

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRRC's website)

(1) Agency:

Insurance Department

(2) Agency Number:

Identification Number: 11-250

IRRC Number: 2971

2012 AUG 22 AM 11: 31

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(3) PA Code Cite:

31 Pa. Code, Chapter 163, §163.1

(4) Short Title:

Requirements for Funds Held as Security for the Payment of Obligations of Unlicensed, Unqualified Reinsurers

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact:

Peter J. Salvatore, Regulatory Coordinator
1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429
psalvatore@pa.gov

Secondary Contact:

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this proposed rulemaking is to update Chapter 163 in accordance with amendments made to 40 P.S. § 442.1 by Act 2012 -136 (S.B. 1464), P.L. ___, approved July 5, 2012("Act 136"), which grants the Insurance Commissioner the authority to "certify" reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. These amendments are proposed in conjunction with amendments to Chapter 161 (relating to Requirements for Qualified Reinsurers). Specifically, Chapter 163 is proposed to be amended to clarify that the requirements of Chapter 163 do not apply to assuming reinsurers that have been duly certified by the Commissioner as permitted by the amendments of Act 136.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department and sections 319--319.2 of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921 (40 P. S. §§ 442--442.2).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. However, these proposed regulations are part of the financial regulation standards the Department must meet in order to maintain its accreditation by the NAIC. Thus, if a jurisdiction opts to certify reinsurers, as Pennsylvania has done with the enactment of Act 136, the standards by which it does so must be substantially similar to NAIC requirements in order for the jurisdiction to maintain NAIC accreditation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This rulemaking is needed to update Chapter 163 in accordance with amendments made to 40 P.S. § 442.1 by Act 136, which grants the Insurance Commissioner the authority to “certify” reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. The general public will benefit to the extent that allowing reduced collateral for reinsurers that are financially solvent and licensed in well-regulated jurisdiction will reduce the cost of reinsurance to ceding insurers in the Commonwealth and reduce trade barriers allowing for more competition in the reinsurance marketplace.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

No adverse effects are anticipated as a result of this rulemaking.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

This proposed rulemaking would apply to all insurance companies domesticated in the Commonwealth and the reinsurers with whom they do business. There are approximately 270 Pennsylvania domiciled licensed companies.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amended requirements in Chapter 163 will impose no significant costs upon the regulated community on the transaction of business in this Commonwealth. However, the amended requirements will allow for reduced collateral for reinsurers that are financially solvent and licensed in well-regulated jurisdiction. This reduced collateral will reduce the cost of reinsurance to ceding insurers in the Commonwealth and reduce trade barriers allowing for more competition in the reinsurance marketplace.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with this rulemaking.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with this rulemaking

(17) In the table below, provide an estimate of the fiscal savings and costs associated with

implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As noted above, these proposed regulations are part of the financial regulation standards the Department must meet in order to maintain its accreditation by the NAIC. Thus, if a jurisdiction opts to certify reinsurers, as Pennsylvania has done with the enactment of Act 136, the standards by which it does so must be substantially similar to NAIC requirements in order for the jurisdiction to maintain NAIC accreditation.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Department circulated pre-exposure drafts of the regulations to the Insurance Federation of Pennsylvania, Inc. and the Pennsylvania Association of Mutual Insurance Companies.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No other regulatory schemes were considered. The rulemaking updates Chapter 163 in accordance with the recent amendments to the reinsurance credits law.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The rulemaking has no impact on Pennsylvania's ability to compete with other states. The rulemaking is based upon an NAIC model, the requirements of which are necessary to maintain accredited regulator status. As such, other jurisdictions who elect to "certify" reinsurers must implement substantially regulatory similar requirements. However, if Pennsylvania does not enact standards to certify reinsurers, it may be at a disadvantage to other states that do allow certification.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional procedures, reporting, recordkeeping or other paperwork will be required.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(26) Include a schedule for review of the regulation including:

- | | |
|---|-------------------------|
| A. The date by which the agency must receive public comments: | <u>October 8, 2012</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>NA</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>January 29, 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>May 1, 2013</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>May 1, 2013</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>NA</u> |

(27) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

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FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU (Pursuant to Commonwealth Documents Law)		
DO NOT WRITE IN THIS SPACE		
<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>Angela M. Elliott</i></p> <p>By _____ (Deputy Attorney General)</p> <p style="text-align: center;">AUG 15 2012</p> <p>_____</p> <p style="text-align: center;">Date of Approval</p> <p>→ Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p style="text-align: center;">Insurance Department</p> <p style="text-align: center;">(AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>11-250</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <i>Michael Consedine</i></p> <p style="text-align: center;">Michael F Consedine Insurance Commissioner</p> <p>TITLE: _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p><i>Shawn E. Smith</i></p> <p style="text-align: center;">SHAWN E. SMITH</p> <p style="text-align: center;">JUL 24 2012</p> <p style="text-align: center;">DATE OF APPROVAL</p> <p style="text-align: center;">(DEPUTY GENERAL COUNSEL) (CHIEF COUNSEL, INDEPENDENT AGENCY) (STRIKE INAPPLICABLE TITLE)</p> <p>→ Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 163, §163.1

REQUIREMENTS FOR FUNDS HELD AS SECURITY FOR THE PAYMENT OF
OBLIGATIONS OF UNLICENSED, UNQUALIFIED REINSURERS

Preamble

The Insurance Department (Department) proposes to amend Chapter 163 of the Department's regulations (31 Pa. Code Ch. 163) (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers) to read as set forth in Annex A. The rulemaking is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) relating to the general rulemaking authority of the Department and sections 319--319.2 of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921 (40 P. S. §§ 442--442.2).

Purpose

The purpose of this proposed rulemaking is to update Chapter 163 in accordance with amendments made to 40 P.S. § 442.1 by Act 2012 -136 (S.B.1464), P.L. 1111, approved July 5, 2012, which grants the Insurance Commissioner the authority to "certify" reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. These amendments are proposed in conjunction with amendments to Chapter 161 (relating to requirements for qualified reinsurers). Specifically, Chapter 163 is proposed to be amended to clarify that the requirements of Chapter 163 do not apply to assuming reinsurers that have been duly certified by the Commissioner as permitted by the amendments of Act 2012-136.

Explanation of Proposed Amendments

The following is a description of the changes contained in the proposed rulemaking:

Section 163.1 (relating to definitions) is proposed to be amended to clarify that the definition of "unlicensed, unqualified reinsurer" does not include an assuming insurer who is certified by the Commissioner under section 319.1(a) of the act (40 P.S. § 442.1(a)).

External Comments

The Department circulated pre-exposure drafts of the regulations to the Insurance Federation of Pennsylvania, Inc. and the Pennsylvania Association of Mutual Insurance Companies.

Affected Parties

This proposed rulemaking would apply to all insurance companies domesticated in the Commonwealth and the reinsurers with whom they do business.

Fiscal Impact

State Government

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

General Public

While the chapter has no immediate fiscal impact on the general public, the general public will benefit to the extent that allowing reduced collateral for reinsurers that are financially solvent and licensed in well-regulated jurisdiction will reduce the cost of reinsurance to ceding insurers in the Commonwealth and reduce trade barriers allowing for more competition in the reinsurance marketplace.

Political Subdivisions

The rulemaking will not impose additional costs on political subdivisions.

Private Sector

The amended requirements in Chapter 163 will impose no significant costs on the transaction of business in this Commonwealth.

Paperwork

The rulemaking would not impose additional paperwork on the Department.

Effectiveness/Sunset Date

The rulemaking will become effective within thirty (30) days after published in final form 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 the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@pa.gov or faxed to (717) 705-3873.

Under the Regulatory Review Act (71 P. S. §§ 745.1--745.15), the Department is required to write to all commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on 8/22/12, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has, as required by the Regulatory Review Act, provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

The IRRC will notify the Department of any objections to any portion of the proposed rulemaking within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

Michael F. Consedine
Insurance Commissioner

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 163. REQUIREMENTS FOR FUNDS HELD AS SECURITY FOR THE
PAYMENT OF OBLIGATIONS OF UNLICENSED, UNQUALIFIED REINSURERS

Sec.

163.1. Definitions.

§ 163.1. Definitions.

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

* * * * *

Unlicensed, unqualified reinsurer—An assuming insurer which is neither:

- (i) Licensed by the Department to transact insurance business in this Commonwealth.
- (ii) Included on a list of qualified **or certified** reinsurers published and periodically reviewed by the Commissioner under section 319.1(a) of the act (40 P. S. § 442.1(a)).



August 22, 2012

Mr. David Sumner
Executive Director
Independent Regulatory Review Comm.
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Insurance Department Proposed Regulation No. 11-250.

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, enclosed for your information and review is proposed regulation 31 Pa. Code, Chapter 163, Requirements for Funds Held as Security for the Payment of Obligations of Unlicensed, Unqualified Reinsurers.

The purpose of this proposed rulemaking is to update Chapter 163 in accordance with amendments made to 40 P.S. § 442.1 by Act 2012 -136 (S.B.1464), P.L. 1111, approved July 5, 2012, which grants the Insurance Commissioner the authority to "certify" reinsurers so that ceding insurers may receive credit for reinsurance ceded to duly certified reinsurers. These amendments are proposed in conjunction with amendments to Chapter 161 (relating to requirements for qualified reinsurers). Specifically, Chapter 163 is proposed to be amended to clarify that the requirements of Chapter 163 do not apply to assuming reinsurers that have been duly certified by the Commissioner as permitted by the amendments of Act 2012-136.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in black ink that reads "Peter J. Salvatore". The signature is written in a cursive style.

Peter J. Salvatore
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-250
 SUBJECT: REQUIREMENTS FOR FUNDS HELD AS SECURITY FOR THE PAYMENT OF OBLIGATIONS OF UNLICENSED, UNQUALIFIED REINSURERS
 AGENCY: DEPARTMENT OF INSURANCE


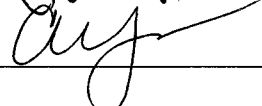
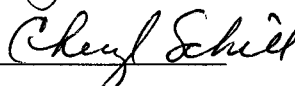
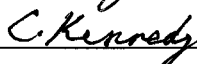
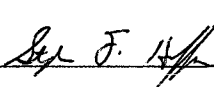
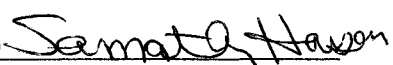
TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/20/12		HOUSE COMMITTEE ON INSURANCE
8/22/12		MAJORITY CHAIRMAN <u>REP. NICHOLAS MICOZZIE</u>
8-22-12		SENATE COMMITTEE ON BANKING & INSURANCE
8-22-12		MAJORITY CHAIRMAN <u>SEN. DONALD C. WHITE</u>
8/22/12		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/22/12		LEGISLATIVE REFERENCE BUREAU (for Proposed only)