

RULES AND REGULATIONS

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Restrictions and Exceptions

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends § 5.32 (relating to restrictions/exceptions).

Summary

The final-omitted rulemaking amends § 5.32 by rescinding subsection (a), which is superseded by the act of December 22, 2011 (P. L. 530, No. 113) (Act 113) and the act of July 5, 2012 (P. L. 1007, No. 116), and rescinding subsection (b), which judicial rulings have struck down as unconstitutional.

With regard to subsection (a), Act 113 added section 493(34) of the Liquor Code (47 P. S. § 4-493(34)), regarding noise. Under section 493(34) of the Liquor Code, a licensee may not use, or permit to be used, inside or outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee's property line. As is also made clear, section 493(34) of the Liquor Code supersedes subsection (a). This created the need to rescind subsection (a).

On August 15, 2006, the Third Circuit Court of Appeals struck down section 493(10) of the Liquor Code and § 5.32(b) as facially unconstitutional insofar as they prohibited "lewd" entertainment in an establishment holding a liquor license. *Conchatta Inc. v. Miller*, 458 F.3d 258 (3rd Cir. 2006). In conjunction with a 2005 District Court decision that struck down section 493(10) of the Liquor Code and § 5.32(b) as facially unconstitutional insofar as they prohibited "immoral or improper" entertainment in an establishment holding a liquor license, § 5.32(b) is unconstitutional and unenforceable, and therefore should be rescinded.

Consistent with section 493(34) of the Liquor Code and section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), these amendments may be submitted as a final-omitted rulemaking because the amendment is necessary as a result of a self-executed statute and judicial rulings on the regulation's constitutionality.

Affected Parties

Individuals affected by this final-omitted rulemaking include retail and other licensees who must comply with the Liquor Code and the Board's regulations. Enforcement is the province of the Pennsylvania State Police, Bureau of Liquor Control Enforcement. As the amendment to section 493(34) of the Liquor Code supersedes § 5.32(a) and judicial rulings have struck down § 5.32(b) as unconstitutional, the amendments affirm the statutory change and judicial rulings, respectively.

Paperwork Requirements

The Board does not anticipate that this final-omitted rulemaking will affect the amount of paperwork or administrative costs of the regulated community.

Fiscal Impact

This final-omitted rulemaking is not expected to have fiscal impact since the amendments affirm section 493(34) of the Liquor Code, which explicitly supersedes the Board's noise regulation, and judicial rulings as to the regulation's constitutionality.

Effective Date

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

Contact Person

Further information is available by contacting Justin Blake, Assistant Counsel, or Rodrigo Diaz, Executive Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 11, 2013, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and the Senate Law and Justice Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on November 6, 2013, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 7, 2013, and approved the final-omitted rulemaking.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by amending § 5.32 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) 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 become effective upon publication in the *Pennsylvania Bulletin*.

JOSEPH E. BRION,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 6988 (November 23, 2013).)

Fiscal Note: 54-77. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 40. LIQUOR
PART I. LIQUOR CONTROL BOARD
CHAPTER 5. DUTIES AND RIGHTS OF
LICENSEES
Subchapter C. AMUSEMENT AND
ENTERTAINMENT

§ 5.32. Restrictions/exceptions.

- (a) (Reserved).
- (b) (Reserved).

* * * * *

[Pa.B. Doc. No. 13-2257. Filed for public inspection December 6, 2013, 9:00 a.m.]

Title 58—RECREATION
FISH AND BOAT COMMISSION
[58 PA. CODE CHS. 53, 101 AND 105]
General Provisions and Boating

The Fish and Boat Commission (Commission) amends Chapters 53, 101 and 105 (relating to Commission property; boating accidents; and operational conditions). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments modify and update the Commission’s property and boating regulations.

A. Effective Date

The final-form rulemaking will go into effect on January 1, 2014.

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission’s web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 53.8 (relating to boats) is published under the statutory authority of section 741 of the code (relating to control of property). The amendments to §§ 101.6 and 105.3 (relating to investigation reports by Commission officers; and unacceptable boating practices) and the rescission of § 101.8 are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission’s property and boating regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

(1) Effective January 1, 2007, the Commission established a Regional Opening Day of Trout Season Program which allows the Executive Director, with approval of the Commission, to designate waters in certain regions of this Commonwealth to open for trout fishing beginning the first Saturday after March 28. In 2013, the regional opening day for trout season was March 30 for designated

waters in the 18-county southeastern region while the rest of this Commonwealth opened April 13. Recently, the Commission eliminated its Early Season Trout Stocked Waters Program and moved waters in that program to the Approved Trout Waters Open to Year-Round Fishing Program to allow angling to occur from March 1 through the opening day of trout season and increase recreational angling opportunities on these waters.

Section 53.8 permits the overnight mooring of boats at designated mooring areas from April 1 to November 30. This regulation prohibits trout anglers and others using boats from mooring their boats on Commission property for the early regional opening day of trout season or to take advantage of the year-round fishing designation during winter and early spring.

The Commission amends § 53.8 to allow for mooring of boats on Commission property at the beginning of March to increase fishing and boating opportunities and encourage greater participation in the two regulatory fishing programs. The Commission amends § 53.8 to read as set forth in the proposed rulemaking published at 43 Pa.B. 3238 (June 15, 2013).

(2) In accordance with § 101.6(a), Commission officers conduct an investigation when a recreational boating accident occurs involving loss of life, disappearance, medical treatment given beyond first aid or in other circumstances the Commission deems appropriate. A boating accident investigation report is completed for each boating accident investigated and is submitted by the Bureau of Law Enforcement to the Boating Accident Review Officer within the Bureau of Boating and Outreach.

Written reports are required to be submitted by operators or owners involved in recreational boating accidents when one or more of the following conditions exist: a person dies; a person is injured and requires medical treatment beyond first aid; damage to the vessels and other property totals \$2,000 or more or there is complete loss of a vessel; or a person disappears from the boat under circumstances that indicate death or injury is likely. Owner/operator-submitted accident reports are submitted on Form PFBC 260 directly to the Boating Accident Review Officer and are for statistical purposes only. These reports are for the information of the Commission, maintained as confidential and not releasable to the public.

Section 101.6(b) currently states that Commission personnel will complete a boating accident investigation report without referring to the boating accident report (PFBC 260) submitted by the owner or operator of the boat. However, there are limited occasions when an investigating officer may need to reference information in the operator-submitted form (PFBC 260). These limited references by the officer are meant to assist with the completion of the investigation, not to supplant a step in the investigation process or supplement information gained in the investigative process. The Commission therefore deletes § 101.6(b) to read as set forth in the proposed rulemaking.

(3) The act of November 1, 2012 (P. L. 1716, No. 211) (Act 211) updated the code. In particular, section 5507 of the code (relating to duties of operators involved in boating accidents) was added to be consistent with requirements and penalties for operators involved in motor vehicle accidents in 75 Pa.C.S. (relating to Vehicle Code).

Section 101.8 detailed the duties of operators involved in boating accidents. A violation of this section is a summary of the second degree. Act 211 increased the

grading of the violation to a misdemeanor of the first degree and if a victim of an accident dies the violator commits a felony of the third degree. Since the duties detailed in § 101.8 are now law, and to bring the penalties in the Commission's regulations into conformance, the Commission rescinds § 101.8.

(4) In 2009, the Commission amended its regulations to prohibit passengers from riding outside the normal passenger carrying area of pontoon boats when the boat is travelling at any speed. Tragic boat accidents proved that riding outside of the passenger carrying area on a pontoon boat at any speed was an unsafe practice because the passenger can very easily fall overboard and will most likely be struck by the boat's propeller.

Waterways conservation officers encounter as many, if not more, boats travelling at high speeds with persons, most frequently children, riding on closed bow decking with ornamental railings or railings intended for use during docking, mooring or rafting. These railings are not intended to protect a passenger from falling overboard; however, there were not regulations to prohibit passengers from riding in this area of the boat at high speeds. Although, fortunately, the Commission has not had to investigate accidents of this nature, the Commission intends to take a proactive approach to prohibiting this activity before a tragedy occurs. In an effort to simplify and clarify unacceptable boating practices, the Commission amends § 105.3 to prohibit persons from riding outside the passenger carrying area of motorboats and to define this area for motorboats and pontoon boats. The Commission amends this section to read as set forth in the proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose new costs on the private sector or the general public.

H. Public Involvement

The proposed rulemaking was published at 43 Pa.B. 3238. The Commission did not receive public comments.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and public comments were not received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 53, 101 and 105, are amended by deleting § 101.8 and by amending §§ 53.8, 101.6 and 105.3 to read as set forth at 43 Pa. B. 3238.

(b) The Executive Director will submit this order and 43 Pa.B. 3238 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 43 Pa.B. 3238 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2014.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-242 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 13-2258. Filed for public inspection December 6, 2013, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Seasons, Sizes and Creel Limits

The Fish and Boat Commission (Commission) amends Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). This final-form rulemaking modifies and updates the Commission's fishing regulations.

A. Effective Date

This final-form rulemaking will go into effect on January 1, 2014.

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of change.

E. Summary of Change

In 2007, the Atlantic States Marine Fisheries Commission's Shad and River Herring Technical Committee and American Shad Stock Assessment Subcommittee developed a coastwide stock assessment that indicated that adult American shad stocks in the Delaware River have been declining since 1994. In response, in January 2010, the Commission reduced the daily creel limit of American shad from six to three fish in cooperation and coordination with the other boundary states (New Jersey, New York and Delaware).

The freshwater and marine bureaus of the New Jersey Division of Fish and Wildlife have jurisdiction over different parts of the river. The Bureau of Freshwater Fisheries has jurisdiction over the waters of the Delaware River upstream of the Commodore Barry Bridge. The Bureau of Marine Fisheries has jurisdiction over waters

downstream of this bridge. The Bureau of Freshwater Fisheries adopted the three fish limit in 2010. Although the Bureau of Marine Fisheries also had been working on a three fish creel limit for 2010, marine regulations in New Jersey are approved by both the New Jersey Marine Council and the New Jersey Department of Environmental Protection. This prolongs the process for regulatory changes in the marine waters of New Jersey.

To be consistent with New Jersey, the Commission adopted the three fish limit for the Delaware River from the New York/Pennsylvania state line downstream to the Commodore Barry Bridge in 2010. The creel limit remained at six fish in the 2.9-mile section of the river between the bridge and the Pennsylvania/Delaware state line. When the three fish limit was approved by the Commission, the Commission acknowledged that the daily limit would remain at six fish in this section until the New Jersey Marine Council effectuated a change to three fish. The Commission indicated that it would then seek public comment on an amendment that would reduce the creel limit of the lower section to three fish.

In December 2012, the New Jersey Marine Council and the New Jersey Department of Environmental Protection acted to reduce the creel limit of American shad in the marine waters of New Jersey (including the portion of the Delaware River downstream of the Commodore Barry Bridge) from six to three fish. To coordinate the Commonwealth's regulation with New Jersey, the Commission has extended the three fish limit to the entire river, including the 2.9-mile section from the Commodore Barry Bridge downstream to the Pennsylvania/Delaware state line. The Commission has amended § 61.2 to read as set forth in the proposed rulemaking published at 43 Pa.B. 3237 (June 15, 2013).

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Comments

The proposed rulemaking was published at 43 Pa.B. 3237. The Commission received one public comment supporting the change. Copies of the public comments were provided to the Commissioners.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendment adopted by this order 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided, and all public comments received were considered.
- (3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 61, are amended by amending § 61.2 to read as set forth at 43 Pa.B. 3237.

(b) The Executive Director will submit this order and 43 Pa.B. 3237 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 43 Pa.B. 3237 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2014.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-243 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-2259. Filed for public inspection December 6, 2013, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 75]
Fishing; Endangered Species

The Fish and Boat Commission (Commission) amends Chapter 75 (relating to endangered species). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

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

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

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

D. Purpose and Background

The specific purpose and background of the final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

The Eastern Spadefoot (*Scaphiopus holbrookii*) is a small to medium-sized stout-bodied toad (1.7 to 2.2 inches). It is mostly a fossorial (burrowing) creature that comes to the surface to feed during warm, humid conditions. It is known as a sporadic breeder and breeds during major rain storms associated with steep barometric drops. It typically inhabits loose, friable soils where it can use its hind feet for burrowing. In the northeast, Eastern Spadefoot tend to be associated with sandy or loamy soils along the floodplains of streams and rivers and in depressions in agricultural fields (Hulse et al., 2001). These depressions, sometimes quite shallow, may be temporary or permanent and often form ephemeral pools following rains.

The species range from southern New England to the Florida Keys and west to eastern Louisiana, but this Commonwealth forms a break between the New England populations and Maryland (NatureServe, 2010). In this Commonwealth, populations are in the Susquehanna, Delaware and Cumberland Valleys, including occurrences in Adams, Berks, Bucks, Centre, Chester, Clinton, Cumberland, Franklin, Lehigh, Lycoming, Montgomery, Northampton, Northumberland, Union and York Counties.

The Eastern Spadefoot is listed as endangered in Ohio, Connecticut and Rhode Island, threatened in Massachusetts and Species of Concern in Illinois, Indiana and Missouri (Nanjappa and Conrad, 2011). Additionally, NatureServe state rankings list the Eastern Spadefoot as considered "critically imperiled" in Connecticut, Ohio, Rhode Island and West Virginia and "imperiled" in Indiana, Missouri, New York and Massachusetts.

The Eastern Spadefoot was historically distributed in disjunct populations in southcentral and central Pennsylvania. Counties of historical occurrence in this Commonwealth include the following (with collection dates): Cumberland (1954); Franklin (1933 and 1937); Northumberland (1938, 1943 and 1985); and Union (1941). The records considered historical were initially documented prior to 1988. Historically documented sites were not considered extirpated until indicated by evidence. Anecdotal observations for the Eastern Spadefoot were re-

corded in the Delaware Valley from the Philadelphia region north to Monroe County.

More recently, the Eastern Spadefoot was collected in York County in 1989, Berks County in 2003 and Lehigh County in 2003. The Eastern Spadefoot was listed as endangered by the Commission in 2005 due to the absence of observations during the first Pennsylvania Herp Atlas (1995–2001) and only two known breeding areas occur in this Commonwealth. In an attempt to understand the species, a major study investigating the distribution of the Eastern Spadefoot was conducted by East Stroudsburg University and funded by the Commission from 2008–2011. The Eastern Spadefoot was recorded in a total of 15 counties by the study in highly fragmented population centers. The following recent occurrence summary is derived from this work. It is important to note that these sites have been inhabited by the Eastern Spadefoot for an unknown period of time and do not constitute an active expansion of the range of this species but rather an expansion of the knowledge of the distribution. The current distribution of the Eastern Spadefoot in this Commonwealth is likely a relic of what was formerly a much wider range in this Commonwealth evidenced by the highly fragmented manner in which clusters or known sites occur. The following table relates the estimated area of occupancy (actual occupied habitats) in the 15-county Pennsylvania range.

<i>County</i>	<i>Number of Breeding Sites</i>	<i>Estimated Area of Occupancy (ac)</i>	<i>Estimated Area of Occupancy (mi²)</i>
Adams	5	172.00	0.27
Berks	8	275.20	0.43
Bucks	4	137.60	0.22
Centre	3	103.20	0.16
Chester	2	68.80	0.11
Clinton	4	137.60	0.22
Cumberland	61	2,098.40	3.28
Franklin	29	997.60	1.56
Lehigh	2	68.80	0.11
Lycoming	3	103.20	0.16
Montgomery	4	137.60	0.22
Northampton	4	137.60	0.22
Northumberland	14	481.60	0.75
York	3	103.20	0.16
Union	2	68.80	0.11
<i>Total</i>	148	5,091.20	7.96

The Eastern Spadefoot occurs in broad valleys and the Atlantic Coastal Plain and is threatened by habitat destruction from residential and industrial development. Many known locations exist in areas that receive substantial pressure from these development practices. Habitat alteration and changes in water chemistry from agricultural practices can also impact breeding habitat (Jansen et al., 2001; Wildlife in Connecticut, 1999). The water in which they breed can be temporary pools, which are not necessarily delineated wetlands; thus, wetland regulations cannot be relied upon to provide sufficient protection for the breeding habitat of this species. The level of fragmentation of Eastern Spadefoot habitats is significant

both on an individual population level and on a metapopulation level.

Only 12 known breeding sites (8% of 148) have some level of protection: Centre County, 2; Cumberland County, 4; Franklin County, 4; and Berks County, 2. It is important to note that only 2 of 12 (+17%) of protected sites have adequate upland buffers receiving protection. Only 1% of Eastern Spadefoot sites in this Commonwealth can be considered secure from a direct development threat, though other threats (such as drought, disease, poaching or isolation due to fragmentation) may leave these sites vulnerable. Pennsylvania Eastern Spadefoot occur in landscapes heavily disturbed by either urbanization or

some types of intensive agriculture (row crops are seemingly compatible as long as breeding pools are not drained). Unfortunately, agricultural easements, a potentially important tool in Eastern Spadefoot conservation, do not factor biological resources.

The Amphibian and Reptile Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Eastern Spadefoot and recommended it be changed from “critically imperiled” (S1) to “imperiled” (S2) status, rare in this Commonwealth. (State Rank Definitions, 1996). The PABS committee additionally recommended changing the Pennsylvania status to “threatened” based on the supporting data and conclusions of the recent status assessment of the species in this Commonwealth. The PABS definition of a threatened species is a species which was once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions, 2005).

After a thorough status assessment was conducted from 2008 to 2011, this species was run through the Commission’s amphibian and reptile species documentation and objective listing/delisting criteria and met Threatened Criteria B.1 (Extent of Occurrence is less than 2,000 square miles) and B.2 (Area of Occupancy is less than 200 square miles) and three subcriteria under B.2: a) severely fragmented; b) continued decline; and c) extreme in fluctuations.

Enough information is available to make the determination that the Eastern Spadefoot no longer meets Endangered criteria; however, it clearly meets two Threatened species criteria. The Eastern Spadefoot faces considerable threats and is relatively rare in this Commonwealth; therefore, it continues to warrant protection. As two Threatened species criteria have been met, the Commission believes that this justifies removing the Eastern Spadefoot from the Commonwealth’s list of Endangered species and adding the Eastern Spadefoot to the list of Threatened species. The Commission therefore amends §§ 75.1 and 75.2 to read as set forth in the proposed rulemaking published at 43 Pa.B. 3233 (June 15, 2013).

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Comments

The proposed rulemaking was published at 43 Pa.B. 3233. The Commission received two public comments concerning the proposed rulemaking. Copies of the public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and all public comments received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 75, are amended by amending §§ 75.1 and 75.2 to read as set forth at 43 Pa.B. 3233.

(b) The Executive Director will submit this order and 43 Pa.B. 3233 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 43 Pa.B. 3233 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-245 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 13-2260. Filed for public inspection December 6, 2013, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CH. 589]

Lunar Poker; Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 13A03(b) (relating to temporary table game regulations) and the specific authority in 4 Pa.C.S. § 13A02(1) and (2) (relating to regulatory authority), adds Chapter 589 (relating to Lunar Poker) to read as set forth in Annex A.

Explanation of Chapter 589

Section 589.1 (relating to definitions) contains the definitions for terms used in Lunar Poker. Section 589.2 (relating to Lunar Poker table physical characteristics) contains the requirements pertaining to the table layouts and other equipment used in the play of the game.

Section 589.3 (relating to cards; number of decks) addresses the number of decks that are used in Lunar Poker and the frequency with which the decks are to be changed. Sections 589.4 and 589.5 (relating to opening of the table for gaming; and shuffle and cut of the cards) set forth the procedures for the inspection, shuffling and cutting of the cards before they are dealt.

Sections 589.6 and 589.7 (relating to Lunar Poker rankings; and wagers) set forth the rank of the cards for the purpose of determining a winning hand and specify which wagers are authorized for use at the game and when those wagers are to be placed.

Sections 589.8—589.10 (relating to procedure for dealing the cards from a manual shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) specify the procedures for the dealing of the cards to each patron and the dealer. Section 589.11 (relating to procedures for completion of each round of play) addresses how the dealer is to evaluate whether a patron’s hand is a winning hand. This

section also addresses the procedures for collecting cards, collecting losing wagers and paying out winning wagers.

Section 589.12 (relating to payout odds) addresses the payout odds for all permissible wagers and § 589.13 (relating to irregularities) specifies how irregularities in the play of the game are to be handled.

Affected Parties

This temporary rulemaking allows certificate holders additional options on how to conduct table games at their licensed facilities.

Fiscal Impact

Commonwealth. The Board does not expect that this temporary rulemaking will have fiscal impact on the Board or other Commonwealth agencies. Internal control procedures submitted by certificate holders related to table games Rules Submissions will be reviewed by existing Board staff.

Political subdivisions. This temporary rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth. Host municipalities and counties benefit from the local share funding that is mandated by the act of January 7, 2010 (P. L. 1, No. 1).

Private sector. This temporary rulemaking will give certificate holders some additional flexibility as to how they conduct table games. It is anticipated that this temporary rulemaking will have an impact only on certificate holders, which are not small businesses.

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

Paperwork Requirements

If a certificate holder elects to offer new games for play at the licensed facility, the certificate holder will be required to submit an updated Rules Submission reflecting the changes.

Effective Date

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

Public Comments

While this temporary rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how the temporary regulations might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Susan A. Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P.O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-179.

Contact Person

The contact person for questions about this temporary rulemaking is Susan A. Yocum, Assistant Chief Counsel, (717) 346-8300.

Regulatory Review

Under 4 Pa.C.S. § 13A03(b), the Board's authority to adopt temporary regulations governing the rules of new table games does not expire. Additionally, temporary regulations adopted by the Board are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), the Regulatory Review Act (71 P. S. §§ 745.1—745.12) and sections 204(b)

and 301(10) of the Commonwealth Attorneys Act (71 P. S. §§ 732-204(b) and 732-301(10)). These temporary regulations expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 13A03(b), the temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the Commonwealth Documents Law and sections 204(b) and 301(10) of the Commonwealth Attorneys Act.

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

Order

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

(1) The regulations of the Board, 58 Pa. Code, are amended by adding §§ 589.1—589.13 to read as set forth in Annex A.

(2) The temporary regulations are effective December 7, 2013.

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

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

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

WILLIAM H. RYAN, Jr.,
Chairperson

Fiscal Note: 125-179. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 589. LUNAR POKER

Sec.	Definitions.
589.1.	Lunar Poker table physical characteristics.
589.2.	Cards; number of decks.
589.3.	Opening of the table for gaming.
589.4.	Shuffle and cut of the cards.
589.5.	Lunar Poker rankings.
589.6.	Wagers.
589.7.	Procedure for dealing the cards from a manual dealing shoe.
589.8.	Procedure for dealing the cards from the hand.
589.9.	Procedures for dealing the cards from an automated dealing shoe.
589.10.	Procedures for completion of each round of play.
589.11.	Payout odds.
589.12.	Irregularities.
589.13.	

§ 589.1. Definitions.

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

Bet Wager—An additional wager that a player shall make if the player opts to remain in competition against the dealer after the player reviews his hand.

Draw—When a player exchanges between two and five of the cards held in his hand for an equal number of new cards from the deck or buys a sixth card.

Fold—The withdraw of a player from a round of play by refusing to make a Bet Wager.

Options fee—An additional payment made by a player to draw an additional card or cards or to force the dealer to try to qualify.

Super Wager—An optional wager that a player shall make to play against a posted paytable.

§ 589.2. Lunar Poker table physical characteristics.

(a) Lunar Poker shall be played at a table having betting positions for no more than five players on one side of the table and a place for the dealer on the opposite side of the table.

(b) The layout for a Lunar Poker table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

- (1) The name or logo of the certificate holder.
- (2) Two separate betting areas designated for the placement of the Ante and Bet Wagers for each player.
- (3) A separate area designated for the placement of the player's Options fees for each player. The Options area must be inscribed with the following:

- (i) Exchange 2-5 cards.
- (ii) Buy a 6th Card.
- (iii) Force the Dealer.

(4) If the certificate holder offers the optional Super Wager authorized under § 589.7(c)(2) (relating to wagers), a separate area designated for the placement of the Super Wager for each player.

(5) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Lunar Poker table.

(6) Inscriptions that advise patrons of the following:

- (i) Dealer qualifies with an ace-king or better.
- (ii) Instant payout for a royal flush or straight flush on the first five cards dealt to the player.

(7) If the information in paragraph (6) is not on the layout, a sign which sets forth the required information shall be posted at each Lunar Poker table.

(c) Each Lunar Poker table must have a drop box and a tip box attached on the same side of the gaming table as, but on opposite sides of, the dealer, as approved by the Bureau of Casino Compliance in accordance with § 601a.10(g). The Bureau of Casino Compliance may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

(d) Each Lunar Poker table must have a discard rack securely attached to the top of the dealer's side of the table.

§ 589.3. Cards; number of decks.

(a) Except as provided in subsection (b), Lunar Poker shall be played with one deck of cards that are identical in appearance and one cover card.

(b) If an automated card shuffling device is utilized, Lunar Poker may be played with two decks of cards in accordance with the following requirements:

(1) The cards in each deck must be of the same design. The backs of the cards in one deck must be of a different color than the cards included in the other deck.

(2) One deck of cards shall be shuffled and stored in the automated card shuffling device while the other deck is being used to play the game.

(3) Both decks are continuously alternated in and out of play, with each deck being used for every other round of play.

(4) The cards from only one deck are placed in the discard rack at any given time.

(c) The decks of cards used in Lunar Poker shall be changed at least every:

- (1) Four hours if the cards are dealt by hand.
- (2) Eight hours if the cards are dealt from a manual or automated dealing shoe.

§ 589.4. Opening of the table for gaming.

(a) After receiving one or more decks of cards at the table, the dealer shall inspect the cards for any defects. The floorperson assigned to the table shall verify the inspection.

(b) After the cards are inspected, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread in horizontal fan shaped columns by deck according to suit and in sequence.

(c) After the first player arriving at the table has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a washing of the cards and stacked. Once the cards have been stacked, the cards shall be shuffled in accordance with § 589.5 (relating to shuffle and cut of the cards).

(d) If an automated card shuffling device is utilized and two decks of cards are received at the table, each deck of cards shall be spread for inspection, mixed, stacked and shuffled in accordance with subsections (a)—(c).

(e) If the decks of cards received at the table are reinspected and reshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), subsections (a)—(d) do not apply.

§ 589.5. Shuffle and cut of the cards.

(a) Immediately prior to commencement of play, unless the cards were reshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), after each round of play has been completed or when directed by a floorperson or above, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or automated shuffling device shall place the deck of cards in a single stack. The certificate holder may use an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.

(b) If an automated card shuffling device is being used, which counts the number of cards in the deck after the

completion of each shuffle and indicates whether 52 cards are present, and the device reveals that an incorrect number of cards are present, the deck shall be removed from the table.

(c) After the cards have been shuffled and stacked, the dealer shall:

(1) If the cards were shuffled using an automated card shuffling device, deal the cards in accordance with § 589.8, § 589.9 or § 589.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe).

(2) If the cards were shuffled manually or were reshuffled, cut the cards in accordance with the procedures in subsection (d).

(d) If a cut of the cards is required, the dealer shall place the cover card in the stack at least ten cards in from the top of the stack. Once the cover card has been inserted, the dealer shall take all cards above the cover card and the cover card and place them on the bottom of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

(e) After the cards have been cut and before any cards have been dealt, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

(f) If there is no gaming activity at a Lunar Poker table which is open for gaming, the cards shall be removed from the dealing shoe and discard rack and spread out on the table face down unless a player requests that the cards be spread face up on the table. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, the procedures in § 589.4(c) (relating to opening of the table for gaming) and this section shall be completed.

(g) A certificate holder may utilize a dealing shoe or other device that automatically reshuffles and counts the cards provided that the device is submitted and approved in accordance with § 461a.4 (relating to submission for testing and approval) prior to its use in the licensed facility. If a certificate holder is utilizing the approved device, subsections (d)—(f) do not apply.

§ 589.6. Lunar Poker rankings.

(a) The rank of the cards used in Lunar Poker, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. Notwithstanding the foregoing, an ace may be used to complete a straight flush or a straight with a 2, 3 and 4 but may not be combined with any other sequence of cards (for example: king, ace, 2 and 3). All suits shall be equal in rank.

(b) The permissible Poker hands in the game of Lunar Poker, in order of highest to lowest rank, shall be:

(1) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(2) A straight flush, which is a hand, other than a royal flush, consisting of five cards of the same suit in consecutive ranking, with king, queen, jack, 10 and 9 being the highest ranking straight flush and ace, 2, 3, 4 and 5 being the lowest ranking straight flush.

(3) A four-of-a-kind, which is a hand consisting of four cards of the same rank, with four aces being the highest ranking four-of-a-kind and four 2s being the lowest ranking four-of-a-kind.

(4) A full house, which is a hand consisting of a three-of-a-kind and a pair, with three aces and two kings being the highest ranking full house and three 2s and two 3s being the lowest ranking full house.

(5) A flush, which is a hand consisting of five cards of the same suit, not in consecutive order, with ace, king, queen, jack and 9 being the highest ranking flush and 2, 3, 4, 5 and 7 being the lowest ranking flush.

(6) A straight, which is a hand consisting of five cards of more than one suit and of consecutive rank, with an ace, king, queen, jack and 10 being the highest ranking straight and an ace, 2, 3, 4 and 5 being the lowest ranking straight.

(7) A three-of-a-kind, which is a hand consisting of three cards of the same rank, with three aces being the highest ranking three-of-a-kind and three 2s being the lowest ranking three-of-a-kind.

(8) Two pairs, which is a hand consisting of two pairs, with two aces and two kings being the highest ranking two pair and two 3s and two 2s being the lowest ranking two pair.

(9) A pair, which is a hand consisting of two cards of the same rank, with two aces being the highest ranking pair and two 2s being the lowest ranking pair.

(10) An ace-king, which is a hand consisting of an ace and king in any suit.

(c) When comparing two Poker hands that are of identical rank under subsection (b), or that contain none of the hands listed in subsection (b), the hand that contains the highest ranking card under subsection (a), which is not in the other hand, shall be considered the higher ranking hand. If the hands are of equal rank after the application of this section, the hands shall be considered a tie.

(d) If the certificate holder is offering the optional Super Wager authorized under § 589.7(c)(2) (relating to wagers) the five-card Poker hands eligible for a payout are:

(1) A four-of-a-kind, which is a hand consisting of four cards of the same rank.

(2) A same-colored straight, which is a hand consisting of five cards of more than one suit and of consecutive rank and color.

(3) A full house, which is a hand consisting of a three-of-a-kind and a pair.

(4) A flush, which is a hand consisting of five cards of the same suit, not in consecutive order.

(5) A straight, which is a hand consisting of five cards of more than one suit and of consecutive rank.

(6) A three-of-a-kind, which is a hand consisting of three cards of the same rank, with three aces being the highest ranking three-of-a-kind and three 2s being the lowest ranking three-of-a-kind.

(7) An ace-king, which is a hand consisting of an ace and king in any suit.

(8) Same colored five, which is a hand consisting of five cards of the same color.

§ 589.7. Wagers.

(a) Wagers at Lunar Poker shall be made by placing value chips, plaques or other Board-approved wagering instruments on the appropriate areas of the table layout. Verbal wagers accompanied by cash may not be accepted.

(b) Only players who are seated at a Lunar Poker table may wager at the game. Once a player has placed a wager and received cards, that player shall remain seated until the completion of the round of play. If a player leaves the table during a round of play, any wagers made by the player may be considered abandoned and may be treated as losing wagers.

(c) The following wagers may be placed in the game of Lunar Poker:

(1) A player shall compete against the dealer's five-card Poker hand by placing both an Ante Wager, then a Bet Wager in accordance with § 589.11(b) or (d) (relating to procedures for completion of each round of play).

(2) In addition to the Ante and Bet Wagers, a player may compete against a posted payable by placing an optional Super Wager.

(d) The Ante and Super Wagers shall be placed prior to the dealer announcing "no more bets" in accordance with the dealing procedures in § 589.8, § 589.9 or § 589.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe). Except as provided in § 589.11(b) and (d), a wager may not be made, increased or withdrawn after the dealer has announced "no more bets."

(e) A player may not wager on more than one player position at a Lunar Poker table.

§ 589.8. Procedure for dealing the cards from a manual dealing shoe.

(a) If a manual dealing shoe is used, the dealing shoe must be located on the table in a location approved by the Bureau of Casino Compliance in accordance with § 601a.10(g) (relating to approval of table game layouts, signage and equipment). Once the procedures required under § 589.5 (relating to shuffle and cut of the cards) have been completed, the stacked deck of cards shall be placed in the dealing shoe by the dealer or by the automated card shuffling device.

(b) The dealer shall announce "no more bets" and begin dealing the cards. Each card shall be removed from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and placed face down on the appropriate area of the layout with the opposite hand.

(c) Starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, the dealer shall deal one card at a time to each player who placed an Ante Wager and to the dealer until each player and the dealer have five cards. The last card of the dealer shall be turned face up on the layout.

§ 589.9. Procedure for dealing the cards from the hand.

(a) If the cards are dealt from the dealer's hand, the following requirements shall be observed:

(1) An automated shuffling device shall be used to shuffle the cards.

(2) After the procedures required under § 589.5 (relating to shuffle and cut of the cards) have been completed, the dealer shall place the stacked deck of cards in either hand. After the dealer has chosen the hand in which to hold the cards, the dealer shall continue to use that hand whenever holding the cards during that round of play. The cards held by the dealer shall be kept over the table inventory container and in front of the dealer at all times.

(3) Prior to dealing any cards, the dealer shall announce "no more bets."

(b) The dealer shall deal each card by holding the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout. The dealer shall, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed an Ante Wager and to the dealer until each player and the dealer have five cards. The last card of the dealer shall be turned face up on the layout.

§ 589.10. Procedures for dealing the cards from an automated dealing shoe.

(a) If the cards are dealt from an automated dealing shoe, the following requirements shall be observed:

(1) After the procedures required under § 589.5 (relating to shuffle and cut of the cards) have been completed, the cards shall be placed in the automated dealing shoe.

(2) Prior to the shoe dispensing any stacks of cards, the dealer shall announce "no more bets."

(b) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to the dealer's left who has placed an Ante Wager. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed an Ante Wager. The dealer shall then deliver a stack of five cards face down to the dealer. The last card of the dealer shall be turned face up on the layout.

§ 589.11. Procedures for completion of each round of play.

(a) After the dealing procedures required under § 589.8, § 589.9 or § 589.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) have been completed, each player shall examine his cards, subject to the following limitations:

(1) Each player who wagers at Lunar Poker shall be responsible for his own hand and no person other than the dealer and the player to whom the cards were dealt may touch the cards of that player.

(2) Each player shall keep his five cards in full view of the dealer at all times.

(3) After the dealer announces "all decisions are locked in," a player may not amend his decision to fold or increase, decrease or place any Bet Wager or Options fee except as provided in subsection (d).

(b) After five cards have been dealt to each player, the player shall examine his cards. Each player shall then elect to:

(1) Fold.

(2) Place a Bet Wager equal to twice the amount of the player's Ante Wager provided that if any player's hand contains a royal flush or a straight flush the player shall not place a Bet Wager but shall declare the hand and reveal his cards by placing them face up on the layout. A player with a royal flush or straight flush shall be paid an instant payout as provided in subsection (c).

(3) Place an Options fee, equal to the player's Ante Wager, to buy a sixth card or draw and exchange between two and five of the player's cards.

(c) After all players have either folded, placed a Bet Wager or Options fee, the dealer shall announce "all decisions are locked in." Beginning with the player to the dealer's left and moving clockwise around the table, the dealer shall then settle any instant payout for a royal flush or straight flush and each player's Super Wager, if applicable, as follows:

(1) If a player's hand contains a royal flush or a straight flush in the first five cards dealt:

(i) The dealer shall pay an instant payout on the player's Ante Wager in accordance with § 589.12(a) (relating to payout odds) provided that if a player does not declare and reveal a winning hand before any other cards are dealt, the player will not be eligible for the instant payout.

(ii) And the player:

(A) Did not place a Super Wager, after paying the instant payout, the dealer shall immediately collect the player's cards and place them in the discard rack.

(B) Placed a Super Wager, the wager shall be settled in accordance with paragraph (2)(ii).

(2) If a player placed a Super Wager:

(i) And the player's five-card hand does not contain a same colored five or better, as described in § 589.6(d) (relating to Lunar Poker rankings), or the player does not declare and reveal a winning hand, the dealer shall collect the player's Super Wager and the player shall continue play in accordance with subsection (d).

(ii) And the player's five-card hand contains a same colored five or better, as described in § 589.6(d), the player shall declare the hand and place his cards face up on the layout. If a player's hand contains a royal flush or a straight flush, the winning hand shall be considered a same-colored straight. The dealer shall payout out the winning Super Wager for the highest ranking hand in accordance with § 589.12(b). If a player's hand:

(A) Was eligible for both the instant payout, in accordance with paragraph (1), and the Super Wager payout, after paying the player's instant and Super Wager payouts, the dealer shall immediately collect the player's cards and place them in the discard rack.

(B) Was not otherwise eligible for the instant payout in accordance with paragraph (1), the player shall continue play in accordance with subsection (d).

(d) After settling the instant payouts and Super Wagers, if applicable, beginning with the player to the dealer's left and moving clockwise around the table:

(1) For any player who did not make a Bet Wager and folded, the dealer shall collect the player's Ante Wager and place the player's cards in the discard rack.

(2) For any player who placed an Options fee equal to the player's Ante Wager:

(i) The dealer shall collect the Options fee and:

(A) If the player elects to buy the sixth card, the dealer shall deal one additional card.

(B) If the player elects to exchange cards, the player shall discard between two and five cards, which will thereafter be replaced by dealer with the same number of cards from the deck.

(ii) After dealing the additional cards, the player shall create the best possible five-card Poker hand.

(iii) The dealer shall then ask the player if the player would like to fold and forfeit the player's Ante Wager or place a Bet Wager equal to twice the amount of the player's Ante Wager.

(iv) If the player does not make a Bet Wager and forfeits his Ante Wager, the dealer shall collect the Ante Wager and place the player's cards in the discard rack.

(e) After all players have either folded or placed a Bet Wager, the dealer shall reveal the dealer's cards and form the highest ranking five-card Poker hand. If the dealer's hand:

(1) Qualifies with an ace-king or better, as provided in § 589.6(b), starting with the player farthest to the dealer's right and continuing around the table in a counter-clockwise direction, the dealer shall turn the cards of each player who placed a Bet Wager face up on the layout, if applicable, and form the highest ranking five-card Poker hand. If the dealer's highest ranking five-card Poker hand is:

(i) Higher in rank than the player's five-card Poker hand, as provided in § 589.6(b), the dealer shall collect the player's Ante and Bet Wagers and place the player's cards in the discard rack.

(ii) Lower in rank than the player's five-card Poker hand, as provided in § 589.6(b), the dealer shall return the player's Ante Wager and pay the winning Bet Wager in accordance with § 589.12(c). If a player's winning hand also contains a second Poker combination where at least one card in the second combination was not included in the winning combination, the dealer shall pay the winning Bet Wager in accordance with § 589.12(c) for the second Poker combination. For example, if a player's winning hand contained two aces, a king, 8 and 9, the player would be paid out for the pair of aces that beat the dealer's hand but would also be paid out for the ace-king. If a player purchased a sixth card, all six cards may be considered for purposes of the second payout.

(iii) Equal in rank with the dealer's hand, as provided in § 589.6(b), the dealer shall return the player's Ante and Bet Wagers.

(2) Does not qualify with an ace-king or better, as provided in § 589.6(b), each player shall have the option to force the dealer to try to qualify. If any player:

(i) Does not elect to force the dealer to try to qualify by placing an Options fee, the dealer shall return the player's Bet Wager, pay the player's Ante Wager in accordance with § 589.12(d) and place the player's cards in the discard rack.

(ii) Elects to force the dealer to try to qualify, the player shall place an Options fee equal to the player's Ante Wager on the layout. After settling the Ante and Bet Wagers for any players who did not force the dealer to try to qualify as provided in subparagraph (i), the dealer shall collect any Options fees placed, discard the highest ranking card from the dealer's hand and replace it with a card from the deck. The dealer shall form the highest ranking five-card Poker hand. If the dealer's hand:

(A) Does not qualify with an ace-king or better, as provided in § 589.6(b), the dealer shall return each player's Ante and Bet Wagers and place the player's cards in the discard rack.

(B) Qualifies with an ace-king or better, as provided in § 589.6(b), starting with the player farthest to the dealer's right and continuing around the table in a counter-clockwise direction, the dealer shall turn the cards of

each player who placed a Bet Wager face up on the layout, if applicable, and form the highest ranking five-card Poker hand. If the dealer's highest ranking five-card hand is:

(I) Higher in rank than the player's five-card Poker hand, as provided in § 589.6(b), the dealer shall collect the player's Ante and Bet Wagers and place the player's cards in the discard rack.

(II) Lower in rank than the player's five-card Poker hand, as provided in § 589.6(b), the dealer shall return the player's Ante Wager and pay the winning Bet Wager in accordance with § 589.12(c). If a player's winning hand also contains a second Poker combination where at least one card in the second combination was not included in the winning combination, the dealer shall pay the winning Bet Wager in accordance with § 589.12(c) for the second Poker combination. For example, if a player's winning hand contained two aces, a king, 8 and 9, the player would be paid out for the pair of aces that beat the dealer's hand but would also be paid out for the ace-king. If a player purchased a sixth card, all six cards may be considered for purposes of the second payout.

(III) Equal in rank with the dealer's hand, the dealer shall return the player's Ante and Bet Wagers.

(f) After all wagers have been settled, the dealer shall remove any remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

(g) If an automated card shuffling device, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, is not being used, the dealer shall count the cards at least once after every 5 rounds of play to determine if the correct number of cards is still present in the deck. The dealer shall determine the number of cards by counting the cards face down on the layout. If the count indicates:

(1) That 52 cards are in the deck, the dealer shall place the cards in the discard rack.

(2) That 52 cards are not in the deck, the entire deck of cards shall be removed from the table.

§ 589.12. Payout odds.

(a) The certificate holder shall pay an instant payout on a player's Ante Wager in accordance with one of the following paytables, selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2 (relating to table games Rules Submissions):

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>	<i>Paytable D</i>
Royal flush	1,500 to 1	1,500 to 1	1,500 to 1	1,200 to 1
Straight flush	500 to 1	400 to 1	300 to 1	400 to 1

<i>Hand</i>	<i>Paytable E</i>	<i>Paytable F</i>	<i>Paytable G</i>	<i>Paytable H</i>
Royal flush	1,200 to 1	1,000 to 1	800 to 1	600 to 1
Straight flush	300 to 1	300 to 1	300 to 1	300 to 1

(b) A certificate holder shall pay the player's winning Super Wager at the odds in one of the following paytables, selected by the certificate holder in its Rules Submission filed in accordance with § 601a.2:

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>	<i>Paytable C</i>
Four-of-a-kind	250 to 1	250 to 1	250 to 1
Same-colored straight	150 to 1	150 to 1	150 to 1
Full house	100 to 1	100 to 1	100 to 1
Flush	60 to 1	60 to 1	60 to 1
Straight	30 to 1	30 to 1	30 to 1
Three-of-a-kind	8 to 1	8 to 1	7 to 1
Ace-king	6 to 1	5 to 1	6 to 1
Same colored five	2 to 1	2 to 1	2 to 1

(c) A player placing a Bet Wager shall be paid at the following odds:

<i>Hand</i>	<i>Payout</i>
Royal flush	100 to 1
Straight flush	50 to 1
Four-of-a-kind	20 to 1
Full house	7 to 1
Flush	5 to 1
Straight	4 to 1
Three-of-a-kind	3 to 1
Two pair	2 to 1
One pair	1 to 1
Ace-king	1 to 1

(d) A certificate holder shall pay each winning Ante Wager at odds of 1 to 1.

§ 589.13. Irregularities.

(a) A card that is found face up in the shoe or the deck while the cards are being dealt may not be used in that round of play and shall be placed in the discard rack. If

more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe or the deck.

(c) If any player or the dealer is dealt an incorrect number of cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(d) If any of the dealer's cards that are dealt face down on the layout are inadvertently exposed prior to each player having either folded or placed a Bet Wager as provided under § 589.11 (relating to procedures for completion of each round of play), all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(e) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle or fails to complete a shuffle cycle, the cards shall be reshuffled.

(f) If an automated dealing shoe is being used and the device jams, stops dealing cards or fails to deal cards during a round of play, the round of play shall be void, all wagers shall be returned to the players and the cards shall be removed from the device and reshuffled with any cards already dealt.

(g) If an automated card shuffling device or automated dealing shoe malfunctions and cannot be used, the automated card shuffling device or automated dealing shoe shall be covered or have a sign indicating that the automated card shuffling device or automated dealing shoe is out of order placed on the device before any other method of shuffling or dealing may be utilized at that table.

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