

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 129 ]

### Large Appliance and Metal Furniture Surface Coating Processes

The Environmental Quality Board (Board) proposes to amend Chapter 129 (relating to standards for sources) to read as set forth in Annex A.

The proposed rulemaking would amend Chapter 129 to limit emissions of volatile organic compounds (VOCs) from the use and application of coatings and cleaning materials in large appliance and metal furniture surface coating processes. The proposal would add § 129.52a (relating to control of VOC emissions from large appliance and metal furniture surface coating processes) and amend §§ 129.51 and 129.52 (relating to general; and surface coating processes).

This proposal was adopted by the Board at its meeting on November 17, 2009.

#### A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### B. *Contact Persons*

For further information, contact Arleen J. Shulman, Chief, Division of Air Resource Management, P. O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 772-3436, or Kristen Campfield Furlan, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. 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 at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (Select Public Participation).

#### C. *Statutory Authority*

This proposed rulemaking is authorized under section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005), which in subsection (a)(1) grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth, and which in subsection (a)(8) grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA).

#### D. *Background and Purpose*

The purpose of this proposed rulemaking is to reduce VOC emissions from large appliance and metal furniture surface coating operations. VOCs are a precursor for ozone formation. Ground-level ozone is not emitted directly by surface coatings to the atmosphere, but is formed by a photochemical reaction between VOCs and nitrogen oxides (NOx) in the presence of sunlight. The proposed rulemaking adopts the emission limits and other requirements of the United States Environmental Protection Agency's (EPA's) 2007 Control Techniques Guidelines (CTGs) for large appliance coatings and metal furniture coatings in order to meet Federal CAA requirements.

The EPA is responsible for establishing National Ambient Air Quality Standards (NAAQS) for six criteria pollutants considered harmful to public health and the environment: ozone, particulate matter, NOx, carbon monoxide, sulfur dioxide and lead. The CAA established two types of NAAQS: primary standards, limits set to protect public health; and secondary standards, limits set to protect public welfare, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. The EPA has established primary and secondary ozone NAAQS to protect public health and welfare.

When ground-level ozone is present in concentrations in excess of the Federal health-based 8-hour NAAQS for ozone, public health and welfare are adversely affected. Ozone exposure correlates to increased respiratory disease and higher mortality rates. Ozone can inflame and damage the lining of the lungs. Within a few days, the damaged cells are shed and replaced. Over a long time period, lung tissue may become permanently scarred, resulting in permanent loss of lung function and a lower quality of life. When ambient ozone levels are high, more people with asthma have attacks that require a doctor's attention or use of medication. Ozone also makes people more sensitive to allergens including pet dander, pollen and dust mites, all of which can trigger asthma attacks.

The EPA has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments including asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. High levels of ozone also affect animals in ways similar to humans.

In addition to causing adverse human and animal health effects, the EPA has concluded that ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields by destroying chlorophyll; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests and other environmental stresses, including harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas. Through deposition, ground-level ozone also contributes to pollution in the Chesapeake Bay. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production and visible injury to some leaf crops, including lettuce, spinach and tobacco, as well as visible injury to ornamental plants, including grass, flowers and shrubs. Other types of welfare loss may not be quantifiable, such as the reduced aesthetic value of trees growing in heavily visited parks.

High levels of ground-level ozone can also cause damage to buildings and synthetic fibers, including nylon, and reduced visibility on roadways and in natural areas. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health and welfare, animal and plant health and welfare and the environment.

In July 1997, the EPA established primary and secondary ozone standards at a level of 0.08 parts per million (ppm) averaged over 8 hours. See 62 FR 38855 (July 18, 1997). In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS see 69 FR 2385 at p. 2393 (April 30, 2004). The areas in which the 1997 standard has been attained are required to have permanent and enforceable control measures to ensure violations do not occur for the next decade. The Commonwealth must demonstrate that the two areas currently not attaining the 1997 standard will meet the 1997 standard as expeditiously as practicable. If these two areas do not attain the standard during the 2009 ozone season, additional reductions will be required.

In March 2008, the EPA lowered the standards to 0.075 ppm averaged over 8 hours to provide even greater protection for children, other at-risk populations and the environment against the array of ozone-induced adverse health and welfare effects. See 73 FR 16436 (March 27, 2008). The EPA is reconsidering the March 2008 ozone NAAQS and on January 7, 2010 announced a proposal to set a more protective 8-hour ozone standard between 0.060 and 0.070 ppm. The final revised ozone NAAQS is expected in August 2010.

There are no Federal statutory or regulatory limits for VOC emissions from large appliance and metal furniture surface coating operations. State regulations to control VOC emissions from large appliance and metal furniture surface coating operations are required under Federal law, however, and will be reviewed by the EPA for whether they meet the "reasonably available control technology" (RACT) requirements of the CAA and its implementing regulations. *Consumer and Commercial Products; Control Techniques Guidelines in lieu of Regulations for Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings*, 72 FR 57215, 57218 (October 9, 2007).

Section 172(c)(1) of the CAA provides that State Implementation Plans (SIPs) for nonattainment areas must include "reasonably available control measures," including RACT, for sources of emissions. 42 U.S.C.A. § 7502(c)(1). Section 182(b)(2) of the CAA provides that for moderate ozone nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued by the EPA prior to the area's date of attainment. 42 U.S.C.A. § 7511a(b)(2). More importantly, section 184(b)(1)(B) of the CAA requires that states in the Ozone Transport Region (OTR), including the Commonwealth, submit a SIP revision requiring implementation of RACT for all sources of VOC emissions in the state covered by a specific CTG. 42 U.S.C.A. § 7511c(b)(1)(B).

Section 183(e) of the CAA directs the EPA to list for regulation those categories of products that account for at least 80% of the VOC emissions from consumer and commercial products in ozone nonattainment areas. 42 U.S.C.A. § 7511b(e). Section 183(e)(3)(C) of the CAA further provides that the EPA may issue a CTG in place of a National regulation for a product category where the EPA determines that the CTG will be "substantially as effective as regulations" in reducing emissions of VOC in ozone nonattainment areas. 42 U.S.C.A. § 7511b(e)(3)(C).

In 1995, the EPA listed large appliance coatings and metal furniture coatings on its section 183(e) list and, in 2007, issued CTGs for these two product categories. See 60 FR 15264 (March 23, 1995) and 72 FR 57215 (October 9, 2007). In the 2007 notice, the EPA determined that the

CTGs would be substantially as effective as National regulations in reducing VOC emissions from these product categories in ozone nonattainment areas. 72 FR at p. 57220.

The CTG provides states with the EPA's recommendation of what constitutes RACT for the covered category. States can use the recommendations provided in the CTG to inform their own determination as to what constitutes RACT for VOC emissions from the covered category. State air pollution control agencies are free to implement other technically sound approaches that are consistent with the CAA requirements and the EPA's implementing regulations or guidelines.

The Department has reviewed the recommendations included in the 2007 CTGs for large appliance and metal furniture coatings for their applicability to the ozone reduction measures necessary for this Commonwealth. The Department has determined that the measures provided in the CTGs for large appliance and metal furniture coatings are appropriate to be implemented in this Commonwealth as RACT for this category.

This rulemaking, if adopted as a final rule, would assist in reducing VOC emissions locally as well as reducing the transport of VOC emissions and ground-level ozone to downwind states. Adoption of VOC emission requirements for large appliance and metal furniture surface coating operations is part of the Commonwealth's strategy, in concert with other OTR jurisdictions, to further reduce transport of VOC ozone precursors and ground-level ozone throughout the OTR to attain and maintain the 8-hour ozone NAAQS. The proposed rulemaking is required under the CAA and is reasonably necessary to attain and maintain the health-based 8-hour ozone NAAQS in this Commonwealth. When final, this rulemaking will be submitted to the EPA as a revision to the SIP.

The concepts of the proposed rulemaking were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its October 30 and December 11, 2008, meetings. The proposed rulemaking was discussed with the AQTAC on May 28, 2009. The AQTAC concurred with the Department's recommendation to present the proposed amendments to the Board for approval for publication as a proposed rulemaking. The Department also consulted with the Citizens Advisory Council on July 21, 2009, and with the Small Business Compliance Advisory Committee on October 22, 2008, and April 22 and July 22, 2009.

#### E. Summary of Regulatory Requirements

The proposed rulemaking would amend § 129.51(a) to extend its coverage to large appliance and metal furniture surface coating processes covered by this proposed rulemaking, as well as to paper, film and foil surface coating processes and flat wood paneling surface coating processes, which are covered in parallel rulemakings. Section 129.51(a) provides an alternative method for owners and operators of facilities to achieve compliance with air emission limits.

The proposed rulemaking would amend § 129.52 by adding subsection (i). Section 129.52 specifies requirements and emission limits for various surface coating

processes. The amendment in this proposed rulemaking would clarify in new subsection (i) that the requirements and limits already specified in § 129.52 for metal furniture coatings, large appliance coatings and paper coatings are superseded by the requirements and limits that will be adopted in this proposed rulemaking and in the proposed rulemaking for paper, film and foil surface coating processes.

One emission limit is expressed in § 129.52 for large appliance coatings and one emission limit is expressed for metal furniture coatings, whereas in the CTGs separate emission limits are expressed for eight different coating types within each of these two categories. Several of the limits in the CTGs are more stringent and several are less stringent than the existing limits expressed in § 129.52. As is explained in the discussion, as follows, regarding Tables I and II (relating to emission limits of VOCs for large appliance surface coatings; and emission limits of VOCs for metal furniture surface coatings), the more stringent limits are adopted in this proposed rulemaking.

The proposed rulemaking would add § 129.52a to regulate VOC emissions from large appliance and metal furniture surface coating processes. The applicability of this new section is described in subsection (a), which establishes that § 129.52a applies to the owner and operator of a large appliance or metal furniture surface coating process if the total actual VOC emissions from all large appliance or metal furniture surface coating operations, including related cleaning activities, at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day or 2.7 tons (2,455 kilograms) per 12-month rolling period, before consideration of controls. The emission limits and other requirements of this section supersede the emission limits and other requirements of § 129.52. Basing the applicability on a 12-month rolling period is generally considered to be more stringent than basing it on a calendar year, as in § 129.52, but is consistent with the CTGs.

Proposed subsection (b) explains that the requirements of § 129.52a supersede the requirements of a RACT permit for VOC emissions from a large appliance or metal furniture surface coating operation already issued to the owner or operator of a source subject to § 129.52a, except to the extent the RACT permit contains more stringent requirements.

Proposed subsection (c) establishes VOC emission limits. Beginning January 1, 2011, a person may not cause or permit the emission into the outdoor atmosphere of VOCs from a large appliance or metal furniture surface coating process, unless: (1) the VOC content of each as applied coating is equal to or less than the limit specified in one of the two tables in § 129.52a; or (2) the overall weight of VOCs emitted to the atmosphere is reduced through the use of vapor recovery, incineration or another method that is acceptable under § 129.51(a). The second option also addresses the overall efficiency of a control system.

Proposed subsection (d) identifies daily records that must be kept to demonstrate compliance with § 129.52a, including records of parameters and VOC content of each coating, thinner, component and cleaning solvent, as supplied, and the VOC content of each as applied coating or cleaning solvent.

Proposed subsection (e) requires that the records be maintained for 2 years and submitted to the Department on request.

Under proposed subsection (f), an owner or operator subject to § 129.52a may not cause or permit the emis-

sion into the outdoor atmosphere of VOCs from the application of large appliance or metal furniture surface coatings, unless the coatings are applied using electrostatic coating, roller coating, flow coating, dip coating (including electrodeposition), high volume-low pressure (HVLP) spray, or brush coating. An owner or operator may use another coating application method if a request is submitted in writing that demonstrates that the method is capable of achieving a transfer efficiency equivalent to or better than that achieved by the other methods listed in subsection (f), and is approved in writing by the Department prior to use.

Proposed subsection (g) exempts stencil coatings, safety-indicating coatings, solid-film lubricants, electric-insulating coatings, thermal-conducting coatings, touch-up and repair coatings and coating applications using hand-held aerosol cans from the VOC coating content limits in Tables I and II of proposed § 129.52a. Subsection (g) also exempts a coating used exclusively for determining product quality and commercial acceptance and other small quantity coatings, if the quantity of coating used does not exceed 50 gallons per year for a single coating and a total of 200 gallons per year for all coatings combined for the facility and if the owner or operator of the facility requests, in writing, and the Department approves, in writing, the exemption prior to use of the coating.

Proposed subsection (h) establishes work practices that an owner or operator of a large appliance or metal furniture surface coating process subject to § 129.52a must comply with for coating-related activities.

Proposed subsection (i) establishes work practices that an owner or operator of a large appliance or metal furniture surface coating process subject to § 129.52a must comply with for cleaning materials.

Proposed Table I establishes emission limits for VOCs for eight types of large appliance surface coatings, expressed in weight of VOC per volume of coating solids (kilograms per liter (kg/l) or pounds per gallon (lb/gal)), as applied. Limits are prescribed for coatings that are baked and coatings that are air dried. The emission limits for the following coating types are taken from the large appliance coatings CTG: *Baked (kg/l and lb/gal)*—“General, one component” and “General, multi-component”; *Air Dried (kg/l)*—“General, one component”; and *Air Dried (lb/gal)*—“General, one component,” “General, multi-component” and “Extreme high gloss.” The emission limits for *Air Dried (kg/l)*—“General, multi-component” and “Extreme high gloss” are taken from both the CTG and the emission limit for “large appliance coatings” in § 129.52, as they are the same in both places. The remaining emission limits are taken from § 129.52 because the limit in § 129.52 is more stringent than the recommended limits in the CTG. Whenever the limit in § 129.52 is the same as or more stringent than the recommended limit in the CTG, the limit in § 129.52 is listed due to the CAA prohibition against backsliding from existing emission control requirements.

Proposed Table II establishes emission limits for VOCs for eight types of metal furniture surface coatings, expressed in weight of VOC per volume of coating solids (kg/l or lb/gal), as applied. Limits are prescribed for coatings that are baked and coatings that are air dried. The emission limits from the following coating types are taken from the metal furniture CTG: *Baked (kg/l and lb/gal)*—“General, one component” and “General, multi-component”; and *Air Dried (kg/l and lb/gal)*—“General, one component,” “General, multi-component” and “Ex-



tre high gloss.” The emission limits for *Baked (kg/l)*—“Extreme high gloss,” “Extreme performance,” “Heat resistant” and “Solar absorbent” are taken from both the CTG and the emission limit for “metal furniture coatings” in § 129.52, as they are the same in both places. The remaining emission limits are taken from § 129.52 because the limit in § 129.52 is more stringent than the recommended limits in the CTG. Whenever the limit in § 129.52 is the same as or more stringent than the recommended limit in the CTG, the limit in § 129.52 is listed due to the CAA prohibition against backsliding from existing emission control requirements.

#### F. *Benefits, Costs and Compliance*

##### *Benefits*

Implementation of the proposed control measure would benefit the health and welfare of the approximately 12 million humans, animals, crops, vegetation and natural areas of this Commonwealth by reducing emissions of VOCs, which are precursors to ground-level ozone air pollution. Although the proposed amendments are designed primarily to address ozone air quality, the reformulation or substitution of coating products to meet the VOC content limits applicable to users may also result in reduction of hazardous air pollutant (HAP) emissions, which are also a serious health threat.

The proposed rulemaking provides as one compliance option that coatings used on or applied to large appliance or metal furniture products manufactured in this Commonwealth meet specified limits for VOC content, usually through substitution of low VOC-content solvents or water for the high VOC-content solvents. The reduced levels of high VOC-content solvents would also benefit water quality through reduced loading on water treatment plants and in reduced quantities of high VOC-content solvents leaching into the ground. Owners and operators of affected large appliance and metal furniture coating process facilities may also reduce VOC emissions through the use of add-on controls, or a combination of complying coatings and add-on controls.

In this Commonwealth approximately four large appliance surface coating operations combine to emit an estimated total of 18.2 tons of VOCs per year; about 16 metal furniture surface coating operations combine to emit an estimated total of 50.33 tons of VOCs per year.

The EPA estimates that implementation of the recommended control options for large appliance coatings processes will result in approximately a 30% reduction in VOC emissions. The maximum anticipated additional annual VOC reductions from the large appliance surface coating facilities as a result of this rulemaking is approximately 5.5 tons (18.2 tons x 30%).

The EPA estimates that implementation of the recommended control options for metal furniture coatings processes will result in approximately a 35% reduction in VOC emissions. The maximum anticipated additional annual VOC reductions from the metal furniture surface coating facilities as a result of this rulemaking is approximately 17.6 tons (50.33 tons x 35%).

##### *Compliance Costs*

The costs of complying with the proposed amendments include the cost of using alternative product formulations, such as low-VOC or water-based coatings, and the cost of using add-on controls. The facility owner or operator would be given the flexibility to choose controls. Based on information provided by the EPA in the large appliance coating CTG, the cost effectiveness of reducing VOC

emissions from large appliance surface coating operations is estimated to be \$500 per ton of VOC reduced. This estimate is based on the use of low VOC-content coatings for control. The estimated annual costs for the owners or operators of the affected large appliance surface coating facilities in this Commonwealth, combined, is \$2,750 (5.5 tons VOC reduced x \$500 per ton reduced).

Similarly, based on information provided by the EPA in the metal furniture coating CTG, the cost effectiveness of reducing VOC emissions from metal furniture surface coating operations is estimated to be \$200 per ton of VOC reduced. This estimate is based on the use of low VOC-content coatings for control. The estimated annual costs for the owners or operators of the affected metal furniture coating facilities in this Commonwealth, combined, is \$3,520 (17.6 tons VOC reduced x \$200 per ton reduced).

The potential total annual costs to the regulated industry of \$2,750 for large appliance surface coating operations and \$3,520 for metal furniture surface coating operations are negligible compared to the improved health and environmental benefits that would be gained from this proposed rulemaking.

The implementation of the work practice requirements for cleaning materials is expected to result in a net cost savings. The recommended work practices should reduce the amount of cleaning materials used by reducing the amount of cleaning materials lost to evaporation, spillage and waste.

##### *Compliance Assistance Plan*

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department’s ongoing compliance assistance program.

##### *Paperwork Requirements*

The owners and operators of affected large appliance or metal furniture surface coating operations would be required to keep daily operational records of information for coatings and cleaning solvents sufficient to demonstrate compliance, including identification of materials, VOC content and volumes used. The records must be maintained for 2 years and submitted to the Department upon request. Persons claiming the small quantity exemption or use of exempt coating would be required to keep records demonstrating the validity of the exemption. Persons seeking to comply through the use of add-on controls would be required to meet the applicable reporting requirements specified in Chapter 139 (relating to sampling and testing).

##### G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposal has incorporated the following pollution prevention incentives:

The proposed amendments will assure that the citizens and the environment of this Commonwealth experience the benefits of reduced emissions of VOCs and HAPs from large appliance and metal furniture surface coating processes. Although the proposed amendments are designed primarily to address ozone air quality, the reformulation or substitution of coating products to meet the VOC content limits applicable to users may also result in reduction of HAP emissions, which are also a serious health threat. The proposed rulemaking provides as one compliance option that coatings used on or applied to large appliance or metal furniture products manufactured in this Commonwealth meet specified limits for VOC content, usually through substitution of low VOC-content solvents or water for the high VOC-content solvents. The reduced levels of high VOC-content solvents would also benefit water quality through reduced loading on water treatment plants and in reduced quantities of high VOC-content solvents leaching into the ground. Owners and operators of affected large appliance and metal furniture surface coating process facilities may also reduce VOC emissions through the use of add-on controls, or a combination of complying coatings and add-on controls.

#### H. Sunset Review

These regulations 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.

#### I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 5, 2010, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final-form publication of the regulations.

#### J. Public Comments

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by March 22, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by March 22, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by March 22, 2010. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

#### K. Public Hearings

The Board will hold public hearings in Pittsburgh, Harrisburg and Norristown for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

- |                             |  |
|-----------------------------|--|
| February 16, 2010<br>1 p.m. | Department of Environmental Protection<br>Southwest Regional Office<br>Waterfront Conference Room A and B<br>400 Waterfront Drive<br>Pittsburgh, PA 15222-4745 |
| February 17, 2010<br>1 p.m. | Department of Environmental Protection<br>Rachel Carson State Office Building<br>Conference Room 105<br>400 Market Street<br>Harrisburg, PA 17105              |
| February 18, 2010<br>1 p.m. | Department of Environmental Protection<br>Southeast Regional Office<br>Delaware Conference Room<br>2 East Main Street<br>Norristown, PA 19401                  |

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing Chairperson to aid in transcribing the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD), or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

JOHN HANGER,  
Chairperson

**Fiscal Note:** 7-449. No fiscal impact; (8) recommends adoptions.

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE III. AIR RESOURCES

#### CHAPTER 129. STANDARDS FOR SOURCES SOURCES OF VOCs

#### § 129.51. General.

(a) *Equivalency.* Compliance with §§ 129.52, **129.52a**, **129.52b** (*Editor's Note: The Department proposed to*

add § 129.52b at 39 Pa.B. 6460 (November 7, 2009), 129.52c (*Editor's Note: The Department proposed to add § 129.52c at 39 Pa.B. 6061, 6067 (October 17, 2009.)*) and 129.54—129.73 may be achieved by alternative methods if the following exist:

\* \* \* \* \*

(3) Compliance by a method other than the use of a low VOC coating or ink which meets the applicable emission limitation in §§ 129.52, 129.52a, 129.52b, 129.52c, 129.67 and 129.73 [ (relating to surface coating processes; graphic arts systems; and aerospace manufacturing and rework) ] shall be determined on the basis of equal volumes of solids.

\* \* \* \* \*

(6) The alternative compliance method is incorporated into a plan approval or operating permit, or both, reviewed by the EPA, including the use of an air cleaning device to comply with § 129.52, § 129.52a, § 129.52b, § 129.52c, § 129.67, § 129.68(b)(2) and (c)(2) or § 129.73.

\* \* \* \* \*

§ 129.52. Surface coating processes.

\* \* \* \* \*

(i) Beginning January 1, 2011, the requirements and limits for metal furniture coatings, large appliance coatings and paper coatings are superseded by the requirements and limits in §§ 129.52a and 129.52b (*Editor's Note: The Department proposed to add § 129.52b at 39 Pa.B. 6460 (November 7, 2009) (relating to control of VOC emissions from large appliance and metal furniture surface coating processes; and control of VOC emissions from paper, film and foil surface coating processes), respectively.*

\* \* \* \* \*

(*Editor's Note: Section 129.52a is new and printed in regular type to enhance readability.*)

§ 129.52a. Control of VOC emissions from large appliances and metal furniture surface coating processes.

(a) *Applicability.* This section applies as follows:

(1) This section applies to the owner and operator of a large appliance or metal furniture surface coating process if the total actual VOC emissions from all large appliance or metal furniture surface coating operations, including related cleaning activities, at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day or 2.7 tons (2,455 kilograms) per 12-month rolling period, before consideration of controls.

(2) The emission limits and other requirements of this section supersede the emission limits and other requirements of § 129.52 (relating to surface coating processes) for large appliance and metal furniture surface coating processes.

(b) *Existing RACT permit.* The requirements of this section supersede the requirements of a RACT permit issued to the owner or operator of a source subject to subsection (a)(1) prior to January 1, 2011, under §§ 129.91—129.95 (relating to stationary sources of NOx and VOCs) to control, reduce or minimize VOCs from a large appliance or metal furniture surface coating operation, except to the extent the RACT permit contains more stringent requirements.

(c) *Emission limits.* Beginning January 1, 2011, a person subject to this section may not cause or permit the emission into the outdoor atmosphere of VOCs from a large appliance or metal furniture surface coating process, unless one of the following limitations is met:

(1) The VOC content of each as applied coating is equal to or less than the limit specified in Table I or Table II (relating to emission limits of VOCs for large appliance surface coatings; and emission limits of VOCs for metal furniture surface coatings).

(i) The VOC content of the as applied coating, expressed in units of weight of VOC per volume of coating solids, shall be calculated as follows:

$$VOC = (W_o)(D_c)/V_n$$

Where:

VOC = VOC content in lb VOC/gal of coating solids

W<sub>o</sub> = Weight percent of VOC (W<sub>v</sub>-W<sub>w</sub>-W<sub>ex</sub>)

W<sub>v</sub> = Weight percent of total volatiles (100%-weight percent solids)

W<sub>w</sub> = Weight percent of water

W<sub>ex</sub> = Weight percent of exempt solvent(s)

D<sub>c</sub> = Density of coating, lb/gal, at 25° C

V<sub>n</sub> = Volume percent of solids of the as applied coating

(ii) The VOC content of a dip coating, expressed in units of weight of VOC per volume of coating solids, shall be calculated on a 30-day rolling average basis using the following equation:

$$VOC_A = \frac{\sum_i (W_{oi} \times D_{ci} \times Q_i) + \sum_J (W_{oJ} \times D_{dJ} \times Q_J)}{\sum_i (V_{ni} \times Q_i)}$$

Where:

VOC<sub>A</sub> = VOC content in lb VOC/gal of coating solids for a dip coating, calculated on a 30-day rolling average basis

W<sub>oi</sub> = Percent VOC by weight of each as supplied coating (i) added to the dip coating process, expressed as a decimal fraction (that is 55% = 0.55)

D<sub>ci</sub> = Density of each as supplied coating (i) added to the dip coating process, in pounds per gallon

Q<sub>i</sub> = Quantity of each as supplied coating (i) added to the dip coating process, in gallons

V<sub>ni</sub> = Percent solids by volume of each as supplied coating (i) added to the dip coating process, expressed as a decimal fraction

W<sub>oJ</sub> = Percent VOC by weight of each thinner (J) added to the dip coating process, expressed as a decimal fraction

D<sub>dJ</sub> = Density of each thinner (J) added to the dip coating process, in pounds per gallon

Q<sub>J</sub> = Quantity of each thinner (J) added to the dip coating process, in gallons

(iii) Sampling and testing shall be done in accordance with the procedures and test methods specified in Chapter 139 (relating to sampling and testing).

(2) The overall weight of VOCs emitted to the atmosphere is reduced through the use of vapor recovery or incineration or another method that is acceptable under § 129.51(a) (relating to general). The overall efficiency of a control system, as determined by the test methods and procedures specified in Chapter 139, may be no less than 90% or may be no less than the equivalent efficiency as calculated by the following equation, whichever is less stringent:

$$O = (1 - E/V) \times 100$$



Where:

V = The VOC content of the as applied coating, in lb VOC/gal of coating solids.

E = The Table I or Table II limit in lb VOC /gal of coating solids.

O = The overall required control efficiency.

(d) *Compliance monitoring procedures.* The owner or operator of a facility subject to this section shall maintain records sufficient to demonstrate compliance with this section. At a minimum, the owner or operator shall maintain daily records of:

(1) The following parameters for each coating, thinner, component and cleaning solvent as supplied:

(i) Name and identification number.

(ii) Volume used.

(iii) Mix ratio.

(iv) Density or specific gravity.

(v) Weight percent of total volatiles, water, solids and exempt solvents.

(vi) Volume percent of solids for each Table I or Table II coating used in the surface coating process.

(2) The VOC content of each coating, thinner, component and cleaning solvent as supplied.

(3) The VOC content of each as applied coating or cleaning solvent.

(e) *Recordkeeping and reporting requirements.* The records required under subsection (d) shall be maintained for 2 years and submitted to the Department on request.

(f) *Coating application methods.* A person subject to this section may not cause or permit the emission into the outdoor atmosphere of VOCs from the application of large appliance or metal furniture surface coatings, unless the coatings are applied using one or more of the following coating application methods:

(1) Electrostatic coating.

(2) Roller coating.

(3) Flow coating.

(4) Dip coating, including electrodeposition.

(5) High volume-low pressure (HVLP) spray.

(6) Brush coating.

(7) Other coating application method, if approved in writing by the Department prior to use.

(i) The coating application method must be capable of achieving a transfer efficiency equivalent to or better than that achieved by the methods listed in paragraphs (1)–(6).

(ii) The request for approval must be submitted in writing.

(g) *Exempt coatings and coating operations.* The VOC coating content limits in Table I and Table II do not apply to the following types of coatings and coating operations:

(1) Stencil coatings.

(2) Safety-indicating coatings.

(3) Solid-film lubricants.

(4) Electric-insulating coatings.

(5) Thermal-conducting coatings.

(6) Touch-up and repair coatings.

(7) Coating applications using hand-held aerosol cans.

(8) A coating used exclusively for determining product quality and commercial acceptance and other small quantity coatings, if the coating meets the following criteria:

(i) The quantity of coating used does not exceed 50 gallons per year for a single coating and a total of 200 gallons per year for all coatings combined for the facility.

(ii) The owner or operator of the facility requests, in writing, and the Department approves, in writing, the exemption prior to use of the coating.

(h) *Work practice requirements for coating-related activities.* The owner or operator of a large appliance or metal furniture surface coating process subject to this section shall comply with the following work practices for coating-related activities:

(1) Store all VOC-containing coatings, thinners and coating-related waste materials in closed containers.

(2) Ensure that mixing and storage containers used for VOC-containing coatings, thinners and coating-related waste materials are kept closed at all times except when depositing or removing these materials.

(3) Minimize spills of VOC-containing coatings, thinners and coating-related waste materials and clean up spills immediately.

(4) Convey VOC-containing coatings, thinners and coating-related waste materials from one location to another in closed containers or pipes.

(i) *Work practice requirements for cleaning materials.* The owner or operator of a large appliance or metal furniture surface coating process subject to this section shall comply with the following work practices for cleaning materials:

(1) Store all VOC-containing cleaning materials and used shop towels in closed containers.

(2) Ensure that mixing and storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials.

(3) Minimize spills of VOC-containing cleaning materials and clean up spills immediately.

(4) Convey VOC-containing cleaning materials from one location to another in closed containers or pipes.

(5) Minimize VOC emissions from cleaning of storage, mixing and conveying equipment.

**Table I**

**Emission Limits of VOCs for Large Appliance Surface Coatings**

**Weight of VOC per Volume of Coating Solids, as Applied**

Coating Type	Baked		Air Dried	
	kg/l	lb/gal	kg/l	lb/gal
General, One Component	0.40	3.3	0.40	3.3
General, Multi-Component	0.40	3.3	0.55	4.5
Extreme High Gloss	0.55	4.62	0.55	4.5
Extreme Performance	0.55	4.62	0.55	4.62
Heat Resistant	0.55	4.62	0.55	4.62
Metallic	0.55	4.62	0.55	4.62
Pretreatment	0.55	4.62	0.55	4.62
Solar Absorbent	0.55	4.62	0.55	4.62

**Table II**  
**Emission Limits of VOCs for Metal Furniture**  
**Surface Coatings**  
**Weight of VOC per Volume of Coating Solids,**  
**as Applied**

Coating Type	Baked		Air Dried	
	kg/l	lb/gal	kg/l	lb/gal
General, One Component	0.40	3.3	0.40	3.3
General, Multi-Component	0.40	3.3	0.55	4.5
Extreme High Gloss	0.61	5.06	0.55	4.5
Extreme Performance	0.61	5.06	0.61	5.06
Heat Resistant	0.61	5.06	0.61	5.06
Metallic	0.61	5.06	0.61	5.06
Pretreatment	0.61	5.06	0.61	5.06
Solar Absorbent	0.61	5.06	0.61	5.06

[Pa.B. Doc. No. 10-104. Filed for public inspection January 15, 2010, 9:00 a.m.]

# FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 61 AND 65 ]

## Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

### A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

### B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

### C. Statutory Authority

The proposed amendment to § 61.1 (relating to Commonwealth inland waters) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307(a) of the code (relating to waters limited for specific purposes).

### D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

### E. Summary of Proposals

(1) *Amendment to § 61.1.* The Commission recently adopted an amendment to § 61.2 (relating to Delaware

River and River Estuary) that reduces the creel limit for American shad on the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge from six to three. This change went into effect on January 9, 2010, upon publication of an order at 40 Pa.B. 254.

Upon further review of its regulations, however, the Commission has determined that an amendment to § 61.1 is also needed. This section provides for a daily limit for American shad of six on all inland waters that are not covered by other sections within Chapter 61. Section 61.2, which is applicable only to those Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence, does not cover large tributaries upriver of the tidal influence, such as the Lackawaxen River in Pike County. It is likely that a limited number of shad enter the larger tributaries upriver of the tidal influence. Currently, the limit for American shad on those Delaware River tributaries is six under § 61.1. The Commission proposes an amendment to this section to reduce the creel limit to three as set forth in Annex A to be consistent with § 61.2.

The Executive Director of the Commission, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), already has taken immediate action to amend § 61.1 to be consistent with § 61.2. This temporary modification went into effect on January 1, 2010. See 39 Pa.B. 7165 (December 19, 2009).

(2) *Amendment to § 65.24.* On October 26, 2009, Act 40 of 2009 went into effect. This act amends section 2907.2 of the code (relating to Lake Erie fishing permits), to provide that a Lake Erie permit is required to fish in Lake Erie, Presque Isle Bay and their tributaries, including waters that flow into those tributaries, instead of "the Pennsylvania waters of Lake Erie, Presque Isle Bay and their tributaries" only. This amendment requires anglers to procure a Lake Erie fishing permit to fish in Conneaut Creek, Turkey Creek and their tributaries when previously one was not required because although these streams begin in this Commonwealth, they enter Lake Erie in Ohio. Although a Lake Erie permit will be required to fish these streams, Act 40 also provides that proceeds derived from their sale may now be used to fund projects on those waters.

The Commission's regulation in § 65.24 currently provides that a Lake Erie permit is not required on Conneaut Creek, Turkey Creek and their tributaries. To be consistent with the new law, this section must be amended to remove that language.

In addition, the Commission currently applies the seasons, sizes and creels limits applicable to Lake Erie and its tributaries under § 69.12 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries) to the portion of Conneaut Creek that flows through Erie County. However, the Commission applies the seasons, sizes and creel limits applicable to Commonwealth inland waters under § 61.1 to the portion of Conneaut Creek and its tributaries that flow through Crawford County except with regard to salmon and steelhead that are addressed in § 65.24. To be consistent with the new law, § 65.24 must be amended to remove the existing language. With this change, the Commission will apply the Lake Erie seasons, sizes and creel limits to the entire length of Conneaut Creek and its tributaries. The Commission is actively developing a viable steelhead fishery in Conneaut Creek by annually stocking smolts. Accordingly, the Commission proposes that § 65.24 be amended to read as set forth in Annex A.



By notice published at 39 Pa.B. 6524 (November 7, 2009), the Executive Director, acting under the authority of § 65.25, already has taken immediate action to rescind these regulations. The temporary modification went into effect on October 26, 2009, and will remain in effect until the Commission, by appropriate action, rescinds the regulations.

**F. Paperwork**

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

**G. Fiscal Impact**

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

**H. Public Comments**

Interested persons are invited to submit written com-

ments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcom](http://www.fishandboat.com/regcom) ments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-216. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART II. FISH AND BOAT COMMISSION**  
**Subpart B. FISHING**  
**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.1. Commonwealth inland waters.**

\* \* \* \* \*

(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * * * *		
AMERICAN SHAD	Open year-round	No minimum	<b>[ 6 ] 3</b>
	* * * * *		

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
	* * * * *	
[ Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required. ]
[ Crawford	Crazy Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required. ]
	* * * * *	
[ Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required. ]
	* * * * *	

[Pa.B. Doc. No. 10-105. Filed for public inspection January 15, 2010, 9:00 a.m.]

## [ 58 PA. CODE CH. 75 ]

## Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments add the northern redbelly dace, northern cricket frog and blue-spotted salamander to the list of endangered species. The proposed amendments also remove the silver chub from the list of endangered species, the mooneye, goldeye and skipjack herring from the list of threatened species and the brook silverside from the list of candidate species.

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect immediately upon publication of an order in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposal is available electronically through the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

C. *Statutory Authority*

The proposed amendments to §§ 75.1, 75.2 and 75.3 (relating to endangered species; threatened species; and candidate species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to endangered, threatened and candidate species. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal**Proposed Additions to the Endangered Species List*

(1) Northern Redbelly Dace (*Phoxinus eos*). The Northern Redbelly Dace is a small cyprinid. Characterized as a colorful minnow, this dace has a dark olive or brown back with spots and two dark, broad bands on the side. The space between the two bands is cream, reddish or dark. The stomach is cream-colored except in breeding males where the stomach is yellow-orange to red. It occurs in ponds and slow and swampy sections of streams. In this Commonwealth, it appears to be strictly confined to springs, wetlands and sections of waterways impounded by beavers (D. Fischer, personal observation).

The Northern Redbelly Dace's National distribution includes the Atlantic, Great Lakes, Hudson Bay, upper Mississippi, Missouri and Peace-Mackenzie River drainages, from Nova Scotia west to Northwest Territories and British Columbia, south to northern Pennsylvania, Wisconsin, Nebraska, and Colorado (Page and Burr 1991). In this Commonwealth, it was formerly known from Meshoppen Creek, Susquehanna County (Cooper 1983). It currently inhabits the Allegheny River drainage in Erie and Warren Counties (unpublished data). It also occurs adjacent to northwest Pennsylvania in the Brokenstraw Creek

and Conewango Creek drainages in New York (Smith 1985). This species is listed as endangered in Massachusetts.

Only one historic occurrence record—Susquehanna County exists in this Commonwealth (Cope 1862). More recently, five occurrences were documented in 2008: French Creek drainage in Erie and Warren Counties (2) and the Brokenstraw Creek drainage in Warren County (3). Apparently three of these occupied waterways have not been previously surveyed, and surveys on the remaining two did not include the occupied sections or habitat suitable for Northern Redbelly Dace (Raney 1938, Stauffer 1987, Cooper field notes, PFBC unpublished data). The total known lineal occupancy appears to be no more than 10 kilometers.

The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Northern Redbelly Dace and recommended it be changed from Extirpated (SX) to "critically imperiled" (S1)—in the State because of extreme rarity or because of some factors making it especially vulnerable to extirpation from the State. Typically five or fewer occurrences or very few remaining individuals occur in the State (State Rank Definitions 1996). The PABS Committee additionally recommended endangered status based on the previously referenced data and apparent rarity of the species.

The Northern Redbelly Dace was described by Cope (1862) from specimens collected in Meshoppen Creek, Susquehanna County, PA. No specimens have been reported from this Commonwealth since that time, and this taxon was considered extirpated (Cooper 1983). This species was evaluated through the Commission's fish species documentation and objective listing criteria and met Criteria B.3. (Distribution & Trends), that the extent of occupancy in the stream/river is less than 10 miles. Recently discovered populations of this species in north-eastern Erie and northwestern Warren counties justify a change in status from extirpated to endangered. Therefore, the Commission proposes that Northern Redbelly Dace be added to the list of endangered species.

(2) Northern Cricket Frog (*Acris crepitans*). The Northern Cricket Frog is the smallest frog species in this Commonwealth, averaging around 23mm (0.875 inch). This small tree frog is variable in coloration and markings. The dorsal body color can be golden brown, tan, gray or olive and can vary among individuals depending on ground temperature (R. Koval, personal observation). Most often mid-dorsal stripes are present and vary in color from brown to lime green. The most characteristic marking of the Northern Cricket Frog is the V-shaped or dark triangle spot located between the eyes and the well defined longitudinal stripe along the rear surface of the dark dorsal thigh.

Breeding habitats are typically described as permanent bodies of water such as slow-moving streams, ponds, lakes, marshes, bogs and swamps, but breeding sites can also be semipermanent ponds and seasonal forest pools. Often, breeding microhabitats within these larger systems are open-canopied, usually contain emergent vegetation, and contain areas of flat, sparsely vegetated patches along the margins of open water (Bayne 2004, Gibbs et al. 2007, White and White 2002). Upland habitats surrounding breeding habitats are varied but include: floodplain forest, small scrub-shrub islands in impoundments, mature deciduous forest with rocky substrates, mature deciduous forest with sandy substrates and old fields.

The Northern Cricket Frog is known from southeastern New York, south along the Atlantic Coastal states, and west along the Gulf Coast from northwestern Florida to eastern Texas. Southern populations range as far north as Tennessee and Missouri. Isolated populations occur on the Coastal Plain of South Carolina. It is listed as an endangered species in New York and as a species of concern in Ohio.

The Northern Cricket Frog was historically distributed throughout the southeastern and southcentral portions of this Commonwealth with several apparently disjunct populations found in northeastern and southwestern Pennsylvania. Counties of historical occurrence included: Allegheny, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Lebanon, Montgomery, Philadelphia and York. Nearly half of all records were collected from within or near the coastal plain in southern Bucks, Delaware, Montgomery, and Philadelphia Counties. All records considered historical were initially documented before 1983.

The Northern Cricket Frog is apparently extirpated from approximately 92% of historically (initially discovered pre-1983: 34 of 37 locations) documented collection sites. Two of the three historical sites considered extant are included as a “best case scenario” since investigations or surveys have not been conducted for the species at these locations. The species may very well have disappeared from these locations as well. A total of six recent new sites have been initially documented since 1983. Of these sites, 50% (3 of 6) are considered extirpated, and an additional 33% (2 of 6) are located in a heavily disturbed industrial/urbanized landscape making future viability uncertain (these sites are considered extant in this analysis). Presently, of the 43 total sites that have been adequately documented as valid collection locations in this Commonwealth, only 14% (6 of 43) are considered extant. Suitable habitats in the vicinity of all but two of the historical collection locations (single sites in Chester and Franklin Counties have not been investigated since their initial discovery, but are considered extant in this analysis as a best case scenario) have been investigated in the last 15 years, thus documenting a significant (86%) population reduction for this species in this Commonwealth in the last 20 years, which meets listing criterion A.1.: Range Reduction of > 80% in the last 20 years. The Area of Occupancy for Northern Cricket Frog in this Commonwealth is under 4 square miles (Listing Criterion B.2) and severely fragmented (Listing Criterion B.2.a). Additionally, declines are projected in the area of occupancy, area/extent/and or quality of habitat, number of locations or subpopulations, and number of mature individuals (Listing Criterion B.2.b).

The Amphibian and Reptile Technical Committee of PABS reviewed the Heritage rank of the Northern Cricket frog and recommended it be changed to “critically imperiled” (S1)—critically imperiled in the State because of extreme rarity or because of some factors making it especially vulnerable to extirpation from the State. As the species meets Listing Criteria A.1. and B.2., the Committee recommended the status of the Northern Cricket Frog (*Acris crepitans*) be elevated to endangered. Therefore, given the apparent rarity and threats to the Statewide population, and multiple listing criteria met, the Commission proposes that Northern Cricket Frog be added to the list of endangered species.

(3) Blue-Spotted Salamander (*Ambystoma laterale*). The Blue-Spotted Salamander is member of the Ambystomatidae (*mole salamander*) family. They are characterized as a small to medium sized salamander with a pattern of bright blue spots scattered over a grayish-black or black body. They live mostly a terrestrial, fossorial/subterranean existence. Blue-spotted Salamanders require both breeding (aquatic) and nonbreeding (upland) habitats. Breeding habitat consists of hardwood swamps, open marshes, oxbow ponds, ditches, and seasonal forest pools, often within or near floodplains of large streams and rivers (Ruhe unpublished). Nonbreeding habitat can be characterized as deciduous and mixed forests surrounding breeding habitats.

Blue-Spotted Salamanders occur in Southeastern Quebec to Lake Winnipeg, south through the Great Lakes region and New England to northern Indiana and northern New Jersey. The United States portion of this range includes the states of Connecticut, Iowa, Illinois, Indiana, Massachusetts, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Vermont and Wisconsin. Hybrid *A. laterale* populations (in association with *A. jeffersonianum*, *A. texanum*, and *A. tigrinum*) occur throughout the range of this species. The Blue-Spotted Salamander is listed as endangered in Ohio and New Jersey and as a species of concern in New York.

The Blue-spotted Salamander complex (including associated hybrids) is a peripheral species to this Commonwealth with all known populations being found in northern tier counties bordering the states of New Jersey and New York: the Delaware River drainage (Northampton County), and the Allegheny River drainage (McKean County and Warren County).

The Blue-spotted Salamander was not discovered in this Commonwealth until April of 2000. The Blue-spotted Salamander probably did not recently colonize this Commonwealth; rather this species had likely escaped detection due to locations being situated in fairly rural areas and general similarity in appearance to the Jefferson Salamander. This species was not detected during the 7-year long Pennsylvania Herpetological Atlas project.

The Blue-spotted Salamander was first discovered in McKean County (Allegheny River drainage) during the spring of 2000 as part of a distribution-wide survey for the Jefferson Salamander (*Ambystoma jeffersonianum*) and Blue-spotted Salamander complex (Bogart and Klemens 2008, Ruhe unpublished). Two additional populations were subsequently found in Northampton (Delaware River drainage) and Warren (Allegheny River drainage) Counties (Bogart and Klemens 2008, Ruhe unpublished). The Northampton County population was discovered in October 2003, and the Warren County population in October 2008 (Ruhe unpublished).

The known extent of occurrence for the Blue-spotted Salamander in this Commonwealth encompasses an area of under 3 square miles, qualifying the species for listing as endangered under listing criterion B. 1. (Extent of Occurrence < 40 mi<sup>2</sup>). As the Blue-spotted Salamander meets this criterion, the Amphibian and Reptile Technical Committee of PABS recommends that the Blue-spotted Salamander be listed as an endangered species. Therefore, based upon the limited range of the species within this Commonwealth, the small number of known sites and threats to these sites, the Commission proposes that Blue-Spotted Salamander be added to the list of endangered species.



*Proposed Removals from the Endangered, Threatened and Candidate Species Lists*

(1) Silver Chub (*Macrhybopsis storeriana*). The Silver Chub is a small, slender, silvery minnow with large eyes, small mouth, and small, posterior maxillary barbel. It inhabits large rivers and lakes, where it prefers clean sand and gravel substrates. Its Nationwide distribution includes the Lake Erie drainage in Ontario, New York, Pennsylvania, Ohio, and Michigan; Mississippi River basin from Pennsylvania and West Virginia to the Midwest, and south to Gulf Coast drainages from Alabama to Louisiana. In this Commonwealth, they occur in Lake Erie, and in the Allegheny, Monongahela, and Ohio River drainages (Argent & Carline 2005).

The Silver Chub was probably common in all the large rivers in this Commonwealth's portion of the Ohio River drainage prior to European settlement (Trautman 1981). It was abundant in the Monongahela in the late 1800s (Evermann and Bollman 1886). It was apparently extirpated during the early 1900s, when conditions in these rivers were degraded (Ortmann 1909). ORSANCO collected a single specimen in 1957 and eight in 1959 from the lower Allegheny River. Cooper (1983) collected a single specimen from Lake Erie in the vicinity of the mouth of Walnut Creek in 1971.

The Silver Chub is rarely taken in Lake Erie and was considered extirpated in the Ohio River drainage by Gilbert (1985). It was collected in 1986 in the Ohio River and has subsequently been documented in the Monongahela and lower Allegheny as well (unpublished data—California University of Pennsylvania CUP, Ohio River Sanitation Commission (ORSANCO), Pennsylvania State University (PSU), PFBC). It has been collected more often since the early 1990s, with collections ranging from one to 24 specimens (unpublished data—CUP, ORSANCO, PSU, PFBC). Multiple size classes including juveniles have been collected recently in the Ohio River (personal communication, T. Stecko PSU unpublished data 2009).

The Fishes Technical Committee of the PABS reviewed the Heritage rank of the Silver Chub and recommended that it be changed from "critically imperiled" (S1) to "vulnerable-apparently secure" (S3S4) status—uncommon but not rare, and usually widespread in the State. (State Rank Definitions 1996.) The PABS committee additionally recommended "delisting" status based on the previously referenced data and apparent commonality of the species. PABS definition of delisted species—species which were once listed but now cited for delisting (PABS Suggested Status Definitions 2005).

The Silver Chub was listed as endangered based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Commonwealth range since 1990 have documented an expansion in range and population size compared to pre-1990 information. These species were considered extirpated during the first half of the twentieth century; however, recent electrofishing and benthic trawl surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. Based on recent records, it appears that this species is now fairly widespread in the lock and dam section of the "Three Rivers" (Criswell and Stauffer 2005).

This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. Silver Chub now occupy much of their former

range and their population is increasing. Therefore, it no longer meets endangered species listing criteria. Nor does it meet the threatened species listing criteria. Therefore, the Commission proposes that Silver Chub be removed from the list of endangered species.

(2) Mooneye (*Hiodon tergisus*): The Mooneye is a medium-sized, deep-bodied pelagic fish that inhabits large rivers and reservoirs. It is known from the St. Lawrence—Great Lakes drainage (except Lake Superior), Mississippi River and Hudson Bay basins from Quebec to Alberta and south to the Gulf; Gulf Slope drainages from Alabama to Louisiana (Page and Burr 1991). In this Commonwealth, it occurs in the Monongahela and Ohio Rivers, and the lock and dam section of the Allegheny River, and formerly occurred in Lake Erie (Fowler 1940, Cooper 1983).

Lessueur's original 1818 description of this species, based in part on specimens collected in Pittsburgh, is apparently the only historic record from the Ohio River drainage in the State (Cooper 1985). In Lake Erie, it was collected in 1920 near Erie, PA (UMMZ 55667). The Mooneye was common in Ohio waters before 1900, but has decreased greatly since, and is rarely taken in Lake Erie (Trautman 1981). It was probably fairly common in this Commonwealth before 1900 as well but was apparently extirpated during the early 1900s when conditions in these rivers were degraded. Its recent recolonization is undoubtedly a result of improved water quality (Criswell and Stauffer 2005).

The Mooneye was collected in 1987 in the Allegheny River and since has been collected as far upriver as River Mile 60 and has subsequently been documented in the Monongahela and lower Ohio Rivers as well (unpublished data—CUP, ORSANCO, PSU, PFBC). It has been collected more often since the early 1990s, with collections ranging from 1—22 specimens (unpublished data—CUP, ORSANCO, PSU, PFBC).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Mooneye and recommended that it be changed from "imperiled-vulnerable" (S2S3) to "apparently secure" (S4) status—uncommon but not rare, and usually widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended "delisting" status based on the above referenced data and apparent commonality of the species.

The Mooneye was listed as threatened based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Commonwealth range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. The Mooneye was considered extirpated from the State, with no collections reported between 1920 and 1987 (Cooper 1985, unpublished data); however, recent electrofishing and gillnet surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. The Mooneye no longer meets the threatened species listing criteria as its distribution and population is increasing in this Commonwealth.

Enough information is available to make the determination that it is secure in the State at present and to justify removal from the list of threatened and endangered fishes. Therefore, the Commission proposes that the Mooneye be removed from the list of threatened species.

(3) Goldeye (*Hiodon alosoides*). Similar in shape and form to the Mooneye, the Goldeye inhabits large turbid rivers and the silty shallows of large lakes. It is known from tributaries to James Bay in Quebec and Ontario; Arctic, Missouri, Mississippi, and Ohio River drainages from Northwest Territories to Pennsylvania and south to Louisiana (Page and Burr 1991). In this Commonwealth, the Goldeye was known from the Ohio River Basin.

The historic distribution of Goldeye within this Commonwealth is difficult to determine. Fowler (1911 & 1919) reported collections from the Beaver River (1 specimen) and the Youghiogheny River (2 specimens) made by Edward D. Cope, presumably in the 1860s or 1870s. Trautman (1981) reported that in Ohio it was far more numerous in the Ohio River below Portsmouth than in the industrially polluted upper Ohio River near the Pennsylvania State line, and remained fairly common there during the period 1955-1980. However, no recent records exist in this Commonwealth.

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Mooneye and recommended it be changed to "extirpated" (SX) status—believed to be extirpated from the state (State Rank Definitions 1996). The PABS committee additionally recommended "delisting" status based on the previously referenced data and lack of contemporary collections of the species.

The Goldeye was listed as threatened based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the Ohio River basin during the last 110 years have not yielded a known collection of Goldeye supported by a preserved voucher specimen. These surveys include increasingly intensive efforts using multiple methodologies implemented by multiple scientific entities.

At this time, enough information is available to make the determination that the Goldeye is presumed extirpated from this Commonwealth and to justify its removal from the list of threatened fishes. Therefore, the Commission proposes that Goldeye be removed from the list of threatened species.

(4) Skipjack Herring (*Alosa chrysochloris*). The Skipjack Herring is a streamlined, laterally compressed herring with a large mouth and protruding lower jaw, inhabiting open waters of medium to large rivers and reservoirs. It is known from the Hudson Bay drainage (Red River) and Mississippi River basin from Minnesota south to the Gulf of Mexico, and from southwestern Pennsylvania to South Dakota, Nebraska, Kansas, Oklahoma, and Texas Gulf Slope drainages from Florida to Texas (Page and Burr 1991). In this Commonwealth, it is known from the Ohio, Monongahela and Allegheny River basins.

Early accounts indicated that the Skipjack Herring was evidently uncommon in this Commonwealth. Rafinesque (1820) stated that it seldom went as far upriver as Pittsburgh. Trautman (1981) reported that rivermen occasionally took individuals between Marietta, OH, and the Pennsylvania State line. Fowler (1919) reported an occurrence from the Conemaugh River, Indiana County, that he thought was likely a Skipjack Herring. However, Fowler (1940) also reported this species from Blair County, a questionable record at best. Cooper (1985) considered it extirpated and thought it possible that the species never had been collected from the Commonwealth. It was occasionally collected in this Commonwealth's portion of the Ohio River during the mid-1980's and has continued to increase in numbers (unpublished data).

Recent records show the Skipjack Herring is well distributed and taken regularly in the Ohio and Monongahela Rivers (Criswell and Stauffer 2005; Unpublished data—ORSANCO, PSU, PFBC, CUP).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Skipjack Herring and recommended it be changed to "apparently secure" (S4) status—uncommon but not rare, and usually widespread in the State; usually more than 100 occurrences (State Rank Definitions 1996). The PABS Committee additionally recommended "delisting" status based on the previously referenced data and apparent commonality of the species.

The Skipjack Herring was listed as threatened based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Commonwealth range since the 1990s have documented an expansion in range and population size compared to pre-1990 information. The Skipjack Herring was considered extirpated until the mid-1980s; however, recent electrofishing and gillnet surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. The Skipjack Herring now occupy their former range (widespread in the Ohio and Monongahela and increasing in the Allegheny) and the population is increasing in this Commonwealth. They no longer meet the threatened species listing criteria. Therefore, the Commission proposes that Skipjack Herring be removed from the list of threatened species.

(5) Brook Silverside (*Labidesthes sicculus*): The Brook Silverside is a slender, elongate fish with a nearly straight dorsal profile anteriorly, including a flattened head. It inhabits lakes and sluggish sections of large streams and rivers, where it occurs primarily in schools near the surface in open water, often over substrates of silt, sand, or mud. The Brook Silverside is known from the St. Lawrence-Great Lakes drainage (except Lake Superior), and Mississippi River basin from southern Quebec to eastern Minnesota and south to Louisiana; Atlantic and Gulf drainages from South Carolina to Texas. It has been introduced elsewhere (Page and Burr 1991). In this Commonwealth, it is known from the Ohio River and Lake Erie drainages in western part of State (Cooper 1983).

Little historical information on abundance is available for this Commonwealth. Trautman (1981) reported that in Ohio the brook silverside was abundant and distributed throughout the state prior to 1900 but was severely reduced and many populations were extirpated. He identified the chief factor causing this decline as increased turbidity levels. Since this species is generally detected during surveys targeting other fishes in this Commonwealth, comprehensive data on distribution and abundance is lacking. It probably declined significantly in our western rivers, as did many other fishes, and is now rebounding there.

In the last 25 years, collection records indicate that the Brook Silverside is locally common in larger water bodies, especially lakes and impounded sections of large rivers. It is collected regularly in the Allegheny, Monongahela, and Ohio Rivers, French Creek and tributaries, Shenango River and its tributaries, and major impoundments, and Lake Erie (CUP, ORSANCO, PSU, PFBC).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Brook Silverside and recommended

it be changed to “apparently secure” (S4) status—uncommon but not rare, and usually widespread in the State. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS Committee additionally recommended “delisting” status based on the previously referenced data and apparent commonality of the species in this Commonwealth.

The Brook Silverside was listed as a candidate species in this Commonwealth based on a limited number of collections and apparent low numbers. Recent field surveys conducted throughout the historic Pennsylvania range have documented a significant expansion in range and population size compared to pre-1990 information. This species was evaluated through the Commission’s fish species documentation and objective listing/delisting criteria. The Brook Silverside population and distribution is increasing, such that they no longer meet the candidate species listing criteria.

Enough information is available to determine that it is secure in the State at present and to justify Brook Silverside’s removal from the list of candidate fishes. Therefore, the Commission proposes that Brook Silverside be removed from the list of candidate species.

The Commission accordingly proposes that §§ 75.1, 75.2 and 75.3 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no direct adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new direct costs on the private sector or the general public. The direct regulatory significance of designating a species as endangered or threatened is limited to prohibiting persons from taking, catching, killing or possessing these species in this Commonwealth. Because none of the species that are proposed for listing have any commercial or recreational significance because of their rarity, there are no direct fiscal impacts from providing these protections.

With respect to listings previously proposed by the Commission, the private sector and regulated community have asserted that the designation of certain species as endangered or threatened may have indirect fiscal impacts on them and the Commonwealth because of impacts on permitting decisions by the Department of Environmental Protection and other agencies. If an endangered species is found in an area slated for development, applicants for permits may be required to conduct additional studies or adjust the project to avoid adverse impacts on these species and their habitat. These are fiscal impacts resulting from regulatory and statutory authorities other than those under the aegis of the Commission.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-215. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

\* \* \* \* \*

(b) *Fish*. The following species are endangered:

\* \* \* \* \*

(8) [ **Silver chub, *Macrhybopsis storeriana*** ]  
**Northern redbelly dace, *Phoxinus eos***.

\* \* \* \* \*

(c) *Reptiles and amphibians*. The following species are endangered:

\* \* \* \* \*

(9) **Northern Cricket Frog, *Acris crepitans***.

(10) **Blue-spotted Salamander, *Ambystoma laterale***.

\* \* \* \* \*

§ 75.2. Threatened species.

\* \* \* \* \*

(b) *Fish*. The following species are threatened:

\* \* \* \* \*

(2) [ **Skipjack herring, *Alosa chrysochloris***.

(3) **Goldeye, *Hiodon alosoides***.

(4) **Mooneye, *Hiodon tergisus***.

(5) ] **Bigmouth shiner, *Notropis dorsalis***.

[ (6) ] (3) **Southern redbelly dace, *Phoxinus erythrogaster***.

[ (7) ] (4) **Spotted sucker, *Minyterma melanops***.

[ (8) ] (5) **Brindled madtom, *Noturus miurus***.

[ (9) ] (6) **Bluebreasted darter, *Etheostoma camurum***.

[ (10) ] (7) **Spotted darter, *Etheostoma maculatum***.

[ (11) ] (8) **Tippecanoe darter, *Etheostoma tippecanoe***.

[ (12) ] (9) **Gilt darter, *Percina evides***.

\* \* \* \* \*

§ 75.3. Candidate species.

\* \* \* \* \*

(b) *Fishes*.

\* \* \* \* \*

(8) [ **Brook silverside, *Labidesthes sicculus***



(9) ] Brook stickleback, *Culaea inconstans*.

\* \* \* \* \*

[Pa.B. Doc. No. 10-106. Filed for public inspection January 15, 2010, 9:00 a.m.]

## PENNSYLVANIA GAMING CONTROL BOARD

[ 58 PA. CODE CH. 433a ]

### Principal Licensing Amendments

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1202(b)(9) and (23) and §§ 1311.1 and 1326 (relating to licensing of principals; and license renewals), proposes to amend Chapter 433a to read as set forth in Annex A.

#### *Purpose of the Proposed Rulemaking*

The proposed rulemaking amends Chapter 433a (relating to principal licenses). These amendments revise and update this chapter to improve its clarity and eliminate or reduce some of the requirements to obtain a principal license.

#### *Explanation of Amendments to Chapter 433a*

In § 433a.1 (relating to definitions), the definitions of “officer” and “principal affiliate” have been amended to include individuals who may have an ability to influence or direct matters related to the operations of a slot machine licensee.

In § 433a.2 (relating to officers and directors of licensees), a number of changes have been made to improve the clarity of the existing licensing requirements. References to applicants for licenses have been deleted. While principals of applicants will be required to file principal applications as part of the application process for an applicant for a license, they do not have to hold a license as a precondition for an applicant to apply for a license. Similar revisions have been made in the other sections in this chapter for the same reason.

Subsection (b) has been revised to apply to all licensees, not just slot machine licensees, eliminating the need for the existing requirements in subsection (c) regarding licensees other than slot machine licensees. As a result of the amendments to subsection (b), subsection (c) has been revised so that it now addresses the licensing requirements for officers and directors of subsidiary of a slot machine licensee.

Subsection (d) has been deleted. It is no longer needed because of the change to the definition of “officer” in § 433a.1. The waiver provisions in subsections (e) and (g) of the current regulation are also being deleted and have been replaced with a new subsection (d) (formerly subsection (f)) which provides an exemption from licensure for outside directors of a public traded corporation. This will eliminate the paperwork required by the waiver request process for these directors who typically have no significant involvement with the operations of a licensee.

New subsections (e) and (f) have been added to address the filing requirements of new officers and directors. Under subsection (e), most new directors or officers will be allowed to commence their duties upon appointment

and will only be required to file a completed Multi Jurisdictional Personal History Disclosure Form and the Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form within 30 days of performing any duties or exercising any powers as an officer or director. However, an officer or director of a privately held slot machine licensee, privately held licensed management company or privately held principal affiliate of a slot machine licensee or licensed management company may not perform any duties or exercise any powers of an officer or director prior to being granted temporary authorization from the Bureau of Licensing. The Bureau of Licensing may grant temporary authorization to a new officer or director of a privately held entity if the individual has submitted a completed Multi Jurisdictional Personal History Disclosure Form, a completed Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form, and fingerprints in a manner prescribed by the Bureau of Investigation and Enforcement. The more restrictive provisions for directors or officers of these privately held entities have been imposed because of the potential threat to the integrity of gaming and the lack of any other regulatory oversight of these entities.

New § 433a.3 (relating to interests in licensees held by individuals) has been reorganized. Subsection (a) now requires individuals who meet the criteria contained in this subsection to both apply for and obtain a principal license before acquiring an interest in a slot machine or management company licensee. In subsection (b), individuals acquiring an interest in other licensees will only be required to file a principal application before acquiring the interest; however, under subsection (c), if the individual does not obtain a principal license, the individual must divest the interest. The more rigorous requirements related to interests in slot machine or management company licensees are in recognition of the greater potential threat to the integrity of gaming from the acquisition of an interest in a slot machine or management company licensee as opposed to other licensees.

New subsections (d) and (e) establish new principal licensing requirements for individuals seeking to acquire a direct or indirect ownership interest of 20% or more in licensees other than slot machine or management company licensees. Under subsection (d), these individuals will be required to file a completed principal application and a Notification of a Change in Control of a Licensee form at least 30 days prior to the acquisition. This will allow the Bureau of Licensing to review the acquisition before it actually takes place. Additionally, under subsection (e) the Board may require that the individual successfully complete the licensing process prior to completing the acquisition. This is being done to ensure the suitability of these individuals prior to their acquisition of a controlling interest in these licensees.

New subsections (f), (g) and (h) provide higher thresholds for principal licensing for interests acquired in publicly traded corporations and exempted private investment funds. This is because of the more limited ability of these acquisitions to affect the operations of a licensee. Finally, the existing subsection (g), which is now subsection (i) still retains the Board’s ability to require any individual to obtain a principal license if the Board determines licensure to be appropriate.

New section 433a.4 (relating to interests in licensees held by entities) has been reorganized in the same manner as § 433a.3. Subsection (a) addresses entities acquiring an interest in a slot machine or management

company licensee and subsection (b) addresses entities acquiring an interest in other licensees. Subsections (c), (d), (e), (f) and (g) also mirror the provisions in § 433a.3(c), (d), (e), (f) and (g). Subsection (h) (formerly subsection (f)) has been amended to improve its clarity and existing subsection (g) has been deleted because it no longer applies. Existing subsection (h), which is now subsection (i), has been revised to make it consistent with the revisions to § 433a.3(i).

Section 433a.5 (relating to institutional investors) has been revised to reduce the filing requirements imposed on institutional investors. Under subsection (a), institutional investors that meet the criteria in paragraphs (1) and (2) will be allowed to file an Institutional Investor Notice of Ownership instead of being required to file an application for a principal licensee. Additionally, the Board has deleted the existing provisions related to waivers because they are not needed.

In § 433a.6 (relating to lenders and underwriters), references to applicants for a license have been deleted for the reasons previously discussed. Existing subsection (c) has been deleted and replaced with new text that includes specific criteria pertaining to when a lender will not be required to be licensed as a principal. Additionally, a new subsection (d) has been added which sets forth the circumstances under which the purchaser of debt issued by a licensee will not be required to be licensed as a principal. Subsection (e) (formerly subsection (d)) has been revised to make it consistent with the requirements in new subsection (d). These revisions will make it easier for lenders to determine whether or not they will be required to be licensed as principals.

In § 433a.7 (relating to trusts), existing subsections (a), (b) and (c) have been revised and rearranged to mirror the requirements in §§ 433a.3(a) and (b) and 433a.4(a) and (b) so that trusts will be treated in the same manner as an individual or other entity. The new subsection (c) is a reformatted version of the current subsection (d). Subsections (d) and (e) mirror the language of subsections (c) and (f) in §§ 433a.3 and 433a.4.

*Affected Parties*

This rulemaking will affect officers and directors of licensees; individuals, entities, institutional investors and trusts which hold an interest in a licensee; and lending institutions and other purchasers who hold debt of a licensee. It will provide greater clarity regarding who must be licensed as a principal and eliminate the need for some of these entities to be licensed as principals.

*Fiscal Impact*

*Commonwealth*

There will be no significant increase or decrease in regulatory costs for the Board or other State agencies as a result of this rulemaking. This is because the Board recovers the costs associated with licensing activities from the applicants for licenses.

*Political Subdivisions*

This proposed rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

*Private Sector*

Overall, this proposed rulemaking should result in a slight reduction in the number of applications for a principal license from the affected groups listed in this preamble.

*General Public*

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

*Paperwork Requirements*

This proposed rulemaking will reduce the number of applications that are filed for principal licenses and allow some institutional investors to file the shorter Institutional Investor Notice of Ownership form.

*Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed 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 #125-108.

*Contact Person*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 6, 2010, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site at [ww.w.pgcb.state.pa.us](http://ww.w.pgcb.state.pa.us).

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,  
*Chairperson*

**Fiscal Note:** 125-108. No fiscal impact; (8) recommends adoption.

**Annex A**

**Title 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION**

**CHAPTER 433a. PRINCIPAL LICENSES**

**§ 433a.1. Definitions.**

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

\* \* \* \* \*

*Officer*—A president, chief executive officer, chief operating officer, secretary, treasurer, principal legal officer, principal compliance officer, principal financial officer, [ **comptroller,** ] principal accounting officer, chief engineer or technical officer of a manufacturer, [ **or** ] principal slot operations officer of a slot machine licensee, **senior surveillance and audit executives of an intermediary or holding company of a slot machine licensee** and any person routinely performing corresponding functions with respect to an entity whether incorporated or unincorporated.

*Principal affiliate*—

(i) An intermediary or holding company of an applicant or licensee.

(ii) A general partner of a limited partnership that is an applicant or licensee.

(iii) A general partner of a limited partnership that is an intermediary or holding company of an applicant or licensee.

\* \* \* \* \*

*Registered investment adviser*—An investment adviser [ **that has** ] registered with the SEC under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

*Registered investment company*—An investment company [ **that has** ] registered with the SEC under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

\* \* \* \* \*

§ 433a.2. [ **Directors or officers** ] **Officers and directors of licensees.**

(a) Each officer and director of [ **an applicant or** ] a licensee shall be licensed as a principal.

(b) Each officer and director of an intermediary [ **,** **subsidiary** ] or holding company of a [ **slot machine applicant or** ] licensee shall be licensed as a principal.

(c) Each officer and director of [ **an intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company** ] a subsidiary of a slot machine licensee shall be licensed as a principal.

(d) [ **The senior surveillance or internal audit executives of a holding or intermediate company which has authority to direct the operations of a slot machine licensee shall be licensed as a principal if the most senior executive in the reporting line reports directly to the independent audit committee of the board of directors of the holding or intermediary company**

(e) Notwithstanding subsection (b), an officer or director of a publicly traded intermediary or holding company of a slot machine applicant or licensee, who is not a member of the audit committee, may request that the Board waive his requirement to be licensed as a principal if he is not actively involved in the affairs of the slot machine applicant or licensee. The waiver request shall be submitted on a Principal/Key Employee Waiver Form, and require that the officer or director certify that he is not actively involved in the affairs of the slot machine applicant or licensee.

(f) ] Notwithstanding [ **subsection (c)** ] subsection (a) or (b), an outside director of a publicly traded [ **intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company** ] corporation, who is [ **not** ] neither a member of the audit committee [ **or** ] nor chairperson of the board of directors of the [ **intermediary or holding company** ] publicly traded corporation will not be required to be licensed as a principal unless the Board determines that the licensure of the individual is necessary to protect the integrity of gaming in this Commonwealth.

[ (g) Notwithstanding subsection (c), an officer of a publicly traded intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company may request that the Board waive the requirement to be licensed as a principal if the officer is not actively involved in the affairs of the applicant or licensee. The waiver request shall be submitted on a Principal/Key Employee Waiver Form and require that the officer certify that he is not actively involved in the affairs of the applicant or licensee. ]

(e) Except as provided in subsection (f), an officer or director required to be licensed under this section shall submit a completed Multi Jurisdictional Personal History Disclosure Form and the Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form within 30 days of performing any duties or exercising any powers as an officer or director.

(f) An officer or director of a privately held slot machine licensee, privately held licensed management company or privately held principal affiliate of a slot machine licensee or licensed management company may not perform any duties or exercise any powers of an officer or director prior to being granted temporary authorization from the Bureau of Licensing. The Bureau of Licensing may grant temporary authorization to a new officer or director of a privately held entity if the individual has submitted a completed Multi Jurisdictional Personal History Disclosure Form, a completed Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form, and fingerprints in a manner prescribed by the Bureau of Investigation and Enforcement.

§ 433a.3. [ **Individual ownership** ] **Interests in licensees held by individuals.**

(a) An individual [ **who has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an applicant or licensee shall be licensed as a principal.** ] shall apply for and obtain a principal license from the Board prior to possessing any of the following:

(1) A direct ownership interest in a slot machine or management company licensee.

(2) A 1% or greater indirect ownership interest in a slot machine or management company licensee. An ownership interest that is held indirectly by an individual through one or more intervening entities



will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(3) A right to receive a payment from a slot machine licensee based directly or indirectly on the earnings, profits or receipts from the slot machines and associated equipment for use or play in this Commonwealth.

(4) A right or ability to control or influence the management or policies of a slot machine licensee.

(b) An individual who [ , directly or indirectly, has the power to control or direct the management or policies of an applicant or licensee shall be licensed as a principal ] possesses any of the interests or rights in paragraphs (1)—(3) shall apply for and obtain a principal license. An individual may possess any of the interests or rights in paragraphs (1)—(3) if the individual notifies the Board and submits a completed application to the Board in accordance with § 433a.8 (relating to principal applications) prior to acquiring the interest or right.

(1) A direct ownership interest of 1% or more in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise.

(2) A 1% or greater indirect ownership interest in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise. An ownership interest that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(3) A right or ability to control or influence the management or policies of a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise.

(c) [ An individual who has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an intermediary or holding company of a slot machine applicant or licensee shall be licensed as a principal ] An individual who has acquired an interest or right set forth in subsection (b)(1)—(3) prior to being licensed, whose application is denied or withdrawn shall divest the interest or right.

(d) [ An individual that has a 1% or greater indirect ownership interest in an applicant or licensee shall be licensed as a principal. An ownership interest that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain. ] An individual seeking to acquire a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise shall submit the following, at least 30 days prior to acquiring the ownership interest:

(1) A notification of a Change in Control of a Licensee Form.

(2) A completed principal application.

(e) Notwithstanding [ any provision to the contrary in this section, an individual who holds less than 5% of the voting securities of an applicant or licensee or an intermediary or holding company of an applicant or licensee that is a publicly traded company will not be required to be licensed as a principal ] subsection (d), the Board may require an individual to obtain a principal license prior to acquiring a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise.

(f) [ Each individual who is a grantor, trustee or beneficiary of a trust that is required to be licensed as a principal under this chapter shall be licensed as a principal ] Notwithstanding subsections (a) and (b), an individual whose ownership interest in a licensee consists of less than 5% of the voting securities of a publicly traded corporation will not be required to be licensed as a principal.

(g) Notwithstanding subsections (a) and (b), an individual who indirectly owns less than 5% of the voting securities of a publicly traded corporation through one or more privately held entities will not be required to be licensed as a principal.

(h) Notwithstanding subsections (a) and (b), an individual who holds an indirect ownership interest of less than 5% in a licensee through a private investment fund that has been exempted from licensure under § 433a.4(e) (relating to interests in licensees held by entities) will not be required to be licensed as a principal.

[ (g) The ] (i) Notwithstanding any provision in this section, the Board may require any individual who has [ a ] any financial interest in [ , or receives an economic benefit from, ] an applicant or licensee to be licensed as a principal.

§ 433a.4. [ Entity ownership ] Interests in licensees held by entities.

(a) An [ intermediary, subsidiary or holding company of an applicant or licensee ] entity shall [ be licensed as a principal. ] apply for and obtain a principal license prior to possessing any of the following:

(1) A direct ownership interest in a slot machine or management company licensee.

(2) A 1% or greater indirect ownership interest in a slot machine or management company licensee. An ownership interest that is held indirectly by an entity through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(3) A right to receive a payment from a slot machine or management company licensee based directly or indirectly on the earnings, profits or receipts from the slot machines and associated equipment for use or play in this Commonwealth.

(4) A right or ability to control or influence the management or policies of a slot machine or management company licensee.

(b) An entity that [ , indirectly or directly, has the power to control or direct the management or policies of an applicant or licensee shall be licensed as a principal ] possesses any of the interests or rights in paragraphs (1)—(3) shall apply for and obtain a principal license. An entity may possess any of the interests or rights in paragraphs (1)—(3) if the entity notifies the Board and submits a completed application to the Board in accordance with § 433a.8 (relating to principal applications) prior to acquiring the interest or right.

(1) A direct ownership interest of 1% or more in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise.

(2) A 1% or greater indirect ownership interest in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise. An ownership interest that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(3) A right or ability to control or influence the management or policies of a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise.

(c) An entity that has [ a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an applicant or licensee shall be licensed as a principal ] acquired an interest or right set forth in subsection (b)(1)—(3) prior to being licensed, whose application is denied or withdrawn shall divest his interest or right.

(d) An entity [ that has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an intermediary, subsidiary or holding company of a slot machine applicant or licensee, shall be licensed as a principal. ] seeking to acquire a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise shall submit the following, at least 30 days prior to acquiring the ownership interest:

(1) A notification of a Change in Control of a Licensee Form.

(2) A completed principal application.

(e) [ An entity that has an indirect ownership interest of 5% or greater in an applicant or licensee shall be licensed as a principal. An ownership interest that is held indirectly by an entity through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain ] Notwithstanding subsection (d), the Board may require an entity to obtain a principal license prior to acquiring a direct or indirect ownership interest of

20% or greater in a licensed manufacturer, licensed supplier, licensed manufacturer designee or licensed junket enterprise.

(f) Notwithstanding subsections (a) and (b), an entity whose ownership interest in a licensee consists of less than 5% of the voting securities of a publicly traded corporation will not be required to be licensed as a principal.

(g) Notwithstanding subsections (a) and (b), an entity that indirectly owns less than 5% of the voting securities of a publicly traded corporation through one or more privately held entities will not be required to be licensed as a principal.

[ (f) ] (h) Notwithstanding [ subsection (e) ] subsections (a) and (b), a private investment fund [ , including its feeder funds, that has an indirect ownership interest in an applicant or licensee, shall be exempt from obtaining ] and its related management entities will not be required to be licensed as a principal [ license ] if the following apply:

(1) [ Neither the ] The private investment fund [ , nor the investors in the private investment fund have any voting rights or any other power ] has no voting rights in licensee and does not possess any other right or ability to control or to influence the [ applicant or ] licensee.

\* \* \* \* \*

(3) [ No investor in the private investment fund has a right to redeem his interest in the private investment fund within 2 years of the purchase of the interest ] Each individual who has an indirect ownership or beneficial interest of 5% or greater in the licensee through the private investment fund applies for and obtains a principal license.

(4) Each individual [ and entity that ] who has the ability to control or influence the management of the private investment fund [ is licensed as ] applies for and obtains a principal license.

\* \* \* \* \*

[ (g) A private investment fund that does not qualify for the exemption under subsection (f) solely on the basis that it fails to satisfy paragraph (3), may still qualify for an exemption from licensure if the private investment fund satisfies the other conditions under subsection (f) and its indirect ownership interest in the applicant or licensee is less than 10%.

(h) [ (i) Notwithstanding any provision to the contrary in this section, the Board may require any entity that has [ a ] any financial interest in [ , or receives any economic benefit from, an applicant or ] a licensee to be licensed as a principal.

§ 433a.5. Institutional investors.

(a) [ Notwithstanding any provision to the contrary in this chapter, an ] An institutional investor may file an Institutional Investor Notice of Ownership with the Bureau of Licensing, in lieu of applying for principal licensure required under this chapter, if:

(1) **The institutional investor [ that ] owns or beneficially owns more than 5% but less than 15% of the outstanding voting securities of a publicly traded corporation that is an intermediary or holding company of [ an applicant for or ] a holder of a manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license [ will not be required to be licensed as a principal if the following conditions are satisfied: ] and has filed and remains eligible to file a statement of beneficial ownership on Schedule 13G with the SEC as a result of the institutional investor's ownership interest in the publicly traded corporation.**

[ (1) **The institutional investor or the applicant or licensee files a notice with the Board containing a description of the institutional investor's interests. ]**

(2) **The institutional investor [ has filed a Schedule 13G with the SEC, and the institutional investor continues to be eligible to file the Schedule 13G ] owns or beneficially owns more than 5% but less than 10% of the outstanding voting securities of a publicly traded corporation that is an intermediary or holding company of a slot machine licensee and has filed and remains eligible to file a statement of beneficial ownership on Schedule 13G with the SEC as a result of the institutional investor's ownership interest in the publicly traded corporation.**

[ (b) **Notwithstanding any provision to the contrary in this chapter, an institutional investor that owns less than 10% of the outstanding voting securities of an intermediary or holding company of a slot machine licensee or applicant shall be eligible to be receive a waiver from the requirements of licensure from the Board by filing a Principal Waiver-Entity Form. The waiver request must include, at a minimum, a certification by the institutional investor stating that the institutional investor has no present involvement in, and no intention of influencing or affecting the affairs of, the slot machine applicant or licensee or an intermediary or holding company of the slot machine applicant or licensee and will give the Board 30 days notice if the institutional investor intends to do so.**

(c) **Notwithstanding subsection (b), an institutional investor that has been granted a waiver shall be permitted to vote on matters put to the vote of the outstanding security holders.**

(d) **A holding company of an institutional investor may file a notice or waiver request on behalf of its institutional investor subsidiaries provided that the holding company does not own more than 5% or more of the securities of the intermediary or holding company of the applicant or licensee.**

(e) **A registered investment adviser or a holding company of a registered investment adviser may file a notice or waiver request, when permitted, on behalf of the registered investment companies that hold securities beneficially owned by the registered investment adviser. ]**

#### **§ 433a.6. Lenders and underwriters.**

(a) **Each lender and underwriter of a slot machine, manufacturer or supplier [ applicant or ] licensee shall be licensed as a principal.**

(b) **Notwithstanding subsection (a), a lender that is a bank or lending institution which makes a loan to a slot machine, manufacturer or supplier [ applicant or ] licensee in the ordinary course of business [ is ] will not be required to be licensed as a principal. The Board may require a bank or lending institution to provide information or other assurances to verify its eligibility for this exemption.**

(c) **[ An underwriter or lender of an intermediary, subsidiary or holding company of a slot machine applicant or licensee shall be required to be licensed as a principal if the Board determines that the suitability of the underwriter or lender is at issue and is necessary to consider a pending application for a slot machine license. ] A lender to an intermediary or holding company of a slot machine licensee shall be required to be licensed as a principal unless all of the following apply:**

(1) **The lender is in the business of providing debt or equity capital to individuals or enterprises.**

(2) **The lender's loan to the intermediary or holding company of a slot machine licensee is in the ordinary course of its business.**

(3) **The lender does not have the ability to control or otherwise influence the affairs of the intermediary or holding company of a slot machine licensee or the slot machine licensee.**

(d) **A person who acquires a debt instrument issued by a licensed supplier, licensed manufacturer, slot machine licensee or intermediary or holding company of a slot machine licensee in a secondary market shall not be required to be licensed as a principal if:**

(1) **The person does not have any right or ability to control or influence the affairs of the applicant or licensee.**

(2) **The person's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.**

(e) **Notwithstanding any provision to the contrary in this section, the Board may require the licensure of any [ lender or underwriter of an applicant or ] person who holds a debt instrument issued by a licensee or any holding or intermediary company or subsidiary of [ an applicant or ] a licensee if the Board has reason to believe that the [ lender or underwriter ] person would not satisfy the character requirements of section 1310(a) of the act (relating to slot machine license application character requirements).**

#### **§ 433a.7. Trusts.**

(a) **A trust or similar business entity [ that holds a direct ownership interest in an applicant or licensee must be licensed as a principal. ] shall apply for and obtain a principal license prior to possessing any of the following:**

(1) **A direct ownership interest in a slot machine licensee.**



(2) A 1% or greater indirect ownership interest in a slot machine licensee. An ownership interest that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(3) A right to receive a payment from a slot machine licensee based directly or indirectly on the earnings, profits or receipts from the slot machines and associated equipment for use or play in this Commonwealth.

(4) A right or ability to control or influence the management or policies of a slot machine licensee.

(b) A trust or similar business entity [ that holds a 1% or greater indirect ownership interest in an applicant or licensee must be licensed as a principal. An ownership interest that is held indirectly by an entity through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain. ] shall notify the Board and submit an application to the Board in accordance with § 433a.8 (relating to principal applications) prior to possessing any of the following:

(1) A direct ownership interest of 1% or more in a licensed manufacturer, licensed supplier, licensed manufacturer designee, management company licensee or junket enterprise licensee.

(2) A 1% or greater indirect ownership interest in a licensed manufacturer, licensed supplier, licensed manufacturer designee, management company licensee or junket enterprise licensee. An ownership interest that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(3) A right or ability to control or influence the management or policies of a licensed manufacturer, licensed supplier, licensed manufacturer designee, management company licensee or junket enterprise licensee.

(c) [ A trust or similar business entity that receives any payment, percentage or share of revenue, profits or receipts directly from an applicant or licensee must be licensed as a principal.

(d) A trust or similar business entity will not be issued a principal license unless each ] Each trustee, grantor and beneficiary, including a minor child beneficiary, [ has been granted a principal license ] of a trust required to be licensed as a principal under this section shall be required to be licensed as a principal.

(e) Notwithstanding [ any provision to the contrary in this section ] subsection (a), a trust [ will not be required to be licensed as a principal if the holdings of the trust consist of less than 5% of the voting securities of a publicly traded company ] whose ownership interest in a licensee consists of less than 5% of the voting securities of a publicly traded company will not be required to be licensed as a principal.

(f) Notwithstanding any provision to the contrary in this section, the Board may require any trust that has any financial interest in a licensee to be licensed as a principal.

[Pa.B. Doc. No. 10-107. Filed for public inspection January 15, 2010, 9:00 a.m.]

## STATE BOARD OF PODIATRY

[ 49 PA. CODE CH. 29 ]  
Continuing Education

[Correction]

A typographical error occurred in the Fiscal Note for the proposed rulemaking which appeared at 39 Pa.B. 7107, 7108 (December 19, 2009).

The correct version of the Fiscal Note is as follows:

**Fiscal Note:** 16A-4410. No fiscal impact; (8) recommends adoption.

The remainder of the document was accurate as printed.

[Pa.B. Doc. No. 09-2314. Filed for public inspection December 18, 2009, 9:00 a.m.]