RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

Paper, Film and Foil Surface Coating Processes

The Environmental Quality Board (Board) amends Chapters 121 and 129 (relating to general provisions; and standards for sources) to read as set forth in Annex A.

The final-form rulemaking amends Chapter 129 to limit emissions of volatile organic compounds (VOCs) from the use and application of coatings and cleaning materials in paper, film and foil surface coating processes. The final-form rulemaking adds § 129.52b (relating to control of VOC emissions from paper, film and foil surface coating processes) and amends §§ 129.51 and 129.52 (relating to general; and surface coating processes). The final-form rulemaking also amends § 121.1 (relating to definitions).

This order was adopted by the Board at its meeting on August 30, 2010.

A. *Effective Date*

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

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. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us (Keyword: Public Participation).

C. *Statutory Authority*

This final-form rulemaking is authorized under section 5 of the Air Pollution Control Act (35 P. S. § 4005), which in subsection (a)(1) grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth, and which in subsection (a)(8) grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

D. *Background and Purpose*

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

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

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

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

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

High levels of ground-level ozone can also cause damage to buildings and synthetic fibers, including nylon, and reduced visibility on roadways and in natural areas. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is nec-

essary to protect the public health and welfare, animal and plant health and welfare and the environment.

In July 1997, the EPA established primary and secondary ozone standards at a level of 0.08 part per million (ppm) averaged over 8 hours. See 62 FR 38856 (July 18, 1997). In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS. The Commonwealth is meeting the 1997 standard in all areas except the five-county Philadelphia area. The areas in which the 1997 standard has been attained are required to have permanent and enforceable control measures to ensure violations do not occur for the next decade.

Furthermore, in March 2008, the EPA lowered the standard to 0.075 ppm averaged over 8 hours to provide even greater protection for children, other at-risk populations and the environment against the array of ozone-induced adverse health and welfare effects. See 73 FR 16436 (March 27, 2008). The EPA is reconsidering the March 2008 ozone NAAQS and proposed in January 2010 to set a more protective 8-hour ozone primary standard between 0.060 and 0.070 ppm to provide increased protection for children and other at-risk groups. See 75 FR 2938 (January 19, 2010). The EPA also proposed that the secondary ozone standard, which was set identically to the revised primary standard in the 2008 final rule, should instead be a new cumulative, seasonal standard. See 75 FR 2938. This seasonal standard is designed to protect plants and trees from damage occurring from repeated ozone exposure, which can reduce tree growth, damage leaves, and increase susceptibility to disease. The final revised ozone NAAQS is expected in December 2010.

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

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

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

In 1995, the EPA listed paper, film and foil coatings on its list in section 183(e) of the CAA and, in 2007, issued a CTG for this product category. See 60 FR 15264 (March 23, 1995) and 72 FR 57215 (October 9, 2007). In the 2007 notice, the EPA determined that the CTG would be substantially as effective as a National regulation in reducing VOC emissions from these product categories in ozone nonattainment areas. See 72 FR 57215, 57220.

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

The Department reviewed the recommendations included in the 2007 CTG for paper, film and foil coatings for their applicability to the ozone reduction measures necessary for this Commonwealth. The Department determined that the measures provided in the CTG for paper, film and foil coatings are appropriate to be implemented in this Commonwealth as RACT for this category.

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

The final-form rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on June 17, 2010. The AQTAC concurred with the Department's recommendation to present the final-form amendments to the Board for approval for publication as a final regulation. The Department also consulted with the Small Business Compliance Advisory Committee (SBCAC) on July 28, 2010. The SBCAC had no concerns. The Department consulted with the Citizens Advisory Council on June 30, 2010.

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

The final-form rulemaking adds the definition of "coating line" to § 121.1. The final-form rulemaking amends the definition of "coating" to specify a definition for purposes of § 129.52b that is consistent with the EPA's CTG. The final-form rulemaking also amends the definition of "paper coating" to correspond to the broader terms "paper, film or foil coating" and "paper, film or foil surface coating," which are used in other sections of Chapter 129 and this final-form rulemaking.

The final-form rulemaking amends § 129.51(a) to extend its coverage to paper, film and foil surface coating processes covered by this final-form rulemaking. Section

129.51(a) provides an alternative method for owners and operators of facilities to achieve compliance with air emission limits.

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

The final-form rulemaking adds § 129.52b to regulate VOC emissions from paper, film and foil surface coating processes. The applicability of this new section is described in subsection (a), which establishes that emission limits and other requirements of this section apply to the owner and operator of a paper, film or foil surface coating process if an individual paper, film or foil surface coating line has a potential to emit at least 25 tons per year (tpy) of VOC from coatings, prior to controls. This differs from the current applicability threshold in § 129.52, and is consistent with the recommended applicability threshold in the CTG. The current applicability threshold in § 129.52 is also carried over into subsection (a) for paper surface coating processes only, in subsection (a)(2), to avoid backsliding from current emission limitations. Subsection (a) specifies that the emission limits and other requirements of § 129.52b supersede the emission limits and other requirements of § 129.52.

Subsection (a) also establishes that the work practice requirements in subsection (h) for cleaning materials, and the related compliance monitoring and recordkeeping and reporting requirements specified in subsections (d) and (e), apply to the owner and operator of a paper, film or foil surface coating process if the total actual VOC emissions from all paper, film or foil surface coating operations, including related cleaning activities, at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day or 2.7 tons (2,455 kilograms) per 12-month rolling period, before consideration of controls. Basing the applicability on a 12-month rolling period is generally considered to be more stringent than basing it on a calendar year, as in § 129.52(a), but is consistent with the CTG.

Subsection (b) explains that the requirements of § 129.52b supersede the requirements of a RACT permit for VOC emissions from a paper, film or foil surface coating operation already issued to the owner or operator of a source subject to § 129.52b, except to the extent the RACT permit contains more stringent requirements.

Subsection (c) establishes VOC emission limits. Beginning January 1, 2012, a person may not cause or permit the emission into the outdoor atmosphere of VOCs from a paper, film or foil surface coating process subject to § 129.52b, unless: (1) the VOC content of each as applied coating is equal to or less than the limit specified in Table I or II (relating to emission limits of VOCs for paper, film and foil surface coatings if potential VOC emissions from a single line, prior to control, are 25 tons per year or more; and emission limit of VOCs for paper coating if actual VOC emissions have exceeded 3 pounds per hour, 15 pounds per day or 2.7 tons per year in any year since January 1, 1987); or (2) the overall weight of VOCs emitted to the atmosphere is reduced through the use of vapor recovery, incineration or another method that is acceptable under § 129.51(a). The second option also addresses the overall efficiency of a control system.

Final-form subsection (d) identifies daily records that must be kept to demonstrate compliance with § 129.52b. An owner or operator of an individual paper, film or foil surface coating line that is subject to this section by virtue of having a potential to emit of at least 25 tpy of VOC from coatings, prior to controls, shall keep daily records that include the parameters and VOC content of each coating, thinner, component and cleaning solvent, as supplied, and the VOC content of each as applied coating or cleaning solvent. The daily records required of an owner or operator of a paper, film or foil surface coating process subject to the cleaning material-related requirements of § 129.52b are similar, but relate only to cleaning solvents. The owner or operator of a facility subject to this section by virtue of the existing threshold being carried forward from § 129.52 shall also keep daily records of the volume percent solids for each coating, thinner or component, as supplied.

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

Under final-form subsection (f), an owner or operator of an individual paper, film or foil surface coating line that is subject to § 129.52b by virtue of having a potential to emit at least 25 tpy of VOC from coatings, prior to controls, may not cause or permit the emission into the outdoor atmosphere of VOCs from the application of paper, film or foil surface coatings, unless the coatings are applied using rotogravure coating, reverse roll coating, knife coating, dip coating, slot die coating, flexographic coating, extrusion coating or calendaring. An owner or operator may use another coating application method if a request is submitted in writing that demonstrates that the method is capable of achieving a transfer efficiency equivalent to or better than that achieved by the other methods in subsection (f) and is approved in writing by the Department prior to use.

Final-form subsection (g) exempts from the VOC coating content limits in Tables I and II in § 129.52b a coating used exclusively for determining product quality and commercial acceptance and other small quantity coatings, if the quantity of coating used does not exceed 50 gallons per year for a single coating and a total of 200 gallons per year for all coatings combined for the facility and if the owner or operator of the facility requests, in writing, and the Department approves, in writing, the exemption prior to use of the coating.

Final-form subsection (h) establishes work practices that an owner or operator of a paper, film or foil surface coating process subject to § 129.52b shall comply with for cleaning materials. Consistent with the CTG, this subsection has been amended to apply to all processes subject to this section, not just to those subject to the cleaning material-related requirements of this section.

Final-form Table I establishes emission limits of VOCs for paper, film and foil surface coatings from a single line, expressed in units of weight of VOC per weight of coating solids, as applied. The title of Table I is amended in the final-form rulemaking for clarity.

Final-form Table II establishes emission limits of VOCs for paper coatings, only, if actual VOC emissions have exceeded 3 pounds per hour, 15 pounds per day or 2.7 tpy in any year since January 1, 1987. This table, along with the applicability criteria in § 129.52b(a)(2), were added to carry forward the previously regulated paper coating sources (in § 129.52) that would fall between the applicability criteria in § 129.52b(a)(1) and (3) and eliminate the potential for backsliding. Emission limits in Table II are expressed in units of weight of VOC per volume of coating solids, as applied.

F. *Comments and Responses*

The Board approved publication of the proposed rulemaking at its meeting of September 15, 2009. The proposed rulemaking was published at 39 Pa.B. 6460 (November 7, 2009). Three public hearings were held on December 9, 11 and 14, 2009, in Pittsburgh, Harrisburg and Norristown, PA, respectively. The public comment period closed on January 13, 2010.

No public comments were received by the Board.

The Independent Regulatory Review Commission (IRRC) commented that proposed § 129.52b(d) and (e), which require the owners and operators of the regulated surface coating processes to maintain certain records, are unclear. IRRC requested that the Board clarify the format in which these records must be maintained. The Department respectfully disagrees that subsections (d) and (e) are unclear. Requiring regulated facilities to maintain records is a standard requirement in many Board-approved regulations, including § 129.52(g), for instance. Neither the Department nor the regulated sources have had difficulty understanding or complying with this requirement. The Department did not make changes to the final-form rulemaking in response to this comment.

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

G. *Benefits, Costs and Compliance*

Benefits

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

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

In this Commonwealth, approximately 15 paper, film and foil surface coating operations combine to emit an estimated total of 374 tons of VOCs per year.

The EPA estimates that implementation of the recommended control options for paper, film or foil surface coatings processes will result in approximately a 47% reduction in VOC emissions. The maximum anticipated additional annual VOC reductions from the paper, film or foil surface coatings facilities as a result of this final-form rulemaking is approximately 176 tons (374 tons x 47%).

Compliance Costs

The costs of complying with the final-form rulemaking include the cost of using alternative product formulations, such as low-VOC or water-based coatings and the cost of using add-on controls, such as thermal oxidizers. The facility owner or operator is given the flexibility to choose controls. Based on information provided by the EPA in the paper, film and foil coatings CTG, the cost effectiveness of reducing VOC emissions from paper, film and foil surface coating operations is estimated to be $1,200 per ton of VOC reduced. This estimate is based on the use of thermal oxidizer add-on controls, which are the most costly option to reduce VOC emissions on an annual operating basis. The estimated annual cost for the owners or operators of the affected noncomplying paper, film and foil surface coating facilities in this Commonwealth, combined, is $211,200 (176 tons VOC reduced x $1,200 per ton reduced). Based on total VOC emissions reported to the Department for the 2009 calendar year, the annual compliance costs for each affected noncomplying facility will range from an estimated $2,000 to an estimated $69,000 depending on actual VOC emissions.

The potential total annual costs to the regulated industry of $211,200 for paper, film and foil surface coating operations are negligible compared to the improved health and environmental benefits that will be gained from this final-form rulemaking.

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

Compliance Assistance Plan

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

Paperwork Requirements

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

H. *Pollution Prevention*

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

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

I. *Sunset Review*

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

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6460, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 House and Senate Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on October 20, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 21, 2010, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 6460.

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

(5) This final-form rulemaking is necessary to attain and maintain the ozone NAAQS and to satisfy related CAA requirements.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 129, are amended by amending §§ 121.1, 129.51 and 129.52 and by adding § 129.52b 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 Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

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

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

JOHN HANGER,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: Fiscal Note 7-448 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:

* * * * *

Coating—

(i) For purposes of wood furniture manufacturing operations under §§ 129.101—129.107, a protective, decorative or functional material applied in a thin layer to a surface.

(A) The term includes paints, topcoats, clear coats, varnishes, sealers, stains, washcoats, basecoats, inks and temporary protective coatings.

(B) The term does not include adhesives.

(ii) For purposes of paper, film and foil surface coating under § 129.52b (relating to control of VOC emissions from paper, film and foil surface coating processes), a material applied onto or impregnated into a substrate for decorative, protective or functional purposes.

(A) The term includes solvent-borne coatings, waterborne coatings, adhesives, wax coatings, wax laminations, extrusion coatings, extrusion laminations, 100% solid adhesives, UV-cured coatings, electron beam-cured coatings, hot melt coatings and cold seal coatings.

(B) The term does not include materials used to form unsupported substrates, such as calendaring of vinyl, blown film, cast film, extruded film and co-extruded film.

Coating line—The equipment and activities of the manufacturing process used to apply coatings onto or into a substrate.

* * * * *

Paper, film or foil coating or *paper, film or foil surface coating*—Coatings applied in a continuous, uniform layer to paper, film or foil surfaces, and pressure-sensitive tapes, regardless of substrate. The coatings are applied to provide a covering, finish or functional or protective layer to the substrate, saturate a substrate for lamination or provide adhesion between two substrates for lamination.

(i) The term includes coatings used in web coating processes on the following:

(A) Pressure sensitive tapes and labels, including fabric coated for use in pressure sensitive tapes and labels.

(B) Plastic and photographic films.

(C) Industrial and decorative laminates.

(D) Abrasive products, including fabric coated for use in abrasive products.

(E) Flexible packaging, including coating of non-woven polymer substrates for use in flexible packaging.

(F) Miscellaneous coating operations, including the following:

(I) Corrugated and solid fiber boxes.

(II) Die-cut paper, paperboard and cardboard.

(III) Converted paper and paperboard not elsewhere classified.

(IV) Folding paperboard boxes, including sanitary boxes.

(V) Manifold business forms and related products.

(VI) Plastic aseptic packaging.

(VII) Carbon paper and inked ribbons.

(ii) The term does not include the following:

(A) Coatings applied in whole or in part as nonuniform layers, such as patterns, designs or print.

(B) Inks and other coatings used at printing operations that are applied on or in-line with an offset lithographic, screen, letterpress, flexographic, rotogravure or digital printing press.

(C) Sizing, starch or water-based clays that are applied with size presses and on-machine coaters that are part of an in-line papermaking system.

* * * * *

CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOCs

§ 129.51. General.

(a) *Equivalency.* Compliance with §§ 129.52, 129.52a, 129.52b and 129.54—129.73 may be achieved by alternative methods if the following exist:

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

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

(3) Compliance by a method other than the use of a low VOC coating or ink which meets the applicable emission limitation in §§ 129.52, 129.52a, 129.52b, 129.67 and 129.73 shall be determined on the basis of equal volumes of solids.

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

(5) Adequate records are maintained to ensure enforceability.

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

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

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

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

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

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

(3) An owner or operator claiming that a facility or source is exempt from the VOC control provisions of this

chapter shall maintain records that clearly demonstrate to the Department that the facility or source is not subject to the VOC emission limitations or control requirements.

§ 129.52. Surface coating processes.

* * * * *

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

(j) Beginning January 1, 2012, the requirements and limits for paper coatings in this section are superseded by the requirements and limits in § 129.52b (relating to control of VOC emissions from paper, film and foil surface coating processes).

* * * * *

§ 129.52b. Control of VOC emissions from paper, film and foil surface coating processes.

(a) *Applicability.* This section applies to the owner and operator of a paper, film or foil surface coating process, as follows, if the surface coating process meets one or a combination of the following:

(1) The emission limits in Table I and other requirements of this section apply to the owner and operator of a paper, film or foil surface coating process if an individual paper, film or foil surface coating line has a potential to emit at least 25 tpy of VOC from coatings, prior to controls. For these processes, the emission limits and other requirements of this section supersede the emission limits and other requirements of § 129.52 (relating to surface coating processes).

(2) The emission limit in Table II and other requirements of this section apply to the owner and operator of a paper surface coating process which emits or has emitted VOCs into the outdoor atmosphere in quantities greater than 3 pounds (1.4 kilograms) per hour, 15 pounds (7 kilograms) per day or 2.7 tons (2,455 kilograms) per year during any calendar year since January 1, 1987. For these processes, the emission limit and other requirements of this section supersede the emission limit and other requirements of § 129.52.

(3) The work practice requirements for cleaning materials found in subsection (h), and the related compliance monitoring and recordkeeping and reporting requirements of subsections (d) and (e), apply to the owner and operator of a paper, film or foil surface coating process if the total actual VOC emissions from all paper, film or foil surface coating operations, including related cleaning activities, at the facility are equal to or greater than 15 pounds (6.8 kilograms) per day or 2.7 tons (2,455 kilograms) per 12-month rolling period, before consideration of controls.

(b) *Existing RACT permit.* The requirements of this section supersede the requirements of a RACT permit issued to the owner or operator of a source subject to subsection (a) prior to January 1, 2012, under §§ 129.91—129.95 (relating to stationary sources of NOx and VOCs) to control, reduce or minimize VOCs from a paper, film or foil surface coating process, except to the extent the RACT permit contains more stringent requirements.

(c) *Emission limits.* Beginning January 1, 2012, a person subject to subsection (a)(1) or (2) may not cause or permit the emission into the outdoor atmosphere of VOCs from a paper, film or foil surface coating process, unless one of the following limitations is met:

(1) The VOC content of each as applied coating is equal to or less than the limit specified in Table I or Table II, as applicable.

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

$$VOC_B = (W_o)/(W_n)$$

Where:

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

W_o = Weight percent of VOC (W_v-W_w-W_{ex})

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

W_w = Weight percent of water

W_{ex} = Weight percent of exempt solvents

W_n = Weight percent of solids of the as applied coating

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

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

Where:

VOC = VOC Content in lb voc/gal of coating solids
W_o = Weight percent of VOC (W_v-W_w-W_{ex})
W_v = Weight percent of total volatiles (100%-weight percent solids)
W_w = Weight percent of water
W_{ex} = Weight percent of exempt solvent(s)
D_c = Density of coating, lb/gal, at 25° C
V_n = Volume percent of solids of the as applied coating

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

$$VOC_A = -\frac{\Sigma_i (W_{oi} \times D_{ci} \times Q_i) + \Sigma_J (W_{oJ} \times D_{dJ} \times Q_J)}{\Sigma_i (W_{ni} \times D_{ci} \times Q_i)}$$

Where:

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

W_{oi} = Percent VOC by weight of each as supplied coating (i) added to the dip coating process, expressed as a decimal fraction (that is 55% = 0.55)

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

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

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

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

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

Q_J = Quantity of each thinner (J) added to the dip coating process, in gallons

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

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

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

Where:

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

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

O = The overall required control efficiency.

(d) *Compliance monitoring procedures.* The owner or operator of a facility subject to this section shall maintain records sufficient to demonstrate compliance as follows:

(1) The owner or operator of a facility subject to subsection (a) shall maintain daily records of the following parameters for each coating, thinner, component or cleaning solvent, as supplied:

(i) Name and identification number of the coating, thinner, component or cleaning solvent.

(ii) Volume used.

(iii) Mix ratio.

(iv) Density or specific gravity.

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

(vi) VOC content.

(2) In addition to the records required under paragraph (1), the owner or operator of a facility subject to subsection (a)(2) shall maintain daily records of the volume percent solids for each coating, thinner or component, as supplied.

(3) The owner or operator of a facility subject to subsection (a) shall maintain daily records of the VOC content of each as applied coating or cleaning solvent.

(e) *Recordkeeping and reporting requirements.* The records required under subsection (d) shall be:

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

(2) Submitted to the Department upon receipt of a written request.

(f) *Coating application methods.* A person subject to subsection (a)(1) may not cause or permit the emission into the outdoor atmosphere of VOCs from the application of paper, film or foil surface coatings, unless the coatings are applied using one or more of the following coating application methods:

(1) Rotogravure coating.

(2) Reverse roll coating.

(3) Knife coating.

(4) Dip coating.

(5) Slot die coating.

(6) Flexographic coating.

(7) Extrusion coating.

(8) Calendaring.

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

(i) The coating application method must be capable of achieving a transfer efficiency equivalent to or better than that achieved by a method listed in paragraphs (1)—(8).

(ii) The request for approval must be submitted in writing by the owner or operator of the paper, film or foil surface coating facility.

(g) *Exempt coatings.* The VOC coating content limits in Tables I and II do not apply to a coating used exclusively for determining product quality and commercial acceptance and other small quantity coatings, if the coating meets the following criteria:

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

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

(h) *Work practice requirements for cleaning materials.* The owner or operator of a paper, film or foil surface coating process subject to subsection (a) shall comply with the following work practices for cleaning materials:

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

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

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

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

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

Table I

Emission Limits of VOCs for Paper, Film and Foil Surface Coatings if Potential VOC Emissions from a Single Line, Prior to Control, are 25 Tons per Year or More

	Weight of VOC per Weight of Coating Solids, as Applied	
	RACT Limits	
Units	*Pressure Sensitive Tape and Label Surface Coating*	*Paper, Film, and Foil Surface Coating (Not including Pressure Sensitive Tape and Label Surface Coating)*
kg VOC/kg solids (lb VOC/lb solids)	0.20	0.40
kg VOC/kg coating (lb VOC/lb coating)	0.067	0.08

Table II

Emission Limit of VOCs for Paper Coating if Actual VOC Emissions have Exceeded 3 Pounds per Hour, 15 Pounds per Day or 2.7 Tons per Year in Any Year Since January 1, 1987

Weight of VOC per Volume of Coating Solids, as Applied

Units	*RACT Limit Paper Coating*
lb voc/gal coating solids	4.84
kg voc/l coating solids	0.58

[Pa.B. Doc. No. 10-2190. Filed for public inspection November 19, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 253]

Administration of the Uniform Environmental Covenants Act

The Environmental Quality Board (Board) adopts Chapter 253 (relating to administration of the Uniform Environmental Covenants Act) to read as set forth in Annex A. The final-form rulemaking addresses ambiguities in 27 Pa.C.S. §§ 6501—6517 (relating to Uniform Environmental Covenants Act) (UECA) and establishes procedural interfaces with other statutes.

This order was adopted by the Board at its meeting of August 30, 2010.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Troy Conrad, Director, Land Recycling Program, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 783-7816; or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us.

C. *Statutory Authority*

The final-form rulemaking is being made under section 6515 of UECA (relating to Environmental Quality Board), which grants the Board the power and the duty to promulgate regulations for the proper performance of the work of the Department under UECA; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department. Section 6515 of UECA also explicitly grants the Board the power to develop fees by regulation for environmental covenants.

D. *Background and Purpose*

UECA was signed into law on December 18, 2007. The statute was based on a National model act developed by the National Conference of Commissioners on Uniform State Laws. UECA provides for the creation of environmental covenants to ensure the long-term stewardship of activity and use limitations on property remediated under the Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P. S. §§ 6026.101—6026.907) or the Storage Tank and Spill Prevention Act (Tank Act) (35 P. S. §§ 6021.101—6021.2103). These limitations are restrictions on the use of the remediated property (institutional controls) or the maintenance of a "structure" needed to control the movement of regulated substances through the environment (engineering controls). The environmental covenant is a property interest with a holder and is capable of being transferred and may be enforced by multiple parties, including the Department. Finally, the environmental covenant is recorded with the county recorder of deeds where the property is located, giving future landowners and developers notice of the activity and use limitations. Once the Department develops a formal registry containing all covenants, as required by section 6512 of UECA (relating to registry; substitute notice), only a simple notice will need to be recorded with the county recorder of deeds where the property is located.

Although UECA does contain relatively detailed procedural requirements, the Department determined that regulations under UECA would be necessary to address ambiguities and to establish procedural interfaces with the Tank Act and Act 2. Collection of the fee will support the Department's review of environmental covenants and the development and maintenance of the electronic registry of environmental covenants that section 6512 of UECA requires the Department to develop and maintain.

UECA does not require review of proposed regulations by a particular advisory committee. However, the Department had discussions with several outside groups concerning the proposed rulemaking. The Department presented the proposed rulemaking to the Cleanup Standards Scientific Advisory Board (CSSAB). The proposed rulemaking was discussed and supported at the CSSAB board meeting held on September 1, 2009; a formal motion supporting the proposed rulemaking was not considered due to a lack of a quorum at the meeting. The proposed rulemaking was also discussed with the Storage Tank Advisory Committee (STAC) on September 8, 2009. The STAC did not take formal action on the proposed rulemaking at that meeting.

The proposed rulemaking was published at 40 Pa.B. 1379 (March 6, 2010) with a 30-day public comment period. The Board received 66 comments from 11 commentators, including the Independent Regulatory Review Commission (IRRC). The Department presented the draft final-form rulemaking to the STAC on June 8, 2010, in substantially the same form as published. The STAC approved a motion to recommend approval of the final-form rulemaking by the Board. The Department also presented the draft final-form rulemaking to the CSSAB on June 15, 2010. The CSSAB was supportive of the draft final-form rulemaking but did not take formal action on the rulemaking, pending resolution of several issues. The Department had further discussions with the CSSAB on June 28, 2010, resulting in this final-form rulemaking.

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

As previously noted, the final-form rulemaking is intended to supplement UECA and tie it together with the Commonwealth's existing risk-based corrective action programs. The Department developed the final-form rulemaking to provide the regulated community and program staff a straightforward step-by-step outline of when envi-

ronmental covenants are required to be used, how they are created, what they must contain and when they must be submitted to the Department. While there is some overlap with UECA when necessary, the Department did not include those portions of UECA that were clear in UECA and did not pertain to the process for creating and implementing an environmental covenant. These items include enforcement of the environmental covenant and the various parts of UECA outlining the legal effect of creating an environmental covenant.

The contents of the final-form rulemaking are discussed as follows, with special attention to provisions that were amended between the proposed rulemaking and final-form rulemaking.

§ 253.1. Definitions.

For ease of understanding, the definitions from UECA are included in this section. Several definitions not in UECA are included in this section, including "final report," "instrument," "political subdivision," "Remedial Action Completion Report," "Storage Tank Act" and "UECA." Several of these definitions were amended in minor ways in response to comments.

Several definitions were added to the final-form rulemaking at the suggestion of commentators. These definitions include "eminent domain proceeding" and "regulated substance."

§ 253.2. Contents and form of environmental covenant.

This section describes what must be included in an environmental covenant and what may be included as appropriate; it follows section 6504 of UECA (relating to contents of environmental covenant). Subsection (c) affirms that the Department may require the permitted information from subsection (b) or other conditions appropriate to the remediation. Subsection (e) makes it clear that the Department's model covenant may be used, although the Department will accept alternative language in the appropriate case. The model covenant is an evolving document drafted with a significant amount of input from the regulated community. Finally, subsection (f) allows for the special situation when an environmental covenant covers commonly owned property in a common interest community.

Most of the revisions to this section of the final-form rulemaking were minor points of clarification or consolidation. For example, subsection (d) of the proposed rulemaking addressed limitations on the Department's ability to require conditions for approval; that subsection was deleted and the substance of the subsection added to subsection (c)(1) of the final-form rulemaking. In addition, the final-form rulemaking contains language in subsection (c)(6) tracking the language in UECA making the Department's decision to approve or disapprove an environmental covenant appealable to the Environmental Hearing Board.

The final-form rulemaking adds subsection (a)(8). Paragraph (8) will be a mandatory component of all environmental covenants. Paragraph (8) addresses concerns expressed by the Department of Transportation concerning termination of environmental covenants when property is taken for use as a highway right-of-way in an eminent domain proceeding.

§ 253.3. Notice of environmental covenant.

This section describes who is to receive notice of the environmental covenant and when. It tracks section 6507 of UECA (relating to notice). Subsection (c) allows for waivers of required notice and establishes a procedure for persons interested in receiving a waiver.

Several changes were made to this section in the final-form rulemaking to address comments. First, the time for provision of file-stamped copies of the covenant to parties is extended to 90 days from filing (an increase from 60 days) and language allowing the Department to extend that time frame was added. Second, subsection (a)(4) was added to allow the board of a common interest community to receive the required copy on behalf of the community. Sites cleaned up to the nonresidential Statewide health standard and requiring an activity and use limitation to demonstrate attainment or maintenance of the standard will be required to comply with UECA.

§ 253.4. Requirements for and waiver of environmental covenants.

This section outlines when environmental covenants are required as well as the procedures for the Department's waiver of the requirement for an environmental covenant. The basic requirement for use of an environmental covenant is in section 6517(a) of UECA (relating to relationship to other laws).

Several changes were made to this section in response to comments. As discussed in more detail regarding § 253.5 (relating to submission of environmental covenants and related information), the final-form rulemaking does not require submission of draft environmental covenants and only requires submission of requests for waivers at the time the remediator submits the Final Report or Remedial Action Completion Report to the Department. As a result, all references to submission of draft environmental covenants or submission of environmental covenants at earlier stages in the process have been eliminated from this section. This includes deletion of references to the various Act 2 standards and deletion of proposed subsection (d). Subsection (c) of the final-form rulemaking establishes requirements relating to the process for and timing of submission of requests for Department waiver of the requirement to use environmental covenants in cleanups under Chapters 245 and 250 (relating to administration of the storage tank and spill prevention program; and administration of land recycling program).

Subsection (b) clarifies that when activity and use limitations are to be used in special industrial area cleanups under section 305 of Act 2 (35 P. S. § 6026.305), they are to be in the form of an environmental covenant.

Subsection (d) relates to section 6517(a)(3) of UECA. Section 6517(a)(3) of UECA establishes special provisions regarding the use of environmental covenants at Federally-owned property. Subsection (e) makes it clear that the requirement to use environmental covenants at these properties is not waived by UECA but delayed until the property is transferred out of Federal government control. Until the time of transfer, the activity and use limitations must be memorialized in an installation's master plan or similar remedial documentation. It also requires notification of the Department in the event of transfer.

§ 253.5. Submission of environmental covenants and related information.

This is an important section because it addresses ambiguities in UECA in terms of establishing procedural interfaces between UECA and existing remedial action programs in this Commonwealth. This section establishes the time frames for submission of draft and final signed environmental covenants to the Department. This section

was also one of the most commented upon in the proposed rulemaking and several major changes have been made to this section.

Several commentators raised concerns regarding the deadlines for submission of draft and final signed environmental covenants. As a result, the submission process has been overhauled in the final-form rulemaking. The first major change to this section relates to submission of draft environmental covenants prior to the Final Report/Remedial Action Completion Report stage of the remediation process. The final-form rulemaking completely eliminates the requirement to submit draft environmental covenants to the Department for review. Instead, the final-form rulemaking requires the remediator to provide the environmental covenant no later than 30 days after receipt from the Department of written approval for the Final Report or Remedial Action Completion Report. The Department believes that most if not all issues regarding the activity and use limitations required to attain or maintain an Act 2 standard will be worked out as part of the review and approval of the reports. The environmental covenant will reflect the requirements in those reports and should be relatively straightforward to prepare and submit.

As a result of this change, references to various Act 2 standards in proposed subsections (a) and (b) have been deleted, along with language requiring submission of draft reports. Proposed subsection (b) was deleted and proposed subsection (c) was amended and renumbered as subsection (b). That subsection addresses submission to the Department of information regarding persons who shall be given notice of the environmental covenant (§ 253.3 (relating to notice of environmental covenant)). It is also necessary so the Department can determine if subordination should be required (§ 253.8 (relating to subordination)) as holders of prior interests are not subject to the environmental covenant under UECA unless they agree to subordinate their interest to the covenant (see section 6503(d) of UECA (relating to nature of rights; subordination of interests)). Given the changes to the submission process, proposed subsection (d) was no longer necessary and was deleted. Finally, proposed subsection (e) addressed recording the signed covenant and the time frame for providing the Department with proof of recordation. This subsection is retained in the final-form rulemaking and renumbered as subsection (c). In response to concerns raised by commentators, the final-form rulemaking increases the time available to provide the Department with proof of recordation from 60 to 90 days after approval of the covenant by the Department and allows for the Department to agree to extensions if needed.

§ 253.6. Requirements for county recorder of deeds.

The proposed section contained two provisions regarding the recordation of environmental covenants with a county recorder of deeds. Subsection (a) required the recorder of deeds to provide proof of recordation in a timely manner and subsection (b) made it clear that environmental covenants, as negative restrictions, generally have no or negative value and so should not be routinely subject to the Pennsylvania Realty Transfer Tax. In response to comments, the final-form rulemaking deletes subsection (b) as issues regarding the Pennsylvania Realty Transfer Tax are better addressed elsewhere.

§ 253.7. Fees.

This section of the final-form rulemaking establishes fees for the review of environmental covenants by the Department. This section also contains an exemption to pay a fee for environmental covenants submitted to convert a prior instrument where the person submitting the environmental covenant did not cause or contribute to the contamination described in the environmental covenant. Finally, subsection (c) requires the Department to review the fee at least every 3 years and report to the Board as to whether the fee continues to meet the Department's cost of administering the program.

Only one significant change was made to this section. The amount of the fee was increased from $350 per environmental covenant submitted to $500 per covenant. Upon review of the program and associated costs, the Department realized that the higher fee would be necessary to cover the costs of administering the program established by UECA.

§ 253.8. Subordination.

This section tracks UECA language regarding subordination and is included for reference. Several commentators raised issues concerning the Department's exercise of discretion to require subordination. As a result, subsection (b) of the final-form rulemaking requires the Department to provide a basis for requiring subordination should the Department reach that conclusion. The Department does not anticipate frequent requests for subordination and if the need should arise, will work together with the parties involved to try to ensure an amicable resolution to the issue.

Subsection (c) of the final-form rulemaking was amended to delete the requirement that proof of recordation of a subordination agreement be provided to the Department, to allow for extension of time to provide the subordination agreement and to address situations involving common interest communities.

§ 253.9. Duration.

In two situations, an environmental covenant can be terminated through action outside of the specific terms of the covenant: eminent domain; and judicial termination. In both instances, a Department determination is required for the termination to occur. This section establishes a process for requesting Department action in an appropriate proceeding. Minor editorial changes were made to this section of the final-form rulemaking.

§ 253.10. Conversion and waiver of conversion.

For persons researching activity and use limitations at properties in this Commonwealth to have a clear understanding of the complete universe of properties with activity and use limitations, section 6517(b) of UECA requires an instrument that establishes activity and use limitations under Act 2 or the Tank Act created prior to February 2008 to be converted to an environmental covenant by February 2013. By converting these prior instruments to covenants and including them in the Department's registry, the limitations will have the legal protection afforded by UECA and be readily available and transparent to property developers with a minimum of effort on their part. The term "instrument" is defined in § 253.1 (relating to definitions) as a "deed restriction, restrictive covenant or other similar document that imposes activity or use limitations filed with a recorder of deeds."

The Department is conducting an internal review to identify all sites and anticipates targeted outreach to owners of property identified as being subject to a prior "instrument."

The final-form rulemaking establishes requirements regarding this conversion requirement and provides a temporal waiver for a certain class of prior instruments. Subsection (b) requires the current property owner to convert the prior instrument and states that the Department will not require, but may allow, the new environmental covenant to contain activity and use limitations not contained in either the existing instrument or a "Department-approved postremediation care plan."

Subsection (c) of the final-form rulemaking contains the conditional temporal waiver previously noted. This subsection waives the requirement to convert the prior "instrument" until the current property owner transfers the property, so long as the owner requests the waiver and provides the Department with proof that the prior instrument was recorded with the recorder of deeds in the county where the property is located. Based on comments, subsection (d) of the proposed rulemaking was judged to be duplicative of subsection (c) and therefore subsection (d) is deleted in the final-form rulemaking.

Finally, subsection (d) notes that the Department may waive the requirement to convert a prior instrument outright, and that such a waiver will be issued in writing.

§ 253.11. Assignment of interest.

Section 6510 of UECA (relating to amendment or termination by consent) requires the Department to consent to several categories of changes regarding the holder, or grantor, of the environmental covenant. This section outlines the requirements applicable to a request for consent.

F. *Benefits, Costs and Compliance Benefits*

The final-form rulemaking will assist the Department and the regulated community in implementing UECA and serve the dual purpose of enhancing the protection of human health and the environment, while promoting the safe reuse of contaminated brownfields sites. Brownfield redevelopment in this Commonwealth has been successful largely because regulators, property owners and communities have accepted that contamination can be left in place with the proper activity and use limitations to allow redevelopment—without presenting significant risk to human health or the environment.

The final-form rulemaking provides better legal tools to ensure that future generations understand the reasons why activity and use limitations have been imposed and why certain long-term maintenance/monitoring might be needed. Regulators and the community can have confidence that environmental activity and use limitations will be enforced in perpetuity. The final-form rulemaking allows all parties to have a clear understanding of how UECA will be implemented going forward.

Compliance Costs

The Department does not anticipate any increased costs to the regulated community as a result of the final-form rulemaking, except for the fee in § 253.7 (relating to fees). The activity and use limitations are necessary to demonstrate attainment or maintenance of an Act 2 standard; the final-form rulemaking does not expand the use of these limitations. The obligation to use environmental covenants to implement those activity and use limitations is established by UECA and not these regulations.

Based on historical data developed in administering the UECA program since February 2008 (the effective date of UECA), the Department projects that approximately 165 environmental covenants will be submitted for review and approval annually. Therefore, the fees collected under the regulation are projected to be around $82,500 per year.

Compliance Assistance Plan

It is not anticipated that the Commonwealth will provide sources of financial assistance to aid in compliance with this final-form rulemaking. As noted in section E, the Department will target outreach to property owners whose properties are identified as being subject to the conversion requirement in section 6517(b) of UECA. Finally, the Department developed a model environmental covenant and will develop policies, guidance and factsheets as needed to explain particular aspects of how implementation of UECA fits in with other parts of the remediation process.

Paperwork Requirements

The final-form rulemaking does not establish new paperwork requirements. Submission of the various documents is required by UECA. The final-form rulemaking merely formalizes the manner and timing of those submissions along with the Department's responses.

G. *Pollution Prevention*

This final-form rulemaking relates to pollution that has already been released into the environment. The use of environmental covenants should ensure long-term stewardship of activity and use limitations, however, helping to ensure that existing problems do not get worse through inattention or further spread of pollution through the environment. The final-form rulemaking does not directly promote a multimedia pollution prevention approach.

H. *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. Section 253.7(c) obligates the Department to evaluate whether or not the current fee covers the expenses associated with the program and report to the Board the results of that evaluation at least every 3 years.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 24, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 1379, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 20, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 21, 2010, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 1379.

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

K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code, are amended by adding §§ 253.1—253.11 to read as set forth in Annex A.

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

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

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

(e) This order shall take effect immediately.

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. 6487 (November 6, 2010).)

Fiscal Note: Fiscal Note 7-454 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VI. GENERAL HEALTH AND SAFETY

CHAPTER 253. ADMINISTRATION OF THE UNIFORM ENVIRONMENTAL COVENANTS ACT

Sec.

§ 253.1. Definitions.

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

Activity and use limitations—

(i) Restrictions or obligations with respect to real property created under this chapter.

(ii) The term includes engineering controls and institutional controls.

Agency—Any of the following:

(i) The Department.

(ii) A Federal agency which determines or approves an environmental response project pursuant to which the environmental covenant is created.

Common interest community—A condominium, cooperative or other real property, with respect to which a person, by virtue of ownership of a parcel of real property or of ownership of an interest in real property, is obligated to pay for property taxes, insurance premiums, maintenance or improvement of other real property described in a recorded covenant which creates the common interest community.

Eminent domain proceeding—An acquisition of property by an entity acting with the power of eminent domain, whether by condemnation or in lieu of condemnation.

Engineering controls—

(i) Remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment.

(ii) The term includes slurry walls, liner systems, caps, leachate collection systems and groundwater recovery trenches.

Environmental covenant—A servitude arising under an environmental response project which imposes activity and use limitations under UECA.

Environmental response project—A plan or work performed for environmental remediation of real property conducted under one of the following:

(i) A Federal program governing environmental remediation of real property.

(ii) A Commonwealth program governing environmental remediation of real property.

(iii) Incident to closure of a solid or hazardous waste management unit if the closure is conducted with approval of an agency.

(iv) A Commonwealth voluntary cleanup program authorized by statute.

Final report—A report filed with the Department by a remediator documenting attainment of one or a combination of cleanup standards under the Land Recycling Act under § 250.204, § 250.312 or § 250.411 (relating to final report).

Holder—A person that is the grantee of an environmental covenant as specified in section 6503(a) of UECA (relating to nature of rights; subordination of interests).

Institutional controls—

(i) Measures undertaken to limit or prohibit certain activities which may interfere with the integrity of a remedial action or result in exposure to regulated substances at a site.

(ii) The term includes fencing and restrictions on the future use of the site.

Instrument—A deed restriction, restrictive covenant or other similar document that imposes activity or use limitations filed with a recorder of deeds.

Land Recycling Act—The Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Person—

(i) Any individual, corporation, partnership, association or other entity recognized by law as the subject of rights, duties or obligations.

(ii) The term includes the United States of America, a Federal agency, the Commonwealth, an agency or instrumentality of this Commonwealth and a political subdivision.

Political subdivision—Any county, city, borough, township, or incorporated town.

Record—Information which is:

(i) Inscribed on a tangible medium or stored in an electronic or other medium.

(ii) Retrievable in perceivable form.

Regulated substance—The term has the same meaning given to it in section 103 of the Land Recycling Act (35 P. S. § 6026.103).

Remedial Action Completion Report—A corrective action report filed with the Department by a remediator documenting attainment of one or a combination of cleanup standards under the Land Recycling Act pursuant to the Storage Tank Act under either § 245.310(b) or § 245.313 (relating to site characterization report; and remedial action completion report).

Storage Tank Act—The Storage Tank and Spill Prevention Act (35 P. S. §§ 6021.101—6021.2104).

UECA—The Uniform Environmental Covenants Act (27 Pa.C.S. §§ 6501—6517).

§ 253.2. Contents and form of environmental covenant.

(a) An environmental covenant must contain the following:

(1) A statement that the instrument is an environmental covenant executed under UECA.

(2) A legally sufficient description of the real property subject to the environmental covenant.

(3) A brief narrative description of the contamination and the remedy.

(4) A description of the activity and use limitations on the real property.

(5) An identification of every holder.

(6) The signatures, with the formalities required for a deed, by the following:

(i) The agency, unless the environmental covenant has been deemed approved under subsection (c)(4).

(ii) Every holder.

(iii) Every owner in fee simple of the real property subject to the environmental covenant, unless waived by the agency.

(7) The name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(8) A clause that the covenant may be amended or terminated as to any portion of the real property subject to the covenant that is acquired for use as highway right of way by the Commonwealth, providing that:

(i) The Department waives the requirements for an environmental covenant and for conversion under section 6517 of UECA (relating to relationship to other laws) to the same extent that the environmental covenant is amended or terminated.

(ii) The Department determines that termination or modification of the environmental covenant will not adversely affect human health or the environment.

(iii) The Department will provide 30-days advance written notice to the current property owner, each holder, and, as practicable, each person that originally signed the environmental covenant or successors in interest to those persons.

(b) An environmental covenant may contain other information, restrictions and requirements agreed to by the persons who signed it, including the following:

(1) The requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for or proposals for any site work affecting the contamination on the property subject to the environmental covenant.

(2) The requirements for periodic reporting describing compliance with the environmental covenant.

(3) The rights of access to the property granted in connection with implementation or enforcement of the environmental covenant.

(4) The restrictions or limitations on amendment or termination of the environmental covenant in addition to those contained in sections 6509 and 6510 of UECA (relating to duration; and amendment or termination by consent).

(5) The rights of the holder in addition to its right to enforce the environmental covenant under section 6511 of UECA (relating to enforcement of environmental covenant).

(6) A detailed narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure and the location and extent of the contamination.

(7) Limitations on the duration of the environmental covenant.

(c) Agency review will be as follows:

(1) Prior to signing an environmental covenant, an agency may review the covenant and provide its conditions for approval, including subordination under § 253.8 (relating to subordination), if the conditions are applicable to the implementation of a remedy (including any postremediation care plan that is part of the remediation).

(2) In addition to other conditions for its approval of an environmental covenant, an agency may require those persons specified by the agency that have interests in the real property to sign the covenant.

(3) Except as set forth in paragraph (4), signature by an agency on an environmental covenant constitutes its approval of the environmental covenant. Disapprovals of an environmental covenant by the Department will be made in writing to the person submitting the environmental covenant and will describe the basis for the disapproval.

(4) Failure of the Department to approve or disapprove an environmental covenant within 90 days of receipt of all information reasonably required by the Department to make a determination shall be deemed an approval of the environmental covenant, unless the Department and the remediator agree to an extension of time.

(5) The date the Department receives an environmental covenant for review and the information reasonably required by the Department to make a determination concerning the approval or disapproval of the environmental covenant, shall be the date of receipt under section 6504(c)(4) of UECA (relating to contents of environmental covenant) and for purposes of this chapter.

(6) The Department's decision to approve or not approve an environmental covenant is appealable to the EHB.

(d) An environmental covenant may be in the form of the Model Covenant posted on the Department's web site or may be in any other form acceptable to the agency.

(e) If the environmental covenant covers commonly owned property in a common interest community, the covenant may be signed by any person authorized by the governing board of the owners association.

§ 253.3. Notice of environmental covenant.

(a) The environmental covenant must indicate to whom copies are to be provided, when those copies are to be provided and by whom the copies are to be provided. A grantor, a holder or any person who signed the environmental covenant may be designated as the individual responsible for distributing copies of the environmental covenant. File-stamped copies shall be provided no later than 90 days after the recording of the environmental covenant by the county recorder of deeds, unless the Department agrees to an extension of time.

(b) Unless waived by the Department in writing, copies of the environmental covenant shall be provided to the following persons:

(1) Each person who signed the environmental covenant.

(2) Each person holding a recorded interest in that portion of the real property subject to the environmental covenant.

(3) Each person in possession of that property.

(4) If the environmental covenant covers commonly owned property in a common interest community, the copies of the environmental covenant may be provided to any person authorized by the governing board of the owners association.

(5) Each political subdivision in which that property is located.

(6) Other persons designated by the agency, based upon the rights or interests that the other persons have in receiving a copy of the environmental covenant.

(c) A person submitting an environmental covenant to an agency may request waiver of the requirement that copies of the environmental covenant be provided. The request must be in writing and include the reasons for the requested waiver.

§ 253.4. Requirements for and waiver of environmental covenants.

(a) Unless waived by the Department, activity and use limitations used to demonstrate or maintain attainment of a remediation standard under the Land Recycling Act or the Storage Tank Act must be in the form of an environmental covenant. An environmental covenant may be used with other types of environmental response projects.

(b) Remediation measures undertaken pursuant to the special industrial area provisions of the Land Recycling Act which include land use restrictions limiting use of the property to the intended purpose shall implement those land use restrictions in the form of an environmental covenant.

(c) For remediations that require an environmental covenant under subsection (a), requests and justifications for waivers from the requirement to develop and record an environmental covenant shall be submitted to the Department in writing no later than at the time of submission of the Remedial Action Completion Report or the Final Report. Any waivers that are granted by the Department will be issued in writing.

(d) An environmental covenant will not be required, but may be used, for property owned by the Federal government before transfer of the property to a non-Federal entity or individual. At least 120 days before the transfer of a property owned by the Federal government, at which engineering or institutional controls are used to demonstrate or maintain attainment of a remediation standard under the Land Recycling Act or the Storage Tank Act, the Department shall be notified of the proposed transfer of the property and be provided with a draft environmental covenant. The requirement for providing notice and a draft environmental covenant to the Department shall be incorporated into an installation's master plan or other similar and appropriate remedial documentation.

§ 253.5. Submission of environmental covenants and related information.

(a) For remediations that require an environmental covenant under § 253.4 (relating to requirements for and waiver of environmental covenants), the remediator shall provide the environmental covenant to the Department no later than 30 days after receipt of written approval from the Department of the Remedial Action Completion Report or the Final Report.

(b) For remediations that require an environmental covenant under § 253.4, the person who submits the environmental covenant to the agency shall provide the agency with the name and current address of each person occupying or otherwise in possession of the real property subject to the environmental covenant and each person owning a recorded interest in that property. If the environmental covenant covers commonly owned property in a common interest community, only the person as is authorized by the governing board of the owners association to receive the covenant needs to be included under this subsection. The information shall be provided no later than when the Remedial Action Completion Report or the Final Report is submitted to the agency.

(c) Within 90 days after the environmental covenant has been approved and signed by the Department, the person who submitted the environmental covenant shall provide the Department with proof of recordation of either the approved environmental covenant or the substitute notice allowed under section 6512(b) of UECA (relating to registry; substitute notice), unless the Department agrees to an extension of time.

§ 253.6. Requirements for county recorder of deeds.

Within 45 days after the filing of an environmental covenant, or the substitute notice allowed under section

6512 of UECA (relating to registry; substitute notice), with a county recorder of deeds, the recorder of deeds shall provide the person who filed the document with a copy of the recorded document which indicates where the recorder has indexed the document.

§ 253.7. Fees.

(a) A nonrefundable fee of $500 shall be submitted to the Department with each environmental covenant appropriately signed by all parties other than the Department.

(b) A fee is not required for environmental covenants submitted under § 253.10 (relating to conversion and waiver of conversion) where the person submitting the environmental covenant did not cause or contribute to the contamination described in the environmental covenant.

(c) At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

§ 253.8. Subordination.

(a) As a condition of approving an environmental covenant, the Department may require that an owner of a prior interest subordinate its interest to the environmental covenant.

(b) If the Department requires subordination of a prior interest to the environmental covenant, it will notify the person submitting the environmental covenant and the owner of the prior interest of this condition in writing and describe the basis for requiring subordination.

(c) A subordination agreement may be contained in the environmental covenant or in a separate record. If contained in a separate record, a copy of the subordination document shall be provided to the Department prior to approval of the environmental covenant, unless the Department agrees to an extension of time. If the environmental covenant covers commonly owned property in a common interest community, the agreement or record may be signed by any person authorized by the governing board of the owners association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of the person's interest but does not itself impose an affirmative obligation on the person with respect to the environmental covenant nor does it affect the person's existing environmental liabilities.

§ 253.9. Duration.

(a) *Duration of covenant.* An environmental covenant is perpetual except as provided under section 6509 of UECA (relating to duration).

(b) *Eminent domain.* When the Department is the agency referenced in section 6509(a)(5) of UECA, notice and request for consent must be made in writing and submitted to the Department at least 30 days prior to commencement of the eminent domain proceeding.

(c) *Judicial termination* or *amendment.* Where the Department is the agency referenced in section 6509(b) of UECA, the notice and request for determination must be made in writing and submitted to the Department at least 90 days prior to commencement of the judicial proceeding.

§ 253.10. Conversion and waiver of conversion.

(a) An instrument created before February 18, 2008, which establishes activity and use limitations to demonstrate attainment or maintenance of one or a combination of cleanup standards under the Land Recycling Act or to demonstrate satisfaction of a corrective action requirement under the Storage Tank Act shall be converted to an environmental covenant by February 18, 2013, unless waived by the Department or as otherwise provided in this section.

(b) The current owner of a property subject to an instrument covered in subsection (a) shall have the responsibility to convert the existing instrument to an environmental covenant in accordance with the requirements of UECA and this chapter. The Department will not require, but may allow, such an environmental covenant to contain information, restrictions or requirements, including activity and use limitations, not contained in the existing instrument or a Department-approved postremediation care plan.

(c) The obligation to convert an instrument covered in subsection (a) shall be waived until the property is transferred to a new owner if the current owner of the property requests the waiver in writing and provides the Department with proof of recordation of the instrument covered by subsection (a).

(d) The Department may waive the requirement to convert an instrument. Waivers that are granted by the Department will be issued in writing.

§ 253.11. Assignment of interest.

When the Department's consent is required for a holder to assign its interest, or for the removal and replacement of a holder, request for the consent must be made in writing and submitted to the Department at least 30 days prior to the assignment, unless waived by the Department.

[Pa.B. Doc. No. 10-2191. Filed for public inspection November 19, 2010, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 160]

Standards to Define Insurers Deemed to be in Hazardous Financial Condition

The Insurance Department (Department) amends Chapter 160 (relating to standards to define insurers deemed to be in hazardous financial condition).

Statutory Authority

The final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department; Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63) regarding the suspension of business; sections 5.1 and 10 of the Health Maintenance Organization Act (40 P. S. §§ 1555.1 and 1560) regarding authority and supervision; and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P. S. §§ 991.2456 and 991.2457) regarding notice of deficiencies and sanctions of fraternal benefit societies.

Purpose

The purpose of this final-form rulemaking is to amend Chapter 160, adopted in 1993, to update and clarify

standards used to identify insurers in hazardous financial condition and specify corrective actions to be taken to minimize the number and impact of insurer insolvencies. It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) entitled "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" (Model Regulation 385) and included in the NAIC's Financial Regulation Standards and Accreditation Program.

This final-form rulemaking is based upon updates made in 2009 to the NAIC model, which was updated to provide timely and effective guidance for financial regulation. Because of the regulation's significance in efforts to prevent insolvencies, the Department expects that the amendments to the NAIC model will be incorporated into the financial regulation standards the Department will meet to maintain its accreditation by the NAIC.

Comments and Response

Notice of proposed rulemaking was published at 40 Pa.B. 2976 (June 5, 2010) with a 30-day comment period. Comments supporting the rulemaking and recommending prompt promulgation were received from The Insurance Federation of Pennsylvania, Inc. during the 30-day comment period. The Independent Regulatory Review Commission (IRRC) reviewed the proposed rulemaking and did not have objections, comments or recommendations.

Affected Parties

Chapter 160 applies to all types of insurers doing or purporting to do business in this Commonwealth, as provided under the scope and definitions of the authorizing statutes.

Fiscal Impact

State government

The final-form rulemaking will strengthen, clarify and update existing regulatory requirements. There will not be material increase in cost to the Department as a result of the final-form rulemaking.

General public

The public will benefit to the extent the final-form rulemaking strengthens financial solvency regulatory requirements for insurers, thereby promoting the ability of the insurance industry to meet obligations under insurance policies and the Department's ability to minimize the number and impact of insurer insolvencies.

Political subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

The strengthened requirements in the final-form rulemaking should not impose additional costs on insurers currently subject to State financial reporting and solvency requirements.

Paperwork

The final-form rulemaking updates and strengthens existing standards and authority used by the Department in financial regulation of insurers and would not impose additional paperwork requirements.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions regarding the final-form rulemaking should be directed to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 25, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2976, to IRRC and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 20, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC, effective October 21, 2010.

Findings

The Insurance Commissioner finds that:

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

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

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 160, are amended by amending §§ 160.1—160.5 to read as set forth at 40 Pa.B. 2976.

(b) The Department shall submit this order and 40 Pa.B. 2976 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Department shall certify this order and 40 Pa.B. 2976 and deposit them with the Legislative Reference Bureau as required by law.

(d) This final-form rulemaking takes effect immediately upon publication in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: 11-243. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 10-2192. Filed for public inspection November 19, 2010, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Audiologists, Speech-Language Pathologists and Teachers of the Hearing Impaired

The Commissioner of Professional and Occupational Affairs (Commissioner) rescinds § 43b.16 and replaces it with § 43b.16a (relating to schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired).

Effective Date

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

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking published at 40 Pa.B. 2263 (May 1, 2010) was followed by a 30-day public comment period during which the Bureau did not receive public comments. The Independent Regulatory Review Commission (IRRC) did not have objections, comments or recommendations to offer on this final-form rulemaking. The Senate Consumer Protection and Professional Licensing Committee (SCP/PLC) did not comment. The House Professional Licensure Committee (HPLC) commented that it would not take formal action "until final regulations are promulgated." The State Board of Examiners in Speech-Language and Hearing (Board) subsequently voted to approve the final-form rulemaking at its July 9, 2010, meeting.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions and reduces the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2010, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2263, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC 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 Commissioner considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 28, 2010, the final-form rulemaking was approved by HPLC. On October 20, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC, effective October 21, 2010.

Sunset Date

The Board continually monitors the effectiveness of its regulations. As a result, a sunset date has not been assigned.

Contact Person

Individuals who need information about the final-form rulemaking should contact Sandra Matter, Board Administrator, State Board of Examiners in Speech-Language and Hearing, P. O. Box 2649, Harrisburg, PA 17105-2649, samatter@state.pa.us.

Findings

The Commissioner finds that:

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

(2) A public comment period was provided as required by law and no comments were received.

(3) The final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 40 Pa.B. 2263.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by deleting § 43b.16 and by adding § 43b.16a to read as set forth at 40 Pa.B. 2263.

(b) The Commissioner shall submit this order and 40 Pa.B. 2263 to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Commissioner shall certify this order and 40 Pa.B. 2263 and deposit them with the Legislative Reference Bureau as required by law.

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

BASIL L. MERENDA,
Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: Fiscal Note 16A-6804 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-2193. Filed for public inspection November 19, 2010, 9:00 a.m.]

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Veterinarians and Veterinary Technicians

The Commissioner of Professional and Occupational Affairs (Commissioner) rescinds § 43b.21 and replaces it with § 43b.21a (relating to schedule of civil penalties—veterinarians and certified veterinary technicians).

Effective Date

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

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

Summary of Comments and Bureau's Response

The Commissioner did not receive comments from the public following publication of proposed rulemaking. The House Professional Licensure Committee (HPLC) submitted comments on June 9, 2010. The HPLC recommended that the sections of the proposed rulemaking be reorganized so that each section remains consistent with the previously stated profession. The State Board of Veterinary Medicine (Board) prefers to organize the regulation according to violation rather than licensee class.

The HPLC requested information on how the Commissioner monitors the civil penalty time periods to ensure compliance with the proposed regulation. Also related to time periods, the HPLC questioned the need for adding a new civil penalty time period of 25 to 30 months and requested an explanation on how the Commissioner determined the amount of a civil penalty for practicing in a lapsed license. Based on the records kept by the Board, the Commissioner is able to monitor the date when a license to practice veterinary medicine has expired. When the licensee applies to renew the license, the Commissioner is able to determine the number of months that have lapsed by counting back from the date of attempted renewal to the date of expiration, as shown by the Board's records. A new civil penalty was added for the time period of 25 to 30 months because licensees who have forgotten to renew generally only realize their licenses are expired at the end of a biennial renewal period. This new 25- to 30-month period will provide a simplified disciplinary process for licensees who have failed to renew for two biennial periods. The additional civil penalty during this 25- to 30-month time period is appropriately the highest civil penalty, in that the biennial renewal period has lapsed, yet it provides the licensees with the opportunity to renew licenses without formal action, saving the Commonwealth's money by reducing unnecessary formal actions.

Finally, the HPLC requested an explanation on why a category of failing to display a current certificate for certified veterinary technicians (CVTs) with civil penalty is not included. Neither the Veterinary Medicine Practice Act (63 P. S. §§ 485.1—485.33) nor the Board's regulations require CVTs to display their certificates; therefore, civil penalty cannot be imposed for failing to display a current certificate. The Board is considering a rulemaking to require CVTs to display their current certificates and will adopt a civil penalty for violating the regulatory provision when it is promulgated.

The Independent Regulatory Review Commission (IRRC) submitted comments on July 7, 2010. IRRC noted the comments made by the HPLC and stated that it would review the responses to the issues raised by the HPLC in its determination of whether the final-form rulemaking is in the public interest.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking would have a positive fiscal impact on the Commonwealth and its political subdivisions and reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

Professional licensure statutes require each board and commission to be self-supporting; therefore, boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2010, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2423 (May 8, 2010), to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC 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 Commissioner considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 28, 2010, the final-form rulemaking was approved by HPLC. On October 20, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 21, 2010, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

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

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

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Commissioner, acting under its authorizing statute, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by deleting § 43b.21 and by adding § 43b.21a to read as set forth at 40 Pa.B. 2423.

(b) The Board shall submit this order and 40 Pa.B. 2423 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and 40 Pa.B. 2423 and deposit them with the Legislative Reference Bureau as required by law.

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

BASIL L. MERENDA,
Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: Fiscal Note 16A-51 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-2194. Filed for public inspection November 19, 2010, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 165]

Revisions to the Special Allowance for Supportive Services Requirements; Road to Economic Self-Sufficiency Through Employment and Training (RESET) Program

The Department of Public Welfare (Department) amends Chapter 165 (relating to Road to Economic Self-Sufficiency Through Employment and Training (RESET) Program) under the authority of sections 201(2), 403(b) and 408(c) of the Public Welfare Code (code) (62 P. S. §§ 201(2), 403(b) and 408(c)) and the Federal food stamp regulation in 7 CFR 273.7(d)(4) (relating to work provisions). Notice of proposed rulemaking was published at 40 Pa.B. 2111 (April 24, 2010).

Purpose of Final-Form Rulemaking

The purpose of this final-form rulemaking is to enhance program integrity and effectiveness and to help ensure that funds for special allowances are available to the greatest number of participants with a verified need for supportive services. This final-form rulemaking amends regulations pertaining to special allowances for supportive services, which the Department provides to individuals who apply for and receive cash assistance or Supplemental Nutrition Assistance Program (SNAP) benefits (formerly known as food stamps), or both. These special allowances are limited to those who agree to participate in or who are participating in approved work or work-related activities. In this final-form rulemaking, the Department is amending Chapter 165 and Appendix A (relating to work and work-related special allowances). Appendix A enumerates the types of special allowances for supportive services for which the Department authorizes payment, as well as the rates, frequency and limitations of the allowances.

This final-form rulemaking enables the Department to provide special allowances in a fiscally responsible and cost-effective manner. To maximize scarce resources, this final-form rulemaking amends the maximum amount and frequency for special allowances. By maximizing the Commonwealth's scarce resources, this final-form rulemaking complies with State law and ensures that supportive services are available to the greatest number of participants who verify the need for services.

In Appendix A, special allowances are listed under six general categories: public transportation; private transportation; motor vehicle purchase; motor vehicle insurance; clothing; and work education and training. Each category includes subcategories of special allowances, respective payments and maximum annual and lifetime parameters.

Finally, this final-form rulemaking authorizes restitution for overpayments of supportive services. The Department will not use recoupment to recover a special allowance issued from SNAP funds. The Department may process an overpayment to recover a special allowance to the extent of the misuse of the special allowance in accordance with Department regulations. The overpayment will be pro rata, to the extent the recipient did not use, or did not properly use, the special allowance.

Background

With the enactment of the Deficit Reduction Act of 2005 (Pub. L. No. 109-171), the Temporary Assistance for Needy Families (TANF) program was reauthorized. Under the reauthorized TANF program, the Commonwealth is required to increase the work participation rate (WPR) for families or face financial penalty of up to $36 million on an annual basis. To avoid that financial penalty, the Department intensified its efforts to meet the Federal WPR and instituted new initiatives to ensure that all work-eligible individuals participate in approved work or work-related activities. As these participants enroll in employment and training activities or search for or obtain employment, the demand for special allowances for supportive services increases, as does the strain on the Commonwealth's fiscal resources. In fact, the number of recipients increased from 11,877 recipients in Fiscal Year (FY) 2002-2003 to 75,723 recipients in FY 2009-2010.

Further, under the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234), also known as the 2008 U.S. Farm Bill, section 4108 allows SNAP employment and training funds to support SNAP only participants who participate in other SNAP work-related activities and obtain employment. These funds allow the Department to provide additional support to these recipients.

Affected Individuals and Organizations

This final-form rulemaking affects individuals who receive TANF and General Assistance (GA) cash assistance and who are participating in approved work or work-related activities, as specified on an approved Agreement of Mutual Responsibility (AMR). This final-form rulemaking also affects SNAP only participants who participate in approved work or work-related activities according to the provisions of their approved Employment Development Plan (EDP).

Accomplishments and Benefits

The purpose of this final-form rulemaking is to enhance program integrity and effectiveness and to help ensure that funds for special allowances are available to the greatest number of participants with a verified need for supportive services. This final-form rulemaking benefits individuals who receive TANF and GA cash assistance and who are participating in approved work or work-related activities. This final-form rulemaking also benefits SNAP only recipients who shall participate in approved work or work-related activities according to their approved EDPs. This final-form rulemaking is designed to meet the needs of participants while maintaining fiscal responsibility and accountability. The final-form rulemaking effectively supports individuals receiving cash assistance and SNAP benefits as they move successfully toward achieving economic self-sufficiency.

Fiscal Impact

The Department estimates the net result of the amendments to Chapter 165 will yield a savings of $2.107 million in the first year, with the first full-year savings estimated at $6.322 million.

Changes in the maximum amount for special allowances yield savings estimated at $5.818 million in the first fiscal year. The Department anticipates that savings for the first full fiscal year after implementation at $17.455 million.

Changes that increase the maximum allowances for the purchase of a motor vehicle and mileage reimbursement will cost the Commonwealth $3.711 million in the first fiscal year. Full-year implementation costs the following year are estimated at $11.133 million.

Paperwork Requirements

Verification of the need for special allowances is required prior to authorization. A participant is also required to verify actual expenses. Both a participant and a provider of supportive services may be required to verify the receipt of supportive services and the amount of the actual payment.

Public Comment

Written comments and suggestions were solicited during a 30-day comment period after the publication of the proposed rulemaking. Following publication of the proposed rulemaking, 36 separate commentators submitted comments to the Department. The Department also received comments from the Independent Regulatory Review Commission (IRRC) and Representative Matthew E. Baker.

The Department carefully reviewed and considered each comment and thanks the individuals and organizations that commented on the proposed rulemaking. The Department appreciates the many thoughtful comments that were received. Many of these comments were incorporated into the final-form rulemaking. In addition, the Department met with advocates and consumers in the development of the proposed rulemaking and continued to meet with interested parties following publication of the proposed rulemaking.

Discussion of Comments and Major Changes

Following is a summary of the comments received following publication of the proposed rulemaking and the Department's response to those comments.

General

The Department received 13 comments supporting the proposed rulemaking because it strengthened accountability of the program while utilizing scarce resources to serve the greatest number of people. Several commentators, however, objected to the proposed rulemaking, suggesting that it imposes significant, short-sighted limits on supportive services. They raised concerns that the regulations will deprive TANF and SNAP only recipients of getting the supports they need to work or participate in work-related activities. They expressed concern that recipients may be penalized by losing cash assistance or SNAP benefits and become deprived of the opportunity to achieve self-sufficiency.

Response

The Department appreciates the commentators' support for the amendments to the regulations. Following the 30-day comment period, the Department carefully considered the comments and participated in meetings with stakeholders and legislators.

The Department identified the major concerns in the rulemaking, as follows. The Department attempted to take into account all voices heard in the regulatory debate and continued consulting and meeting with stakeholders, consumers and legislators to help ensure that this final-form rulemaking will strike a fair balance between the competing interests of all parties.

General—Support for the KEYS program

Commentators praised Keystone Education Yields Success (KEYS) as a program that significantly helps individuals continue their postsecondary education. They noted that KEYS is a collaborative program between the Department and the Pennsylvania Commission for Community Colleges, designed to help TANF and SNAP only recipients pursue postsecondary education at one of the 14 community colleges in this Commonwealth.

Response

The Department concurs that KEYS an important program and thanks the commentators for their support.

General—Comments about the PA WORKWEAR initiative

One commentator noted that the clothing allowance adequately reflects the cost of the special allowance. This commentator suggested that the final-form rulemaking provide for administrative funding for the PA WORKWEAR Initiative because of the cost of collecting, distributing and purchasing special allowance items.

Another commentator also highlighted the positive aspects of this initiative, including how it has improved fiscal responsibility. The commentator suggested that PA WORKWEAR can be used as a model for similar initiatives regarding special allowances.

Response

Although the Department is unable to expand funding for the PA WORKWEAR program at this time due to fiscal constraints, the Department concurs that the initia-

tive improves fiscal responsibility. The Department may consider using the PA WORKWEAR program as a model for future initiatives.

Appendix A

IRRC, Representative Baker and several commentators expressed concern about the proposed annual and lifetime limits. The Department carefully considered these concerns and accordingly revised several provisions in the final-form rulemaking. These changes are described more fully as follows.

A. *Comment*

IRRC questioned how the Department took into account availability, costs and the number of recipients needing services within the geographic area in determining the new limits for special allowances. IRRC also asked the Department to provide more detail about how it examined the availability, costs or number of recipients needing services in developing the amendments to Appendix A.

Response

First, the Department formulated the annual and lifetime parameters by reviewing the costs of the program and how those costs were distributed among the types of special allowances. In doing so, the Department considered several factors, such as the average cost of each type of special allowance, the distribution of the total allowance amounts issued annually to individuals in the past, how many recipients received allowances totaling under and over $2,000, the average length of enrollment in employment and training programs, the number of individuals supported by the programs, community and stakeholder support for increases in mileage and motor vehicle purchase amounts and the respective demand for each special allowance. The Department also studied the nature and extent of special allowances in other states.

Second, Federal law limits the activities that count toward meeting state work participation requirements. For example, certain education and training activities are limited to 12 months in a lifetime. This limitation provided the context within which the Department analyzed expenditure patterns for the allowances associated with education and training activities. In analyzing the program, the Department reviewed historical special allowance data, which showed that in a 1-year period, over 97% of participants would not be impacted by the proposal; and that over a 2-year period, a maximum of 92% of individuals who receive special allowances would not be impacted. Departmental data also confirms the short-term nature of most employment and training programs—18 weeks or less. The parameters set for work, education and training special allowances are more than adequate to support not only the benchmark amount of 18 weeks of participation in employment and training programming, but also those individuals who participate for a longer period of time, such as many of those in the KEYS program. With regard to the transportation allowances, the Department's analysis shows that over 99% of participants historically would be supported within the $1,500 annual transportation-related allowance. Based on historical data, the Department concluded that 99.9% of individuals requiring a special allowance for motor vehicle insurance would not be adversely affected by the lifetime limit and 98.5% of individuals requesting an allowance to purchase a motor vehicle would not be adversely affected. Based on the historical data and the impact of the PA WORKWEAR initiative, over 99% of individuals would not be adversely affected by the clothing allowance.

Third, the Department anticipates that the low percentage of adversely affected individuals will be even lower as a result of the Department's additional revisions in the final-form rulemaking.

Finally, a reduction in the overall costs of the special allowance program is likely as the Department continues to strengthen its implementation and to offer appropriate, targeted case-managed supports for individuals on the road to economic self-sufficiency. For example, one of the Department's initiatives, PA WORKWEAR, has substantially reduced the Department's costs for clothing allowances. The Department anticipates additional savings as the Department considers future initiatives.

B. *Comment*

IRRC noted that the Department claimed the proposed rulemaking would assist in providing services to the greatest number of recipients given the current budget crisis. Commentators claimed that spending, however, has actually decreased in these programs over the years. In addition, commentators contended that the program utilizes a very small percentage of the available block grant funding. IRRC, therefore, requested more detail about why the changes are necessary to provide services to the greatest number of individuals.

Response

Although the cost of providing certain special allowances has decreased, the Department is offering special allowances to more recipients than ever and doing so in the face of a deeply troubled National and Statewide economic crisis. In FY 2002-2003, the Department served 11,877 recipients. In contrast, in FY 2009-2010, the Department served 75,723 recipients. To continue to provide special allowances to the greatest number of recipients, the Department accordingly revised Appendix A.

For example, the Department developed and implemented fiscally responsible initiatives, such as PA WORKWEAR, to reduce overall special allowance costs. Costs decreased from $56,047,690 in FY 2006-2007 to $31,516,534 in FY 2009-2010. In FY 2006-2007, the Department served 35,830 people. Two years later, in FY 2009-2010, the Department served approximately 75,723 recipients, more than double the number of recipients. This final-form rulemaking will enable the Department to further strengthen and improve the special allowance program. With these new initiatives and prudent budgetary and programmatic strategizing, the Department managed to serve 53% more people with 44% less cost.

C. *Comment*

IRRC noted that commentators contended that the limits will undercut participants' efforts to obtain better employment and that ultimately the proposed amendments would defeat the purpose of the allowances. For example, they questioned the $1,500 annual private transportation limit. Commentators contended that between gas, repair costs and other expenses, it would be virtually impossible for a recipient not to exceed that limit. Commentators expressed concern about the limits on education expenses. Without these supports, commentators indicated that many will be unable to pursue educational programs that exceed more than 1 or 2 years, or to return to receive additional training or education in the future. They surmised that employment will be limited to low-paying jobs. Commentators argued that in the long run, these limits will be more costly to taxpayers because fewer people will be able to permanently become self-sufficient.

Response

The Department agrees with IRRC and other commentators who suggested that in some circumstances individuals might exhaust their annual or lifetime parameters before completing their Department-approved education, training or work program and that denying recipients who are successfully participating in a work-related activity with the support they need to complete the activity is counter to the intended purpose of the program. The Department revised the final-form rulemaking by adding § 165.1(e), which clarifies that this regulation does not affect the Department's existing ability to provide supportive services to individuals through contracted employment and training programs.

This provision clarifies that the Department may provide additional supportive services to the extent required by an approved work or work-related program under a written agreement with the Department. In the context of a written agreement with the Department, such as through the EARN or KEYS program, cash and SNAP only recipients may receive the supportive services they need to complete their approved activity even if they have reached the limits in Appendix A.

The reason for creating this exception in the context of a written agreement with the Department (such as within the Department's contracted work activity programs) is simple: these programs utilize case management. Case management is a highly effective tool in the delivery of services to recipients participating in work or work-related activities. Case management facilitates the coordination and tracking of recipient services, including supportive services, especially for those with multiple employment barriers. Case managers are skilled at assessing, tailoring, managing and monitoring a recipient's supportive services to best fit each recipient's particular needs in a sensible and cost-effective way. In short, case management helps to ensure that recipients are well served and the Department's funds are wisely spent.

Even an individual completing self-initiated education or training (for example, an individual who completed the KEYS program and is continuing on to complete a 4-year degree) may receive additional supportive services if offered through an employment and training provider under a written agreement with the Department. The new provision should allay the commentators' concerns without sacrificing the Department's authority—indeed, its duty—to keep expenditures within reasonable, predictable bounds.

D. *Comment*

IRRC commented that the Department should explain its methods for determining each of the annual and lifetime limits. In addition, IRRC requested that the Department should address concerns of the affected communities regarding the impact of each limit on those seeking to improve their training and education, and to obtain and maintain long-term employment and self-sufficiency. IRRC requested a thorough fiscal analysis and explanation of the impact of and need for the proposed rulemaking.

Response

For ease of administration and to maximize recipient choice, the Department divided special allowances into six categories. These categories enable individuals to select the allowances that will best meet their needs.

In researching the types and limits of special allowances in other states, the Department found that other states have similar categories and parameters for special allowances for supportive services. Washington and Mississippi limit special allowances by category and dollar amount. For example, Washington limits special allowances to a total of $3,000 per participant per program year. Within that annual limit, special allowances are limited by category: $300 for educational expenses per request; $250 for vehicle repairs per program year; mileage reimbursement at the state employee rate; and up to $300 for each professional fee.

Mississippi offers several categories of assistance and specifies totals that are available for these items. For example, transportation-related items are limited up to $300 per month and clothing or books are limited up to $500 per year.

Comparing Pennsylvania to its near neighbors shows that many individual levels of special allowances are substantially lower than Pennsylvania. For example, New Jersey permits a totality of $500 for all work-related expenses and a per diem rate for transportation. West Virginia allows $1,000 in total for motor vehicle insurance and $2,000 for vehicle repair. West Virginia recipients do not receive special allowance for a motor vehicle purchase.

As previously described, in determining the parameters for special allowances for supportive services, the Department considered the Federal limits on activities counting towards the WPR, data on the length of participation in employment and training programs, historical data on special allowance usage and the impact of the regulations on future usage. Historical special allowance data showed that for work, education and training related allowances, in a 1-year period, over 97% of participants would not be impacted by the proposed parameters; and over a 2-year period, a maximum of 92% of individuals who receive special allowances would not impacted. The parameters set for work, education and training special allowances are more than adequate to support not only the benchmark amount of 18 weeks of participation in employment and training programming, but also those individuals who participate for a longer period of time, such as many of those in the KEYS program.

With regard to the transportation allowances, the Department's analysis shows that over 99% of participants historically would be supported within the $1,500 annual transportation-related allowances for public and private transportation. Based on historical data, the Department concluded that 99.9% of individuals requiring a special allowance for motor vehicle insurance would not be adversely affected by the lifetime limit and 99% of individuals requesting an allowance to purchase a motor vehicle would not be adversely affected. Based on the historical data and the impact of the PA WORKWEAR initiative, over 99% of individuals would not be adversely affected by the clothing allowance parameter.

E. *Comment*

One commentator contended that according to the Regulatory Analysis Form, the Department anticipates saving $2.199 million ($1.753 million in State funds) in the first year, with the first full-year savings estimated at $6.599 million ($5.259 million in State funds). The commentator contended that the Department has not provided data to support this assertion and that the Department arrived at this number by simply totaling the special allowances paid in the past that would not be paid in the future due to the imposition of the new and annual lifetime limits.

According to the commentator, this rulemaking will not save as much as the Department anticipates because the Department has not accounted for the number of recipients that may be unable to move off the assistance rolls and achieve self-sufficiency through quality education and training. The commentator asserted the Department will be called upon to continue to pay for public benefits received by these families because their ability to obtain self-sufficient employment will be impaired.

Response

The Department provided data to support the regulations. Both preceding and following the publication of the proposed rulemaking, the Department provided program data to stakeholders, including the commentator. As described in the response to the previous comment, the Department explained how it developed the amendments in Appendix A. Contrary to the opinion of the commentator, the Department derived its numbers in a factual and objective manner, drawing upon current and historic program data including cost, usage, current initiatives like PA WORKWEAR, other state's data and savings. The Department also does not agree with the commentator's statement that the amendments to Appendix A will hinder individuals from moving off assistance. To the contrary, the Department has a robust employment and training program designed to move individuals off assistance and into employment and has achieved a high success rate, even with the current economic downturn, in successfully assisting individuals participating in the TANF program in acquiring the skills and knowledge that they need to successfully move from the cash assistance program to the workplace. As of May 2010, well over 1,500 individuals per month are successfully moving into employment. The regulations are intended to protect the special allowance program from waste, abuse and fraud and assure its integrity while meaningfully supporting individuals with appropriate, targeted work supports.

F. *Comment*

Representative Baker expressed concern with the annual and lifetime limits in the proposed rulemaking. He stated that although the existing regulation limits the value of certain allowances, it does not limit how often allowances needed for education or training may be issued, nor does it limit needed transportation payments. Representative Baker expressed concern that the newly proposed limits may harm individuals seeking to better their lives through education or training, especially as the training required for a family-sustaining job may take more semesters than the proposed supports for education and training expenses would permit.

Representative Baker and another commentator are concerned about the harm these limits may cause recipients in rural areas because of travel needs. Representative Baker noted that the lifetime limits may also harm individuals who have worked their way off welfare but suffered a setback, such as domestic violence, a child's disability or a job loss, requiring them to start again.

Response

As previously discussed, annual and lifetime totals are rationally based on a number of factors, meaningfully provide for the needs of those seeking to successfully move into the workplace and are in line with or more generous than policies in many other states.

Regarding transportation, Departmental data reveals that 97% of the cases that utilized transportation would not be adversely affected. The Department analyzed transportation costs for students traveling from significant distances in rural counties to attend quality training programs and found that the $1,500 annual allowance is adequate. For example, a student enrolled in a two semester computer support specialist course at the Community College of Beaver County would require a maximum of $1,016 in transportation support for mileage between Beaver and Monaca. A participant attending an 8-week nurse aid training course at the Central Pennsylvania Institute of Science and Technology would require a maximum of $470.20 in transportation support for mileage from Moshannon.

With respect to the impact on participants who may be more reliant on automobile travel, the analysis showed that 90% of participants received only one allowance to assist with the purchase of an automobile to support participation in an approved work activity.

The Department also revised the final-form rulemaking to clarify that the Department may provide additional supportive services under a written agreement with the Department, as previously discussed. This revision addresses the concern raised about how to support an individual who is actively engaged in a program to help achieve self-sufficiency through improved quality education or training.

The Department disagrees with the assertion that this rulemaking will hamper individuals from achieving self-sufficiency. The Department's final-form rulemaking will support those individuals in their quest for independence from the public welfare system. The supports available through the special allowance programs are targeted to match the needs that people have as they move from welfare to work.

Finally, in response to Representative Baker's statement that current Departmental regulations do not place effective control on how many times a category of special allowances may be received, except for the transportation allowance of $250, the Department does not agree. The existing regulation contains many provisions limiting how often an individual may receive certain special allowances. For example, motor vehicle purchase and repair is once per job; motor vehicle-related expenses (such as a driver's license and inspection fees) is once per job; moving expenses related to accepting employment is once per 12-month period; and clothing, tools, books and fees is once per job. In addition to the foregoing limitations, the existing regulation restricts the special allowance for public and private transportation to the period up to the date of the first pay after employment.

G. *Comment*

Twenty commentators expressed concern that the limits appear to be arbitrary and unrealistically low. Some commentators stated that annual and lifetime limits are not necessary for program integrity because the Department has existing policies to prevent unnecessary spending. One commentator suggested that if limits are imposed, the limitations should be minimal and that the program should be implemented in a manner that rewards people complying with the regulation. One commentator expressed concern that this regulation would be detrimental to KEYS participant's ability to complete their degree programs.

Response

This rulemaking is intended to achieve fiscal responsibility and accountability while providing appropriate and effective targeted supports for individuals on the road to economic self-sufficiency. Departmental data indicates the average amount per issuance for several of these special

allowances was notably less than the current maximum allowance. For example, the average payment is $384.88 for tools and equipment, $308.93 for books and supplies and $106.18 for fees. Current regulation provides up to $2,000 for tools and equipment per job, $500 for books and supplies as required for education and training and $250 for fees per job.

Departmental data for the KEYS program during FY 2009-2010 demonstrates that of the 11.8% of the participants who graduated from KEYS in that time period, 56% of them did so in less than 6 semesters. The average issuance of $308.93 for books and supplies multiplied by 6 semesters is below the $2,000 permissible for work, education and training-related allowances. For the remaining individuals who exceed 6 semesters, the Department reiterates that it added a provision to the final-form rulemaking clarifying the availability of additional supportive services to the extent required by an approved work, work-related or education program under written agreement with the Department, which would include individuals participating in the KEYS program. These individuals who are in the KEYS program will be able to access appropriately targeted supports to complete their participation and move into the workforce on solid ground.

Finally, this final-form rulemaking provides binding norms to increase enforceability of the current policy that laid the foundation for this final-form rulemaking. The annual and lifetime parameters are just one aspect of this final-form rulemaking; a final-form rulemaking that as a whole, enhances program efficiency and integrity and supports an effective program for individuals seeking to improve their knowledge, skills and opportunities to successfully participate in the workforce. This final-form rulemaking also appropriately provides for the Department's comprehensive effort to strengthen verification requirements and to collect overpaid special allowances.

H. *Comment*

IRRC commented that § 165.46(c) does not comply with the requirements of the Regulatory Review Act (71 P. S. §§ 745.1—745.12). IRRC suggested that this subsection be removed from the final-form rulemaking.

Response

Although the Department has the authority to adjust payment frequency, types and amounts in appendices by means of a notice, the Department deleted subsection (c) in the final-form rulemaking to maximize the public comment process in future adjustments of the codified amounts.

Key sections of the code reveal the General Assembly's intent to bestow upon the Department the authority to create and modify some aspects of eligibility without resorting to rulemaking. The plain language of section 408(c) of the code directs the Department to base the nature and extent of work supports on four factors: (1) availability; (2) costs; (3) number of recipients needing services; and (4) distribution to the greatest number of recipients. To fulfill this statutory mandate, the General Assembly instructed the Department "to take such measures not inconsistent with the purposes of [the statute]." Consistent with section 408(c) of the code are "such measures" as publishing a notice in the *Pennsylvania Bulletin* to modify special allowances as these four factors require.

Section 403(b) of the code and section 432 of the code (62 P. S. § 432) specify the Department has the power and duty to "establish rules, regulations and standards" regarding the nature and extent of eligibility for public assistance. Also, section 201(2) of the code requires the Department to promulgate regulations as well as to "establish and enforce standards and to take such other measures as may be necessary. . . ." Applying general rules of statutory construction, "rules" and "standards" are necessarily distinct from "regulations"—to interpret otherwise would render those words superfluous. See 1 Pa.C.S. § 1922(2) (relating to presumptions in ascertaining legislative intent).

In fact, the *Pennsylvania Code* is replete with examples of the Department's authority to adjust appendices and provisions involving payment frequency and amounts via publication of a notice in the *Pennsylvania Bulletin*. A few of these examples are §§ 181.1, 299.37, 1150.61 and 1187.2.

§ 165.1(a)—Eligibility for special allowances for supportive services

Comment

IRRC noted that commentators claimed this subsection would require exempt volunteers to adhere to an hourly service requirement. IRRC pointed out that section 405.1(b) of the code (62 P. S. § 405.1) does not impose this requirement, but states that an applicant or recipient exempted from RESET may participate in employment and work-related activities. IRRC questioned the Department's statutory authority for subsection (a).

IRRC noted that commentators argued this subsection is not in the public interest and that exempt RESET individuals include those with disabilities and domestic violence victims. IRRC questioned how the Department intends to protect these exempt individuals while maintaining the hourly requirement.

Response

The Department agrees with the concerns expressed by IRRC and the commentators and amended the language in § 165.1(a) in the final-form rulemaking.

§ 165.44—Verification for special allowances for supportive services

A. *Comment*

IRRC noted that commentators expressed concern with the deletion of the phrase "only when it is not readily apparent" in subsection (a)(2). IRRC challenged the Department to explain the need for verification for authorization of every expense. IRRC questioned whether the need for transportation expenses would be readily apparent based on the address of the recipient and the job site or school. IRRC suggested that the Department provide examples of acceptable and readily accessible means of verification.

Response

Because what is readily apparent may be a matter of subjective opinion, the Department declined to restore the deleted text. For a fair, even-handed approach, individuals in varying scenarios shall verify the need for a special allowance. With this uniform approach, caseworkers need not risk making an erroneous call on what facts do or do not require supportive documentation. That said, the Department is confident that for arguably readily apparent facts, verification will not be difficult to obtain. With the availability of fast, reliable resources like the internet and caseworker assistance when necessary, verification of arguably readily apparent facts is often a few questions or keystrokes away. Verification of the need for a transportation allowance might occur in the context of an

interview between caseworker and recipient. The caseworker would document the facts gathered during the interview. Verification of the distance from home to work may consist of a print off from a simple Mapquest search or the local transit provider's web site, which the caseworker would place in the recipient's file. Caseworkers may assist those without access to such fast, reliable resources as the Internet.

Finally, the Department agrees that individuals should not be required to provide verification from employers, school officials, training and social services providers for facts unknown to them. For example, a new employer is likely ignorant of an individual's personal transportation circumstances, so the Department would not look to the employer as the source of that verification. The list of sources for verification is not exhaustive in this section. Verification may involve caseworker inquiry and assistance.

B. *Comment*

IRRC raised a concern with respect to verification of service in subsection (b)(1)(i). IRRC questioned the need for subsection (b)(1)(i). Additionally, IRRC asked under what circumstances the Department would require verification from both the participant and the provider.

Response

If unreliable or inadequate verification is provided, the Department may require additional verification from the recipient or provider. The need to provide verification from both the participant and provider arises in the unusual circumstance where there is a reason to question the validity of verification provided by only one of these sources. The purpose of subsection (b)(1)(i) is to prevent fraud involving the special allowances through the provider or recipient, or both. Verification from both the provider and participant is not expected to be routinely requested. It might be requested when, for example, the County Assistance Office (CAO) has reason to believe verification provided by one source may be forged. For example, if the caseworker suspects or receives a tip that a car dealer or repair shop engaged in deceptive business practices, the caseworker might seek verification that the recipient actually received exactly the specific car or repair the special allowance paid for. If the caseworker suspects that a car purchase might be a sham transaction for the dealer and recipient's mutual benefit, the caseworker might seek documentation from both to prevent the apparent collusion. Finally, for incomplete, ambiguous or otherwise inadequate documentation, the caseworker might ask the supportive service provider to supplement the recipient's information.

C. *Comment*

IRRC commented that subsection (b)(2) sets forth when the Department will process supportive services overpayment referrals. IRRC noted that commentators expressed concern that this language would always result in overpayment referrals for the full amount, even though participants may have completed the majority of their required hours. IRRC questioned whether the amount that a participant will be required to repay will be pro-rated based on the hours.

Response

The Department agrees with IRRC and other commentators that an overpayment referral for the entire special allowance is not appropriate in all circumstances. For example, for individuals who have completed most or a portion of a work or work-related activity, the Department agrees that a partial, prorated overpayment referral—to the extent of the misuse of the special allowance—is the fairest approach. To clarify this sensible approach to special allowance overpayments, the Department added the phrase "the extent of the misuse" to subsection (b)(2).

One example is when an individual receives books to attend vocational education then stops attending half-way through the semester because the individual lost interest in the program. In this circumstance, the Department may process an overpayment for half the cost of the books. In another example, an individual might receive a monthly bus pass to attend a training program, but drops out after 1 week, thereby not fulfilling the requirement of the AMR or EDP. The Department may process an overpayment for the cost of the unused portion of the bus pass. On the other hand, if the individual stopped attending due to illness, hospitalization, homelessness or similar circumstance, the Department would not process an overpayment.

D. *Comment*

IRRC and a commentator noted that there is not a subparagraph (vii) and subparagraph (viii), therefore, should be renumbered.

Response

The Department agrees with IRRC and the commentator and renumbered this subparagraph.

§ 165.46—Types of special allowances for supportive services

Comment

IRRC and one commentator stated that the proposed regulation eliminates special allowances for moving costs. They also noted that section 432.20 of the code (62 P. S. § 432.20) specifically allows for assistance for moving costs "to ensure gainful employment." IRRC asked the Department to examine the economic impact of this deletion and explain the need for this change.

Response

The Department revised the final-form rulemaking by adding moving and relocation expenses as a special allowance. Under section 432.20 of the code, the special allowance may be authorized as required to accept gainful, permanent employment, not more than once in a 12-month period, and for the actual cost up to $200.

Regulatory Review Act

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on August 25, 2010, the Department submitted a copy of the final-form rulemaking, to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act, on October 6, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and approved the final-form rulemaking.

Findings

The Department finds that:

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

(b) The adoption of this final-form rulemaking in the manner provided by this preamble is necessary and appropriate for the administration and enforcement of the code.

Order

The Department, acting under sections 201(2), 403(b) and 408(c) of the code and 7 CFR 273.7(d)(4), orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 165, are amended by amending §§ 165.2, 165.41—165.43, 165.45 and 165.91 to read as set forth at 40 Pa.B. 2111 and by amending §§ 165.1, 165.44, 165.46 and Appendix A to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order, 40 Pa.B. 2111 and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this order, 40 Pa.B. 2111 and Annex A with the Legislative Reference Bureau as required by law.

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

HARRIET DICHTER,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6226 (October 23, 2010).)

Fiscal Note: 14-518. No fiscal impact; (8) recommends adoption.

Enactment of this regulation is expected to save $1.679 million in state funds.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 165. ROAD TO ECONOMIC SELF-SUFFICIENCY THROUGH EMPLOYMENT AND TRAINING (RESET) PROGRAM

GENERAL RESET PROVISIONS

§ 165.1. General.

(a) A recipient who is not exempt shall participate in and comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP, unless the recipient establishes good cause. An exempt individual may volunteer to participate in an approved work or work-related activity. The Department will inform an applicant and recipient of the rights, responsibilities and services and benefits available to RESET participants. The Department or its agent will assess the recipient's ability to meet RESET participation requirements after consultation with the recipient.

(b) The Department will provide RESET participants with case management and special allowances for supportive services as required to help them become self-sufficient. The Department will authorize special allowances for supportive services for the least costly item or service which is available and practical considering the location and hours of scheduled employment or training, and the location of the participant's residence in relation to the provider of the item or service. In addition, the Department will provide participants with or refer them to work or work-related activities designed to break the cycle of welfare dependency. To the extent it deems possible, the Department will identify and promote resources in the public and private sectors that may assist participants to prepare for and obtain employment they may realistically be expected to obtain.

(c) Nothing in this chapter shall be interpreted as requiring the Department to develop or to offer or to continue to offer employment, education, training, work-related activities or work experience programs.

(d) This chapter applies to recipients of TANF and GA cash assistance. Sections 165.41—165.46 (relating to special allowances for supportive services) also apply to SNAP only participants defined in § 165.2 (relating to definitions). For SNAP only participants, a special allowance for supportive services may be authorized as determined by the Department only up to the employment start date, with the following exception. SNAP only participants who obtain employment after participating in a SNAP work-related activity may receive special allowances for supportive services not to exceed the types and time frames permitted by Federal law.

(e) The Department may provide for additional supportive services to the extent required by an approved work, work-related or educational program under a written agreement with the Department.

SPECIAL ALLOWANCES FOR SUPPORTIVE SERVICES

§ 165.44. Verification for special allowances for supportive services.

(a) *Verification needed to authorize special allowances for supportive services.*

(1) Before authorizing the special allowance for supportive services, the Department will determine the following:

(i) Whether the supportive service requested is required to enable the participant to engage in an approved work or work-related activity.

(ii) The expected charge for the service or item requested.

(iii) The date the service or item is needed by the participant.

(iv) The date that payment for the service or item is required under the provider's usual payment policy or practice.

(2) Verification, including collateral contact, that the special allowances for supportive services is required will be provided prior to authorization.

(3) Acceptable verification consists of collateral contacts, written statements or completed Departmental forms, obtained from sources such as employers, prospective employers, school officials, employment and training providers or providers of supportive services. If collateral contacts are used, the information will be documented in the participant's file.

(4) The Department will use collateral contacts whenever necessary to ensure that payment is made in advance of the date that payment is required.

(b) *Verification needed for reoccurring and nonrecurring special allowances for supportive services.*

(1) The participant's eligibility for a special allowance for a supportive service is reviewed monthly, or more often if expenses are likely to change, at each redetermination or recertification, whenever a change in employment or training is reported by the participant or the employment and training provider, and whenever the AMR or EDP is revised.

(i) A participant shall verify the actual costs incurred by the participant for the supportive service and the participant's attendance at the approved work or work-related activity. The Department may require that the participant or provider of the supportive service, or both, verify that the participant received the approved special allowance for supportive services and that the provider received payment for the amount the participant was eligible to receive.

(ii) When verification provided indicates a change in eligibility, payment of the special allowance to the participant shall be reduced, terminated or increased, as appropriate, upon issuance of a confirming notice to the participant, in accordance with § 133.4(c) (relating to procedures).

(2) The Department will process an overpayment referral to recover a special allowance for supportive services to the extent of the misuse in accordance with § 165.91 (relating to restitution) and Chapter 255 (relating to restitution). Circumstances for which a referral may be appropriate include the following:

(i) The participant was ineligible for cash assistance or SNAP only benefits in the month the Department issued a special allowance for supportive services.

(ii) The participant did not use the special allowance for supportive services for its intended purpose.

(iii) The actual cost of the supportive service was less than the estimated cost of the service.

(iv) The participant provided falsified or erroneous documentation to obtain a special allowance for supportive services.

(v) The participant received a reoccurring special allowance for supportive services when the need no longer existed.

(vi) The participant or provider of supportive services, or both, did not provide verification, such as a receipt, that the supportive services requested were obtained using the special allowance payment.

(vii) The participant did not participate in or comply with RESET, including meeting hourly and other work and work-related requirements as specified on the AMR or EDP.

§ 165.46. Types of special allowances for supportive services.

(a) *Transportation and related expenses.* The Department will pay for transportation and related expenses required for an individual to engage in approved work or work-related activities up to the maximum allowance established in Appendix A (relating to work or work-related special allowances). Transportation-related allowances are provided for the least costly type of transportation which is available and practical considering the location and hours of scheduled approved work or work-related activity, the participant's physical condition and the need to transport children to a child care provider. Transportation-related allowances are not provided if the activity is secondary education or an equivalent level of vocational or technical training unless the individual is pregnant or a custodial parent.

(1) *Public transportation.* Public transportation-related allowances are provided for costs incurred for transportation provided by bus, subway, commuter rail, taxi, paratransit or other recognized modes of transportation.

(i) An allowance for public transportation is the actual cost to the participant up to the maximum amount established by the Department in Appendix A (relating to work and work-related special allowances).

(ii) Verification of the need and the cost of transportation is required.

(2) *Private transportation.* Private transportation-related allowances are provided for costs incurred for transportation provided by privately owned vehicles, ride sharing and car or van pools.

(i) An allowance for private transportation provided by a vehicle owned by the participant is the mileage rate established by the Department in Appendix A and the actual cost of parking and highway or bridge tolls up to the maximum amount established by the Department in Appendix A.

(ii) An allowance for transportation provided by a volunteer driver or if the participant is permitted to use another person's vehicle is the mileage rate established by the Department in Appendix A and the actual cost of parking and highway or bridge tolls up to the maximum amount established by the Department in Appendix A.

(iii) An allowance provided for transportation by a car or van pool is the participant's proportionate share of the cost up to the maximum amount established by the Department in Appendix A. If the participant's share is a flat fee, the payment is the actual fee up to the maximum amount established by the Department in Appendix A.

(3) *Motor vehicle purchase or repair.* When there is no other type of practical transportation available or other available transportation is more expensive, a special allowance may be authorized toward the purchase, down payment or repair of a motor vehicle for an individual to participate in an approved work or work-related activity.

(i) The maximum total allowance toward a motor vehicle purchase, down payment and repair is limited to the rate and frequency established by the Department in Appendix A.

(ii) Preexpenditure approval is required.

(4) *Motor vehicle-related expenses.* The cost of a driver's license, State inspection fee, emission control inspection fee, license plates and vehicle registration fee may be authorized for a participant if they are required for participation in an approved work or work-related activity.

(i) Payment is made for actual cost up to the maximum allowance and frequency established by the Department in Appendix A.

(ii) Preexpenditure approval is required.

(5) *Motor vehicle insurance.* The cost of motor vehicle insurance may be authorized if the allowance is required for participation in an approved work or work-related activity.

(i) The allowance is provided only to participants who use their own vehicles.

(ii) Payment is made for actual cost up to the maximum allowance established by the Department in Appendix A.

(iii) Preexpenditure approval is required.

(b) *Other expenses related to approved work and work-related activities.* Special allowances may be authorized for other items related to participation in approved work or work-related activities. Preexpenditure approval is required. The maximum allowances for these items are subject to the rates and frequencies established by the Department in Appendix A.

(1) *Clothing.* The Department may refer a participant to other public or nonprofit sources that provide clothing and grooming items at no cost. If these sources are not available or do not have appropriate clothing or other required items, the Department may authorize a special allowance for supportive services for clothing and grooming items required to participate in an approved work or work-related activity.

(2) *Tools and other equipment.* A special allowance may be authorized for tools and other equipment which an employer, education, employment or training provider requires for participation in an approved work or work-related activity but which are not provided by the employer, education, employment or training provider and are not available under Federal, State or other educational grants.

(3) *Books and supplies.* A special allowance may be authorized for books and supplies that an employer or employment and training provider requires for a participant to participate in an approved work or work-related activity if these items are not provided by the employer or training provider and are not available under Federal, State or other educational grants.

(4) *Fees.* A special allowance for supportive services may be authorized for a fee to take a test such as a high school equivalency test, a test that is a prerequisite for employment or for registration or enrollment fees required for an individual to enter an approved work or work-related activity. Tuition is not construed to be a fee.

(5) *Union dues and professional fees.* If payment of union dues or professional fees is a condition of employment, a special allowance for supportive services may be authorized to participants who receive TANF or GA cash assistance for the initial fee only and for the period up to the date of the participant's first pay. A special allowance for supportive services may not be issued to pay for reoccurring fees, such as license fees, even if they are necessary for the individual to maintain employment.

Appendix A

WORK AND WORK-RELATED SPECIAL ALLOWANCES

Type of Allowance	*Frequency*		*Maximum Allowance*
	TANF or GA	*SNAP Only*	
PUBLIC TRANSPORTATION RELATED ALLOWANCES			—actual cost up to $1,500 annually
Transportation Public —bus —subway —commuter rail —taxi —paratransit	—as required for job interviews, work or work-related activities	—as required for job interviews, work or work-related activities	
	—for employment, may be authorized for the period up to the date of the first pay	—for employment, may be authorized for the period up to the start date	
PRIVATE TRANSPORTATION RELATED ALLOWANCES			—actual cost up to $1,500 annually, except for moving/relocation costs to accept employment
Transportation Private —privately-owned vehicle —volunteer car and driver	—as required for job interviews, work or work-related activities	—as required for job interviews, work or work-related activities	—mileage reimbursement rate will be set by the Department by notice not to exceed Commonwealth reimbursement rate for actual cost of gasoline, plus the actual cost of parking and highway and bridge tolls
	—for employment, may be authorized for the period up to the date of the first pay	—for employment, may be authorized for the period up to the start date	

Type of Allowance	*Frequency* *TANF or GA*	*SNAP Only*	*Maximum Allowance*
Transportation Car or van pool	—as required for job interviews, work or work-related activities	—as required for job interviews, work or work-related activities	
	—for employment, may be authorized for the period up to the date of the first pay	—for employment, may be authorized for the period up to the start date	
Moving/relocation costs to accept employment	—to accept a verified offer of gainful, permanent employment	—to accept a verified offer of gainful, permanent employment	—actual cost up to $200
	—no more than once in a 12-month period	—no more than once in a 12-month period	
Motor Vehicle Repair	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	
Motor Vehicle-Related Expenses —driver's license —State inspection fee —emission control inspection fee —license plates —vehicle registration fee	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	
MOTOR VEHICLE PURCHASE	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	—actual cost for one vehicle up to $1,500 in a lifetime.
MOTOR VEHICLE INSURANCE	—as required for work or work-related activities	—as required for work-or work-related activities or if required to accept employment	—actual cost up to $1,500 in a lifetime.
CLOTHING	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	—required clothing or actual cost of clothing up to $150 annually
WORK, EDUCATION AND TRAINING RELATED ALLOWANCES			—actual cost up to $2,000 in a lifetime
Tools and Equipment	—as required for work or work-related activities	—as required for work or work-related activities or if required to accept employment	
Books and Supplies	—as required for work or work-related activities	—as required for work or work-related activities	
Fees	—as required for work or work-related activities	—as required for work-or work-related activities or if required to accept employment	
Union Dues/Professional Fees	—may be authorized for the period up to date of first pay	—may be authorized for the period up to the start date	

[Pa.B. Doc. No. 10-2195. Filed for public inspection November 19, 2010, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 433a]

Principal Licensing Amendments

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

Purpose of the Final-Form Rulemaking

This final-form rulemaking amends and updates Chapter 433a to improve its clarity, codify Board policy, eliminate or reduce some of the requirements to obtain a principal license and to reflect amendments to 4 Pa.C.S. Part II (relating to gaming).

Explanation of Amendments to Chapter 433a

Throughout this final-form rulemaking, references to "an intermediary or holding company of an applicant or licensee" were used in place of "principal affiliate." "Principal affiliate" is a defined term that had not been incorporated into the body of the regulations.

In § 433a.1 (relating to definitions), the definition of "officer" has been amended to include individuals who may have an ability to influence or direct matters related to the operations of a licensee.

In § 433a.2 (relating to officers and directors of licensees), a number of amendments have been made to improve the clarity of the existing licensing requirements. References to applicants for licenses have been deleted. While principals of slot machine, manufacturer, manufacturer designee, supplier and management company applicants (entity applicant) will be required to file principal applications as part of the entity application process, the principals of the entity applicant do not have to hold a license as a precondition for an entity applicant to apply for a license. Similar amendments have been made in other sections of Chapter 433a for the same reason.

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

Subsection (d) has been deleted. It is no longer needed because of the amendments to the definition of "officer" in § 433a.1. The waiver provisions in subsections (e) and (g) are also deleted and have been replaced with new subsection (d), formerly subsection (f), which provides an exemption from licensure for outside directors of a public traded corporation. This will eliminate the paperwork required under the waiver request process for these directors who typically do not have significant involvement with the operations of a licensee.

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

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

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

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

New § 433a.4 (relating to interests in licensees held by entities) has been reorganized in the same manner as § 433a.3. Subsection (a) addresses entities acquiring an interest in a slot machine or management company licensee and subsection (b) addresses entities acquiring an interest in other licensees. Subsections (c)—(g) also

mirror § 433a.3(c)—(g). Subsection (h), formerly subsection (f), has been amended to improve its clarity and existing subsection (g) has been deleted because it no longer applies. Existing subsection (h), which is now subsection (j), has been revised to make it consistent with the amendments to § 433a.3(i).

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

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

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

Comment and Response Summary

Notice of proposed rulemaking was published at 40 Pa.B. 434 (January 16, 2010).

During the public comment period, the Board received a letter from International Game Technology thanking the Board for the opportunity to comment and supported the proposed rulemaking. Comments were also received from Washington Trotting Association, Inc. (WTA) and Shuffle Master, Inc. By letter dated March 18, 2010, the Independent Regulatory Review Commission (IRRC) also submitted comments on the proposed rulemaking.

In § 433a.2(e), Shuffle Master suggested that a 30-day requirement for officers and directors of a publicly traded company to file an application is a burdensome time constraint and requests that the subsection be amended to allow officers and directors to perform their duties prior to filing an application. Additionally, Shuffle Master request that the subsection allow for the Board to grant extensions of time to file. IRRC asked the Board to explain why 30 days is reasonable and consider allowing extensions on a case-by-case basis.

In response to Shuffle Master's and IRRC's suggestions, language was added allowing for an extension of time to file the application provided that the officer or director file a written request with the Bureau of Licensing and the extension is granted prior to the expiration of the 30-day filing requirement. Shuffle Master's other concern, allowing officers and directors to perform their duties prior to filing, was addressed in the proposed rulemaking. As proposed, an officer or director of a publicly traded company may begin performing his job duties prior to filing for licensure provided that the application is submitted within 30 days. A change is therefore not needed.

IRRC also asked the Board to explain why 30 days is a reasonable time period for an officer or director to file an application. The Board believes that because the proposed rulemaking allows officers and directors of a publicly traded company to begin their duties upon appointment but prior to applying for licensure, that the time period is reasonable. Therefore, the Board has not expanded the filing requirement beyond 30 days unless a written request is filed and the Bureau of Licensing allows for more time.

In § 433a.4, IRRC asked the Board to provide clarity on how to accomplish divestiture and include a time frame for completion. The Board did not include language on how to accomplish divestiture or the time period for completion as it will depend entirely on the nature of the interest held and the person holding the interest and therefore will be determined on a case-by-case basis. Instead, language was added that allows the Office of Enforcement Counsel to establish the time period for divestiture.

In § 433a.5, IRRC and Shuffle Master requested that this section include a time frame that the institutional investor will be required to file the Institutional Investor Notice of Ownership Form. In response, the Board established a filing deadline of 30 days from the date the institutional investor files its Schedule 13G with the United States Securities Exchange Commission. An extension for more time was not added to this section because the form is one page and contains a check box on whether the institutional investor is still eligible to file a Schedule 13(G) with the United States Securities Exchange Commission and requests disclosure on the percentage of ownership the institutional investor has in a licensee.

In § 433a.6, WTA stated that the amendment is contrary to the Board's stated intention to eliminate or reduce the requirements to obtain a principal license and is too rigid and inflexible. WTA requests that the proposed section be revised to include a more general provision allowing the Board discretion. IRRC requested that the Board explain how the proposed amendments will eliminate or reduce the requirement to obtain a principal license.

The overall purpose of the amendments to Chapter § 433a is to eliminate or reduce the requirements to obtain a principal license and to provide clarity as to whether a person is required to be licensed. With respect to § 433.6, these amendments were added to codify current policy of the Board and to provide greater clarity regarding when a lender must be licensed as a principal. The lenders referenced in subsection (c), which would be required to be licensed, are not banks or lending institutions but are companies that are not in the business of providing debt or equity loans or financing. The Board determined that requiring those lenders that do not provide debt or equity capital in the ordinary course of the lender's business to submit to a background investigation is necessary to protect the integrity of gaming. Subsection (d) was added allowing the lender to provide financing prior to licensure provided that an application had been filed and the lender received authorization from the Bureau of Licensing. The lender may receive authori-

zation once the agency has had an opportunity to review the application and loan documents and to verify revenue sources.

In this section, lenders to management companies that obtain financing for the construction or operation of a slot machine licensee were added to the lender requirements in subsection (c). With the passage of the act of January 7, 2010 (P. L. 1, No. 1) (Act 1), the application period for Category 3 slot machine licensees was reopened. Several of the new applicants have opted to use management companies to oversee aspects of the slot operations including obtaining the financing for the project. With this additional language, lenders to management companies that are obtaining financing for the construction or operation of a slot machine licensee would be treated the same as lenders to principal affiliates of a slot machine licensee. Since a management company oversees all aspects of slot operations, the Board has determined that requiring lenders that are providing the financing to the management company to be licensed as principals is necessary to protect the integrity of gaming.

Additional Revisions

Throughout the final-form rulemaking, minor editorial changes have been made to enhance the clarity of the regulations. Several sections were also amended to the final-form rulemaking to reflect the policy decisions of the Board.

Throughout Chapter 433a, references to "junket enterprise license" have been deleted from the final-form rulemaking. With the passage of Act 1, gaming junket enterprises are now required to obtain a gaming junket enterprise license. The Board, however, has discretion to develop a classification system for the regulation of gaming junket enterprises and the individuals and entities associated with the gaming junket enterprise. The Board determined that the licensing of officers, directors and owners of the gaming junket enterprise, which provides a service to the slot machine licensee, as principals is overly burdensome and is not necessary to protect the integrity of gaming. Instead, officers, directors and owners will now complete applications that more closely parallel the gaming service provider requirements in Chapter 437a (relating to vendor certification and registration).

Throughout this final-form rulemaking, references to "an intermediary or holding company of an applicant or licensee" were used in place of "principal affiliate." "Principal affiliate" is a defined term but had not been incorporated into the body of the regulations. Additionally, in § 433a.1, the language added to the definition of "principal affiliate" in the proposed rulemaking has been deleted. Instead this language was incorporated into the body of the regulations.

In § 433a.3(a)(3), language was added requiring those who receive payment from a slot machine licensee based directly or indirectly on earnings, profits or receipts from table games to apply for a principal license. This language was added in response to the amendments to 4 Pa.C.S. Part II. A management company licensee was added in subsection (a)(4) for consistency with § 433a.4(a)(4).

Additionally, language was added to § 433a.3(a)(5) and (6) and (b)(4) and (5) requiring an individual who is a general partner (GP) of a limited partnership (LP) of licensees and those who have the power or right to control or vote, directly or indirectly, 20% or more of the outstanding voting securities of a licensee to apply for a principal license. GPs of LPs that are intermediaries or holding companies (principal affiliates) of licensees have not previously been required to be licensed as principals because the GPs' interests in LPs is typically less than 1%. Despite the actual ownership interest, GPs characteristically have management control of LPs, carry the liability for the debts and have the right to bind the LPs in contracts. The Board determined that the licensure of an individual who has an interest in or is a GP who controls 20% or more of the outstanding voting securities of a licensee is necessary to protect the integrity of gaming. The "general partner of a limited partnership" language was added to the definition of "principal affiliate" but had not been incorporated in the proposed rulemaking into the licensing requirements in § 433a.3. The incorporation of the language in subsections (a)(5) and (6) and (b)(4) and (5) makes clear that individuals who are the GPs of LPs that are intermediaries or holding companies of a licensee, defined as principal affiliates, are required to be licensed as principals. The numbering in subsection (b) was therefore updated to reflect the addition of paragraphs (4) and (5).

Proposed subsection (b) was amended to mirror the format of subsection (a). Language was added in subsection (c) for consistency with the divestiture language in § 433a.4(c), which was added based on comments received from IRRC.

Subsection (h) was amended to correspond with the section on exemption from licensure for private investment funds, which is found in § 433a.4(h), not subsection (e).

Section 433a.4(a)(3) was amended to add language requiring those entities that receive payment from a slot machine licensee based directly or indirectly on earnings, profits or receipts from table games to apply for a principal license. This language was added in response to the amendments to 4 Pa.C.S. Part II. Language was also added in subsections (a)(5) and (6) and (b)(4) and (5) requiring entities that are the GP of a limited partner to be licensed as principals for the same reasons previously discussed. The numbering in subsection (b) was updated to reflect the addition of paragraphs (4) and (5). The term "individual" was amended to "entity" in subsection (b)(2) as § 433a.4 relates to interests held by entities, not individuals.

Proposed subsection (b) was amended to mirror the format of subsection (a). Language in subsection (c) was added based on comments received from IRRC and is consistent with the language added to § 433a.3(c).

The current regulations require that intermediaries, holding companies and subsidiaries be licensed as principals. Subsidiaries were inadvertently deleted from the proposed rulemaking as subsidiaries do not have an interest or right in a licensee, but are, instead, possessed by a licensee. The language in subsection (i) was added which no longer mandates the licensure of subsidiaries of a licensee but allows the Board discretion as to when a subsidiary would be required to be licensed. The remainder of § 433.4 was therefore renumbered.

A minor editorial change from "license" to "licensee" was made in § 433a.5(a)(1).

In § 433a.7, language was added in subsections (a)(5) and (6) and (b)(4) and (5) requiring trusts that are the GP of an LP to be licensed for the reasons previously discussed. Additionally, "management company" was moved from subsection (b) to subsection (a) for consistency between this section and §§ 433a.3(a) and

433a.4(a). Interests in management companies held by trusts will therefore be treated like interests in management companies held by individuals and other business entities.

In section (d), the proposed rulemaking excludes trusts from the requirements of licensure if the trust owns less than 5% of the voting securities of a publicly traded slot machine licensee or holding company of a slot machine licensee. The proposed rulemaking, however, did not provide for the same exclusion if a trust held a similar interest in a licensed manufacturer, supplier, manufacturer designee or management company. The amendment applies the exclusion to trusts that hold interests in publicly traded licensees and is consistent with the exclusion in §§ 433a.3(f) and 433a.4(f) for individuals and entities that hold similar interests in licensees.

In § 433a.8(c) (relating to principal applications), language was amended to improve clarity.

The amendment to § 433a.9(a) (relating to principal license term and renewal) reflects the statutory change to 4 Pa.C.S. Part II which extended the renewal period for principals from yearly to once every 3 years. Subsection (b) was added because, unlike slot machine licensees, licensed manufacturers and suppliers are subject to an initial 1-year renewal. The manufacturer or supplier license, however, can only be renewed when the principals, including the affiliates, intermediaries, holding companies, officers, directors and owners also apply for renewal and are investigated. After the initial 1-year renewal, the principals will be on a 3-year renewal cycle along with the licensed supplier or manufacturer for which they are a principal. Subsections (b) and (c) were renumbered to reflect the additional renewal language.

Affected Parties

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

Fiscal Impact

Commonwealth

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

Political subdivisions

This final-form rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector

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

General public

This final-form rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

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

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Susan A. 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 January 6, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 434, to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee 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 Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 6, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and approved the final-form rulemaking.

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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

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

(a) The regulations of the Board, 58 Pa. Code Chapter 433a, are amended by amending §§ 433a.1—433a.9 to read as set forth in Annex A.

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

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

GREGORY C. FAJT,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6226 (October 23, 2010).)

Fiscal Note: Fiscal Note 125-108 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 433a. PRINCIPAL LICENSES

§ 433a.1. Definitions.

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

Applicant—A person that has submitted an application to the Board for a slot machine license, manufacturer license, manufacturer designee license, supplier license or management company license.

Director—A director of a corporation, member of an audit committee or any person performing similar functions with respect to an entity, whether incorporated or unincorporated.

Entity—A person, other than an individual.

Indirect ownership interest—An ownership interest in an entity that has a direct ownership interest in an applicant or licensee, or a direct ownership interest in an entity that has an ownership interest in an applicant or licensee through one or more intervening entities.

Individual—A natural person.

Lending institution—A person who has been issued a license to lend money by a state or Federal agency or a person who satisfies the definition of "qualified institutional buyer" under 17 CFR 230.144a (relating to private resales of securities to institutions).

Licensee—A person that has been issued a slot machine license, manufacturer license, manufacturer designee license, supplier license or management company license.

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

Principal affiliate—An intermediary or holding company of an applicant or licensee.

Principal entity—An entity that meets the definition of "principal" in section 1103 of the act (relating to definitions) or is otherwise required to be licensed as a principal and is not an intermediary or holding company of an applicant or licensee.

Private investment fund—An entity that meets the definition of "investment company" under section 3(a)(1) of the Investment Company Act of 1940 (15 U.S.C.A. § 80a-3(a)(1)), but is otherwise exempt from the definition of "investment company" under section 3(c)(7) of the Investment Company Act of 1940.

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

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

Voting security—A security or other interest which entitles the owner to vote for the election of:

(i) A director of a corporation.

(ii) A person performing functions similar to a director with respect to an organization, whether incorporated or unincorporated.

§ 433a.2. Officers and directors of licensees.

(a) Each officer and director of a licensee shall be licensed as a principal.

(b) Each officer and director of a principal affiliate shall be licensed as a principal.

(c) Each officer and director of a subsidiary of a slot machine licensee shall be licensed as a principal.

(d) Notwithstanding subsection (a) or (b), an outside director of a publicly traded corporation, who is neither a member of the audit committee nor chairperson of the board of directors of the publicly traded corporation shall not be required to be licensed as a principal unless the Board determines that the licensure of the individual is necessary to protect the integrity of gaming in this Commonwealth.

(e) Except as provided in subsection (f), an officer or director required to be licensed under this section shall submit a completed Multi Jurisdictional Personal History Disclosure Form and the Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form within 30 days of performing any duties or exercising any powers as an officer or director unless the officer or director files a written request for an extension with the Bureau of Licensing and the extension is granted prior to the expiration of the 30-day filing deadline.

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

§ 433a.3. Interests in licensees held by individuals.

(a) An individual shall apply for and obtain a principal license from the Board prior to possessing any of the following:

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

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

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

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

(5) A general partnership interest in a limited partnership that is a slot machine or management company licensee.

(6) A general partnership interest in a limited partnership that is a principal affiliate of a slot machine or management company licensee.

(b) An individual shall notify the Board and submit a completed application in accordance with § 433a.8 (relating to principal applications) prior to possessing any of the following:

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

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

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

(4) A general partnership interest in a limited partnership that is a licensed manufacturer, licensed supplier or licensed manufacturer designee.

(5) A general partnership interest in a limited partnership that is a principal affiliate of a licensed manufacturer, licensed supplier or licensed manufacturer designee.

(c) An individual who has acquired an interest or right set forth in subsection (b)(1)—(5) prior to being licensed, and whose application is denied or withdrawn, shall divest his interest or right within a period of time established by the Office of Enforcement Counsel.

(d) An individual seeking to acquire a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier or licensed manufacturer designee shall submit the following, at least 30 days prior to acquiring the ownership interest:

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

(2) A completed principal application.

(e) Notwithstanding subsection (d), the Board may require an individual to obtain a principal license prior to acquiring a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier or licensed manufacturer designee.

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

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

(h) Notwithstanding subsections (a) and (b), an individual who indirectly owns less than 5% of the voting securities of a publicly traded corporation through a private investment fund that has been exempted from licensure under § 433a.4(h) (relating to interests in licensees held by entities) will not be required to be licensed as a principal.

(i) Notwithstanding any provision in this section, the Board may require any individual who has any financial interest in a licensee to be licensed as a principal.

§ 433a.4. Interests in licensees held by entities.

(a) An entity shall apply for and obtain a principal license prior to possessing any of the following:

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

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

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

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

(5) A general partnership interest in a limited partnership that is a slot machine or management company licensee.

(6) A general partnership interest in a limited partnership that is a principal affiliate of a slot machine or management company licensee.

(b) An entity shall notify the Board and submit a completed application in accordance with § 433a.8 (relating to principal applications) prior to possessing any of the following:

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

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

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

(4) A general partnership interest in a limited partnership that is a licensed manufacturer, licensed supplier or licensed manufacturer designee.

(5) A general partnership interest in a limited partnership that is a principal affiliate of a licensed manufacturer, licensed supplier or licensed manufacturer designee.

(c) An entity that has acquired an interest or right set forth in subsection (b)(1)—(5) prior to being licensed, and whose application is denied or withdrawn, shall divest its interest or right within a period of time established by the Office of Enforcement Counsel.

(d) An entity seeking to acquire a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier or licensed manufacturer designee shall submit the following, at least 30 days prior to acquiring the ownership interest:

(1) A notification of a change in control of a licensee form.

(2) A completed principal application.

(e) Notwithstanding subsection (d), the Board may require an entity to obtain a principal license prior to acquiring a direct or indirect ownership interest of 20% or greater in a licensed manufacturer, licensed supplier or licensed manufacturer designee.

(f) Notwithstanding subsections (a) and (b), an entity that indirectly owns less than 5% of the voting securities of a publicly traded corporation will not be required to be licensed as a principal.

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

(h) Notwithstanding subsections (a) and (b), a private investment fund and its related management entities will not be required to be licensed as a principal if the following apply:

(1) The private investment fund has no voting rights in the licensee and does not possess any other right or ability to control or to influence the licensee.

(2) At least 20% of the investors in the private investment fund are "institutional investors" as defined in § 401a.3 (relating to definitions).

(3) Each individual who has an indirect ownership or beneficial interest of 5% or greater in the licensee through the private investment fund applies for and obtains a principal license.

(4) Each individual who has the ability to control or influence the management of the private investment fund applies for and obtains a principal license.

(5) The private investment fund agrees to provide the Board with information the Board deems necessary to evaluate the integrity of the private investment fund and its investors, and its compliance with this section. Information provided to the Board will be confidential.

(6) Each individual required to be licensed as a principal in paragraph (4) shall as part of his principal license application sign a notarized statement affirming, at a minimum, the following:

(i) The private investment fund's investment in the applicant or licensee will not violate applicable United States, Commonwealth or international laws and regulations, including anti-money laundering regulations or conventions, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

(ii) To his best knowledge, no investor in the private investment fund:

(A) Holds an interest in the private investment fund in contravention of any applicable United States, Commonwealth or international laws and regulations, including anti-money laundering regulations or conventions, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

(B) Is directly or indirectly affiliated with, a prohibited country, territory, individual or entity on the List of Specially Designated Nationals and Blocked Persons maintained by the United States Treasury Department's Office of Foreign Asset Control.

(C) Is currently charged with or is under indictment for any felony or gambling offense in any jurisdiction.

(D) Has been convicted of a felony when 15 years have not elapsed from the date of expiration of the sentence for the offense.

(i) The Board may require a subsidiary of a licensee to be licensed as a principal.

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

§ 433a.5. Institutional investors.

(a) An institutional investor may file an Institutional Investor Notice of Ownership Form with the Bureau of Licensing in lieu of applying for principal licensure required under this chapter, if:

(1) The institutional investor owns or beneficially owns more than 5% but less than 15% of the outstanding voting securities of a publicly traded corporation that is a principal affiliate of a manufacturer licensee, manufacturer designee licensee, supplier licensee, or management company licensee and has filed and remains eligible to file a statement of beneficial ownership on Schedule 13G with the SEC as a result of the institutional investor's ownership interest in the publicly traded corporation.

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

(b) The institutional investor shall file the Institutional Investor Notice of Ownership Form with the Bureau of Licensing within 30 days of the institutional investor filing its Schedule 13G with the SEC.

§ 433a.6. Lenders and underwriters.

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

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

(c) A lender to a principal affiliate of a slot machine licensee or to a management company that is obtaining financing for the construction or operation of a slot machine licensee shall be required to be licensed as a principal unless the following apply:

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

(2) The loan to the principal affiliate or management company of a slot machine licensee is in the ordinary course of the lender's business.

(3) The lender does not have the ability to control or otherwise influence the affairs of the principal affiliate or management company of a slot machine licensee or the slot machine licensee.

(d) A lender that is required to be licensed as a principal in accordance with subsection (c) may lend to a principal affiliate or to a management company of a slot machine licensee prior to licensure if the lender has filed a completed application in accordance with § 433a.8 (relating to principal applications) and has received lender authorization from the Bureau of Licensing.

(e) A person that acquires a debt instrument issued by a licensed supplier, licensed manufacturer, slot machine licensee or principal affiliate of a slot machine licensee in a secondary market shall not be required to be licensed as a principal if:

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

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

(f) Notwithstanding any provision to the contrary in this section, the Board may require the licensure of any person that holds a debt instrument issued by a licensee or any principal affiliate or subsidiary of a licensee if the Board has reason to believe that the person would not satisfy the character requirements of section 1310(a) of the act (relating to slot machine license application character requirements).

§ 433a.7. Trusts.

(a) A trust or similar business entity shall apply for and obtain a principal license prior to possessing any of the following:

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

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

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

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

(5) A general partnership interest in a limited partnership that is a slot machine or management company licensee.

(6) A general partnership interest in a limited partnership that is a principal affiliate of a slot machine or management company licensee.

(b) A trust or similar business entity shall notify the Board and submit a completed application in accordance with § 433a.8 (relating to principal applications) prior to possessing any of the following:

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

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

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

(4) A general partnership interest in a limited partnership that is a licensed manufacturer, licensed supplier, or licensed manufacturer designee.

(5) A general partnership interest in a limited partnership that is a principal affiliate of a licensed manufacturer, licensed supplier or licensed manufacturer designee.

(c) Each trustee, grantor and beneficiary, including a minor child beneficiary, of a trust required to be licensed as a principal under this section shall be required to be licensed as a principal.

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

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

§ 433a.8. Principal applications.

(a) An individual required to be licensed as a principal, unless otherwise directed by the Board, shall file:

(1) An original and three copies of a completed Multi Jurisdictional Personal History Disclosure Form.

(2) An original and three copies of a completed Principal/Key Employee Form—Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form.

(3) Executed releases requested by the Board, including releases whereby the applicant consents to the release of information that may be requested by the individual pursuant to the Freedom of Information Act (5 U.S.C.A. § 552) to the Board.

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

(b) A principal entity required to be licensed as a principal shall file a completed Principal Entity Form and submit the applicable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(c) A principal affiliate shall apply for a principal license as if the principal affiliate were applying for the slot machine license, manufacturer license, manufacturer designee license, supplier license or management company license.

(d) In addition to the materials required under subsections (a) or (b), an applicant for a principal license shall:

(1) Promptly provide information requested by the Board relating to the principals' 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).

§ 433a.9. Principal license term and renewal.

(a) A principal license or renewal will be valid for 3 years from the date on which the license or renewal is approved by the Board.

(b) Notwithstanding subsection (a), a principal of a manufacturer or supplier shall be subject to an initial annual renewal for each slot machine or table game license held by the manufacturer or supplier. Renewals thereafter will be valid for 3 years from the date of the approval of the renewal of the license by the Board.

(c) A renewal application and renewal fee shall be filed at least 2 months prior to the expiration of the current license.

(d) A principal 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 principal license that the Board has approved or denied the license.

[Pa.B. Doc. No. 10-2196. Filed for public inspection November 19, 2010, 9:00 a.m.]