

Comments of the Independent Regulatory Review Commission



Insurance Department Regulation #11-254 (IRRC #3129)

Annual Financial Reporting Requirements

March 23, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the January 23, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Insurance Department (Department) to respond to all comments received from us or any other source.

1. Section 147.8a. Internal audit function requirements. – Clarity; Implementation procedures.

Subsection (f) states that an insurer or group of insurers exempt from the requirements of this section is *encouraged* to conduct a review of the insurer business type, sources of capital and other risk factors to determine whether an internal audit function is warranted. Subsection (f) further states that the potential benefits of an internal audit function *should* be assessed and compared against the estimated costs. The terms “encouraged” and “should” are non-regulatory language which indicates that these provisions are optional. While we recognize that this language is taken word-for-word from the National Association of Insurance Commissioners (NAIC) Model Regulation, it is inappropriate to include optional provisions in a regulation. If the intent of this provision is to advise the exempted regulated community of the Department’s preference regarding whether an internal audit function is warranted, it may be more appropriate to include this information in a policy statement. Otherwise, we ask the Department to amend the final-form regulation to establish binding norms of general applicability and future effect.

2. Section 147.13. Effective date and exemption. – Clarity; Implementation procedures.

Subsection (j) states that if an insurer or group of insurers no longer qualifies to be exempt from the requirements in Section 147.8a (relating to internal audit function requirements), it has “1 year after the year the threshold is exceeded” to comply with the requirements of Section 147.8a. Again, while we recognize that this language is taken word-for-word from the NAIC Model Regulation, the date by which an insurer would be required to comply is unclear. Is one year defined as a calendar or fiscal year, or by some other measure? We ask the Department to explain in the Preamble of the final-form regulation how this provision will be implemented, and to ensure that the language in the final regulation makes clear when the regulated community must comply with this provision.