# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

### [ 25 PA. CODE CHS. 121 AND 123 ]

### Outdoor Wood-Fired Boilers

The Environmental Quality Board (Board) amends Chapters 121 and 123 (relating to general provisions; and standards for contaminants) to read as set forth in Annex A.

This order is adopted by the Board at its meeting of July 13, 2010.

A. *Effective Date*

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

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan upon promulgation of this final-form rulemaking.

B. *Contact Persons*

For further information, contact Ron Gray, Chief, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3369; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

C. *Statutory Authority*

This final-form rulemaking is adopted under the authority of section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary*

On July 18, 1997, the EPA amended the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM) to add a new standard for fine particles, using fine particulates equal to and less than 2.5 micrometers in diameter (PM2.5) as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM2.5 annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour standard at a level of 65 $\mu g/m^3$. See 62 FR 38652 (July 18, 1997). The health-based primary standard is designed to protect human health from elevated levels of PM2.5, which have been linked to premature mortality and other important health effects. The secondary standard is designed to protect against major environmental effects of PM2.5 such as visibility impairment, soiling and materials damage. The following counties in this Commonwealth have been designated nonattainment for the 1997 fine particulate NAAQS: Allegheny (Liberty-Clairton), Allegheny (remainder), Armstrong, Beaver, Berks, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene, Indiana, Lancaster, Lawrence, Lebanon, Montgomery, Philadelphia, Washington, Westmoreland and York.

Subsequently, on October 17, 2006, the EPA revised the primary and secondary 24-hour NAAQS for PM2.5 to 35 $\mu g/m^3$ from 65 $\mu g/m^3$. See 71 FR 61236 (October 17, 2006). On December 18, 2008, all or portions of the following counties in this Commonwealth were designated by the EPA as nonattainment for the 2006 24-hour fine particulate NAAQS: Allegheny (Liberty-Clairton), Allegheny (remainder), Armstrong (partial), Beaver, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene (partial), Indiana (partial), Lancaster, Lawrence (partial), Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York.

The health effects associated with exposure to PM2.5 are significant. 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.

A significant and growing source of PM2.5 emissions in this Commonwealth is from outdoor wood-fired boilers (OWBs). OWBs, also referred to as outdoor wood-fired furnaces, outdoor wood-burning appliances or outdoor hydronic heaters, are free-standing fuel-burning devices designed: (1) to burn clean wood or other approved solid fuels; (2) specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, such as garages; and (3) to heat building space or water by means of distribution, typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture. OWBs are being sold to heat homes and buildings and to produce domestic hot water.

The emissions, health effects and the nuisance factor created by the use of OWBs are a major concern to the Department of Environmental Protection (Department). The Northeast States for Coordinated Air Use Management has conducted stack tests on OWBs. Based on the test results, the average PM2.5 emissions from 1 OWB are equivalent to the emissions from 205 oil furnaces or as many as 8,000 natural gas furnaces. Cumulatively, the smallest OWB has the potential to emit almost 1 1/2 tons of PM every year. Of the estimated 155,000 OWBs sold Nationwide, 95% have been sold in 19 states, of which this Commonwealth is one.

Unlike indoor wood stoves that are regulated by the EPA, Federal standards do not exist for OWBs and the majority of them are not equipped with pollution controls. The EPA initiated a voluntary program that encourages manufacturers of OWBs to improve air quality through developing and distributing cleaner-burning, more efficient OWBs. Phase 1 of the program was in place from January 2007 through October 15, 2008. To qualify for Phase 1, manufacturers were required to develop an OWB model that was 70% cleaner-burning than unqualified models by meeting the EPA air emission standard of 0.6 pound PM per million Btu heat input as tested by an independent accredited laboratory. Phase 1 Partnership Agreements ended when the Phase 2 Partnership Agree-

ments were initiated on October 16, 2008. To qualify for Phase 2, manufacturers must develop an OWB model that is 90% cleaner-burning than preprogram, unqualified OWBs and meet the EPA air emissions standard of 0.32 pound PM per million Btu heat output as tested by an independent accredited laboratory. The emission standard established in the final-form rulemaking is the Phase 2 emission standard described in the EPA voluntary program.

The final-form rulemaking would help assure that the citizens of this Commonwealth will benefit from reduced emissions of PM2.5 from OWBs. Attaining and maintaining levels of PM2.5 below the health-based NAAQS is important to reduce premature mortality and other health effects associated with PM2.5 exposure. There are many citizen complaints regarding the operation of OWBs. This final-form rulemaking reduces the problems associated with the operation of OWBs, including smoke, odors and burning prohibited fuels including garbage, tires, hazardous waste and the like. Reductions in ambient levels of PM2.5 would promote improved human and animal health and welfare, improved visibility, decreased soiling and materials damage and decreased damage to plants and trees.

A review of the Department's complaint tracking system reveals a significant amount of activity regarding OWB complaints in this Commonwealth. Since 2005, the Department has logged 200 complaints. In the Northeast Regional Office, complaints were received from 8 of 11 counties; 11 of 14 counties in the Northcentral Regional Office; 10 of 12 counties in the Northwest Regional Office; 2 of 4 counties in the Southeast Regional Office; 13 of 15 counties in the Southcentral Regional Office; and 9 of 9 counties in the Southwest Regional Office. Complaints are being received across this Commonwealth, but most frequently from the northern tier counties.

While there are no Federal limits for the OWBs that would be subject to regulation under this final-form rulemaking, section 4.2 of the APCA (35 P. S. § 4004.2) authorizes the Board to adopt regulations more stringent than Federal requirements when the control measures are reasonably necessary to achieve and maintain the ambient air quality standards. These measures are reasonably necessary to attain and maintain the primary and secondary 24-hour NAAQS for PM2.5 in this Commonwealth.

E. *Summary of Comments and Responses*

The Board received over 2,000 comments regarding the proposed OWB regulations during the public hearings and public comment period. Of those, 538 were in full support of the proposed rulemaking, 723 were in support contingent upon revisions being made to the proposed rulemaking and 745 were opposed to the proposed rulemaking.

Several commentators noted that PM2.5 pollution from OWBs is associated with heart disease, lung disease and premature deaths and have severe effects on neighbors' quality of life. The health effects associated with exposure to PM2.5 are significant. Epidemiological studies have shown a significant correlation between elevated PM2.5 levels and premature mortality. The final-form rulemaking helps assure that the citizens of this Commonwealth will benefit from reduced emissions of PM2.5 and air toxics from OWBs. Attaining and maintaining levels of PM2.5 below the health-based NAAQS is important to reduce premature mortality and other health effects associated with PM2.5 exposure.

Other commentators are concerned about the odors and pollutants caused by burning garbage and trash in OWBs. The final-form rulemaking, in § 123.14(f) and (g) (relating to outdoor wood-fired boilers), prohibits the burning of trash or garbage in new or existing OWBs.

Several commentators suggested a ban on the operation of OWBs. The intention is not to ban the use of OWBs, but to control some aspects of the operation of OWBs to reduce future health impacts and air emissions and nuisances. The Board recognizes the value of heating with OWBs, including providing a lower cost fuel option which is particularly important in the present economy, use of a renewable and plentiful fuel and reduction of the country's dependency on fossil fuel.

Many commentators complained about the smoke odors. The Board recognizes that ground-level smoke is one of the problems with the operation of conventional model OWBs. The final-form rulemaking should provide some relief from the impact of smoke odors due to the Phase 2 emission standards.

Several commentators complained about having to deal with the smoke and odors year-round since the neighboring OWB is used throughout the year for hot water or to heat swimming pools. The Board appreciates these concerns, but decided not to impose a seasonal prohibition. The Board believes that a better approach is to educate owners of OWBs on more efficient operation of the units to reduce complaints.

A few commentators stated that OWB operation can only be adequately controlled at the State level. The Board believes that the final-form rulemaking will consistently regulate OWBs across this Commonwealth, instead of the piecemeal, inconsistent way OWBs are currently regulated. This would be particularly appropriate for establishing emission standards for new OWBs installed in this Commonwealth.

A few commentators stated that using coal as a fuel creates problems. The regulation is targeted for OWBs. Coal-fired units are not covered by the EPA Phase 2 certification program and, therefore, are beyond the scope of this regulation.

A commentator stated that penalties should be included in the regulation. The Board does not include penalties in specific regulations. Penalties for violations of regulations are calculated by way of penalty assessment policies developed by the Department. However, the first steps in dealing with OWB noncompliance would be education and voluntary compliance by the owner.

Several commentators stated that minimum stack height requirements should be greater. Based upon the comments received and further investigation, the Department determined that the proposed stack heights would be problematic for stack stability and the proper operation of the OWB. The Board has proposed a minimum stack height of 10 feet for new Phase 2 OWBs; additionally, these stacks shall be installed according to manufacturer's specifications.

A commentator stated that stringent standards should be included for commercial units. Currently, the Department routinely addresses commercial units through existing regulations. However, the EPA is developing new source performance standards requirements that will regulate the emission rate of the commercial units.

A commentator stated that existing OWB owners and operators should apply for a permit within 30 days and comply within 60 days. The Department is prohibited

from requiring permits for home heating devices at private residences by section 6.1 of the APCA (35 P. S. § 4006.1).

Several commentators had general concerns about stack height requirements for existing and new OWBs. The stack height requirements for existing OWBs have been eliminated in the final-form regulation. The stack height requirements for new OWBs established in the final-form regulation provide that new OWBs must have a permanent stack that extends at least 10 feet above the ground and be installed according to the manufacturer's specifications.

Some commentators believe opacity requirements for residential-sized OWBs are unreasonable because opacity is based on a subjective, visual observation. The opacity regulation, as defined in § 123.41 (relating to limitations), is an existing Statewide regulation limiting the visual emissions emanating from stacks. The Department's field staff is certified annually to determine the percent opacity from stacks. Opacity is not a subjective visual observation for these certified individuals. The opacity regulation would be used when there is a complaint submitted to the Department about the operation of an OWB. The ability to use an objective visual test to determine if there is an actual nuisance could be helpful both to the complainant and the OWB owner.

Several commentators believe that existing OWBs should be grandfathered. The Board eliminated the stack height requirements for existing OWBs. Existing units need to comply with existing laws and the final-form regulation's fuel requirements.

Other commentators are concerned about the incremental cost of new Phase 2 units. According to the EPA, OWBs fueled by wood, pellets and other biomass cost between $8,000 and $18,000, depending on the size of the unit. The cleaner Phase 2 units may cost between $9,200 to $20,700, or about 15% more. Because of the changes made to improve the efficiency of these units and reduce their emissions, most of these new models are significantly more efficient. The cleaner Phase 2 units use less wood to produce the same amount of heat, reducing the cost of wood purchases.

Commentators believe that the regulation of OWBs is a local issue and disagree with a one-size-fits-all approach. The Board believes the final-form rulemaking sets Statewide minimum criteria for new Phase 2 units as well as the basic criteria for cleaner fuel. Local municipalities can still enact ordinances that are stricter.

One commentator asked whether municipalities would need to pass their own ordinances referencing this final-form rulemaking before they could require compliance. A municipality may enact an ordinance that adopts a Department regulation by reference, but would then enforce it as its own ordinance. If a municipality does not have an ordinance that includes the Department's regulatory requirements, it could not enforce the Department's regulation directly. Further, in accordance with section 12 of the APCA (35 P. S. § 4012), local municipalities may enact ordinances more stringent than the final-form regulation.

One commentator believes that the proposed regulation may be considered a government "taking," placing the Commonwealth at risk for numerous lawsuits from those using OWBs. The Board disagrees that the regulation is a regulatory taking. The final-form regulation merely establishes a number of environmental and public health requirements that property owners shall abide by if they install an OWB on their property.

Other commentators believe that a regulatory issue like OWBs should go through the Legislature and be voted on by elected officials. The Board believes that it has legal authority from the General Assembly to enact the regulation. Statutory authority for the Board to enact an OWB regulation comes from section 5(a)(1) of the APCA, which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

One commentator suggested the regulation of OWBs on a Statewide scale is a policy decision of such a substantial nature that it requires legislative review. Section 5(a)(1) of the APCA gives the Board the authority to adopt regulations to prevent, control, reduce and abate air pollution. The final-form regulation is adopted to prevent, control, reduce, and abate air pollution. The Department undertook additional discussions with the legislative members subsequent to receipt of their comments. The Department also provided the draft final-form rulemaking to the legislative members for review.

One commentator wondered why the Board believes that it is now more appropriate for a State agency to regulate OWBs when the model ordinance that was developed by the Department stated that "it believes that local municipalities can respond to and resolve issues more effectively and swiftly than a state agency." The Board believes that local governments can still respond to home heating issues. The final-form rulemaking only sets the Statewide minimum criteria for new Phase 2 units as well as the basic criteria for cleaner fuel. Local municipalities can still enact ordinances that are stricter.

A commentator pondered the need for this final-form rulemaking and questioned why enforcement of the existing regulatory and statutory requirements cannot provide adequate protection of the public health, safety and welfare. The intent of the final-form regulation is to ensure that only the cleanest OWB units are sold in this Commonwealth.

The commentator asked the Board to allow the requirements of the final-form regulation to be phased-in over time so that the three manufacturers in this Commonwealth will not be negatively affected by the final-form rulemaking. A sell-through exemption has been established in the final-form regulation. The sell-through exemption specifies that a person may not sell, offer for sale, distribute or lease a non-Phase 2 OWB in this Commonwealth unless the OWB was manufactured, distributed, purchased or leased and received in this Commonwealth before May 31, 2011. This exemption shall remain in effect through May 31, 2011.

The commentator noted that the setback and stack height provisions in § 123.14(c) and (d), respectively, have been cited by many commentators as problematic. The Board made the following changes to those subsections, renumbered as subsections (d) and (e). For subsection (d), setback requirements for new Phase 2 OWBs, a person may not install a Phase 2 OWB in this Commonwealth unless the boiler is installed a minimum of 50 feet from the nearest property line. For subsection (e), stack height requirements for new Phase 2 OWBs, the requirements are a permanent stack that extends a minimum of 10 feet above the ground and is installed according to the manufacturer's specifications. These changes are in line with the Hearth, Patio & Barbecue Association's Outdoor Hydronic Heater Caucus recommendations.

The commentator urged the Board to include specific language in the final-form regulation that would exempt

individuals involved with real estate transactions from these regulations. The Board added language to the final-form rulemaking.

The commentator noted that since Phase 2 OWBs are cleaner burning devices than non-Phase 2 OWBs, what is the need for the significant setback requirement for them (150 feet from the nearest property line) in the proposed regulation. The commentator suggested that the setback be a function of distance to the nearest residence, not property line. The setback requirement has been revised from 150 feet to the nearest property line to 50 feet from the nearest property line. The Board believes that setbacks should be based on a property line. The use of property lines will minimize the emission impact from a new Phase 2 unit.

A few commentators opposed the proposed OWB regulation because it will limit the use of OWBs for agricultural purposes. The Board appreciates the comments regarding the use of OWBs for agricultural purposes. Under section 4.1 of the APCA (35 P. S. § 4004.1), the Board does not have the authority to adopt rules and regulations relating to air pollution arising from the production of agricultural commodities, unless the regulations are required by the Clean Air Act (42 U.S.C.A. §§ 7401—7671q). However, if the OWB is being used exclusively to heat or provide hot water, or both, for a residence located on agricultural property, then the final-form regulation would apply.

Some commentators opposed the proposed OWB regulation because it would hinder or ban the ability to use wood for home heating. The final-form regulation does not ban the use of OWBs. Instead, it sets minimum controls for the use of OWBs to reduce health impacts, air emissions and nuisances. The Board also recognizes the value of heating with OWBs, including providing a lower cost fuel option which is particularly important in the present economy, use of a renewable and plentiful fuel and reduction of the country's dependency on fossil fuel.

The commentator opposed the proposed OWB regulation because it would promote increased use of oil and natural gas, which results in greater fuel dependency. The Board agrees that it is important to encourage the use of renewable fuels, such as wind, solar, geothermal and wood, and thereby reduce the country's dependency on fossil fuels. The OWB regulation does not ban or hinder the use of OWBs. Instead, the final-form regulation intends to regulate some aspects of the operation of OWBs to reduce health impacts, air emissions and nuisances.

The commentator opposed the proposed OWB regulation because it is a government intrusion that infringes on personal freedom. The intent of the proposed regulation is to find a balance between the rights of the OWB owner and the rights of the neighbors that are affected by smoke and odors from the OWB operation. The intent of the proposed OWB regulation is not to ban OWBs, but rather to set minimum standards for the operation of OWBs to reduce health impacts, air emissions and nuisances.

A few commentators opposed the proposed OWB regulation because there are already enough Department, Federal, or both, regulations that cover OWBs. The intent of the final-form regulation is to ensure that only the cleanest OWB units are sold in this Commonwealth.

A commentator opposed the proposed OWB regulation because the notification and paperwork requirements are burdensome for small business distributors. The written notice and recordkeeping requirements in the proposed regulation have been eliminated in the final-form regulation.

Several commentators stated that over time OWB manufacturers will produce more efficient boilers, which will be phased in as old OWBs are replaced and the problem will take care of itself. As of August 30, 2010, there are 19 EPA-qualified Phase 2 OWB models. As more states adopt regulations and laws that establish emission requirements, more qualifying models will be developed and consumers will have more choices.

F. *Summary of Final-form Regulation and Changes from Proposed to Final-Form Rulemaking*

*Summary of final-form regulation*

The final-form amendments add definitions to § 121.1 (relating to definitions) for the following six new terms: "Btu—British thermal unit," "clean wood," "new Phase 2 outdoor wood-fired boiler," "non-Phase 2 outdoor wood-fired boiler," "outdoor wood-fired boiler" and "Phase 2 outdoor wood-fired boiler."

The final-form rulemaking adds § 123.14. In general, under final-form subsection (a), regarding applicability, beginning October 2, 2010, the requirements of the regulation apply to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an OWB for use in this Commonwealth; a person who installs an OWB in this Commonwealth; and a person who purchases, receives, leases, owns, uses or operates an OWB in this Commonwealth.

Final-form subsection (b)(1), regarding exemptions, provides that this section does not apply if the following is applicable: the OWB is intended for shipment and use outside of this Commonwealth.

Under final-form subsection (b)(2), subsections (c), (d) and (e) do not apply to a permanently installed OWB that was installed prior to October 2, 2010, and is transferred to a new owner as a result of a real estate transaction.

Under final-form subsection (b)(3), a person may not sell, offer for sale, distribute or lease a non-Phase 2 OWB unless it was manufactured, distributed, purchased or leased and received in this Commonwealth before May 31, 2011. This exemption will remain in effect through May 31, 2011. A non-Phase 2 OWB installed during the sell-through period shall meet the following requirements: the non-Phase 2 OWB shall be installed a minimum of 150 feet from the nearest property line; and it shall have a permanently attached stack that extends a minimum of 10 feet above the ground and is installed according to the manufacturer's specifications.

Under final-form subsection (c), regarding Phase 2 outdoor wood-fired boilers, except as provided under subsection (b), a person may not sell, offer for sale, distribute or install an OWB unless it is a Phase 2 OWB.

Under final-form subsection (d), regarding setback requirements for new Phase 2 outdoor wood-fired boilers, a person may not install, use or operate a new Phase 2 OWB unless the boiler is installed a minimum of 50 feet from the nearest property line.

Under final-form subsection (e), regarding stack height requirements for new Phase 2 outdoor wood-fired boilers, a person may not install, use or operate a new Phase 2 OWB in this Commonwealth unless the boiler has a permanently attached stack. The stack must meet both of the following requirements: extend a minimum of 10 feet above the ground; and be installed according to the manufacturer's specifications.

Under final-form subsection (f), regarding allowed fuels, a person that owns, leases, uses or operates an OWB in this Commonwealth shall use only one or more of the following fuels: clean wood; wood pellets made from clean wood; certain home heating oil, natural gas or propane fuels; or other fuel approved in writing by the Department.

Under final-form subsection (g), regarding prohibited fuels, a person who owns, leases, uses or operates an OWB in this Commonwealth may not burn a fuel or material in that OWB other than those fuels listed under subsection (f).

Under final-form subsection (h), regarding applicable laws and regulatory requirements, a person may not use or operate an OWB in this Commonwealth unless it complies with applicable Commonwealth, county and local laws.

*Changes from proposed to final-form rulemaking*

In addition to the revisions for definitions previously discussed in this section, changes from the proposed rulemaking to final-form rulemaking are summarized as follows:

Final-form § 123.14(b)(2) was added and states that subsections (c), (d) and (e) do not apply to a permanently installed OWB that was installed prior to October 2, 2010, and is transferred to a new owner as a result of a real estate transaction.

Final-form subsection (b)(3) was added and provides that a person may not sell, offer for sale, distribute or lease a non-Phase 2 OWB unless it was manufactured, distributed, purchased or leased and received in this Commonwealth before May 31, 2011. This exemption will remain in effect through May 31, 2011. A non-Phase 2 OWB installed during the sell-through period shall meet the following requirements: the non-Phase 2 OWB shall be installed a minimum of 150 feet from the nearest property line; and it must have a permanently attached stack that extends a minimum of 10 feet above the ground and is installed according to the manufacturer's specifications.

Final-form § 123.14(c) (relating to Phase 2 outdoor wood-fired boilers) was modified for clarification.

Final-form § 123.14(d) reduces the minimum setback requirements from 150 feet to 50 feet for new Phase 2 OWBs installed in this Commonwealth. It was also revised to delete the requirement that a person may not use or operate a Phase 2 OWB unless the boiler has a stack that extends at least 2 feet above the highest peak of the highest residence located within 150 feet of the OWB.

Final-form § 123.14(e) was revised to state that a person may not install, use or operate a new Phase 2 OWB in this Commonwealth unless the boiler has a permanently attached stack that extends a minimum of 10 feet above the ground and is installed according to the manufacturer's specifications. This final-form subsection also deleted the 150 feet stack height requirement.

Proposed subsection (e) was deleted in its entirety.

Final-form subsection (f) clarifies that it relates to a person that owns, leases, uses or operates an OWB in this Commonwealth.

Final-form subsection (g) was not revised between the proposed and final-form rulemakings.

Final-form subsection (h) clarifies that a person may not use or operate an OWB in this Commonwealth unless it complies with Commonwealth, county and local laws and regulations. In addition, specific references to Department regulations were deleted.

The final-form rulemaking deletes proposed subsection (i).

The final-form rulemaking deletes proposed subsection (j).

G. *Benefits, Costs and Compliance*

*Benefits*

The citizens of this Commonwealth will benefit from this final-form rulemaking because it will help to reduce emissions of PM2.5 from OWBs. Attaining and maintaining levels of PM2.5 below the health-based NAAQS is important to reduce premature mortality and other health effects associated with PM2.5 exposure. There are also many citizen complaints regarding the operation of OWBs. Reductions in ambient levels of PM2.5 would promote improved human and animal health and welfare, improved visibility, decreased soiling and materials damage and decreased damage to plants and trees.

*Compliance Costs*

The cost of complying with the new requirements includes the cost of designing, manufacturing and distributing an OWB model that meets the EPA Phase 2 emission limit. Currently, there are 19 models available Nationally that meet the EPA Phase 2 emission limit. Nonqualifying OWB models cost between $8,000 and $18,000, depending on the size of the unit. It is estimated that the cleaner units may be approximately 15% more expensive because of the changes made to improve the efficiency of these units and reduce their emissions. However, most of these qualifying models are significantly more efficient which means they will burn less wood to produce the same amount of heat, reducing the cost of wood purchases.

The final-form rulemaking is not expected to impose additional direct regulatory costs or savings on local governments.

The final-form rulemaking is not expected to impose additional direct regulatory costs or savings on State government, except that nominal costs will be experienced by the Commonwealth to assist in providing training, outreach and assistance to the regulated community. New staff resources are not anticipated to be necessary.

*Compliance Assistance Plan*

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

*Paperwork Requirements*

There are no additional paperwork requirements associated with this final-form rulemaking.

H. *Advisory Committee Recommendation*

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final-form rulemaking. At its April 29, 2010, meeting, the AQTAC recommended adoption of the final-form rulemaking with the following concerns: all OWBs shall have a minimum 10 feet stack height requirement; all new Phase 2 OWBs shall have a 150 feet setback requirement from the nearest residence and not 50 feet from the nearest property line; all non-Phase 2 OWBs not used as the primary source of heat and hot water shall not be operated between May 15 and September 30; retailers of

OWBs shall report to the Department the model of boilers sold and the zip codes of the buyers.

The Department also consulted with the Citizens Advisory Council on March 16, 2010, and May 6, 2010, the Agricultural Advisory Board on April 21, 2010, and the Small Business Compliance Advisory Committee (SBCAC) on April 28, 2010. The SBCAC recommended adoption of the final-form rulemaking with the following concerns: the written notice and recordkeeping provisions should be reinstated in the final-form rulemaking; and supported providing grant moneys for the purchase and installation of Phase 2 units to replace old, conventional OWBs.

I. *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. The final-form rulemaking does not directly promote a multimedia approach. The reduced levels of PM2.5, however, will benefit water quality through reduced soiling and quantities of sediment that may run off into waterways. Reduced levels of PM2.5 would therefore promote improved aquatic life and biodiversity, as well as improved human, animal and plant life on land.

J. *Sunset Review*

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

K. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6068 (October 17, 2009), to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 18, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 19, 2010, and approved the final-form rulemaking.

L. *Findings*

The Board finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 6068.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

(5) This final-form rulemaking is reasonably necessary to achieve and maintain the PM2.5 NAAQS.

M. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 123, are amended by amending §§ 121.1 and 123.14 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

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

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

JOHN HANGER,
*Chairperson*

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5424 (September 18, 2010).)

**Fiscal Note:** Fiscal Note 7-444 remains valid for the final adoption of the subject regulations.

## Annex A

## TITLE 25. ENVIRONMENTAL PROTECTION

## PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

## Subpart C. PROTECTION OF NATURAL RESOURCES

## ARTICLE III. AIR RESOURCES

## CHAPTER 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:

* * * * *

*Btu—British thermal unit*—The amount of thermal energy necessary to raise the temperature of 1 pound of

pure liquid water by 1° F at the temperature at which water has its greatest density (39° F).

* * * * *

*Clean wood*—The term includes the following:

(i) Wood that contains no paint, stains or other types of coatings.

(ii) Wood that has not been treated with preservatives or chemicals, including copper, chromium arsenate, creosote and pentachlorophenol.

* * * * *

*New Phase 2 outdoor wood-fired boiler*—A Phase 2 outdoor wood-fired boiler that is installed on or after October 2, 2010.

* * * * *

*Non-Phase 2 outdoor wood-fired boiler*—An outdoor wood-fired boiler that has not been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

* * * * *

*Outdoor wood-fired boiler*—

(i) A fuel-burning device that:

(A) Is designed to burn, or is capable of burning, clean wood or other fuels listed under § 123.14(f) (relating to outdoor wood-fired boilers).

(B) Has a rated thermal output of less than 350,000 Btu per hour.

(C) The manufacturer designs or specifies for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, including structures like garages and sheds.

(D) Heats building space or fluid, or both, through the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

(ii) The fuel-burning device may also be known as an:

(A) Outdoor wood-fired furnace.

(B) Outdoor wood-burning appliance.

(C) Outdoor hydronic heater.

* * * * *

*Phase 2 outdoor wood-fired boiler*—An outdoor wood-fired boiler that has been certified or qualified by the EPA as meeting a particulate matter emission limit of 0.32 pounds per million Btu output or lower and is labeled accordingly.

* * * * *

## CHAPTER 123. STANDARDS FOR CONTAMINANTS

### PARTICULATE MATTER EMISSIONS

### § 123.14. Outdoor wood-fired boilers.

(a) *Applicability*. Beginning on October 2, 2010, this section applies to the following:

(1) A person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an outdoor wood-fired boiler for use in this Commonwealth.

(2) A person who installs an outdoor wood-fired boiler in this Commonwealth.

(3) A person who purchases, receives, leases, owns, uses or operates an outdoor wood-fired boiler in this Commonwealth.

(b) *Exemptions.*

(1) This section does not apply to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes in this Commonwealth a non-Phase 2 outdoor wood-fired boiler if the person, manufacturer, supplier or distributor demonstrates the non-Phase 2 outdoor wood-fired boiler is intended for shipment and use outside of this Commonwealth.

(2) Subsections (c), (d) and (e) do not apply to a permanently installed outdoor wood-fired boiler that was installed prior to October 2, 2010, and is transferred to a new owner as a result of a real estate transaction.

(3) A person may not sell, offer for sale, distribute or lease a non-Phase 2 outdoor wood-fired boiler in this Commonwealth unless the outdoor wood-fired boiler was manufactured, distributed, purchased or leased and received in this Commonwealth before May 31, 2011.

(i) This exemption shall remain in effect until May 31, 2011.

(ii) A non-Phase 2 outdoor wood-fired boiler purchased during the sell-through period must meet the following requirements:

(A) Be installed a minimum of 150 feet from the nearest property line.

(B) Have a permanently attached stack that meets the following requirements:

(I) Extends a minimum of 10 feet above the ground.

(II) Is installed according to the manufacturer's specifications.

(c) *Phase 2 outdoor wood-fired boiler.* Except as provided under subsection (b):

(1) A person may not sell, offer for sale, distribute or install an outdoor wood-fired boiler for use in this Commonwealth unless it is a Phase 2 outdoor wood-fired boiler.

(2) A person may not purchase, lease or receive an outdoor wood-fired boiler for use in this Commonwealth unless it is a Phase 2 outdoor wood-fired boiler.

(d) *Setback requirements for new Phase 2 outdoor wood-fired boilers.* A person may not install a new Phase 2 outdoor wood-fired boiler in this Commonwealth unless the boiler is installed a minimum of 50 feet from the nearest property line.

(e) *Stack height requirements for new Phase 2 outdoor wood-fired boilers.* A person may not install, use or operate a new Phase 2 outdoor wood-fired boiler in this Commonwealth unless the boiler has a permanently attached stack. The stack must meet both of the following requirements:

(1) Extend a minimum of 10 feet above the ground.

(2) Be installed according to the manufacturer's specifications.

(f) *Allowed fuels.* A person that owns, leases, uses or operates an outdoor wood-fired boiler in this Commonwealth shall use only one or more of the following fuels:

(1) Clean wood.

(2) Wood pellets made from clean wood.

(3) Home heating oil, natural gas or propane that:

(i) Complies with all applicable sulfur limits.

(ii) Is used as a starter or supplemental fuel for dual-fired outdoor wood-fired boilers.

(4) Other types of fuel approved in writing by the Department upon receipt of a written request.

(g) *Prohibited fuels.* A person who owns, leases, uses or operates an outdoor wood-fired boiler in this Commonwealth may not burn a fuel or material in that outdoor wood-fired boiler other than those fuels listed under subsection (f).

(h) *Applicable laws and regulatory requirements.* A person may not use or operate an outdoor wood-fired boiler in this Commonwealth unless it complies with applicable Commonwealth, county and local laws and regulations adopted thereunder.

[Pa.B. Doc. No. 10-1876. Filed for public inspection October 1, 2010, 9:00 a.m.]

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# Title 28—HEALTH AND SAFETY

## DEPARTMENT OF HEALTH

## [ 28 PA. CODE. CH. 211 ]

### Program Standards for Long-Term Care Nursing Facilities

The Department of Health (Department), following consultation with the Health Policy Board, amends § 211.7 (relating to physician assistants and certified registered nurse practitioners) to read as set forth in Annex A.

A. *Purpose of the Final-Omitted Rulemaking*

This final-omitted rulemaking amends § 211.7 to address unnecessarily proscriptive procedures applicable to the provision of care by a certified registered nurse practitioner (CRNP) to a resident of a long-term care nursing facility (nursing home). Specifically, the final-omitted rulemaking amends § 211.7(c) as it applies to CRNPs because the subsection placed an unnecessary and broad restriction on how the CRNP, the collaborating physician and the nursing home determine the specifics of their relationship, and results in a barrier to a nursing home resident's access to qualified health care practitioners and increased health care costs. Although § 211.7(c) uses the term "supervising physician," the relationship between a CRNP and a physician is one of collaboration.

Section 211.7(a) and (b) set forth broad parameters for the use of CRNPs in nursing homes. Section 211.7(a) provides that CRNPs may be utilized in nursing homes in accordance with their training and experience and the requirements in statutes and regulations governing their practice. Section 211.7(b) requires, among other things, that the nursing home establish written policies indicating the manner in which the CRNPs shall be used and the responsibilities of the collaborating physicians. Section 211.7(c), however, further requires that the collaborating physician countersign a CRNP's documentation on a resident's record within 7 days. This includes progress notes, physical examination reports, treatments, medications and other notations made by the CRNP. Subsection (c) unnecessarily restricts the CRNP's and collaborating physician's ability to specify how often and in what circumstances the physician's countersignature will be required on the CRNP's orders and other documentation.

Section 211.7(c) is amended by removing this unnecessary restriction on the CRNP/physician collaborative relationship. Given the CRNP's recently expanded scope of practice and the emphasis on the definition of a CRNP's practice through the collaborative agreement that now exists in The Professional Nursing Law (PNL) (63 P. S. §§ 211—225.5) and the regulations in 49 Pa. Code Chapter 21, Subchapter C (relating to certified registered nurse practitioners) promulgated under the PNL by the State Board of Nursing (Board) regarding CRNPs, it is unnecessary for the Department to define this particular element of the CRNP/physician relationship with so much specificity. Rather, as required under § 211.7(b) and recognized in section 8.2(c.2)(2) of the PNL (63 P. S. § 218.2(c.2)(2)), a nursing home should have the flexibility to determine the supervision or other oversight requirements for physicians and CRNPs practicing within its facility based on the needs of the nursing home's residents. Within these parameters, CRNPs and collaborating physicians should have the ability to establish their responsibilities to each other within the context of the collaborative agreement between them and without undue direction from the Department.

The PNL and the regulations promulgated by the Board provide that the collaboration process shall incorporate the availability of the physician for cosigning records, when appropriate. Placing specific restrictions on this aspect of the collaborative relationship inhibits the physician and the nursing home from fully recognizing the individual CRNP's training and experience, unnecessarily restricts the physician's and nursing home's utilization of CRNPs in providing medical care to nursing home residents and ultimately negatively interferes with a nursing home resident's medical care.

Section 211.7 was last revised in 1999, over a decade ago. Since that time, health care practice has evolved to refine and expand the scope of practice of nonphysician health care practitioners, in particular CRNPs, to increase health care access and quality and contain or reduce health care costs. CRNPs continue to receive advanced education and training to provide them the knowledge necessary to deliver this expanded care. The recent amendments to the Board's regulations regarding CRNPs, published at 39 Pa.B. 6994 (December 12, 2009), recognized the need to update requirements regarding the practice of CRNPs because "existing regulations prevented the effective use of CRNPs to the full extent of their education, skills and abilities, thereby depriving the citizens of this Commonwealth necessary, high quality care." It is for these same reasons that the Department amends § 211.7(c).

Amendments to the PNL and to the Board's regulations now provide the appropriate rules regarding the collaborative relationship between the CRNP and the physician and there is no reasonable basis for continuing the requirement applicable to CRNPs in § 211.7(c). Section 211.7(a) and (b) provide more than adequate requirements for nursing homes regarding the CRNP's practice and in addition allow for the appropriate flexibility in the relationship between the CRNP and the collaborating physician. Section 211.7(c) is a specific requirement that may or may not suit the circumstances in the individual CRNP/physician collaborative agreement or the nursing home resident's medical needs.

Section 8.2(b) of the PNL permits a CRNP to perform acts of medical diagnosis in collaboration with a physician and in accordance with regulations promulgated by the Board. Specifically, the PNL permits a CRNP to prescribe medical or therapeutic corrective measures, including pharmaceuticals, if the CRNP is acting in accordance with section 8.3(c) of the PNL (63 P. S. § 218.3(c)). In addition, the act of July 20, 2007 (P. L. 318, No. 48) (Act 48) amended the PNL to further express the General Assembly's intent to broaden the scope of the CRNP's practice and authority by specifically authorizing the CRNP to issue or conduct certain kinds of orders, referrals, assessments and certifications, traditionally reserved to physicians, if the CRNP is acting within the scope of the CRNP's specialty certification and the collaborative agreement with the physician. See section 8.2(c.1) of the PNL. By its passage of the amendments to the PNL, the General Assembly expressed its confidence in the ability of CRNPs to provide medical services without excessive restrictions.

Section 8.2(b) of the PNL specifies that a CRNP may prescribe medical therapeutic or corrective measures (including pharmaceuticals) if the nurse is acting in accordance with section 8.3 of the PNL, regarding prescriptive authority for CRNPs. Section 8.3 of the PNL details the conditions under which a CRNP may exercise prescriptive authority. This includes acting in collaboration with a physician as set forth in a written agreement. The agreement must identify the area of practice in which the CRNP is certified, the categories of drugs from which the CRNP may prescribe and the circumstances and how often the collaborating physician will personally see the patient. See section 8.3 of the PNL. Furthermore, under the PNL and the Board's new regulations applicable to CRNPs, the CRNP and the collaborating physician are to incorporate into the collaboration process the availability of the physician for cosigning records when necessary to document accountability by both parties. See 49 Pa. Code § 21.251 (relating to definitions).

Thus, § 211.7(c) unnecessarily dictates the terms of the CRNP/physician collaborative relationship for assuring physician involvement in the medical care of the resident by requiring a countersignature by the collaborating physician in all cases and within 7 days. This requirement may not best serve the needs of the individual resident and represents a direct barrier to the implementation of health care innovations that are intended to increase health care access and quality and contain or reduce costs. Section 211.7(c) rigidly applies in all circumstances and is contrary to the need to provide care to residents based on their individual needs and as governed by the protocols agreed to by the physician, CRNP and the nursing home.

Section 211.7(c) was originally intended to regulate how a nursing home would ensure that a nursing home resident's physician would remain primarily involved in the medical care planning and delivery for the resident. Currently, however, physician involvement is not only required by the PNL and the Board's regulations but also by Federal regulations applicable to nursing homes. For example, see 42 CFR 483.40 (relating to physician services). The unnecessary rigidity of the Department's regulation has the unfortunate effect of discouraging CRNP/physician collaborative practice in nursing homes, which has a deleterious effect on nursing home residents by limiting their access to qualified health care practitioners. This is compounded by the fact that the number of primary care physicians who are able to provide services to nursing home residents is becoming more limited. Consequently, CRNPs, in collaboration with physicians, perform an invaluable service to these most vulnerable of citizens, which should not be impeded by an outdated, burdensome regulation.

With the enactment of Act 48 amending the PNL and with the promulgation of the Board's regulations in December 2009, the issue of the CRNP/physician relationship has been thoroughly reviewed, discussed and commented upon by the public, specifically including various associations and other groups that represent various entities affected by the regulation. Consistently, the conclusion has been that the collaborative agreement in conjunction with the health care facility's protocols for patient care should control the provision of medical services by CRNPs.

In particular, with respect to the Department's regulation, the three nursing home associations, Pennsylvania Health Care Association, Pennsylvania Association of Non-Profit Homes for the Aging and Pennsylvania Association of County Affiliated Homes, as well as the CRNP association, Pennsylvania Coalition of Nurse Practitioners, have argued that the regulation undermines the ability to best utilize the expanded scope of practice for CRNPs. These stakeholders, directly affected by § 211.7(c), believe that the collaborating physician needs to use his professional judgment regarding the level of oversight needed by the CRNP and that an inflexible oversight requirement creates additional paperwork with no commensurate benefit to the nursing home resident. In addition to the objections of the nursing homes and CRNPs, the Department has also been presented with comments from physicians who practice in nursing homes and that similarly object to the unnecessary requirement.

Since the promulgation of the Board's regulations, the Department has received over 70 exception requests from nursing homes seeking relief from the Department's regulation. Given the consensus by those who have considered the issue, including major stakeholders directly affected by the regulation, deferring to the scope of practice defined in the collaborative agreement in conjunction with a nursing home's protocols for provision of medical care to its residents is in the public interest. Delay in allowing CRNPs to practice as contemplated by the amendments to the PNL and the Board's regulations will result in the provision of less than adequate care to nursing home residents and increases in health care costs. Physicians have limited availability for nursing home practice and nursing homes are relying on CRNPs to provide needed care to residents, for which they are well qualified.

The collaborative agreement, existing law and the more recent developments in the CRNP's scope of practice more than sufficiently protect the needs of nursing home residents. Requiring countersignatures on orders and all within 7 days creates an unreasonable burden upon CRNPs and physicians practicing in nursing homes.

Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), notice of proposed rulemaking may be omitted if the agency for good cause finds that the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are in the circumstances impracticable, unnecessary or contrary to the public interest. The Department finds justification for omitting notice of proposed rulemaking to amend § 211.7(c) as it relates to CRNPs, because in these circumstances it is unnecessary and contrary to the public interest. See section 204(3) of the CDL.

B. *Requirements of the Regulation*

The Department amends § 211.7(c) which required that a CRNP's documentation on the resident's record, including progress notes, physical examination reports, treatments, medications and other notations made by the CRNP be countersigned by the supervising physician within 7 days. The Department amends § 211.7(c) by removing references to CRNPs.

C. *Affected Persons*

The final-omitted rulemaking amends an existing regulation that governs the operation of nursing homes in this Commonwealth. However, as the final-omitted rulemaking does not impose new requirements on the nursing homes and instead removes an unnecessary requirement, nursing homes would not be negatively affected by the final-omitted rulemaking.

D. *Cost and Paperwork Estimate*

There are no additional costs or paperwork requirements for the Commonwealth, the regulated community, local governments or the general public associated with the final-omitted rulemaking. The Department expects a reduction in cost and paperwork to various stakeholders. The Department is not able to accurately quantify the expected reduction in cost and paperwork.

E. *Statutory Authority*

Sections 601 and 803(2) of the Health Care Facilities Act (HCFA) (35 P. S. §§ 448.601 and 448.803(2)) authorize the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provisions of the HCFA. Section 801.1 of the HCFA (35 P. S. § 448.801a) seeks to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities and that the minimum standards are to assure safe, adequate and efficient facilities and services, and promote the health, safety and adequate care of patients or residents of these facilities. Section 102 of the HCFA (35 P. S. § 448.102) states that the General Assembly finds that a purpose of the HCFA is, among other things, to assure that citizens receive humane, courteous and dignified treatment. Finally, section 201(12) of the HCFA (35 P. S. § 448.201(12)) provides the Department with explicit authority to enforce its rules and regulations promulgated under the HCFA.

The Department also has the duty to protect the health of the people of this Commonwealth under section 2102(a) of The Administrative Code of 1929 (71 P. S. § 532(a)). The Department has general authority to promulgate regulations under section 2102(g) of The Administrative Code of 1929 for this purpose.

Act 48 also directs the Department to make amendments to its regulations to implement the additions and amendments to the PNL by Act 48. See Act 98, Section 3.

F. *Effectiveness/Sunset Dates*

The final-omitted rulemaking will become effective upon its publication in the *Pennsylvania Bulletin*. A sunset date has not been established. The Department will continually review and monitor the effectiveness of this regulation.

G. *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on July 27, 2010, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation" to the Independent Regulatory Review Commission (IRRC) and to the House Health and Human Services Committee and the Senate Public Health and Welfare Committee (Committees). On the same date, the regulation was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act, on September 15, 2010, the final-omitted rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 16, 2010, and approved the final-omitted rulemaking.

H. *Contact Person*

Questions or comments regarding the final-omitted rulemaking may be submitted to Melanie Waters, Director, Bureau of Facility Licensure and Certification, Department of Health, Room 932, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120-0701, (717) 787-8015. Comments submitted by facsimile or e-mail will not be accepted. Persons with a disability may submit questions in alternative formats such as audio tape or Braille or by using V/TT, (717) 783-6514 for speech or hearing impaired persons or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT). Persons who require an alternative format of this document (that is, large print, audio tape or Braille) should contact Melanie Waters at the previous address or telephone numbers to make necessary arrangements. The Department will accept comments in response to the amendment at any time following the effective date of the final-omitted rulemaking.

I. *Findings*

The Department finds that:

(1) This final-omitted rulemaking complies with section 204 of the CDL. Notice of proposed rulemaking is impractical, unnecessary or contrary to the public interest because the 7-day countersignature requirements for CRNP documentation in a resident's clinical record in § 211.7(c) inhibits access to qualified health care practitioners by nursing home residents and interferes with the physician/CRNP collaborative relationship established in the PNL and the Board's regulations.

(2) The adoption of the final-omitted rulemaking in the manner provided by this order is necessary and appropriate for the administration of the authorizing statutes and is in the public interest.

J. *Order*

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

(a) The regulations of the Department, 28 Pa. Code Chapter 211, are amended by amending § 211.7 to read as set forth in Annex A.

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

(c) The Secretary shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

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

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

EVERETTE JAMES,
*Secretary*

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5655 (October 2, 2010).)

**Fiscal Note:** 10-191. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 28. HEALTH AND SAFETY**

**PART IV. HEALTH FACILITIES**

**Subpart C. LONG-TERM CARE FACILITIES**

**CHAPTER 211. PROGRAM STANDARDS FOR LONG-TERM CARE NURSING FACILITIES**

**§ 211.7. Physician assistants and certified registered nurse practitioners.**

(a) Physician assistants and certified registered nurse practitioners may be utilized in facilities, in accordance with their training and experience and the requirements in statutes and regulations governing their respective practice.

(b) If the facility utilizes the services of physician assistants or certified registered nurse practitioners, the following apply:

(1) There shall be written policies indicating the manner in which the physician assistants and certified registered nurse practitioners shall be used and the responsibilities of the supervising physician.

(2) There shall be a list posted at each nursing station of the names of the supervising physician and the persons, and titles, whom they supervise.

(3) A copy of the supervising physician's registration from the State Board of Medicine or State Board of Osteopathic Medicine and the physician assistant's or certified registered nurse practitioner's certificate shall be available in the facility.

(4) A notice plainly visible to residents shall be posted in prominent places in the institution explaining the meaning of the terms "physician assistant" and "certified registered nurse practitioner."

(c) Physician assistants' documentation on the resident's record shall be countersigned by the supervising physician within 7 days with an original signature and date by the licensed physician. This includes progress notes, physical examination reports, treatments, medications and any other notation made by the physician assistant.

(d) Physicians shall countersign and date their verbal orders to physician assistants or certified registered nurse practitioners within 7 days.

(e) This section may not be construed to relieve the individual physician, group of physicians, physician assistant or certified registered nurse practitioner of responsibility imposed by statute or regulation.

[Pa.B. Doc. No. 10-1877. Filed for public inspection October 1, 2010, 9:00 a.m.]

# Title 58—RECREATION

## PENNSYLVANIA GAMING CONTROL BOARD

## [ 58 PA. CODE CHS. 549 and 561 ]

## Table Game Rules Amendments; Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1303A (relating to temporary table game regulations) enacted by the act of January 7, 2010 (P. L. 1, No. 1) (Act 1) and the specific authority in 4 Pa.C.S. § 1302A(1) and (2) (relating to regulatory authority), amends temporary regulations in Chapters 549 and 561 (relating to Blackjack; and Pai Gow Poker) to read as set forth in Annex A. The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

*Purpose of the Temporary Rulemaking*

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

*Explanation of Chapters 549 and 561*

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

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

In Chapter 549, the Twenty Point Bonus Wager was recently added as an optional side wager. This side wager is also known as Lucky Ladies and is a proprietary game. For clarity, the term "Lucky Ladies" was added before the term "Twenty Point Bonus Wager" in § 549.2(c)(4) (relating to Blackjack table; card reader device; physical characteristics; inspections).

Additionally, the Match-the-Dealer Wager has been added as an optional side wager to the game of Blackjack. The requirements for table layouts were added in § 549.2(c). Section 549.18 (relating to Match-the-Dealer Wager) is added to provide the rules of the wager, the payout odds and the payout limitation on the Match-the-Dealer Wager.

In Chapter 561, the Fortune Bonus Wager has been added as an optional side wager to the game. Additional definitions were added in § 561.1 (relating to definitions); requirements for table layouts were added in § 561.2 (relating to Pai Gow Poker table; Pai Gow Poker shaker; physical characteristics); additional card rankings were added in § 561.6 (relating to Pai Gow Poker rankings; cards; poker hands); and § 561.13a (relating to Fortune Bonus Wager; Envy Bonus; payout odds; payout limitation) is added to provide the rules of the wager, the payout odds and the payout limitation on the Fortune Bonus Wager.

*Affected Parties*

The amendments in this temporary rulemaking allow certificate holders additional options on how to conduct table games at their licensed facilities.

*Fiscal Impact*

*Commonwealth*

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

*Political subdivisions*

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

*Private sector*

The amendments in this temporary rulemaking will give certificate holders some additional flexibility as to how they conduct table games and allows for the offering of additional side wagers to patrons. These changes may increase wagers in Blackjack and Pai Gow Poker.

*General public*

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

*Paperwork Requirements*

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

*Effective Date*

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

*Public Comments*

While this temporary rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how the temporary regulations might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Susan A. Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-132.

*Contact Person*

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

*Regulatory Review*

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

*Findings*

The Board finds that:

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

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

*Order*

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

(1) The regulations of the Board, 58 Pa. Code Chapters 549 and 561, are amended by amending §§ 549.2, 561.1, 561.2 and 561.6; and by adding §§ 549.18 and 561.13a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The temporary regulations are effective October 2, 2010.

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

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

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

GREGORY C. FAJT,
*Chairperson*

**Fiscal Note:** 125-132. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart K. TABLE GAMES**

**CHAPTER 549. BLACKJACK**

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

* * * * *

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

* * * * *

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

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

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

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

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

(5) If a certificate holder offers the Match-the-Dealer Wager:

(i) A separate area designated for the placement of the Match-the-Dealer Wager for each player.

(ii) Inscriptions that advise patrons of the payout odds for the Match-the-Dealer Wager. If the payout odds are

not inscribed on the layout, a sign identifying the payout odds for the Match-the-Dealer Wager shall be posted at each Blackjack table.

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

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**§ 549.18. Match-the-Dealer Wager.**

(a) A player may make an additional Match-the-Dealer Wager which shall have no bearing on any other wagers made by the player. The Match-the-Dealer Wager of a player shall win if either of the player's initial two cards matches the dealer's up card in the manner required under subsection (e). If both of the player's initial two cards match the dealer's up card, the player shall be paid in accordance with subsection (e) for each matching card. For purposes of the Match-the-Dealer wager, any card with a face value of 10 or a point value of 10 (jack, queen, king) shall only match an identical card without regard to value.

(b) Prior to the first card being dealt for each round of play, a player who has placed the basic wager required under § 549.4 (relating to wagers) may make an additional Match-the-Dealer Wager, which shall be in an amount not less than $1 and may not exceed the lesser of:

(1) The amount of the wager made by the player under § 549.4(a).

(2) A maximum amount established by the certificate holder in the certificate holder's Rules Submission under § 521.2 (relating to table games Rules Submissions).

(c) A Match-the-Dealer Wager shall be made by placing gaming chips on the appropriate area of the Blackjack layout.

(d) Immediately after the second card is dealt to each player and the dealer, but prior to any additional cards being dealt to any player or the dealer or before any card reader device is utilized, losing Match-the-Dealer Wagers shall be collected and winning Match-the-Dealer Wagers shall be paid in accordance with subsection (e).

(e) The certificate holder shall pay out winning Match-the-Dealer Wagers at the odds contained in the following payout table:

(1) If six decks of cards are being used:

| *Hand* | *Payout* |
|---|---|
| Each matching card of a different suit | 4 to 1 |
| Each matching card of the same suit | 11 to 1 |

(2) If eight decks of cards are being used:

| *Hand* | *Payout* |
|---|---|
| Each matching card of a different suit | 3 to 1 |
| Each matching card of the same suit | 14 to 1 |

## CHAPTER 561. PAI GOW POKER

**§ 561.1. Definitions.**

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

*Envy Bonus*—An additional fixed sum payout made to a player who placed a Qualifying Fortune Bonus Wager when another player at the Pai Gow Poker table is the holder of a qualifying hand.

*High hand*—The five-card hand which is formed from the seven cards dealt at the game of Pai Gow Poker so as to rank equal to or higher than the two-card Low hand.

*Low hand*—The two-card hand which is formed from the seven cards dealt at the game of Pai Gow Poker so as to rank equal to or lower than the five-card High hand.

*Qualifying Fortune Bonus Wager*—A Fortune Bonus Wager of at least $5.

*Qualifying hand*—A Pai Gow Poker hand with a rank of four-of-a-kind or higher formed from the seven cards dealt to a player.

*Rank* or *ranking*—The relative position of a card or group of cards as set forth in § 561.6 (relating to Pai Gow Poker rankings; cards; poker hands)

*Set* or *setting the hands*—The process of forming a High hand and Low hand from the seven cards dealt.

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

* * * * *

(b) The layout for a Pai Gow Poker table shall be approved by the Bureau of Gaming Operations and contain, at a minimum, the following:

(1) Six separate numbered betting areas for the players at the table.

(2) Two separate areas located below each betting area which shall be designated for the placement of the High and Low hands of that player.

(3) Two separate areas designated for the placement of the High and Low hands of the dealer.

(4) The name or logo of the certificate holder offering the game.

(5) If the certificate holder offers a Fortune Bonus Wager:

(i) A separate designated area for each player, located to the right of the player's betting area, designated for the placement of the Fortune Bonus Wager.

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

(iii) Inscriptions that advise patrons of the payout odds and amounts for the Fortune Bonus Wager and Envy Bonus. If payout odds and amounts are not inscribed on the layout, a sign identifying the payout odds and amounts shall be posted at each Pai Gow Poker table.

(iv) Inscriptions that advise patrons of any payout limits as described in § 561.13a(f) (relating to Fortune Bonus Wager; Envy Bonus; payout odds; payout limitation). If payout limits are not inscribed on the layout, a sign identifying the payout limits shall be posted at each Pai Gow Poker table.

(c) Each Pai Gow Poker table must have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer, and in locations approved by the Bureau of Gaming Operations. The Bureau of Gaming Operations may approve an

alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

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**§ 561.6. Pai Gow Poker rankings; cards; poker hands.**

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(e) If a certificate holder offers the optional Fortune Bonus Wager under § 561.13a (relating to Fortune Bonus Wager; Envy Bonus; payout odds; payout limitation), the following seven card hands, which shall have a rank higher than a five-card poker hand of five aces, shall be used to determine the amount of the Fortune Bonus Wager payout or Envy Bonus payment to a winning player:

(1) Seven-card straight flush with no joker is a hand consisting of seven cards of the same suit in consecutive ranking, with no joker used to complete the straight flush.

(2) Royal flush plus royal match is a seven card hand consisting of an ace, king, queen, jack and a 10 of the same suit, with or without a joker, with one of the following:

(i) An additional ace and king of a same suit.

(ii) An additional king and queen of a same suit.

(3) Seven-card straight flush with joker is a hand consisting of seven cards of the same suit in consecutive ranking with a joker being used to complete the straight flush.

**§ 561.13a. Fortune Bonus Wager; Envy Bonus; payout odds; payout limitation.**

(a) A certificate holder may, if specified in its Rules Submission under § 521.2 (relating to table games Rules Submissions), offer a player the option of placing a Fortune Bonus Wager on whether the player will be dealt a hand type as set forth in subsection (e). A player who makes a Qualifying Fortune Bonus Wager shall also qualify to receive an Envy Bonus payout.

(b) Prior to the first card being dealt for each round of play, each player who has placed a wager in accordance with § 561.7 (relating to wagers), may make a Fortune Bonus Wager by placing a value chip of at least $1 into the separate area designated for that player. If a player makes a Qualifying Fortune Bonus Wager, the dealer shall place an Envy lammer next to that player's wager.

(c) The dealer shall then announce "no more bets" and deal the cards in accordance with the dealing procedures in § 561.9, § 561.10 or § 561.11 (relating to procedures for dealing the cards from a manual dealing shoe; procedures for dealing the cards by hand; and procedures for dealing the cards from an automated dealing shoe).

(d) If a Fortune Bonus Wager has been made by one or more players, the dealer shall observe the procedures in § 561.13 (relating to procedures for completion of each round of play; setting of hands; payment and collection of wagers; payout odds; vigorish) with the following modifications:

(1) The dealer shall, starting from the dealer's right and moving counterclockwise around the table, settle the Pai Gow Poker wager of each player and collect any vigorish that is due, provided that:

(i) The cards of a player who has placed a Fortune Bonus Wager shall remain on the layout regardless of the outcome of the player's Pai Gow Poker wager.

(ii) If any player has placed a Qualifying Fortune Bonus Wager, the cards of all players shall remain on the table regardless of the outcome of any player's Pai Gow Poker wager.

(2) After settling the Pai Gow Poker wager of a player who has placed a Fortune Bonus Wager, the dealer shall rearrange the seven cards of the player to form the best possible hand and shall be responsible for creating the hand for purposes of the Fortune Bonus Wager. A joker may be used as any card to complete a straight, flush, straight flush or royal flush other than a seven-card straight flush with no joker. If any player at the table has placed a Qualifying Fortune Bonus Wager, the dealer shall rearrange the cards of each player regardless of whether that player placed a Fortune Bonus Wager. If a player:

(i) Does not have a straight or higher from the seven cards dealt to the player, the dealer shall collect the Fortune Bonus Wager and place the cards of the player in the discard rack.

(ii) Has a straight or higher formed from the seven cards dealt to the player, the dealer shall pay the winning Fortune Bonus Wager in accordance with subsection (e).

(iii) Has a Qualifying Hand, the dealer shall verbally acknowledge the Qualifying Hand and leave the Fortune Bonus Wager, if applicable, and the cards of the player face up on the table.

(3) After all other Fortune Bonus Wagers have been settled, the dealer shall, starting from the dealer's right and moving counterclockwise around the table, settle with each player who has an Envy Bonus lammer at the player's betting position or who has a Fortune Bonus Wager and a Qualifying Hand. If a player:

(i) Has an Envy Bonus lammer, the dealer shall pay the player in accordance with subsection (e) and collect the Envy Bonus lammer.

(ii) Has a Fortune Bonus Wager and a Qualifying Hand, the dealer shall pay the winning Fortune Bonus Wager in accordance with subsection (e) and place the cards of the player in the discard rack. Players are entitled to multiple Envy Bonuses when another player at the same Pai Gow Poker table is the holder of an Envy Bonus; provided, however, that a player is not entitled to an Envy Bonus for his own hand or the hand of the dealer.

(iii) After all Envy Bonuses and Qualifying Hands have been paid, the dealer shall collect the cards of any player who had a Qualifying Hand but did not place a Fortune Bonus Wager and shall place the cards of the player in the discard rack.

(e) The certificate holder shall pay out winning Fortune Bonus Wagers and Envy Bonus payouts at the amounts contained in one of the following payout tables selected by the certificate holder in the certificate holder's Rules Submission filed in accordance with § 521.2:

**Table A**

| *Hand* | *Payout* | *Envy Bonus* |
|---|---|---|
| 7 card Straight Flush | 8,000 to 1 | $5,000 |
| Royal Flush and Royal match | 2,000 to 1 | $1,000 |
| 7 card Straight Flush with Joker | 1,000 to 1 | $500 |
| 5 Aces | 400 to 1 | $250 |
| Royal Flush | 150 to 1 | $50 |
| Straight Flush | 50 to 1 | $20 |
| Four-of-a-Kind | 25 to 1 | $5 |
| Full House | 5 to 1 | |
| Flush | 4 to 1 | |
| Three-of-a-Kind | 3 to 1 | |
| Straight | 2 to 1 | |

**Table B**

| *Hand* | *Payout* | *Envy Bonus* |
|---|---|---|
| 7 card Straight Flush | 5,000 to 1 | $3,000 |
| Royal Flush and Royal match | 2,000 to 1 | $1,000 |
| 7 card Straight Flush with Joker | 1,000 to 1 | $500 |
| 5 Aces | 400 to 1 | $250 |
| Royal Flush | 150 to 1 | $50 |
| Straight Flush | 50 to 1 | $20 |
| Four-of-a-Kind | 25 to 1 | $5 |
| Full House | 5 to 1 | |
| Flush | 4 to 1 | |
| Three-of-a-Kind | 3 to 1 | |
| Straight | 2 to 1 | |

**Table C**

| *Hand* | *Payout* | *Envy Bonus* |
|---|---|---|
| 7 card Straight Flush | 5,000 to 1 | $2,500 |
| Royal Flush and Royal match | 2,000 to 1 | $500 |
| 7 card Straight Flush with Joker | 1,000 to 1 | $250 |
| 5 Aces | 400 to 1 | $150 |
| Royal Flush | 150 to 1 | $55 |
| Straight Flush | 50 to 1 | $25 |
| Four-of-a-Kind | 25 to 1 | $6 |
| Full House | 5 to 1 | |
| Flush | 4 to 1 | |
| Three-of-a-Kind | 3 to 1 | |
| Straight | 2 to 1 | |

(f) Notwithstanding the payout odds in subsection (e), a certificate holder may establish a maximum payout for a winning Fortune Bonus Wager that is payable for one round of play. The maximum payout amount shall be at least $40,000 or the maximum amount that one player could win per round when betting the minimum possible wager, whichever is greater. Maximum payouts established by a certificate holder require the approval of the Board's Executive Director and shall be included in the certificate holder's Rules Submission filed in accordance with § 521.2. Any maximum payout limit established by a certificate holder applies only to Fortune Bonus Wagers and does not apply to Envy Bonus payouts.

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