for review and approval of the unapproved withdrawal, consumptive use and/or diversion consistent with §§ 806.4 and 806.14 and paragraph (d) of this section.

\* \* \* \* \*

(b) Previously unapproved activities associated with a project subject to transfer under paragraph (a) of this section include:

(1) The project has an associated pre-compact consumptive water use that has not had mitigation approved by the Commission.

(2) The project has an associated diversion that was initiated prior to January 23, 1971.

(3) Projects registered under subpart E of this part.

\* \* \* \* \*

(d) Any unapproved activities associated with a transferred project shall be subject to the following:

(1) The transfer approval shall be conditioned to include monitoring requirements under § 806.30 for all previously unapproved sources and activities.

(2) The transfer approval may include any other conditions consistent with this part deemed necessary by the Executive Director.

(3) The approved transfer will act as the unapproved activity's temporary approval for a period of five years, at which point, the project sponsor shall submit an application for review and approval consistent with subpart B of this part.

(4) The Executive Director may require hydrogeologic evaluation under § 806.12 and/or formal review and approval of any of the previously unapproved sources sooner if those sources show a substantial likelihood of environmental harm, interference with other water users or water availability issues.

5. Revise § 806.12 to read as follows:

**§ 806.12. Hydrogeologic evaluation.**

Evaluation of groundwater withdrawal projects requires a hydrogeologic evaluation, which may be an aquifer test in accordance with an approved plan or an alternative hydrogeologic evaluation in conformance with this section.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform an aquifer test.

(b) Unless an alternative hydrogeologic evaluation method is approved, the project sponsor shall prepare an aquifer test plan for prior review and approval by Commission staff before testing is undertaken. Such plan shall include a groundwater availability analysis to determine the availability of water during a 1-in-10-year recurrence interval.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring.

(e) The project sponsor may be required, at its expense, to provide temporary water supply if an aquifer test results in interference with an existing water use.

(f) Review of submittals under this section may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

(g) This section does not apply to withdrawals related to mine dewatering, water resources remediation or AMD facilities, provided the activity is governed by another regulatory agency.

(h) Sources undergoing renewal that can provide an interpretative hydrogeologic report that documents the results of a Commission approved aquifer test or documentation of an approved prior waiver by the Commission may meet the requirements of this section for that previously approved groundwater source.

(i) In lieu of completing a Commission-approved aquifer test, the project sponsor may submit an Alternative Hydrogeologic Evaluation (AHE) that provides supporting information equivalent to that which would be obtained from completing an approved aquifer test under para-

graph (a) of this section. This supporting information includes, but is not limited to, prior aquifer testing data, the withdrawal setting and location, existing site specific operational data, and prior Commission approved waivers of aquifer testing requirements. Commission staff may approve an AHE for a project or require completion of a Commission approved aquifer test in accordance with paragraph (a) of this section.

(j) This section does not apply to withdrawals from a small capacity source, unless otherwise determined by the Executive Director.

6. Amend § 806.14 by:

a. Revising paragraphs (a)(2) and (3), (b)(1) and (2), and (c)(2), (3), and (5);

b. Adding paragraphs (c)(10) and (11); and

c. Revising paragraph (d).

The revisions and additions read as follows:

**§ 806.14. Contents of application.**

(a) \* \* \*

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and description of all sources, consumptive uses and diversions related to the project.

\* \* \* \* \*

(b) \* \* \*

(1) *Surface water.*

(i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) For new projects and major modifications to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a water with exceptional water quality, or as required by the Commission.

(2) *Groundwater.*

(i) With the exception other projects which are addressed in paragraph (b)(6) of this section, the project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) An interpretive report that includes the results of a Commission approved aquifer test and an updated groundwater availability estimate if changed from the aquifer test plan,

(B) An approved AHE,

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met along with an updated groundwater availability estimate.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

\* \* \* \* \*

(c) \* \* \*

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, description of all sources, consumptive uses and diversions related to the project and any proposed project modifications.

\* \* \* \* \*

(5) An as-built and approved metering plan that conforms to § 806.30.

\* \* \* \* \*

(10) Changes to the facility design.

(11) Any proposed changes to the previously authorized purpose.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water.*

(i) Description and as-built of intake structure.

(ii) For renewals seeking to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater.*

(i) The project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) Provide an interpretive report that includes the results of a Commission approved aquifer test and an updated GW availability estimate if changed from the aquifer test plan;

(B) An approved AHE; or

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed materials to demonstrate satisfaction of § 806.12, which may include a hydrogeologic report from previous aquifer testing, an approved AHE or prior determination of waiver of aquifer testing.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year drought recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use.* (i) Consumptive use calculations.

(ii) Mitigation plan, including method of consumptive use mitigation.

(4) *Into basin diversion.*

(i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(c).

(ii) Identification of the source and current water quality characteristics of the water to be diverted.

(5) *Out of basin diversion.*

(i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(b).

(6) *Other projects.* Other projects, including without limitation, mine dewatering, water resources remediation projects, and AMD facilities that qualify as a withdrawal.

(i) In lieu of a hydrogeologic evaluation, a copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i) of this section.

(iii) Demonstration of continued need for expiring approved water source and quantity.

\* \* \* \* \*

7. Revise § 806.15 to read as follows:

**§ 806.15. Notice of application.**

(a) Except with respect to paragraphs (e), (f), and (g) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (d) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall be in a form and manner as prescribed by the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2) for new projects, major modifications, and renewals requesting an increase, the project sponsor shall also provide the notice required under paragraph (a) of this section to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any property that is located within a one-quarter mile radius of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within a one-half mile radius of the proposed withdrawal location.

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property of such property owner is served by a public water supply.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt or the verified return receipt from a comparable delivery service for the notifications to agencies of member States, municipalities, counties and appropriate county agencies required under this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

(e) For Notices of Intent (NOI) seeking coverage under a general permit, the project sponsor shall provide notice of the NOI to the appropriate agency of the member State and each municipality and county and appropriate county agencies in which the project is located and any additional notice identified in the general permit.

(f) For applications for minor modifications and approvals by rule under § 806.22(e), the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county and appropriate county agencies in the which the project is located.

(g) For NOIs seeking an approval pursuant to § 806.22(f), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies, and the owner of the property on or in which the drilling pad site is located. For requests for approval submitted under § 806.22(f)(13), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies in which the public water supply is located.

8. Amend § 806.18 by revising paragraph (c) to read as follows:

§ 806.18. Approval modifications.

\* \* \* \* \*

(c) *Minor modifications.* The following are minor modifications:

- (1) Correction of typographical or other errors;
- (2) Changes to monitoring or metering conditions;
- (3) Addition, amendment or removal of sources of water for consumptive use or project descriptions;
- (4) Changes to the authorized water uses;

(5) Changes to conditions setting a schedule for developing, implementing, and/or reporting on monitoring, data collection and analyses;

(6) Changes to the design and minor changes to the location of intakes;

(7) Increases to total system limits that were established based on the projected demand of the project; and

(8) Modifications of extraction well network used for groundwater remediation systems.

(9) Adjustments to a term of an approval to align the approval with a member jurisdiction approval or another docket approval by the Commission.

(10) Changes to the method of consumptive use mitigation to payment of the mitigation fee, providing for discontinuance, use of storage or an adequate conservation release in accordance with a previous Commission determination.

(11) Addition of stormwater as a source of consumptive use, including an increase to the total consumptive use related to the stormwater use.

(12) Extension of the date of commencement of a withdrawal, diversion or consumptive use established under § 806.31(b).

\* \* \* \* \*

9. Amend § 806.22 by revising paragraphs (e)(6) and (8) and (f)(4) and (11) through (13), and removing and reserving paragraph (f)(14).

The revisions read as follows:

§ 806.22. Standards for consumptive use of water.

\* \* \* \* \*

(e) \* \* \*

(6) *Mitigation* The project sponsor shall comply with mitigation in accordance with paragraph (b)(1)(iii) or (b)(2) or (3) of this section.

\* \* \* \* \*

(8) *Decision.* The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved. Use of small capacity sources or sources used only for supply of potable water may be appropriately included as a part of this approval by rule in the discretion of the Executive Director.

\* \* \* \* \*

(f) \* \* \*

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. The project sponsor shall submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

\* \* \* \* \*

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Captured stormwater, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water, except a public water supply, 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 unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use and the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission. Use of the registered source shall not commence until the Commission acknowledges in writing that the registration is proper and complete.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, water withdrawals or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), public water supplies, or another approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

\* \* \* \* \*

10. Amend § 806.23 by revising the paragraph (b) subject heading and paragraph (b)(4) and adding paragraphs (b)(6) and (7) to read as follows:

§ 806.23. Standards for water withdrawals.

\* \* \* \* \*

(b) *Limitations on and considerations for withdrawals.*

\* \* \* \* \*

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources, interconnections or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, including interconnections, and support existing and proposed future withdrawals.

\* \* \* \* \*

(6) Notwithstanding this paragraph, existing withdrawals that successfully complete the process in § 806.12(h) and (i) shall satisfy the standards in paragraph (b)(2) of this section. Further, evaluation of the withdrawal shall include reasonably foreseeable need and the need for total

system limits, compliance with § 806.21, and any changes to the project or project location and setting.

(i) Approval of withdrawal limits on existing sources will not be set above the amount supported by the existing historical and current operating data or otherwise supported by the evaluation under § 806.12, and may be set at a different rate if supported by the evaluation required in this paragraph.

(ii) Any approvals shall include metering and measurement of parameters consistent with § 806.30, and may include conditions requiring monitoring of surface water features or other withdrawal sources.

(iii) If any reported metering or monitoring data or other information show a significant adverse impact to any consideration in paragraph (b)(2) of this section, the Commission may take actions necessary to eliminate the significant adverse impact, including but not limited to requiring the project to undertake more data collection and analysis, aquifer testing and/or conditioning the docket approval.

(7) Notwithstanding this paragraph, small capacity sources shall be subject to any withdrawal limit, including total system limit, set by the Commission and shall include metering and measurement of parameters consistent with § 806.30.

11. Amend § 806.34 by revising paragraph (c)(2) to read as follows:

§ 806.34. Emergencies.

\* \* \* \* \*

(c) \* \* \*

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission where the extension of the certificate may be included in the notice for the next regularly scheduled public hearing for that business meeting.

\* \* \* \* \*

Dated: September 20, 2021

ANDREW D. DEHOFF,  
Executive Director

**Fiscal Note:** Fiscal Note 72-16 remains valid for the final adoption of the subject regulation.

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 (2021) (relating to review and approval of projects) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 21-1752. Filed for public inspection October 22, 2021, 9:00 a.m.]

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

#### [ 31 PA. CODE CH. 84a ]

#### Minimum Reserve Standards for Individual and Group Health and Accident Insurance Contracts

The Insurance Department (Department) amends Chapter 84a (relating to minimum reserve standards for individual and group health and accident insurance contracts) to read as set forth in Annex A. This final-form rulemaking is made under the Department's general rulemaking authority in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Insurance Commissioner's (Commissioner) authority to set forth minimum valuation and reserve standards in 40 Pa.C.S. § 7124(c)(1) and (2) (relating to minimum standard for accident and health insurance contracts).

#### *Purpose*

Chapter 84a governs the minimum reserve standards to which insurers issuing individual and group health and accident insurance contracts must adhere. Among other standards, the regulation establishes standards for claim reserves, contract reserves and premium reserves. These standards are in place to ensure that insurers maintain sufficient financial wherewithal to support long-term solvency. Chapter 84a, originally adopted in 1993, is based on the National Association of Insurance Commissioners (NAIC) Health Insurance Reserves Model Regulation (# 10).

This final-form rulemaking updates the Commonwealth's standards to align with the most recent updates to the NAIC Health Insurance Reserves Model Regulation, which were incorporated in 2017. These updates clarify that the minimum reserve standards contained in Chapter 84a apply to individual and group health and accident insurance coverages, including single premium credit health and accident insurance, issued prior to January 1, 2017. The amendments specify the use of new valuation tables for certain individual disability and group disability policies and claims. By incorporating these standards for coverages issued prior to January 1, 2017, the Department promotes the continuity of applicable reserving standards for those older coverages issued prior to the operative date of the NAIC Valuation Manual. Moreover, the amendments indicate that the claim reserve requirements for all claims incurred on or after January 1, 2017, are as described in the NAIC Valuation Manual. As indicated in Department Notice 2016-10 entitled "Principle-Based Reserving Operative Date" published at 46 Pa.B. 5867 (September 10, 2016), the operative date of the NAIC Valuation Manual was January 1, 2017.

#### *Comments and Responses*

Notice of proposed rulemaking was published at 50 Pa.B. 5260 (September 26, 2020), with a 30-day public comment period. Stateside Associates and the Insurance Federation of Pennsylvania (IFP) submitted comments during the public comment period. Comments were taken into consideration.

Madison Hetzner, a senior regulatory associate with Stateside Associates, submitted a comment, noting that the regulation is located in the life insurance part of the insurance regulations and inquiring whether the rulemaking would affect health insurers. This final-form

rulemaking applies to all entities with the authority to issue individual and group health and accident insurance coverages, including single premium credit health and accident insurance coverage. The entities include licensed insurers as defined in section 201-A of the Insurance Department Act of 1921 (40 P.S. § 65.1-A) and entities doing the business of insurance under the Insurance Company Law of 1921 (40 P.S. §§ 341—991.2707).

The IFP expressed support for the proposed rulemaking without any additional comments.

The Independent Regulatory Review Commission (IRRC) had no objections, comments or recommendations. However, IRRC did separately note that there was a transcription error in the Annex in Appendix A (relating to specific standards for morbidity, interest and mortality), Section (I)(a)(1)(ii) under Month 10. The adjustment factor included in the proposed rulemaking, which was unchanged from the current provision in Appendix A, was 0.633. The same adjustment factor in the NAIC Model Regulation # 10 is 0.663. The Legislative Reference Bureau corrects this transcription error upon publication of this final-form rulemaking so that the correct adjustment factor of 0.663 will appear in Appendix A.

#### *Affected Parties*

This final-form rulemaking applies to all entities with the authority to issue individual and group health and accident insurance coverages, including single premium credit health and accident insurance coverage. The entities include licensed insurers as defined in section 201-A of the Insurance Department Act of 1921 and entities doing the business of insurance under the Insurance Company Law of 1921.

#### *Fiscal Impact*

##### *State government*

There will not be any fiscal impact to the Department as a result of this final-form rulemaking.

##### *General public*

This final-form rulemaking will have no fiscal impact upon the general public.

##### *Political subdivisions*

This final-form rulemaking will have no fiscal impact upon political subdivisions.

##### *Private sector*

This final-form rulemaking will have no fiscal impact upon the private sector, except for a possible minimal impact to the regulated entities affected.

#### *Paperwork*

This final-form rulemaking would not impose additional paperwork on the Department or the regulated community because no additional filing is required to be made by insurers that must comply with this proposed rulemaking.

#### *Effectiveness/Sunset Date*

This final-form rulemaking will become effective immediately upon publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

#### *Contact Person*

Questions or comments regarding this final-form rulemaking may be addressed in writing to Richard L.



Hendrickson, Department Counsel, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may be e-mailed to rihendrick@pa.gov or faxed to (717) 772-1969.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 10, 2020, the Department submitted a copy of the notice of proposed rulemaking, published at 50 Pa.B. 5260, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided copies of comments received as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 31, 2021, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 1, 2021, and approved this final-form rulemaking.

*Findings*

The Commissioner finds that:

- (1) Public notice of proposed rulemaking 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), referred to as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 50 Pa.B. 5260.
- (4) This final-form rulemaking adopted by 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 84a, are amended by amending §§ 84a.1—84a.6 and Appendix A to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Department shall submit this final-form rulemaking to IRRC and the House and Senate Committees as required by law.
- (c) The Department shall submit this final-form rulemaking to the Office of General Counsel and Office of Attorney General for approval as to legality and form as required by law.
- (d) The Department shall certify this final-form rulemaking, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication of the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

(*Editor’s Note:* See 51 Pa.B. 6115 (September 18, 2021) for IRRC’s approval order.)

**Fiscal Note:** Fiscal Note 11-259 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 31. INSURANCE**

**PART IV. LIFE INSURANCE**

**CHAPTER 84A. MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP HEALTH AND ACCIDENT INSURANCE CONTRACTS**

**§ 84a.1. Purpose.**

The purpose of this chapter is to set forth the minimum standards of valuation required by 40 Pa.C.S. § 7124(c)(1) and (2) (relating to minimum standard for accident and health insurance contracts).

**§ 84a.2. Applicability and scope.**

(a) This chapter shall take effect for annual statements for the year 1993.

(b) The minimum reserve standards of this chapter apply to individual and group health and accident insurance coverages, including single premium credit health and accident insurance, issued prior to January 1, 2017, by life insurance companies, property insurance companies, casualty insurance companies and fraternal benefit societies. Monthly premium credit health and accident insurance is not subject to this chapter, but instead is subject to the reserve standards in Chapter 73 (relating to credit life and credit accident and health insurance).

(c) When an insurer determines that adequacy of its health and accident insurance reserves requires reserves in excess of the minimum standards specified in this chapter, the increased reserves shall be held and shall be considered the minimum reserves for that insurer.

(d) With respect to a block of contracts, or with respect to an insurer’s health and accident business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. The gross premium valuation will take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of expected benefits unpaid, expected expenses unpaid and unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect.

(e) The gross premium valuation is to be performed whenever a significant doubt exists as to reserve adequacy with respect to a major block of contracts, or with respect to the insurer’s health and accident business as a whole. If inadequacy is found to exist, immediate loss recognition shall be made and the reserves restored to adequacy. Adequate reserves, inclusive of claim, premium and contract reserves, if any, shall be held with respect to all contracts, regardless of whether contract reserves are required for the contracts under this chapter.

(f) Whenever minimum reserves, as defined in this chapter, exceed reserve requirements as determined by a prospective gross premium valuation, the minimum reserves remain the minimum requirement under this chapter.

(g) Minimum standards for three categories of health and accident insurance reserves are established. These categories are claim reserves, premium reserves and contract reserves.

(h) Adequacy of an insurer's health and accident insurance reserves is to be determined on the basis of the three categories of subsection (g) combined. These minimum standards emphasize the importance of determining appropriate reserves for each of the three categories separately.

### § 84a.3. Definitions.

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

*Annual-claim cost*—The net annual cost per unit of benefit before the addition of expenses, including claim settlement expenses, and a margin for profit or contingencies. For example, the annual claim cost for a \$100 monthly disability benefit, for a maximum disability benefit period of 1 year, with an elimination period of 1 week, with respect to a male at age 35, in a certain occupation might be \$12, while the gross premium for this benefit might be \$18. The additional \$6 would cover expenses and profit or contingencies.

*Claims accrued*—The portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services which have been rendered on or prior to the valuation date, and for the payment of benefits for days of hospitalization and days of disability which have occurred on or prior to the valuation date, which the insurer has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for "accrued" benefits. A claim reserve, which represents an estimate of this accrued claim liability, shall be established.

*Claims reported*—A claim that has been incurred on or prior to the valuation date is considered as a reported claim for annual statement purposes if the date the claim is reported to the insurer is on or prior to the valuation date.

*Claims unaccrued*—The portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disability occurring after the valuation date. This liability is sometimes referred to as a liability for unaccrued benefits. A claim reserve, which represents an estimate of the unaccrued claim payments expected to be made, which may or may not be discounted with interest, shall be established.

*Claims unreported*—A claim incurred on or prior to the valuation date is considered as an unreported claim for annual statement purposes if the insurer has not been informed of the claim on or before the valuation date.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Credit insurance*—Insurance which falls within the regulatory scope of the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance (40 P.S. §§ 1007.1—1007.15).

*Date of disablement*—The earliest date the insured is considered as being disabled under the definition of

disability in the contract, based on a doctor's evaluation or other evidence. Normally this date will coincide with the start of an elimination period.

*Department*—The Insurance Department of the Commonwealth.

*Elimination period*—A specified number of days, weeks or months starting at the beginning of each period of loss, during which no benefits are payable.

*Gross premium*—The amount of premium charged by the insurer, which includes the net premium based on claim-cost for the risk, together with loading for expenses, profit or contingencies.

*Group insurance*—The term includes blanket insurance and other forms of group insurance.

*Group long-term care insurance*—A long-term care insurance policy that is delivered or issued for delivery in this Commonwealth and issued to one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations.

*Group long-term disability income contract*—A group contract providing group disability income coverage with a maximum benefit duration longer than 2 years that is based on a group pricing structure. The term does not include any of the following:

(i) Group short-term disability (coverage with benefit periods of 2 years or less in maximum duration).

(ii) Voluntary group disability income coverage that is priced on an individual risk structure and generally sold in the workplace.

*Level premium*—A premium calculated to remain unchanged throughout either the lifetime of the policy, or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it is calculated to remain level, it may be changed if any of the assumptions on which it was based are revised at a later time. The annual claim costs are expected to increase each year and the insurer, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In this case the benefit portion of the premium is more than needed to provide for the cost of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.

*Long-term care insurance*—An insurance contract advertised, marketed, offered or designed to provide coverage for at least 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for functionally necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital:

(i) The term includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

(ii) The term does not include an insurance contract which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense cover-

age, disability income coverage, accident only coverage, specified disease coverage or specified accident coverage.

*Modal premium*—The premium paid on a contract based on a premium term that could be annual, semiannual, quarterly, monthly or weekly. For example, if the annual premium is \$100 and if, instead, monthly premiums of \$9 are paid the modal premium is \$9.

*Negative reserve*—A terminal reserve which is a negative value.

*Operative date*—The effective date of the approval by the Commissioner for an insurer to use the 1980 CSO Mortality Table to calculate nonforfeiture values and reserves for life insurance contracts.

*Preliminary term reserve method*—A reserve method under which the valuation net premium for each year falling within the preliminary term period is exactly sufficient to cover the expected incurred claims of that year, so that the terminal reserves will be zero at the end of the year. As of the end of the preliminary term period, a new constant valuation net premium, or stream of changing valuation premiums, becomes applicable so that the present value of the net premiums is equal to the present value of the claims expected to be incurred following the end of the preliminary term period.

*Present value of amounts not yet due on claims*—The reserve for claims unaccrued, which may be discounted at interest.

*Rating block*—A grouping of contracts based on common characteristics, such as a policy form or forms having similar benefit designs.

*Reserve*—The term used to include all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued. An insurer under its contract promises benefits which result in claims which have been incurred, that is, for which the insurer has become obligated to make payment, on or prior to the valuation date and in claims which are expected to be incurred after the valuation date. For the incurred claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the insurer which should be provided for by establishing claim reserves. For the expected claims, present liability of the insurer for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.

*Terminal reserve*—The reserve at the end of a contract year. It is the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.

*Unearned premium reserve*—The reserve that values that portion of the premium paid or due to the insurer which is applicable to the period of coverage extending beyond the valuation date. Thus, if an annual premium of \$120 was paid on November 1, \$20 would be earned as of December 31 and the remaining \$100 would be unearned. The unearned premium reserve could be on a gross basis as in this example, or on a valuation net premium basis.

*Valuation net modal premium*—The modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on a contract to which contract reserves apply. For example, if the mode of payment in effect is quarterly, the valuation net modal premium is the quarterly equivalent of the valuation net annual premium.

*Worksite disability policies*—Individual short-term disability policies that are sold at the worksite through employer-sponsored enrollment, that cover normal pregnancy, and that have benefit periods up to 24 months. The term does not include any of the following:

(i) Personal disability policies sold to an individual and not associated with employer-sponsored enrollment.

(ii) Business overhead expense, disability buyout, or key person policies, in whatever manner those policies are sold.

**§ 84a.4. Claim reserves.**

(a) *General requirements.*

(1) Claim reserves are required for incurred but unpaid claims on health and accident insurance contracts. When reserving for contracts with an elimination period, the duration of disablement commences on the date that benefits would have begun to accrue had there been no elimination period.

(2) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of incurred but unpaid claims.

(3) The reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of residual unpaid liability.

(4) For claim reserves on policies that require contract reserves, the claim incurral date constitutes the “issue date” for determining the table and interest rate for claim reserves.

(5) The maximum interest rate for claim reserves is specified in Appendix A (relating to specific standards for morbidity, interest and mortality).

(6) The requirements for claims reserves on all claims incurred on or after January 1, 2017, will be as described in the Valuation Manual based on the incurred date of the claim.

(b) *Minimum morbidity standards for claim reserves of individual disability income benefits, excluding single premium credit health and accident insurance.*

(1) For claims incurred prior to January 1, 2007, each insurer may elect any of the following standards to use as the minimum morbidity standard for claim reserves:

(i) The minimum morbidity standard in effect for claim reserves as of the date the claim was incurred.

(ii) The standards as defined in paragraphs (2) or (3) applied to all open claims. Once an insurer elects to calculate reserves for all open claims on the standard defined in either paragraph (2) or (3), all future valuations must be on that basis.

(2) For claims incurred on or after January 1, 2007, and prior to the effective date for the company as determined in paragraph (5), the minimum standards with respect to morbidity are those specified in Appendix A, except that, at the option of the insurer, assumptions regarding claim termination rates for the period less than 2 years from the date of disablement may be based on the insurer’s experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(3) For claims incurred on or after January 1, 2020, the minimum standards with respect to morbidity are those

specified in Appendix A, including all of the following (as derived in accordance with Actuarial Guideline L):

- (i) The use of the insurer's own experience.
  - (ii) An adjustment to include an own experience measurement margin.
  - (iii) The application of a credibility factor.
- (4) In determining the minimum reserves in accordance with paragraph (3), the provisions in paragraph (3)(i)—(iii) are not applicable to any of the following circumstances:

- (i) Where the insurer meets the Own Experience Measurement Exemption provided in Actuarial Guideline L.
- (ii) Where, for worksite disability policies with benefit periods of up to 2 years, the insurer chooses to base its disabled life reserves on the insurer's experience, if such experience is considered credible, or on other assumptions and methods designed to place a sound value on the liabilities.
- (5) An insurer may begin to use the minimum reserve standards in paragraph (3) at a date earlier than January 1, 2020, but not prior to January 1, 2017.

(6) An insurer may, within 3 years of January 1, 2020, or an earlier date the insurer elects under paragraph (5), apply the new standards in paragraph (3) to all open claims incurred prior to the effective date for paragraph (3) for the insurer. Once an insurer elects to calculate reserves for all open claims based on paragraph (3), all future valuations must be on that basis.

(c) *Minimum morbidity standards for claim reserves of group disability income benefits, excluding single premium credit health and accident insurance.*

(1) For claims incurred prior to January 1, 2007, each insurer may elect any of the following standards to use as the minimum morbidity standard for claim reserves:

- (i) The minimum morbidity standard in effect for claim reserves as of the date the claim was incurred.
- (ii) After the effective date selected by the company in paragraph (2), the standards as defined in paragraph (2), applied to all open group long term disability income claims. Once an insurer elects to calculate reserves for all open claims on a more recent standard, all future valuations must be based on that more recent standard.
- (iii) The standards as defined in paragraph (3), applied to all open group disability income claims. Once an insurer elects to calculate reserves for all open claims on a more recent standard, all future valuations must be based on that more recent standard.

(2) For group long-term disability income claims incurred on or after January 1, 2007, but before the effective date selected by the company in paragraph (4), and group disability income claims incurred on or after January 1, 2007, that are not group long-term disability income, the minimum standards with respect to morbidity are those specified in Appendix A except that, at the option of the insurer:

- (i) Assumptions regarding claim termination rates for the period less than 2 years from the date of disablement may be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.
- (ii) Assumptions regarding claim termination rates for the period 2 or more years but less than 5 years from the date of disablement may, with the approval of the Com-

missioner, be based on the insurer's experience for which the insurer maintains underwriting and claim administration control. The request for such approval of a plan of modification to the reserve basis must include:

- (A) An analysis of the credibility of experience.
- (B) A description of how all of the insurer's experience is proposed to be used in setting reserves.
- (C) A description and quantification of the margins to be included.
- (D) A summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement.
- (E) A copy of the approval of the proposed plan of modification by the Commissioner of the state of domicile.
- (F) Any other information the Commissioner deems necessary to review the plan of modification.

(iii) Each insurer may elect any of the following standards to use as the minimum morbidity standard for group long term disability income claim reserves:

- (A) The minimum morbidity standard in effect for claim reserves as of the date the claim was incurred.
- (B) The standards as defined in paragraph (3), applied to all open claims. Once an insurer elects to calculate reserves for all open claims on a more recent standard, all future valuations must be on that basis.

(3) For group long-term disability income claims incurred on or after January 1, 2017, the minimum standards with respect to morbidity must be based on the 2012 GLTD termination table or subsequent table with consideration of all of the following:

- (i) The insurer's own experience computed in accordance with Actuarial Guideline XLVII, as included in the most current version of the NAIC *Accounting Practices and Procedures Manual*.
- (ii) An adjustment to include an own experience measurement margin derived in accordance with Actuarial Guideline XLVII, as included in the most current version of the NAIC *Accounting Practices and Procedures Manual*.
- (iii) A credibility factor derived in accordance with Actuarial Guideline XLVII, as included in the most current version of the NAIC *Accounting Practices and Procedures Manual*.

(4) An insurer may begin to use the minimum reserve standards in paragraph (3) for dates earlier than January 1, 2017, but not prior to October 1, 2014. The date the insurer selects between January 1, 2017, and October 1, 2014, to begin to use the minimum reserve standards in paragraph (3) will be considered the effective date.

(5) An insurer may apply the standards in paragraph (3) to all open claims incurred prior to the effective date of paragraph (3) for the insurer. Once an insurer elects to calculate reserves for all open claims based on paragraph (3), all future valuations must be on that basis.

(d) *Minimum morbidity standards for other health insurance claim reserves, including single premium credit health and accident insurance.* The minimum standards with respect to morbidity and other contingencies must be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(e) *Claim reserve methods.* An insurer may use a generally accepted actuarial reserving method or combination of methods to estimate claim liabilities.

(1) Methods used for estimating liabilities generally may be aggregate methods or various reserve items may be separately valued.

(2) Approximations may be based on groupings and averages.

(3) Adequacy of the claim reserves shall be determined in the aggregate.

**§ 84a.5. Premium reserves.**

(a) *General requirements.*

(1) Unearned premium reserves are required for all contracts, except single premium credit health and accident insurance contracts, with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.

(2) If premiums due and unpaid are carried as an asset, the premiums shall be treated as premiums in force, subject to unearned premium reserve determination. The value of unpaid commissions, premium taxes and the cost of collection associated with due and unpaid premiums shall be carried as an offsetting liability.

(3) The gross premiums paid in advance for a period of coverage commencing after the next premium due date which follows the date of valuation may be appropriately discounted to the valuation date and shall be held either as a separate liability or as an addition to the unearned premium reserve which would otherwise be required as a minimum.

\* \* \* \* \*

**§ 84a.6. Contract reserves.**

\* \* \* \* \*

(b) *Minimum standards for contract reserves.*

(1) *Morbidity or other contingency.*

(i) Minimum standards with respect to morbidity are those in Appendix A (relating to specific standards for morbidity, interest and mortality). Valuation net premiums used under each contract shall have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of the insured, contract duration and period for which gross premiums have been calculated.

(ii) Contracts for which tabular morbidity standards are not specified in Appendix A shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the Commissioner. The morbidity tables shall contain a pattern of incurred claim costs that reflect the underlying morbidity and may not be constructed for the primary purpose of minimizing reserves.

(iii) If a morbidity standard specified in Appendix A is on an aggregate basis, the morbidity standard may be adjusted to a select and ultimate basis to reflect the effect of insurer underwriting by policy duration. The adjustments shall be appropriate to the underwriting and be acceptable to the Commissioner.

(iv) In determining the morbidity assumptions, the actuary shall use assumptions that represent the best estimate of anticipated future experience but may not incorporate any expectation of future morbidity improvement for contracts issued on or after January 1, 2007. Morbidity improvement is a change in the combined effect of claim frequency and the present value of future

expected claim payments given that a claim has occurred from the current morbidity tables or experience that will result in a reduction to reserves. The actuary can reflect the morbidity impact for a specific known event that has occurred and can be evaluated and quantified.

(2) *Maximum interest rate.* The maximum interest rate is specified in Appendix A.

(3) *Termination rates.*

(i) Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in Appendix A except as noted in subparagraphs (ii), (iii), (iv) and (v).

(ii) Total termination rates may be used at ages and durations when these exceed specified mortality table rates, but not in excess of the lesser of 80% of the total termination rate used in the calculation of the gross premiums or 8%.

(iii) For long-term care individual contracts and group certificates issued on and after January 1, 1999, termination rates in addition to the specified mortality table rates may be used. The termination rates other than mortality may not exceed the following:

(A) For policy years 1 through 4, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 8%.

(B) For policy years 5 and later, the lesser of 100% of the voluntary lapse rate used in the calculation of gross premiums and 4%.

(iv) For long-term care individual contracts and group certificates issued on and after January 1, 2007, the following termination rates in addition to the mortality table rates specified in Appendix A may be used.

(A) For policy year 1, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 6%.

(B) For policy years 2 through 4, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 4%.

(C) For policy years 5 and later, the lesser of 100% of the voluntary lapse rate used in the calculation of gross premiums and 2%, except for group long-term care insurance where the 2% shall be 3%.

(v) For single premium credit disability insurance, termination rates may not be used.

(4) *Reserve methods.*

(i) For health and accident insurance except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the 2-year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.

\* \* \* \* \*

**Appendix A**

**SPECIFIC STANDARDS FOR MORBIDITY, INTEREST AND MORTALITY**

**I. MORBIDITY.**

(a) Minimum morbidity standards for valuation of specified individual contract health and accident insurance benefits are as follows:

(1) Disability income benefits due to accident or sickness.

(i) *Contract reserves.*

(A) Contracts issued on or after January 1, 1965, and prior to January 1, 1986: The 1964 Commissioners Disability Table (64 CDT).

(B) Contracts issued on or after January 1, 1993, and before January 1, 2020: The 1985 Commissioners Individual Disability Tables A (85 CIDA) or The 1985 Commissioners Individual Disability Tables B (85 CIDB).

(C) Contracts issued on or after January 1, 1986, and prior to January 1, 1993: Optional use of either the 1964 Table or the 1985 Tables.

(D) Each insurer shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A or Tables B as the minimum standard. The insurer may elect to use the other tables with respect to a subsequent statement year.

(E) Contracts issued on or after January 1, 2020: The 2013 IDI Valuation Table with modifiers as described in Actuarial Guideline L.

(F) An insurer may begin to use the 2013 IDI Valuation Table with modifiers at a date earlier than January 1, 2020, but not prior to January 1, 2017.

(G) Within 3 years of 2020 or the earlier date an insurer begins to use the 2013 IDI Valuation Table, the insurer may elect to apply that morbidity standard for all policies issued subject to other valuation tables if the following conditions are met:

(I) The insurer applies the morbidity standard to all inforce policies and incurred claims.

(II) The insurer elects or has elected to apply the 2013 IDI Valuation Table to all claims incurred regardless of incurral date.

(III) The insurer maintains adequate policy records on policies issued prior to 2020 that allow the insurer to apply the 2013 IDI Valuation Table appropriately.

(IV) Once an insurer elects to calculate reserves for all inforce policies based on the current morbidity standard, all future valuations must be on that basis.

(ii) *Claim reserves.*

(A) Claims incurred on or after January 1, 2007, and prior to January 1, 2020: The 1985 Commissioners Individual Disability Table A (85CIDA) with claim termination rates multiplied by the following adjustment factors:

<i>Duration</i>	<i>Adjustment Factor</i>
Week 1	0.366
2	0.366
3	0.366
4	0.366
5	0.365
6	0.365
7	0.365
8	0.365
9	0.370
10	0.370
11	0.370
12	0.370
13	0.370
Month 4	0.391

<i>Duration</i>	<i>Adjustment Factor</i>
5	0.371
6	0.435
7	0.500
8	0.564
9	0.613
10	0.663
11	0.712
12	0.756
13	0.800
14	0.844
15	0.888
16	0.932
17	0.976
18	1.020
19	1.049
20	1.078
21	1.107
22	1.136
23	1.165
24	1.195
Year 3	1.369
4	1.204
5	1.199
6 and later	1.000

The 85 CIDA so adjusted for the computation of claim reserves shall be known as The 1985 Commissioners Individual Disability Table C (85 CIDC).

(B) For claims incurred on or after January 1, 2020, the 2013 IDI Valuation Table with modifiers and adjustments for company experience as prescribed in the Actuarial Guideline L, except for worksite disability policies with benefit periods of 24 months or less.

(C) For worksite disability policies, claim reserves may be calculated using claim run-out analysis or claim triangles or other methods that place a sound value on the reserves that are appropriate for the business and risks involved.

(D) For claims incurred prior to January 1, 2020, each insurer may elect any of the following standards to use as the minimum standard for claims incurred:

(I) The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the claim is incurred.

(II) The standard as defined in clause (A) or (B) applied to all open non-worksite claims, if the insurer maintains adequate claim records to allow the insurer to apply the standard defined in clause (A) or (B) appropriately. Once an insurer elects to calculate reserves for all open claims on the standard defined in clause (A) or (B), all future valuations must be on that basis. This option, with respect to clause (B), may be selected only if the insurer maintains adequate claims records for all claims incurred to use the 2013 IDI Valuation Table appropriately.

(2) Hospital benefits, surgical benefits and maternity benefits (scheduled benefits or fixed time period benefits only).

(i) *Contract reserves.*

\* \* \* \* \*

(ii) *Claim reserves.* Claim reserves are to be determined as provided in § 84a.4(d) (relating to claim reserves).

(3) Cancer expense benefits (scheduled benefits or fixed time period benefits only).

(i) *Contract reserves.* Contracts issued on or after January 1, 1986: The 1985 NAIC Cancer Claim Cost Tables.

(ii) *Claim reserves.* Claim reserves are to be determined as provided in § 84a.4(d).

(4) Accidental death benefits.

(i) *Contract reserves.* Contracts issued on or after January 1, 1965: The 1959 Accidental Death Benefits Table.

(ii) *Claim reserves.* Actual amount incurred.

(5) Single Premium Credit Health and Accident Insurance.

(i) *Contract reserves:*

\* \* \* \* \*

(ii) *Claim Reserves:* Claim reserves are to be determined as defined in § 84a.4(d).

(6) Other individual contract benefits.

(i) *Contract reserves.* For other individual contract benefits, morbidity assumptions are to be determined as provided in § 84a.6(b)(1)(ii) (relating to contract reserves).

(ii) *Claim reserves.* For benefits other than disability, claim reserves are to be determined as provided in § 84a.4(d).

(b) Minimum morbidity standards for valuation of specified group contract health and accident insurance benefits are as follows:

(1) Disability income benefits due to accident or sickness.

(i) Where the regulation references this Appendix.

(A) *Contract reserves.*

(I) Certificates issued prior to January 1, 1993: The same basis, if any, as that employed by the insurer as of January 1, 1993.

(II) Certificates issued on or after January 1, 1993: The 1987 Commissioners Group Disability Income Table (87CGDT).

(B) *Claim reserves.*

(I) For claims incurred on or after January 1, 1993: The 1987 Commissioners Group Disability Income Table (87CGDT).

(II) For claims incurred prior to January 1, 1993: Claim reserves are to be determined as provided in § 84a.4(d) (relating to claim reserves).

(i) Where the regulation does not reference this Appendix, the minimum morbidity standards are set forth in Actuarial Guideline XLVII.

(2) Single Premium Credit Health and Accident Insurance.

\* \* \* \* \*

(ii) *Claim reserves.* Claim reserves are to be determined as defined in § 84a.4(d).

(3) Other group contract benefits.

(i) *Contract reserves.* For other group contract benefits, morbidity assumptions are to be determined as provided in § 84a.6(b)(1)(ii) (relating to contract reserves).

(ii) *Claim reserves.* For benefits other than disability, claim reserves are to be determined as provided in § 84a.4(d).

II. INTEREST

(a) Contract reserves.

(1) The maximum interest rate is the maximum rate permitted by 40 Pa.C.S. §§ 7111—7127 (relating to valuation of reserves for contracts and policies) in the valuation of whole life insurance issued on the same date as the health and accident insurance contract and with a guarantee duration of more than 20 years.

(b) Claim reserves.

(1) For claim reserves on policies that require contract reserves, the maximum interest rate is the maximum rate permitted by 40 Pa.C.S. §§ 7111—7127 in the valuation of whole life insurance issued on the same date as the claim incurral date and with a guarantee duration equal to the maximum benefit period.

(2) For claim reserves on policies not requiring contract reserves, the maximum interest rate (I) shall be the calendar year statutory valuation interest rates as defined by:

$$I = .02 + .8 * (R - .03)$$

Where *R* is the average, over a period of 12 months, ending June 30 of the calendar year of the claim incurral date, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc. and the results rounded to the nearer 1/4 of 1%.

III. MORTALITY.

(a) For individual contracts and group certificates issued prior to the insurer's operative date, the mortality basis used shall be according to a table permitted by law for the valuation of whole life insurance issued on the same date as the health and accident insurance individual contract or group certificate.

\* \* \* \* \*

(d) Other mortality tables adopted by the National Association of Insurance Commissioners (NAIC) and promulgated by the Commissioner may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the Commissioner. The request for approval shall include the proposed mortality table and the reason that the standard specified in subsection (c) is inappropriate.

(e) For single premium credit insurance using the 85CIDA table, no separate mortality shall be assumed.

[Pa.B. Doc. No. 21-1753. Filed for public inspection October 22, 2021, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION

#### [ 58 PA. CODE CH. 131 ]

#### Preliminary Provisions; Replacement Costs for Wildlife Killed

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 11, 2021, meeting amends § 131.8 (relating to replacement costs for wildlife killed) to increase replacement costs for the peregrine falcons (*Falco peregrinus*) from \$200 to \$2,500.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 51 Pa.B. 5687 (September 4, 2021).

##### 1. Purpose and Authority

The population of nesting peregrine falcons (*Falco peregrinus*) in this Commonwealth has continued to increase since the Commission's upgrade of the species from endangered to threatened. This action follows the Commission's Peregrine Falcon Management Plan (dated 2013) in which objectives for delisting the species were established. Section 925(i) of the code (relating to jurisdiction and penalties) states that "[i]n addition to the fines and costs imposed for violations pursuant to subsection (b), the costs incurred by the commission for the replacement of the species involved in the violation shall be assessed by the magisterial district judge in such amount as is fixed by regulation of the commission." Upon the peregrine falcon's (*Falco peregrinus*) delisting, replacement costs for this species will effectively be reduced from \$5,000 to a default of \$200. Notwithstanding its efforts to delist the peregrine falcon (*Falco peregrinus*), the Commission has determined that the species necessitates further protection from unlawful takings in the form of increased replacement costs upon its effective delisting date. The Commission amends § 131.8 to increase replacement costs for the peregrine falcons (*Falco peregrinus*) from \$200 to \$2,500.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 131.8 are adopted under this authority.

##### 2. Regulatory Requirements

This final-form rulemaking amends § 131.8 to increase replacement costs for the peregrine falcon (*Falco peregrinus*) \$200 to \$2,500.

##### 3. Persons Affected

Persons interested or affected by the classification status of the peregrine falcon (*Falco peregrinus*) will be affected by this final-form rulemaking.

##### 4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

##### 5. Cost and Paperwork Requirements

This final-form rulemaking should not result in any additional cost or paperwork.

##### 6. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

##### 7. Contact Person

For further information regarding this final-form rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

##### Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

##### Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 131, are amended by amending § 131.8 to read as set forth in Annex A.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

BRYAN J. BURHANS,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-475 remains valid for the adoption of the subject regulation.

#### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 131. PRELIMINARY PROVISIONS

#### § 131.8. Replacement costs for wildlife killed.

Under section 925(i) of the act (relating to jurisdiction and penalties), in addition to any fines and costs imposed for violations of the act and this title, any person who unlawfully kills or possesses wildlife may be assessed replacement costs according to the following minimum cost scale:

##### (1) General class.

(i) Each threatened or endangered bird or mammal, \$5,000.



- (ii) Each bald eagle, golden eagle, osprey or peregrine falcon, \$2,500.
- (iii) Each elk or black bear, \$1,500.
- (iv) Each white-tailed deer, \$800.
- (v) Each bobcat or otter, \$500.
- (vi) Each wild turkey or beaver, \$300.
- (vii) Any other wildlife, \$200.

(2) *Trophy class.*

- (i) Each elk with a Boone and Crockett green score of 200 inches or more, \$5,000.
- (ii) Each white-tailed deer with a Boone and Crockett green score of 115 inches or more, \$5,000.
- (iii) Each black bear with a field dressed weight of 350 pounds or more, \$5,000.

[Pa.B. Doc. No. 21-1754. Filed for public inspection October 22, 2021, 9:00 a.m.]

**Title 58—RECREATION**

**GAME COMMISSION**

**[ 58 PA. CODE CH. 133 ]**

**Wildlife Classification; Birds**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 11, 2021, meeting amends § 133.21 (relating to classification of birds) to add the northern goshawk (*Accipiter gentilis*) to the Commonwealth’s list of endangered birds and to delete the peregrine falcon (*Falco peregrinus*) from the Commonwealth’s list of threatened birds.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 51 Pa.B. 5688 (September 4, 2021).

1. *Purpose and Authority*

The Commission made two changes to the Commonwealth’s lists of threatened and endangered birds based on current monitoring data. First, the Commission amends § 133.21 to add the northern goshawk (*Accipiter gentilis*) to the Commonwealth’s list of endangered birds. A large secretive raptor of mature, mixed forests, the northern goshawk (*Accipiter gentilis*) is found in the northern tier and high elevations across this Commonwealth and has experienced both range contraction and breeding population decline over the past 20 years. Primary threats to northern goshawks (*Accipiter gentilis*) include forest fragmentation and degradation, nest site disturbance, disease and predation. This Commonwealth lies at the southern limits of the range of the Northeastern population of northern goshawk (*Accipiter gentilis*), which makes this population more susceptible to the previous effects. Several recent agency-supported efforts to better understand this species have documented a dramatic decline in the Commonwealth’s population. The agency’s advisory Ornithological Technical Committee has recommended a change to endangered status. This change will tailor protections for the species, including, but not

limited to, limiting or delaying certain activities within known breeding northern goshawk (*Accipiter gentilis*) habitat during courtship and nesting seasons.

Second, the Commission amends § 133.21 by deleting the peregrine falcon (*Falco peregrinus*) from the Commonwealth’s list of threatened birds. This Commonwealth’s population of nesting peregrine falcons (*Falco peregrinus*) has continued to increase since the Commission’s upgrade of the species from endangered to threatened in 2019, and the objectives established in the Commission’s 2013—2022 Peregrine Falcon Management Plan have been achieved. This current status revision comes after more than 40 years of conservation recovery action in this Commonwealth and Nationally, in which the Commission has taken an active role. This status change accomplishes a significant victory for the Commission as the third high-profile raptor recovery, following bald eagle and osprey and demonstrating that an endangered or threatened species listing is not a permanent designation, and recovery is an achievable goal.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the Commission to “Add to or change the classification of any wild bird or wild animal.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 133.21 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends § 133.21 to add the northern goshawk (*Accipiter gentilis*) to the Commonwealth’s list of endangered birds and deletes the peregrine falcon (*Falco peregrinus*) from the Commonwealth’s list of threatened birds.

3. *Persons Affected*

Persons interested or affected by the classification status of the northern goshawk (*Accipiter gentilis*) or the peregrine falcon (*Falco peregrinus*) will be affected by this final-form rulemaking.

4. *Comment and Response Summary*

The Commission received a total of 14 comments concerning this final-form rulemaking. All 14 of these comments generally supported and celebrated delisting the peregrine falcon (*Falco peregrinus*) as threatened. Two of these comments from falconers permitted by the Commission also opposed or questioned listing the northern goshawk (*Accipiter gentilis*) as endangered due to its impacts on falconry activities relating to this species. The Commission recognizes that listing the northern goshawk (*Accipiter gentilis*) as endangered will necessarily restrict falconers from engaging in falconry activities concerning this species. However, the Commission also recognizes the gravity and importance of its mandate to take action to conserve and protect the Commonwealth’s most vulnerable species of wildlife, even to the extent that such action creates adverse collateral consequences to recreational activities such as falconry.

### 5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in any additional cost or paperwork.

### 6. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### 7. *Contact Person*

For further information regarding this final-form rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

### *Order*

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 133, are amended by amending § 133.21 to read as set forth in Annex A.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

BRYAN J. BURHANS,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-473 remains valid for the adoption of the subject regulation.

### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 133. WILDLIFE CLASSIFICATION

#### Subchapter B. BIRDS

#### § 133.21. Classification of birds.

The following birds are classified:

- (1) *Endangered*.
  - (i) King Rail (*Rallus elegans*)
  - (ii) Short-eared Owl (*Asio flammeus*)
  - (iii) Black Tern (*Chlidonias niger*)
  - (iv) Least Bittern (*Ixobrychus exilis*)
  - (v) Piping Plover (*Charadrius melodus*)
  - (vi) Loggerhead Shrike (*Lanius ludovicianus*)
  - (vii) American Bittern (*Botaurus lentiginosus*)
  - (viii) Great Egret (*Ardea alba*)
  - (ix) Yellow-crowned Night Heron (*Nycticorax violaceus*)
  - (x) Common Tern (*Sterna hirundo*)
  - (xi) Blackpoll Warbler (*Setophaga striata*)
  - (xii) Black-crowned Night-Heron (*Nycticorax nycticorax*)
  - (xiii) Dickcissel (*Spiza americana*)
  - (xiv) Sedge Wren (*Cistothorus platensis*)
  - (xv) Yellow-bellied Flycatcher (*Empidonax flavi-ventris*)
  - (xvi) Upland Sandpiper (*Batramia longicauda*)
  - (xvii) Northern Goshawk (*Accipiter gentilis*)
- (2) *Threatened*.
  - (i) Northern Harrier (*Circus cyaneus*)
  - (ii) Long-eared Owl (*Asio otus*)
  - (iii) (Reserved)
  - (iv) Red Knot (*Calidris canutus rufa*)

[Pa.B. Doc. No. 21-1755. Filed for public inspection October 22, 2021, 9:00 a.m.]