

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Blue Eye Run, et al. (Water Quality Network (WQN) Package); Stream Redesignations

Order

The Environmental Quality Board (Board) amends 25 Pa. Code §§ 93.9b, 93.9d, 93.9f, 93.9g, 93.9i, 93.9l, 93.9p and 93.9q to read as set forth at 39 Pa.B. 3043 (June 20, 2009).

This proposal was adopted by the Board at its meeting of December 15, 2009.

A. *Effective Date*

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information, contact Richard H. Shertzer, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637 or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site (<http://www.depweb.state.pa.us>).

C. *Statutory and Regulatory Authority*

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20) which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C. § 1313) sets forth requirements for water quality standards and the Federal regulation in 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Proposed Amendments*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices) on individual sources of pollution.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies.

Organizations, businesses or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and Statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water quality or uses. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in the regulation in § 93.9 (relating to designated water uses and water quality criteria).

The Department operates the Surface Water Quality Network (WQN), which is a long-term, fixed station network of monitoring stations on rivers and streams throughout this Commonwealth. This network was initially designed to monitor water quality conditions on a broad scale. Most stations are located on major streams with large drainage areas. However, recent water quality monitoring trends emphasize the importance of identifying and defining biological reference conditions characteristic of no or minimal disturbance. As part of the process to establish biological reference conditions, smaller watersheds with minimal land disturbance were added to the water quality network to collect data representative of reference water quality conditions and to support biological metric protocol development. WQN streams are selected from various areas across the State and monitored for 5 years. Following the close of the 5-year inventory period, the studied sites are replaced with a new set of stations.

After reviewing the WQN monitoring data, several of the stations displayed existing use stream conditions indicative of EV waters. Physical, chemical and biological characteristics along with other information on these waterbodies were considered to determine the appropriateness of the current and recommended designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional

Value Waters). According to the Department's regulatory criteria, a Biological Condition Score (BCS) greater than or equal to 92% of the reference station score supports an EV designation. See § 93.4(b)(1)(v).

All reference streams were selected because they were representative of excellent EV conditions based on the macroinvertebrate community and were of similar stream types, comparable geologic settings and reasonable proximity with respect to their compared candidate stream. Both the candidate stream and the reference streams were sampled within a similar time frame to minimize the effects of seasonal variation.

All of the recommended redesignations in this final-form rulemaking for the WQN stations are candidates for EV, based upon data and appropriate regulatory criteria. All of the waterbodies in this regulatory package which are being recommended for EV qualify based on their BCS being greater than or equal to 92% of the reference station score. Copies of the Department's stream evaluation report for these waterbodies is available on the Department's web site or from the contacts whose addresses and telephone numbers are listed in Section B. Based upon the data and information collected on these waterbodies, the Board has made the designations as set forth in 39 Pa.B. 3043 (June 20, 2009).

A basin-wide migratory fishes (MF) designation was added to the Atlantic slope basin (drainage lists A—O and Z) as part of the Triennial Review of Water Quality Standards which was effective upon publication as a final rulemaking at 39 Pa.B. 2523 (May 16, 2009). The MF designation applies to all waters within the respective basins unless there were specific exceptions previously noted for certain waterbodies or stream segments within one of these drainage lists. Drainage Lists A—G are located within the Delaware River Basin. Drainage lists H—O are located within the Susquehanna River Basin. Drainage List Z is located within the Potomac River Basin. The MF designated use has been added to those waters to be consistent with the action in the Triennial Review final rulemaking at 39 Pa.B. 2523.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board approved the proposed rulemaking for the Blue Eye Run, et al. (WQN) package at its April 21, 2009 meeting. The proposed rulemaking was published at 39 Pa.B. 3043 with provision for a 45-day public comment period that closed on August 4, 2009. The only commentator was the United States Environmental Protection Agency (EPA) Region 3 who commended the Department on its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program, but otherwise had no comments.

On June 5, 2009, the Department submitted a copy of the proposed rulemaking published at 39 Pa.B. 3043 to the Independent Regulatory Review Commission (IRRC) and to the Senate and House Environmental Resources and Energy Committees (Committees) for review and comment in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). Neither IRRC nor the Committees raised any comments, recommendations or objections to any portion of the proposed rulemaking, and no changes were made from the proposed rulemaking to this final-form regulation; therefore under section 5(g) of Regulatory Review Act, the final rulemaking was deemed approved by IRRC.

F. Summary of Changes to the Proposed Rulemaking

No changes were made to the proposed rulemaking.

G. Benefits, Costs and Compliance

1. *Benefits*—Overall, the Commonwealth, its citizens and natural resources will benefit from these changes because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

2. *Compliance Costs*—The amendments to Chapter 93 may impose additional compliance costs on the regulated community. These regulatory changes are necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

Persons conducting or proposing activities or projects must comply with the regulatory requirements relating to designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment or best management practices to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for point source discharges. Treatment costs and best management practices are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes and best management practices may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

3. *Compliance Assistance Plan*—The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and Pennsylvania Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent

treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification (SEJ) may be required for new or expanded discharges to certain HQ Waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

H. *Pollution Prevention*

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged, and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and may reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. *Sunset Review*

These amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act, on June 5, 2009, the Department submitted a copy of the proposed rulemaking published at 39 Pa.B. 3043, to IRRC and to the Senate and House Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of the comments received, as well as other documentation. The Department has considered all public comments in preparing this final-form regulation. No comments were received on the proposed rulemaking from IRRC or the Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 24, 2010, this final-form regulation was deemed approved by the Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC, effective February 24, 2010.

K. *Findings*

The Board 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) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 39 Pa.B. 3043.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

(5) These final-form regulations do not contain standards or requirements that exceed requirements of the companion Federal regulations.

L. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9b, 93.9d, 93.9f, 93.9g, 93.9i, 93.9l, 93.9p and 93.9q to read as set forth at 39 Pa.B. 3043.

(b) The Chairperson of the Board shall submit this order and 39 Pa.B. 3043 to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and 39 Pa.B. 3043 to IRRC and the Committees, as required under the Regulatory Review Act.

(d) The Chairperson shall certify this order and 39 Pa.B. 3043 and deposit them with the Legislative Reference Bureau, as required by law.

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

JOHN HANGER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 1471 (March 13, 2010).)

Fiscal Note: Fiscal Note 7-436 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-587. Filed for public inspection April 2, 2010, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 137]

Wildlife

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) adopted the following rulemaking at its January 26, 2010, meeting:

Amend § 137.1 (relating to importation, possession, sale and release of certain wildlife) to exempt menagerie permit holders who possess a USDA Class C Exhibitor permit and who operate their menagerie facilities as their primary means of gaining a livelihood from possession and importation prohibitions of this section.

The final rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 6661 (November 21, 2009).

1. *Purpose and Authority*

Section 137.1 formerly prohibited the importation of certain species of exotic and native wildlife determined to be dangerous or injurious to the public, native wildlife or native wildlife habitat, such as nutria, bears and primates. This prohibition applied to all persons including those currently possessing exotic wildlife dealer, exotic wildlife possession and menagerie permits. The Commission was recently approached by a number of menagerie permit holders who have alleged that these importation restrictions unnecessarily restrict their ability to import and possess certain "popular" wildlife and thus limit their ability to gain a livelihood. These menagerie permit holders formally requested relief from these importation and possession restrictions. To this end, the Commission amended § 137.1 to exempt menagerie permit holders who possess a USDA Class C Exhibitor permit and who operate their menagerie facilities as their primary means of gaining a livelihood from possession and importation prohibitions of this section.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(c) of the code (relating to regulations) directs that "The commission shall promulgate regulations concerning the transportation, introduction into the wild, importation, exportation, sale, offering for sale or purchase of game or wildlife or the disturbing of game or wildlife in their natural habitat." The amendment to § 137.1 was adopted under this authority.

2. *Regulatory Requirements*

The final rulemaking amended § 137.1 to exempt menagerie permit holders who possess a USDA Class C Exhibitor permit and who operate their menagerie facilities as their primary means of gaining a livelihood from possession and importation prohibitions of this section.

3. *Persons Affected*

Persons wishing to import or possess otherwise prohibited wildlife into this Commonwealth may be affected by the final rulemaking.

4. *Comment and Response Summary*

There was one official comment received in support of the final rulemaking. This comment was provided by counsel purporting to represent the interests of various menageries aggrieved by the general restrictions excepted by the final rulemaking.

5. *Cost and Paperwork Requirements*

The final rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

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

7. *Contact Person*

For further information regarding the final rulemaking, contact Richard R. Palmer, 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 regulation 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) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this amendment 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 authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 137, are amended by amending § 137.1 to read as set forth at 39 Pa.B. 6661.

(b) The Executive Director of the Commission shall certify this order and 39 Pa.B. 6661 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-294 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 10-588. Filed for public inspection April 2, 2010, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]
Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) adopted the following rulemaking at its January 26, 2010, meeting:

Amend § 141.22 (relating to small game) to restructure the regulatory provisions relating to small game hunting to promote consistency and clarity in the regulations and also permit the full inclusion of crossbows during the various small game seasons to expand opportunity and increase participation in small game hunting within this Commonwealth.

The final rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 6659 (November 21, 2009).

1. *Purpose and Authority*

In recent years, the Commission has been moving towards a comprehensive restructuring of the regulations attending the code. The goals of this restructuring effort are primarily focused on simplifying and making the language more understandable to its users. In January 2009, the Commission completed its efforts to rewrite the regulatory structures relating to the big game seasons. The Commission intends to carry the theme in these changes to other chapters of the regulations to establish

clear correlations between related seasonal information. To this end, the Commission amended § 141.22 to restructure the regulatory provisions relating to small game hunting to promote consistency and clarity in the regulations and also permit the full inclusion of crossbows during the various small game seasons to expand opportunity and increase participation in small game hunting within this Commonwealth.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to “promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used.” Section 2102(a) of the code 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 amendment to § 141.22 was adopted under this authority.

2. Regulatory Requirements

The final rulemaking amended § 141.22 to restructure the regulatory provisions relating to small game hunting to promote consistency and clarity in the regulations and also permit the full inclusion of crossbows during the various small game seasons to expand opportunity and increase participation in small game hunting within this Commonwealth.

3. Persons Affected

Persons wishing to hunt small game within this Commonwealth may be affected by the final rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the final rulemaking.

5. Cost and Paperwork Requirements

The final rulemaking should not result in any additional cost or paperwork.

6. Effective Date

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

7. Contact Person

For further information regarding the final rulemaking, contact Richard R. Palmer, 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 regulation 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) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this amendment 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 authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.22 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-295 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Permitted devices.* It is lawful to hunt small game, except woodchucks with the following devices:

(1) A manually operated rifle or handgun. The firearm must be .23 caliber or less, that projects single-projectile ammunition.

(2) A manually operated or semiautomatic centerfire shotgun or muzzleloading shotgun. The firearm must be 10 gauge or less, that projects multiple-projectile shotgun ammunition not larger than #4 lead, #2 steel, or #4 of any other composition or alloy of nontoxic shot approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot).

(3) A muzzleloading rifle or handgun. The firearm must be .40 caliber or less, that projects single-projectile ammunition.

(4) A bow and arrow.

(5) A crossbow and bolt.

(6) A raptor. The raptor must be lawfully possessed under a falconry permit pursuant to section 2925 of the act (relating to falconry permits).

(b) *Prohibitions.* It is unlawful to:

(1) Use or possess single-projectile ammunition larger than .23 caliber or multiple-projectile shotgun ammunition larger than #4 lead, #2 steel, or #4 of any other composition or alloy of nontoxic shot approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot), except as authorized under section 2525 of the act (relating to possession of firearm for protection of self or others).

(2) Possess a firearm while hunting with a raptor, except as authorized under section 2525 of the act.

(3) Discharge a firearm within 150 yards of a Commission vehicle releasing pheasants.

(4) Use or possess a device not provided for in the act or in this section.

(5) Hunt in a party of more than six persons. This does not apply to waterfowl or dove hunters when hunting from a blind or other stationary position.

(c) *Woodchucks (Groundhogs)*.

(1) *Permitted devices*. It is lawful to hunt woodchucks with the following devices:

(i) A manually operated rifle or handgun.

(ii) A manually operated or semiautomatic centerfire shotgun or muzzleloading shotgun. The firearm must be 10 gauge or less that propels multiple-projectile shotgun ammunition not larger than #4 lead, #2 steel, or #4 of any other composition or alloy of nontoxic shot approved by the Director of the United States Fish and Wildlife Service or an authorized representative under 50 CFR 20.134 (relating to nontoxic shot).

(iii) A muzzleloading rifle or handgun.

(iv) A bow and arrow.

(v) A crossbow and bolt.

(vi) A raptor. The raptor must be lawfully possessed under a falconry permit pursuant to section 2925 of the act (relating to falconry permits).

(2) *Prohibitions*. While hunting woodchucks, it is unlawful to use or possess a device or ammunition not provided for in this section.

[Pa.B. Doc. No. 10-589. Filed for public inspection April 2, 2010, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 147]
Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) adopted the following rulemaking at its January 26, 2010, meeting:

Amend §§ 147.902 and 147.904 (relating to definitions; and permit) to specifically authorize properly permitted individuals to engage in commercial coyote guiding activities on State game lands (SGLs).

The final rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 39 Pa.B. 6660 (November 21, 2009).

1. Purpose and Authority

In July 2009, the Commission added Subchapter Y to Chapter 147 to relocate, consolidate and more clearly define the permitting process for persons interested in guiding other hunters or trappers for certain designated species. The Commission was recently approached by a number of houndsmen who have formally requested the expansion of this newly created subchapter to authorize commercial coyote guiding activities on SGLs. To this end, the Commission amended §§ 147.902 and 147.904 to specifically authorize properly permitted individuals to engage in commercial coyote guiding activities on SGLs.

Section 721(a) of the code (relating to control of property) provides that “The administration of all lands and

waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” Section 2901(b) of the code (relating to authority to issue permits) provides “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” 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 §§ 147.902 and 147.904 were adopted under this authority.

2. Regulatory Requirements

The final rulemaking amended §§ 147.902 and 147.904 to specifically authorize properly permitted individuals to engage in commercial coyote guiding activities on SGLs.

3. Persons Affected

Persons wishing to engage in commercial coyote guiding activities on SGLs will be affected by the final rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the final rulemaking.

5. Cost and Paperwork Requirements

The final rulemaking should not result in any additional cost or paperwork.

6. Effective Date

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

7. Contact Person

For further information regarding the final rulemaking, contact Richard R. Palmer, 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 regulations 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) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these 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 authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.902 and 147.904 to read as set forth at 39 Pa.B. 6660.

(b) The Executive Director of the Commission shall certify this order and 39 Pa.B. 6660 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-296 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-590. Filed for public inspection April 2, 2010, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 521, 528 and 539]

Temporary General Provisions; Gaming Related Gaming Service Providers; and Table Game Rules for Sic Bo

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1303A (relating to temporary table game regulations) enacted by the act of January 7, 2010 (Act 1) and the specific authority in 4 Pa.C.S. §§ 1302A(1)—(4) and 1317.2(a) (relating to regulatory authority; and gaming service provider), adopts temporary regulations in Chapters 521, 528 and 539 (relating to general provisions; gaming related gaming service providers; and Sic Bo) to read as set forth in Annex A. The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

Purpose of the Temporary Rulemaking

This temporary rulemaking contains general provisions, certification requirements for gaming related gaming service providers and the table game rules for Sic Bo.

Explanation of Chapters 521, 528 and 539

Section 521.4 (relating to request to offer a new table game or new feature for an existing table game) has been amended to provide certificate holders a more detailed list of the information the Board will require to be included in a request to offer a new game or feature for an existing game. New §§ 521.6—521.9 (relating to electronic, electrical and mechanical devices prohibited; minimum and maximum wagers; additional wagering requirements; rules of the games; notice; and patron access to the rules of the games; gaming guides) have been added. Section 521.6 prohibits the use of equipment that could be used for cheating. Section 521.7 sets forth the requirements for setting maximum and minimum wagers at gaming tables while § 521.8 sets forth the rules governing signage at the gaming tables. Finally, § 521.9 requires certificate holders to make the rules of each table game offered available to the public and to develop a gaming guide which summarizes the rules.

Chapter 528 sets forth the certification process for gaming related gaming service providers. These individuals or entities provide new games or wagers, game variations or similar innovations for which they have received or applied for a patent. Since they do not meet

the definition of a manufacturer or supplier, the Board is creating a category of gaming service providers for these individuals and entities.

Included in this Chapter are provisions relating to: who will be considered to be a gaming related gaming service provider; the application and renewal process; the qualification process for key individuals who own or are employed by the gaming related gaming service provider; gaming related gaming service provider responsibilities; the gaming related gaming service provider list; permission to conduct business prior to certification; requirements related to using a gaming related gaming service provider; and certificate holders' duty to investigate.

Chapter 539 contains the rules governing the play of Sic Bo, a game that uses three dice and an electronic layout which contains various combinations of the results that can occur when the dice are rolled. The provisions in this chapter address: physical characteristics of Sic Bo tables, dice and other related equipment; the permissible wagers; the opening of Sic Bo tables and procedures for completion of each round of play; payment and collection of wagers; and how irregularities in play are to be handled.

Affected Parties

Slot machine licensees who elect to become certificate holders will be required to post minimum and maximum wagering limits at each gaming table, make the rules of each table game offered available to the public and develop a gaming guide which summarizes the rules. They will also have to hire and train dealers for the table games they wish to offer and purchase the equipment necessary to conduct the table games.

Individuals who want to become gaming related gaming services providers will have to complete a certification application and pay the applicable fees.

The Board does not anticipate that it will receive many gaming related gaming service provider applications and any applications it does receive will be reviewed by existing Bureau of Licensing staff. The Board will experience increased regulatory demands resulting from the implementation of table games. The most significant increases will be the hiring of additional casino compliance agents to oversee the operation of the table games at the licensed facilities and increased number of license and occupation permit applications that will have to be processed by the Bureau of Licensing.

Fiscal Impact

Commonwealth

The Board expects that it will experience increased costs related to adding additional staff at the licensed facilities and at its offices to handle the increased licensing and oversight requirements that will result from the introduction of table games. Because the Board is just starting to receive petitions from slot machine licensees seeking permission to conduct table games, the extent of these additional costs are not known. However, the Board does not expect these increased costs to exceed the additional funding provided to the Board under Act 1.

Political Subdivisions

This rulemaking will have no direct fiscal impact on political subdivisions of this Commonwealth. Eventually, host Municipalities and Counties will benefit from the local share funding that is mandated by Act 1.

Private Sector

This rulemaking will result in additional costs for slot machine licensees who elect to become certificate holders. More specifically, certificate holders will experience minor costs associated with the signage requirements for gaming tables and the production costs associated with the gaming guides. However the Board does not expect these costs to be significant. Certificate holders will also be required to pay a table games licensing fee, purchase equipment to conduct the table games they elect to offer and to hire and train employees to operate table games. While these costs will be significant, they will be offset by the revenues generated from the table games.

General Public

This rulemaking will have no direct fiscal impact on the general public.

Paperwork Requirements

This rulemaking will require certificate holders to: post signs at gaming tables; have complete sets of rules for all the games they offer available for public inspection; produce a gaming guide summarizing the rules of the games they offer; and file Rules Submissions for each table game they elect to offer. The Rules Submissions may take the form of standardized checklists for each game and should be relatively simple to fill out.

Effective Date

This temporary rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Public Comments

While this rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-114.

Contact Person

The contact person for questions about this rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under 4 Pa.C.S. § 1303A, the Board is authorized to adopt temporary regulations which are not subject to the provisions of: sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240), referred to as the Commonwealth Documents Law (CDL); the Regulatory Review Act (71 P. S. §§ 745.1—745.12); and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P. S. §§ 732-204(b) and 732-301(10)). These temporary regulations shall expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 1303A, the temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the CDL and sections 204(b) and 301(10) of the Commonwealth Attorney Act.

(2) The adoption of the temporary regulations is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(1) The regulations of the Board, 58 Pa. Code Chapters 521, 528 and 539, are amended by amending § 521.4 and adding §§ 521.6—521.9, 528.1—528.9 and 539.1—539.7 to read as set forth in Annex A.

(2) The temporary regulations are effective April 3, 2010.

(3) The temporary regulations will be posted on the Board's web site and published in the *Pennsylvania Bulletin*.

(4) The temporary regulations shall be subject to amendment as deemed necessary by the Board.

(5) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

GREGORY C. FAJT,
Chairperson

Fiscal Note: 125-114. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 521. GENERAL PROVISIONS

§ 521.4. Request to offer a new table game or new feature for an existing table game.

A certificate holder that desires to offer a new table game that is not in this subpart or offer a new wager or feature as part of a table game included in this subpart, shall file a written request with the Board's Executive Director. The request, at a minimum, must contain:

(1) A detailed description of the table game or feature including the rules of play and wagering that would be used for the new table game or feature. In addition, for table games, the certificate holder shall:

(i) Indicate whether the game is a variation of an authorized game, a composite of authorized games, or a new game.

(ii) Provide the true odds, the payout odds, and the house advantage for each wager.

(iii) Provide a sketch or picture of the game layout, if any.

(iv) Provide sketches or pictures of the equipment used to play the game.

(2) The reason why the new table game or feature is being proposed.

(3) A list of other gaming jurisdictions where the new table game or feature is currently being offered.

(4) Whether the game, its name, or any of the equipment used to play the game is covered by any copyrights, trademarks or patents, either issued or pending.

§ 521.6. Electronic, electrical and mechanical devices prohibited.

Except as specifically permitted by the Board, a person may not possess with the intent to use, or actually use, at

any table game, either by himself or in concert with others, any calculator, computer, or other electronic, electrical or mechanical device to assist in projecting an outcome at any table game or in keeping track of or analyzing the cards having been dealt, the changing probabilities of any table game, or the playing strategies to be utilized.

§ 521.7. Minimum and maximum wagers; additional wagering requirements.

(a) Certificate holders shall establish minimum and maximum wagers for any authorized table game in a licensed facility.

(b) A certificate holder shall provide notice of the minimum and maximum wagers in effect at each gaming table, and any changes thereto, in accordance with § 521.8 (relating to rules of the games; notice).

(c) Any wager accepted by a dealer that exceeds the current table maximum or is lower than the current table minimum shall be paid or lost in its entirety in accordance with the rules of the game.

(d) Nothing in this section precludes a certificate holder from establishing additional wagering requirements that are consistent with the rules of the game, such as a requirement that wagers be made in specified increments, provided that the wagering requirements are specified in the rules of the game or in the certificate holder's Rule Submission under § 521.2 (relating to table games Rules Submissions).

§ 521.8. Rules of the games; notice.

(a) Whenever a certificate holder is required by regulation to provide notice of the rules under which a particular table game will be operated, the certificate holder shall post a sign at the gaming table advising patrons of the rules in effect at that table.

(b) Except as provided in subsection (c), a certificate holder may not change the rules under which a particular table game is being operated unless the certificate holder files and receives approval of an amendment to its Rules Submission under § 521.2 (relating to table games Rules Submissions).

(c) A certificate holder may change the permissible minimum or maximum wager at a table game:

(1) At any time, if no patrons are playing at the table.

(2) Where patrons are playing the game, if the certificate holder:

(i) Provides at least a 30 minute advance notice of the change.

(ii) Posts a sign at the gaming table advising patrons of the change and the time that it will go into effect.

(iii) Announces the change to patrons who are at the table.

(d) The location, size and language of each sign required by this section shall be submitted to and approved by the Bureau of Gaming Operations prior to its use.

§ 521.9. Patron access to the rules of the games; gaming guides.

(a) Each certificate holder shall maintain, at its security podium or other location approved by the Bureau of Gaming Operations, a printed copy of the complete text of the rules of all authorized games. This information shall be made available to the public for inspection upon request.

(b) Each certificate holder shall make available to patrons upon request a gaming guide which contains an abridged version of the information required to be made available under subsection (a) in a printed format.

(c) The gaming guide required by subsection (b) may not be issued, displayed or distributed by a certificate holder until a sample of the gaming guide has been submitted to and approved by the Bureau of Gaming Operations.

(d) Prior to issuing, distributing or displaying a gaming guide that is materially different from the approved gaming guide, a certificate holder shall submit and obtain approval from the Bureau of Gaming Operations of a sample of the revised gaming guide which contains the material changes.

(e) A certificate holder may display an approved gaming guide at any location in its licensed facility.

(f) Each certificate holder shall make the gaming guide required under subsection (b) available on its web site.

CHAPTER 528. GAMING RELATED GAMING SERVICE PROVIDERS

Sec.	
528.1.	General requirements.
528.2.	Gaming related gaming service provider certification applications.
528.3.	Qualification of individuals and entities.
528.4.	Certification term and renewal.
528.5.	Certified gaming related gaming service provider responsibilities.
528.6.	Gaming related gaming service provider list.
528.7.	Requirements for use of a gaming related gaming service provider.
528.8.	Permission to conduct business prior to certification.
528.9.	Certificate holders' duty to investigate.

§ 528.1. General requirements.

A person seeking to conduct business with a certificate holder shall apply to the Board for certification as a gaming related gaming service provider if the person:

(1) Provides a gaming related service that includes a new game or new wager, game variation, side bet or similar innovation relating to a table game that has been approved by the Board.

(2) Is the owner of a patent or has a patent pending for the new game or new wager, game variation, side bet or similar innovation.

(3) Is not required to be licensed as a manufacturer, supplier or manufacturer designee.

§ 528.2. Gaming related gaming service provider certification applications.

(a) A gaming related gaming service provider seeking certification shall complete and the certificate holder for whom the gaming related gaming service provider may be providing gaming related services shall submit:

(1) An original and one copy of a Gaming Related Gaming Service Provider Certification Application and Disclosure Information Form unless otherwise directed by the Board.

(2) The nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(3) Applications and release authorizations for each individual required to be qualified under § 528.3 (relating to qualification of individuals and entities).

(4) A written statement from a certificate holder, stating that the certificate holder may do business with the

gaming related gaming service provider for the purpose of utilizing the gaming related gaming service provider's gaming related service.

(b) In addition to the materials required under subsection (a), an applicant for a gaming related gaming service provider certification shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421a and 423a (relating to general provisions; and applications).

(c) A gaming related gaming service provider certification will not be issued until all fees and costs, including any Gaming Laboratory Operation costs incurred in the review of the proposed new game or new wager, game variation, side bet or similar innovation, have been paid.

§ 528.3. Qualification of individuals and entities.

(a) The following individuals shall be required to submit a Pennsylvania Personal History Disclosure Form and be found qualified by the Board:

(1) Each officer and director of a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification. For the purposes of this paragraph, the term "officer" means a president, chief executive officer, a chief financial officer and a chief operating officer and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

(2) Each individual who has a direct or indirect ownership or beneficial interest of 10% or more in the certified gaming related gaming service provider or applicant for gaming related gaming service provider certification. A certified gaming related gaming service provider or applicant for gaming related gaming service provider certification shall provide information or documentation requested by the Board necessary to determine compliance with this paragraph.

(3) Each salesperson of a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification who solicits or will be soliciting business from, or has regular contact with, any representatives of a certificate holder.

(b) Each entity that directly owns 20% or more of the voting securities of a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification shall be required to file a Gaming Service Provider Certification Form-Private Holding Company with the Board and be found qualified by the Board.

(c) The following persons may be required to submit a Gaming Service Provider Certification Form-Private Holding Company or a Pennsylvania Personal History Disclosure Form and be found qualified by the Board if the Board determines that the qualification of the person is necessary to protect the public interest or to enhance the integrity of gaming in this Commonwealth:

(1) An intermediary or holding company of a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification not otherwise required to be qualified.

(2) An officer or director of an intermediary or holding company of a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification.

(3) An employee of a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification.

(4) A person who holds any direct or indirect ownership or beneficial interest in a certified gaming related gaming service provider or applicant for gaming related gaming service provider certification, or has the right to any profits or distribution, directly or indirectly, from the certified gaming related gaming service provider or applicant for gaming related gaming service provider certification.

(5) A trustee of a trust that is required to be found qualified under this section.

(d) The Bureau of Licensing may issue a temporary credential to an individual who is required to be qualified by the Board under this section if:

(1) The individual's presence in the licensed facility is needed.

(2) The company with which the individual is associated is on the Authorized Gaming Service Provider List.

(e) The Bureau of Licensing will issue a permanent credential to an individual who has been found to be qualified under this section if the gaming related gaming service provider has been certified.

§ 528.4. Certification term and renewal.

(a) Gaming related gaming service provider certifications, and renewals issued under this chapter shall be valid for 4 years from the date of Board approval.

(b) A certified gaming related gaming service provider shall submit to the Board a completed renewal application and renewal fee at least 60 days prior to the expiration of a certification.

(c) A certification for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the certification that the Board has approved or denied the certification.

§ 528.5. Certified gaming related gaming service provider responsibilities.

A holder of a gaming related gaming service provider certification shall have a continuing duty to:

(1) Provide information requested by the Board relating to licensing or regulation; cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions; and comply with conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(2) Report a change in circumstances that may render the holder of a gaming related gaming service provider certification ineligible, unqualified or unsuitable to hold a certification under the standards and requirements of the act and of this part.

§ 528.6. Gaming related gaming service provider list.

The Board will maintain a list of gaming related gaming service providers who are certified and have had their gaming related service approved by the Bureau of Gaming Laboratory Operations.

§ 528.7. Requirements for use of a gaming related gaming service provider.

Prior to use of a gaming related service by a certificate holder the following must occur:

(1) The gaming related gaming service provider providing the gaming related service must submit its gaming related service to, and have it approved by, the Bureau of Gaming Laboratory Operations.

(2) The gaming related gaming service provider shall pay all Gaming Laboratory Operation costs incurred in the review of the proposed new game or new wager, game variation, side bet or similar innovation.

(3) The certificate holder shall make a written request to the Board's Executive Director and receive written approval for use of the new gaming related service in accordance with § 521.4 (relating to request to offer a new table game or new feature for an existing table game).

(4) The gaming related gaming service provider must be certified or have received written authorization from the Bureau of Licensing to conduct business prior to certification.

§ 528.8. Permission to conduct business prior to certification.

(a) Notwithstanding § 528.1 (relating to general requirements), the Bureau of Licensing may authorize an applicant for a gaming related gaming service provider certification to conduct business with a certificate holder prior to the certification of the gaming related gaming service provider applicant if the following criteria are met:

(1) A completed Gaming Related Gaming Service Provider Certification Application and Disclosure Information Form has been filed by the certificate holder in accordance with § 528.2 (relating to gaming related gaming service provider certification applications).

(2) The certificate holder certifies that it has performed due diligence on the gaming related gaming service provider.

(3) The applicant for gaming related gaming service provider certification agrees, in writing, that the grant of permission to conduct business prior to certification does not create a right to continue to conduct business and that the Bureau of Licensing may rescind, at any time, the authorization granted pursuant to this section, with or without prior notice to the applicant, if the Bureau of Licensing determines that the suitability of the applicant is at issue or the applicant fails to cooperate in the application process.

(4) The gaming related gaming service provider and the certificate holder have satisfied the requirements in § 538.7 (relating to requirements for use of a gaming service provider).

(b) If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to an applicant for gaming related gaming service provider certification, the Bureau of Licensing may rescind the permission granted to the applicant for gaming related gaming service provider certification to conduct business with a certificate holder under subsection (a). If the permission is rescinded, the applicant for gaming related gaming service provider certification shall cease conducting business with the certificate holder by the date specified in the notice of the rescission by the Bureau of Licensing under subsection (c).

(c) The Bureau of Licensing will notify the applicant for gaming related gaming service provider certification and the certificate holder by registered mail that permission for the applicant for gaming related gaming service

provider certification to conduct business with the certificate holder under subsection (a) has been rescinded and that the certificate holder shall cease conducting business with the applicant for gaming related gaming service provider certification by the date specified in the notice.

§ 528.9. Certificate holders' duty to investigate.

(a) A certificate holder shall investigate the background and qualifications of the applicants for gaming related gaming service provider certification with whom it intends to have a contractual relationship or enter into an agreement.

(b) A certificate holder shall have an affirmative duty to avoid agreements or relationships with persons applying for gaming related gaming service provider certification whose background or association is injurious to the public health, safety, morals, good order and general welfare of the people of this Commonwealth, or who threaten the integrity of gaming in this Commonwealth.

(c) A certificate holder shall have a duty to inform the Board of an action by an applicant for or holder of a gaming related gaming service provider certification which the certificate holder believes would constitute a violation of the act or this part.

CHAPTER 539. SIC BO

Sec.	
539.1.	Sic Bo table; Sic Bo shaker; physical characteristics.
539.2.	Dice; number of dice.
539.3.	Permissible wagers.
539.4.	Placement of wagers.
539.5.	Procedures for opening and dealing the game.
539.6.	Payout odds.
539.7.	Irregularities.

§ 539.1. Sic Bo table; Sic Bo shaker; physical characteristics.

(a) Each Sic Bo table must have a drop box and tip box attached to the table on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations.

(b) Each Sic Bo table must have an electrical device, approved by the Bureau of Gaming Laboratory Operations, where the numeric value of each die will be entered by the dealer and an area that depicts all permissible wagers under § 539.3 (relating to permissible wagers) and which causes the winning combinations to be illuminated after the numeric value of each die has been entered by the dealer.

(c) The layout for a Sic Bo table shall be approved by the Bureau of Gaming Operations and contain, at a minimum:

(1) The name or logo of the certificate holder.

(2) Specific areas designated for the placement of the wagers authorized by § 539.3.

(3) The payout odds currently being offered in accordance with § 539.6 (relating to payout odds).

(d) Sic Bo shall be played with a Sic Bo shaker approved by the Bureau of Gaming Operations, which shall be used to shake the dice to arrive at the winning combinations.

(1) A manual Sic Bo shaker shall be designed and constructed to maintain the integrity of the game and must, at a minimum, adhere to the following specifications:

(i) The Sic Bo shaker must have a compartment to secure the three dice and a separate cover which conceals the dice while the dealer is shaking the Sic Bo shaker.

The compartment to secure the three dice must be transparent and the cover which conceals the dice must be opaque.

(ii) The Sic Bo shaker must have the capability of being sealed or locked to ensure the integrity of the dice contained inside the Sic Bo shaker.

(iii) The Sic Bo shaker must have the name or logo of the certificate holder imprinted or impressed thereon.

(2) An automated Sic Bo shaker, approved by the Bureau of Gaming Laboratory Operations, may be used in the game of Sic Bo, provided that:

(i) The shaker meets the requirements of paragraph (1), except that a separate opaque cover may not be used.

(ii) The shaker, its location on the Sic Bo table and the procedures for shaking the dice are submitted to and approved by the Bureau of Gaming Operations.

(f) The Sic Bo shaker shall be the responsibility of the dealer and may never be left unattended while at the table.

§ 539.2. Dice; number of dice.

(a) Sic Bo shall be played with three dice, which shall be kept inside the Sic Bo shaker while at the Sic Bo table.

(b) The dice that have been placed in a Sic Bo shaker for use in gaming may not be used for the play of the game for more than 24 hours.

§ 539.3. Permissible wagers.

The following are the permissible wagers for the game of Sic Bo:

(1) *Three of a Kind.* A wager which wins if the same number is showing on all three dice and the player selected that number to appear on all three dice.

(2) *Two of a Kind.* A wager which wins if the same number is showing on two of the three dice and the player selected that number to appear on two out of the three dice.

(3) *Any Three of a Kind.* A wager which wins if the numeric value on all three dice is the same and the player wagered that any of the numbers 1 through 6 would appear on all of the three dice.

(4) *Total Value Bet.* A wager which wins if the numeric total of all three dice equals the total of the number wagered.

(5) *Two Dice Combination.* A wager which wins when the player wagered that a combination of two specific but different numeric values would appear on at least two of the dice and the two numeric values chosen are showing.

(6) *Small Bet.* A wager which wins if the numeric total of all three dice equals any one of the following totals: 4, 5, 6, 7, 8, 9 or 10 and loses if any other numeric total is shown or if a three of a kind appears.

(7) *Big Bet.* A wager which wins if the numeric total of all three dice equals any one of the following totals: 11, 12, 13, 14, 15, 16 or 17 and loses if any other numeric total is shown or if a three of a kind appears.

(8) *One of a Kind.* A wager which wins if one or more of the three dice shows a numeric value equal to the number wagered.

§ 539.4. Placement of wagers.

(a) Wagers at Sic Bo shall be made by placing gaming chips or plaques on the appropriate areas of the Sic Bo

layout. Verbal wagers accompanied by cash may not be accepted at the game of Sic Bo.

(b) Each player shall be responsible for the correct positioning of his wagers on the Sic Bo layout regardless of whether the player is assisted by the dealer. Each player shall ensure that any instructions given to the dealer regarding the placement of wagers are correctly carried out.

(c) Each wager shall be settled strictly in accordance with its position on the layout when the dice come to rest and the numeric value showing on each die has been entered into the electrical device and illuminated at the table.

§ 539.5. Procedures for opening and dealing the game.

(a) Prior to opening the Sic Bo table for gaming activity, the floorperson assigned to the Sic Bo table shall inspect the following items to ensure that each is in proper working order:

(1) The electrical device which causes the winning combinations to be illuminated when the numeric value of each die has been entered by the dealer and the area of the Sic Bo table which depicts all permissible wagers under § 539.3 (relating to permissible wagers). At a minimum, the inspection shall be completed by entering three numeric values into the electrical device and verifying that all winning combinations are properly illuminated.

(2) The automated dice shaker, if one is in use. At a minimum, the inspection shall be completed by operating the device three times and verifying that the dice are being properly tossed.

(b) Prior to shaking the manual Sic Bo shaker or activating the automated dice shaker, the dealer shall announce "no more bets."

(c) Once "no more bets" has been announced, the dealer shall either:

(1) Place the cover on the manual Sic Bo shaker, and shake the Sic Bo shaker at least three times so as to cause a random mixture of the dice.

(2) Activate the automated dice shaker to cause a random mixture of the dice.

(d) The dealer shall then remove the cover from the manual Sic Bo shaker, announce the numeric value of each die and enter the numeric value of each die into the electrical device on the table. The electrical device shall then cause the winning combinations to be illuminated on the Sic Bo layout.

(e) After the winning combinations have been illuminated, the dealer shall first collect all losing wagers and then pay off all winning wagers at the odds currently being offered in accordance with § 539.6 (relating to payout odds). A manual Sic Bo shaker shall remain uncovered until all winning wagers have been paid. An automated Sic Bo dice shaker shall remain uncovered at all times.

(f) After losing wagers have been collected and winning wagers paid, the dealer shall clear the previously illuminated winning combinations from the table.

§ 539.6. Payout odds.

(a) Payout odds on the layout or in any brochure or other publication distributed by a certificate holder shall be stated through the use of the word "to" and no odds may be stated through the use of the word "for."

(b) Each certificate holder shall pay off winning wagers at the game of Sic Bo at the odds contained in the certificate holder's Rules Submission under § 521.2 (relating to table games Rules Submissions) which shall be no less than the odds listed below:

<i>Wager</i>	<i>Payout Odds</i>
Three of a Kind	150 to 1
Two of a Kind	8 to 1
Any Three of a Kind	24 to 1
Total Value Bet of 4	50 to 1
Total Value Bet of 5	18 to 1
Total Value Bet of 6	14 to 1
Total Value Bet of 7	12 to 1
Total Value Bet of 8	8 to 1
Total Value Bet of 9	6 to 1
Total Value Bet of 10	6 to 1
Total Value Bet of 11	6 to 1
Total Value Bet of 12	6 to 1
Total Value of Bet 13	8 to 1
Total Value of Bet 14	12 to 1
Total Value of Bet 15	14 to 1
Total Value Bet of 16	18 to 1
Total Value Bet of 17	50 to 1
Any Two Dice Combination	5 to 1
Small Bet	1 to 1
Big Bet	1 to 1

(c) One of a Kind shall be paid at:

(1) 1 to 1, if only one of the dice show the numeric value upon which the wager was placed.

(2) 2 to 1, if two of the dice show the numeric value upon which the wager was placed.

(3) 3 to 1, if all three dice show the numeric value upon which the wager was placed.

§ 539.7. Irregularities.

(a) If all three dice do not land flat on the bottom of the Sic Bo shaker after being tossed, the dealer shall call a "no roll" and all wagers placed shall be returned to the players.

(b) If the electrical device which causes the winning combinations to be illuminated when the numeric value of each die has been entered by the dealer or the area of the Sic Bo table which depicts all permissible wagers under § 539.3 (relating to permissible wagers) malfunctions after the manual Sic Bo shaker has been uncovered or the automated Sic Bo dice shaker has tossed the dice, the dealer shall, in the presence of a floorperson or above, collect losing wagers and pay winning wagers. Once the wagers on the layout have been settled, all gaming at the Sic Bo table shall cease until the electrical device which causes the winning combinations to be illuminated when the numeric value of each die has been entered by the dealer or the area of the Sic Bo table which depicts all permissible wagers under § 539.3 has been fixed.

(c) If the automated Sic Bo shaker fails to operate or malfunctions when activated, the round of play shall be void and wagers placed shall be returned to the players.

(d) An automated Sic Bo shaker shall be removed from a Sic Bo table before a manual Sic Bo shaker may be utilized at that table.

[Pa.B. Doc. No. 10-591. Filed for public inspection April 2, 2010, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 53]

Clothing

The Department of Revenue (Department), under section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), has amended 61 Pa. Code Chapter 53. "Wearing Apparel," by renaming the chapter "Clothing," amending definitions, conforming the regulation to the statute, clarifying examples and the scope in § 53.1 (relating to clothing) to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

This final-form rulemaking will conform to Pennsylvania law and avoid any confusion for taxpayers paying Sales and Use Taxes. In addition, the rulemaking codifies legislative changes relating to clothing patterns that were set forth in Act 23-2000 (See section 204(26) of the TRC 72 P. S. § 7204(26)).

Explanation of Regulatory Requirements

The major reason for this amendment is to bring the regulation into conformity with the statute. The current definition of "wearing apparel" in § 53.1(a)(7) when read in conjunction with § 53.1(b)(3) would appear to exempt from Sales and Use Tax the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and clothing. The statute in section 201(k)(4) and (o)(4) of the TRC (72 P. S. § 7201(k)(4) and (o)(4)) excludes from the definition of "sale at retail" and "use" the repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning of only wearing apparel or shoes. Although "wearing apparel" is not defined in the TRC, it is referred to in section 7204(26) of the TRC as a subset of clothing. That section provides an exemption from tax for "all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing . . . but all accessories, ornamental wear, formal day or evening apparel, and articles made of fur . . . and sporting goods and clothing not normally used or worn when not engaged in sports shall not be excluded from tax." This language clearly indicates that wearing apparel is clothing since wearing apparel is followed by "and other articles of clothing." The language also indicates that accessories, ornamental wear, formal day or evening apparel, fur articles, sporting goods and sporting clothing are not clothing or wearing apparel and the sale or use of these items are taxable.

To bring the regulation into conformity with the statute, the "definitions" in § 53.1(a) have been amended. "Clothing" has been enhanced to mirror language in the statute in section 204(26) of the TRC. The definition for "wearing apparel" has been deleted.

The "scope" subsection has been amended in § 53.1(b) to remove language and insert clarifying language that mirrors language in the statute in sections 7201(k)(4) and (o)(4) and 7204(26) of the TRC. Language has been added

in § 53.1(c) to clarify examples of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing. The word “wearing apparel” has been deleted from this subsection.

In subsection (d), the word “patterns” has been deleted to mirror the statute as a result of Act 23-2000.

Affected Parties

Taxpayers in this Commonwealth paying Sales and Use Tax may be affected by the regulation although it is believed that the repairers, alters, and the like, of accessories, ornamental wear, and the like, have been charging Sales Tax on these services.

Comment and Response Summary

Notice of proposed rulemaking was published at 39 Pa.B. 1209 (March 7, 2009). This proposed rulemaking is being adopted without amendments to read as set forth in Annex A.

The Department received one comment from the public during the public comment period. No comments were received from either the House Finance Committee or the Senate Finance Committee (Committees). The Independent Regulatory Review Commission (IRRC) submitted no comments on the proposed rulemaking.

No amendments have been made to the proposed rulemaking in response to the one public comment, as it was in support of the proposed rulemaking as published.

Fiscal Impact

The Department has determined that the final-form rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the final-form rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Department 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 20, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 1209, to IRRC and to the Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comment received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered the one comment from the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 24, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRCC, effective February 24, 2010.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 61 Pa. Code Chapter 53, are amended by amending § 53.1 to read as set forth in Annex A.

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

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

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

C. DANIEL HASSELL,
Acting Secretary

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 1471 (March 13, 2010).)

Fiscal Note: Fiscal Note 15-446(F) remains valid for the final adoption of the subject regulation.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 53. CLOTHING

§ 53.1. Clothing.

(a) *Definitions.* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Accessories—Articles, other than clothing, which are designed to be worn on or about the human body.

Clothing—Articles, including vesture, wearing apparel, raiments, garments or shoes, which are designed to cover the human body as ordinary or everyday wear.

Formal day or evening apparel—Articles worn or carried on or about the human body which are designed for formal functions and not normally worn except while attending a formal function.

Fur articles—Articles worn or carried on or about the human body which are made of:

(i) Fur on the hide or pelt.

(ii) Material imitative of fur.

(iii) Combination of fur, real, imitative or synthetic, and other material provided the fur, real, imitative or synthetic, is more than three times the value of the next most valuable material.

Ornamental wear—Articles, other than clothing, which are designed and normally worn for decorative purposes.

Sporting goods and sporting clothing—Articles worn or carried on or about the human body which are designed for sporting activity and not normally worn except while engaged in sports.

(b) *Scope.* This section applies to the following transactions:

(1) The sale or use of clothing is not subject to tax.

(2) The sale or use of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing shall be subject to tax unless the purchaser is entitled to claim an exemption under the law.

(3) A charge for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning shoes of any type or clothing is not subject to tax with the exception of the imprinting or printing of clothing belonging to others.

(4) A charge for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning accessories, ornamental wear, formal day or evening apparel, fur articles or sporting goods and sporting clothing, except for shoes of any type shall be subject to tax unless the purchaser is entitled to claim an exemption under the law.

(c) *Examples.* The following are examples of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing:

(1) *Accessories* Accessories include the following:

- (i) Handbags, pocket books and purses.
- (ii) Wallets and billfolds.
- (iii) Umbrellas.
- (iv) Jewelry, including jewelry with religious symbols, pins, cufflinks, and the like.
- (v) Earring backs and covered buttons for making earrings and brooches.
- (vi) Hair nets, hairpins, barrettes, curlers, hair clips, chignons and bandeaus.
- (vii) Wigs and toupees.

(2) *Formal men's day and evening apparel.* Formal men's day and evening apparel includes the following:

- (i) Tuxedos.
- (ii) Dinner jackets.
- (iii) Tail coats.
- (iv) Cummerbunds.
- (v) Striped formal trousers.
- (vi) Opera capes.
- (vii) Formal vests.
- (viii) Cutaway coats.
- (ix) Formal ties including ascots.
- (x) White leather and silk gloves.
- (xi) White formal suspenders.
- (xii) Wing collars.
- (xiii) Silk hats.
- (iv) Opera hats.
- (xv) Derby hats.

(3) *Formal women's day and evening apparel.* Formal women's day and evening apparel includes the following:

- (i) Headpieces of the tiara type.
- (ii) Kid or suede gloves, 16 button type.
- (iii) Shoes for formal wear such as metallic cloth, brocade and satin.
- (iv) Bridal apparel.
- (4) *Sporting goods and sporting clothing.* Sporting goods and sporting clothing includes the following:
 - (i) Athletic supporters.
 - (ii) Team or individual uniforms, for example: football, baseball, basketball, hockey and soccer.
 - (iii) Shoes designed for particular sports, for example: football, baseball, soccer and track spikes; motorcross boots; ski boots; ice skates; wrestling shoes; swim fins; golf shoes; and bowling shoes.
 - (iv) Uniform socks, single-strap-under-a-foot-type.
 - (v) Weightlifting belts.
 - (vi) Protective equipment, for example: shoulder, knee, thigh, elbow, forearm, hand and rib pads used in football and other contact sports; mouthpieces; football and other sports helmets; cups for athletic supporters; and boxing headgear.
 - (vii) Gloves, for example: baseball, handball, hockey, batting and golf.
 - (viii) Hunting and fishing accessories, ammunition belts, hip waders and fly vests.
 - (ix) Bathing suits and caps.

(5) *Fur articles.* Fur articles include the following:

- (i) Articles made of rabbit fur dyed to resemble mink.
- (ii) Articles made of sheepskin with wool or hair attached thereto.
- (iii) Articles made of fabrics made with vegetable, mineral or synthetic fibers which resemble fur in appearance.
- (iv) Articles made of woven animal hair or wool which resembles fur in appearance.
- (v) Articles with fur trim if the value of the fur trim is three times the value of the next most valuable component part.

(6) *Ornamental wear.* Ornamental wear includes the following:

- (i) Costumes.
- (ii) Corsages.
- (iii) Hats, sashes, emblems, insignias, medallions, and the like, designed and normally worn in conjunction with club, organization, fraternity and similar ceremonies.

(d) *Materials to be incorporated in clothing.* The sale of items such as fabrics, thread, knitting yarn, buttons, snaps and zippers, to be incorporated into clothing is not subject to tax. The sale of property such as needles, dress forms, scissors and thimbles, is subject to tax unless the purchaser is engaged in the business of manufacturing or of purchasing the items for resale.

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