RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 129]

Large Appliance and Metal Furniture Surface Coating Processes

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

The final-form rulemaking amends 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 final-form rulemaking adds § 129.52a (relating to control of VOC emissions from large appliance and metal furniture surface coating processes) and amends §§ 129.51 and 129.52 (relating to general; and surface coating processes).

This order was adopted by the Board at its meeting on June 15, 2010.

A. *Effective Date*

This final-form 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. 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 final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us (DEP Keyword: Public Participation).

C. *Statutory Authority*

This final-form 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 in subsection (a)(8) grants the Board the authority to adopt rules and regulations designed to implement the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

D. *Background and Purpose*

The purpose of this final-form 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 final-form rulemaking adopts the emission limits and other requirements of the United States Environmental Protection Agency's (EPA) 2007 Control Techniques Guidelines (CTG) for large appliance coatings and metal furniture coatings 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 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, which can trigger asthma attacks.

The EPA 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 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 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 23858, 23931 (April 30, 2004). This Commonwealth is meeting the 1997 standard in all areas except the five-county Philadelphia area. 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.

Furthermore, in March 2008, the EPA lowered the primary and secondary 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 proposed at 75 FR 2938 (January 19, 2010) to set a more protective 8-hour ozone primary standard between 0.060 and 0.070 ppm to provide increased protection for children and other at-risk groups. The EPA also proposed that the secondary ozone standard, which was set identically to the revised primary standard in the 2008 final rule, should instead be a new cumulative, seasonal standard. See 75 FR 2938. This seasonal standard is designed to protect plants and trees from damage occurring from repeated ozone exposure, which can reduce tree growth, damage leaves and increase susceptibility to disease. The final revised ozone NAAQS are expected in October 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. See 72 FR 57215, 57218 (October 9, 2007).

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

Section 183(e) of the CAA (42 U.S.C.A. § 7511b(e)) 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. 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 when the EPA determines that the CTG will be "substantially as effective as regulations" in reducing emissions of VOC in ozone nonattainment areas.

In 1995, the EPA listed large appliance coatings and metal furniture coatings on its § 183(e) list and in 2007 issued CTGs for these two product categories. See 60 FR 15264 (March 23, 1995) and 72 FR 57215. 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. See 72 FR 57215, 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 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 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 final-form rulemaking will 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 final-form rulemaking is required under the CAA and is reasonably necessary to attain and maintain the health-based 8-hour ozone NAAQS and to satisfy related CAA requirements in this Commonwealth. This final-form rulemaking will be submitted to the EPA as a revision to the SIP.

The final-form rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on April 29, 2010. The AQTAC voted 13-0-1 to concur with the Department's recommendation to present the final-form amendments to the Board for approval for publication as a final-form rulemaking. The Department also consulted with the Small Business Compliance Advisory Committee (SBCAC) on April 28, 2010, and the Citizens Advisory Council (CAC) on May 6, 2010. The SBCAC and CAC did not have concerns.

E. *Summary of Regulatory Requirements and Changes to the Proposed Rulemaking*

The final-form rulemaking amends § 129.51(a) to extend its coverage to large appliance and metal furniture surface coating processes covered by this final-form rulemaking. Section 129.51(a) provides an alternative method for owners and operators of facilities to achieve compliance with air emission limits.

The final-form rulemaking amends § 129.52 by adding subsection (i). Section 129.52 specifies requirements and emission limits for various surface coating processes. The amendment in this final-form rulemaking clarifies in subsection (i) that the requirements and limits already specified in § 129.52 for metal furniture coatings and large appliance coatings are superseded by the requirements and limits that will be adopted in this final-form rulemaking.

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 following discussion regarding § 129.52a, 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 retained in this final-form rulemaking.

The final-form rulemaking adds § 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 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.

Final-form subsection (b) explains that § 129.52a supersedes 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.

Final-form 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: 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 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.

Final-form subsection (d) identifies daily records that shall 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.

Final-form subsection (e) contains a change to the recordkeeping and reporting requirements proposed in § 129.52a(e). The proposed rulemaking required that records be maintained for 2 years. The final-form provision requires that records be maintained for 2 years unless a longer period is required under § 127.511(b)(2) (relating to monitoring and related recordkeeping and reporting requirements). Additionally, § 129.52a(e) has been amended to clarify that records shall be submitted to the Department upon receipt of a written request.

Under final-form subsection (f), an owner or operator subject to § 129.52a 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 electrostatic coating, roller coating, flow coating, dip coating (including electrodeposition), high volume-low pressure spray or brush coating. An owner or operator may use another coating application method if a request is submitted in writing to the Department that demonstrates that the method is capable of achieving a transfer efficiency equivalent to or better than that achieved by the other methods in subsection (f) and is approved in writing by the Department prior to use.

Final-form 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 § 129.52a, Tables I and II. 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.

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

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

Final-form 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

retained due to the CAA prohibition against backsliding from existing emission control requirements.

Final-form 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 "Extreme 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 retained due to the CAA prohibition against backsliding from existing emission control requirements.

The tables in the final-form rulemaking include several amendments to emission limits made for the purpose of providing consistency in the number of significant digits. Specifically, the emission limit of 3.3 lb/gal in the "Baked" columns for "General, One Component" and "General, Multi-Component," and in the "Air Dried" columns for "General, One Component" coatings has been revised to 3.34 lb/gal. The proposed emission limit of 4.5 lb/gal in the "Air Dried" columns for "General, Multi-Component" and "Extreme High Gloss" coatings has been revised at final to 4.62 lb/gal. The 4.62 lb/gal emission limit is being used to provide consistency with the limit in § 129.52 in addition to providing for consistency in the number of significant digits. Despite the fact that 4.62 is a higher emission limit than the limit of 4.5 recommended in the CTGs, the emission reduction that will be achieved is equivalent. The difference between these two numbers is due to different but equally acceptable methodologies being used for rounding during the conversion from metric units to English units. The reductions achieved with the emission limit of 4.62 lb/gal for the "General, Multi-Component" and "Extreme High Gloss" coatings are equivalent to those that would be achieved by using the number recommended in the CTGs.

F. *Comments and Responses*

The Board approved publication of the proposed rulemaking at its meeting on November 17, 2009. The proposed rulemaking was published at 40 Pa.B. 420 (January 16, 2010) with a 66-day public comment period. Three public hearings were held on February 16, 17 and 18, 2010, in Pittsburgh, Harrisburg and Norristown, PA, respectively. The public comment period closed on March 22, 2010.

No public comments were received by the Board.

The Independent Regulatory Review Commission (IRRC) commented that proposed § 129.52a(d), which required the owners and operators of the regulated surface coating processes to maintain certain records, is unclear. IRRC requested that the Board clarify the format in which these records must be maintained. The Board respectfully disagrees that subsection (d) was unclear. Requiring regulated facilities to maintain records is a standard requirement in many Board-approved regulations, including § 129.52(g), for instance. Neither the Department nor the regulated sources have had difficulty understanding or complying with this requirement.

IRRC commented that proposed § 129.52a(e), which required that records required under § 129.52a(d) be submitted to the Department "upon request," is unclear as to whether this request will be made orally or in writing. The Board agrees and revised the final-form rulemaking to specify that the records shall be submitted to the Department upon receipt of a written request.

G. *Benefits, Costs and Compliance*

Benefits

Implementation of the final-form rulemaking will benefit the health and welfare of the approximately 12 million residents and the 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 final-form rulemaking is 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 final-form 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 will 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 4 large appliance surface coating operations combine to emit an estimated total of 18.2 tons of VOCs per year and 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 final-form rulemaking is approximately 5.5 tons (18.2 tons × 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 final-form rulemaking is approximately 17.6 tons (50.33 tons × 35%).

Compliance Costs

The costs of complying with the final-form rulemaking 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 will 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 × $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 × $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 will be gained from this final-form 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 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 shall 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 shall be required to keep records demonstrating the validity of the exemption. Persons seeking to comply through the use of add-on controls shall be required to meet the applicable reporting requirements specified in Chapter 139 (relating to sampling and testing).

H. *Pollution Prevention*

The 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 final-form rulemaking incorporates the following pollution prevention incentives.

The final-form rulemaking assures that the citizens and the environment of this Commonwealth will experience the benefits of reduced emissions of VOCs and HAPs from large appliance and metal furniture surface coating processes. Although the final-form rulemaking is 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 final-form 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 will 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.

I. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 5, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 420, to IRRC and to the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 4, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 6, 2010, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) At least a 60-day public comment period was provided as required by law and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 420.

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

(5) These regulations are necessary to attain and maintain the ozone NAAQS and to satisfy related CAA requirements.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 129, are amended by amending §§ 129.51 and 129.52 and adding § 129.52a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

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

(e) This final-form rulemaking will be submitted to the EPA as an amendment to the Pennsylvania SIP.

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

JOHN HANGER,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4814 (August 21, 2010).)

Fiscal Note: Fiscal Note 7-449 remains valid for the final adoption of the subject regulations.

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, and 129.54—129.73 may be achieved by alternative methods if the following exist:

(1) The alternative method is approved by the Department in an applicable plan approval or operating permit, or both.

(2) The resulting emissions are equal to or less than the emissions that would have been discharged by complying with the applicable emission limitation.

(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, 129.67 and 129.73 shall be determined on the basis of equal volumes of solids.

(4) Capture efficiency testing and emissions testing are conducted in accordance with methods approved by the EPA.

(5) Adequate records are maintained to ensure enforceability.

(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, § 129.67, § 129.68(b)(2) and (c)(2) or § 129.73.

(b) *New source performance standards.* Sources covered by new source performance standards which are more stringent than those contained in this chapter shall comply with those standards in lieu of the standards found in this chapter.

(c) *Demonstration of compliance.* Test methods and procedures used to monitor compliance with the emission requirements of this section are those specified in Chapter 139 (relating to sampling and testing).

(d) *Records.* The owner or operator of a facility or source subject to the VOC emission limitations and control requirements in this chapter shall keep records to demonstrate compliance with the applicable limitation or control requirement.

(1) The records must provide sufficient data and calculations to clearly demonstrate that the emission limitations or control requirements are met. Data or information required to determine compliance with an applicable limitation shall be recorded and maintained in a time frame consistent with the averaging period of the standard.

(2) The records shall be retained at least 2 years and shall be made available to the Department on request.

(3) An owner or operator claiming that a facility or source is exempt from the VOC control provisions of this chapter shall maintain records that clearly demonstrate to the Department that the facility or source is not subject to the VOC emission limitations or control requirements.

§ 129.52. Surface coating processes.

* * * * *

(i) Beginning January 1, 2011, the requirements and limits for metal furniture coatings and large appliance coatings in this section are superseded by the requirements and limits in § 129.52a (relating to control of VOC emissions from large appliance and metal furniture surface coating processes).

* * * * *

§ 129.52a. Control of VOC emissions from large appliance 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_o = Weight percent of VOC (W_v-W_w-W_{ex})

W_v = Weight percent of total volatiles (100%-weight percent solids)

W_w = Weight percent of water

W_{ex} = Weight percent of exempt solvent(s)

D_c = Density of coating, lb/gal, at 25° C

V_n = 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_A = VOC content in lb VOC/gal of coating solids for a dip coating, calculated on a 30-day rolling average basis

W_{oi} = 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_{ci} = Density of each as supplied coating (i) added to the dip coating process, in pounds per gallon

Q_i = Quantity of each as supplied coating (i) added to the dip coating process, in gallons

V_{ni} = Percent solids by volume of each as supplied coating (i) added to the dip coating process, expressed as a decimal fraction

W_{oJ} = Percent VOC by weight of each thinner (J) added to the dip coating process, expressed as a decimal fraction

D_{dJ} = Density of each thinner (J) added to the dip coating process, in pounds per gallon

Q_J = 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:

(1) Maintained for 2 years, unless a longer period is required under § 127.511(b)(2) (relating to monitoring and related recordkeeping and reporting requirements).

(2) Submitted to the Department upon receipt of a written 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	3.34	0.40	3.34
General, Multi-Component	0.40	3.34	0.55	4.62
Extreme High Gloss	0.55	4.62	0.55	4.62
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	3.34	0.40	3.34
General, Multi-Component	0.40	3.34	0.55	4.62
Extreme High Gloss	0.61	5.06	0.55	4.62
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. 10-1677. Filed for public inspection September 10, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 261a]

Hazardous Waste Management System; Exclusion for Identification and Listing of Hazardous Waste

The Environmental Quality Board (Board) amends Chapter 261a (relating to identification and listing of hazardous waste) to read as set forth in Annex A. The final-form rulemaking amends an existing hazardous waste delisting previously granted to Geological Reclamation Operations and Waste Systems, Inc. (GROWS), whose successor by merger, Waste Management Disposal Services of Pennsylvania, Inc. (WMDSPA), petitioned the Board to increase the maximum annual volume covered by the current delisting.

This order was adopted by the Board at its meeting on June 15, 2010.

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Dwayne Womer, Environmental Engineer Manager, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Curtis Sullivan, Assistant Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD Users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site: www.depweb.state.pa.us.

C. *Statutory Authority*

The rulemaking is adopted under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.402 and 6018.501) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20). Under sections 105, 402 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Purpose*

A delisting petition is a request to exclude waste from a particular facility from the list of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901—6986) and SWMA regulations. Under 40 CFR 260.20 and 260.22 (relating to general; and petitions to amend part 261 to exclude a waste produced at a particular facility), which are incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability) and modified by § 260a.20 (relating to rulemaking petitions), a person may petition the United States Environmental Protection Agency (EPA) or a state administering an EPA-approved hazardous waste management program to remove waste or the residuals resulting from effective treatment of a waste from a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR 261.31 and 261.32 (relating to hazardous wastes from non-specific sources; and hazardous wastes from specific sources). Specifically, 40 CFR 260.20 allows a person to petition to modify or revoke any provision of 40 CFR Parts 260—266, 268 and 273. Section 260.22 of 40 CFR provides a person the opportunity to petition to exclude a waste on a "generator specific" basis from the hazardous waste lists.

Under the Commonwealth's hazardous waste regulations in § 260a.20, these petitions are to be submitted to the Board in accordance with the procedures established in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy) instead of the procedures in 40 CFR 260.20(b)—(e).

In a delisting petition, the petitioner shall show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed in 40 CFR 261.11 (relating to criteria for listing hazardous waste). In addition, a petitioner shall demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity and toxicity) and present sufficient information for the agency to decide whether factors other than those for which the waste was originally listed warrant retaining it as a hazardous waste.

WMDSPA operates a commercial landfill and associated wastewater treatment plant in Falls Township, Bucks County. In 1991, WMDSPA's predecessor, GROWS, submitted a delisting petition under 40 CFR 260.20 and 260.22. In response to the petition, the EPA excluded the wastewater treatment sludge filter cake derived from the treatment of landfill leachate originating from the closed "Old GROWS" landfill, that contains a mixture of solid wastes and hazardous wastes, and other nonhazardous waste landfills. The EPA noted that the petitioner submitted sufficient information to allow the EPA to determine that the filter cake was not hazardous based upon the criteria for which it was listed and no other hazardous constituents were present in the waste at levels of regulatory concern. Accordingly, using risk assessment tools in use by the EPA at that time to evaluate the potential risk to human health and the environment associated with the disposal of the filter cake as a nonhazardous waste, the EPA excluded the filter cake generated from the treatment of EPA Hazardous Waste No. F039, multisource leachate, from the list of hazardous wastes in 40 CFR 261.31. This delisting was limited to a maximum annual volume of 1,000 cubic yards of filter cake and was conditioned upon the petitioner performing certain verification testing of the filter cake to demonstrate compliance with maximum allowable concentration limits (MACLs). The MACLs were selected for organic and inorganic constituents of the filter cake and were established as delisting conditions by the EPA to be met before the delisted waste could be disposed in a RCRA Subtitle D (nonhazardous waste) landfill. The original petition and subsequent amendments, including the one proposed by this petition, do not address the wastes disposed in a landfill for which its leachate is treated at the treatment plant or the grit generated during the physical removal (for example, screening) of heavy solids from the landfill leachate.

In 2001, GROWS petitioned the EPA to increase the volume of excluded wastewater treatment sludge filter cake to 2,000 cubic yards because of increased filter cake production attributable to improved efficiencies in its wastewater treatment operations. In support of the petition to amend its delisting, the petitioner submitted the verification testing results it had generated in the preceding 2 years and supplemented that data with the total constituents analyses of inorganic constituents for four samples at the request of the EPA. The EPA applied its Delisting Risk Assessment Software (DRAS) program to analyze the risk associated with the request to amend the delisting. The DRAS contains more advanced risk assessment models than those the EPA used in the 1991 delisting. The EPA ultimately concluded that the filter cake sample results and the results of the risk assessment modeling supported the delisting of the filter cake at the increased volume of 2,000 cubic yards annually.

This conclusion was subject to the filter cake continuing to meet new MACLs set by the EPA based on the more conservative of: 1) the values generated by the DRAS program; or 2) the toxicity characteristic regulatory levels. The 2001 delisting amendment also required verification testing to show that the MACLs continued to be met.

Recently, the volume of leachate treated by WMDSPA at the treatment plant has increased coincident with increased concentrations of certain leachate constituents. Accordingly, WMDSPA is generating substantially more filter cake and, to accommodate the disposal of this increased volume as a nonhazardous waste, it is requesting an increase in the volume limit established in its delisting from 2,000 to 4,000 cubic yards annually.

On December 18, 2008, WMDSPA submitted a petition to the Board requesting the increase in the volume limit to 4,000 cubic yards annually. The Board accepted the petition at its April 21, 2009, meeting and directed the Department to review the contents of the petition under § 23.6 (relating to notice of acceptance and Department report).

In support of its petition, WMDSPA submitted 3 years of verification testing—41 sets of sample results of leachate analyses for inorganic constituents and totals analyses for organic constituents collected from December 2005 through December 2008 along with the total constituents analyses for inorganic constituents for four samples collected in 2008. The scope of data was comparable to, though more extensive than, the data submitted to the EPA in connection with the 2001 amendment. WMDSPA also submitted the results of the modeling of this data that it performed using the DRAS program to evaluate the potential risk associated with treating the filter cake as a nonhazardous waste and to generate MACLs for the filter cake at the proposed increased annual level of disposal. The MACLs were generated in a similar fashion to those generated by the EPA in connection with the 2001 delisting.

The petition demonstrates that the filter cake sample results and the results of the risk assessment modeling support the delisting of the filter cake at the increased volume of 4,000 cubic yards annually. Accordingly, the Board approved the amended delisting to increase the annual volume of filter cake that may be disposed as nonhazardous waste and also includes conditions in the amended delisting governing the testing and management of the filter cake similar to the conditions required by the EPA in the current delisting.

The Department carefully and independently reviewed the information in the petition submitted by WMDSPA. Review of this petition included consideration of the original listing criteria as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA) to the RCRA, as reflected in section 222 of the HSWA (42 U.S.C.A. § 6921(f)), and 40 CFR 260.22(d)(2)—(4). In addition, the Department contacted the municipalities near the WMDSPA landfill and the Bucks County Health Department to gauge local concern over the petition. Based on the Department's review and report, on June 16, 2009, the Board directed the Department to develop this rulemaking granting the changes requested by the WMDSPA petition.

The Board adopted the proposed rulemaking at its August 18, 2009, meeting. The proposed rulemaking was published at 39 Pa.B. 6453 (November 7, 2009) with a 30-day public comment period. The Solid Waste Advisory Committee was briefed on the petition and proposed rulemaking on December 7, 2009, and reviewed and endorsed the final-form rulemaking on May 27, 2010. No public comments were submitted in response to the proposed rulemaking either in support or opposition to the amendments. On January 6, 2010, the Independent Regulatory Review Commission (IRRC) notified the Board that it did not have comments on the proposed rulemaking. No public meetings or hearings were held.

E. *Summary of Changes and Comments and Responses on the Proposed Rulemaking*

Chapter 261a contains provisions for the identification and listing of hazardous waste. Section 261a.32 was added in 2006 to refer to Appendix IXa (relating to wastes excluded under 25 Pa. Code § 260a.20 and 40 CFR 260.20 and 260.22). Appendix IXa contains Table 2a (relating to wastes excluded from specific sources), which lists wastes from specific sources that have been delisted through the petition process by the Department and the Board. This numbering scheme is being used to parallel the Federal regulations for clarity and consistency with the incorporation by reference of the Commonwealth's hazardous waste regulations.

The proposed rulemaking amended Chapter 261a Appendix IXa, Table 2a (relating to wastes excluded from specific sources) to provide a specific conditional delisting of wastewater treatment sludge filter cake at the WMDSPA facility (as opposed to incorporating the existing EPA delisting). The delisting levels in Appendix IXa were established by using the more conservative of health-based values calculated by DRAS or toxicity characteristic regulatory levels. WMDSPA will perform verification testing on the filter cake as set forth in the proposed delisting.

In preparing the final-form rulemaking, the Department recognized that there was an error in the placement of the WMDSPA delisting amendments. The Federal Appendix IX in 40 CFR Part 261 (relating to identification and listing of hazardous waste) contains two tables, one for wastes excluded from nonspecific sources (Table 1) and one for wastes excluded from specific sources (Table 2). The EPA placed the original GROWS delisting that is amended by this final-form rulemaking in Table 1, not Table 2. Therefore, to be consistent with the Federal hazardous waste regulations, the final-form rulemaking adds Table 1a (relating to wastes excluded from nonspecific sources) to Appendix IXa. Although two additional minor editorial corrections were made to the final-form rulemaking, it does not make substantive changes to the proposed rulemaking published at 39 Pa.B. 6453.

F. *Benefits, Costs and Compliance Benefits*

The final-form rulemaking provides additional delisted volume of filter cake commensurate with WMDSPA's increased production of wastewater treatment sludge filter cake resulting from its operations. Allowing WMDSPA to dispose of the filter cake in a permitted Subtitle D landfill after performing certain verification testing provides a cost-effective and environmentally responsible method of disposal for this nonhazardous waste. Based on the current costs incurred by WMDSPA to properly dispose of the hazardous filter cake sludge at Model City Landfill in New York, the company will save over $400,000 annually in avoided disposal costs as a result of this delisting amendment.

Compliance Cost

WMDSPA will be required to continue to comply with the conditions in the delisting regulation, including testing and recordkeeping requirements. However, the delisting of the filter cake should result in an overall reduced waste management cost for the WMDSPA facility, which would otherwise send the filter cake it generates beyond 2,000 cubic yards to a Subtitle C landfill.

Compliance Assistance Plan

The final-form rulemaking should not require educational, technical or compliance assistance efforts. The Department has and will continue to provide manuals, instructions, forms and web site information consistent with the final-form rulemaking. In the event that assistance is required, the Department's central office staff will provide it.

Paperwork Requirements

The final-form rulemaking does not create new paperwork requirements to be satisfied by WMDSPA beyond those it already implements under the existing delisting to demonstrate ongoing compliance with the conditions of the current delisting regulation.

G. *Pollution Prevention*

For this final-form rulemaking, the Department does not require additional pollution prevention efforts. The Department already provides pollution prevention educational material as part of its hazardous waste program.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goal for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6453, to IRRC and to the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 4, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 5, 2010, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The final-form regulation does not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 6453.

(4) The regulation is necessary and appropriate for administration and enforcement of the authorizing SWMA identified in Section C of this preamble.

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 261a, are amended by amending Appendix IXa to read as set forth in Annex A.

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

(c) The Chairperson shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

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

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

JOHN HANGER,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4814 (August 21, 2010).)

Fiscal Note: Fiscal Note 7-445 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter D. LISTS OF HAZARDOUS WASTES

APPENDIX IXa. WASTES EXCLUDED UNDER 25 Pa. Code § 260a.20 AND 40 CFR 260.20 AND 260.22

Table 1a. Wastes Excluded from Nonspecific Sources

Facility	*Address*	*Waste description*
Waste Management Disposal Systems of Pennsylvania, Inc.	100 New Ford Mill Road, Morrisville, PA 19067	Wastewater treatment sludge filter cake from the treatment of EPA Hazardous Waste No. F039, generated at a maximum annual rate of 4,000 cubic yards, after September 11, 2010, and disposed in an RCRA Subtitle D landfill. The exclusion covers the filter cake resulting from the treatment of hazardous waste leachate derived from only the "old" Geological Reclamation Operations and Waste Systems, Inc. (GROWS) landfill and nonhazardous leachate derived from only nonhazardous waste sources. The exclusion does not address the waste disposed in the "old" GROWS landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, WMDSPA must implement a testing program for the petitioned waste. This testing program must meet the conditions listed below in order for the exclusion to be valid:
		(1) *Testing*: Sample collection and analyses, including quality control (QC) procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.
		(i) *Sample Collection*: Each batch of waste generated over a 4-week period must be collected in containers with a maximum capacity of 20 cubic yards. At the end of the 4-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the 4-week period.
		(ii) *Sample Analysis*: Each 4-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be submitted to the Pennsylvania Department of Environmental Protection, Bureau of Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to the Department within 60 days from the end of the calendar year. All data must be accompanied by a signed copy of the statement set forth in 40 CFR 260.22(i)(12) to certify to the truth and accuracy of the data submitted. Records of operating conditions and analytical data must be compiled, summarized, and maintained on-site for a minimum of 3 years and must be furnished upon request by any employee or representative of the Department, and made available for inspection.
		(2) *Waste Holding*: The dewatered filter cake must be stored as hazardous until the verification analyses are completed. If the 4-week composite sample does not exceed any of the delisting levels set forth in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed in accordance with all applicable solid waste regulations. If the 4-week composite sample exceeds any of the delisting levels set forth in Condition (3), the filter cake waste generated during the time period corresponding to the 4-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed in accordance with Subtitle C of RCRA. Filter cake which is generated but for which analyses are not complete or valid must be managed and disposed in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels.

Facility	*Address*	*Waste description*		
		(3) *Delisting Levels*: If the concentrations in the 4-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (mg/l or mg/kg) also listed below, the 4-week batch of failing filter cake waste must either be retreated until it meets these levels or managed and disposed in accordance with Subtitle C of RCRA. WMDSPA has the option of determining whether the filter cake waste exceeds the maximum allowable concentrations for the organic constituents by either performing the analysis on a TCLP leachate of the waste or performing total constituent analysis on the waste, and then comparing the results to the corresponding maximum allowable concentration level.		
		(i) Inorganics	Maximum Allowable Leachate Conc. (mg/l)	
		Constituent:		
		Arsenic	1.83e-01	
		Barium	1.43e+01	
		Cadmium	1.10e-01	
		Chromium	5.00e+00	
		Lead	5.00e+00	
		Mercury	1.59e-02	
		Nickel	5.52e+00	
		Selenium	4.25e-01	
		Silver	7.50e-01	
		Cyanide	2.64e+00	
		Cyanide extractions must be conducted using distilled water in place of the leaching media specified in the TCLP procedure.		
		(ii) Organics	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
		Constituent:		
		Acetone	1.39e+01	2.78e+02
		Acetonitrile	3.25e+01	6.50e+02
		Acetophenone	1.39e+01	2.78e+02
		Acrolein	2.60e+02	5.20e+03
		Acrylonitrile	4.76e-03	9.52e-02
		Aldrin	7.72e-06	1.54e-04
		Aniline	9.24e-01	1.85e+01
		Anthracene	4.88e+00	9.76e+01
		Benz(a)anthracene	2.56e-04	5.12e-03
		Benzene	8.86e-02	1.77e+00
		Benzo(a)pyrene	1.57e-05	3.14e-04
		Benzo(b)fluoranthene	1.42e-04	2.84e-03
		Benzo(k)fluoranthene	1.98e-03	3.96e-02
		Bis(2-chloroethyl)ether	1.95e-02	3.90e-01
		Bis(2-ethylhex yl)phthalate	1.19e-01	2.38e+00
		Bromodichloromethane	4.14e-02	8.28e-01
		Bromoform (Tribromomethane)	3.25e-01	6.50e+00
		Butyl-4,6-dinitrophenol, 2-sec- (Dinoseb)	1.39e-01	2.78e+00
		Butylbenzylphthalate	5.67e+00	1.13e+02
		Carbon disulfide	1.39e+01	2.78e+02
		Carbon tetrachloride	2.75e-02	5.50e-01

Facility	*Address*	*Waste description*		
		Chlordane	6.79e-04	1.36e-02
		Chloro-3-methylphenol 4-	1.81e+02	3.62e+03
		Chloroaniline, p-	5.57e-01	1.11e+01
		Chlorobenzene	2.79e+00	5.58e+01
		Chlorobenzilate	5.02e-02	1.00e+00
		Chlorodibromomethane	3.06e-02	6.12e-01
		Chloroform	4.75e-02	9.50e-01
		Chlorophenol, 2-	6.97e-01	1.39e+01
		Chrysene	2.71e-02	5.42e-01
		Cresol	6.97e-01	1.39e+01
		DDD	7.74e-04	1.55e-02
		DDE	1.82e-04	3.64e-03
		DDT	3.42e-04	6.84e-03
		Dibenz(a,h)anthracene	7.43e-06	1.49e-04
		Dibromo-3-chloropropane, 1,2-	2.14e-03	4.28e-02
		Dichlorobenzene 1,3-	1.36e-02	2.72e-01
		Dichlorobenzene, 1,2-	7.60e+00	1.52e+02
		Dichlorobenzene, 1,4-	1.07e-01	2.14e+00
		Dichlorobenzidine, 3,3'-	5.71e-03	1.14e-01
		Dichlorodifluoromethane	1.28e+01	2.56e+02
		Dichloroethane, 1,1-	7.33e-01	1.47e+01
		Dichloroethane, 1,2-	1.57e-03	3.14e-02
		Dichloroethylene, 1,1-	4.28e-03	8.56e-02
		Dichloroethylene, trans-1,2-	2.79e+00	5.58e+01
		Dichlorophenol, 2,4-	4.18e-01	8.36e+00
		Dichlorophenoxyacetic acid, 2,4-(2,4-D)	1.39e+00	2.78e+01
		Dichloropropane, 1,2-	6.93e-02	1.39e+00
		Dichloropropene, 1,3-	2.57e-02	5.14e-01
		Dieldrin	8.28e+01	1.66e+03
		Diethyl phthalate	1.35e+02	2.70e+03
		Dimethoate	3.67e+01	7.34e+02
		Dimethyl phthalate	7.33e+01	1.47e+03
		Dimethylbenz(a)anthracene, 7,12-	2.05e-06	4.10e-05
		Dimethylphenol, 2,4-	2.79e+00	5.58e+01
		Di-n-butyl phthalate	3.23e+00	6.46e+01
		Dinitrobenzene, 1,3-	1.39e-02	2.78e-01
		Dinitromethylphenol, 4,6-,2-	1.32e-02	2.64e-01
		Dinitrophenol, 2,4-	2.79e-01	5.58e+00
		Dinitrotoluene, 2,6-	3.99e-03	7.98e-02
		Di-n-octyl phthalate	6.83e-03	1.37e-01
		Dioxane, 1,4-	2.34e-01	4.68e+00
		Diphenylamine	2.29e+00	4.58e+01
		Disulfoton	2.32e+02	4.64e+03
		Endosulfan	8.36e-01	1.67e+01
		Endrin	2.00e-02	4.00e-01
		Ethylbenzene	1.02e+01	2.04e+02
		Ethylene Dibromide	2.52e-03	5.04e-02

Facility	*Address*	*Waste description*		
		Fluoranthene	3.15e-01	6.30e+00
		Fluorene	1.08e+00	2.16e+01
		Heptachlor	8.00e-03	1.60e-01
		Heptachlor epoxide	8.00e-03	1.60e-01
		Hexachloro-1,3-butadiene	1.28e-02	2.56e-01
		Hexachlorobenzene	1.29e-04	2.58e-03
		Hexachlorocyclohexane, gamma-(Lindane)	4.00e-01	8.00e+00
		Hexachlorocyclopentadiene	8.61e+02	1.72e+04
		Hexachloroethane	1.84e-01	3.68e+00
		Hexachlorophene	1.91e-04	3.82e-03
		Indeno(1,2,3-cd) pyrene	8.02e-05	1.60e-03
		Isobutyl alcohol	4.18e+01	8.36e+02
		Isophorone	2.70e+00	5.40e+01
		Methacrylonitrile	1.39e-02	2.78e-01
		Methoxychlor	1.00e+01	2.00e+02
		Methyl bromide (Bromomethane)	7.80e+01	1.56e+03
		Methyl chloride (Chloro-methane)	1.21e-02	2.42e-01
		Methyl ethyl ketone	8.36e+01	1.67e+03
		Methyl isobutyl ketone	1.11e+01	2.22e+02
		Methyl methacrylate	2.11e+02	4.22e+03
		Methyl parathion	7.74e+01	1.55e+03
		Methylene chloride	1.76e-01	3.52e+00
		Naphthalene	2.53e-01	5.06e+00
		Nitrobenzene	6.97e-02	1.39e+00
		Nitrosodiethylamine	1.71e-05	3.42e-04
		Nitrosodimethylamine	5.04e-05	1.01e-03
		Nitrosodi-n-butylamine	4.76e-04	9.52e-03
		N-Nitrosodi-n-propylamine	3.67e-04	7.34e-03
		N-Nitrosodiphenylamine	5.24e-01	1.05e+01
		N-Nitrosopyrrolidine	1.22e-03	2.44e-02
		Pentachlorobenzene	7.01e-03	1.40e-01
		Pentachloronitrobenzene (PCNB)	6.64e-03	1.33e-01
		Pentachlorophenol	5.44e-03	1.09e-01
		Phenanthrene	1.27e-01	2.54e+00
		Phenol	8.36e+01	1.67e+03
		Polychlorinated biphenyls	3.99e-05	7.98e-04
		Pronamide	1.04e+01	2.08e+02
		Pyrene	2.41e-01	4.82e+00
		Pyridine	1.39e-01	2.78e+00
		Styrene	3.71e+00	7.42e+01
		Tetrachlorobenzene, 1,2,4,5-	5.75e-03	1.15e-01
		Tetrachloroethane, 1,1,2,2-	1.48e-01	2.96e+00
		Tetrachloroethylene	5.22e-02	1.04e+00
		Tetrachlorophenol, 2,3,4,6-	1.10e+00	2.20e+01
		Tetraethyl dithiopyrophosphate (Sulfotep)	1.83e+05	3.66e+06

Facility	*Address*	*Waste description*		
		Toluene	2.79e+01	5.58e+02
		Toxaphene	5.00e-01	1.00e+01
		Trichlorobenzene, 1,2,4-	4.41e-01	8.82e+00
		Trichloroethane, 1,1,1-	4.63e+00	9.26e+01
		Trichloroethane, 1,1,2-	4.76e-02	9.52e-01
		Trichloroethylene	1.86e-01	3.72e+00
		Trichlorofluoromethane	1.24e+01	2.48e+02
		Trichlorophenol, 2,4,5-	5.59e+00	1.12e+02
		Trichlorophenol, 2,4,6-	2.34e-01	4.68e+00
		Trichlorophenoxyacetic acid, 2,4,5-(245-T)	1.39e+00	2.78e+01
		Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	1.00e+00	2.00e+01
		Trichloropropane, 1,2,3-	4.69e-04	9.38e-03
		Trinitrobenzene, sym-	3.96e+00	7.92e+01
		Vinyl chloride	1.81e-03	3.62e-02
		Xylenes (total)	1.95e+02	3.90e+03
		(4) *Changes in Operating Conditions*: If WMDSPA significantly changes the treatment process or the chemicals used in the treatment process, WMDSPA may not manage the treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) WMDSPA must demonstrate that the waste meets the delisting levels set forth in Condition (3); (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of 40 CFR Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from the Department to manage the waste under this exclusion.		
		(5) *Reopener*:		
		(i) If WMDSPA discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then WMDSPA must report any information relevant to that condition, in writing, to the Department within 10 days of discovering that condition.		
		(ii) Upon receiving information described in subparagraph (i) of this Condition, regardless of its source, the Department will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.		

[Pa.B. Doc. No. 10-1678. Filed for public inspection September 10, 2010, 9:00 a.m.]

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 125]

Workers' Compensation; Individual Self-Insurance

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), amends Chapter 125, Subchapter A (relating to individual self-insurance) to read as set forth in Annex A. This final-form rulemaking updates and clarifies the standards and procedures which govern the processing of applications for and the administration of self-insurance for individual employers under the Workers' Compensation Act (act) (77 P. S. §§ 1—1041.4 and 2501—2506 and 2701—2708) and The Pennsylvania Occupational Disease Act (Occupational Disease Act) (77 P. S. §§ 1201—1603).

Statutory Authority

This final-form rulemaking is published under the authority in sections 305(a) and 435(a) of the act (77 P. S. §§ 501 and 991(a)) and section 2205 of The Administrative Code of 1929 (71 P. S. § 565).

Background

Under section 305(a) of the act and section 305 of the Occupational Disease Act (77 P. S. § 1405), an employer liable for the payment of benefits under those acts may be granted an exemption from the necessity of insuring the payment of its liability with an authorized insurer. The grant of an exemption, which is commonly referred to as self-insurance status, is based on the employer demonstrating to the Department that it has the financial ability to pay the compensation provided under the acts.

Subchapter A addresses these technical issues as the application procedures for self-insurance by individual employers, the materials and information that must be provided with the application, minimum requirements to be considered for self-insurance, factors used in assessing the financial ability to self-insure, financial security and excess insurance requirements and requirements to service a self-insurer's claims.

Chapter 125 (relating to workers' compensation self-insurance) was adopted on October 13, 1995, and has seen only very limited regulatory amendments in the last 15 years. The most recent regulatory amendments followed the act of June 24, 1996 (P. L. 350, No. 57) which, among other things, amended section 305 of the act and 802 of the act (77 P. S. § 1036.2) and added section 819 of the act (77 P. S. § 1036.19) affecting matters regarding the requirements for self-insurance. The Department then amended, in pertinent part, § 125.2 (relating to definitions) and § 125.9 (relating to security requirements). See 28 Pa.B. 5459 (October 24, 1998).

On November 14, 2005, the Department held a stakeholder meeting to discuss possible changes to the regulations. A proposed rulemaking was published at 39 Pa.B. 2293 (May 2, 2009). As a result, the Department received written comments from the following: Jonathan H. Rudd, Esquire, on behalf of Kominklijke Ahold N.V. and Giant Food Stores, LLC (collectively referred to as Giant Foods); Cathy L. James on behalf of Porter & Curtis, LLC; Walter T. Hannigan on behalf of AVI Risk Services, LLC; Claudia Allen on behalf of the Port Authority of Allegheny County (Port Authority); Barry Scott on behalf of the City of Philadelphia; Yolanda Romero on behalf of the Southeastern Pennsylvania Transportation Authority (SEPTA); Jayne K. Lemon on behalf of Wells Fargo Disability Management (Wells Fargo); and, Richard A. Armbrust on behalf of United States Steel Corporation (US Steel). The Department also received written comments from the Independent Regulatory Review Commission (IRRC) dated July 1, 2009. In response to comments received, changes were made to the proposed rulemaking.

Purpose

The final-form rulemaking increases clarity and consistency through the introduction of new standard terms throughout the regulations, provides more objective standards for qualifying for and maintaining self-insurance status and improves and strengthens the Department's ability to efficiently and effectively monitor and regulate workers' compensation self-insurance in this Commonwealth.

Summary of Final-Form Rulemaking and Responses to Comments

The Department amends § 125.1 (relating to purpose) to clarify existing language.

The Department amends § 125.2 to clarify existing language, delete the existing definition of "excess insurer" and "instrumentality of the Commonwealth" and include definitions for the following terms: "active self-insurer," "adequate accident and illness prevention program," "authorized retention amount," "catastrophic loss estimation," "dedicated asset account, " "excess indemnity insurance," "excess insurance," "financial ability to self-insure," "guarantor," "investment grade long-term credit or debit rating," "liability limit," "long-term credit or debit rating," "maximum quick asset exposure amount," "minimum funding amount," "minimum security amount," "NRSRO," "self-insurance loss portfolio transfer policy," "special retention amount," "standard retention amount," "workers' compensation excess insurance," "workers' compensation excess insurance recoveries" and "workers' compensation insurer."

IRRC and Porter & Curtis commented that the Department should explain the basis of the definition for "catastrophic loss estimation." Porter & Curtis additionally asked whether it would affect the amount of security a self-insurer shall provide. The catastrophic loss estimation is a general assumption of an applicant's potential worst-case loss that is used to determine if the applicant would be able to self-insure without the usual protection provided by excess insurance. The definition first takes into account an applicant's concentration of risk by considering the number of employees working at the same time at its largest location. It then assumes that a catastrophic event causes injuries to all of the employees such that compensation equal to the Statewide average weekly wage for 500 weeks shall be paid on all employees. The use of the 500-week factor reflects the maximum 500-week period of partial disability allowable under the act. In and of itself, the catastrophic loss estimation will not affect the amount of security a self-insurer must provide. However, if the applicant's catastrophic loss estimation exceeds its quick asset exposure amount, the applicant must obtain excess insurance to self-insure.

IRRC also commented that the use of the word "usually" in the proposed definition of "catastrophic loss estimation" was vague and should be clarified. The Department agrees and revised the final-form rulemaking to replace "usually" with "anticipated to work at one time during a work day."

IRRC questioned the process for administering the proposed definition for "default multiplier" as well the lack of criteria for its use. IRRC also commented that the regulation did not indicate the time of publication in the *Pennsylvania Bulletin*. Upon further consideration, the Department deleted this term and its companion definition "default multiplier-calculated security factor" from the final-form rulemaking.

IRRC commented that the Department should explain when it would exercise the discretionary provision in calculating the "special retention amount" for current self-insurers. In response, the Department deleted the discretionary language to allow current self-insurers to use an amount equal to the retention amount of their excess insurance in effect on the effective date of this final-form rulemaking.

IRRC also commented about the use of the terms "generally" and "commonly" in the definition of "standard retention amount" as well as the lack of information on when the Department intended to publish updates of the amount in the *Pennsylvania Bulletin*. In response, the Department revised the definition in the final-form rulemaking to remove these terms and to allow this amount to be calculated based upon the Statewide average weekly wage without the need to publish annual updates.

AVI Risk Services requested clarification on whether the "standard retention amount" would be a single amount encompassing all industries or multiple amounts based on industry groupings, since the latter may have an impact on excess insurance. The standard retention amount is a single amount covering self-insurers in all industries. If the insurance market requires a self-insurer to seek authorization to retain excess insurance with a retention amount that exceeds the standard retention amount, it may do so through the application of the "special retention amount," which is separately defined in this section.

The Department amends § 125.3 (relating to application) to better reflect the application requirements. The Department replaces the existing affidavit requirement with a verified statement. Under § 125.3(b), the Department allows renewal applicants to file their applications 3 months before the expiration of current permits, which is 1 month earlier than under the current language. Under § 125.3(c)(1), the Department specifies the application fees required for affiliates or subsidiaries who file a consolidated application under § 125.4 (relating to application for affiliates and subsidiaries). The Department amends § 125.3(c)(3)(i) to require that the text of financial statements must be in English. The Department amends § 125.3(c)(5) and (6) to require that loss information must be filed on each employer requesting self-insurance for an initial application and that a report on incurred loss must be filed on each self-insurer for a renewal application. Also, § 125.3(c)(6) allows applicants that have retained an actuary to submit that actuary's report with the application.

The Department adds requirements that applicants include evidence of long-term credit or debt ratings, if any, in § 125.3(c)(9), as well as a listing of workers' compensation claims previously incurred all Pennsylvania as a self-insurer and closed on or after January 1, 2005, in § 125.3(c)(8). This will replace existing language regarding the OSHA No. 200 report, which has not been utilized since the promulgation of Chapter 129 (relating to workers' compensation health and safety). The Department amends § 125.3(d) to require applicants to provide the data, information, explanations, corrections and missing items regarding an application within the time period prescribed in writing by the Bureau. Otherwise, the application will be deemed withdrawn and a renewal applicant will have to obtain insurance coverage by the expiration of the time period. The Department amends § 125.3(e) to clarify that the Bureau will not issue a decision on an application until the data, information, explanations, corrections and missing items have been submitted. The Department also clarifies existing language and references currently recognized auditing standards when applicable.

SEPTA and the City of Philadelphia commented that the deadline for filing a renewal application should remain as it is due to the volume of information that needs to be compiled for the application. IRRC also asked the Department to provide justification for changing the application deadline. In considering the effect of the amendment to subsection (b), the commentators apparently were left with the impression that the Department intended to reduce by 1 month the time an applicant would have to prepare and submit a renewal application. This is not the Department's intention. Rather, this amendment is intended to benefit self-insurers by providing an additional month between the filing of the application and the expiration of the present permit for the self-insurer to satisfy any revised conditions for renewal that are established by the Bureau. This amendment will improve the ability of self-insurers to satisfy renewal conditions and obtain Department approval of their application in a timely manner.

Giant Foods and IRRC questioned how foreign corporations that do not file Forms 10-K or 10-Q with the Securities and Exchange Commission (SEC) would be able to comply with the proposed documentary requirements in § 125.3(c)(2) and (3). Giant Foods suggested amending the two paragraphs to reference equivalent forms filed by foreign corporations with the SEC or with the governing body of other international security exchanges. In response, the Department substantially adopted the language suggested by Giant Foods for applications of affiliates and subsidiaries under § 125.4(e). For clarity in § 125.3(c)(3), the Department moved this language into new subparagraph (iii).

Porter & Curtis expressed concern that the proposed requirement in § 125.3(c)(3)(i) that a parent company applicant provide consolidated financial statements for its subsidiaries in support of its application would be unduly burdensome. In response, the Department deleted this specific language since, when necessary, these consolidated statements already must be provided to conform to generally accepted accounting principles requirements.

Giant Foods also commented that the proposed requirement in § 125.3(c)(3)(i) that the currency values referenced in the supporting financial statements must be in United States dollars would be problematic for foreign corporations. In response, the Department substantially adopted the suggestion set forth by Giant Foods to require an applicant to assist the Department in converting financial statements not in United States dollars to United States dollar amounts.

Giant Foods commented that the required standard for reviewing financial statements submitted under § 125.3(c)(4) should include standards established by the International Accounting Standards Board (IASB) to accommodate foreign corporations. IRRC also expressed concern about how foreign corporations using IASB standards could comply with this provision. The Department agrees and revised the final-form rulemaking to allow for the submission of financial statements prepared in conformance with the International Auditing and Assurance Standards Board, which is the international counterpart organization to the American Institute of Certified Public Accountants.

IRRC questioned why the three accounting organizations referenced in § 125.3(c)(3)(i) vary from the organizations referenced in § 125.3(c)(4), which concerns the standards for reviewed financial statements. This difference lies in the fact that the organizations involved in the setting of standards for audited financial statements are different from those involved in setting standards for reviewed financial statements.

SEPTA expressed concern over the requirement in § 125.3(c)(8) that applicants shall report data on closed claims. Giant Foods commented that the information on closed claims should be limited to those claims closed within the past 5 years, while IRRC suggested limiting the information to claims closed within a specific time period. In response to these comments, the Department revised § 125.3(c)(8) to limit this requirement to claims closed on or after the effective date of this final-form rulemaking. Similar changes were made to the reporting provisions in § 125.16(b) (relating to reporting by runoff self-insurer).

The City of Philadelphia and IRRC requested clarification on when to find the case reserve instructions referenced in § 125.3(c)(8)(iii) (now § 125.3(c)(8)(iv)). The Department added language specifying that the instructions can be found on the Bureau-prescribed forms currently provided to employers requesting self-insurance.

AVI Risk Services and Porter & Curtis requested the Department to consider the potential compliance costs in developing the electronic formats for the required reserve and claims reporting. For the electronic reporting under § 125.3(c)(8), as well as the related reporting under § 125.16(b), the costs will be minimal. The Department

intends to capture only a limited number of readily available data elements and will do so in a widely used format, such as an Excel spreadsheet.

IRRC commented that the time frame for an applicant to provide missing or incomplete application data in § 125.3(d) should both establish a reasonable minimum period and allow for extension due to unique conditions. The Department agrees and specified a 21-day period for the provision of the application data, which may be extended if requested by the applicant and approved by the Bureau.

SEPTA expressed concern that the requirement in § 125.3(e) that application materials must be provided before decision will delay the approval of renewal applications for reasons such as the self-insurer's excess insurance does not correspond to the renewal of its application. This is not the case. The Department will not delay the issuance of a permit under these circumstances as long as excess coverage is currently in place under § 125.6(c)(2)(ii) (relating to decision on application). Under existing regulations, a significant cause for the delay in issuing decisions involving a public employer such as SEPTA was the regulatory requirement that they provide audited financial statements covering the last complete fiscal year. To address this issue, the Department amended § 125.3(c)(3) to clarify that only private employers shall provide audited financial statements on the most recent fiscal year. This will eliminate the common cause of application delays for public employer applicants and will make public employers' compliance with § 125.10 (relating to funding by public employers) paramount in determining whether they have adequate financial health to self-insure.

The Department amends § 125.4 to allow for the submission of audit reports and financial information for applicants that are subsidiaries of a foreign parent company. The Department deletes the provision in subsection (a) requiring that a parent company of a consolidated program be incorporated under the laws of a state of the United States, because this incorporation requirement is extended to applicants in § 125.5 (relating to preliminary requirements). The Department also deletes the requirement that a Bureau form be used by an applicant to delete an affiliate or subsidiary from a consolidated permit, because a specific form for this purpose is unnecessary.

Giant Foods commented that the Department should include the terms "direct or indirect subsidiary" and "direct or indirect parent company" in § 125.4(a) and elsewhere throughout the regulations to recognize that an applicant's direct parent might be a holding company or other intermediary between the applicant and the ultimate holding company. IRRC also suggested clarifying the terminology regarding this subject. In response, the Department amended the definitions of "subsidiary" and "parent company" in § 125.2 to include reference to direct or indirect ownership and control.

IRRC commented that final-form § 125.4(d) should both establish a reasonable minimum period for the provision of a parent company's financial information and allow for extension by the Bureau due to unique conditions. The Department agrees and specified a 21-day period for the provision of the financial information, which may be extended if requested by the applicant and approved by the Bureau.

Giant Foods commented that § 125.4(d) should be excepted in the case of foreign corporations to whom § 125.4(e) applies. The Department agrees and revised § 125.4 (d) accordingly.

Giant Foods also commented that the term "consolidated audit report" be replaced with "consolidated financial statements" in § 125.4(e). The Department agrees and made this change to § 125.4(d) and (e). The Department also made a similar change in § 125.3(c)(3), (c)(3)(i) and (4) and § 125.6(h).

The Department amends § 125.5 to require, for enforcement purposes, that an applicant be incorporated or organized under the laws of a state of the United States and have an adequate accident and illness prevention program under Chapter 129. The Department deletes existing language in § 125.5(b)—(d) because this information is addressed in § 125.6.

IRRC commented that § 125.5(c) should be amended to specify what constitutes an "adequate" accident and illness prevention program. The term "adequate accident and illness prevention program" is defined in § 125.2, which references Chapter 129. The criteria for and determination of an adequate accident and illness prevention program are more properly governed by section 1001 of the act (77 P. S. § 1038.1) and Chapter 129. For consistency with those provisions, the Department replaced the "applicant" with "self-insured employer" in the definition of "adequate accident and illness prevention program" in § 125.2.

The Department amends § 125.6 to add paragraphs which set forth objective standards that an applicant shall satisfy to demonstrate its financial ability to self-insure, including that the applicant has adequate financial capacity and adequate financial health. The criteria for adequate financial health depend upon whether the applicant is a public or private employer. For a private employer, the Department requires an investment grade long-term credit or debt rating, or a long-term credit or debt rating that it is one grade below investment grade as issued by a rating organization or estimated by the Bureau. This will ensure that a private employer applicant which is approved to self-insure will have adequate, current financial health to meet its obligations, including its self-insurance liability, into the reasonably foreseeable future. The Department also adds language in § 125.6(a) to grandfather existing self-insurers who do not meet the rating requirements under certain conditions.

The Department amends § 125.6(a) to streamline the factors to be considered in assessing an application. The Department clarifies the information, standards and procedures pertaining to initial decisions, compliance with conditional approvals, issuance of permits, reconsideration requests and decisions, and appeals from reconsideration decisions to standardize and streamline the process and identify the necessary time frames involved. The Department also reduces the time period for compliance with conditional approvals in § 125.6 from 60 to 45 days. The Department modifies the hearing procedures following a reconsideration decision to replace the de novo hearing process with an appeal hearing process that will be conducted according to these regulations and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent not specifically superseded by these regulations.

Giant Foods commented that § 125.6(a)(2)(ii)(A) and (B) should contain a reference to the parent company's actual or estimated long-term credit or debt rating for

determining the requisite financial health to self-insure. In response, the Department agrees and revised these sections accordingly for applicants under § 125.4(e).

IRRC commented that the Department should include the criteria to be used in the Bureau's rating estimation for applicants that do not have the referenced Nationally-recognized statistical rating organization (NRSRO) rating under § 125.6(a)(2)(ii)(A). An outline of the specific criteria for this determination is difficult to provide, as it requires a judgment based upon a review of the information provided under § 125.6(b)(1)(i)—(iii). The Department will be using generally available "financial analysis comparison databases and evaluations models" for this estimation however and added this language to § 125.6(b)(1)(iii).

Giant Foods also commented that § 125.6(b)(1)(i) and (2) should include references to an applicant's parent company. The Department agrees with regard to § 125.6(b)(1) and (b)(1)(i) and the revised the subsection accordingly for applicants under § 125.4(e). The Department does not believe this change is proper for § 125.6(b)(2) because the quick asset amount measured for self-insurance should be only that of the applicant. However, the Department deleted the word "audited" and added a reference to § 125.4(e) in § 125.6(b)(2) to clarify that the financial statements reviewed under § 125.6(b)(2) may be the unaudited statements submitted under § 125.4(e).

The City of Philadelphia commented that the time frame for satisfying approval conditions under § 125.6(c)(1) should remain at 60 days and not be decreased to 45 days. IRRC requested that the Department explain the reason for the decreased time frame. The Department believes that the current 60-day compliance period is unnecessarily lengthy and causes delay in the timely processing of applications. A 45-day period is a reasonable time frame when there has been a conditional approval. Moreover, if an applicant requires additional time to meet conditions, it continues to have the ability to request a 30-day extension under § 125.6(c)(1)(ii).

The City of Philadelphia commented that an applicant should be given 90 days, rather than 30 days, to comply with the requirement to obtain workers' compensation insurance coverage in § 125.6(d) and (f)(2) as well as § 125.19(a)(3) and (b)(2) (relating to additional powers of Bureau and orders to show cause). The Department believes that the existing 30-day period is sufficient as it has not proven to be problematic. It is also more closely aligned with section 305(a)(3) of the act, which provides that coverage shall be obtained "immediately."

IRRC commented that the Department should provide time frames for the Bureau to take certain actions, including issuing decisions, assigning appeals to hearing officers and appealing to Commonwealth Court in § 125.6(c), (d), (f), (g) and (g)(5). The Department does not believe time frames for these actions are required or useful for several reasons. With the exception of § 125.6(g)(5), these actions have not been subject to time constraints in the past and this has never been problematic. Importantly, an applicant or current self-insurer's status is not affected by the time it takes for the Bureau to make its decision or assign an appeal. The Department has always acted within a reasonable time and will continue to do so. Finally, the time frame for appeal to Commonwealth Court under § 125.6(g)(5) is separately governed by Pennsylvania Rule of Appellate Procedure 1512 (relating to time for petitioning for review).

IRRC commented that final-form § 125.6(e)(1) should both establish a reasonable minimum period for the applicant to submit additional materials in support of its application and allow for extension by the Bureau due to unique conditions. The Department agrees and specified a 21-day period for the provision of the additional materials, which may be extended if requested by the applicant and approved by the Bureau.

The City of Philadelphia commented that the conditions under which a self-insurer continues to operate when its permit is extended under § 125.6(e)(2) and (g) were unclear. In response, the Department incorporated a reference to the conditions "as set forth under subsection (c)(2)" of that section for clarification.

IRRC commented that the Department should explain its rationale for placing the burden on the applicant to prove that the Bureau acted arbitrarily or abused its discretion in § 125.6(g)(4). The Department added this provision consistent with the current case law in *City of Scranton v. Bureau of Workers' Compensation*, 787 A.2d 1094 (Pa. Cmwlth. 2001), wherein the Court determined that this was the appropriate burden in the context of a self-insurance appeal. The Department retained this provision in the final-form rulemaking, but for clarity purposes deleted the unnecessary phrase "under this subchapter."

The Department amends § 125.7 (relating to permit) to clarify the nature and applicability of the automatic extension of an existing permit, providing safeguards for renewal applicants when the Bureau fails to issue an initial decision on a renewal application before the permit's expiration or when a renewal applicant is in the process of timely satisfying conditions in the Bureau's decision at the time an existing permit is set to expire.

IRRC commented on the lack of a timetable for an applicant to satisfy conditions in § 125.7(c). The Department revised this section in the final-form rulemaking to provide that the conditions must be satisfied within the applicable time periods for the initial or reconsideration decision set forth under § 125.6 (relating to decision on application).

The Department rescinds § 125.8 because it contained information that is duplicated in § 125.6.

The Department amends § 125.9 to clarify existing language and replace the use of the outdated security constant with the new term "minimum security amount." The Department also amends the requirements regarding the forms of acceptable security, the procedures for posting and replacing security and the methods for calculating security amounts. The Department amends § 125.9(b)(3) to delete Alaska and Hawaii as states in which a bank's branch office may issue a securing letter of credit to the Bureau, because time zone differences hamper the Bureau's ability to promptly draw down a letter of credit with a bank located in these states. The Department amends the various methods for calculating the required amount of security for private employers under § 125.9(d) to set forth in detail the factors for calculating security depending upon the status and duration of the private employer's self-insurance program.

The Department also adds a specific security discount table in § 125.9(l) based on the self-insurer's investment grade long-term credit or debt rating, if any, under which security amounts calculated under subsection (d) may be discounted. The Department replaces the language in § 125.9(f) permitting present value discounting of liability projected in an actuary's report, which may result in an

inadequate security amount, with language requiring the Bureau to use the overall experience of all self-insurers or of self-insurers in the self-insurer's industry in its selection of loss development factors under certain circumstances. The Department amends § 125.9(j) to allow for a phase-in of increased security requirements under subsection (d) over a period of up to 2 years. It also amends § 125.9(k) to specify the circumstances under which the Bureau may release a runoff self-insurer of the obligation to provide security.

Wells Fargo commented that the Department should clarify when the 45-day time period for providing replacement security under § 125.9(b)(1)(ii) begins to run. The Department agrees and revised the subparagraph to state that the bond must be replaced within 45 days "of the self-insurer's receipt of written notification of the rating decline from the Bureau."

IRRC commented that the Department should specify the type of evidence that would be acceptable for a standby claims service arrangement under the proposed § 125.9(b)(2)(iii) and (3)(iv). US Steel commented that the proposed standby claims service agreements would impose additional costs and an unnecessary administrative burden on self-insured employers, with limited benefit to the Department or injured workers, and therefore requested that the Department reconsider this requirement. The purpose of the standby claims service arrangements was to ensure the timely and efficient continuation of benefit payments to injured workers in the event of a default when deposits under trust or irrevocable letters of credit are used as security. Upon further consideration, the Department agrees with US Steel and deleted the proposed subparagraphs.

With the elimination of the proposed standby claims service provisions, the Department also deleted § 125.9(b)(3)(iii), which required the maintenance of a separate trust agreement to accommodate the proceeds from a letter of credit which is drawn on by the Bureau. The deletion of this requirement will alternatively accomplish the goal of a smooth transition in payment after a default when there is a letter of credit as security, without placing additional cost on the self-insured employer. In light of the rescission of § 125.9(b)(3)(iii), which included a requirement that the trust company obtain a nonprocurement registration number, the Department deleted the proposed definition of "nonprocurement registration number" in § 125.2, since it is no longer necessary.

AVI Risk Services commented that few self-insurers have a long-term credit or debt rating issued by an NRSRO and that the security discounts in § 125.9(d), as well as the similar funding discounts in § 125.10(b), (c) and (d) should be extended to a self-insurer who receives a Bureau-estimated financial health rating equivalent to an investment-grade long-term credit or debt rating issued by an NRSRO. In response, the Department notes that 54% of current self-insurers are rated by one or more NRSRO. Further, since ratings provided by an NRSRO are more complete and accurate than those estimated by the Bureau, the Department believes that it is appropriate to allow the security and funding discounts to be based only upon the actual investment-grade long-term credit or debt ratings issued by an NRSRO.

Giant Foods commented that the security discounts in § 125.9(d)(1)(ii) and (4)(ii) should be expanded to apply to an appropriate long-term credit or debt rating from an NRSRO on the applicant's parent company. The Department disagrees and did not made this change. The Department believes that the privilege of the security discount should directly correspond to the financial rating of the applicant alone, which will be either the actual self-insurer or the guarantor of the self-insurer.

Giant Foods similarly commented that the security discounts in § 125.9(d)(5)(ii) and (6)(ii) should be expanded to apply to the calculation of a runoff self-insurer's security when a runoff self-insurer's guarantor possesses an appropriate long-term credit or debt rating by an NRSRO. The Department agrees that the discount should apply in this instance and made this change to this subsection. This change was also made to § 125.9(d)(5)(iii). For clarity in this regard, the Department also added a definition for the term "guarantor" in § 125.2.

Giant Foods commented that the Department's use of "runoff" and "runoff self-insurer" was not consistent in §§ 125.9(d)(5) and (6) and 125.16(b). The Department agrees and revised these sections to consistently use the term "runoff self-insurer."

IRRC commented that the provisions regarding submission and consideration of a self-insurer's actuarial report in § 125.9(e) do not establish a binding norm and should be deleted or rewritten to establish criteria the Department will apply to accept or use this report. In response, the Department deleted the proposed amendments.

IRRC commented that § 125.9(f), which addresses the Department's selection of loss development factors to project a self-insurer's outstanding liability, did not provide enough certainty to the regulated community. IRRC also commented that § 125.9(g), which addresses the Department's ability to adjust loss development procedures, also did not provide enough certainty to the regulated community. By its very nature, a projection of liability based on loss development techniques contains many adjustments, selections and considerations based on the experience and judgment of the actuary performing the projection. To provide additional certainty regarding this necessary projection in § 125.9(f) however, the Department amended this section to require that it will incorporate the overall Pennsylvania workers' compensation experience factors in its selection of loss development factors when the self-insurer's volume or experience is not sufficient based upon generally accepted actuarial procedures. Further, the Department revised § 125.9(g) to require that it will make adjustments to the loss development procedures under the circumstances in that subsection. The Department deleted proposed amendments that would have provided discretion to use methods other than loss development to make this projection. The Department also deleted proposed § 125.9(g)(1) and (2), consistent with its deletion of the proposed definitions of "default multiplier" and "default multiplier-calculated security factor" in § 125.2, by which the Department would have had additional discretion to substitute the loss development liability amount for a default-multiplier security factor.

Wells Fargo commented that self-insurers should be provided an opportunity to furnish additional information and participate in discussions prior to the Department utilizing the default multiplier-calculated security factor in § 125.9(g)(1). As previously noted, the Department deleted this provision from the final-form rulemaking.

Wells Fargo commented that the maximum security phase-in period in § 125.9(j) should remain at 3 years and not be reduced to a 2-year period. IRRC commented that the Department should provide justification for the

change or maintain the current arrangement. The Department believes that a 2-year phase-in period for current self-insurers who are already posting security based upon the terms of the regulations is reasonable, based upon its past experience with this section and the fact that it is unlikely there will be significant increases in the amount of security under these amendments.

Wells Fargo and IRRC questioned whether the Department intended to discontinue the practice of reducing a runoff self-insurer's amount of security due to the deletion of language on the subject under § 125.9(k). The Department will continue to authorize security reductions for runoff self-insurers. The provisions for calculating the required amount of security for this category of self-insurer are now in § 125.9(d)(5) and (6).

IRRC commented that the Department should specify the type of evidence that would be acceptable under § 125.9(k)(2) for a runoff self-insurer to establish that its closed claims are unlikely to be reopened. In response, the Department deleted that requirement from the subsection.

Giant Foods commented that the Department should amend § 125.9(l) to clarify whether the security discount is based upon the current long-term credit or debt rating or a past rating. The Department revised the final-form rulemaking to clarify that the security discount is based on the "current" long-term credit or debt ratings of the self-insurer or its guarantor.

IRRC commented that § 125.9(m) would give the Department the authority to amend the security discount table under subsection (l) while bypassing the normal rulemaking process. The Department's sole intention in this subsection is to provide a method for the Department to set forth the discounts resulting from financial ratings issued by a new organization that receives a designation as an NRSRO after the effective date of the final-form rulemaking. Therefore, the Department revised this subsection accordingly.

The Department amends § 125.10 to focus on a public employer's short-term solvency rather than its long-term reserves. Therefore, the amendments require public employers to maintain sufficient dedicated cash reserves to meet payments over the next year for benefits and expenses to self-insure. The Department amends § 125.10(a) to provide that a public employer shall maintain a dedicated asset account, which no longer needs to be a trust fund. This requirement now includes the Commonwealth, but not certain runoff self-insurer public employers who do not meet the threshold for average annual payout of benefits on self-insurance claims. The Department deletes existing language in § 125.10(b) and (c) regarding long-term reserves and adds subsections (b)—(e) which set forth in detail the various methods and factors for calculating the required asset level of a public employer's dedicated asset account depending upon the status and duration of the public employer's self-insurance program.

IRRC and the City of Philadelphia commented that the Department should include a definition for "dedicated asset account" for this section. The Department agrees and added a definition of the term in § 125.2.

The Port Authority commented that by replacing the existing "trust" concept with the dedicated asset account for public employers in § 125.10, the regulations will create a financial burden on public employers and their taxpayers without increasing the security of benefit payments to injured workers. The Port Authority suggested that the Department either eliminate the requirement or establish an exemption for public employers with a history of financial responsibility in the payment of benefits. IRRC requested an explanation of the financial impact of this change on public employers. IRRC also commented that the Department should explain what constitutes "good cause" for purposes of the proposed retroactive phase-in requirement under § 125.10(d)(3).

The Department believes that the replacement of trusts with dedicated asset accounts will not increase costs. To the contrary, this change will likely decrease costs for most public employers since they will no longer be required to maintain a formal trust arrangement. While the amount of assets set aside in a dedicated asset account may increase for some public employers, overall this system will reduce the amount of funding required to be set aside under the existing trust concept. The Department recognizes the importance of allowing a public employer to use as much of its available financial resources as possible to provide its mandated public services. The Department believes that the dedicated asset account concept is carefully tailored to balance this recognition with the need to ensure that an employer who is granted the privilege to self-insure clearly has the financial resources to liquidate its workers' compensation liability. As set forth in more detail in the Fiscal Impact section of this preamble, the Department projects that 37 of the 57 current self-insured public employers actually will be able to reduce their reserve funding for workers' compensation by an average of 49% under this final-form rulemaking. While the remaining 20 public employers may be required to increase their funding, this increase will be based upon the increases in their annual payments of benefits.

To avoid a possible undue burden on the few public employers that also may have been subject to the proposed retroactive funding phase-in requirement in § 125.10(d)(3), the Department deleted that requirement. The Department instead included a grandfathering provision which establishes the initial dedicated asset account level for those public employers at their existing funding level as of the effective date of the final-form rulemaking. Future funding increases for those employers would be based only on the same minimum funding calculations in § 125.10(d)(1) and (2) applicable to all public employers that fall under § 125.10(d).

Further, to limit the impact on a public employer's provision of services while ensuring that they maintain asset reserves within a reasonable margin of safety, the Department amended the definition of "minimum funding amount" in § 125.2 to reduce in half the formula's consideration of the Statewide average weekly wage. Additionally, the Department eliminated the separate definition for an "instrumentality of the Commonwealth" in § 125.2 and included this type of public employer under the existing definition of "Commonwealth;" this will avoid the need for those employers to post unnecessary security under the separate requirements for private employers under § 125.9(a). These employers are now treated as all other public employers under the final-form rulemaking.

IRRC commented that the Department should include additional details regarding the process of determining "a later date agreed to by the Bureau" for a public employer to meet its funding requirement under § 125.10(d)(4). The Department revised the language to provide that this period may be extended if requested by the applicant and approved by the Bureau. Similar proposed language in

§ 125.10(c)(3) has also been revised accordingly. Additionally, for clarity, the Department revised § 125.10 (a), (c)(1)(i) and (d)(1)(i) to clarify that the required asset level is calculated based on a public employer's "fiscal" year payout of benefits.

The City of Philadelphia commented that adjustments the Department would make to a public employer's annual payment of benefits under § 125.10(d)(5) for the purpose of calculating the required asset level should only occur following a hearing on the matter. The Department does not believe that a hearing prior to the adjustments is necessary or practical. However, it is important to note that these adjustments are made in the context of the Bureau's initial or reconsideration decision under § 125.6. When the self-insurer disputes the adjustment or funding amount regarding their permit approval, the self-insurer may avail itself of the reconsideration and appeal proceedings consistent with § 125.6(c)(2)(i) and (e)—(g). For clarity, this subsection has been revised to include specific reference to § 125.6. A similar change also has been made to § 125.10(c)(4) for this reason.

The Department amends § 125.11 (relating to excess insurance) to replace the current requirements and limits of excess insurance with new language addressing excess insurance in terms of adequate financial capacity and the coverage of a possible catastrophic loss. Under § 125.11(a), the Department adds the requirement that, when excess insurance is required to demonstrate adequate financial capacity, the applicant's retention amount must at least equal its authorized retention amount, and the applicant's liability limit of its insurance must be in an amount acceptable to the Bureau to cover adequately a catastrophic loss. The Department deletes existing requirements for aggregate excess insurance in § 125.11(b), as these requirements are no longer necessary. The Department also clarifies and organizes the contract requirements for excess insurance in § 125.11(c) (now § 125.11(b)).

IRRC and the Port Authority commented that the language in § 125.11(a) requiring that the liability limit of an excess insurance policy be "acceptable to the Bureau" was unclear and lacked detail. The language reflects the current practice of the Department, whereby the Bureau reviews the liability limit suggested by the self-insurer to ensure that it provides adequate protection for a catastrophic loss. For clarity, the Department specified that the Bureau's determination will be based upon consideration of the financial capacity of the applicant consistent with § 125.6(a) and the amount of the catastrophic loss estimation consistent with § 125.2 involving the applicant and its self-insured affiliates.

The Port Authority also commented that the regulations on excess insurance retention amounts should take into consideration the existence of cash flow protection coverage the self-insurer may have obtained. The Department notes that since "cash flow protection amount" is a defined term in § 125.2 and included under the definition of "retention amount," the regulations do take this into consideration.

To further improve the clarity of the excess insurance provisions in this section, the Department made minor editorial changes in the final-form rulemaking to § 125.11(b) and the related definitions in § 125.2 for the terms "aggregate excess insurance," "cash flow protection amount," "excess indemnity insurance," "liability limit," "retention amount," "specific excess insurance" and "workers' compensation excess insurance." These changes do not affect the substance of the provisions or definitions, but simply constitute a reorganization of the existing information to make the excess insurance requirements easier to locate and understand within the regulations. Additionally, in light of these changes, the Department deleted the proposed term "nonworkers' compensation insurer" and its related references in the definitions in § 125.2, as it is no longer necessary or useful.

The Department amends § 125.12 (relating to payment, handling and adjusting of claims) to require self-insurers to notify the Bureau when they change claims handling or adjusting arrangements, whether self-administered or administered by a registered claims service company. A self-insurer will also have to provide a summary of its claims data to the Bureau, upon request, to explain discrepancies or problems that may arise due to the change in claims handling responsibilities.

IRRC recommended that § 125.12(c) include the time frame for a self-insurer to report a change in claims handling arrangements and an explanation of how the Bureau will notify the self-insurer of its deadline for filing the data outlined in the subsection. The Department clarified that self-insurers shall "immediately" report changes and provide the summary claims data in a format both prescribed and provided by the Bureau within 21 days of its receipt of notification that the data is required.

The Department amends § 125.13 (relating to special funds assessments) to include the Uninsured Employers Guaranty Fund (UEGF) as one of the listed special funds for which a self-insurer is liable to pay assessments. The UEGF was newly established in sections 1601—1608 of the act (77 P. S. §§ 2701—2708) by the act of November 9, 2006 (P. L. 1362, No. 147). The amendments also allow the Bureau to require a self-insurer to retain the services of its certified public accountant to resolve questions about the accuracy of annual compensation payments reported by the self-insurer.

IRRC and Wells Fargo commented on the rationale for including assessments against self-insurers for the maintenance of the UEGF in § 125.13(a). The Department included this provision consistent with section 1607 of the act, which specifically provides that the Department will assess both insurers and self-insurers for the maintenance of the UEGF.

The Department amends § 125.15 (relating to workers' compensation liability) to clarify existing language, including specific reference to self-insurance loss portfolio transfer policies.

The Department amends § 125.16 to clarify existing language regarding the timing, format and contents of the runoff report and to specify the procedure for a runoff self-insurer to request adjustment of its security amount.

The Department amends § 125.17 (relating to claims service companies) to set forth the continuing obligation of claims service companies to assist the self-insurer and the Bureau in providing data and information on the self-insurer's claims serviced by that company.

IRRC, the City of Philadelphia and Wells Fargo each commented that the Department should provide an enforcement provision for claims service companies who do not comply with § 125.17(d). Section 441(c) of the act (77 P. S. § 997(c)) requires that registered claims service companies "shall furnish such reports of its activities as may be required by rules and regulations of the department." This section of the act further provides an enforcement mechanism by which the company's privilege of conducting business may be suspended or revoked when

the company's failure to assist or provide necessary information or reports affects the prompt payment of compensation. This provision does not appear to provide authority for the Department to impose other penalties for noncompliance. However, self-insurers themselves do not appear to be prohibited from seeking the claims service company's cooperation, or pursuing other recourse, if any, under their prior or expiring contract with that company.

The Department amends § 125.19 (relating to additional powers of Bureau and orders to show cause) to explain the procedures by which the Bureau may address changes in the financial condition of active self-insurers and violations of the act and this subchapter. The Department adds subsection (a) to set forth procedures whereby the Bureau may review the qualifications for self-insurance, and revoke an existing permit, when necessary, for active self-insurers whose financial condition declines before the expiration of an existing permit. Under paragraph (1), the Bureau will issue a letter to the self-insurer outlining its concerns. The Department further adds specific language pertaining to the Bureau's ability to suspend or revoke a permit following the issuance of an order to show cause. This will proceed in the manner in the order to show cause provisions in Chapter 121 (relating to general provisions) when a self-insurer unreasonably fails to pay compensation for which it is liable or fails to submit any report or pay any assessment made under the act.

The City of Philadelphia commented that the Department should provide a standard in § 125.19(a) for when the Bureau may question whether an applicant continues to maintain the financial ability to self-insure. This section implements section 305(a)(3) of the act and section 305 of the Occupational Disease Act, which allow the Department to request further statements of financial ability and revoke a self-insurer's permit during the permit period. The Department does not believe an additional standard is required insofar as § 125.19(a) is based upon the self-insurer's financial ability to self-insure, the requirements of which are clearly in §§ 125.2 and 125.6(a). Additionally, § 125.19(a)(2) provides a self-insurer with the ability to dispute a decision under the procedures in § 125.6(e)—(g).

The City of Philadelphia further suggested that the Department replace "may" with "shall" in § 125.19(a) regarding the Bureau's issuance of a letter when it has reason to question the financial ability of a self-insurer. The Department substantially agrees and modified the language to reflect that the Bureau will issue the letter.

IRRC and the City of Philadelphia commented that the Department should include specific language in the order to show cause provisions in § 125.19(b) to explain how a self-insurer acts unreasonably in failing to pay compensation. Since this issue involves a fact-specific, common sense inquiry, a more specific definition limited to self-insurers under Chapter 125 does not appear necessary or prudent at this time. In this regard, section 441(b) of the act, on which this provision is based, states that the secretary "shall not [revoke or suspend self-insurance status] until the employer has been notified in writing of the charges made against it and has been given an opportunity to be heard before the secretary in answer to the charges." The issue of whether a self-insurer's failure to pay was "unreasonable" under the circumstances would be addressed by the self-insurer and the Bureau before a presiding officer at the show cause proceeding. Section 441(a) of the act contains identical language regarding the repeated or unreasonable failure to pay compensation by licensed insurers, which are not governed by Chapter 125. Moreover, reference to "unreasonable" delays in payment is also in section 435(d)(i) of the act and the courts have addressed the fact-specific issue of what constitutes "unreasonable" delay under that section on a case-by-case basis.

The Department amends § 125.20 (relating to computation of time) to adjust the manner in which a period of time will be computed under this chapter to be consistent with the time computation provisions in Chapter 121.

The Department adds § 125.21 (relating to self-insurance loss portfolio transfer policy) to establish procedures and guidelines for the transfer of a self-insurer's workers' compensation liability to an insurance carrier through the use of a self-insurance loss portfolio transfer policy.

IRRC generally commented that the Department should provide direction in the final-form rulemaking on how an applicant can access the various Bureau-prescribed forms outlined in the regulations. As a result, §§ 125.3(a), 125.4(a) and 125.9(b)(1) and (2) have been revised to state that the various forms described in those sections are available upon request from the Bureau. Additionally, § 125.3(c)(6), (7) and (8), 125.12(c) and 125.16(a) have been revised to state that the various forms and formats mentioned in those provisions will be provided to the applicant by the Bureau.

IRRC also commented that the Department should specify the type of evidence that would be acceptable when the regulations require self-insurers to provide evidence of workers' compensation insurance coverage, such as §§ 125.3(d), 125.6(c)(1)(iv), (d), (f)(1)(ii) and (2), 125.9(b)(1)(iii) and 125.19(a)(3). In response, the Department added "such as a certificate of insurance" to provide clarification. This change has also been made to § 125.19(b)(2).

Porter & Curtis commented that it would like an estimate of the one-time additional costs associated with the Bureau's implementation of the regulations and how those costs would be applied to self-insurers. The Department is not able to accurately project these costs. However, they will be minimal and will be paid through the Workmen's Compensation Administration Fund. Work in the reprogramming of the self-insurance system will be done internally by the Department's Office of Information Services.

Affected Persons

Active self-insurers, runoff self-insurers and employers applying for self-insurance in the future will be affected by the final-form rulemaking in various degrees. The final-form rulemaking will affect self-insurers and applicants for self-insurance. A number of the substantive amendments, including those regarding loss development calculations and security discounts, will affect existing private sector self-insurers. New and existing public sector self-insurers also will be affected by the funding requirements in the final-form rulemaking. Self-insurance claims service companies, sureties and trustees will also be impacted by the final-form rulemaking.

Fiscal Impact

Private employer applicants with a strong financial rating will likely see no significant, direct impact to their overall costs from the final-form rulemaking. These applicants may experience reduced costs due to the greater security discounts for employers having strong financial ratings. Private employer applicants with lesser financial

ratings, however, may experience some increase in costs as a result of the changes to security and excess insurance requirements.

The vast majority of public sector applicants will realize substantially reduced funding requirements under the final-form rulemaking. The Bureau estimates that required funding amounts would decline by an average of 49% for 37 of the 57 public self-insurers. The remaining 20 public employers are subject to a grandfather waiver provision which requires increases to their amount of funding for workers' compensation based on increases in annual compensation payments. Four of the public employers from this group also will realize cost savings as the result of the elimination of security requirements on them.

Some one-time additional costs associated with the implementation of the final-form rulemaking are likely for the Bureau. These costs, which will not be substantial, will mostly result from the reprogramming of the computer system used to monitor self-insurers and to decide applications.

Reporting, Recordkeeping and Paperwork Requirements

The major reporting, recordkeeping and paperwork requirements resulting from the final-form regulation are as follows:

An active or runoff self-insurer is required to annually file, in electronic format prescribed by the Bureau, a listing of its open and closed claims incurred after the effective date of this final-form rulemaking.

An active or runoff self-insurer may be required to file with the Bureau summary data on its claims when it changes claims handling arrangements.

Effective Date

This final-form rulemaking is immediately effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not necessary for these regulations. The regulations are continuously monitored by the Workers' Compensation Advisory Council and by the Bureau in the day-to-day handling and processing of individual self-insurance applications. If needed, corrections can be initiated based on information obtained by these operations.

Contact Person

Persons who require additional information about this final-form rulemaking may submit inquiries to George Knehr, Chief, Self-Insurance Division, Bureau of Workers' Compensation, Department of Labor and Industry, 1171 South Cameron Street, Room 324, Harrisburg, PA 17104-2501, gknehr@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 20, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 2293, to IRRC and to the Senate Committee on Labor and Industry and the House Labor Relations Committee (Committees) for review and comment.

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

Under section 5.1(j.1)—(j.3) of the Regulatory Review Act (71 P. S. § 745.5a(j.1)—(j.3)), on August 4, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 5, 2010, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 34 Pa. Code Chapter 125, are amended by adding § 125.21; by amending §§ 125.1—125.7, 125.9—125.13, 125.15—125.17, 125.19 and 125.20; and by deleting § 125.8 to read as set forth in Annex A.

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

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Committees as required by law.

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

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

SANDI VITO,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4814 (August 21, 2010).)

Fiscal Note: Fiscal Note 12-85 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 125. WORKERS' COMPENSATION SELF-INSURANCE

Subchapter A. INDIVIDUAL SELF-INSURANCE

§ 125.1. Purpose.

This subchapter is promulgated under section 435 of the act (77 P. S. § 991) to provide regulatory guidelines for the uniform and orderly administration of self-insurance for individual employers. This subchapter ensures full payment of compensation when due to employ-

ees of self-insured employers and to their dependents under the act and the Occupational Disease Act.

§ 125.2. Definitions.

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

Act—The Workers' Compensation Act (77 P. S. §§ 1—1041.4, 2501—2506 and 2701—2708).

Active self-insurer—A self-insurer that is not a runoff self-insurer.

Actuary—A member in good standing of the Casualty Actuarial Society or a member in good standing of the American Academy of Actuaries.

Adequate accident and illness prevention program—A determination by the Bureau under Chapter 129 (relating to workers' compensation health and safety) that a self-insured employer's accident and illness prevention services fulfill the program and service requirements as stated in that chapter.

Affiliates—Employers which are closely related through common ownership or control.

Aggregate excess insurance—Insurance under which the insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on claims incurred during a policy period in excess of the retention amount to the insurer's liability limit.

Applicant—An employer requesting permission to initiate or to renew self-insurance, an employer requesting permission for it and its affiliates or subsidiaries to initiate or to renew self-insurance, or a parent company requesting permission for its subsidiaries to initiate or to renew self-insurance.

Authorized retention amount—A retention amount that is equal to or is less than a self-insurer's maximum quick assets exposure amount or the current standard retention amount, whichever is less, or the special retention amount approved by the Bureau.

Bureau—The Bureau of Workers' Compensation of the Department.

Cash flow protection amount—The maximum amount of benefits a self-insurer pays over a 2-year period on an occurrence without reimbursement from an insurer under a specific excess insurance policy with a per year per occurrence cash protection plan.

Catastrophic loss estimation—The greater of the following:

(i) The largest number of employees anticipated to work at one time during a work day at the largest location in this Commonwealth in terms of the applicant's employment, or the employment of any of its affiliates or subsidiaries under a consolidated permit under § 125.4 (relating to application for affiliates and subsidiaries), multiplied by the current Statewide average weekly wage multiplied by 500.

(ii) The current Statewide average weekly wage multiplied by 5,000.

Claims service company—An individual, corporation, partnership or association engaged in the business of servicing a self-insurer's claims, including the adjusting and handling of claims, the payment of benefits and the provision of required reports.

Commonwealth—The term includes the following:

(i) The government of the Commonwealth, including the following:

(A) The courts and other officers or agencies of the unified judicial system.

(B) The General Assembly, and its officers and agencies.

(C) The Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth.

(ii) An employer, politic and corporate, exercising an essential government function under the laws of the Commonwealth that is not a political subdivision.

Dedicated asset account—An account or fund, such as a bank, checking or trust account or an internal services fund, holding cash or investments solely to finance or hold reserves for the payment of a public employer's workers' compensation liability and related expenses.

Department—The Department of Labor and Industry of the Commonwealth.

Employer—An employer as defined in section 103 of the act (77 P. S. § 21) or under section 103 of the Occupational Disease Act (77 P. S. § 1203), or both.

Excess indemnity insurance—Aggregate excess insurance or specific excess insurance that meets the requirements in § 125.11(b)(1) (relating to excess insurance).

Excess insurance—Excess indemnity insurance or workers' compensation excess insurance.

Financial ability to self-insure—Possession of adequate financial capacity and adequate financial health, as specified in § 125.6(a) (relating to decision on application).

Guarantor—The affiliate or parent company that has guaranteed a self-insurer's liability by executing an agreement under § 125.4(b) (relating to application for affiliates and subsidiaries) that is on file with the Bureau.

Investment grade long-term credit or *debt rating*—A long-term credit or debt rating identified as investment grade by the NRSRO that issued it.

Liability limit—The maximum amount of benefits for which an insurer indemnifies a self-insurer under an excess insurance policy.

Long-term credit or *debt rating*—A measurement by an NRSRO of an applicant's willingness and intrinsic capacity to meet its long-term financial commitments as the commitments become due, exclusive of the effects of any guaranties, insurance or other forms of credit enhancements or legal priorities on any of the applicant's financial obligations.

Loss development—The tendency of the cost of a group of claims to increase as they mature.

Maximum quick assets exposure amount—Five percent of an applicant's average year-end quick assets amount for its last 2 completed fiscal years.

Minimum funding amount—The lower of the following:

(i) The current Statewide average weekly wage multiplied by 500.

(ii) The retention amount of the applicant's current or any proposed excess insurance, if applicable.

Minimum security amount—The lower of the following:

(i) The current Statewide average weekly wage multiplied by 1,000.

(ii) The retention amount of the applicant's current or any proposed excess insurance, if applicable.

NRSRO—A designated Nationally-recognized statistical rating organization of the United States Securities and Exchange Commission or its successor.

Occupational Disease Act—The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603).

Parent company—An entity which directly or indirectly owns a majority of the voting stock of an employer or directly or indirectly controls a majority of the employer's board of directors appointments if the employer has no voting stock.

Permit—The document issued by the Bureau to an employer which authorizes the employer to operate as a self-insurer.

Political subdivision—A county, city, borough, incorporated town, township, school district, vocational school district and county institution district, municipal authority, or other entity created by a political subdivision under law.

Private employer—An employer who is not a public employer as defined in this section.

Public employer—The Commonwealth or a political subdivision.

Quick assets—The sum of an applicant's cash, cash equivalents, current receivables and marketable securities or, if the applicant is a public employer who uses fund accounting, the total of the applicant's general fund assets.

Retention amount—

(i) The maximum amount of benefits a self-insurer pays without reimbursement from the insurer under an aggregate excess insurance policy or under a specific excess insurance policy which does not include an annual cash flow protection plan.

(ii) The term also includes the lower of the maximum amount of benefits a self-insurer pays on each occurrence without reimbursement from the insurer or the cash flow protection amount under a specific excess insurance policy which includes an annual cash flow protection plan.

Runoff self-insurer—An employer that had been a self-insurer but no longer maintaining a current permit.

Security—Surety bonds, letters of credit or cash or negotiable government securities held in trust to be used for the payment of a self-insurer's workers' compensation liability upon order of the Bureau if the self-insurer fails to pay its liability due to its financial inability or due to the self-insurer filing for bankruptcy or being declared bankrupt or insolvent.

Self-insurance—The privilege granted to an employer which has been exempted by the Bureau from insuring its liability under section 305(a) of the act (77 P. S. § 501(a)) and section 305 of the Occupational Disease Act (77 P. S. § 1405).

Self-insurance loss portfolio transfer policy—A policy of insurance accepted by the Bureau as meeting the requirements of § 125.21 (relating to self-insurance loss portfolio transfer policy) under which a self-insurer transfers liability incurred as a self-insurer to a workers' compensation insurer.

Self-insurer—

(i) An employer which has been granted the privilege to self-insure its liability and to maintain direct responsibility for the payment of this liability under the act and the Occupational Disease Act.

(ii) The term includes a parent company or affiliate which has assumed a subsidiary's or an affiliate's liability upon the termination of the parent-subsidiary or affiliate relationship.

Special retention amount—

(i) A retention amount that exceeds the applicant's maximum quick assets exposure amount or the standard retention amount requested by the applicant and approved by the Bureau based on a determination that the applicant has sufficient quick assets to easily liquidate all losses at the requested greater retention amount.

(ii) Additionally, an applicant whose self-insurance status began before September 11, 2010, may use a special retention amount that is equal to the retention amount of the applicant's excess insurance in effect on September 11, 2010.

Specific excess insurance—Insurance under which the insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on each occurrence in excess of the retention amount to the insurer's liability limit.

Standard retention amount—

(i) The current Statewide average weekly wage multiplied by 500.

(ii) Rounded upward to the nearest hundred thousand.

Statewide average weekly wage—The amount calculated and reported by the Bureau under section 105.1 of the act (77 P. S. § 25.1).

Subsidiary—An employer whose voting stock or board of directors appointments are directly or indirectly controlled by a parent company.

Workers' compensation excess insurance—Aggregate excess insurance or specific excess insurance that meets the requirements in § 125.11(b)(2) (relating to excess insurance).

Workers' compensation excess insurance recoveries—Payments made to a self-insurer under a policy of workers' compensation excess insurance or payments receivable under a policy of workers' compensation excess insurance that the insurer has agreed in writing that it is liable to pay.

Workers' compensation insurer—An insurance company authorized to transact the class of insurance listed in section 202(c)(14) of The Insurance Company Law of 1921 (40 P. S. § 382(c)(14)).

§ 125.3. Application.

(a) An applicant shall file an application on a form prescribed by and available upon request from the Bureau. All questions on the application shall be answered completely and accurately with the most recent information available. A rider may be attached if more space is necessary. The application shall be signed by the applicant, or if a corporation, an officer of the corporation. The application, including any attached riders and applicable forms, shall be verified as set forth on the application, subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) Initial applications shall be filed with the Bureau no later than 3 months prior to the requested effective date of self-insurance. Renewal applications shall be filed with the Bureau no later than 3 months prior to the expiration of the current permit.

(c) With the application, the applicant shall include:

(1) The nonrefundable statutory fee in the amount of $500 for initial applicants or $100 for renewal applicants required under section 305(a) of the act (77 P. S. § 501(a)), payable to the "Commonwealth of Pennsylvania." A statutory fee is required in the amount of $500 for each affiliate or subsidiary being initially added or in the amount of $100 for each affiliate or subsidiary renewing under a consolidated application under § 125.4 (relating to application for affiliates and subsidiaries).

(2) Its Securities and Exchange Commission (SEC) Form 10-K, or equivalent form filed by a foreign corporation with the SEC or the governing body of an internationally recognized public securities exchange for an application being processed under the conditions of § 125.4(e) (relating to application for affiliates and subsidiaries), for the last complete fiscal year, if applicable. The filing of these forms does not serve as a substitute for the full completion of the application form.

(3) Its latest audited financial statements issued by a licensed certified public accountant or accounting firm. For a private employer, the audited financial statements must cover the last complete fiscal-year period immediately prior to the date of application. The audited financial statements must meet the following criteria:

(i) They must be presented in conformance with applicable generally accepted accounting principles as promulgated by the Financial Accounting Standards Board or the Government Accounting Standards Board or with international financial reporting standards promulgated by the International Accounting Standards Board. The text of the financial statements and their accompanying notes must be in the English language. If the currency used in the financial statements is not in United States dollars, the applicant shall cooperate and assist the Bureau in converting the currency to United States dollars.

(ii) They must be audited in accordance with generally accepted auditing standards in the United States or in accordance with the standards of the Public Company Accounting Oversight Board (United States) or the International Standards on Auditing. An unqualified or qualified opinion shall be stated on the most recent audited financial statements.

(iii) If the most current audited period precedes the application date by more than 6 months, the applicant's latest SEC Form 10-Q, or similar form filed by a foreign corporation with the SEC or the governing body of an internationally recognized public securities exchange for an application being processed under the conditions of § 125.4(e), or unaudited interim financial statements must be submitted.

(4) Audited financial statements covering the applicant's second and third most recent complete fiscal-year periods prior to the date of the application, if an initial application. If audited financial statements covering those periods are not available, financial statements reviewed by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board covering the second and third most recent complete fiscal year periods prior to the date of the application will be accepted.

(5) A report of the paid and incurred workers' compensation loss experience in this Commonwealth under each of the 3 completed policy years prior to the application of each employer requesting self-insurance, if an initial application. The loss information for each policy year shall be valued within 3 months prior to the date of the submission of the application.

(6) A report on a form prescribed by the Bureau and provided to each employer requesting self-insurance stating the costs of claims incurred by the employer by annual periods and projecting the total value of its outstanding liability under the act and the Occupational Disease Act, if a renewal application. A renewal applicant that has retained the services of an actuary to project the total value of its outstanding liability may submit the actuary's report with its application.

(7) A report for each employer requesting self-insurance on a form prescribed by the Bureau and provided to each employer requesting self-insurance summarizing the existence of the accident and illness prevention program required under section 1001(b) of the act (77 P. S. § 1038.1) and regulations promulgated thereunder.

(8) A listing for each employer requesting self-insurance, in a Bureau-prescribed electronic format provided to each employer requesting self-insurance, of the employer's Pennsylvania workers' compensation claims incurred as a self-insurer, including claims currently in litigation, and information such as payments and reserves on each claim. The listing must include:

(i) All open claims at the time of submission.

(ii) All claims closed on or after September 11, 2010.

(iii) Case reserves provided in the listing must be established according to instructions on forms prescribed by the Bureau and provided to each employer requesting self-insurance.

(9) Written verification of the applicant's current long-term credit or debt ratings, if any.

(d) The applicant shall provide additional data, information and explanation that the Bureau deems pertinent to its review of the application based on the factors enumerated under § 125.6(a) (relating to decision on application), and shall make any corrections determined necessary by the Bureau, and provide any items under subsection (c) determined missing or insufficient by the Bureau. The applicant shall provide the data, information, explanation, corrections or missing items within 21 days of its receipt of written notification from the Bureau of its need to do so, or by a later date if requested by the applicant and approved by the Bureau. If the applicant does not provide the data, information, explanation, corrections or missing items within the prescribed time period, the application will be deemed withdrawn. A renewal applicant that does not provide the data, information, explanation, corrections or missing items within the prescribed time period shall obtain workers' compensation insurance coverage effective the expiration of that time period and shall provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date.

(e) The Bureau will not issue a decision on the application under § 125.6 (relating to decision on application) until the application, including all items required under subsection (c) and all additional data, information, explanation and corrections under subsection (d), have been submitted.

(f) An initial applicant's requested self-insurance effective date is subject to the approval of the Bureau. An initial applicant which fails to insure its liability pending review of its application will be subject to prosecution under the act and the Occupational Disease Act.

§ 125.4. Application for affiliates and subsidiaries.

(a) An affiliate or subsidiary may be included under an application submitted by another affiliate or its parent company by providing information and data on the affiliate or subsidiary on a separate form prescribed by and available upon request from the Bureau. The related entities will be included under one consolidated permit if the application is approved. A written notification shall be provided by the applicant to delete an affiliate or a subsidiary from a consolidated permit after its issuance.

(b) An applicant shall provide a written agreement adopted by its board of directors on a form prescribed by the Bureau which states that the applicant guarantees the payment of all claims incurred by the affiliates or subsidiaries. The applicant shall further assume liability for the payment of an affiliate's or subsidiary's claims incurred during its period of self-insurance upon termination of the affiliate or parent-subsidiary relationship unless the applicant is relieved of this liability by the Bureau. In determining whether to relieve an applicant of a subsidiary's or affiliate's liability, the Bureau will consider, among other things, the financial ability of the new owner of the subsidiary or affiliate to pay the liabilities, the new owner's credit worthiness and the adequacy of security held by the Bureau covering the liability.

(c) The guarantor may not terminate the agreement under any circumstances without first giving the Bureau and the affected affiliate or subsidiary 45 days written notice. The affiliate's or subsidiary's self-insurance status automatically terminates upon expiration of the 45-day notice period.

(d) Except as provided in § 125.4(e), if an affiliate or subsidiary not included under a consolidated application as outlined in subsection (a) wishes to self-insure, it shall submit an application in its own name and provide its own audited financial statements in the manner indicated in § 125.3 (relating to application). The Bureau may require the parent company to furnish appropriate financial information within 21 days of its receipt of written notification from the Bureau of its need to do so, or by a later date if requested by the applicant and approved by the Bureau.

(e) If the applicant is a subsidiary of a parent company that is not incorporated or organized under the laws of a state of the United States, the applicant may submit its parent company's consolidated audited financial statements and an unaudited consolidated balance sheet of the applicant's financial condition, or other financial information on the applicant that the Bureau deems pertinent to its review of the application, to satisfy the financial reporting requirements of § 125.3(c), provided the parent company's audited financial statements comply with § 125.3(c)(3)(i) and (ii).

§ 125.5. Preliminary requirements.

(a) An applicant shall have been in business for at least 3 consecutive years prior to application.

(b) An applicant shall be incorporated or organized under the laws of a state of the United States.

(c) Each employer requesting self-insurance shall have an adequate accident and illness prevention program.

§ 125.6. Decision on application.

(a) The application of an applicant which meets the requirements of § 125.5 (relating to preliminary requirements) will be approved if the Bureau determines that the applicant has demonstrated that it possesses the financial ability to self-insure.

(1) An applicant shall demonstrate that it has adequate financial capacity by showing one of the following:

(i) The retention amount of the applicant's current or proposed excess insurance equals or is less than its authorized retention amount.

(ii) The applicant's catastrophic loss estimation is equal to or is less than its maximum quick assets exposure amount.

(2) An applicant shall demonstrate that it has adequate financial health, as follows:

(i) If a public employer, the applicant satisfies or will satisfy the requirements established for it under § 125.10 (relating to funding by public employers).

(ii) If a private employer, the applicant's level of financial stability, solvency and liquidity is such that it satisfies one of the following:

(A) The applicant, or its parent company for an application being processed under the conditions of § 125.4(e) (relating to application for affiliates and subsidiaries), possesses an investment-grade long-term credit or debt rating, or such a rating that is one generic rating classification below investment grade.

(B) For an applicant who does not receive a long-term credit or debt rating by an NRSRO, or whose parent company does not receive a long-term credit or debt rating by an NRSRO for an application being processed under the conditions of § 125.4(e), the Bureau estimates that the applicant, or its parent company for an application being processed under the conditions of § 125.4(e), would merit an investment grade long-term credit or debt rating, or a rating that is one generic rating classification below investment grade, if it were rated.

(C) An applicant that was approved to self-insure as of September 11, 2010, that possesses an actual or Bureau-estimated long-term credit or debt rating more than one generic rating classification below investment grade shall be deemed to possess adequate financial health if its generic rating does not decline further. This clause will no longer apply if the applicant's actual or Bureau-estimated long-term credit or debt rating subsequently increases to one generic rating classification below investment grade or higher.

(b) The Bureau will consider the following information in assessing an applicant's financial ability to self-insure:

(1) The applicant's level of financial health, or its parent company's level of financial health for an application being processed under the conditions of § 125.4(e), based upon the applicant's or its parent's long-term credit or debt rating, if any, or upon an evaluation by the Bureau of one or more of the following:

(i) The applicant's financial statements, or its parent company's financial statements for an application being processed under the conditions of § 125.4(e), which may include comparisons of the applicant's or its parent company's financial ratios to general or to industry ratios and cash flow analysis.

(ii) Public documents and reports filed with other state and Federal agencies including the United States Securities and Exchange Commission.

(iii) Other financial analysis information provided to or considered by the Bureau, including financial analysis comparison databases and evaluation models.

(2) The amount of the applicant's quick assets at the end of its last 2 completed fiscal years as shown on the financial statements provided to the Bureau under § 125.3(c) (relating to application) or under § 125.4(e).

(3) The terms, conditions and limits of the applicant's existing or proposed excess insurance.

(4) For a public employer, its ability to satisfy or its past history in satisfying the requirements established under § 125.10.

(c) If the Bureau finds under subsection (a) that the applicant possesses the financial ability to self-insure, it will send to the applicant an initial decision approving the application and a list of conditions as set forth under subsection (c)(2) that must be met before the applicant will be issued a permit. The Bureau will issue a permit to a renewal applicant at the time of the initial decision when the renewal applicant is currently in compliance with the conditions set forth by the Bureau.

(1) An applicant has 45 days from the receipt of the initial decision approving the application to comply with the conditions set forth by the Bureau.

(i) The applicant may toll the 45-day compliance period by filing a request for a conference or notification of its intent to submit additional written information under subsection (e).

(ii) An applicant may be granted a 30-day extension to meet the conditions if the applicant requests an extension in writing. The Bureau must receive the extension request within the initial 45-day compliance period.

(iii) Unless a timely reconsideration is initiated under subsection (e), when the applicant does not meet the conditions within this compliance period, the application will be deemed denied.

(iv) A renewal applicant that does not meet the conditions within this compliance period and that has not timely initiated the procedures outlined in subsection (e) shall obtain workers' compensation insurance coverage effective the expiration date of the compliance period and provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date.

(2) The applicant will be issued a permit after all of the following have been filed with the Bureau:

(i) Security in an amount as set forth in § 125.9 (relating to security requirements) or funding as set forth in § 125.10.

(ii) A certificate providing evidence that the applicant has obtained excess insurance coverage with limits set forth under § 125.11(a) (relating to excess insurance), if required.

(iii) A guarantee agreement executed by its parent company or an affiliate as set forth in § 125.4 (relating to application for affiliates and subsidiaries), if required.

(iv) Contact information on the claims service company or in-house staff that will be handling the applicant's claims.

(v) Documents relating to any other requirement set by the Bureau to protect the compensation rights of employees.

(d) If an applicant does not meet the requirements of § 125.5 or if upon review under subsection (a) the Bureau finds that the applicant has not demonstrated that it possesses the financial ability to self-insure, the Bureau will send to the applicant an initial decision denying the application. The initial decision will state the documents, data, information, explanation and corrections received from the applicant or otherwise reviewed or considered by the Bureau in rendering its initial decision. A renewal applicant shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of an initial decision denying the renewal application and shall provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date, unless the applicant has timely initiated the procedures outlined in subsection (e).

(e) The applicant may request a conference with the Bureau to submit additional materials to support its application or the alteration of the conditions required in the initial decision, or to challenge the accuracy of underlying calculations made or data considered by the Bureau in its decision or conditions. The applicant may also notify the Bureau of its intention to submit these materials directly in writing without a conference. The Bureau must receive a request or notification within 20 days of the date of the Bureau's initial decision.

(1) Upon its receipt of the request or notification, the Bureau will schedule a conference. If a conference is not requested, the applicant shall provide the additional materials within 21 days of its receipt of written notification from the Bureau of its need to do so, or by a later date if requested by the applicant and approved by the Bureau.

(2) The prior permit of a renewal applicant that has filed a timely request for a conference or notification of intent to submit additional materials will be automatically extended beyond the permit's original expiration date until the Bureau issues a reconsideration decision on the renewal application under subsection (f). During the time the permit is extended, the prior conditions established by the Bureau, as set forth under subsection (c)(2), shall continue to apply.

(f) After a conference or the receipt of additional materials, the Chief of the Self-Insurance Division of the Bureau will review the entire record of the application and will issue a reconsideration decision on the application.

(1) The applicant shall have 30 days from its receipt of a reconsideration decision approving an application to comply with any conditions set forth by the Bureau in that decision.

(i) Unless a timely appeal is filed under subsection (g), when the applicant does not meet the conditions within this 30-day period, the application will be deemed denied.

(ii) A renewal applicant that does not meet the conditions within this 30-day period shall obtain workers' compensation insurance coverage effective the expiration of the compliance period and shall provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date, unless the applicant has timely initiated the procedures outlined in subsection (g).

(2) Upon the issuance of a reconsideration decision denying a renewal application, the renewal applicant shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of the reconsideration decision and provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date unless the applicant has timely initiated the procedures outlined in subsection (g).

(g) An applicant shall have the right to appeal a reconsideration decision issued under subsection (f). The Bureau must receive the appeal within 30 days of the date of the reconsideration decision. The prior permit of a renewal applicant that filed a timely appeal shall be automatically extended beyond the permit's original expiration date, until a presiding officer issues a written decision on the appeal. During the time the permit is extended, the prior conditions established by the Bureau, as set forth under subsection (c)(2), shall continue to apply. Untimely appeals will be dismissed without further action by the Bureau.

(1) The Director of the Bureau will assign the appeal to a presiding officer who will schedule a hearing on the appeal from the reconsideration decision. The presiding officer will provide notice to the parties of the hearing date, time and place.

(2) The hearing will be conducted under this subsection and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent not superseded in paragraph (6). The presiding officer will not be bound by strict rules of evidence.

(3) Hearings will be stenographically-recorded. The transcript of the proceedings will be part of the record.

(4) The presiding officer will issue a written decision and order under 1 Pa. Code Chapter 35, Subchapters G and H (relating to proposed reports; and agency action) to the extent not superseded in paragraph (6). The presiding officer will determine whether the Bureau abused its discretion or acted arbitrarily in the reconsideration decision. The applicant has the burden to prove that the Bureau abused its discretion or acted arbitrarily in the reconsideration decision.

(5) A party aggrieved by a decision rendered by the presiding officer may appeal the decision to Commonwealth Court.

(6) This subsection supersedes 1 Pa. Code §§ 35.131, 35.190, 35.201, 35.211—35.214 and 35.221.

(h) An applicant which has been denied self-insurance may reapply after audited financial statements are published subsequent to the latest ones submitted with the denied application.

§ 125.7. Permit.

(a) A permit is issued for 1 year, except that the Bureau may shorten or extend the effective period of a permit by not more than 6 months to facilitate the filing of timely financial statements or other data and information required with the next renewal application.

(b) If the Bureau fails to issue an initial decision with respect to a renewal application under § 125.6 (relating to decision on application) prior to the expiration of the permit for the prior year, the prior permit will be automatically extended under the prior conditions as set forth under § 125.6(c)(2) beyond the permit's original expiration date, until a decision on the renewal application is issued by the Bureau. This automatic extension applies only in cases when the renewal application has been timely filed under § 125.3 (relating to application) and the applicant has submitted or is submitting all data, information, explanation, corrections and missing items, or has corrected or is correcting inaccurate data, within the time period prescribed in writing by the Bureau.

(c) If a renewal applicant's permit for the prior year expires while the applicant is in the process of satisfying conditions set forth in an initial or reconsideration decision, the prior permit will be automatically extended beyond its original expiration date, pending satisfaction of the conditions within the time period set forth under the applicable provisions of § 125.6.

§ 125.8. (Reserved).

§ 125.9. Security requirements.

(a) A private employer shall provide security in an amount as set forth in subsection (d). The security required in this section is not a substitute for the applicant demonstrating its financial ability to self-insure. A self-insurer's security may be adjusted annually or more frequently as determined by the Bureau.

(b) The following forms of security are acceptable:

(1) A surety bond on a form prescribed by and available upon request from the Bureau issued by a company authorized to transact surety business in this Commonwealth by the Insurance Department.

(i) At the time of the issuance of the bond, the surety company shall possess a current A. M. Best Rating of A- or better or a Standard & Poor's insurer's financial strength rating of A or better or a comparable rating by another NRSRO.

(ii) The self-insurer shall replace the bond with a new bond issued by a surety company with an acceptable rating or with another acceptable form of security if the surety company's highest rating falls below an A. M. Best Rating of B+, a Standard & Poor's insurer's financial strength rating of A- or a comparable rating by another NRSRO after the bond is issued. If the bond is not replaced within 45 days of the self-insurer's receipt of written notification of the rating decline from the Bureau, the Bureau will have discretion to draw on the surety bond and deposit the proceeds with the State Treasurer to secure the self-insurer's liability and to revoke the current permit if the bond exclusively secures claims currently being incurred against the self-insurer.

(iii) An active self-insurer that does not post another bond or another acceptable form of security to cover claims currently being incurred against the self-insurer, after the surety of a bond that exclusively secures the claims provides notification of its intention to terminate the bond, shall obtain workers' compensation insurance coverage effective the bond's termination date. The self-insurer shall provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date.

(2) A security deposit held under a trust agreement prescribed by and available upon request from the Bureau and maintained for the benefit of employees of the self-insurer:

(i) The deposit must consist of cash; bonds or other evidence of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality of the United States; investments in common funds or regulated investment companies which invest primarily in United States Government or Government agency obligations; or bonds or other security issued by the Commonwealth and backed by the Commonwealth's full faith and credit.

(ii) The securities must be held in a Commonwealth chartered bank and trust company or trust company as defined in section 102 of the Banking Code of 1965 (7 P. S. § 102) or a Federally-chartered bank or foreign bank with a branch office and trust powers in this Commonwealth.

(3) An irrevocable letter of credit using language required by the Bureau issued by and payable at a branch office of a commercial bank located in the continental United States. The letter of credit must state that the terms of the letter of credit automatically renew annually unless the letter of credit is specifically nonrenewed by the issuing bank 60 days or more prior to the anniversary date of its issuance.

(i) At the time of issuance of the letter of credit, the issuing bank or its holding company shall have a B/C or better rating or 2.5 or better credit evaluation score by Fitch Ratings, as successor to the rating services of Thomson BankWatch, or the issuing bank shall have a CD or long-term issuer credit rating of BBB or better or a short-term issuer credit rating of A-2 or better by Standard & Poor's or a comparable rating by another NRSRO.

(ii) The self-insurer shall replace the letter of credit with a new letter of credit issued by a bank with an acceptable credit rating or with another acceptable form of security if the issuing bank's highest rating falls below the acceptable rating outlined in subparagraph (i) after the letter of credit is issued. If the letter of credit is not replaced within 45 days, the Bureau will draw on the letter of credit and will deposit the proceeds to secure the self-insurer's liability.

(c) Affiliates included under a consolidated permit under § 125.4(a) (relating to application for affiliates and subsidiaries) must be included together under the forms of security provided. For purposes of this section, affiliates that are runoff self-insurers are considered to be active self-insurers if they were included under a consolidated permit with affiliates that remain active self-insurers.

(d) The amount of security required of private employers is determined as set forth in paragraphs (1)—(6).

(1) For a new self-insurer, the Bureau will determine the initial amount of security, to be calculated as follows:

(i) An amount no less than two times the amount of the applicant's total greatest annual insured incurred workers' compensation losses in this Commonwealth during the last 3 completed policy years prior to its application, or the minimum security amount, whichever is greater.

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(2) For those active self-insurers who have been approved to self-insure for more than 1 year but less than 3 years, the amount of security is calculated as follows:

(i) The greater of:

(A) The amount outlined in paragraph (1).

(B) One hundred percent of the Bureau's calculation of the self-insurer's undiscounted outstanding liability based on loss development, net of workers' compensation excess insurance recoveries.

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(3) For those active self-insurers who have been approved to self-insure for 3 or more years, the amount of security is calculated as follows:

(i) One hundred percent of the Bureau's calculation of the self-insurer's undiscounted outstanding liability based on loss development, net of workers' compensation excess insurance recoveries, or the minimum security amount, whichever is greater.

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(4) When multiple affiliates are included under a consolidated permit, the required amount of security for the consolidated program is calculated as follows:

(i) The sum of each individual affiliate's required amount of security as calculated under the applicable paragraphs above but excluding the effects of any rounding or minimum applicable to the individual affiliates, or the minimum security amount, whichever is greater.

(ii) Discounted by the percentage outlined under subsection (l) for the applicant's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to the nearest hundred thousand.

(5) For runoff self-insurers, the amount of security is calculated as follows:

(i) One hundred percent of the Bureau's calculation of the runoff self-insurer's undiscounted outstanding liability based on loss development, net of workers' compensation excess insurance recoveries.

(ii) Discounted by the percentage outlined under subsection (l) for the runoff self-insurer's or its guarantor's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to either:

(A) The nearest ten thousand if the Bureau's calculated undiscounted outstanding liability, net of workers' compensation excess insurance recoveries, discounted by the percentage outlined under subsection (l) for the runoff self-insurer's or its guarantor's highest current long-term credit or debt rating, if any, is $50,000 or less.

(B) The nearest hundred thousand.

(6) When multiple runoff self-insurers are included under one security instrument, the required amount of security is calculated as follows:

(i) The sum of each individual runoff self-insurer's required amount of security as calculated under paragraph (5) but excluding the effects of any rounding applicable to the individual runoff self-insurers.

(ii) Discounted by the percentage outlined under subsection (l) for the runoff self-insurers' or their guarantor's highest current long-term credit or debt rating, if any.

(iii) Rounded upward to either:

(A) The nearest ten thousand if the Bureau's calculated undiscounted outstanding liability, net of workers' compensation excess insurance recoveries, discounted by the percentage outlined under subsection (l) for the runoff self-insurers' or their guarantor's highest current long-term credit or debt rating, if any, is $50,000 or less.

(B) The nearest hundred thousand.

(e) A self-insurer wishing to refute the Bureau's adjustment of its outstanding liability by its history of loss development may do so by providing a report prepared by an actuary.

(f) The Bureau will incorporate the overall Pennsylvania workers' compensation experience of insured or self-

insured employers in the self-insurer's industry or of all insured or self-insured employers in its selection of loss development factors under subsection (d) if the claim volume or experience of the self-insurer is not sufficient to be considered fully credible based on generally accepted actuarial procedures. The loss development factors selected by the Bureau and its other judgments in its calculation of a self-insurer's outstanding liability will be sufficiently conservative to ensure the adequate provision of security.

(g) The Bureau will make adjustments to the loss development procedures under subsection (d) it deems appropriate under the circumstances if the Bureau believes that a self-insurer has changed its reserving methodology in such a way as to invalidate loss development factors based on past experience.

(h) The Bureau may reduce the amount of security required of a self-insurer under subsection (d) if the self-insurer confirms that liabilities under the act and the Occupational Disease Act are funded through a Black Lung Benefits Trust established under section 501(c)(21) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(21)).

(i) The Bureau may reduce the amount of security required of a self-insurer under subsection (d) to no less than the minimum security amount rounded upward to the nearest hundred thousand if the self-insurer establishes a funding trust to provide a source of funds for the payment of its liability. A self-insurer may elect to establish a funding trust or it may be required by the Bureau to establish a funding trust where the Bureau determines that a dedicated source of funds is needed to further ensure the timely payment of the self-insurer's liability. In either case, the following conditions shall be met:

(1) The trust agreement must be in a form prescribed by the Bureau.

(2) The trust assets must be held in a Commonwealth chartered bank and trust company or trust company as defined in section 102 of the Banking Code of 1965 or a Federally chartered bank or foreign bank with a branch office and trust powers in this Commonwealth.

(3) The value of the trust fund must be adjusted at least annually to the required funding level as determined by the Bureau.

(j) A self-insurer with security which is less than the level of security required under subsection (d) may be permitted to phase in the level of required security over a maximum of 2 years. The Bureau will determine the terms of the phase-in period, including the length of time and the annual phase-in amounts.

(k) The Bureau may release a runoff self-insurer of its obligation to provide security if either of the following occurs:

(1) The runoff self-insurer provides evidence that its liability was assumed under a self-insurance loss portfolio transfer policy.

(2) If the runoff self-insurer made no payments on its liability over the past 2 years and all claims against the runoff self-insurer are closed.

(l) The following discount percentages shall be applied in calculating a self-insurer's required amount of security under subsection (d) based on the highest current long-term credit or debt rating of the self-insurer or of its guarantor:

Security Discount Table

Moody's Investors Service	*Standard & Poor's, Fitch Ratings, or Dominion Bond Rating Service*	*Security Discount*
Aaa	AAA	75%
Aa1	AA+	65%
Aa2	AA	60%
Aa3	AA-	55%
A1	A+	45%
A2	A	40%
A3	A-	35%
Baa1	BBB+	25%
Baa2	BBB	20%
Baa3	BBB-	15%
Ba1 and lower	BB+ and lower	0%

(m) The Bureau may revise the table in subsection (l) through publication of a notice in the *Pennsylvania Bulletin* to assign security discount rates for any organization receiving designation as a NRSRO after September 11, 2010.

§ 125.10. Funding by public employers.

(a) A self-insured public employer shall establish and maintain a dedicated asset account to provide a source of funds for the payment of benefits and other obligations and expenses relating to its self-insurance program. This section does not apply to a runoff self-insured public employer whose average annual payout of benefits on self-insurance claims over its last 3 completed fiscal years, net of workers' compensation excess insurance recoveries, is less than the current Statewide average weekly wage multiplied by 100.

(b) For a new self-insured public employer and for an active self-insured public employer that has been self-insured for less than 3 consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(1) An amount greater than or equal to 20% of the public employer's modified manual premium calculated in accordance with § 125.202 (relating to definitions) or the minimum funding amount, whichever is greater.

(2) Discounted by the percentage outlined under § 125.9(l) (relating to security requirements) for the self-insurer's highest current long-term credit or debt rating, if any.

(3) The dedicated asset account must equal the above prescribed asset level no later than 30 days before the effective date of the public employer's initial permit and may not be reduced below this asset level for the first 3 years of self-insurance.

(c) For an active self-insured public employer that has been self-insured for more than 3 consecutive years but less than 7 consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(1) An amount greater than or equal to the greater of the following:

(i) The self-insurer's greatest annual fiscal year payout of benefits since its initial approval to self-insure, net of workers' compensation excess insurance recoveries, plus 20% of that annual payment amount.

(ii) The minimum funding amount.

(2) Discounted by the percentage outlined under § 125.9(l) for the self-insurer's highest current long-term credit or debt rating, if any.

(3) The dedicated asset account must be equal to or exceed the prescribed asset level 120 days before the beginning of the self-insurer's next fiscal year or by a later date If requested by the applicant and approved by the Bureau.

(4) Prior to issuing a permit under § 125.6(c), the Bureau will require that the asset level of a self-insurer's dedicated asset account under paragraphs (1) and (2) be based on an adjustment to the self-insurer's greatest annual benefit payout amount to correct any material underpayment of benefits the Bureau believes is the result of the self-insurer's failure to pay compensation for which it is liable during the evaluation period.

(d) For an active self-insured public employer that has been self-insured for 7 or more consecutive years, the required asset level of the dedicated asset account established under subsection (a) is calculated as follows:

(1) An amount greater than or equal to the greater of the following:

(i) The self-insurer's average annual payout of benefits over its three most recent completed fiscal years, net of workers' compensation excess insurance recoveries, plus 20% of that average payment amount.

(ii) The minimum funding amount.

(2) Discounted by the percentage outlined under § 125.9(l) for the self-insurer's highest current long-term credit or debt rating, if any.

(3) If the asset level of the self-insurer's dedicated asset account is below the required level under paragraphs (1) and (2) as of September 11, 2010, the required asset level of the account established under subsection (a) is calculated as follows:

(A) The amount required to be in the dedicated asset account under paragraphs (1) and (2) for the current year.

(B) Minus the difference between the amount required to be in the dedicated asset account under paragraphs (1) and (2) as of September 11, 2010, and the actual asset value of the dedicated asset account as of September 11, 2010.

(4) The dedicated asset account must equal or exceed the prescribed asset level 120 days before the beginning of the self-insurer's next fiscal year or by a later date if requested by the applicant and approved by the Bureau.

(5) Prior to issuing a permit under § 125.6(c), the Bureau will require that the asset level of a self-insurer's dedicated asset account under paragraphs (1) and (2) be based on an adjustment to the self-insurer's average annual payout of benefits to correct any material underpayment of benefits the Bureau believes is the result of the self-insurer's failure to pay compensation for which it is liable during the evaluation period.

(e) For a runoff self-insured public employer, the asset level of the dedicated asset account established under subsection (a) is that outlined under subsection (d), except that the minimum funding amount does not apply.

(f) If a self-insured public employer does not possess an investment grade long-term credit or debt rating, the Bureau may require that the asset level of its dedicated asset account established under subsection (a) be greater than that outlined under subsection (b), (c) or (d), in any amount which the Bureau determines will guaranty that the self-insurer will have sufficient funding to meet its claims payments and other obligations and expenses relating to its self-insurance program as they come due over the self-insurer's next fiscal year.

§ 125.11. Excess insurance.

(a) An applicant whose catastrophic loss estimation is greater than its maximum quick assets exposure amount shall obtain aggregate excess insurance or specific excess insurance with a retention amount that is no more than its authorized retention amount and a liability limit acceptable to the Bureau to provide an adequate level of protection to cover the losses from a catastrophic event. The Bureau will consider the financial capacity of the applicant and the amount of the catastrophic loss estimation in determining the adequacy of the applicant's proposed liability limit.

(b) A contract or policy of excess insurance must comply with the following:

(1) For excess indemnity insurance:

(i) It must state that it is not cancelable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the Bureau at least 45 days before termination by the party desiring to cancel or not renew the policy.

(ii) It must state that it applies to any losses of a self-insurer under the act or the Occupational Disease Act.

(iii) It may not exclude coverage for any categories of injuries or diseases compensable under the act and the Occupational Disease Act.

(iv) It must be issued by an insurer that possesses an A. M. Best rating of A- or better, or a Standard & Poor's insurer financial strength rating of A or better, or a comparable rating by another NRSRO.

(2) For workers' compensation excess insurance:

(i) It must meet the requirements of paragraph (1)(i)—(iii).

(ii) It must state that if a self-insurer is unable to make benefit payments under the act and the Occupational Disease Act due to insolvency or bankruptcy, the excess carrier shall make payments to other parties involved in the paying of the self-insurer's liability, as directed by the Bureau, subject to the policy's retentions and limits.

(iii) It must state that the following apply toward reaching the retention amount in the excess contract:

(A) Payments made by the employer.

(B) Payments made on behalf of the employer under a surety bond or other forms of security as required under this subchapter.

(C) Payments made by the Self-Insurance Guaranty Fund.

(iv) It must be issued by a workers' compensation insurer that includes the premium collected for the insurance in data used by the Workers' Compensation Security Fund set forth in the Workers' Compensation Security Fund Act (77 P. S. §§ 1051—1066) to calculate assessments against workers' compensation insurers to finance the operations of that fund.

(c) A certificate of the excess insurance obtained by the self-insurer must be filed with the Bureau together with a certification that the policy fully complies with subsection (b).

§ 125.12. Payment, handling and adjusting of claims.

(a) A self-insurer and its claims service company are responsible for the prompt payment of compensation in accordance with the act, the Occupational Disease Act and this part.

(b) A self-insurer shall have ample facilities and competent personnel within its organization to service its program of claims handling and adjusting or shall contract with a registered claims service company to provide these services.

(c) A self-insurer shall immediately notify the Bureau when it changes arrangements for the handling or adjusting of its claims, including the initiation, modification or termination of self-administration arrangements or the initiation, termination, expiration or modification of services with a registered claims services company. The self-insurer shall file with the Bureau a summary of data on its claims, such as cumulative payments sorted by year of loss, in a format prescribed by the Bureau and provided to the self-insurer within 21 days of its receipt of written notification from the Bureau of its need to do so.

§ 125.13. Special funds assessments.

(a) A self-insurer is responsible for the payment of assessments to maintain funds under the act, including:

(1) The Workmen's Compensation Administration Fund.

(2) The Subsequent Injury Fund.

(3) The Workmen's Compensation Supersedeas Fund.

(4) The Self-Insurance Guaranty Fund.

(5) The Uninsured Employers Guaranty Fund.

(b) A runoff self-insurer is liable for the payment of any assessments made after the termination or revocation of its self-insurance status until it has discharged the obligations to pay compensation which arose during the period of time it was self-insured. The assessments of a runoff self-insurer shall be based on the payment of claims that arose during the period of its self-insurance status.

(c) A self-insurer shall keep accurate records of compensation paid on a calendar year basis, including payment for disability of all types, death benefits, medical benefits and funeral expenses, for the purposes of assessments under the act and the Occupational Disease Act. The records must be available for audit or physical inspection by Bureau employees or other designated persons, whether in the possession of the self-insurer or a service company. If the Bureau has a reasonable basis to question the annual compensation payments reported by the self-insurer, it may require the self-insurer to retain the services of the self-insurer's licensed certified public accounting firm to audit the data reported to provide confirmation or make necessary adjustments.

§ 125.15. Workers' compensation liability.

(a) Notwithstanding the terms of a guarantee and assumption agreement executed under § 125.4(b) (relating to application for affiliates and subsidiaries), a self-insurer or a runoff self-insurer remains liable for workers' compensation on injuries or disease exposures occurring during its period of self-insurance. With application to and permission from the Bureau, liability can be transferred to another employer. Liability also may be transferred through a self-insurance loss portfolio transfer policy.

(b) A self-insurer which liquidates or dissolves shall transfer its liability to a third party, subject to the approval of the Bureau, or shall obtain a self-insurance loss portfolio transfer policy covering the liability.

(c) If a self-insurer sells or divests a part of itself, self-insurance coverage ends for the separated parts on the date of separation. The self-insurer remains liable for claims incurred against the separated part occurring up to the date of separation unless the Bureau approves a request to transfer the self-insurer's liability to another entity.

§ 125.16. Reporting by runoff self-insurer.

(a) A runoff self-insurer shall file an annual report with the Bureau by a date prescribed by the Bureau on a prescribed form provided by the Bureau until all cases incurred during its period of self-insurance have been closed for at least 2 years.

(b) The runoff report must include a listing in a Bureau-prescribed electronic format provided by the Bureau to the runoff self-insurer of the runoff self-insurer's Pennsylvania workers' compensation claims, including all claims currently in litigation, and information such as payments and reserves on each claim. The listing must include:

(i) All open claims at the time of submission.

(ii) All claims closed on or after September 11, 2010.

(iii) Case reserves provided in the listing must be established according to the instructions on forms prescribed by the Bureau and provided to the runoff self-insurer.

(c) A runoff self-insurer that is a private employer shall make any request for the adjustment of its amount of security in writing when it submits its runoff report. If the runoff self-insurer disagrees with the Bureau's decision on the request, it may request reconsideration of this decision under § 125.6(e) (relating to decision on application).

§ 125.17. Claims service companies.

(a) A claims service company desiring to engage in the business of adjusting and handling claims for an approved self-insurer shall register with the Bureau as provided under section 441(c) of the act (77 P. S. § 997(c)) and regulations thereunder on a prescribed form before entering into a contract to provide these services. The claims service company shall answer the questions on the registration form and swear to the information provided on the form.

(b) A claims service company shall have adequate facilities and employ competent staff to provide claims services in a manner which fulfills a self-insurer's obligations under the act, the Occupational Disease Act and this part. A claims service company which repeatedly or unreasonably fails to provide claims adjusting or services promptly with the result that compensation is not paid as required under the act or the Occupational Disease Act may have its privilege of conducting this business revoked or suspended under the procedures of section 441(c) of the act.

(c) The claims service company shall employ at least one person on a full-time basis who has the knowledge and experience necessary to service claims properly under the act and the Occupational Disease Act. A resume covering that person's background must be attached to the registration form of the claims service company.

(d) A claims service company whose engagement to handle or adjust the claims of a self-insurer is terminating or expiring, or has terminated or expired, shall provide reasonable assistance to the self-insurer and the Bureau in providing data and information on the claims serviced to maintain the integrity of past data on the claims filed with the Bureau, to rectify or explain discrepancies or questions on the claims data raised by the Bureau, or to address other related issues identified by the Bureau.

§ 125.19. Additional powers of Bureau and orders to show cause.

(a) If the Bureau has reason to question whether a self-insurer continues to maintain the financial ability to self-insure during the pendency of a permit, authorized under section 305(a)(3) of the act (77 P. S. § 501(a)(3)) and under section 305 of the Occupational Disease Act (77 P. S. § 1405), it will issue a letter to the self-insurer noting the reasons for its concerns and outlining the documents, data and information upon which the Bureau's concerns are based. The following also apply:

(1) The Bureau's letter is treated for procedural purposes as if it were an initial decision denying a renewal application under § 125.6(d) (relating to decision on application).

(2) When the Bureau determines that the self-insurer no longer possesses the financial ability to self-insure, the self-insurer's current permit will be revoked, unless the self-insurer timely initiates the procedures outlined under § 125.6(e)—(g).

(3) The self-insurer shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of a notice of revocation by the Bureau and provide evidence of the coverage, such as a certificate of insurance, to the Bureau no later than the coverage's effective date.

(b) The Department may serve upon a self-insurer an order to show cause why its self-insurance status should not be suspended or revoked under section 441(b) of the act (77 P. S. § 997(b)) for unreasonably failing to pay compensation for which it is liable, or for failing to submit any report or to pay any assessment made under the act.

(1) The order to show cause proceedings are governed by provisions in Chapter 121 (relating to general provisions), found in § 121.27 (relating to orders to show cause).

(2) The self-insurer shall obtain workers' compensation insurance coverage effective no later than 30 days after its receipt of an order revoking or suspending its self-insurance status and provide evidence of the coverage, such as a certificate of insurance, to the Department no later than the coverage's effective date.

§ 125.20. Computation of time.

Except as otherwise provided by law, in computing a period of time prescribed or allowed by this chapter, the day of the act, event or default after which the designated period of time begins to run may not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

§ 125.21. Self-insurance loss portfolio transfer policy.

A self-insurance loss portfolio transfer policy must comply with all of the following:

(1) The insurance carrier must be a workers' compensation insurer.

(2) The policy must provide statutory coverage limits and state that the insurer is responsible to defend, adjust and handle all open, reopened and incurred but not reported claims against the self-insurer for the period of time covered by the policy.

(3) The policy must be retrospective, providing coverage for a consecutive period of time of self-insurance.

(4) The policy must be noncancelable by either the insurance carrier or the self-insurer for any reason.

(5) The amount of annual compensation paid by the insurance carrier on any claims assumed under the policy must be included as compensation paid on the data reports filed with the Insurance Department.

(6) The insurance carrier must include the premium received on the policy in the amount of net written workers' compensation premium it annually reports to the Insurance Department or to the National Association of Insurance Commissioners.

(7) The insurance carrier must notify existing claimants with injuries or diseases covered by the policy that it has assumed liability for the payment and handling of their claims.

(8) The insurance carrier must file the policy with a rating organization approved by the Insurance Commissioner and identify it as a special self-insurance loss portfolio transfer policy. The insurance carrier should not report statistical information on claims assumed under the policy to the rating organization.

(9) The insurance carrier must enter an appearance with the appropriate workers' compensation judge, the Workers' Compensation Appeal Board and any appellate court on each pending claim in adjudication against the self-insurer for injuries or disease exposures occurring during the time period covered by the policy.

[Pa.B. Doc. No. 10-1679. Filed for public inspection September 10, 2010, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 521, 523, 525, 541, 543, 545, 549, 551, 553, 555, 557, 559, 561, 563, 565 AND 567]

Table Games; Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1303A (relating to temporary table game regulations) enacted by the act of January 7, 2010 (P. L. 1, No. 1) (Act 1) and the specific authority in 4 Pa.C.S. §§ 1302A(1) and (2) (relating to regulatory authority), amends temporary regulations in Chapters 521, 523, 525, 541, 543, 545, 549, 551, 553, 555, 557, 559, 561, 563, 565 and 567 to read as set forth in Annex A. The Board's temporary regulations will be

added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

Purpose of the Temporary Rulemaking

This temporary rulemaking amends the regulations for table games in response to comments received from certificate holders and based on the Board's experience to date.

Explanation of Chapters 521, 523, 525, 541, 543, 545, 549, 551, 553, 555, 557, 559, 561, 563, 565 and 567

The Board received numerous comments on the temporary regulations that it has promulgated so far. The Board found these comments useful and thanks the commentators for their input.

While the Board does not agree with all of the suggestions offered and is still reviewing a number of the comments that have been received, the Board does agree that improvements can be made in several areas now.

Section 521.10(f) and (g) (relating to table game taxes and gross table game revenue), has been amended to clarify that revenue from one contest or tournament may not offset losses from another contest or tournament.

The Board, at its July 29, 2010, meeting, delegated authority to the Executive Director to approve certain table game floor plan changes that involve less than 10% of the certificate holder's approved table games. Section 521.11 (relating to table games floor plan changes) codifies that delegation of authority and provides clarity to certificate holders as to what information shall be submitted to the Board before a table game or the configuration of the table game floor plan may be changed.

In § 523.1 (relating to definitions), several types of chips were added. In § 523.3 (relating to value chips; denominations and physical characteristics), additional denominations of value chips, and their required colors, were added to the complement of value chips that a certificate holder may issue.

In § 523.5(c) (relating to nonvalue chips; permitted uses, inventory and impressment), several certificate holders submitted requests to conduct an impressments of their nonvalue chips on a monthly basis instead of every 30 days. The language allows for monthly impressments as specified in the certificate holder's internal controls.

In § 523.11(c) (relating to receipt of gaming chips or plaques from a manufacturer or supplier; inventory, security, storage and destruction of chips and plaques), language was amended for clarity and allows for storage of chips in a vault, locked cabinet or other restricted area approved by the Bureau of Gaming Operations. The language in subsection (f) was amended to mirror the changes made to § 523.5(c).

Section 523.13 (relating to dice; receipt, storage, inspections and removal from use) has been amended to clarify that the requirements for the inspection and distribution of dice used in Pai Gow also apply to dice inspected and distributed in Pai Gow Poker. The language in subsection (o) allows for a certificate holder to retain dice beyond 72 hours. This provision was added in response to public comments from certificate holders that requested to retain dice for security reasons beyond the 72 hours required for destruction or cancellation. For clarity, "and" in subsection (o)(3) was changed to "or" requiring destruction or cancellation, not both.

Section 523.16 (relating to cards; receipt, storage, inspections and removal from use) required that when a damaged card was discovered during the course of play, that an entire deck would be replaced. The Board received feedback during the public comment period requesting that only the damaged card or cards be replaced instead of replacing an entire deck. The new language specifies the inventory controls for replacement decks, the notification requirements to surveillance and the removal procedures at the end of the gaming day of all replacement decks.

Section 525.18(d) (relating to transport of table game drop boxes to and from gaming tables) was amended to require the security department key be returned upon completion of the table game count rather than after collection and transport of the drop boxes to the count room. Language in subsection (j) is added requiring that an emergency drop be conducted by members of the security and finance departments prior to changing the type of table game or removing a table from the gaming floor.

In Chapter 549 (relating to Blackjack), an additional wager, the Twenty Point Bonus Wager, has been added as an optional side wager. The requirements for table layouts were added in § 549.2(c) (relating to Blackjack table; card reader device; physical characteristics; inspections). New § 549.17 (relating to twenty point bonus wager; payout odds; payout limitation) provides the rules of the wager, the payout odds and the payout limitation on the Twenty Point Bonus Wager.

Finally, §§ 541.2(e), 543.2(e), 545.2(d), 549.2(d), 551.2(d), 553.2(d), 555.2(d), 557.2(d), 559.2(d), 561.2(c), 563.2(d), 565.2(d) and 567.2(c) have been amended. Currently, these sections require that the tip box and drop box be attached on the same side of the table, but on opposite sides of the dealer. Several of the certificate holders provided comment that in some circumstances other table game equipment prevents the placement of the tip box on the opposite side of the drop box. With this amendment, the Bureau of Gaming Operations may now approve an alternative location for the tip box.

Affected Parties

The amendments in this temporary rulemaking affect how certificate holders may conduct table games at their licensed facilities.

Fiscal Impact

Commonwealth

The Board does not expect that the amendments in this temporary rulemaking will have fiscal impact on the Board or any other Commonwealth agency.

Political subdivisions

This temporary rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth. Eventually, host municipalities and counties will benefit from the local share funding mandated by Act 1.

Private sector

The amendments in this temporary rulemaking give certificate holders some additional flexibility as to how they conduct table games, allow for additional side wagers and the option to offer matched play to patrons. These changes may increase wagers in Blackjack and decrease the amount of time to replace a damaged card or cards during play, resulting in faster play and lower costs for certificate holders.

General public

This temporary rulemaking will not have direct fiscal impact on the general public.

Paperwork Requirements

This temporary rulemaking will not impose new paperwork requirements on certificate holders.

Effective Date

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

Public Comments

While this temporary rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to Susan A. Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-131.

Contact Person

The contact person for questions about this temporary rulemaking is Susan A. Yocum, Assistant Chief Counsel, (717) 265-8356.

Regulatory Review

Under 4 Pa.C.S. § 1303A, the Board is authorized to adopt temporary regulations which are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208), known as the Commonwealth Documents Law (CDL); the Regulatory Review Act (71 P. S. §§ 745.1—745.12); and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P. S. §§ 732-204(b) and 732-301(10)). These temporary regulations expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

The Board finds that:

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

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

Order

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

(1) The regulations of the Board, 58 Pa. Code Chapters 521, 523, 525, 541, 543, 545, 549, 551, 553, 555, 557, 559, 561, 563, 565 and 567, are amended by amending §§ 521.10, 523.1, 523.3, 523.5, 523.11, 523.13, 523.16, 525.18, 541.2, 543.2, 545.2, 549.1, 549.2, 551.2, 553.2, 555.2, 557.2, 559.2, 561.2, 563.2, 565.2, 567.2 and 569.2; and by adding §§ 521.11 and 549.17 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The temporary regulations are effective September 11, 2010.

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

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

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

GREGORY C. FAJT,
Chairperson

Fiscal Note: 125-131. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 521. GENERAL PROVISIONS

§ 521.10. Table game taxes and gross table game revenue.

* * * * *

(f) Net revenue from any contest or tournament must be the sum of the net revenue determined for each contest or tournament individually. The net revenue for an individual contest or tournament must be equal to:

* * * * *

(g) If the net revenue from a contest or tournament results in a loss, that loss may not offset the net revenue from another contest or tournament and may not be deducted from the calculation of gross table game revenue.

* * * * *

§ 521.11. Table games floor plan changes.

(a) Requests to increase or decrease the number of approved table games by 10% or more require Board approval and shall be submitted to the Board by way of a petition under § 493a.4 (relating to petitions generally). All other requests for changes to the table games floor plan, including the type of table games or the configuration of the table games floor plan, shall be submitted in writing and considered for approval by the Board's Executive Director. The approval of the Board or the Executive Director may include conditions that must be met by the certificate holder prior to commencement of operations of the approved gaming tables or floor area.

(b) A petition or request for table games floor plan changes must, at a minimum, include:

(1) A narrative description of the proposed changes.

(2) The pit number and proposed configuration of any pit affected.

(3) The type, location and table number of any table affected.

(4) The proposed amendments to the standard or alternative staffing levels required under § 525.6 (relating to personnel assigned to the operations and conduct of table games) for the affected gaming tables or pits.

(5) The proposed amendments to table games surveillance required under § 521.3 (relating to table games surveillance requirements).

(6) A time table for completion of the proposed changes.

CHAPTER 523. TABLE GAME EQUIPMENT

§ 523.1. Definitions.

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

* * * * *

Gaming chip—A nonvalue chip, Poker rake chip, tournament chip or value chip.

* * * * *

Poker rake chip—A gaming chip used by dealers to facilitate the collection of the rake in the Poker room.

* * * * *

§ 523.3. Value chips; denominations and physical characteristics.

(a) Certificate holders may issue and use value chips in denominations of $1, $2, $2.50, $5, $20, $25, $100, $500, $1,000 and $5,000 and other denominations approved by the Bureau of Gaming Operations.

* * * * *

(c) Each gaming chip manufacturer shall submit sample color disks to the Bureau of Gaming Operations that identify all primary and secondary colors to be used for the manufacture of gaming chips for certificate holders in this Commonwealth. Once a gaming chip manufacturer has received approval for a primary or secondary color, those colors shall be consistently manufactured in accordance with the approved samples. For a primary color to be approved for use, it must visually appear, when viewed either in daylight or under incandescent light, to comply with the colors as follows:

(1) $1—White.

(2) $2—Blue.

(3) $2.50—Pink.

(4) $5—Red.

(5) $20—Yellow.

(6) $25—Green.

(7) $100—Black.

(8) $500—Purple.

(9) $1,000—Fire Orange.

(10) $5,000—Gray.

(d) Each value chip issued by a certificate holder must contain identifying characteristics that may appear in any location at least once on each face of the value chip and are applied in a manner which ensures that each identifying characteristic shall be clearly visible and remain a permanent part of the value chip. These characteristics must be visible to surveillance employees using the licensed facility's surveillance system and, at a minimum, include:

* * * * *

§ 523.5. Nonvalue chips; permitted uses, inventory and impressment.

* * * * *

(c) An impressment of the nonvalue chips assigned to each Roulette table shall be completed at least once every month as specified in the certificate holder's internal controls. The certificate holder shall record the results of the impressment in the chip inventory ledger required under § 523.11 (relating to receipt of gaming chips or plaques from a manufacturer or supplier; inventory, security, storage and destruction of chips and plaques) and perform the impressment as follows:

* * * * *

§ 523.11. Receipt of gaming chips or plaques from a manufacturer or supplier; inventory, security, storage and destruction of chips and plaques.

* * * * *

(c) Gaming chips or plaques not in active use shall be stored in any of the following:

(1) A vault located in the main bank.

(2) Locked cabinets in the cashiers' cage.

(3) Other restricted storage area approved by the Bureau of Gaming Operations.

* * * * *

(f) At the end of each gaming day, a certificate holder shall compute and record the unredeemed liability for each denomination of value chips and gaming plaques. At least once every month, as specified in the certificate holder's internal controls, each certificate holder shall inventory all sets of value chips and gaming plaques in its possession and record the result of the inventory in the chip inventory ledger. The procedures to be utilized to compute the unredeemed liability and to inventory value chips and gaming plaques shall be submitted as part of the certificate holder's internal controls to the Board for approval. A physical inventory of value chips and gaming plaques not in active use shall only be required annually if the inventory procedures incorporate the sealing of the locked compartment containing the value chips and gaming plaques not in active use.

* * * * *

§ 523.13. Dice; receipt, storage, inspections and removal from use.

* * * * *

(f) Dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

(1) *Alternative No. 1.*

* * * * *

(ii) Immediately upon opening a table for gaming, the pit manager or above shall distribute a set of dice to the table. At the time of receipt, a boxperson at each Craps table and the floorperson at each Pai Gow, Pai Gow Poker, Sic Bo or Mini-Craps table, to ensure that the dice are in a condition to assure fair play and otherwise conform to the requirements of this chapter, shall, in the presence of the dealer, inspect the dice given to him with a micrometer or any other instrument approved by the Bureau of Gaming Operations which performs the same function, a balancing caliper, a steel set square and a magnet. These instruments shall be kept in a compartment at each Craps table or pit stand and shall be at all times readily available for use by the casino compliance representatives or other Board employees upon request. The inspection shall be performed on a flat surface which allows the dice inspection to be observed through the slot machine licensee's surveillance system and by any persons in the immediate vicinity of the table.

(iii) Following the inspection required under subparagraph (ii):

* * * * *

(D) For Pai Gow and Pai Gow Poker, the floorperson shall, in the presence of the dealer, place the dice in the Pai Gow shaker.

* * * * *

(2) *Alternative No. 2.*

(i) The assistant table games shift manager or above and the security department employee who removed the dice from the approved storage area shall distribute the dice directly to the following certificate holder's employees who will perform the inspection in each pit:

* * * * *

(B) For Sic Bo, Pai Gow and Pai Gow Poker, a floorperson, in the presence of another floorperson, both of whom are assigned the responsibility of supervising the operation and conduct of Sic Bo, Pai Gow or Pai Gow Poker games.

* * * * *

(iii) After completion of the inspection, the dice shall be distributed as follows:

* * * * *

(C) For Pai Gow and Pai Gow Poker, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, distribute the dice directly to the dealer at each Pai Gow table. The dealer shall immediately place the dice in the Pai Gow shaker.

* * * * *

(v) Previously inspected reserve dice may be used for gaming without being reinspected if the dice are maintained in a locked compartment in the pit stand in accordance with the following procedures:

* * * * *

(C) For Pai Gow and Pai Gow Poker, a set of three dice, after being inspected, shall be placed in a sealed envelope or container. A label that identifies the date of inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container.

* * * * *

(3) *Alternative No. 3.*

* * * * *

(iv) After completion of the inspection, the persons performing the inspection shall seal the dice as follows:

* * * * *

(C) For Pai Gow and Pai Gow Poker, after each set of three dice are inspected, the dice shall be placed in a sealed envelope, container or shaker. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope, container or shaker.

* * * * *

(v) At the beginning of each gaming day and at other times as may be necessary, an assistant table games shift manager or above and a security department employee shall distribute the dice as follows:

* * * * *

(C) For Pai Gow and Pai Gow Poker, the sealed envelope or container shall be distributed to a pit manager or above in a Pai Gow pit or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the Pai Gow or Pai Gow Poker table by the pit manager or above, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the Pai Gow shaker.

* * * * *

(o) Destruction or cancellation of dice, other than those retained for Board or certificate holder inspection, shall be completed within 72 hours of collection.

(1) Cancellation must occur by drilling a circular hole of at least 1/4 inch in diameter through the center of the die.

(2) Destruction must occur by shredding or crushing.

(3) The destruction or cancellation of dice must take place in a secure location in the licensed facility covered by the slot machine licensee's surveillance system, the physical characteristics of which shall be approved by the Bureau of Gaming Operations.

§ 523.16. Cards; receipt, storage, inspections and removal from use.

* * * * *

(k) If any cards in a deck appear to be damaged during the course of play, the dealer shall immediately notify a floorperson or above. If, after inspection, the floorperson or above determines that the card is damaged and needs to be replaced, the floorperson shall notify the pit manager or above or the Poker shift manager.

(1) The pit manager or above or the Poker shift manager shall:

(i) Notify surveillance of a card change.

(ii) Bring a replacement deck of cards from the pit stand to replace the damaged card or cards.

(iii) Place the damaged card face up on the table and remove the matching card from the replacement deck and place it face up on the table.

(iv) Turn over both the damaged card and the replacement card to verify that the backs of the cards match.

(v) Place the replacement card in the discard rack.

(vi) Tear the damaged card down the center and place it face up in the replacement deck.

(vii) Return the replacement deck to the pit stand.

(2) Replacement decks of cards shall be collected at the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the certificate holder in the certificate holder's internal controls, and at other times as may be required by this subpart.

(3) The replacement decks collected shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which identifies the deck as a replacement deck and shall be signed by the pit manager or above or the Poker shift manager.

(4) The pit manager or above or the Poker shift manager shall maintain the envelopes or containers in a secure place within the pit until collection by a security department employee.

(5) This section does not apply to cards showing indications of tampering, flaws, scratches, marks or other defects that might affect the integrity or fairness of the game.

* * * * *

CHAPTER 525. TABLE GAME INTERNAL CONTROLS

§ 525.18. Transport of table game drop boxes to and from gaming tables.

* * * * *

(d) Upon its removal from a gaming table, a table game drop box shall be immediately placed in an enclosed trolley which is secured by two separately keyed locks. The key to one lock shall be maintained and controlled by the security department. The key to the other lock shall be maintained and controlled by the finance department. Access to the keys shall be controlled, at a minimum, by a sign-in and sign-out procedure contained in the certificate holder's internal controls. The security department key shall be returned to its secure location immediately upon the completion of the table game count. The key controlled by the finance department shall be returned to its secure location after completion of the table game count.

* * * * *

(j) Prior to changing the type of table game offered or removing a table game from the gaming floor, at least one security department employee and one finance department employee shall conduct an emergency drop.

CHAPTER 541. MINIBACCARAT

§ 541.2. Minibaccarat table physical characteristics.

* * * * *

(e) Each Minibaccarat table must have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 543. MIDIBACCARAT

§ 543.2. Midibaccarat table physical characteristics.

* * * * *

(e) Each Midibaccarat table must have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 545. BACCARAT

§ 545.2. Baccarat table physical characteristics.

* * * * *

(d) Each Baccarat table must have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 549. BLACKJACK

§ 549.1. Definitions.

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

Any 20—Two cards of different suits with a total value of 20.

* * * * *

Matched 20—Two identical cards with a total value of 20 except for a queen of hearts pair.

* * * * *

Suited 20—Two cards of the same suit with a total value of 20.

§ 549.2. Blackjack table; card reader device; physical characteristics; inspections.

* * * * *

(c) The following must be inscribed on the Blackjack layout:

* * * * *

(4) If a certificate holder offers a Twenty Point Bonus Wager:

(i) A separate area designated for the placement of the Twenty Point Bonus Wager for each player.

(ii) Inscriptions that advise patrons of the minimum and maximum wagers permitted. If the minimum and maximum wagers permitted are not inscribed on the layout, a sign identifying the minimum and maximum permitted wagers shall be posted at each Blackjack table.

(iii) Inscriptions that advise patrons of the payout odds for the Twenty Point Bonus Wager. If payout odds are not inscribed on the layout, a sign identifying the payout odds for the Twenty Point Bonus Wager shall be posted at each Blackjack table.

(iv) Inscriptions that advise patrons of any payout limits and proportionate allocations as described in § 549.17(g) (relating to twenty point bonus wager; payout odds; payout limitation). If payout limits and proportionate allocations are not inscribed on the layout, a sign identifying the payout limits and proportionate allocation shall be posted at each Blackjack table.

(d) Each Blackjack table shall have a drop box and a tip box attached to it with the location of the boxes on the same side of the gaming table, but on opposite sides of the dealer, as approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

§ 549.17. Twenty point bonus wager; Payout odds; Payout limitation.

(a) A certificate holder may, if specified in its Rules Submission under § 521.2 (relating to table games Rules Submissions), offer players the option of placing an additional wager that the player's hand will have a total value of 20 in the first two cards dealt. The Twenty Point Bonus Wager shall have no bearing on any other wager made by a player.

(b) Prior to the first card being dealt for each round of play, each player who has placed a wager in accordance with § 549.4 (relating to wagers), may make a Twenty Point Bonus Wager by placing a value chip or plaque into the separate betting area designated for that player.

(c) The dealer shall then announce "no more bets" and deal the initial two cards in accordance with the dealing procedures in § 549.7 (relating to procedure for dealing cards).

(d) Prior to any additional cards being dealt to any player, the dealer shall, starting with the player farthest to the dealer's right and continuing counterclockwise around the table, settle in succession, except as provided in subsection (e), all Twenty Point Bonus Wagers by collecting all losing wagers and paying all winning wagers in accordance with subsection (g).

(e) If the first card to the dealer is a ten, jack, queen, king or ace and the player who has placed a Twenty Point Bonus Wager has two queens of hearts, that player's Twenty Point Bonus Wager shall be settled after all other Twenty Point Bonus Wagers. In the presence of a floorperson or above, the dealer shall settle the Twenty Point Bonus Wager as follows:

(1) If the dealer has determined that the hole card will give the dealer a Blackjack, the player shall be paid in accordance with subsection (g) when the player's Blackjack wager is settled.

(2) If the dealer has determined that the hole card will not give the dealer a Blackjack, the player shall be paid in accordance with subsection (g) before any other cards are dealt.

(f) A winning player shall receive the Twenty Point Bonus Wager payout for only the highest qualifying hand.

(g) The certificate holder shall pay out winning Twenty Point Bonus Wagers at the amounts contained in the following payout table:

Hand	*Payout*
Queen of Hearts pair and dealer Blackjack	1,000 to 1
Queen of Hearts pair	200 to 1
Matched 20	25 to 1
Suited 20	10 to 1
Any 20	4 to 1

(h) Notwithstanding the payout odds in subsection (g), a certificate holder may establish a maximum payout for a winning hand of Queen of Hearts pair and dealer Blackjack that is payable to all those winning hands in the aggregate on a single round of play. The maximum payout amount shall be at least $25,000 or the maximum amount that one patron could win per round when betting the maximum possible wager, whichever is greater. Maximum payouts established by a certificate holder for a winning hand of Queen of Hearts pair and dealer Blackjack require the approval of the Board's Executive Director and shall be included in the certificate holder's Rules Submission filed in accordance with § 521.2. If a certificate holder establishes a maximum payout, which is approved by the Board's Executive Director, and more than one player at a table has a winning hand of Queen of Hearts pair and dealer Blackjack, each player shall share the maximum payout amount proportionately to the amount of the player's respective wager.

CHAPTER 551. SPANISH 21

§ 551.2. Spanish 21 table; card reader device; physical characteristics; inspections.

* * * * *

(d) Each Spanish 21 table must have a drop box and a tip box attached to it with the location of the boxes on the same side of the gaming table, but on opposite sides of the dealer, as approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 553. POKER

§ 553.2. Poker table physical characteristics.

* * * * *

(d) Each Poker table must have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 555. CARIBBEAN STUD POKER

§ 555.2. Caribbean Stud Poker table physical characteristics.

* * * * *

(d) Each Caribbean Stud Poker table must have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 557. FOUR CARD POKER

§ 557.2. Four Card Poker table physical characteristics.

* * * * *

(d) Each Four Card Poker table must have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 559. LET IT RIDE POKER

§ 559.2. Let It Ride Poker table physical characteristics.

* * * * *

(d) Each Let It Ride Poker table must have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 561. PAI GOW POKER

§ 561.2. Pai Gow Poker table; Pai Gow Poker shaker; physical characteristics.

* * * * *

(c) Each Pai Gow Poker table must have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, and in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 563. TEXAS HOLD 'EM BONUS POKER

§ 563.2. Texas Hold 'Em Bonus Poker table physical characteristics.

* * * * *

(d) Each Texas Hold 'Em Bonus Poker table must have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 565. THREE CARD POKER

§ 565.2. Three Card Poker table physical characteristics.

* * * * *

(d) Each Three Card Poker table must have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

CHAPTER 567. WAR

§ 567.2. War table; physical characteristics.

* * * * *

(c) Each War table must have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

CHAPTER 569. ULTIMATE TEXAS HOLD 'EM POKER

§ 569.2. Ultimate Texas Hold 'Em Poker table; physical characteristics.

* * * * *

(d) Each Ultimate Texas Hold 'Em Poker table must have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

* * * * *

[Pa.B. Doc. No. 10-1680. Filed for public inspection September 10, 2010, 9:00 a.m.]