PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121, 123 AND 139]

Commercial Fuel Oil Sulfur Limits for Combustion Units

The Environmental Quality Board (Board) proposes to amend Chapters 121, 123 and 139 (relating to general provisions; standards for contaminants; and sampling and testing) to read as set forth in Annex A.

The proposed rulemaking amends § 123.22 (relating to combustion units) to lower the allowable sulfur content of commercial fuel oil for use in combustion units and replace the existing area-specific sulfur content limits for commercial fuel oils with a Statewide sulfur limit; adds provisions for sampling and testing, and recordkeeping and reporting in § 123.22; amends the sampling and testing requirements in Chapter 139; and adds definitions in § 121.1 (relating to definitions) for two new terms and amends the definitions of eight existing terms to provide clarity and support the amendments to Chapter 123.

This proposed rulemaking was adopted by the Board at its meeting on July 13, 2010.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Arleen 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 Furlan, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us (DEP Search/Keyword: Public Participation).

C. *Statutory Authority*

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

Combustion of sulfur-containing commercial fuel oils releases sulfur dioxide (SO_2) emissions, which contribute to the formation of regional haze and fine particulate matter (PM2.5), both of which are serious public welfare and human health threats. Regional haze is visibility impairment that is produced by a multitude of sources and activities that emit fine particles and their precursors and which are located across a broad geographic area. Fine particles have a diameter smaller than 2.5 micrometers (PM2.5). Particles affect visibility through the scattering and absorption of light, and PM2.5—particles similar in size to the wavelength, of light—are most efficient, per unit of mass, at reducing visibility. Regional haze affects urban and rural areas, including National parks, forests and wilderness areas (Federal Class I areas).

SO_2 is the most significant pollutant involved in the formation of regional haze. SO_2 emissions oxidize in the atmosphere to form sulfate particles. Visibility impairment, including regional haze, in rural areas of eastern North America is mostly due to sulfate particles, according to the 2006 Contribution Assessment prepared by the Mid-Atlantic/Northeast Visibility Union (MANE-VU). *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*, MANE-VU Contribution Assessment, August 2006, p. 2—4.

In 1977, Congress amended the CAA by adding section 169A (42 U.S.C.A. § 7491), regarding visibility protection for Federal Class I areas, to set a National goal of the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." See section 169A(a)(1) of the CAA. Congress amended the CAA in 1990 by adding section 169B (42 U.S.C.A. § 7492), regarding visibility, to authorize further research and regular assessments of the progress made so far toward the National visibility goals.

The National Academy of Sciences concluded in 1993 that the average visual range in the eastern United States has been reduced to approximately 30 kilometers or 1/5 of the visual range that would exist under natural conditions. Committee on Haze in National Parks and Wilderness Areas, National Research Council, National Academy of Sciences, *Protecting Visibility in National Parks and Wilderness Areas*, Washington, D.C., 1993.

The United States Environmental Protection Agency (EPA) published its initial regulations setting forth states' requirements to reduce regional haze at 64 FR 35714 (July 1, 1999). The regulations aimed to achieve the National visibility goal set by the CAA by 2064. The EPA published final regional haze regulations at 70 FR 39104 (July 6, 2005). The regulations are codified in 40 CFR Part 51, Subpart P (relating to protection of visibility). The EPA's regulations require all states, even those that do not contain a Federal Class I area, to submit a revision to their State Implementation Plan (SIP) containing emission reduction strategies to improve visibility in Class I areas that their emissions affect.

The EPA regulations require states to demonstrate reasonable progress toward meeting the National goal of a return to natural visibility conditions by 2064. States with Class I areas must establish reasonable progress goals, expressed in deciviews, for visibility improvement at each Class I area. (The lower the deciview value, the better the perception of visibility.) The first set of reasonable progress goals shall be met through measures in each state's long-term strategy covering the period from the present until 2018. A long-term strategy includes enforceable emissions limitations, compliance schedules and other measures as necessary to achieve the reasonable progress goals.

States are required to evaluate progress toward reasonable progress goals every 5 years to assure that emissions controls are on track with emissions reduction forecasts in the SIP. The first progress report is due 5 years from the submittal of the initial implementation plan. If emissions controls are not on track to meet SIP forecasts, then a state would need to take action to assure emissions controls by 2018 would be consistent with the SIP or to revise the SIP to be consistent with the revised emissions forecast.

The Commonwealth is a member of the MANE-VU, established in 2000 as the regional planning organization to help the northeast states plan for their Regional Haze SIP submittals. The MANE-VU states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the District of Columbia. Native American tribes in the region, the EPA, the United States Fish and Wildlife Service and the United States Forest Service are also members.

Although this Commonwealth has no mandatory Class I Federal areas, emissions from this Commonwealth are considered to impact the seven mandatory Class I Federal areas in the MANE-VU region. In addition, the emissions from this Commonwealth are considered to impact the Dolly Sods Wilderness Area in West Virginia and Shenandoah National Park in Virginia.

MANE-VU evaluated several large source categories for their contribution to the MANE-VU SO_2 emission inventory, including electric generating units (EGU), residential and commercial oil heat burners and furnaces, and industrial/commercial/institutional (ICI) boilers. The Northeast States for Coordinated Air Use Management (NESCAUM) performed this evaluation for MANE-VU in 2005 using 2002 data, which was the most current information available at the time of the study. While EGUs are by far the largest source of SO_2 emissions in the MANE-VU region at 71%, SO_2 emissions from the burning of sulfur-containing commercial fuel oil in residential and commercial combustion units, combined and in ICI boilers, each contribute about 7% to the MANE-VU SO_2 emission inventory, for a total of 14%. In this Commonwealth, commercial fuel oil combustion in residential and commercial combustion units contributes between 2% and 3% of SO_2 emissions in the MANE-VU region, depending on the season. The NESCAUM evaluation indicates that the anticipated annual SO_2 emission reduction benefits in this Commonwealth would be approximately 29,000 tons when the proposed low-sulfur content limits for commercial fuel oils are fully implemented.

MANE-VU identified the reduction of sulfur limits in commercial fuel oils used in residential and commercial combustion units as a cost effective strategy for reducing regional haze and adopted a statement in which member states agreed to pursue this strategy. The Department has reviewed the NESCAUM studies and MANE-VU recommendations and determined that the recommended low-sulfur content limits for commercial fuel oil are appropriate measures to be pursued in this Commonwealth as part of the regional strategy to improve visibility. Lowering the sulfur content in commercial fuel oil sold for and used in combustion units in this Commonwealth would contribute to the MANE-VU goals of improving visibility in the region's mandatory Class I Federal areas. Actions taken as part of this Commonwealth's obligations for reducing haze on a regional level would also improve visibility in this Commonwealth's recreational and urban areas.

The existence of PM2.5 in the atmosphere not only produces regional haze but also has significant adverse health effects. Epidemiological studies have shown a significant correlation between elevated PM2.5 levels and premature mortality. Other important health effects associated with PM2.5 exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work and restricted activity days), lung disease, decreased lung function, asthma attacks and certain cardiovascular problems. Individuals particularly sensitive to PM2.5 exposure include older adults, people with heart and lung disease and children.

The EPA set health-based (primary) and welfare-based (secondary) PM2.5 annual National Ambient Air Quality Standards (NAAQS) at a level of 15 micrograms per cubic meter (µg/m3). See 62 FR 38652 (July 18, 1997). The 24-hour NAAQS was subsequently revised in October 2006 to a concentration of 35 µg/m3. See 71 FR 61144 (October 17, 2006). The EPA designated the following counties or portions thereof as being in nonattainment of either the annual or the 24-hour PM2.5 standard or both: Allegheny (Liberty-Clairton); Allegheny (remainder); Armstrong; Berks; Beaver; Bucks; Butler; Cambria; Chester; Cumberland; Dauphin; Delaware; Greene; Indiana; Lancaster; Lawrence; Lebanon; Montgomery; and Philadelphia.

In a March 2010 draft report prepared as part of the EPA's periodic review of NAAQS, the EPA concluded that existing standards for fine particles are insufficient to protect public health and reduce the pollutant's impact on visibility. The draft report recommends that the EPA consider setting significantly more protective standards based on the fact that recent research into the health effects of fine particles calls into question the adequacy of the current suite of standards. See the EPA's *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards: First External Review Draft*, March 2010. The draft report also recommends the agency consider setting a secondary standard for PM2.5 to protect visibility.

SO_2 emissions also contribute to the formation of acid rain. Both acid rain and PM2.5 contribute to agricultural crop and vegetation damage, and degradation of the Chesapeake Bay. Combustion of low-sulfur content commercial fuel oil would contribute to reducing the incidences of these adverse effects in this Commonwealth.

There are several important cobenefits of this proposed rulemaking. Emissions of nitrogen oxides (NOx), which contribute to a number of public health and environmental problems in the northeast, including unhealthy levels of PM2.5 and ground-level ozone, would also decrease with the use of low-sulfur content commercial fuel oil due to furnace and boiler efficiency improvements. Emissions of carbon dioxide, a greenhouse gas, should also be reduced since with improved combustion efficiency, overall commercial fuel oil consumption should decrease.

Ozone is a serious human and animal health and welfare threat, causing or contributing to respiratory illnesses and decreased lung function, agricultural crop loss, visible foliar injury to sensitive plant species, and damage to forests, ecosystems and infrastructure. In March 2008, the EPA lowered the ozone NAAQS from 0.080 parts per million (ppm) 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). As required by

the CAA, the Commonwealth submitted recommendations to the EPA in 2009 to designate 29 counties as nonattainment for the 2008 8-hour ozone NAAQS. However, the EPA reconsidered the 2008 ozone NAAQS and published a proposed rulemaking at 75 FR 2938 (January 19, 2010) to set a more protective 8-hour primary standard at a lower level within the range of 0.060—0.070 ppm; the final revised ozone standard is expected in October 2010. If the EPA sets the standard at the lowest end of this range, all monitors measuring ozone in this Commonwealth could violate the NAAQS.

This proposed rulemaking is designed to lower the allowable sulfur content limits of commercial fuel oils used in oil-burning combustion units in this Commonwealth and to replace the existing area-specific sulfur content limits for commercial fuel oils with a Statewide sulfur limit. The proposed rulemaking would reduce the levels of sulfur in commercial fuel oils used in residential and commercial oil heat burners and furnaces, and in ICI boilers. Section 123.22 regulates Nos. 2, 4, 5 and 6 commercial fuel oils. No. 2 and lighter commercial fuel oil is generally used for residential and commercial heating. Nos. 4, 5 and 6 and heavier commercial fuel oils are used in ICI boilers.

The proposed rulemaking applies to the owner or operator of refineries, pipelines, terminals, retail outlet fuel storage facilities and ultimate consumers, including commercial and industrial facilities, facilities with a unit burning regulated fuel oil to produce electricity and domestic home heaters. The requirements focus on persons or entities that "offer for sale, deliver for use, exchange in trade or permit the use of commercial fuel oil." These are the suppliers and operations selling to the ultimate consumer. Recordkeeping or reporting would not be required of the ultimate consumer receiving commercial fuel oil for use at a private residence or an apartment or condominium building that houses private residents; they would only need to buy and use compliant commercial fuel oil.

The Department consulted with the Air Quality Technical Advisory Committee (Committee) on the proposed rulemaking on February 18, 2010. The Committee unanimously concurred in the Department's recommendation to present the proposed rulemaking, with suggested revisions, to the Board for approval. The Department also consulted with the Citizens Advisory Council, Small Business Compliance Advisory Committee and Agricultural Advisory Board.

E. *Summary of Regulatory Requirements*

This proposed rulemaking would amend definitions of eight terms in § 121.1. The proposed rulemaking amends the definitions of "commercial fuel oil" and "noncommercial fuel" to synchronize them. The proposed rulemaking expands the definition of "carrier" so that it applies when commercial fuel oil is carried. The proposed rulemaking amends the definition of "distributor" so that it applies when commercial fuel oil is distributed and to broaden the list of transferees. The proposed rulemaking similarly expands the definitions of "retail outlet" and "terminal." The proposed rulemaking provides more specificity to the definitions of "transferee" and "transferor" by listing examples of persons and entities included in the definition. The proposed rulemaking adds the terms "ASTM" and "ultimate consumer" because these terms are used elsewhere in the proposed rulemaking.

The proposed rulemaking would amend § 123.22 and add two new subsections. Subsection (a) applies to nonair basin areas. Air basins are defined geographically in § 121.1. The proposed amendments to subsection (a) make minor editorial revisions to the general provision in paragraph (1). The proposed rulemaking reduces the allowable sulfur limits of commercial fuel oil in paragraph (2), in proposed subparagraph (i), to 15 ppm for No. 2 and lighter commercial fuel oils and to 0.25% sulfur content by weight for No. 4 commercial fuel oil and 0.5% sulfur content by weight for No. 5 and 6 and heavier commercial fuel oils beginning May 1, 2012. On and after those dates, a person would not be authorized to offer for sale, deliver for use, exchange in trade or permit the use of a noncomplying commercial fuel oil in a nonair basin.

Proposed amendments to paragraph (2) would contain two exceptions. The first exception in proposed subparagraph (ii) allows commercial fuel oil that is stored in this Commonwealth by the ultimate consumer prior to the applicable compliance date listed and met the applicable maximum sulfur content at the time it was stored to be used in this Commonwealth after the applicable compliance date. The second exception in proposed subparagraph (iii) authorizes the Department to temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil if the Department were to determine that an insufficient quantity of compliant commercial fuel oil were reasonably available in a nonair basin area. Proposed subparagraph (iv) authorizes the Department to limit a suspension or increase granted under subparagraph (iii) to the shortest duration in which adequate supplies of compliant commercial fuel oil can be made reasonably available. Proposed subparagraph (v) specifies that the sulfur content limit for No. 2 and lighter commercial fuel oil may not exceed 500 ppm if a temporary increase in the applicable limit of sulfur content is granted under subparagraph (iii).

The proposed rulemaking would amend the equivalency provision in paragraph (3) to provide greater clarity. The equivalency provision requires an equivalent amount of emission reductions when equipment or a process is used to reduce sulfur emissions from the burning of a fuel with a higher sulfur content than that specified in paragraph (2).

The proposed rulemaking makes similar amendments to the remaining four subsections of § 123.22, which apply as follows: subsection (b) applies to the Erie; Harrisburg; York; Lancaster; Scranton; Wilkes-Barre air basins; subsection (c) applies to the Allentown, Bethlehem, Easton, Reading, Upper Beaver Valley and Johnstown air basins; subsection (d) applies to the Allegheny County, Lower Beaver Valley and Monongahela Valley air basins; and subsection (e) applies to the Southeast Pennsylvania air basin. Each of these air basins is defined in § 121.1. In subsection (d), the proposed rulemaking adds commercial fuel oil limits and percentages as well as the equivalency provision.

The proposed rulemaking would add § 123.22(f) to establish sampling and testing requirements for refinery and terminal owners and operators to ensure compliance with the allowable sulfur limits for commercial fuel oil. A refinery owner or operator who produces commercial fuel oil intended for use or used in this Commonwealth on or after the applicable compliance dates would be required to sample, test and calculate the sulfur content of each batch of the commercial fuel oil. A terminal owner or operator would be required to develop and implement written procedures, including procedures for commercial fuel oil sampling and testing, which would be required to be made available to the Department upon request.

The proposed rulemaking would add § 123.22(g) to establish recordkeeping and reporting requirements applicable to transferors and transferees in the manufacture and distribution chain for commercial fuel oil, from the refinery owner or operator to the ultimate consumer. This subsection requires each transferor to provide each transferee with an electronic or paper record containing specified information each time the physical custody of, or title to, a shipment of commercial fuel oil were to change hands. The transferors and transferees would be required to maintain the records for 2 years and provide them to the Department upon request. The subsection also requires refinery and terminal owners and operators to maintain the records developed under proposed subsection (f) for 2 years and to provide them to the Department upon request. Under this proposed subsection, private residence ultimate consumers would not be required to maintain records nor would ultimate consumers who were owners of apartment or condominium buildings housing private residents if the transfer or use of the commercial fuel oil occurs for use at the building. Other ultimate consumers would be required to maintain the record provided to them in the transfer of the commercial fuel oil.

The proposed rulemaking would amend § 139.4 (relating to references) to update six of the applicable sulfur method references and add two new sulfur method references.

The proposed rulemaking would amend § 139.16 (relating to sulfur in fuel oil) to add cross-references to the two new sulfur method references in § 139.4.

This proposed control measure is an important part of the Commonwealth's efforts to meet the 2018 reasonable progress goals for reducing regional haze established by the Commonwealth in consultation with the member states of MANE-VU and is also reasonably necessary to attain and maintain the PM2.5 NAAQS in this Commonwealth. The proposed rulemaking, if adopted as a final-form rulemaking, will be submitted to the EPA as a revision to the SIP.

F. *Benefits, Costs and Compliance*

Benefits

Implementation of the proposed control measure would benefit the health and welfare of the approximately 12 million human residents and numerous animals, crops, vegetation and natural areas in this Commonwealth by reducing the ambient levels of SO_2, resulting in reductions in regional haze and PM2.5. There are also important cobenefits of this proposed rulemaking. Emissions of NOx, which contribute to unhealthy levels of PM2.5 and ground-level ozone, would also decrease with the use of low-sulfur content commercial fuel oil due to furnace and boiler combustion efficiency improvements. Emissions of carbon dioxide, a greenhouse gas, should also be reduced since with improved combustion efficiency, overall commercial fuel oil consumption should decrease.

Commercial fuel oil users benefit, too. According to the United States Energy Information Administration (EIA), State Energy Profiles, approximately 26% of the households in this Commonwealth use No. 2 commercial fuel oil for space heat. Low-sulfur content commercial fuel oil has the potential to improve furnace and boiler combustion efficiency by reducing fouling rates of furnace and boiler heat exchangers and other components. Reduced boiler and furnace fouling rates translate directly into lower vacuum-cleaning costs for fuel oil companies and homeowners by extending the service intervals. For example, according to a NESCAUM study, using a median hourly service cost of $72.50 per hour for vacuum-cleaning a furnace and changing No. 2 commercial fuel oil from a sulfur content of 2,500 ppm to 500 ppm would save $29,000 a year per 1,000 homes, or $29 annually per home in the United States. (See NESCAUM report: *Low Sulfur Heating Oil in the Northeast States: An Overview of Benefits, Costs and Implementation Issues*, December 2005, p. 3-2 and 3-3.) Further, the availability of low-sulfur content commercial fuel oil would enable the introduction of highly efficient advanced technology condensing furnaces. A lower sulfur content commercial fuel oil would also increase the number of clean fuel types available to consumers.

The commercial fuel oil industry also benefits. A requirement for lower sulfur content No. 2 commercial fuel oil would benefit distributors of commercial fuel oil by increasing their ability to compete with natural gas, a cleaner fuel than today's No. 2 commercial fuel oil. Another benefit is that consistency of No. 2 commercial fuel oil sulfur content limits with highway and nonroad, locomotive and marine (NRLM) transportation diesel sulfur content limits would help refinery owners and operators, distributors, carriers and owners and operators of commercial fuel oil and transportation diesel fuel terminals minimize the number of tanks and trucks needed. No. 2 commercial fuel oil could be combined with NRLM transportation diesel fuel in the same tanks and trucks. The sulfur level of 15 ppm in the proposed rulemaking for No. 2 commercial fuel oil is consistent with the level that is or will be required in highway and NRLM transportation diesel fuels. The Federal final rule for Control of Air Pollution from New Motor Vehicles: Heavy Duty Engines and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, published at 66 FR 5002 (January 18, 2001), requires refiners to produce 100% of their highway diesel fuel to meet the sulfur content limit of 15 ppm beginning June 1, 2010. See 66 FR 5002, 5067. The Federal final rule for Control of Air Emissions from Nonroad Diesel Engines and Fuel, published at 69 FR 38958 (June 29, 2004), requires the sulfur content limit for nonroad transportation diesel fuel be 15 ppm beginning June 1, 2010. See 69 FR 38958, 39039. The sulfur content limit for locomotive and marine (except large ocean-going vessels) diesel fuel will be 15 ppm beginning June 1, 2012. See 69 FR 39039. Furthermore, since sulfur content limits for regulated commercial fuel oils would now be Commonwealth-wide rather than area-specific, compliance and recordkeeping would be simplified for the petroleum refining and distribution companies.

Compliance costs

The proposed rulemaking would affect the owners and operators of refineries, distributors and carriers of commercial fuel oils; owners and operators of commercial fuel oil terminals; ICI boiler owners and operators; and anyone who uses commercial fuel oils in this Commonwealth.

There are five refineries in this Commonwealth owned by four companies. The products of the five refineries would be affected by the proposed rulemaking. Owners and operators of refineries outside this Commonwealth would be indirectly affected if they supply distributors that sell commercial fuel oil in this Commonwealth. The Department believes that this sophisticated industry has the technical capacity for implementing the program because sulfur limits have been established in motor fuels for 30 years.

There are 120 fuel oil terminal operations operated by 38 different companies and 737 distributors of petroleum products in this Commonwealth. Not all of these opera-

tions handle commercial fuel oil. Major distributors in this Commonwealth also operate terminals. While the size of distributor operations ranges from large to small, members of the petroleum distribution industry as a whole have been regulated for many years. Existing systems to track the quantity and composition of fuel are of long standing for purposes of compliance with both environmental and tax regulations.

End-users of commercial fuel oil range from large industrial users to homeowners. There are approximately 1.32 million households in this Commonwealth that may use commercial fuel oil for residential heating (5.08 million households × 26% of households). The EIA State Energy Profile estimates that 26% of homes in this Commonwealth use commercial fuel oil for space heat.

Fuel combustion at many ICI sources is already regulated by the Department under its permit program; these sources would be required to comply with the proposed rulemaking, which retains (with modification) the equivalency provisions of the existing regulation as an alternative compliance mechanism. The equivalency provisions allow the use of equipment or a process to control emissions to the same level as would result from the use of a compliant commercial fuel oil. This choice would most likely only occur if the cost of control were less than the cost of the purchase of compliant commercial fuel oil.

Market forces and regulations for transportation-related diesel fuels in both the United States and internationally will be the major forces affecting this industry, since the use of commercial fuel oil for residential heating and ICI boilers is a very small portion of diesel fuel consumption. No. 2 commercial fuel oil will be identical in sulfur content level to nonroad transportation diesel fuel in 2012 if the proposed rulemaking compliance date of May 1, 2012, is implemented.

In a 2008 report entitled "Northeast Heating Oil Assessment," the National Oilheat Research Alliance (NORA) estimated that there would be a 6.3¢ to 6.8¢ per gallon incremental production cost for 500 ppm versus 2,500 ppm sulfur content home heating oil (No. 2 commercial fuel oil), including capital costs. Costs are estimated to be as much as 8.9¢ per gallon for 15 ppm sulfur content versus 2,500 ppm. However, when refinery owners and operators have desulfurization capabilities, the incremental cost of producing 15 ppm sulfur versus 2,500 ppm home heating oil will be less than 5¢ per gallon. Note that these are costs to the producers; prices to the ultimate consumer will be influenced by factors in addition to the cost of reducing the sulfur content in the fuel oil.

Furnace and boiler maintenance costs for consumers would be lower due to less fouling of their combustion units. According to NORA, although low-sulfur content commercial fuel oil may cost a few cents per gallon more, savings on maintenance costs would help defray that impact. Decreased fouling improves efficiency of the combustion unit, which results in lower fuel usage.

Compliance assistance plan

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

Paperwork requirements

The proposed rulemaking requires that, beginning with the refinery owner or operator who sells or transfers commercial fuel oil and ending with the ultimate consumer, each time the physical custody of or title to a shipment of commercial fuel oil changes hands the transferor would be required to provide the transferee with an electronic or paper record of the transaction. Each affected person would be required to keep the records in electronic or paper format for 2 years, except those ultimate consumers located at a private residence. Recordkeeping or reporting would not be required of ultimate consumers at private residences or apartment complexes and condominiums; they only need to buy and use compliant commercial fuel oil. The Department conferred with industry on normal industry practices and took those practices into account in crafting the paperwork requirements.

G. *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 proposed rulemaking prevents emissions of SO_2 and NOx air pollutants by requiring a lower amount of sulfur in commercial fuel oil used in this Commonwealth, thereby reducing regional haze and ambient levels of PM2.5 in this Commonwealth and throughout the northeast. The proposed rulemaking does not require add-on controls, although existing provisions allow the use of noncompliant fuel if the emissions are equivalent to those obtained with compliant commercial fuel oil.

H. *Sunset Review*

This proposed 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.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 13, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

J. *Public Comments*

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality

Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board on or before November 29, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board on or before November 29, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board on or before November 29, 2010. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

K. *Public Hearings*

The Board will hold public hearings in Harrisburg, Cranberry Township and Norristown for the purpose of accepting comments on this proposed rulemaking. The hearings will be held at 7 p.m. as follows:

October 26, 2010	Department of Environmental Protection Rachel Carson State Office Building Conference Room 105 400 Market Street Harrisburg, PA 17101
October 27, 2010	Cranberry Township Municipal Building 2525 Rochester Road Cranberry Township, PA 16066-6499
October 28, 2010	Department of Environmental Protection Southeast Regional Office Delaware Conference Room 2 East Main Street Norristown, PA 19401

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

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

JOHN HANGER,
Chairperson

Fiscal Note: 7-462. (1) General Fund;

	State Correctional Institutions (SCI)	*Mental Health (MH)*	*Youth Development Centers (YDC)*	*Mental Retardation (MR)*	*Parks*	*Forestry*
(2) Implementing Year 2010-11 is	$60,000	$4,000	$4,000	$4,000	$4,000	$4,000
(3) 1st Succeeding Year 2011-12 is	$60,000	$4,000	$4,000	$4,000	$4,000	$4,000
2nd Succeeding Year 2012-13 is	$60,000	$4,000	$4,000	$4,000	$4,000	$4,000
3rd Succeeding Year 2013-14 is	$60,000	$4,000	$4,000	$4,000	$4,000	$4,000
4th Succeeding Year 2014-15 is	$60,000	$4,000	$4,000	$4,000	$4,000	$4,000
5th Succeeding Year 2015-16 is	$60,000	$4,000	$4,000	$4,000	$4,000	$4,000
(Amounts in Thousands)	*SCI*	*MH*	*YDC*	*MR*	*Parks*	*Forestry*
(4) Program Year 2009-10	$1,290,126	$680,097	$66,573	$86,611	$49,874	$16,445
Program Year 2008-09	$1,311,949	$707,890	$73,204	$83,632	$59,638	$16,907
Program Year 2007-08	$1,313,674	$709,168	$69,797	$103,424	$62,268	$16,441

(1) Motor License Fund;

	Highway Maintenance	*Highway Safety*	*Safety Administration and Licenses*	*General Government Operations*	*Aviation*
(2) Implementing Year 2010-11 is	$64,000	$64,000	$64,000	$64,000	$64,000
(3) 1st Succeeding Year 2011-12 is	$64,000	$64,000	$64,000	$64,000	$64,000
2nd Succeeding Year 2012-13 is	$64,000	$64,000	$64,000	$64,000	$64,000
3rd Succeeding Year 2013-14 is	$64,000	$64,000	$64,000	$64,000	$64,000
4th Succeeding Year 2014-15 is	$64,000	$64,000	$64,000	$64,000	$64,000
5th Succeeding Year 2015-16 is	$64,000	$64,000	$64,000	$64,000	$64,000

(Amounts in Thousands)	Highway Maintenance	Highway Safety	Safety Administration and Licenses	General Government Operations	Aviation
(4) Program Year 2009-10	$754,154	$92,225	$112,747	$47,739	$4,116
Program Year 2008-09	$826,227	$108,251	$117,842	$49,254	$4,689
Program Year 2007-08	$789,238	$140,000	$132,828	$50,668	$4,239

(8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

***ASTM*—ASTM International, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, PA 19428-2959 USA, or on the World Wide Web at www.astm.org.**

* * * * *

Carrier—A distributor who does not take title to or otherwise have ownership of the **commercial fuel oil or** gasoline, and does not alter either the quality or quantity of the **commercial fuel oil or** gasoline.

* * * * *

Commercial fuel oil—**[Commercial fuel oil and mixtures] A fuel oil specifically produced, manufactured for sale and intended for use in fuel oil-burning equipment. A mixture** of commercial fuel **[oils] oil** with **[other fuels] noncommercial fuel** where greater than 50% of the heat content is derived from the commercial fuel oil **portion is considered a commercial fuel oil**.

* * * * *

Distributor—

(i) A person who transports, stores or causes the transportation or storage of **commercial fuel oil or** gasoline at any point between a refinery, **[an oxygenate] a** blending facility or terminal and a retail outlet **[or] ,** wholesale purchaser-consumer's facility **or ultimate consumer**.

(ii) The term includes a refinery, **[an oxygenate] a** blending facility or a terminal.

* * * * *

Noncommercial **[*fuels*] *fuel***—A gaseous or liquid fuel generated as a byproduct or waste product which is not specifically produced and manufactured for sale. A mixture of **a** noncommercial **fuel** and a commercial fuel oil **[where] when** at least 50% of the heat content is derived from the noncommercial fuel portion is considered a noncommercial fuel.

* * * * *

Retail outlet—An establishment at which **commercial fuel oil or** gasoline is sold or offered for sale to the ultimate consumer for use in **a combustion unit or** motor **[vehicles] vehicle, respectively**.

* * * * *

Terminal—

(i) A facility which is capable of receiving **commercial fuel oil or** gasoline in bulk, that is, by pipeline, barge, ship or other transport, and at which **commercial fuel oil or** gasoline is sold or transferred into trucks for transportation to retail outlets **[or] ,** wholesale purchaser-consumer's facilities **or ultimate consumers**.

(ii) The term includes bulk gasoline terminals and bulk gasoline plants. **[The]**

(iii) For purposes of Chapter 126, Subchapter A (relating to oxygenate content), the terminal does not have to be physically located in the control area.

* * * * *

Transferee—

(i) A person who is the recipient of a sale or transfer.

(ii) The term includes the following:

(A) Terminal owner or operator.

(B) Carrier.

(C) Distributor.

(D) Retail outlet owner or operator.

(E) Ultimate consumer.

* * * * *

Transferor—

(i) A person who initiates a sale or transfer.

(ii) The term includes the following:

(A) Refinery owner or operator.

(B) Terminal owner or operator.

(C) Carrier.

(D) Distributor.

(E) Retail outlet owner or operator.

* * * * *

***Ultimate consumer*—With respect to a commercial fuel oil transfer or purchase, the last person, facility owner or operator or entity who in good faith receives the commercial fuel oil for the purpose of using it in a combustion unit or for purposes other than resale.**

* * * * *

CHAPTER 123. STANDARDS FOR CONTAMINANTS SULFUR COMPOUND EMISSIONS

§ 123.22. Combustion units.

(a) *Nonair basin areas.* Combustion units in nonair basin areas **[shall] must** conform with the following:

(1) *General provision.* **[No] A** person may **not** permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from a combustion unit in excess of the rate of 4 pounds per million Btu of heat input over **[any] a** 1-hour period**,** except as provided **[for]** in paragraph (4).

(2) *Commercial fuel oil.* **[No]**

(i) Except as specified in subparagraphs (ii) and (iii), a person may **not** offer for sale, deliver for use, exchange in trade or permit the use of commercial fuel oil in nonair basin areas **[which] on or after the applicable compliance date listed in this subparagraph, if the commercial fuel oil** contains sulfur in excess of the applicable **limit or** percentage by weight set forth in the following table:

[*Grades Commercial Fuel Oil*	***% Sulfur***
No. 2 and Lighter (viscosity less than or equal to 5.820cSt)	**0.5**
No. 4, No. 5, No. 6, and heavier (viscosity greater than 5.82cSt)	**2.8]**

	Compliance Date	
Commercial Fuel Oil	***May 1, 2012***	***May 1, 2012***
No. 2 and lighter (viscosity less than or equal to 5.820cSt)	**15 ppm**	
No. 4 oil (viscosity greater than 5.820cSt)		**0.25% sulfur**
No. 5, No. 6 and heavier oil (viscosity greater than 5.820cSt)		**0.5% sulfur**

(ii) Commercial fuel oil that was stored in this Commonwealth by the ultimate consumer prior to the applicable compliance date in subparagraph (i), which met the applicable maximum sulfur content at the time it was stored, may be used in this Commonwealth after the applicable compliance date in subparagraph (i).

(iii) The Department, with the written concurrence of the Administrator of the EPA, may temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil set forth in the table in subparagraph (i) if both of the following occur:

(A) The Department determines that an insufficient quantity of compliant commercial fuel oil is reasonably available in a nonair basin area.

(B) The Department receives a written request for a suspension or increase on the basis that compliant commercial fuel oil is not reasonably available. The request must include both of the following:

(I) The reason compliant commercial fuel oil is not reasonably available.

(II) The duration of time for which the suspension or increase is requested and the justification for the requested duration.

(iv) The Department will limit a suspension or increase in the applicable limit granted under subparagraph (iii) to the shortest duration in which adequate supplies of compliant commercial fuel oil can be made reasonably available.

(v) The sulfur content limit for No. 2 and lighter commercial fuel oil may not exceed 500 ppm if a temporary increase in the applicable limit of sulfur content is granted under subparagraph (iii).

(3) *Equivalency provision.* Paragraph (2) **[may] does** not apply to **[those persons] a person who uses equipment or a process,** or **[installations] to the owner or operator of an installation** where equipment or **[processes are] a process is** used**,** to reduce the **sulfur** emissions from the burning of **[fuels] a fuel** with a higher sulfur content than that specified in paragraph (2). The emissions may not exceed those which would result from the use of **[the fuels] commercial fuel oil that meets the applicable limit or percentage by weight** specified in paragraph (2).

* * * * *

(b) *Erie; Harrisburg; York; Lancaster; and Scranton, Wilkes-Barre air basins.* Combustion units in these subject air basins **[shall] must** conform with the following:

(1) *General provision.* **[No] A** person may **not** permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from a combustion unit in excess of the rate of 4 pounds per million Btu of heat input over a 1-hour period**,** except as provided **[for]** in paragraph (4).

(2) *Commercial fuel oil.* **[No]**

(i) Except as specified in subparagraphs (ii) and (iii), a person may **not** offer for sale, deliver for use, exchange in trade or permit the use of commercial fuel oil in the subject air basins **[which contain] on or after the applicable compliance date listed in this subparagraph, if the commercial fuel oil contains** sulfur in excess of the applicable **limit or** percentage by weight set forth in the following table:

[*Grades Commercial Fuel Oil*	*Effective August 1, 1979 % Sulfur*
No. 2 and Lighter (viscosity less than or equal to 5.820cSt)	**0.3**
No. 4, No. 5, No. 6, and heavier (viscosity greater than 5.82cSt)	**2.8]**

	Compliance Date	
Commercial Fuel Oil	*May 1, 2012*	*May 1, 2012*
No. 2 and lighter (viscosity less than or equal to 5.820cSt)	**15 ppm**	
No. 4 oil (viscosity greater than 5.820cSt)		**0.25% sulfur**
No. 5, No. 6 and heavier oil (viscosity greater than 5.820cSt)		**0.5% sulfur**

(ii) Commercial fuel oil that was stored in this Commonwealth by the ultimate consumer prior to the applicable compliance date in subparagraph (i), which met the applicable maximum sulfur content at the time it was stored, may be used in this Commonwealth after the applicable compliance date in subparagraph (i).

(iii) The Department, with the written concurrence of the Administrator of the EPA, may temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil set forth in the table in subparagraph (i) if both of the following occur:

(A) The Department determines that an insufficient quantity of compliant commercial fuel oil is reasonably available in the subject air basins.

(B) The Department receives a written request for a suspension or increase on the basis that compliant commercial fuel oil is not reasonably available. The request must include both of the following:

(I) The reason compliant commercial fuel oil is not reasonably available.

(II) The duration of time for which the suspension or increase is requested and the justification for the requested duration.

(iv) The Department will limit a suspension or increase in the applicable limit granted under subparagraph (iii) to the shortest duration in which adequate supplies of compliant commercial fuel oil can be made reasonably available.

(v) The sulfur content limit for No. 2 and lighter commercial fuel oil may not exceed 500 ppm if a temporary increase in the applicable limit of sulfur content is granted under subparagraph (iii).

(3) *Equivalency provision*. Paragraph (2) does not apply to **[those persons] a person who uses equipment or a process,** or **[installations] to the owner or operator of an installation** where equipment or **[processes are] a process is** used**,** to reduce the **sulfur** emissions from the burning of **[fuels] a fuel** with a higher sulfur content than that specified in paragraph (2). The emissions may not exceed those which would result from the use of **[the fuels] commercial fuel oil that meets the applicable limit or percentage by weight** specified in paragraph (2).

* * * * *

(c) *Allentown, Bethlehem, Easton, Reading, Upper Beaver Valley and Johnstown air basins*. Combustion units in these subject air basins **[shall] must** conform with the following:

(1) *General provision.* **[No] A** person may **not** permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from **[any] a** combustion unit **[, at any time,]** in excess of the rate of 3 pounds per million Btu of heat input over **[any] a** 1-hour period**,** except as provided **[for]** in paragraph (4).

(2) *Commercial fuel oil.* **[No]**

(i) Except as specified in subparagraphs (ii) and (iii), a person may **[, at any time,] not** offer for sale, deliver for use, exchange in trade or permit the use of commercial fuel oil in the subject air basins on or after the **[effective dates] applicable compliance date** listed in this **[paragraph which] subparagraph, if the commercial fuel oil** contains sulfur in excess of the applicable **limit or** percentage by weight set forth in the following table:

[*Grades Commercial Fuel Oil*	*Effective August 1, 1979 % Sulfur*
No. 2 and Lighter (viscosity less than or equal to 5.82cSt)	**0.3**
No. 4, No. 5, No. 6 and heavier (viscosity greater than 5.82cSt)	**2.0]**

	Compliance Date	
Commercial Fuel Oil	*May 1, 2012*	*May 1, 2012*
No. 2 and lighter (viscosity less than or equal to 5.820cSt)	**15 ppm**	
No. 4 oil (viscosity greater than 5.820cSt)		**0.25% sulfur**
No. 5, No. 6 and heavier oil (viscosity greater than 5.820cSt)		**0.5% sulfur**

(ii) Commercial fuel oil that was stored in this Commonwealth by the ultimate consumer prior to the applicable compliance date in subparagraph (i), which met the applicable maximum sulfur content at the time it was stored, may be used in this Commonwealth after the applicable compliance date in subparagraph (i).

(iii) The Department, with the written concurrence of the Administrator of the EPA, may temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil set forth in the table in subparagraph (i) if both of the following occur:

(A) The Department determines that an insufficient quantity of compliant commercial fuel oil is reasonably available in the subject air basins.

(B) The Department receives a written request for a suspension or increase on the basis that compliant commercial fuel oil is not reasonably available. The request must include both of the following:

(I) The reason compliant commercial fuel oil is not reasonably available.

(II) The duration of time for which the suspension or increase is requested and the justification for the requested duration.

(iv) The Department will limit a suspension or increase in the applicable limit granted under subparagraph (iii) to the shortest duration in which adequate supplies of compliant commercial fuel oil can be made reasonably available.

(v) The sulfur content limit for No. 2 and lighter commercial fuel oil may not exceed 500 ppm if a temporary increase in the applicable limit of sulfur content is granted under subparagraph (iii).

(3) *Equivalency provision*. Paragraph (2) does not apply to **[those persons] a person who uses equipment or a process,** or **[installations] to the owner or operator of an installation** where equipment or **[processes are] a process is** used, to reduce the **sulfur** emissions from the burning of **[fuels] a fuel** with a higher sulfur content than that specified in paragraph (2) **[; however, the]. The** emissions may not exceed those which would result from the use of **[the fuels] commercial fuel oil that meets the applicable limit or percentage by weight** specified in paragraph (2).

* * * * *

(d) *Allegheny County, Lower Beaver Valley***[,]** *and Monongahela Valley air basins.* **[No person may permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from any combustion unit in excess of any of] Combustion units in these subject air basins must conform with** the following:

(1) ***General provision.* A person may not permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from a combustion unit in excess of one or more of the following:**

(i) The rate of **[one] 1** pound per million Btu of heat input, when the heat input to the combustion unit in millions of Btus per hour is greater than 2.5 but less than 50.

[(2)] (ii) The rate determined by the following formula: $A = 1.7E^{-0.14}$, where: A = Allowable emissions in pounds per million Btu of heat input, and E = Heat input to the combustion unit in millions of Btus per hours when E is equal to or greater than 50 but less than 2,000.

[(3)] (iii) The rate of 0.6 pounds per million Btu of heat input when the heat input to the combustion unit in millions of Btus per hour is equal to or greater than 2,000.

(2) *Commercial fuel oil.*

(i) Except as specified in subparagraphs (ii) and (iii), a person may not offer for sale, deliver for use, exchange in trade or permit the use of commercial fuel oil in the subject air basins on or after the applicable compliance date listed in this subparagraph, if the commercial fuel oil contains sulfur in excess of the applicable limit or percentage by weight set forth in the following table:

	Compliance Date	
Commercial Fuel Oil	***May 1, 2012***	***May 1, 2012***
No. 2 and lighter (viscosity less than or equal to 5.820cSt)	**15 ppm**	
No. 4 oil (viscosity greater than 5.820cSt)		**0.25% sulfur**
No. 5, No. 6 and heavier oil (viscosity greater than 5.820cSt)		**0.5% sulfur**

(ii) Commercial fuel oil that was stored in this Commonwealth by the ultimate consumer prior to the applicable compliance date in subparagraph (i), which met the applicable maximum sulfur content at the time it was stored, may be used in this Commonwealth after the applicable compliance date in subparagraph (i).

(iii) The Department, with the written concurrence of the Administrator of the EPA, may temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil set forth in the table in subparagraph (i) if both of the following occur:

(A) The Department determines that an insufficient quantity of compliant commercial fuel oil is reasonably available in the subject air basins.

(B) The Department receives a written request for a suspension or increase on the basis that compliant commercial fuel oil is not reasonably available. The request must include both of the following:

(I) The reason compliant commercial fuel oil is not reasonably available.

(II) The duration of time for which the suspension or increase is requested and the justification for the requested duration.

(iv) The Department will limit a suspension or increase in the applicable limit granted under subparagraph (iii) to the shortest duration in which adequate supplies of compliant commercial fuel oil can be made reasonably available.

(v) The sulfur content limit for No. 2 and lighter commercial fuel oil may not exceed 500 ppm if a temporary increase in the applicable limit of sulfur content is granted under subparagraph (iii).

(3) *Equivalency provision.* Paragraph (2) does not apply to a person who uses equipment or a process, or to the owner or operator of an installation where equipment or a process is used, to reduce the sulfur emissions from the burning of a fuel with a higher sulfur content than that specified in paragraph (2). The emissions may not exceed those which would result from the use of commercial fuel oil that meets the applicable limit or percentage by weight specified in paragraph (2).

(e) *Southeast Pennsylvania air basin.* Combustion units in the Southeast Pennsylvania air basin **[shall] must** conform with the following:

(1) *General provision.* **[No] A** person may **not** permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from **[any] a** combustion unit except as provided **[for]** in paragraph (3) or (5), in excess of the applicable rate in pounds per million Btu of heat input specified in the following table:

Rated Capacity of Units in 10^6 Btus per hour	*Inner Zone*	*Outer Zone*
less than 250	1.0	1.2
greater than or equal to 250	0.6	1.2

(2) *Commercial fuel oil.* **[No]**

(i) Except as specified in subparagraphs (ii) and (iii), a person may **[, at any time,] not** offer for sale, deliver **[or] for** use, exchange in trade or permit the use of commercial fuel oil **[for use]** in **a** combustion **[units] unit** in the Southeast Pennsylvania air basin **[which] on or after the applicable compliance date listed in this subparagraph, if the commercial fuel oil** contains sulfur in excess of the applicable **[percentages] limit or percentage** by weight set forth in the following table:

[*Grades of Commercial Fuel Oil*	***Inner Zone***	***Outer Zone***
No. 2 and lighter (viscosity less than or equal to 5.82cSt)	**0.2%**	**0.3%**
No. 4, No. 5, No. 6 and Heavier (viscosity greater than 5.82cSt)	**0.5%**	**1.0%]**
	Compliance Date	
Commercial Fuel Oil	***May 1, 2012***	***May 1, 2012***
No. 2 and lighter (viscosity less than or equal to 5.820cSt)	**15 ppm**	
No. 4 oil (viscosity greater than 5.820cSt)		**0.25% sulfur**
No. 5, No. 6 and heavier oil (viscosity greater than 5.820cSt)		**0.5% sulfur**

(ii) Commercial fuel oil that was stored in this Commonwealth by the ultimate consumer prior to the applicable compliance date in subparagraph (i), which met the applicable maximum sulfur content at the time it was stored, may be used in this Commonwealth after the applicable compliance date in subparagraph (i).

(iii) The Department, with the written concurrence of the Administrator of the EPA, may temporarily suspend or increase the applicable limit or percentage by weight of sulfur content of a commercial fuel oil set forth in the table in subparagraph (i) if both of the following occur:

(A) The Department determines that an insufficient quantity of compliant commercial fuel oil is reasonably available in the subject air basin.

(B) The Department receives a written request for a suspension or increase on the basis that compliant commercial fuel oil is not reasonably available. The request must include both of the following:

(I) The reason compliant commercial fuel oil is not reasonably available.

(II) The duration of time for which the suspension or increase is requested and the justification for the requested duration.

(iv) The Department will limit a suspension or increase in the applicable limit granted under subparagraph (iii) to the shortest duration in which adequate supplies of compliant commercial fuel oil can be made reasonably available.

(v) The sulfur content limit for No. 2 and lighter commercial fuel oil may not exceed 500 ppm if a temporary increase in the applicable limit of sulfur content is granted under subparagraph (iii).

(3) *Noncommercial fuels.* **[No] A** person may **not** permit the emission into the outdoor atmosphere of sulfur oxides, expressed as SO_2, from **[any] a** combustion unit using **a** noncommercial fuel **[at any time] ,** in excess of the rate of 0.6 pounds per million Btu of heat input in the inner zone or 1.2 pounds per million Btu of heat input in the outer zone.

(4) *Equivalency provision.* Paragraph (2) does **not** apply to **[those persons] a person who uses equipment or a process,** or **[installations] to the owner or operator of an installation** where equipment or **[processes are] a process is** used, to reduce the **sulfur** emissions from the burning of **[fuels] a fuel** with a higher sulfur content than that specified in paragraph (2)**[; however, the]. The** emissions may not exceed those which would result from the use of **[the**

fuels] commercial fuel oil that meets the applicable limit or percentage by weight specified in paragraph (2).

* * * * *

(f) ***Sampling and testing.***

(1) For the purpose of determining compliance with the requirements of this section, the sulfur content of commercial fuel oil shall be determined by one of the following:

(i) In accordance with the sample collection, test methods and procedures specified under § 139.16 (relating to sulfur in fuel oil).

(ii) Other methods developed or approved by the Department, the Administrator of the United States Environmental Protection Agency, or both.

(2) A refinery owner or operator who produces commercial fuel oil intended for use or used in this Commonwealth on or after the applicable compliance date in subsections (a)(2), (b)(2), (c)(2), (d)(2) and (e)(2), is required to sample, test and calculate the sulfur content of each batch of the commercial fuel oil as specified in paragraph (1).

(3) A terminal owner or operator shall develop and implement written procedures, including procedures for commercial fuel oil sampling and testing as specified in paragraph (1). These procedures shall be made available to the Department upon request.

(g) ***Recordkeeping and reporting.***

(1) Beginning with the refinery owner or operator who sells or transfers commercial fuel oil in this Commonwealth and ending with the ultimate consumer, on or after the applicable compliance date specified in subsections (a)(2), (b)(2), (c)(2), (d)(2) and (e)(2), each time the physical custody of, or title to, a shipment of commercial fuel oil changes hands, the transferor shall provide to the transferee an electronic or paper record described in this paragraph. This record must legibly and conspicuously contain the following information:

(i) The date of the sale or transfer.

(ii) The name and address of the transferor.

(iii) The name and address of the transferee.

(iv) The volume of commercial fuel oil being sold or transferred.

(v) The sulfur content of the commercial fuel oil by limit or weight percent on a per-gallon basis determined using the sampling and testing methods specified in subsection (f).

(vi) The location of the commercial fuel oil at the time of transfer.

(2) The refinery owner or operator shall do both of the following:

(i) Maintain in electronic or paper format, the records developed under subsection (f)(2) to determine the sulfur content of each batch of the commercial fuel oil.

(ii) Provide electronic or written copies of the records developed under subsection (f)(2) of the sulfur content of each batch of the commercial fuel oil to the Department upon request.

(3) The terminal owner or operator shall do both of the following:

(i) Maintain in electronic or paper format, the records developed under subsection (f)(3) to determine the sulfur content of the commercial fuel oil.

(ii) Provide electronic or written copies of the records of the sulfur content of the commercial fuel oil to the Department upon request.

(4) A person subject to this section shall do both of the following:

(i) Maintain the applicable records required under paragraphs (1)—(3) in electronic or paper format for 2 years.

(ii) Provide an electronic or written copy of the applicable record to the Department upon request.

(5) The ultimate consumer shall maintain in electronic or paper format the record containing the information listed in paragraph (1), except in either of the following situations:

(i) The transfer or use of the commercial fuel oil occurs at a private residence.

(ii) The ultimate consumer is an owner of an apartment or condominium building housing private residents and the transfer or use of the commercial fuel oil occurs for use at the building.

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

GENERAL

§ 139.4. References.

The references referred to in this chapter are as follows:

* * * * *

(10) **[** ***Standard Method of Sampling Petroleum and Petroleum Products*****, American Society for Testing Materials, D 270-80, 1916 Race Street, Philadelphia, Pennsylvania 19103] ASTM D 4057,** ***Practice for Manual Sampling of Petroleum and Petroleum Products*****, including updates and revisions**.

(11) **[** ***Standard Method of Test for Kinematic Viscosity of Transparent and Opaque Liquids (and the calculation of Dynamic Viscosity)*****, American Society for Testing Materials, D 445-79, 1916 Race Street, Philadelphia, Pennsylvania 19103] ASTM D 445,** ***Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity)*****, including updates and revisions**.

(12) **[** ***Standard Method of Test for Sulfur in Petroleum Products (Lamp Method)*****, American Society for Testing Materials, D 1266-80, 1916 Race Street, Philadelphia, Pennsylvania 19103] ASTM D 1266,** ***Test Methods for Sulfur in Petroleum Products: Lamp Method*****, including updates and revisions**.

(13) **[** ***Standard Method of Test for Sulfur in Petroleum Products by the Bomb Method*****, American Society for Testing Materials, D 129-78, 1916 Race Street, Philadelphia, Pennsylvania 19103] ASTM D 129,** ***Test Methods for Sulfur in Petroleum Products: General Bomb Method*****, including updates and revisions**.

(14) **[** ***Standard Method of Test for Sulfur in Petroleum Products (High Temperature Method)*****, Ameri-**

can Society for Testing Materials, D 1552-79, 1916 Race Street, Philadelphia, Pennsylvania 19103] ASTM D 1552, ***Test Methods for Sulfur in Petroleum Products: High-Temperature Method*****, including updates and revisions**.

(15) **[** ***Standard Method of Test for Sulfur in Petroleum Products (X-Ray Spectrographic Method)*****, American Society for Testing Materials, D 2622-77, 1916 Race Street, Philadelphia, Pennsylvania 19103] ASTM D 2622,** ***Test Methods for Sulfur in Petroleum Products by X-Ray Spectrometry*****, including updates and revisions**.

* * * * *

(20) ASTM D 4294, ***Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry*****, including updates and revisions.**

(21) ASTM D 4177, ***Practice for Automatic Sampling of Petroleum and Petroleum Products*****, including updates and revisions.**

STATIONARY SOURCES

§ 139.16. Sulfur in fuel oil.

The following **[are applicable] apply** to tests for the analysis of commercial fuel oil:

(1) The fuel oil sample for chemical analysis shall be collected in a manner that provides a representative sample. Upon the request of a Department official, the person responsible for the operation of the source shall collect the sample employing the procedures and equipment specified in § 139.4(10) **or (21)** (relating to references).

* * * * *

(3) Tests methods and procedures for the determination of sulfur shall be those specified in § 139.4(12)—(15) **and (20)**.

* * * * *

[Pa.B. Doc. No. 10-1834. Filed for public inspection September 24, 2010, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 421a, 439a, 440a, 441a, 451a, 465a, 481a, 501a AND 503a]

Gaming Junket Amendments

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1601—1611 (relating to junkets), proposes to amend Chapters 401a, 421a, 439a, 440a, 441a, 451a, 465a, 481a, 501a and 503a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking amends and updates these chapters to improve clarity, eliminate or reduce the registration or application requirements for some entities and individuals and to bring the Board's regulations into conformity with revisions to 4 Pa.C.S. Part II (relating to Pennsylvania Race Horse Development and Gaming Act) (act) enacted by act of January 7, 2010 (P. L. 1, No. 1) (Act 1).

Explanation of Amendments to Chapters 401a, 421a, 439a, 440a, 441a, 451a, 465a, 481a, 501a and 503a

Throughout these chapters, the word "gaming" was added before "junket," "junket enterprise" and "junket representative" to conform to amendments to the act enacted by Act 1.

In § 439a.1 (relating to definitions) the definitions of "junket," "junket enterprise" and "junket representative" have been amended to mirror the definitions in Act 1.

Section 439a.2(a) (relating to gaming junket enterprise general requirements; participation in a gaming junket) has amended the name of the application form the gaming junket enterprise must complete to apply for a license. Additionally, applications for a gaming junket enterprise license shall now be submitted by the gaming junket enterprise, not by the slot machine licensee.

Subsection (b) was amended to clarify existing language.

Subsections (d) and (e) have been amended to change "person" to "individual." "Person" is a statutorily defined term that includes both individuals and entities. Subsections (d) and (e), however, don't apply to entities; they only apply to individuals.

Section 439a.3(a) (relating to gaming junket enterprise license applications) was amended to include the number of copies an applicant for a gaming junket enterprise license shall file. Language requiring verification has been deleted from (a) because that verification shall be provided by the slot machine licensee, not by the gaming junket enterprise. The verification requirement was moved to subsection (d).

Subsection (b)(2) previously required that application forms be completed for affiliates, intermediaries, subsidiaries and holding companies of the junket enterprise. Affiliates and subsidiaries are no longer required to complete applications. This reflects the policy decision of the Board that the licensing of affiliates, intermediaries, subsidiaries and holding companies of the gaming junket enterprise is overly burdensome and not necessary to protect the integrity of gaming. A limited number of intermediaries and holding companies are now required to complete applications in accordance with revised § 439a.4a (relating to individual and entity applications). The requirement that applicants promptly provide information to the Board is existing language moved from subsection(c)(1).

Subsection (b)(3) previously required that each natural person who was a principal or key employee complete a registration. Key employees are no longer required to complete applications or registrations. The requirements for principal applications was moved to revised § 439a.4a. The language requiring compliance with general application requirements is existing language moved from subsection (c)(2).

Subsection (d) has been renumbered as subsection (c).

Subsection (d) was added and requires the slot machine licensee to submit a verification and due diligence form prior to engaging the services of a gaming junket enterprise. This verification requirement was taken, in part, from subsection (a).

Section 439a.4 has been rescinded and its provisions moved to § 439a.6a (relating to gaming junket enterprise license and occupation permit term and renewal).

Proposed § 439a.4a was drafted to more closely parallel the gaming service provider requirements in Chapter 437a (relating to vendor certification and registration) and to account for the occupation permit requirements enacted by Act 1.

Subsection (a) establishes that officers and directors as well as individuals with a 10% interest in the gaming junket enterprise must complete a Pennsylvania Personal History Disclosure Information Form—Gaming Junket Enterprise and be found qualified by the Board. This is similar to the application requirement for officers, directors and owners of a gaming service provider that provides services to the licensed facility. Previously, key employees, officers, directors, persons who directly held a beneficial interest or ownership interest and persons who held a controlling interest in a gaming junket were required to complete a Junket Enterprise Representative Registration Form. Key employees of the gaming junket enterprise are no longer required to complete an application or registration.

Subsection (b) requires that only those entities that have a direct interest of 20% or more must complete a Gaming Junket Enterprise Form—Private Holding Company and be found qualified by the Board. This amendment will require far fewer applications from the gaming junket enterprise in that the former § 439a.3 required that a principal entity, as well as an affiliate, intermediary, subsidiary and holding company, complete an application. Affiliates and subsidiaries are therefore no longer required, nor are many intermediaries or holding companies unless their interest is greater than 20%.

Subsection (c) requires that gaming junket representatives have an occupation permit instead of registering as a junket representative. This amendment was statutorily required under Act 1. Gaming junket representatives will now complete occupation permit applications utilizing the agency's SLOTS Link electronic application system instead of submitting paper forms.

Subsection (d) retains the Board's authority to require additional applications from the intermediaries, holding companies, subsidiaries, affiliates, individuals or trusts if the Board determines that the application is necessary to protect the public interest or enhance the integrity of gaming.

Subsection (e) requires individuals who are required to be found qualified or obtain an occupation permit to submit fingerprints, which will be used for their background investigation and subsection (f) notifies these individuals that they will be liable for investigation costs in excess of their application fees.

Section 439a.5 (relating to gaming junket representative general requirements) has been amended to improve its clarity and to accommodate the fact that Act 1 now requires that gaming junket representatives obtain an occupation permit. See 4 Pa.C.S. § 1318 (relating to occupation permit application) and §§ 435a.1 and 435a.3 (relating to general provisions; and occupation permit).

Section 439a.6 has been rescinded because gaming junket representatives are now required under Act 1 to obtain an occupation permit.

Proposed § 439a.6a contains the term and renewal process for gaming junket enterprise licenses and gaming junket representative occupation permits. With the passage of Act 1, occupation permits and gaming junket enterprise licenses, which were originally valid for only 1 year, are now valid for 3 years; subsection (a) reflects this change.

Subsections (b) and (c) were moved from § 439a.4 with no substantive changes. Subsection (d), regarding the nontransferability of the license, was added in compliance with 4 Pa.C.S. §§ 1602(f) and 1604(d) (relating to gaming junket enterprise license; and gaming junket representatives).

Minor clarity changes were made to §§ 439a.7, 439a.8, 439a.9, 439a.10 and 439a.11.

Section 439a.12(a) (relating to gaming junket enterprise and representative prohibitions) was added to comply with § 435a.1(h), which prohibits the holder of a permit from wagering at a licensed facility in this Commonwealth. The remaining language in this subsection has been revised slightly to conform to the language in 4 Pa.C.S. § 1611 (relating to prohibitions).

Affected Parties

This proposed rulemaking will affect officers, directors, representatives as well as the individuals and entities that own the gaming junket enterprise. It will provide greater clarity regarding who must be qualified and found suitable to hold a permit and eliminates the need for key employees, affiliates and subsidiaries of the gaming junket enterprise to complete applications or registrations.

Fiscal Impact

Commonwealth

There will not be a significant increase or decrease in the regulatory cost for the Board or other State agencies as a result of this rulemaking. This is because the Board recovers the costs associated with licensing and permitting activities from the applicants for licenses and permits.

Political subdivisions

This proposed rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector

Overall, this proposed rulemaking will result in a decrease in the number of applications from the affected groups listed in this preamble. The costs associated with the application have also been reduced. Previously, officers, directors, owners, key employees and representatives were required to be registered at a cost of $1,000. Officers, directors and owners with a greater than 10% interest are now required to be qualified with the gaming junket enterprise at a lower cost per application. Additionally, gaming junket representatives who obtain a permit now pay only $350 instead of the $1,000 required previously.

General public

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

Paperwork Requirements

This proposed rulemaking will increase the number of applications that are filed for officers, owners and directors but will eliminate applications or registrations for affiliates, subsidiaries and key employees. Only one original and one paper copy will now be required for individuals and entities that are required to be qualified. Additionally, individuals filing for a gaming junket entity representative occupation permit will not have to submit

a paper application because the application process can be done electronically on the Board's SLOTS Link system.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after 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 Gaming Junkets, Regulation #125-129.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 19, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and on the Board's web site at www.pgcb.state.pa.us.

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

GREGORY C. FAJT,
Chairperson

Fiscal Note: 125-129. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Vendor—

(i) A person **[who] that** provides goods or services to a slot machine licensee or applicant, but **[who] that** is not required to be licensed as a manufacturer, manufacturer designee, supplier, management company or **gaming** junket enterprise.

* * * * *

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS

§ 421a.6. Advertising.

(a) Slot machine, **gaming** junket **enterprise** and manufacturer licensees will be required to discontinue as expeditiously as possible the use of a particular advertisement upon receipt of written notice from the Board that the Board has determined that the use of the particular advertisement in, or with respect to, this Commonwealth could adversely impact the public or the integrity of gaming.

(b) For purposes of this section, the term "advertisement" means marketing materials including signs, billboards, print, radio and television advertisements, emails and any notice or communication by a slot machine, **gaming** junket **enterprise** or manufacturer licensee or its agent to the public through broadcasting, publication, mailing or other means of dissemination.

(c) Advertisements used by slot machine, **gaming** junket **enterprise** or manufacturer licensees may not:

* * * * *

(e) A slot machine, **gaming** junket **enterprise** or manufacturer licensee or an agent thereof may not employ or contract with an individual to persuade or convince a person to engage in gaming or play a specific slot machine at a licensed facility.

CHAPTER 439a. GAMING JUNKET ENTERPRISES

§ 439a.1. Definitions.

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

[*Junket*] *Gaming junket*—[An arrangement made between a slot machine licensee and a junket enterprise or a junket representative, the purpose of which is to induce a person, selected or approved, to come to a licensed facility for the purpose of gambling and pursuant to which, and as consideration for which, some or all of the cost of transportation, food, lodging and entertainment for that person is directly or indirectly paid by a slot machine licensee.] A gaming arrangement made by a gaming junket enterprise or a gaming junket representative for an individual who:

(i) Is selected or approved for participation in the arrangement based on the individual's ability to satisfy specific financial qualifications and the likelihood that the individual will participate in playing slot machines or table games and patronize a licensed facility for the purpose of gaming.

(ii) Receives complimentary services or gifts from a slot machine licensee for participation in the arrangement including the costs of transportation, food, lodging or entertainment.

[*Junket*] *Gaming junket enterprise*—A person, other than a slot machine licensee, **[who] that** employs or otherwise engages the services of a **gaming** junket representative **[in connection with a junket to a licensed facility] to arrange gaming junkets to a licensed facility**, regardless of whether **[or not]** the activities **of the person or the gaming junket representative** occur within this Commonwealth.

[***Junket*** **]** ***Gaming junket*** *representative—*

[(i) A natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in a junket to a licensed facility, regardless of whether or not those activities occur within this Commonwealth.

(ii) A gaming employee of a slot machine licensee who performs the duties and functions listed in subparagraph (i) for the licensed facility is not a junket representative] An individual, other than an employee of a slot machine licensee, who arranges and negotiates the terms of a gaming junket or selects individuals to participate in a gaming junket to a licensed facility, regardless of whether the activities of the individual occur within this Commonwealth.

§ 439a.2. **[Junket] Gaming junket** enterprise general requirements; **participation in a gaming junket**.

(a) **[A slot machine licensee seeking to conduct business with a junket enterprise or a junket enterprise seeking to conduct business with a slot machine licensee shall file a Junket Enterprise License Form with the Board] A gaming junket enterprise seeking to conduct business with a slot machine licensee shall file a Gaming Junket Enterprise License Application and Disclosure Information Form with the Board**.

(b) **[A junket enterprise shall be licensed as a junket enterprise prior to a slot machine licensee permitting a junket involving that junket enterprise to arrive at its licensed facility. A junket enterprise shall be considered "involved" in a junket to a licensed facility if it receives any compensation whatsoever from any person as a result of the conduct of the junket] Prior to organizing a gaming junket to a licensed facility or receiving compensation from any person as a result of the conduct of a gaming junket, the gaming junket enterprise shall be licensed by the Board**. A slot machine licensee may not engage the services of any **gaming** junket enterprise **[which] that** has not been licensed.

(c) A **gaming** junket enterprise may not employ or otherwise engage the services of a **gaming** junket representative except in accordance with § 439a.5 (relating to **gaming** junket representative general requirements).

(d) **[A person] An individual** may be selected or approved to participate in a **gaming** junket on the basis of one or more of the following:

(1) The ability to satisfy a financial qualification **[obligation]** related to the **[person's] individual's** ability or willingness to gamble, which shall be deemed to occur whenever **[a person] an individual**, as an element of the arrangement**,** is required to perform one or more of the following:

* * * * *

(2) The **individual's** propensity to gamble, which shall be deemed to occur **[whenever a person] when an individual** has been selected or approved on the basis of one or more of the following:

(i) The previous satisfaction of a financial qualification **[obligation]** in accordance with **[the provisions of]** paragraph (1).

(ii) An evaluation that the **[person] individual** has a tendency to participate in gambling activities as the result of:

(A) An inquiry concerning the **[person's] individual's** tendency to gamble.

(B) Use of other means of determining that the **[person] individual** has a tendency to participate in gambling activities.

(e) A rebuttable presumption that **[a person] an individual** has been selected or approved for participation in **[an arrangement] a gaming junket based** on **[a basis related to]** the **[person's] individual's** propensity to gamble shall be created **[whenever] when** the **[person] individual** is provided, as part of the arrangement, **[with]** one or more of the following:

* * * * *

§ 439a.3. **[Junket] Gaming junket** enterprise license applications.

(a) **[A Junket Enterprise License Form shall be submitted by a slot machine licensee or junket enterprise applicant with a verification provided by the slot machine licensee that the junket enterprise's services will be utilized at the licensed facility] An applicant for a gaming junket enterprise license shall submit to the Bureau of Licensing an original, one paper copy and one compact disc containing the Gaming Junket Enterprise License Application and Disclosure Information Form and additional applications as required under § 439a.4a (relating to individual and entity applications)**.

(b) In addition to the **[Junket Enterprise License Form] materials required under subsection (a)**, an applicant for a **gaming** junket enterprise license**,** shall **[submit]**:

(1) **[The] Submit the** nonrefundable application fee posted on the Board's web site (pgcb.state.pa.us).

(2) **[A Junket Enterprise License Form for any principal that is an entity, and for each affiliate, intermediary, subsidiary and holding company of the applicant] Promptly provide information requested by the Board and cooperate with the Board in investigations, hearings, enforcement and disciplinary actions**.

(3) **[A Junket Enterprise Representative Registration for each principal who is a natural person and for each key employee.**

(c) In addition to the materials required under subsections (a) and (b), an applicant for a junket enterprise license shall:

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

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

[(d)] (c) An applicant for a **gaming** junket enterprise license will be required to reimburse the Board for any

additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

(d) Prior to engaging the services of a gaming junket enterprise, the slot machine licensee shall submit to the Bureau of Licensing, a Verification and Due Diligence Form certifying that the slot machine licensee has entered into an agreement or contract with, and has investigated the background and qualifications of the gaming junket enterprise.

§ 439a.4. [Junket enterprise license term and renewal] (Reserved).

[(a) A junket enterprise license issued under this chapter will be valid for 1 year from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a junket enterprise license.

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

§ 439a.4a. Individual and entity applications.

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

(1) Each officer and director of a gaming junket enterprise applicant or licensee. The term "officer" means a president, chief executive officer, chief financial officer, chief operating officer and any individual routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

(2) Each individual who has a direct or indirect ownership or beneficial interest of 10% or more in the gaming junket enterprise. An applicant for a gaming junket enterprise license shall provide information or documentation requested by the Board necessary to determine compliance with this paragraph.

(b) Each entity or trust that directly owns 20% or more of the voting securities of a gaming junket enterprise applicant or licensee shall be required to submit a Gaming Junket Enterprise Form—Private Holding Company and be found qualified by the Board.

(c) A gaming junket representative is required to submit an electronic application, using the SLOTS Link system, and be found suitable to hold an occupation permit. An individual who wishes to receive an occupation permit under this chapter may provide the gaming junket enterprise with written authorization to file an application on the individual's behalf. When an application for an occupation permit is filed using SLOTS Link, the additional documents required, including releases, shall be submitted to the Board within 10 days of the submission of the SLOTS Link application by an applicant for or a holder of a gaming junket enterprise license.

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

(1) An intermediary or holding company of a gaming junket enterprise applicant or licensee not otherwise required to be qualified.

(2) An officer or director of an intermediary or holding company of a gaming junket enterprise applicant or licensee.

(3) An employee of a gaming junket enterprise applicant or licensee who is not otherwise required to be qualified or permitted.

(4) A person that holds any direct or indirect ownership or beneficial interest in a gaming junket enterprise applicant or licensee, or has the right to any profits or distributions, directly or indirectly, from the gaming junket enterprise applicant or licensee.

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

(e) Individuals who are required to submit applications in accordance with subsections (a), (c) and (d) shall submit fingerprints to the Board in a manner prescribed by the Bureau of Investigations and Enforcement.

(f) An applicant for an occupation permit and individuals, entities or trusts that are required to be found qualified shall be required to reimburse the Board for additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

§ 439a.5. **[Junket] Gaming junket** representative general requirements.

(a) **[A person] An individual** may not act as a **gaming** junket representative in connection with a **gaming** junket to a licensed facility unless the **[person] individual** has **[been registered as a junket representative] obtained an occupation permit under § 435a.3 (relating to occupation permit)** and is employed by a **gaming** junket enterprise that is licensed by the Board.

(b) A **gaming** junket representative may **[only]** be employed by **only** one **gaming** junket enterprise at a time. For the purposes of this section, to qualify as an employee of a **gaming** junket enterprise, a **gaming** junket representative shall:

(1) Receive all compensation for **[his]** services as a **gaming** junket representative within this Commonwealth through the payroll account of the **gaming** junket enterprise.

* * * * *

§ 439a.6. [Junket representative registration] (Reserved).

[(a) A natural person applying for a junket representative registration shall submit:

(1) A Junket Representative Registration Form.

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

(b) In addition to the materials required under subsection (a), an applicant for a junket representative registration shall:

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

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

(c) After review of the information submitted under subsections (a) and (b), including a background investigation, the Board may issue a junket representative registration if the individual has proven that he is a person of good character, honesty and integrity and is qualified to hold a junket representative registration.

(d) An individual who wishes to receive a junket representative registration under this chapter may provide the junket enterprise with written authorization to file an application on the individual's behalf.

(e) A junket representative registration issued under this section does not require renewal and is nontransferable.]

§ 439a.6a. Gaming junket enterprise license and occupation permit term and renewal.

(a) A gaming junket enterprise license and gaming junket representative occupation permit issued under this chapter will be valid for 3 years from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of the license or occupation permit.

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

(d) The gaming junket enterprise license and the gaming junket representative occupation permit are nontransferable.

§ 439a.7. **[Junket] Gaming junket** schedules.

(a) A **[junket schedule shall be prepared by a]** slot machine licensee **shall prepare a gaming junket schedule** for each **gaming** junket that is arranged through a **gaming** junket enterprise or its **gaming** junket representative.

(b) A **slot machine licensee shall file a gaming** junket schedule **[shall be filed]** with the Bureau of Gaming Operations by **[a slot machine licensee by]** the 15th day of the month preceding the month in which the **gaming** junket is scheduled. If a **gaming** junket is arranged after the 15th day of the month preceding the arrival of the **gaming** junket, **the slot machine licensee shall file** an amended **gaming** junket schedule **[shall be filed]** with the Bureau of Gaming Operations by **[the slot machine licensee by]** the close of the next business day.

(c) **[Junket schedules shall be certified by an] An** employee of the slot machine licensee **[and include] shall certify the gaming junket schedules which includes** the following:

(1) The origin of the **gaming** junket.

(2) The number of participants in the **gaming** junket.

(3) The arrival time and date of the **gaming** junket.

(4) The departure time and date of the **gaming** junket.

(5) The name and registration number of all **gaming** junket representatives and the name and license number of **[all] the gaming** junket enterprises involved in the **gaming** junket.

(d) Changes in the information which occur after the filing of a **gaming** junket schedule or amended **gaming** junket schedule **[with the Bureau of Corporate Compliance and Internal Controls]** shall be reported in writing to the Bureau of **[Corporate Compliance and Internal Controls] Gaming Operations** by the slot machine licensee by the close of the next business day. These changes, plus any other material change in the information provided in a **gaming** junket schedule, shall also be noted on the arrival report.

§ 439a.8. **[Junket] Gaming junket** arrival reports.

(a) A **slot machine licensee shall prepare a gaming** junket arrival report **[shall be prepared by a slot machine licensee]** for each **gaming** junket arranged through a **gaming** junket enterprise or its **gaming** junket representative with whom the slot machine licensee does business.

(b) **[Junket] Gaming junket** arrival reports must:

(1) Include a **gaming** junket guest manifest listing the names and addresses of the **gaming** junket participants.

(2) Include information required under § 439a.7 (relating to **gaming** junket schedules) that has not been previously provided to the Bureau of Gaming Operations in a **gaming** junket schedule pertaining to the particular **gaming** junket, or an amendment thereto.

* * * * *

(c) **[Junket] A slot machine licensee shall prepare gaming junket** arrival reports **[shall be prepared by a slot machine licensee]** in compliance with the following:

(1) A **gaming** junket arrival report involving complimentary accommodations shall be prepared within 12 hours of the arrival of the **gaming** junket participant.

(2) A **gaming** junket arrival report involving complimentary services that does not involve **[complementary] complimentary** accommodations shall be filed by 5 p.m. of the next business day following arrival. A **gaming** junket arrival which occurs after 12 a.m. but before the end of the gaming day shall be deemed to have occurred on the preceding calendar day.

(3) **[Junket] Gaming junket** arrival reports shall be maintained on the premises of the licensed facility **for a minimum of 5 years** and **shall be** made available to the Board **[for inspection during normal business hours] upon request**.

§ 439a.9. **[Junket] Gaming junket** final reports.

(a) A **slot machine licensee shall prepare a gaming** junket final report **[shall be prepared by a slot machine licensee]** for each **gaming** junket for which the slot machine licensee was required to prepare either a **gaming** junket schedule or a **gaming** junket arrival report.

(b) A **gaming** junket final report must include the actual amount of complimentary services provided to each **gaming** junket participant.

(c) A **gaming** junket final report shall be:

(1) Prepared within 7 days of the completion of the **gaming** junket.

(2) Maintained on the premises of **[its] the** licensed facility **for a minimum of 5 years** and made available to the Board **[for inspection during normal business hours] upon request**.

§ 439a.10. Monthly **gaming** junket reports.

(a) Each slot machine licensee shall, on or before the 15th day of the month, prepare and file with the Bureau of Gaming Operations a monthly **gaming** junket report listing the name and **[registration] gaming identification** number of each **[person] individual** who performed the services of a **gaming** junket representative during the preceding month.

(b) Copies of the monthly **gaming** junket reports shall be maintained **[by the slot machine licensee]** on the premises of **[its] the** licensed facility **for a minimum of 5 years** and **shall be** made available to the Board **[for inspection during normal business hours] upon request**.

§ 439a.11. Purchase of patron lists.

(a) Each slot machine licensee, **gaming** junket representative and **gaming** junket enterprise shall prepare and maintain a report with respect to each list of names of **gaming** junket patrons or potential **gaming** junket patrons purchased from or for which compensation was provided to any source whatsoever.

(b) The report required **[by] under** subsection (a) must include:

* * * * *

(4) The zip codes of all participants or potential participants.

(c) The report required **[by] under** subsection (a) shall be filed with the Bureau of Gaming Operations, no later than 7 days after the receipt of the list by the purchaser.

§ 439a.12. **[Junket] Gaming junket** enterprise and representative prohibitions.

[A junket enterprise or junket representative may not:

(1) Engage in collection efforts.

(2) Individually receive or retain a fee from a patron for the privilege of participating in a junket.

(3) Pay for services, including transportation or other items of value, provided to or for the benefit of any patron participating in a junket, unless otherwise disclosed to and approved by the Board.

(4) Extend credit to or on behalf of a patron participating in a junket.]

(a) A gaming junket representative may not wager at any licensed facility in this Commonwealth.

(b) A gaming junket enterprise or gaming junket representative may not:

(1) Engage in efforts to collect on any check provided by a gaming junket participant that has been returned by a financial institution.

(2) Exercise approval authority over the authorization or issuance of credit under section 1327A of the act (relating to other financial transactions).

(3) Receive or retain a fee from an individual for the privilege of participating in a gaming junket.

(4) Pay for any service, including transportation, or other thing of value provided to a participant participating in a gaming junket except as authorized by this part.

CHAPTER 440a. MANAGEMENT COMPANIES

§ 440a.5. Management contracts.

* * * * *

(f) A management contract submitted for Board review and approval must enumerate with specificity the responsibilities of the slot machine applicant or licensee and management company under the terms and conditions of the management contract. At a minimum, the terms should address whether, and to what extent, the management company is involved in the following:

* * * * *

(12) Procurement of vendors and **gaming** junkets.

* * * * *

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

§ 441a.20. Slot machine license agreements.

* * * * *

(e) The following are exempt from the requirements of this section:

* * * * *

(2) **[Junket] Gaming junket** agreements.

* * * * *

Subpart D. RECORDKEEPING

CHAPTER 451a. RECORDKEEPING REQUIREMENTS

§ 451a.1. Recordkeeping generally.

(a) All manufacturer, **gaming** junket enterprise, and management company licensees and all registered and certified vendors shall maintain adequate records of business operations which shall be made available to the Board upon request. These records include:

* * * * *

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS

§ 465a.1. Accounting records.

* * * * *

(c) The detailed, supporting and subsidiary records include:

* * * * *

(2) Records pertaining to the financial statements and all transactions impacting the financial statements of the slot machine licensee including contracts or agreements with licensed manufacturers, suppliers, **gaming** junket enterprises, certified and registered vendors, contractors, consultants, management companies, attorneys and law firms, accountants and accounting firms, insurance companies, and financial institutions, including statements and reconciliations related thereto.

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Subpart G. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

CHAPTER 481a. DIVERSITY

§ 481a.2. Definitions.

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

* * * * *

Regulated entity—An applicant for or holder of the following:

* * * * *

(v) **[Junket] Gaming junket enterprise** license.

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Subpart I. COMPULSIVE AND PROBLEM GAMBLING

CHAPTER 501a. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS

§ 501a.5. Signage requirements.

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(b) Each slot machine **licensee** and **gaming** junket **[licensee] enterprise** shall print a statement related to obtaining compulsive or problem gambling on all marketing or advertising materials that are offered to the general public by a slot machine **licensee** or **gaming** junket **[licensee] enterprise**, including signs, billboards, print, radio or television advertisements. The text and font size of the statement shall be submitted for approval to the Director of OCPG utilizing the process **[contained]** in § 501a.2(g).

CHAPTER 503a. SELF-EXCLUSION

§ 503a.4. Duties of slot machine licensees.

(a) A slot machine licensee shall train its employees and establish procedures that are designed to:

* * * * *

(4) Deny check cashing privileges, player club membership, complimentary goods and services, **gaming** junket participation and other similar privileges and benefits to a self-excluded person.

(5) Ensure that self-excluded persons do not receive, either from the slot machine licensee or any agent thereof, **gaming** junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility as required under § 501a.3(a)(10) (relating to employee training program).

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[Pa.B. Doc. No. 10-1835. Filed for public inspection September 24, 2010, 9:00 a.m.]