

# RULES AND REGULATIONS

## Title 40—LIQUOR

### LIQUOR CONTROL BOARD

#### [ 40 PA. CODE CH. 5 ]

#### Responsible Alcohol Management Program

The Liquor Control Board (Board), under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), amends Chapter 5 (relating to duties and rights of licensees).

#### Summary

This final-form rulemaking implements section 471.1 of the Liquor Code (47 P. S. § 4-471.1). Under the act of December 20, 2000 (P. L. 992, No. 141) (Act 141), the General Assembly authorized the Board to establish a training program for licensees. The Commonwealth expects holders of its liquor and beer licenses to meet demanding standards of operation or face fines and other penalties that can culminate in the loss of the license. Training of licensees was seen to be one of the best ways to prevent these problems and the legislation was the means to implement training. The legislation was entitled "Responsible Alcohol Management." From this, the implementing program took its name: the Responsible Alcohol Management Program (RAMP). RAMP has been established in the Board's Bureau of Alcohol Education (BAE) since 2001. RAMP has developed training materials, authorized instructors and provided a certification process for licensed establishments. It is expected that this final-form rulemaking will serve the public interest by: (1) providing the public and the licensees with greater awareness of RAMP's resources; (2) providing the licensed community with a clear statement of the licensee, manager and server training standards that implement the legislation's intent; and (3) clarifying how the certification and decertification process for licensees is being implemented.

The following is a summary of the four main sections of this final-form rulemaking:

- Explains how instructors are approved to train retail licensees to manage their alcohol service more responsibly.
- Defines qualifications for certifying and decertifying instructors.
- Explains training of managers and owners and how managers shall train new employees for a licensee to be RAMP-certified.
- Effect of RAMP certification is explained as are the requirements for signs to be posted in the licensed premises.

Further, under section 471.1(f) of the Liquor Code, licensees are to obtain certification upon the completion of a certified alcohol service personnel program or the Board's owner/manager training program. Certification is valid for 2 years.

Originally, RAMP was primarily a voluntary program. Act 141 also created incentives for licensees to become RAMP certified. If a licensee was RAMP certified and was adjudicated to have violated two of the more serious violations of the Liquor Code (sales to minors or sales to visibly intoxicated persons) and if the licensee did not have similar violations in the previous 4 years, the range of penalties to which the licensee would be subject would

be reduced to a fine in the range of \$50 to \$1,000. Without RAMP certification, the range of penalties would be \$1,000 to \$5,000.

By the act of April 13, 2006 (P. L. 78, No. 26), administrative law judges were enabled to make RAMP certification mandatory for licensees adjudicated to have sold alcohol to minors or to visibly intoxicated persons. A citation may be issued if the licensee fails to comply with an administrative law judge's order to complete RAMP training. Further, the Board's Bureau of Licensing may object to a license renewal application on the basis that a licensee has failed to comply with the terms of an administrative law judge's order.

Moreover, a licensee may be required to participate in RAMP training because it agreed to undergo training under the terms of a conditional licensing agreement entered into between the Board and the licensee. A licensee's failure to undergo the training under the terms of a conditional licensing agreement may result in the issuance of a citation. Further, the Board's Bureau of Licensing may object to a license renewal application on the basis that a licensee has failed to comply with the terms of a conditional licensing agreement.

Finally, a licensee may voluntarily choose to undergo RAMP training and certification to allow its owners, managers, servers, sellers and other employees to benefit from the Board's BAE instruction on the responsible service of alcoholic beverages.

Before Act 141, employees of the Board were the instructors, providing server/seller training. After the passage of Act 141, the decision was made by the Board to have approved independent instructors provide server/seller training. The Board planned to approve both the instructors and the training curriculum they would use. As the number of instructors increased, the administrative burden of approving a training curriculum for each one also increased and became almost unmanageable. When this rulemaking was proposed, to deal with the increasing administrative workload, it was planned that instructors would receive a standardized, preapproved training curriculum from a "provider." Providers would develop the training curriculum, have the Board approve it and then provide administrative and clerical support to the instructors. However, this plan did not develop as originally intended.

The BAE's principal connection has been, and continues to be, with the individual instructors. The instructors prepare and present their curricula to the BAE for approval. Of the 33 currently certified instructors, nine have presented curricula that incorporate the National training program prepared by Training for Intervention Procedures (TIPS). Five instructors have presented curricula that incorporate the training program prepared by the Tavern Association and two have presented curricula that incorporate the National training program prepared by ServSafe. The remaining 17 instructors have written their own curricula that are identified by various names of their own choosing.

As a result, there has been widespread confusion among licensees that are trying to obtain training with the aim of becoming RAMP certified. Employees of the BAE are called by licensees to clarify the compliance of these training curricula with the requirements of RAMP. In the years since RAMP began operating, only two entities have developed their own curricula and have

provided administrative and clerical support to instructors—the Tavern Association and Tara Paster, who is also a certified instructor. As a result, between the time of the proposed rulemaking, published at 38 Pa.B. 499 (January 26, 2008), and the present, the procedure for training licensees and their servers/sellers has changed.

Since the proposed rulemaking was published, the BAE developed a standard training curriculum for use by instructors, thereby eliminating the reliance on providers to develop curricula for instructors. It should be noted that most instructors currently provide training without having a relationship with a particular provider. Further, nothing in the Liquor Code requires both “providers” and “instructors”; rather, section 471.1(b) of the Liquor Code merely provides that the Board is authorized to certify and decertify entities that wish to offer training for alcohol service personnel. In recognition of these policy changes, proposed §§ 5.221 and 5.222 (relating to providers) dealing with the qualifications of providers and the Board’s certification of providers have been withdrawn in the final-form rulemaking as no longer relevant. As required under section 471.1(c) of the Liquor Code, the BAE will continue to train managers and owners.

The final-form rulemaking provides that an instructor who fails to satisfactorily carry out the instructor’s responsibilities, as provided in § 5.232 (relating to instructor responsibilities), or fails to meet the minimum standards of training, as provided in § 5.233 (relating to minimum standards of training), would receive an “unacceptable evaluation” under § 5.251(a)(9) (relating to prohibited conduct). Examples of conduct which would warrant an unacceptable evaluation include, but are not limited to, failing to provide students with current and accurate information, failing to provide accurate records of attendance and course completion to the BAE, failing to conduct at least 2 1/2 hours of instructional time in each training, exceeding the ratio of students per instructor and failing to properly administer the standardized test prepared by the BAE.

It should be noted that the proposed rulemaking contained the term “unsatisfactory,” which has been changed in the final-form rulemaking to the term “unacceptable.” This change was made to reflect the terminology used in BAE’s current evaluation form, which contains the following categories: Outstanding; Acceptable; Needs Improvement; and Unacceptable.

Further, it should be noted that, whereas in the proposed rulemaking, the Board has the discretion to decertify instructors who received three unsatisfactory evaluations, the final-form rulemaking provides that the Board has the discretion to decertify instructors who receive one or more unacceptable evaluations. This was changed in light of the fact that the final-form rulemaking, as previously noted, clearly puts instructors on notice of the type of conduct which would warrant an unacceptable evaluation from the BAE. Accordingly, the Board believes that an instructor having at least one unacceptable evaluation is sufficient to allow the Board to evaluate whether that instructor should be decertified.

Finally, it should be noted that the duration of an instructor’s certification has been modified in the final-form rulemaking from 2 years to 1 year in § 5.231(3) (relating to instructor certification). This has been changed to reflect the BAE’s current practice of annually evaluating instructors since the proposed rulemaking was published. This modification is also referenced in the preamble.

### *Affected Parties*

The final-form rulemaking will affect retail and wholesale licensees and applicants for certification as instructors. As an active, ongoing program, many in this Commonwealth have already had experience with RAMP. There are about 15,000 licenses active in this Commonwealth that authorize the sale and service of alcohol for on-premises consumption. As of January 15, 2010, 2,300 licensees are certified under RAMP; since the inception of RAMP, 3,861 licensees have been RAMP-certified. A total of 7,559 licensees have participated in the owner/manager trainings since the inception of RAMP; a total of 17,769 individuals have received instruction under the owner/manager trainings. A total of 8,200 licensees have participated in the server/seller trainings since the inception of RAMP; a total of 111,348 individuals have been instructed under the server/seller trainings.

There are currently 33 certified instructors who provide server/seller training. Owner/manager trainings are conducted only by designated staff of the BAE, as mandated under section 471.1(c) of the Liquor Code. Only the Tavern Association and Tara Paster have functioned as providers, providing both curricula and administrative support to instructors. These entities may be adversely affected to the extent that they will not be eligible for certification by the Board as a provider. Both parties have been notified about the development of the standardized curriculum and the anticipated change in the regulations.

TIPS is a National provider of training curricula, but not administrative support, to instructors. TIPS is a program of Health Communications, Inc., located in Arlington, VA. TIPS has been advised that the BAE plans to implement its own standard training curriculum. TIPS may be adversely affected by this final-form rulemaking to the extent that TIPS will not be eligible for certification by the Board as a provider.

### *Paperwork Requirements*

Because this final-form rulemaking codifies an ongoing program, the final-form rulemaking will not significantly increase paperwork for the Board or the regulated community.

### *Fiscal Impact*

RAMP training and certification has been in effect under section 471.1 of the Liquor Code since 2001. The current annual cost of RAMP to the Board is \$1,011,551.37. Like all of the Board’s operating costs, it is funded fully from the proceeds of selling liquor, not from a General Fund appropriation. Because RAMP is mandated by law, its costs cannot be avoided completely. Balanced against the cost of RAMP to the Board is the unquantifiable benefit to the public from licensees and server/sellers that receive training in the practical and legal aspects of alcohol management.

The regulated community (licensees authorized to sell alcohol to the public, including restaurant, hotel, club, eating place retail dispenser, distributor and importing distributor licensees) would not incur costs or savings unless they use RAMP. Because certified instructors, and not the Board, provide seller/server training, the Board can only estimate the cost of training. The Board estimates that the server/seller training would typically cost the retail licensee \$25—\$40 per employee, based on a review of training fees across the country. Cost for owner/manager training is being borne by the Board. Therefore, the cost is measured in time spent in training, which is approximately 6 hours. Savings to the regulated community could be the reduction in administrative

sanctions by an administrative law judge in terms of reduced fines, that is, from \$1,000—\$5,000 to \$50—\$1,000. In cases when an administrative law judge requires a licensee to take responsible alcohol management training as part of an adjudication in a citation proceeding, the owner/manager training cost would be borne by the Board and the licensee would bear other costs of compliance.

As previously explained, the final-form rulemaking deletes the provisions for providers and the annual provider certification fee of \$500. The provider certification fees and instructor certification fees were never expected to significantly offset the costs of RAMP. However, they were expected to help defray some of the Board's administrative costs associated with the certification process.

The final-form rulemaking increases the annual instructor certification fee from \$100 in the proposed rulemaking to \$250. Further, the duration of an instructor's certification has been modified in the final-form rulemaking from 2 years to 1 year. This has been changed to reflect the BAE's current practice of annually evaluating instructors since the proposed rulemaking was published. While it is impossible to know how many entities or individuals will apply for certification as an instructor, as previously noted, there are currently 33 instructors approved by the Board. Assuming that all 33 instructors apply for certification under the final-form rulemaking, the total cost to instructors would be \$8,250 per year. The Board does not believe that these costs will unduly burden future certified instructors.

This final-form rulemaking is not expected to result in costs or savings to local governments.

#### *Effective Date*

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

#### *Contact Person*

Further information is available by contacting Christopher L. Herrington, Deputy Chief Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 28, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 499, to the Independent Regulatory Review Commission (IRRC) and to the House Committee on Liquor Control and Senate Committee on Law and Justice (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 12, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 12, 2010, and approved the final-form rulemaking.

#### *Findings*

The Board finds that:

(1) Public notice of intention to adopt the administrative regulations 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments to the Board's regulations in the manner provided in this order are necessary and appropriate for the administration of the Liquor Code.

#### *Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by adding §§ 5.201, 5.202, 5.211, 5.231—5.233, 5.241—5.243, 5.251, 5.261 and 5.271 to read as set forth in Annex A.

(*Editor's Note:* The proposal to add §§ 5.221 and 5.222 has been withdrawn by the Board.)

(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*.

PATRICK J. STAPLETON, III,  
*Chairperson*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 2838 (May 29, 2010).)

**Fiscal Note:** Fiscal Note 54-60 remains valid for the final adoption of the subject regulations.

### **Annex A**

#### **TITLE 40. LIQUOR**

#### **PART I. LIQUOR CONTROL BOARD**

#### **CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES**

#### **Subchapter I. RESPONSIBLE ALCOHOL MANAGEMENT PROGRAM**

##### **GENERAL**

Sec.	
5.201.	Purpose.
5.202.	Definitions.

##### **COURSE OF STUDY**

5.211.	Course of study for alcohol service personnel.
--------	--

##### **INSTRUCTORS**

5.231.	Instructor certification.
5.232.	Instructor responsibilities.
5.233.	Minimum standards of training.

##### **TRAINING/ORIENTATION**

5.241.	Manager/owner training.
5.242.	New employee orientation.
5.243.	Records.

##### **PROHIBITED CONDUCT**

5.251.	Prohibited conduct.
--------	---------------------

##### **SIGNS**

5.261.	Signs.
--------	--------

##### **CERTIFICATION**

5.271.	Premises certification.
--------	-------------------------

**GENERAL**

**§ 5.201. Purpose.**

(a) This subchapter implements the program authorized under section 471.1 of the Liquor Code (47 P.S. § 4-471.1), regarding responsible alcohol management. This provision authorizes the Board to establish a four-part program including:

- (1) New employee orientation.
- (2) Training for alcohol service personnel.
- (3) Manager/owner training.
- (4) Display of responsible alcohol service signage.

(b) Under section 471.1(f) of the Liquor Code, licensees are to obtain certification upon the completion of a certified alcohol service personnel program or the Board's owner/manager training program. Certification will be valid for 2 years.

(c) Licensees and their managers and employees may enter the Responsible Alcohol Management Program voluntarily, may commit to participation as part of a conditional licensing agreement entered into with the Board or may be required to participate by order of one of the Board's administrative law judges. This subchapter also establishes standards for the Board to certify compliance with this program.

**§ 5.202. Definitions.**

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

*BAE—Bureau of Alcohol Education*—The office in the Board that is responsible for administering the Responsible Alcohol Management Program.

*Certify*—To approve and confirm the approval in writing.

*Instructor*—An individual who is certified by the Board to instruct students, including licensees, owners, managers, servers, sellers and members of the public, in responsible server practices.

*Licensee*—An individual, person or entity that holds a license issued by the Board.

*Manager/owner training*—Training conducted by the Board or its employees for individuals who manage or own licensed premises.

*New employee*—An individual who has not been employed at the licensed premises seeking certification in any capacity during the preceding year.

*Responsible server practices*—Procedures and practices used by alcohol service personnel to prevent the furnishing or selling of alcoholic beverages to minors and visibly intoxicated persons.

**COURSE OF STUDY**

**§ 5.211. Course of study for alcohol service personnel.**

A standard curriculum for the course of study will be provided by the BAE.

**INSTRUCTORS**

**§ 5.231. Instructor certification.**

The BAE will have a procedure, as set forth in this section, to confirm a person's competency to begin and continue working as an instructor. Part of this procedure

will include observation of an instructor's training sessions by representatives of the BAE at least twice per year.

(1) A person desiring certification as an instructor shall submit an application on forms issued by the Board and pay a \$250 nonrefundable application fee.

(2) The minimum qualifications of an instructor include the following:

- (i) Possessing a high school diploma or GED.
- (ii) Possessing a minimum of 2 years of experience, full-time, in the field of education, law, law enforcement, substance abuse prevention, hospitality or alcohol service training.
- (iii) Being 21 years of age or older.
- (iv) Having no arrests that are related to alcohol, narcotics or other controlled substances in the previous 10 years.

(v) Attending manager/owner training once in the year preceding the date the application for instructor certification is filed.

(3) If a person who has submitted a completed application meets the minimum requirements for certification, the Board will issue to the instructor a Notice of Certification. The period of certification shall be 1 year from the date of issuance of the Notice of Certification.

(4) Renewal of certification shall be submitted to the BAE at least 30 days prior to the expiration of the instructor's current certification. The same forms, provided by the BAE, shall be used for renewals as for initial certification. A \$250 fee must accompany an application for renewal.

**§ 5.232. Instructor responsibilities.**

Instructors have the responsibility to do the following:

(1) Using the standard curriculum provided by the BAE, provide students with information regarding the current status of the law on issues regarding the sale or service of alcoholic beverages by licensees.

(2) Schedule training sessions in locations throughout this Commonwealth.

(3) Conduct at least two training sessions per quarter and train at least 225 students per year. Instructors may request a waiver of the minimum requirements in this paragraph by sending a letter or e-mail to the BAE. The BAE will waive the requirements for minimum training activity for instructors due to temporary, nonrecurrent exigencies, such as instructor illness or family emergency, bad weather or other circumstances beyond the instructor's control.

(4) Provide accurate records of attendance and course completion, as required under § 5.233(c) (relating to minimum standards of training), to the BAE within 7 calendar days following each training session through the BAE's web site. Original attendance sheets shall be submitted to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.

(5) Attend instructor meetings twice per year as scheduled by the BAE.

(6) Attend manager/owner training at least once per year.

**§ 5.233. Minimum standards of training.**

(a) Instructors shall conduct training sessions conforming to the BAE's standard curriculum.

(1) Each training session must consist of at least 2 1/2 hours of instructional time.

(2) The ratio of students per instructor may not exceed 40 to 1.

(b) Instructors shall notify the BAE of the following:

(1) At least 7 calendar days in advance of scheduling any training session. Instructors shall provide notification to the BAE through the BAE's web site.

(2) Immediately of any training session cancellation. Instructors shall provide notification to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.

(3) Immediately of any changes to the training schedule. Instructors shall provide notification to the BAE by first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.

(c) Instructors shall obtain the student information indicated in paragraphs (1)—(3) at the beginning of the training session. An instructor shall send a completed attendance sheet to the BAE within 7 days of the end of the training session, including the following information from each student:

(1) Name.

(2) Home address.

(3) Home telephone number.

(4) Student identification number issued by the BAE.

(5) Pass/fail score on the test.

(6) Licensed establishment name, address and licensee identification.

(7) Time and location of training.

(d) At the conclusion of the training, the instructor shall administer a standardized test prepared by the BAE, insuring that students complete the examination as a closed book exam, without access to references to aid in the completion of the examination.

(e) The instructor shall grade examinations and notify students of their grades. A test score of 80% or better is required to pass. A student who does not pass may, at the first opportunity, schedule training and take the test again.

**TRAINING/ORIENTATION****§ 5.241. Manager/owner training.**

(a) Manager/owner training will be conducted by the BAE.

(b) Training must include instruction on proper service of alcohol, developing an alcohol service policy and establishing house rules and policies aimed at preventing sales of alcoholic beverages to minors or visibly intoxicated persons. Instruction shall also be provided on identification checks and signs of visible intoxication. Instruction shall be provided on techniques to assure that employees are complying with house rules and policies, including the orientation of new and current employees and the documentation of incidents occurring in the workplace.

(c) For 2 years, the Board will maintain records establishing the names of individuals who have successfully undergone manager/owner training.

**§ 5.242. New employee orientation.**

(a) Licensees applying for certification of compliance under section 471.1 of the Liquor Code (47 P. S. § 4-471.1) shall conduct new employee orientation within 30 days of the employee's hire, in accordance with a checklist of responsible server practices provided by the BAE including:

(1) Penalties for furnishing or selling alcohol to minors.

(2) Acceptable forms of identification as defined in section 495(a) of the Liquor Code (47 P. S. § 4-495(a)).

(3) Practices for checking identification to prevent the service of alcohol to minors, which is prohibited under section 493(1) of the Liquor Code (47 P. S. § 4-493(1)).

(4) Penalties for furnishing or selling alcohol to visibly intoxicated persons.

(5) Practices for refusing service of alcohol to visibly intoxicated persons.

(6) Procedures for handling situations where criminal activity, such as drug activity, assaults or fights, loitering and prostitution, is occurring in or about the premises.

(b) The licensee is responsible for ensuring that the owner or manager conducts the new employee orientation.

**§ 5.243. Records.**

(a) The licensee shall keep the following records:

(1) Certification status of its employees, managers and owners, consisting of the name of the employee, manager or owner, date of hire, date of training and the name of the trainer.

(2) Date of premises certification.

(3) Records of its new employee orientation program.

(4) Responsible alcohol service signs it posted, where and when the signs were posted, revised and reposted.

(b) These records shall be maintained as part of the licensee's operating records required to be kept for 2 years in accordance with section 493(12) of the Liquor Code (47 P. S. § 4-493(12)).

**PROHIBITED CONDUCT****§ 5.251. Prohibited conduct.**

(a) The Board may decertify instructors for violating any of the provisions of this subchapter or engaging in the following conduct:

(1) Discrimination or harassment based on age, race, sex, disability, national origin or religion.

(2) An act that is in violation of the Liquor Code or this title.

(3) An act resulting in a misdemeanor or felony conviction.

(4) An act resulting in admittance into an Accelerated Rehabilitative Disposition (ARD) program if the underlying activity is related to alcoholic beverages, narcotics or controlled substances.

(5) Being under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, examinations or breaks.

(6) Knowingly permitting students to be under the influence of alcoholic beverages, narcotics or controlled substances during training presentations, examinations or breaks.

- (7) Cheating or condoning cheating by students.
- (8) Knowingly providing false information on reports submitted to the Board.
- (9) Having an unacceptable evaluation regarding the presentation of the course of study from class observations conducted by the BAE. An unacceptable evaluation will result from conduct including, but not limited to, the following:
  - (i) Failing to satisfactorily carry out the instructor's responsibilities in § 5.232 (relating to instructor responsibilities).
  - (ii) Failing to meet the minimum standards of training in § 5.211 (relating to course of study for alcohol service personnel).
  - (iii) Failing to provide students with current and accurate information.
  - (iv) Failing to provide accurate records of attendance and course completion to the BAE.
  - (v) Failing to conduct at least 2 1/2 hours of instructional time in each training.
  - (vi) Exceeding the ratio of students per instructor.
  - (vii) Failing to properly administer the standardized test prepared by the BAE.
- (b) The Board will send a Notice of Decertification to an instructor by certified United States mail. An appeal of the Board's decision to decertify an instructor shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).

(c) The Board will not consider an instructor's application for recertification until 1 year after the date of decertification.

**SIGNS**

**§ 5.261. Signs.**

- (a) Signs for posting in the licensed premises will be provided by the Board. A licensee may use its own signs provided that they are equivalent in size and content to the Board's signs.
- (b) The following signs must be posted, notifying patrons about:
  - (1) Acceptable forms of identification as described in section 495(a) of the Liquor Code (47 P. S. § 4-495(a)).
  - (2) The licensee's duty to refuse service to minors and visibly intoxicated persons under section 493(1) of the Liquor Code (47 P. S. § 4-493(1)).
- (c) The design of the signs must be that they are legible from a distance of 10 feet. Signs must be located where patrons will easily see them.
- (d) The licensee is responsible for the posting and maintenance of signs.

**CERTIFICATION**

**§ 5.271. Premises certification.**

- (a) A licensee may request that the Board certify that it complies with section 471.1 of the Liquor Code (47 P. S. § 4-471.1). The request may be made by personal contact, telephone or written communication to the BAE. Written communication includes first class United States mail, other delivery or express service, transmission by facsimile or by e-mail.
- (b) Certification or recertification will be issued by the Board after investigation and approval of the licensed premises.

- (c) There is no fee for certification or recertification.
- (d) If the Board finds that a licensee has met the requirements under section 471.1 of the Liquor Code, the licensee will be issued a certificate of compliance valid for 2 years.
- (e) If the Board finds that a licensee has not met the requirements of section 471.1 of the Liquor Code or this subchapter, and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was not mandated by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse certification or decertify the licensee.
- (f) If the Board finds that a licensee has not met the requirements under section 471.1 of the Liquor Code or this subchapter and the licensee's compliance with section 471.1 of the Liquor Code or this subchapter was required by the Office of Administrative Law Judge, by statute, by regulation or by a conditional licensing agreement, the Board will refuse the application for certification or decertify the licensee and refer the matter to the Pennsylvania State Police, Bureau of Liquor Control Enforcement.
- (g) The Board will send a Notice of Decertification to the licensee by certified United States mail. Appeal of the Board's decision to decertify a licensee shall be as set forth in 2 Pa.C.S. § 702 (relating to appeals).
- (h) A licensee may apply for recertification at any time after the date of decertification.
- (i) The Office of Administrative Law Judge will take official notice of the Board's records with regard to the licensee's certification.

[Pa.B. Doc. No. 10-1158. Filed for public inspection June 25, 2010, 9:00 a.m.]

**Title 52—PUBLIC UTILITIES**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
[ 52 PA. CODE CH. 64 ]**

[L-00060179/57-251]

**Provision of Bundled Service Package Plans at a Single Monthly Rate by Local Exchange Carriers**

The Pennsylvania Public Utility Commission (Commission), on December 17, 2009, adopted a final rulemaking order which eliminates the need for administrative review and approval of a waiver of Chapter 64 (relating to standards and billing practices for residential telephone service) separate billing requirements and preserves consumer protections in place for basic local service provided in a bundled service pricing plan.

*Executive Summary*

By Order entered July 3, 2006, at Docket No. L-00060179, the Commission adopted a Proposed Rulemaking Order to amend Chapter 64 of Commission regulations, 52 Pa. Code §§ 64.2, 64.14, 64.17, 64.18, 64.21, 64.24, 64.72, 64.74 and 64.123. By order entered March 27, 2009, the Commission approved final-form regulations to amend Chapter 64 to both: 1) expand Chapter 64 billing provisions so as to authorize competitive local exchange carriers to offer and bill on one bill bundled packages of telecommunications services in the same manner that incumbent local exchange carriers

(ILECs) were authorized under 66 Pa.C.S. § 3016(e)(2) (relating to pricing flexibility and bundling); and 2) clarify that consumer protections remain in place for the suspension, termination and restoration of protected basic service, when included in a bundled service pricing plan.

Upon reconsideration, the Commission revised the final-form regulations to avoid imposing unnecessary and burdensome regulatory obligations on the offering of bundled service packages. The Commission has revised § 64.24 (relating to provisions of bundled service packages) to closely track the previously granted waivers from consumer protection regulations and has revised the remaining sections so that § 64.24 is a stand-alone section dealing with provision of basic service in bundled service packages.

The now final-form regulations codify the existing waivers previously granted to Local Exchange Carriers (LECs) that provide bundled service packages and, at the same time, ensure that residential telephone customers are protected from an abrupt termination of basic service if the customer fails to make full payment for the bundled service package. The revised final-form regulations strike an appropriate and lawful balance between the LECs' right to offer bundled service packages at a single rate and consumer protection in regard to access to basic service. Access to "basic service" for residential telecommunications customers is essential for emergency services, for contact with schools, doctors, hospitals and family, and for Telecommunications Relay Services.

Under the current language of Chapter 64, the Commission is required to review and approve or deny a request for waiver from Chapter 64's separate billing requirements. The amendment to Chapter 64 contained in our final rulemaking eliminates the need for administrative review and approval of a waiver from separate billing requirements, provided certain consumer safe guards are met, while preserving the Commission's oversight authority. Specifically, the need for administrative hours devoted to review of applications for waiver from Chapter 64 separate billing requirements will be eliminated.

Public Meeting held  
December 17, 2009

*Commissioners Present:* James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; Kim Pizzigrilli; Wayne E. Gardner; Robert F. Powelson

*Provision of Basic Service in Bundled Service Package Plans by Local Exchange Carriers; Doc. No. L-00060179*

### **Final Rulemaking Order on Reconsideration**

*By the Commission:*

By order entered March 27, 2009, the Commission adopted final form regulations regarding Chapter 64, Standards and Billing Practices for Residential Services, and, in particular, the issues raised by the pricing flexibility granted to LECs, by Chapter 30 of the Public Utility Code, to offer bundled service packages at a single price pursuant to Section 3016(e)(1). 66 Pa.C.S. § 3016(e)(1). This rulemaking was initiated to codify the various waivers of otherwise applicable Chapter 64 regulations that the Commission had granted to LECs over time, so as to avoid repetitive petitions for waiver of those regulations.

On April 13, 2009, Verizon Pennsylvania, Inc. (Verizon) filed a petition for reconsideration and/or clarification regarding the final rulemaking order. The petition argues, inter alia, that the final form regulation would "impose

burdensome, unnecessary, confusing and costly billing requirements" on LECs that offer bundled service packages by a requirement to separately display an amount attributable to "basic" local service on the bill, contrary to the terms of the waivers previously granted by the Commission, and that the regulations appear to preclude Verizon's existing practice of converting a non-paying bundled service package customer to a zero-balance basic account. Verizon Petition at 2.

The Office of Consumer Advocate (OCA) filed an answer in support of Verizon's Petition for Reconsideration, submitting that the Petition should be adopted to the extent that it allows LECs that currently convert non-paying customers to a zero-balance basic service account to continue to do so. OCA Answer at 5.

Also, on May 11, 2009, the Broadband Cable Association of Pennsylvania (BCAP) filed a petition for reconsideration and clarification. The BCAP petition argues, inter alia, that the final form regulation should not apply to Competitive Local Exchange Carriers (CLECs) and the bundled service package offered by those telecommunications companies due to (a) the enactment of Act 183, which altered certain definitions within Chapter 30, and (b) the passage of the Voice-Over-Internet Protocol Freedom Act, 73 P.S. § 2251.1—2251.6, which exempts VoIP services or IP-enabled services from regulation by the Commission.

The standards for granting a petition for reconsideration provide that such a petition may raise any matters designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or in part, and should raise new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission. *Duick v. Pa. Gas and Water Co.*, Docket No. C-R0597001, et al., 56 Pa. P.U.C. 553, 1982 Pa. PUC LEXIS 4 (December 17, 1982). Upon review of the matters raised in the petitions for reconsideration and/or clarification filed by Verizon and BCAP, we find that the petitions raise legal and operational issues regarding this rulemaking that require further consideration by the Commission and, on that basis, we shall grant reconsideration for the purpose of considering those legal and operational issues.

In the context of our review of these petitions for reconsideration and/or clarification, it appears that the scope of this rulemaking has expanded beyond its original purpose, that is, to codify the existing waivers previously granted to LECs that provide bundled service packages and, at the same time, to ensure that residential telephone customers are protected from an abrupt termination of basic service if the customer fails to make full payment for the bundled service package. Access to "basic service" for residential telecommunications customers is essential for emergency services, for contact with schools, doctors, hospitals and family, and for Telecommunications Relay Services. Customers should have the opportunity to maintain basic service to maintain these essential contacts so long as they meet their payment obligations for basic service.

Upon reconsideration, it appears that the final form regulations previously adopted by the Commission appear to place regulatory obligations on the offering of bundled service packages that are unnecessary and burdensome, and that are beyond the scope of the waivers previously granted by the Commission. Therefore, the Commission has revised § 64.24 to closely track the previously granted waivers and has revised the remaining sections

so that § 64.24 is a stand-alone section dealing with bundled service packages. In the Commission's judgment, these revised final form regulations strike an appropriate and lawful balance between the LECs' right to offer bundled service packages at a single rate and consumer protection in regard to access to basic service.

#### *Discussion*

#### **§ 64.2. Definitions.**

The definitions in Chapter 64 have been amended to add a definition for "bundled service package" in order to describe in more detail the type of service offering addressed in section 3016(e) of the Public Utility Code and in § 64.24 of these regulations.

#### **§ 64.14. Billing Information.**

Subsection (a)(4), regarding the categories of service that must be displayed on a customer bill, has been revised to require customer bills to display two categories of services: basic and non-basic, as well as taxes and applicable surcharges. The former category of "equipment" has been deleted because it is a subset of non-basic service. However, per § 64.24(b) of the revised final form regulation, the obligation to separately display these categories on a customer bill will not apply to bundled service packages.

Subsection (a)(5), regarding an itemized list of toll charges, has been revised to make clear that the requirement to provide an itemized list of toll charges on a customer bill does not apply if the customer subscribes to an unlimited toll service plan or if an unlimited toll service plan is included in the customer's bundled service package.

Finally, subsection (a)(11), has been amended to use the word "contacting" instead of "calling" to recognize and permit other reasonable means by which a customer may get in touch with the LEC to obtain a rate schedule, verify the accuracy of a bill, or get explanations of various charges on the bill.

#### **§ 64.17. Partial Payments for Current Bills.**

Subsection (a) has been re-worded to make clear that, if the customer's payment is insufficient to cover the entire amount currently due, the partial payment must be applied first to the customer's amount due for "basic services," provided there is no past amount due. The purpose of this regulation is to maintain access to basic service, to the extent possible, in situations where the customer's failure to pay the full amount currently due places the customer in jeopardy of service termination. The policy goal is to maintain universal service and customer access to emergency service, to doctors, hospitals and family, and to TRS service, provided the customer's partial payment is adequate to pay the basic service portion of the current bill. Per § 64.24(b), this allocation of partial payments for current bills is not mandated for bundled service packages.

In addition, this section has been revised to allow both oral and written instructions by the customer as to how a partial payment is to be applied. Thus, as revised, the customer may supply written instruction or the customer may supply oral instructions so long as those oral instructions are noted by the LEC's customer service representative and documented in the normal course of business on the customer's account. This will allow electronic notation of the customer's preference which, in turn, is likely to be less costly and more efficient.

#### **§ 64.18. Application of Partial Payment Between Past and Current Bills.**

This section also relates to the policy goal of maintaining universal service and, to that end, the obligation to apply partial payments first to the basic service portion of customer bills. Here, this section requires that when customer payments are insufficient to pay a balance due for past and current bills, the partial payment must be first applied to the basic service portion of the past due bill. However, again, per § 64.24(b), this required allocation of partial payments between past and current bills is not applicable to bundled service packages. Also, consistent with § 64.17, this section has been revised to allow electronic notation as to the customer's preference regarding the application of partial payments.

#### **§ 64.21. Separate Billing for Basic Service.**

This section has been deleted as superfluous. The requirement for separate charges on the bill for basic service is already covered by § 64.14(a) for separately purchased services, and the protection of access to basic service in the case of partial payments is covered in §§ 64.17 and 64.18.

#### **§ 64.24. Bundled Service Packages Containing Basic Services.**

This rulemaking was initiated to codify the existing waivers previously granted to LECs that provide bundled service packages and, at the same time, to ensure that residential telephone customers are protected from an abrupt suspension and termination of basic service if the customer fails to make full payment for the bundled service package. In Act 183 the General Assembly, recognizing the increased competition in the telecommunications industry and the benefits of such competition to consumers, specifically allowed ILECs to offer bundled service packages at a single rate to compete with the bundled services offered by their competitors. 66 Pa.C.S. § 3016(e). However, Section 3016(e) does not go so far as to categorically exempt all aspects of bundled service, especially basic service, from regulation. Indeed, the Commission was permitted to retain regulatory authority regarding the "suspension, termination and restoration of any telecommunications service." 66 Pa.C.S. § 3019(b).

While ILECs are now authorized by law to offer bundled service packages, the regulation will explicitly permit CLECs to have the authority to offer bundled service packages without filing repetitive petitions with the Commission for Chapter 64 waivers. In developing the regulations to accomplish this objective, the Commission is required to carefully balance the LEC's legitimate business interest in having the pricing and service offering flexibility needed to respond to competition with the consumer's countervailing interest in maintaining access to basic service, so long as timely payments are made.

The Commission believes that the revised final form regulation is lawful and has struck the appropriate balance between these important interests. Moreover, the Commission has struck this balance, in these revised final form regulations, by codifying the waivers previously granted to LECs that sought to offer bundled service packages and the associated customer disclosure notices and conversion of non-paying customers to basic service. In that fashion, customers who are delinquent on their bundled service package will have an opportunity to maintain access to basic service, in lieu of termination from the network.

*Right to Offer Bundled Service Package*

Subsection (a) applies to all LECs and parallels the general rule in Section 3016(e) that permits ILECs to offer bundled services at a single price. This regulation makes no rule regarding the pricing of bundled services and contains no requirement that the billing for bundled services be disaggregated on a customer's bill. Independent Regulatory Review Commission (IRRC) comments had questioned whether the proposed form regulations attempted to regulate bundled service packages as a whole and wording that LECs "may offer bundled packages of service . . . under the following conditions. . . ." IRRC Comments at 1-2. The IRRC comments also questioned language in the proposed form regulation that addressed payment arrangements on past due amounts for bundled service packages. IRRC Comments at 2.

In response to these IRRC concerns and the parties' comments to this rulemaking, this subsection was revised to delete the "under the following conditions" language in order to make clear the right of all LECs to offer bundled service packages; moreover, in regard to bundled service packages, there are no conditions on the ability of LECs to offer bundled service packages, no limitation on the services that can be bundled, no regulation of the rates for bundled service packages, no requirements on allocation of partial payments, no disaggregation obligations as to billing or tariffs, and no obligation to offer payment arrangements for past due amounts. However, the regulation does impose notice obligations relating to consumer protection and an after-the-fact obligation to offer an opportunity to obtain "basic service," or its nearest equivalent, to customers whose bundled service packages are to be terminated.

*Exemption from Certain Chapter 64 Regulations*

Subsection (b) provides that LECs that offer bundled service packages are exempt from certain regulations in Chapter 64 regarding itemized charges, allocation of partial payments between basic and non-basic charges, allocation of partial payments between current and past bills, and suspension notices covering basic and non-basic services. However, this subsection also continues previously adopted consumer protection requirements for bundled service packages, as set forth in subsection (c), regarding customer notice and the opportunity for delinquent customers to maintain access to basic service, so long as payment for basic service remains current.

*Consumer Protection Requirements*

Subsection (c) sets forth the consumer protection rules associated with the offering of bundled service packages. First, the failure to pay the single-rate bundled service package price will not result in the potential for immediate termination of a residential customer's access to basic service; rather, if and when the LEC determines that the bundled service package will be terminated for non-payment or other appropriate reason, the account will be converted, reduced or otherwise changed to a "basic service" account subject to future suspension and termination in accordance with Chapter 64. Thereafter, if the customer fails to make timely payments relating to basic service charge, the customer will be subject to termination under Chapter 64. In this fashion, a customer who falls behind on payments for a bundled service package that contains services in addition to basic service will not face the prospect of an immediate loss of access to basic service and the associated ability to make 911 emergency calls, and to contact doctors, hospitals and family members.

Under these rules, the delinquent customer will have the opportunity to maintain access to basic service so long as the customer remains current on the amounts due for basic service. The Commission recognizes that unregulated cable, wireless and VoIP carriers would not operate under this same consumer protection obligation. However, these carriers are not subject to any universal service obligations under state law. Given Chapter 30's policy goal to maintain universal service, the special consumer protections provided within Chapter 30 for so-called "protected services" (which include basic service), and the Commission's long-standing policy to protect consumers' access to basic service for carriers subject to the Commission's jurisdiction, the promulgation of this regulation, consistent with existing waivers and billing practices, is a reasonable exercise of our authority under Chapters 13, 15 and 30 of the Public Utility Code.

Second, the LEC is required to provide a disclosure statement to all new bundled service package customers that notifies these customers of the LEC's billing and suspension practices for the bundled service package, discloses that failure to pay the amount due for bundled services will not result in an immediate loss of access to basic service, and complies with the Commission's plain language guidelines in § 69.251.

These disclosure requirements are generally consistent with those previously required by the Commission in granting bundled billing waivers, as well as the Commission's Secretarial Letter issued September 23, 2003 to all CLECs. The disclosure requirements are intended to make clear to the customer that if the customer falls behind on the amounts due for the bundled service package, while the LEC may lawfully terminate the bundled service package (or, at its discretion, work out a payment arrangement or otherwise work with the customer to maintain service), the delinquent customer will have an opportunity to maintain access to basic service so long as the customer remains current on the amounts due for basic service. The revised Annex A, however, deletes the requirements to disclose the current tariff charge for basic service and the notice that Chapter 64 rules will govern the suspension of basic service. Upon further consideration, these notices are unnecessary at the time the customer initiates a bundled service package since, if the customer subsequently becomes delinquent, the LEC is obligated to provide these notices pursuant to § 64.72 before any suspension of basic service can take place.

The disclosure requirements set forth in revised Annex A herein represent consumer protection measures that the Commission deems necessary and in the public interest. At the same time, we have also minimized the burdens on LECs. For example, there is no obligation in these rules to place this customer notice in monthly billing inserts, no Commission review of other unrelated customer communications, no rules on the allocation of partial payments, and no obligation to separately display, on customer bills, elements of the basic service package. Also, we do not require any re-notification to existing bundled service package customers. LECs operating under waivers previously granted by the Commission are not required to re-notify their existing bundled service package customers.

Lastly, the applicable basic service rate for a customer that is converted to basic service will be the LEC's current tariff rate at the time of the conversion. For LECs with no tariff rate for a stand-alone basic service option, the LEC may convert or step-down the customer to the nearest basic service equivalent in its tariff. The Commis-

sion does not intend that this regulation, in and of itself, obligate LECs to offer stand-alone basic service. That is a subject matter that is not within the scope of this rulemaking.

#### *IRRC Comments*

While recognizing the Commission's interest in protecting basic service, the IRRC comments indicated a concern that the regulation regarding customer notice was overbroad in that it appeared to address all aspects of bundled service packages and, further, that the proposed form regulation would require Commission review of "other communications" regarding bundled service packages. IRRC Comments at 2. In response to these comments, the Commission would point out that the notice that is subject to Commission review is only that portion of the LEC's communication that deals with consumer protection of access to basic service. The regulation does not purport to control all communications regarding bundled service packages. In addition, the phrase "other communications" has been deleted to make this clear.

IRRC also noted a concern, under the proposed form regulations, that the LEC would be required to convert the customer to basic service without the discretion for the LEC and customer to "resolve any issues that may have led to failure to make payment." IRRC Comments at 2. As noted herein, under the revised final form regulations, the LEC retains the discretion as to when the bundled service package is to be terminated for non-payment, as well as the discretion to offer a step-down service or payment arrangement to the customer. The obligation set forth in § 64.24(c)(1) to convert the customer to basic service commences only at that point when the LEC determines that the bundled service package is to be terminated.

In regard to the concern expressed by IRRC that the existing waivers may be inconsistent with the proposed form regulations, IRRC Comments at 3, the Commission has re-drafted the regulation to clarify that the Chapter 64 regulations, 52 Pa. Code §§ 64.14(a)(4) and (5), 64.17, 64.18, and 64.63(1) and (2) are not applicable to bundled service packages because they are unnecessary and inconsistent with the concept of a competitive bundled service package. However, at the same time, for consumer protection purposes, the Commission's revised final form regulation imposes separate requirements to provide customers with notice and the opportunity to maintain basic service connectivity to the telephone network if they are to be terminated by the LEC from a bundled service package. Moreover, providing customers with an opportunity to maintain basic service promotes universal service, a key goal of Chapter 30. 66 Pa.C.S. § 3011(2). Accordingly, under these rules, there are no longer any waivers from the above-referenced Chapter 64 regulations for bundled service packages; rather, bundled service packages are simply exempt from those regulations.

#### *VZ Petition for Reconsideration*

As noted initially in this order, Verizon filed a petition for reconsideration and/or clarification arguing that the final form regulation would "impose burdensome, unnecessary, confusing and costly billing requirements" on LECs that offer bundled service packages by a requirement to separately display an amount attributable to "basic" local service on the bill, contrary to the terms of the waivers previously granted by the Commission, and that the regulations appear to preclude Verizon's existing practice of converting a non-paying bundled service package customer to a zero-balance basic account.

The Commission believes that these concerns have been addressed in this reconsideration order and revised Annex A. The revised final form regulations contain no obligation on LECs to separately display an amount attributable to the "basic service" portion of a bundled service package. The package rate is a single-rate for multiple services; it would be inconsistent with that concept and the ability to offer bundled services at a single rate granted in 66 Pa.C.S. § 3016(e) to mandate a disaggregated "basic service" rate on the customer's bill or in the tariff.

Also, nothing in the final-form regulation was intended to prohibit the so-called "zero balance" approach to conversion of a customer's bundled service package to a basic service account. To make this clear, Annex A has been revised to describe and permit this approach in § 64.24(c)(1)(i). In the "zero balance" approach, used by Verizon and some other LECs, when the conversion to basic service is accomplished, there is no past due balance associated with the basic service account. Any past due amounts associated with the bundled service package are pursued by normal collection means, at the discretion of the LEC. Thereafter, if the customer becomes delinquent on the basic service account, the LEC may issue a suspension notice in accordance with § 64.72, which provides notice to the customer that suspension is imminent and identifies the amount past due for basic service that must be paid by that customer to avoid suspension of basic service.

At the same time, however, the Commission is aware that some LEC billing systems are able to track, internally, the amounts associated with the basic service portion of a customer's bundled service package account. For LECs whose billing systems allow tracking of amounts associated with basic service, those carriers would: (1) list the amount past due for basic service separately (from the total due for the bundled package) on the suspension notice and termination notice; (2) apply any partial payments first to basic service; and (3) suspend for non-payment of basic service pursuant to intervals set by Chapter 64 rules. See FSN Additional Comments at 1. This alternate billing approach is now described and permitted in § 64.24(c)(1)(ii). Accordingly, if a customer's partial payment is insufficient to pay even the basic service portion of the bundled bill, the LEC may issue a suspension notice, in accordance with § 64.72, at that time.

The regulation does not prohibit these approaches, nor does it require any internal tracking of the basic service portion of a bundled service package. However, in any suspension and termination proceeding for basic service under Chapter 64, it would be the LEC's burden of proof to demonstrate the accuracy of its stated past due amounts for basic service.

#### *BCAP Petition for Reconsideration*

In regard to the petition for reconsideration filed by BCAP, the petition argues that the final-form regulation should not apply to competitive LECs and the bundled service packages offered by those telecommunications companies due to (a) the enactment of Act 183, which altered certain definitions within Chapter 30, and (b) the passage of the Voice-over-Internet Protocol Freedom Act, 73 P. S. § 2251.1—2251.6, which exempts VoIP services or IP-enabled services from regulation by the Commission.

As previously stated in our order adopted March 27, 2009 at this docket, nothing in the language of Chapter 30 establishing the right to offer and bill competitive, non-competitive and protected services on one bill expressed any limitation on the Commission's regulatory authority regarding the suspension, termination and restoration of the basic services included in the single-priced bundle of services. Indeed, Section 3016(e)(2) deals with "pricing flexibility and bundling" for LECs. It does not purport to address suspension, termination, and restoration of service issues as general matter which, pursuant to Section 3019(b)(2), is an area of regulation that is retained by the Commission as to "any telecommunications service." 66 Pa.C.S. § 3019(b). Nor does Section 3016(e)(2) negate the Commission's authority under Section 3019(b)(3) to establish requirements deemed necessary and in the public interest by the Commission "to ensure the protection of customers." 66 Pa.C.S. § 3019(b)(3). Accordingly, the Commission rejects the position that CLECs are categorically exempt from Chapter 64 and its consumer protection provisions, particularly with respect to consumers' access to basic services.

The essential argument made by BCAP is that because the General Assembly modified the definition of "protected services" to be associated with "a local exchange telecommunications company" in Section 3012, and because the definition of "local exchange telecommunications company" is now defined, in Section 3012, in relation to an "incumbent carrier," none of the rules and protections associated with "protected services" are applicable to non-incumbent carriers, i.e., CLECs and other forms of competitive telecommunications service providers. BCAP Petition at 3-4. Basic service is a subset of the several so-called "protected services" identified by the General Assembly for special protections under Chapter 30 as to rates, terms and conditions of service, unless deemed competitive by the Commission. See 66 Pa.C.S. § 3012.

What this statutory analysis overlooks, however, is that pursuant to Section 3019(b)(2), the Commission retains regulatory authority over the suspension, termination and restoration of "any telecommunications service." 66 Pa.C.S. § 3019(b)(2) (emphasis added). This authority is not limited to incumbent LECs. CLECs are a subset of "all telecommunications carriers" and, therefore, CLECs are within the scope of this section. Indeed, Chapter 30's description of the powers and duties retained by the Commission provides clearly that the Commission "shall retain the following powers and duties relating to the regulation of all telecommunications carriers and interexchange telecommunications carriers. . ." 66 Pa.C.S. § 3019(b) (emphasis added). There is no exemption for CLECs.

Moreover, in the Commission's judgment, the opportunity for customers to retain access to basic service at the CLEC's tariff rates, provided that the customer remains current on the amounts due, is a necessary and critical consumer protection measure within our authority to require under Section 3019(b)(3), as well as Sections 1301 (rates must be just and reasonable) and 1501 (obligation to provide adequate, efficient, safe and reasonable service). 66 Pa.C.S. §§ 3019(b), 1301, and 1501. Subsection (b)(3) provides that the Commission may "establish such additional requirements as are consistent with this chapter as the Commission determines to be necessary to ensure the protection of customers." The consumer protection measures adopted herein provide consumers with an

opportunity to maintain access to basic service in the event that they become delinquent on bundled service packages, provide connectivity to the telephone network for basic communications needs (including local calls and medical emergencies), and serve to promote universal service. In the Commission's judgment, these measures are necessary to protect consumers and are in the public interest.

BCAP also argues that pursuant to the VoIP Freedom Act, services offered by CLECs by means of IP-enabled or VoIP networks are exempt from regulation by the Commission because the exemption for "protected service" at 73 P. S. § 2251.6 only applies to protected services offered by incumbent LECs.

Upon further review of this section, it is clear that the General Assembly intended to exempt, from regulation, any services offered by means of IP-enabled or VoIP networks, subject to five specific exceptions: access to and fees for 911 service, access to TRS service, obligations to Universal Service Fund fees, obligations to pay applicable access charges, and rates, terms and conditions for protected services offered under tariffs "which are subject to approval by the Pennsylvania Public Utility Commission." As noted earlier, the definition of "protected services" in Chapter 30 has been narrowed to refer to ILEC-provided services, and this then raises the statutory interpretation issue of whether the exemption for protected services in the VoIP Freedom Act applies to both ILECs and CLECs.

The rules of statutory construction provide that the object of all interpretation and construction of a statute is to ascertain and effectuate the intention of the General Assembly, that the plain words of the statutory language control, and that if an ambiguity does exist the intention of the General Assembly is to be ascertained by considering, inter alia, the occasion and necessity of the statute, the object to be attained, and the consequences of a particular interpretation. 1 Pa.C.S. § 1921(c).

The clear purpose of the statute is to encourage the proliferation and rapid expansion of IP-enabled and VoIP services by minimizing regulatory burdens. However, it is equally clear that the General Assembly desired to carve out certain exceptions related to 911 service, TRS service, Universal Service Fund fees, access charges, and the "rates, terms and conditions for protected services offered under tariffs which are subject to approval by the Pennsylvania Public Utility Commission." Because four of the five exceptions relate to consumer protection that is to be provided regardless of the use of IP-enabled technology, we interpret the fundamental purpose and object of this exemption portion of the legislation to be consumer protection, especially as to "protected services" offered under tariffs filed with and approved by the Commission.

Because there is no definition of "protected services" in the VoIP Freedom Act, the act is ambiguous as to the extent of this exemption. BCAP reasons that since the term "protected services" is defined in Chapter 30 with reference to ILECs, the term has no meaning and thus no application to CLECs who provide protected services using IP-technology. Adoption of BCAP's reasoning would preclude consumer protection before the Commission for basic services offered by CLECs who use IP-technology. This would be a substantial diminution of consumer protection rights regarding access to the network and,

further, would treat ILEC and CLEC customers differently whenever IP-technology is used to provide the service. It is not clear that the General Assembly intended that there be disparate treatment for such similarly situated customers.

However, we also note that the term “protected services” is further limited by the phrase “under tariffs subject to approval by the [Commission].” Given that certain VoIP providers may not be obligated to file tariffs for their retail services with the Commission, we conclude that non-ILECs who provide telecommunications services, including basic services, by means of IP-technology as defined in the VoIP Freedom Act, and have never filed tariffs with the Commission, or have filed petitions, and obtained Commission approval, to cancel or discontinue their tariffs on that basis, are exempt from the requirements of this regulation regarding bundled billing, customer disclosures, and conversion to basic service.

#### § 64.72. Suspension Notice Information.

This section sets forth the information that must be included in the suspension notices sent to delinquent customers. The section has been amended to require a statement of the amount due to avoid the suspension of basic service. The revised language set forth in Annex A is consistent with the minor revisions proposed by PTA. PTA Further Comments at 8-9.

#### § 64.74. Procedures Upon Customer Contact Before Suspension.

This section sets forth the procedures to be followed when the customer contacts the LEC regarding a suspension notice before the suspension has occurred. The section lists the information that the LEC is obligated to provide to the customers that are in jeopardy of suspension. The minor revisions in this section are intended to clarify that all of the listed information must be provided to the customer and to preclude the practice of requiring the immediate payment of both past due and current amounts due in order for a customer to retain basic service.

#### § 64.123. Termination Notice.

This section sets forth the information that must be included in the termination notice sent to customers after service is suspended and, in particular, explains the steps the customer must take for service to be restored. The Commission has adopted the minor revision proposed by PTA for clarity regarding the elements of the termination notice. PTA Further Comments at 9.

#### Conclusion

The revised final-form regulations set forth in Annex A will, in the Commission’s judgment, strike the appropriate balance between the interests of LECs to offer bundled service packages in a competitive environment and the interests of consumers in maintaining access to basic services. The Commission has balanced these interests while giving consideration to the policy goals of Chapter 30 and, in particular, the ability to offer a diversity of new and existing telecommunications services (by imposing no limits on the services that can be bundled), promoting the provision of competitive services on equal terms (by establishing equal obligations on ILECs and CLECs), and maintaining universal service at affordable rates (by providing customers with the opportunity to maintain access to basic service). See 66 Pa.C.S. § 3011(2), (5), (6), (8) and (13).

Access to basic service is important not only to universal service, which benefits all citizens, but to the individual customer who can maintain access to 911 emergency services, access to hospitals, doctors, schools and family, and access to TRS (for hearing-impaired customers). At the same time, the Commission has, in these revised final form regulations, eliminated language that could have been read as an attempt to regulate bundled service packages as a whole, to mandate the format of billing displays for bundled service packages or to control the application of partial payments for bundled service packages.

Rather, these revised final form regulations, drafted to be consistent with the waivers previously granted on a case by case basis, permit ILECs and CLECs to offer bundled service packages on equal terms, subject only to the consumer protection obligations to offer delinquent customers the opportunity to maintain access to basic service and to provide a disclosure notice to communicate the availability of that opportunity to maintain basic service.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. § 501 and 1501; section 204 of the act of July 31, 1968 (P. L. 769 No. 240) (CDL) 45 P. S. § 1204, and the regulations promulgated thereunder 1 Pa. Code §§ 7.1, 7.2, and 7.5; the Commission adopts the regulations set forth in Annex A; *Therefore,*

#### *It Is Ordered That:*

1. On reconsideration, the Commission hereby adopts amendments to 52 Pa. Code Chapter 64 by amending §§ 64.2, 64.14, 64.17, 64.18, 64.72, 64.74 and 64.123; by deleting § 64.21; and by adding § 64.24 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The petitions for reconsideration and clarification filed by Verizon Pennsylvania, Inc. and Broadband Cable Association of Pennsylvania are granted in part and denied in part, consistent with the text of this order.

3. The Secretary shall serve this order and Annex A on the Office of Consumer Advocate, Office of Small Business Advocate, all parties that submitted comments to the proposed regulation and all Local Exchange Carriers.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

5. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

6. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

7. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

8. The regulations in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

9. The contact persons related to this rulemaking are Elizabeth Lion Januzzi, Assistant Counsel, Law Bureau (717) 772-0696, elionjanuz@state.pa.us; and Tawana Dean, Policy Analyst, Bureau of Consumer Services, (717) 772-0806, tadean@state.pa.us. Alternate formats of this document are available to persons with disabilities and

may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597, [sdelbiondo@state.pa.us](mailto:sdelbiondo@state.pa.us).

JAMES J. McNULTY,  
*Secretary*

Public Meeting held  
April 15, 2010

*Commissioners Present:* James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; Wayne E. Gardner; Robert F. Powelson

*Rulemaking Re: Provision of Basic Service in Bundled Service Package Plans by Local Exchange Carriers; Doc. No. L-00060179*

### Amended Final Rulemaking Order

*By the Commission:*

By Order entered December 23, 2009, the Commission amended on reconsideration, its March 27, 2009 Order wherein it adopted final form regulations regarding Chapter 64, Standards and Billing Practices for Residential Services. Those regulations codified various waivers of applicable Chapter 64 regulations that had been granted to LECs, so as to avoid future repetitive petitions for waiver of those regulations. The final form regulations were then submitted to IRRC and Legislative Committees on February 18, 2010.

Upon review, IRRC recommended a revision to the final-form regulations. At IRRC's recommendation, the Commission requested tolling of IRRC's regulatory review period pursuant to 71 P.S. § 745.5a(g)(1) (on agency tolling of regulatory review), by letter dated March 20, 2010. By letter dated March 22, 2010, IRRC consented to toll its review in order that the Commission might revise its final-form rulemaking to delete § 64.24(c)(2)(iii).

Section 64.24(c)(2)(iii) requires the local exchange telecommunications company to send a disclosure statement that "complies with the plain language guidelines at § 69.251 (relating to plain language)." Since § 69.251 is a statement of policy, the language in the regulation would improperly require compliance with, and allow enforcement of, a statement of policy. A statement of policy is not subject to review by the Legislature, IRRC and the public, and can be changed by an agency at any time.

Because the provision of § 64.24(c)(2)(iii), if enacted, effectively circumvents the regulatory review provisions of the CDL (45 P.S. §§ 1201—1208), and the Regulatory Review Act (71 P.S. §§ 745.1—745.15), the Commission determined that the rulemaking should be revised to delete the provision. The Commission notified all interested parties of the intent to amend the rulemaking on March 22, 2010, and advised interested parties to file written comments within 10-days of the date of the notice.

Comments were submitted by the Office of Consumer Advocate (OCA), on April 1, 2010. The OCA does not object to the revised regulation, but, noted that as a matter of good business practices, all utilities should communicate clearly with their residential customers, along the lines suggested in the existing Commission policy statement on plain language guidelines. No other comments were received.

We agree with OCA that the issue of clear communication between utilities and residential customers should be a priority for all utilities as a matter of good business practices. We hope that the Commission policy statement on plain language guidelines will continue to be a useful

reference source to that end. However, we also conclude that the requirement of compliance with our policy statement on plain language guidelines contained in § 64.24(c)(2)(iii) is inappropriate and should be deleted from the final regulation.

Based upon IRRC's recommendation and upon consideration of the comments and lack of objection to the change, we amend the final-form rulemaking to delete § 64.24(c)(2)(iii).

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 15, 2010, the Commission submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1032 (March 3, 2007), to IRRC and to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure (Committees) for review and comment.

Under section 5(b.1) 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.

The final-form rulemaking was deemed approved by the Committees on May 12, 2010. Under section 5(c) of the Regulatory Review Act, IRRC met on May 13, 2010, and approved the final-form rulemaking.

### *Conclusion*

The final-form rulemaking in Annex A is amended to delete § 64.24(c)(2)(iii).

These amended final-form regulations, drafted to be consistent with the waivers previously granted on a case by case basis, permit ILECs and CLECs to offer bundled service packages on equal terms, subject only to the consumer protection obligations to offer delinquent customers the opportunity to maintain access to basic service and to provide a disclosure notice to communicate the availability of that opportunity to maintain basic service.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; section 204 of the CDL, and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2, and 7.5; the Commission adopts the regulations set forth in Annex A; *Therefore,*

### *It Is Ordered That:*

1. The Commission hereby adopts amendments to 52 Pa. Code Chapter 64 by amending §§ 64.2, 64.14, 64.17, 64.18, 64.72, 64.74 and 64.123; by deleting § 64.21; and by adding § 64.24 to set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The Secretary shall serve this order and Annex A on the Office of Consumer Advocate, Office of Small Business Advocate, all parties that submitted comments to the proposed rulemaking and all LECs.

3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

7. The regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

8. The contact persons related to this rulemaking are Elizabeth Lion Januzzi, Assistant Counsel, Law Bureau (717) 772-0696, elionjanuz@state.pa.us; and Tawana Dean, Policy Analyst, Bureau of Consumer Services, (717) 772-0806, tadean@state.pa.us. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597, sdelbiondo@state.pa.us.

JAMES J. McNULTY,  
Secretary

*(Editor's Note: The amendments to §§ 64.2, 64.14, 64.17, 64.18, 64.72, 64.74 and 64.123 and the rescission of § 64.21 were not included in the proposed rulemaking published at 37 Pa.B. 1032.)*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 2838 (May 29, 2010).)*

**Fiscal Note:** Fiscal Note 57-251 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE**

**Subchapter A. PRELIMINARY PROVISIONS**

**§ 64.2. Definitions.**

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

\* \* \* \* \*

*Bundled service package*—A package of services offered and billed on one bill by an LEC, as defined in this section, which includes nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the LEC.

\* \* \* \* \*

**Subchapter B. PAYMENT AND BILLING STANDARDS**

**§ 64.14. Billing information.**

(a) Every bill rendered must state clearly the following information:

- (1) The date of the bill.
- (2) The due date on or before which payment shall be received to avoid an account being considered delinquent.
- (3) The beginning and ending dates of the billing period for service, excluding toll usage and equipment.
- (4) The amount due for basic service, nonbasic service, and taxes and applicable surcharges, during the current billing period.
- (5) An itemized statement of toll charges listing the date, time, destination, duration and rate period for each

toll call unless the customer subscribes to an unlimited toll service plan or toll service is included as part of the customer's bundled service package.

(6) The amounts for security deposits owed by or credited to existing customers. This amount shall be separately stated on each bill if a security deposit remains unpaid.

(7) The total amount of payments and other credits made to the account during the current billing period.

(8) The amount of late payment charges

(9) The total amount due.

(10) A statement directing the customer to register a question or complaint about the bill prior to the due date, with the address and telephone number where the customer may direct questions or complaints.

(11) A statement that a rate schedule, an explanation of how to verify the accuracy of a bill, and an explanation of the various charges, if applicable, can be obtained by contacting the business office of the LEC.

(b) At least annually, and upon request of the customer, the LEC shall provide an itemization of all service equipment and other recurring charges.

(c) Upon request for new or additional services, the LEC shall inform the customer of the monthly recurring charge for service and each item of equipment ordered by the customer and shall provide a minimum and maximum estimate of applicable nonrecurring charges. The LEC shall maintain a record of the estimates given for 90 days. The LEC shall have available a printed explanation of alternative rates and services.

(d) Every final bill must contain a statement that a subsequent bill will be rendered if needed to collect charges, such as additional tolls or lost equipment.

**§ 64.17. Partial payments for current bills.**

(a) Payments received by an LEC which are insufficient to pay the total amount due for the current bill, when there is no past due balance, shall first be applied to basic service.

(b) This section does not apply when the customer supplies instructions specifying how a partial payment should be applied.

**§ 64.18. Application of partial payments between past and current bills.**

In the absence of instructions from a customer, or a disputed bill or a payment arrangement, payments received by the LEC which are insufficient to pay a balance due for both past and current bills shall first be applied to the balance due for past due basic service, then to other past due charges, including late payment charges.

**§ 64.21. (Reserved).**

**§ 64.24. Provision of bundled service packages.**

(a) *Right to offer bundled services.* Nothing in this chapter prohibits an LEC from offering bundled service packages, as defined in § 64.2 (relating to definitions), at a single price selected by the LEC.

(b) *Exemption from certain regulations.* An LEC that offers a single-rate bundled service package shall be exempt from certain sections of this chapter regarding payment and billing standards. The sections subject to exemption for bundled service packages are:

- (1) Section 64.14(a)(4) and (5) (relating to billing information).

(2) Section 64.17 (relating to partial payments for current bills).

(3) Section 64.18 (relating to application of partial payments between past and current bills).

(4) Section 64.63(1) and (2) (relating to unauthorized suspension of service).

(c) *Consumer protection requirements.* An LEC that offers bundled service packages is subject to the following consumer protection requirements:

(1) *Conversion to basic service.* A residential customer's failure to pay the single-rate bundled service package price may not result in immediate suspension or termination of basic service to the residential customer.

(i) When an LEC determines that a bundled service package shall be terminated for nonpayment, the account shall be converted to a basic service account subject to future suspension and termination in accordance with this chapter if the customer fails to make timely payments.

(ii) For an LEC which tracks the basic service portion of a bundled service package, when a customer fails to make payment sufficient to pay the basic service charges in the package, the LEC may suspend and terminate basic service for nonpayment in accordance with this Chapter.

(2) *Disclosure statement.* An LEC shall send a disclosure statement to new bundled service package customers that:

(i) Notifies the customer of the LEC's billing practices that shall be implemented in the event of the customer's failure to pay the bundled service package charge in full.

(ii) Notifies the customer that failure to pay the bundled service package charge may not result in immediate suspension of basic service.

#### **Subchapter E. SUSPENSION OF SERVICE**

##### **NOTICE PROCEDURES PRIOR TO SUSPENSION**

###### **§ 64.72. Suspension notice information.**

A notice of suspension must clearly and fully include the following information, when applicable, in conspicuous print:

- (1) The reason for the proposed suspension.
- (2) A statement of amounts past due, and of a required deposit. The suspension notice must identify the amount past due for basic service which the customer shall pay to avoid the suspension of basic service.
- (3) A statement that a specific reconnection fee will be required to have service restored after it has been suspended if the reconnection fee is a part of the approved tariff of the LEC.
- (4) The date on or after which service will be suspended unless one of the following occurs:
  - (i) Payment in full is received.
  - (ii) The grounds for suspension are otherwise eliminated.
  - (iii) A payment agreement is entered into.
  - (iv) A dispute is filed with the LEC.
- (5) A statement that the customer should immediately contact the LEC to attempt to resolve the matter, including the mailing address and telephone number where questions may be filed and payment agreements entered into with the LEC.

(6) A medical emergency notice substantially in compliance with the form as set forth in Appendix A (relating to Medical Emergency Notice).

###### **§ 64.74. Procedures upon customer contact before suspension.**

(a) If, at a time after the issuance of the suspension notice and before the suspension of service, a customer contacts the LEC concerning the proposed suspension, an authorized LEC employee shall fully explain, when applicable, the following:

- (1) The reasons for the proposed suspension.
- (2) The available methods of avoiding a suspension including:
  - (i) Tendering the past due amount as specified on the suspension notice or otherwise eliminating the grounds for suspension.
  - (ii) Entering a payment agreement.
  - (iii) The right of the customer to file a dispute with the telephone company and, thereafter, an informal complaint with the Commission.

(3) The procedures for resolving disputes relating to charges on the notice other than IXC toll charges and the procedures for filing informal complaints to request payment terms on the basic service portion of the account, including the address and the telephone number of the nearest regional Commission office.

(4) The duty of the customer to pay a portion of a bill not honestly disputed.

(5) The duty of the customer to restrict toll usage to 150% of average normal toll usage.

(6) The medical emergency procedures.

(7) That upon failure to timely appeal from or comply with a telephone company report, as defined in § 64.142 (relating to contents of written summary by the LEC), an informal complaint report, or an order from a formal complaint—the LEC is not required to give further written notice before suspension so long as the LEC makes a reasonable attempt to contact the customer personally at least 24 hours prior to suspension.

(b) The LEC, through its employees, shall exercise good faith and fair judgment in attempting to enter into a reasonable payment agreement regarding undisputed amounts or to otherwise equitably resolve the matter. Factors to be taken into account when attempting to make a reasonable payment agreement include, but are not limited to, the size of the unpaid balance, the payment history of the customer and the length of time over which the bill accumulated. When the customer breaches a payment agreement for toll or nonbasic service, or both, the LEC may suspend the toll or nonbasic, or both, service after complying with § 64.81 (relating to limited notice upon noncompliance with report or order). At the time a payment agreement is entered into, the LEC shall explain to the customer the consequences of breaching the payment agreement, including the possible suspension of toll or nonbasic service, or both, without further written notice. The LEC may not suspend service for an undisputed delinquent bill under either of the following circumstances:

- (1) While it is negotiating a payment agreement with the customer.
- (2) Within 24 hours after negotiating fails, except where toll usage increases by \$25 or more after the initial customer or customer designee contact.

**Subchapter F. TERMINATION OF SERVICE**

**GROUNDS FOR TERMINATION**

**§ 64.123. Termination notice.**

Immediately after service is suspended, a termination notice which conforms substantially to the suspension notice and which indicates how the customer may arrange to have service restored shall be mailed to the customer's billing address. The termination notice must include:

(1) The amount past due for basic service which the customer shall pay to avoid the termination of basic service.

(2) A medical emergency restoration notice substantially in the form set forth in Appendix B (relating to Medical Emergency Restoration Notice).

(3) A statement that service will be terminated on or after a specified date and a clear explanation that the customer shall request service as a new applicant, subject to additional charges, if termination occurs.

[Pa.B. Doc. No. 10-1159. Filed for public inspection June 25, 2010, 9:00 a.m.]

**Title 58—RECREATION**

**PENNSYLVANIA GAMING CONTROL BOARD**

**[ 58 PA. CODE CH. 521 ]**

**Table Game Taxes and Gross Table Game Revenue; Temporary Regulations**

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1303A (relating to temporary table game regulations) enacted by the act of January 7, 2010 (P.L. 1, No. 1) (Act 1) and the specific authority in 4 Pa.C.S. §§ 1103 and 1362A (relating to definitions; and table game taxes), adopts a temporary regulation in § 521.10 (relating to table game taxes and gross table game revenue) to read as set forth in Annex A. The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

*Purpose of the Temporary Rulemaking*

This temporary rulemaking adds provisions regarding the weekly payment of the tax on table game revenues to the Department of Revenue (Department) and the calculation of gross table game revenue.

*Explanation of Amendments to Chapter 521*

Section 521.10 echoes the requirement in Act 1 which requires certificate holders to pay the tax on table game revenue to the Department on a weekly basis on forms prescribed by the Department.

In addition, it sets forth the procedures for calculating gross table game revenue for the following: all banking table games including electronic gaming tables which are not fully automated electronic table games; nonbanking table games (that is, Poker); fully automated electronic table games; and contests or tournaments.

It also repeats the items that a certificate holder may deduct from the calculation of gross table game revenue that are included in Act 1.

*Affected Parties*

Act 1 prescribes what taxes a certificate holder is required to pay on table game revenue. Because this temporary rulemaking is consistent with the requirements of Act 1, this temporary rulemaking will not have additional fiscal impact on certificate holders.

*Fiscal Impact*

*Commonwealth*

The Board expects that this temporary rulemaking will not have direct impact on the Board or other Commonwealth agencies.

*Political subdivisions*

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

*Private sector*

Because this temporary rulemaking is consistent with the requirements of Act 1, it will not impose additional costs on certificate holders beyond those imposed by Act 1.

*General public*

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

*Paperwork Requirements*

This temporary rulemaking and Act 1 require certificate holders to submit supporting documentation on forms prescribed by the Department with their weekly remittance of the tax on table game revenue.

*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 this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P.O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-125.

*Contact Person*

The contact person for questions about this rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

*Regulatory Review*

Under 4 Pa.C.S. § 1303A, the Board is authorized to adopt temporary regulations which are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—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. § 1303A, temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the CDL and sections 204(b) and 301(10) of the Commonwealth Attorneys Act.

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

*Order*

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

(1) The temporary regulations of the Board, 58 Pa. Code Chapter 521, are amended by adding § 521.10 to read as set forth in Annex A.

(2) The temporary regulation is effective June 26, 2010.

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

(4) The temporary regulation shall be subject to amendment as deemed necessary by the Board.

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

GREGORY C. FAJT,  
*Chairperson*

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

**Annex A****Title 58. RECREATION****PART VII. GAMING CONTROL BOARD****Subpart K. TABLE GAMES****CHAPTER 521. GENERAL PROVISIONS****§ 521.10. Table game taxes and gross table game revenue.**

(a) The tax on table game revenue shall be payable to the Department on a weekly basis and must be based upon the gross table game revenue derived during the previous week reported on forms and in the manner prescribed by the Department.

(b) Gross table game revenue includes the following:

(1) The net revenue from all banking table games including electronic gaming tables which are not fully automated electronic table games.

(2) The net revenue from nonbanking table games.

(3) The net revenue from fully automated electronic table games.

(4) The net revenue from contests or tournaments.

(c) Net revenue from banking table games, including electronic gaming tables which are not fully automated electronic table games, must be the sum of the net revenue determined for each banking table game, which is not a fully automated electronic table game, individually. The net revenue for an individual banking table game which is not a fully automated electronic table game must be equal to:

(1) The ending inventory of gaming chips at the gaming table as reported on the Table Inventory Slip prepared in accordance with § 525.13 (relating to procedures for drops at open table games) for a table game that

remained open for gaming activity when the table was being dropped at the end of the gaming day or the Table Inventory Slip prepared in accordance with § 525.14 (relating to procedures for closing table games) for a table game that was closed prior to the end of the gaming day, plus.

(2) The sum of all Credit Slips for the gaming table for that gaming day, plus.

(3) The total of the currency and Counter Checks collected from the drop box for that gaming table, minus.

(4) The inventory of gaming chips at the gaming table as reported on the Table Inventory Slip prepared in accordance with § 525.13 for a table game that remained open for gaming activity when the table was being dropped at the end of the previous gaming day or the Table Inventory Slip prepared in accordance with § 525.8 (relating to procedures for opening table games) for a table game that was opened during the gaming day, minus.

(5) The sum of all Fill Slips for the gaming table for that gaming day.

(d) Net revenue from nonbanking table games must be the sum of the net revenue determined for each nonbanking table game individually. The net revenue for an individual nonbanking table game must be equal to the Poker rake recorded in accordance with § 525.19 or § 525.20 (relating to procedures for opening, counting and recording the contents of table game drop boxes; and alternate procedures for collecting, distributing, opening, counting and recording the contents of nonbanking table game drop boxes).

(e) Net revenue from fully automated electronic table games must be the sum of the net revenue determined for each fully automated electronic table game individually. The net revenue for an individual fully automated electronic table game must be equal to:

(1) The amount recorded on the bill in meter for that gaming day, plus.

(2) The amount recorded on the voucher in-cashable/value meter for that gaming day, minus.

(3) The amount recorded on the coin out meter for that gaming day, minus.

(4) The amount recorded on the fully automated electronic gaming table paid progressive payout meter for that gaming day, minus.

(5) The amount recorded on the attendant paid progressive payout meter for that gaming day, minus.

(6) The amount recorded on the attendant paid jackpots meter for that gaming day, minus.

(7) The amount recorded on the attendant paid cancelled credits meter for that gaming day, minus.

(8) The amount recorded on the voucher out-cashable/value meter for that gaming day.

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

(1) The sum of all entry fees, buy-ins, re-buy-ins and administrative fees imposed by the certificate holder on the contest or tournament participants, minus.

(2) The cash paid by the certificate holder to the contest or tournament winners as prizes, minus.

(3) The actual cost paid by the certificate holder for noncash prizes awarded to the contest or tournament winners.

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

(h) Gross table game revenue may not include:

(1) Counterfeit cash or counterfeit value chips.

(2) Coins or currency of other countries that is not readily convertible to cash.

(3) Cash taken in a fraudulent act perpetrated against a certificate holder for which the certificate holder is not reimbursed.

[Pa.B. Doc. No. 10-1160. Filed for public inspection June 25, 2010, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD**  
**[ 58 PA. CODE CH. 526 ]**  
**Credit; Temporary Regulations**

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1303A (relating to temporary table game regulations) enacted by the act of January 7, 2010 (P. L. 1, No. 1) (Act 1) and the specific authority in 4 Pa.C.S. §§ 1302A(9) and 1327A (relating to regulatory authority; and other financial transactions), adopts temporary regulations in Chapter 526 (relating to credit) to read as set forth in Annex A. The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

*Purpose of the Temporary Rulemaking*

This temporary rulemaking adds provisions regarding the application for, issuance of, and administration and recordkeeping regarding credit given to a patron by a certificate holder.

*Explanation of Chapter 526*

Section 526.1 (relating to definitions) contains definitions for terms that are used in this chapter.

Section 526.2 (relating to internal control requirements) requires certificate holders who elect to offer credit to patrons to include the procedures that the certificate holders will use as part of their internal controls submissions to the Board. This will allow the Board to review the procedures to verify that they comply with this chapter.

Section 526.3 (relating to application and verification procedures for granting credit) contains the information that must be included in an application for credit filed by a patron and the procedures that the certificate holder shall follow to verify the information submitted by the patron and to insure that the patron is not on the voluntary credit suspension list, the self-exclusion list and the list of persons required to be excluded.

Section 526.4 (relating to approval of credit limits) sets forth the requirements regarding the approval of credit including: who is authorized to approve credit; what information must be included in the patron's credit file

regarding the approval; and the procedures to be followed when a patron requests an increase in their credit limit.

Section 526.5 (relating to derogatory information; reduction or suspension of credit) permits a certificate holder to reduce or suspend a patron's credit limit at any time. It also addresses a certificate holder's obligations concerning the receipt and reporting of derogatory information; requires the suspension of credit if a patron's check is returned; and the procedures that shall be followed before a patron's credit may be reinstated.

Section 526.6 (relating to additional reverification requirements) requires a certificate holder to reverify a patron's credit information if the patron has not used credit within the last 24 months or whenever the certificate holder has reason to believe that some of the information may have changed.

Section 526.7 (relating to patron credit transactions) requires that all credit transactions be recorded in the patron's credit file and lists the specific information regarding each transaction that must be included.

Section 526.8 (relating to recordkeeping requirements) sets forth the recordkeeping requirements certificate holders will have to meet regarding Counter Checks and personal checks received to redeem or in substitution for Counter Checks. Certificate holders will be required to keep a log of all Counter Checks and related personal checks to keep track of the issuance, redemption and substitution for Counter Checks.

Section 526.9 (relating to voluntary credit suspension list) states that the Board will maintain and distribute to certificate holders a voluntary credit suspension list. This list is required by Act 1 and will contain the names and other relevant identifying information regarding individuals who have elected to be put on the list which will prohibit a certificate holder from extending credit to the individual.

Section 526.10 (relating to request for voluntary credit suspension) sets forth the procedure an individual shall follow to be placed on the voluntary credit suspension list. To be put on the list, an individual will be required to fill out an application form (Request for Voluntary Credit Suspension) and present government-issued photo identification.

Section 526.11 (relating to reinstatement of credit and removal from the voluntary credit suspension list) sets forth the procedure an individual shall follow to be removed from the voluntary credit suspension list. To be removed from the list, an individual will be required to fill out a form requesting removal (Request for Removal From the Voluntary Credit Suspension List) and present government-issued photo identification. While requests to be placed on the list may be filed at a licensed facility or one of the Board's offices, a request for removal from the list may only be submitted at one of the Board's offices.

Section 526.12 (relating to duties of certificate holders) lists the obligations of certificate holders regarding the voluntary credit suspension list. Certificate holders will be required to do the following: maintain a current copy of the list; suspend the credit of an individual who is placed on the list; record the placement on or removal from the voluntary credit suspension list in a patron's credit file; and disseminate information about the voluntary credit suspension list program to patrons.

Section 526.13 (relating to requirements for Counter Checks; issuance of Counter Checks) establishes the specification for Counter Checks, which are the forms

that are used to effectuate the issuance of credit. It also sets forth the procedures that shall be followed when issuing a Counter Check and the distribution of the copies of a Counter Check.

Section 526.14 (relating to redemption of Counter Checks) specifies the processes that can be used to redeem or partially redeem an outstanding Counter Check (either in person or through the mail) and requires a redemption or partial redemption to be recorded in the patron's credit file.

Section 526.15 (relating to substitution of Counter Checks) sets forth the provisions governing the substitution of a personal check for a Counter Check.

Section 526.16 (relating to deposit of Counter Checks and personal checks substituted for Counter Checks) establishes the time frames within which an unredeemed Counter Check or personal check that has been substituted for a Counter Check shall be deposited.

Section 526.17 (relating to collection of returned checks) sets forth the procedures that shall be met regarding a certificate holder's attempts to collect on a Counter Check or personal check that has been returned by the patron's bank.

#### *Affected Parties*

This temporary rulemaking will affect certificate holders who elect to offer credit and patrons who apply for and receive credit.

#### *Fiscal Impact*

##### *Commonwealth*

The Board expects that this temporary rulemaking will not have direct impact on the Board or other Commonwealth agencies. Internal controls submitted by certificate holders related to credit will be reviewed by existing Board staff.

##### *Political subdivisions*

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

##### *Private sector*

Certificate holders who elect to offer credit to patrons will have to develop procedures governing the credit application process and procedures for administering credit and the use of Counter Checks. These procedures will be part of the certificate holder's internal controls which shall be submitted to the Board for approval. Because credit must be interest free, the certificate holder will have to absorb costs regarding the issuance of credit.

#### *General public*

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

#### *Paperwork Requirements*

If a certificate holder elects to offer credit, the certificate holder will have to develop forms and recordkeeping systems to keep track of the issuance and redemption of credit.

#### *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 this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-123.

#### *Contact Person*

The contact person for questions about this temporary rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

#### *Regulatory Review*

Under 4 Pa.C.S. § 1303A, the Board is authorized to adopt temporary regulations which are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—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. § 1303A, the temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the CDL and sections 204(b) and 301(10) of the Commonwealth Attorneys Act.

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

#### *Order*

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

(a) The temporary regulations of the Board, 58 Pa. Code Chapter 526, are amended by adding §§ 526.1—526.17 to read as set forth in Annex A.

(b) The temporary regulations are effective June 26, 2010.

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

(d) The temporary regulations shall be subject to amendment as deemed necessary by the Board.

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

GREGORY C. FAJT,  
Chairperson

**Fiscal Note:** 125-123. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART VII. GAMING CONTROL BOARD**  
**Subpart K. TABLE GAMES**  
**CHAPTER 526. CREDIT**

Sec.	
526.1.	Definitions.
526.2.	Internal control requirements.
526.3.	Application and verification procedures for granting credit.
526.4.	Approval of credit limits.
526.5.	Derogatory information; reduction or suspension of credit.
526.6.	Additional reverification requirements.
526.7.	Patron credit transactions.
526.8.	Recordkeeping requirements.
526.9.	Voluntary credit suspension list.
526.10.	Request for voluntary credit suspension.
526.11.	Reinstatement of credit and removal from the voluntary credit suspension list.
526.12.	Duties of certificate holders.
526.13.	Requirements for Counter Checks; issuance of Counter Checks.
526.14.	Redemption of Counter Checks.
526.15.	Substitution of Counter Checks.
526.16.	Deposit of Counter Checks and personal checks substituted for Counter Checks.
526.17.	Collection of returned checks.

**§ 526.1. Definitions.**

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

*Counter Check*—A form provided to a patron who receives a credit advance which contains the account information for the personal checking account designated in the patron’s application for credit under § 526.3(a)(4) (relating to application and verification procedures for granting credit).

*Credit clerk*—An employee of the cage or credit department who is responsible for receiving, processing and verifying the information in credit applications from patrons and who does not have authority to grant credit or credit limit increases.

*Derogatory information*—Information regarding a patron’s credit accounts that are partially or completely uncollectible, checks returned unpaid by a patron’s bank, settlements, liens, judgments or any other credit problems of a patron.

**§ 526.2. Internal control requirements.**

Each certificate holder who issues credit shall include procedures in the certificate holder’s internal controls to implement the requirements in this chapter.

**§ 526.3. Application and verification procedures for granting credit.**

(a) A patron who wants to obtain credit from a certificate holder shall file a credit application with the certificate holder which contains, at a minimum, the following information:

- (1) The patron’s name.
- (2) The address of the patron’s residence.
- (3) The patron’s telephone number.
- (4) Bank account information including:
  - (i) The name and location of the patron’s bank.
  - (ii) The account number of the patron’s personal checking account upon which the patron is individually authorized to draw and upon which all Counter Checks will be drawn. Checking accounts of sole proprietorships shall be

considered as personal checking accounts. Partnership or corporate checking accounts will not be considered personal checking accounts.

(5) The credit limit requested by the patron.

(6) The approximate amount of the patron’s current indebtedness.

(7) The amount and source of income in support of the requested credit limit.

(8) The patron’s signature indicating acknowledgement of the following statement, which must be included at the bottom of the credit application form containing the information required to be submitted under this subsection: “I certify that I have read and understand this application and its terms and I execute this document voluntarily and with full knowledge of its significance. I authorize (insert the name of the certificate holder) to conduct any investigations necessary for the approval of my credit limit. I am aware that this application is required by the regulations of the Pennsylvania Gaming Control Board. I understand that a Counter Check issued by (insert name of certificate holder) is identical to a personal check and may be deposited in or presented for payment to my bank or other financial institution. I acknowledge that willfully drawing or passing a credit instrument with the intent to defraud, including knowing there are insufficient funds in my account, is a crime in this Commonwealth that may result in criminal prosecution. I am also aware that providing false or misleading statements or omitting information on this application may subject me to civil or criminal penalties.”

(b) Upon receipt of an application for credit, a confidential credit file for that patron containing all of the information required under subsection (a) shall be prepared by a credit clerk either manually or by computer prior to the certificate holder’s approval of a patron’s credit limit. Patron credit limits including changes to the credit limit must be supported by the information contained in the patron’s credit file.

(c) Prior to a certificate holder’s approval of a patron’s credit limit, a credit clerk shall:

(1) Verify the address of the patron’s residence. Verification of the address of the patron’s residence shall be satisfied by confirming the patron’s address with a credit bureau or bank. If neither of these sources has the patron’s address on file or will not provide the information, the credit clerk may use an alternative source which shall not include any identification credentials or other documentation presented by the patron at the licensed facility. The credit clerk shall record the source of verification and the method by which the verification was performed in the patron’s credit file. Verification of the patron’s address may be performed telephonically.

(2) Verify the patron’s current casino credit limits and outstanding balances, which includes the following:

- (i) The date each of the patron’s casino credit accounts was established.
- (ii) The amount of the current approved credit limits at any other casinos.
- (iii) The current balance and status of the patron’s credit account at each casino including checks deposited by a casino that have not yet cleared the bank and any derogatory information.

(iv) Verification of information required under subparagraphs (i)—(iii) must be performed through a casino credit bureau and, if appropriate, through direct contact

with other casinos. The credit clerk shall record the source of verification and the method by which the verification was performed in the patron's credit file. If casino credit information regarding the patron is not available from these sources, this fact shall be noted in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the credit clerk requests written documentation of the information as soon as possible and includes written documentation of the request in the patron's credit file. Requests for written documentation shall be maintained in the patron's credit file until the documentation is obtained.

(3) Verify the patron's outstanding indebtedness. Verification of the patron's outstanding indebtedness shall be performed by contacting a consumer credit bureau, which is reasonably likely to possess information concerning the patron, and a casino credit bureau to determine if the applicant has any liabilities or if there is any derogatory information concerning the patron's credit history. If contact with a consumer and casino credit bureau is not immediately possible, the credit clerk may use an alternative source which has made the required contact. The credit clerk shall record the source of verification and the method by which the verification was performed in the patron's credit file. If either one or both of these credit bureaus do not have information regarding a patron's outstanding indebtedness, this fact shall be recorded in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the credit clerk requests written documentation of the information obtained as soon as possible and includes written documentation of the request in the patron's credit file. Requests for written documentation shall be maintained in the patron's credit file until the documentation is obtained.

(4) Verify the patron's personal checking account information which includes, but not be limited to, the following:

- (i) Type of account (personal or sole proprietorship).
- (ii) Account number.
- (iii) Date the account was opened.
- (iv) Average balance of the account for the last 12 months.
- (v) Current balance in the account.
- (vi) Whether the patron can sign individually on the account.
- (vii) Name and title of the person supplying the information.
- (viii) Verification of information required under subparagraphs (i)—(vii) shall be performed by the credit clerk or a bank verification service directly with the patron's bank. A bank verification service utilized by a certificate holder may make use of another bank verification service to make direct communication with the patron's bank. If the information is not immediately available, the credit clerk may use an alternative source. The credit clerk shall record the source of verification and the method by which the verification was performed in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the credit clerk or bank verification service requests written documentation of all information obtained as soon as possible and the request for written documentation is included in the patron's credit file. Requests for written documentation shall be maintained in the patron's credit file until the documentation is obtained. If a bank

verification service is used as a primary source of verification, either directly by a certificate holder or by another bank verification service, each service and the certificate holder shall record the date that the patron's personal checking account information was obtained from the bank by the service.

(5) Verify that the patron's name is not on:

(i) The master list of individuals who have voluntarily requested suspension of credit privileges under § 526.9 (relating to voluntary credit suspension list).

(ii) The list of individuals who have voluntarily placed themselves on the self-exclusion list under Chapter 503a (relating to self-exclusion).

(iii) The list of individuals who have been placed on the exclusion list under Chapter 511a (relating to persons required to be excluded).

(d) Verifications performed by a credit clerk under subsection (c), which are required to be recorded in the patron's credit file, must be accompanied by the signature of the credit clerk who performed the required verifications or filed the relevant information. The date and time of the signature of the credit clerk shall be recorded either electronically or manually contemporaneously with the verification.

(e) A certificate holder may only request credit information concerning a patron from another certificate holder if the patron has credit or has applied for credit with the certificate holder. When requesting credit information on a patron from another certificate holder, the requesting certificate holder shall provide the patron's name, address of the patron's residence and the name and location of the patron's bank with the request. Upon receipt of this information, the certificate holder receiving the request shall furnish to the requesting certificate holder any credit information in its possession concerning the patron.

(f) Unless a patron has already established a patron signature file under § 465a.20(c) (relating to personal check cashing), a patron who has been approved for credit may not be issued a Counter Check until the certificate holder has established a signature file for the patron in accordance with § 465a.20(c).

#### § 526.4. Approval of credit limits.

(a) A credit limit, and any changes thereto, shall be approved by either:

(1) Two or more employees holding the job positions of credit manager, assistant credit manager, credit shift manager, credit executive or other key employee in a direct reporting line above the credit manager.

(2) A credit committee composed of at least two of the employees in paragraph (1) which may approve credit as a group.

(b) The approval of credit shall be recorded in the patron's credit file and include:

(1) Other information used to support the credit limit and changes thereto, including the source of the information, if the information is not otherwise required to be recorded under this section.

(2) A brief summary of the key factors relied upon in approving or reducing the requested credit limit and any changes thereto.

(3) If derogatory information was obtained during the verification process, the reason credit was approved.

(4) The signatures of the employees approving the credit limit, together with the date and time of the authorization, shall be recorded before any actual extension of credit.

(c) Prior to approving a credit limit increase, an employee of the certificate holder's credit department shall:

(1) Obtain a written request from the patron which includes:

- (i) The date and time of the patron's request.
- (ii) The amount of credit limit increase requested by the patron.
- (iii) The signature of the patron.

(2) Reverify the patron information required under § 526.3(c) (relating to application and verification procedures for granting credit).

(3) Consider the patron's player rating based on a continuing evaluation of the amount and frequency of play subsequent to the patron's initial receipt of credit.

(4) Include the information and documentation required under paragraphs (1)—(3) in the patron's credit file.

**§ 526.5. Derogatory information; reduction or suspension of credit.**

(a) A certificate holder may reduce or suspend a patron's credit limit at any time.

(b) Derogatory information concerning a patron's credit account shall be reported by each certificate holder on a daily basis to the casino credit bureau used by the certificate holders. Each certificate holder shall request written documentation of any derogatory information pertaining to its patrons to be reported to that certificate holder on a daily basis by the casino credit bureau used by the certificate holders. Documentation obtained from the casino credit bureau shall be maintained in the patron's credit file.

(c) Whenever derogatory information is received by a certificate holder's credit department regarding the patron's continued creditworthiness other than a returned check, the certificate holder's credit department shall reverify the patron's address, current casino credit limits and outstanding balances, outstanding indebtedness, and personal checking account information, as required under § 526.3(c)(1)—(4) (relating to application and verification procedures for granting credit).

(d) A patron having a check returned to any certificate holder unpaid by the patron's bank shall have credit privileges suspended at all licensed facilities until the returned check has been paid in full.

(e) If a patron's credit privileges have been suspended, the certificate holder's credit department shall reverify the patron's address, current casino credit limits and outstanding balances, outstanding indebtedness, and personal checking account information, as required under § 526.3(c)(1)—(4), before that patron's credit privileges are reinstated.

**§ 526.6. Additional reverification requirements.**

(a) Prior to the issuance of credit to a patron whose credit file has been inactive for a 24-month period, the certificate holder's credit department shall:

(1) Reverify the patron's address, current casino credit limits and outstanding balances at other casinos, outstanding indebtedness, personal checking account infor-

mation, as required under § 526.3(c)(1)—(5) (relating to application and verification procedures for granting credit).

(2) Verify that the patron is not on the list of patrons who have requested suspension of their credit privileges.

(3) Verify that the patron is not on the list of individuals who are on the self-exclusion list under Chapter 503a (relating to self-exclusion).

(4) Verify that the patron is not on the exclusion list under Chapter 511a (relating to persons required to be excluded).

(b) The certificate holder's credit department shall reverify the information required under § 526.3(a)(2) and (4), in accordance with the procedures in § 526.3(c)(1) and (4), whenever the certificate holder has reason to believe that this information has changed.

**§ 526.7. Patron credit transactions.**

(a) Transactions affecting a patron's outstanding indebtedness to the certificate holder shall be recorded in chronological order in the patron's credit file. Credit transactions shall be recorded separately from transactions regarding customer deposits under § 465a.23 (relating to customer deposits). The following information shall be included:

(1) The date, amount and check number of each Counter Check accepted from the patron.

(2) The date, method, amount and, if applicable, the personal check number of each redemption transaction and the check number of the Counter Check returned to the patron.

(3) The date, amount and check number of each personal check used for a substitution transaction and the check number of the Counter Check returned to the patron.

(4) The date, amount and check number of each Counter Check deposited.

(5) The date, amount and check number of each personal check or Counter Check returned to the certificate holder by the patron's bank and the reason for its return.

(6) The outstanding balance after each transaction.

(7) The date, amount and check number of any Counter Checks or personal checks that have been partially or completely written off by the certificate holder, and a brief explanation of the reason for the write off.

**§ 526.8. Recordkeeping requirements.**

(a) A log of Counter Checks exchanged and of personal checks received for redemption or substitution shall be prepared, manually or by computer, on a daily basis. The log must include, at a minimum, the following:

(1) The balance of the Counter Checks on hand in the cashier's cage at the beginning of each shift.

(2) For Counter Checks initially accepted and for personal checks received for redemption or substitution:

- (i) The date of the check.
- (ii) The name of the drawer of the check.
- (iii) The amount of the check.
- (iv) The serial number for each Counter Check received.
- (v) An indication as to whether the check was initially accepted or received in a redemption or substitution.

(3) For Counter Checks deposited, redeemed by patrons with cash, cash equivalents, gaming chips and plaques, or any combination thereof, or substituted:

(i) The date on which the Counter Check was deposited, redeemed or substituted.

(ii) The name of the drawer of the Counter Check.

(iii) The amount of the Counter Check.

(iv) The serial number for each Counter Check deposited, redeemed or substituted.

(v) An indication as to whether the Counter Check was deposited, redeemed or substituted.

(4) The balance of the Counter Checks on hand at the end of each shift.

(b) A list of all Counter Checks on hand, and of all personal checks received for redemption or substitution shall be prepared, manually or by computer, on a monthly basis and include the following:

(1) The date of the check.

(2) The name of the drawer of the check.

(3) The amount of the check.

(4) The serial number for each Counter Check received.

(c) At the end of each gaming day, the following procedures shall be performed:

(1) The daily total of the amounts of Counter Checks initially recorded as described in subsection (a)(2) shall be reconciled to the daily total of Counter Checks issued.

(2) The daily total of the checks indicated as deposited on a log required by subsection (a)(3) shall be reconciled to the bank deposit slips corresponding to the checks by employees with no incompatible functions.

(3) The balance required under subsection (a)(4) shall be reconciled to the total of the Counter Checks on hand in the cashiers' cage.

#### § 526.9. Voluntary credit suspension list.

(a) The Board will maintain a voluntary credit suspension list of all individuals who have requested suspension of credit privileges and will provide a current list of these individuals to the credit department of each certificate holder.

(b) The list provided to certificate holders must contain the following information for each individual on the list:

(1) The individual's name, including any aliases or nicknames.

(2) The individual's address.

(3) The individual's date of birth.

(c) Information furnished to or obtained by the Board or a certificate holder under this chapter will be deemed confidential and may not be disclosed except in accordance with this chapter.

#### § 526.10. Request for voluntary credit suspension.

(a) An individual may request the suspension of the individual's credit privileges at all licensed facilities by submitting, in person, a completed Request for Voluntary Credit Suspension Form to the credit department of a certificate holder or to the Board. A submission to the Board may be made at the Board's office at a licensed facility, at the Board's Harrisburg office or one of the Board's regional offices. A Request for Voluntary Credit Suspension Form submitted to the credit department of a

certificate holder shall be forwarded to the Bureau of Casino Compliance within 24 hours.

(b) The Request for Voluntary Credit Suspension Form must also include the following statement: "I certify that I have read and understand this request to be placed on the voluntary credit suspension list and that I knowingly and voluntarily execute this document. I am aware that my signature below authorizes the Pennsylvania Gaming Control Board to direct all Pennsylvania certificate holders to suspend my credit privileges until such time as I submit a written request to the Board for the reinstatement of my credit privileges. I also understand that under § 1327A(i) of the Pennsylvania Race Horse Development and Gaming Act, all certificate holders shall not be liable for any claims, damages, losses, expenses or for any harm, monetary or otherwise, that may arise as a result of the failure of a certificate holder to restore credit privileges to me or otherwise permit me to engage in gaming activity in the licensed facility while on the voluntary credit suspension list."

(c) An individual requesting to be placed on the voluntary credit suspension list shall be required to present a government-issued photo identification containing the person's signature and photograph when the individual submits the Request for Voluntary Credit Suspension form.

#### § 526.11. Reinstatement of credit and removal from the voluntary credit suspension list.

(a) An individual on the voluntary credit suspension list may, at any time, request removal from the voluntary credit suspension list by submitting a Request for Removal From the Voluntary Credit Suspension List form to the Board. The request may be made at the Board's office at a licensed facility, at the Board's Harrisburg office or one of the Board's regional offices.

(b) The Request for Removal From the Voluntary Credit Suspension List Form must also include the following statement: "I certify that I have read and understand this request to be removed from the voluntary credit suspension list and that I knowingly and voluntarily execute this document. I am aware that my signature below will result in the Pennsylvania Gaming Control Board notifying all Pennsylvania certificate holders that I have been removed from the voluntary credit suspension list."

(c) An individual requesting to be removed from the voluntary credit suspension list shall be required to present a government-issued photo identification containing the person's signature and photograph when the individual submits the Request for Removal From the Voluntary Credit Suspension List form.

(d) Within 3 business days after the Request for Removal From the Voluntary Credit Suspension List form is signed, the Board will delete the name of the individual from the voluntary credit suspension list and will notify each certificate holder of the removal.

#### § 526.12. Duties of certificate holders.

(a) A certificate holder shall maintain a copy of the voluntary credit suspension list and ensure that the copy of the list is updated within 24 hours after the certificate holder receives an updated list from the Board.

(b) A certificate holder shall immediately suspend the credit privileges of any individual upon receipt of notice that the individual has been added to the voluntary credit suspension list.

(c) If an individual has an existing credit file, the certificate holder shall note any voluntary credit suspension or removal from the voluntary credit suspension list in the credit file. A copy of the applicable Board notice of the voluntary suspension or removal from the voluntary credit suspension list and the date, time and signature of the credit department representative making the suspension or removal entry shall be included in the individual's credit file.

(d) Upon receipt of notice that an individual's name has been removed from the voluntary credit suspension list, the certificate holder may reinstate the individual's credit after reverifying the information as required under § 526.3(c) (relating to application and verification procedures for granting credit).

(e) A certificate holder shall establish procedures to ensure that an individual who is on the voluntary credit suspension list is not granted casino credit.

(f) Certificate holders shall disseminate written materials to patrons explaining the voluntary credit suspension program.

**§ 526.13. Requirements for Counter Checks; issuance of Counter Checks.**

(a) Counter Checks must be serially prenumbered forms. Each series of Counter Checks shall be used in sequential order and the series numbers of all Counter Checks received by a certificate holder shall be accounted for by employees with no incompatible functions.

(b) The original and all copies of void Counter Checks shall be marked "VOID" and require the signature of the individual who marked the Counter Check as void.

(c) For Counter Checks that are manually prepared:

(1) The Counter Checks must be a five-part form which consists of an original, a redemption copy, an accounting copy, an issuance copy and an acknowledgement copy.

(2) Counter Checks must be attached in a book that will:

(i) Permit an individual to write on the original copy of the Counter Check and all of the other copies simultaneously, while still contained in the book.

(ii) Allow the removal of the original and all duplicate copies.

(3) Access to the Counter Checks shall be maintained and controlled at all times by the finance department employees responsible for the control of and accounting for the unused supply of Counter Checks, and the table games department employees responsible for the preparation of Counter Checks for a patron's signature.

(d) For Counter Checks that are prepared by computer:

(1) The Counter Checks must be a four-part form which consists of an original, a redemption copy, an issuance copy and an accounting copy.

(2) The Counter Checks shall be inserted in a printer that will simultaneously print an original and the other copies.

(3) The information printed on the original Counter Check and the other copies shall be stored in machine-readable form. The stored data must not be susceptible to change or removal by any personnel after preparation of a Counter Check.

(e) For a Counter Check exchanged at a gaming table, a pit clerk or above shall:

(1) Verify the patron's identity by either:

(i) Obtaining the patron's signature, on a form, which shall be compared to the signature contained within a patron signature file. The pit clerk or above shall sign the form indicating that the signature of the patron on the form appears to agree with the signature in the patron signature file. The form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department. After the patron's identity has been verified by the pit clerk or above, the requirements for subsequent verification of the patron's identity during the same shift and in the same gaming pit may be satisfied by the employee who performed the initial verification signing a form attesting to the patron's identity before each subsequent Counter Check is exchanged. The form must include the patron's name and the serial number of the initial Counter Check exchanged by the patron. The form shall be attached to the accounting copy of the subsequent Counter Check prior to forwarding the accounting copy to the accounting department.

(ii) Obtaining the attestation of a floorperson or above as to the identity of the patron. The floorperson or above shall record his Board credential number and sign a form attesting to the patron's identity. The form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department.

(2) Determine the patron's remaining credit limit from the cashier's cage.

(3) Prepare the Counter Check for the patron's signature by recording or by electronically inputting, the following information:

(i) The name of the patron exchanging the Counter Check.

(ii) The current date and time.

(iii) The amount of the Counter Check expressed in numerals.

(iv) The game and table number.

(v) The signature of the floorperson or above authorizing acceptance of the check.

(vi) The signature of the preparer or, if computer prepared, the identification code of the preparer.

(4) Place an impression on the back of the original Counter Check a restrictive endorsement "for deposit only" to the certificate holder's bank account.

(5) Present the original and all duplicate copies of the Counter Check to the patron for signature. However, a certificate holder may, in accordance with its approved internal controls, require the patron to sign the original Counter Check only and have a computer generated facsimile of the signature exemplar obtained from the patron's signature file preprinted on the redemption, issuance and accounting copies of a computer prepared Counter Check if:

(i) The patron's signature has previously been recorded in a patron signature file in conformance with § 465a.20 (relating to personal check cashing).

(ii) A legible copy of the signed original Counter Check is made by the certificate holder prior to the presentment of the original Counter Check for collection or payment in accordance with this chapter. The copy shall be maintained by the certificate holder and be available for inspection by representatives of the Board upon request.

(6) Receive the signed Counter Check directly from the patron. The issuance copy of the Counter Check shall then be immediately given to the dealer or boxperson to be exchanged for value chips or gaming plaques. A certificate holder may allow a dealer or boxperson to give the patron value chips or gaming plaques before the patron has signed the Counter Check if the certificate holder includes procedures in the certificate holder's internal controls to verify the patron's identity and available credit limit prior to giving the patron the value chips or gaming plaques.

(i) The original, redemption and, if applicable, the acknowledgement copies of the Counter Check shall be expeditiously transported to the cashiers' cage where the original and redemption copies shall be maintained and controlled by the cage cashier designated to act as the check bank cashier.

(ii) The accounting copy of the Counter Check shall be maintained and controlled by the pit clerk or above until forwarded to the accounting department as required under subsection (h).

(iii) The issuance copy of the Counter Check shall be deposited by the dealer or boxperson in the drop box.

(f) The cage cashier designated to act as the check bank cashier shall sign and time stamp the acknowledgement copy of the Counter Check and expeditiously return it to the pit clerk or above by means of a security department member.

(g) The acknowledgement copy of the Counter Check returned to the pit clerk or above shall be reconciled with the accounting copy and maintained and controlled by the pit clerk or above until forwarded to the accounting department as required under subsection (h).

(h) At the end of each gaming day the following procedures and requirements shall be observed:

(1) The original and all copies of voided Counter Checks shall be forwarded to the accounting department.

(2) The accounting and acknowledgement copies of Counter Checks retained by the pit clerk or above shall be forwarded to the accounting department for agreement with the issuance copy of the Counter Check removed from the drop box or stored data.

(3) The redemption copy of a Counter Check shall be forwarded to the accounting department subsequent to the redemption or deposit of the original Counter Check for agreement with the accounting and issuance copies of the Counter Check or stored data.

#### § 526.14. Redemption of Counter Checks.

(a) A patron may redeem or partially redeem a Counter Check that has not been deposited by exchanging cash, cash equivalents, a check issued by the slot machine licensee to the patron, value chips, gaming plaques or any combination thereof, in an amount less than or equal to the amount of the Counter Check being redeemed.

(b) When a patron elects to redeem or partially redeem a Counter Check that has not been deposited by exchanging a personal check for the Counter Check being redeemed, the personal check must meet one of the following conditions:

(1) The personal check must be drawn on the bank account in patron's credit file upon which all Counter Checks are to be drawn.

(2) The validity of the personal check shall be verified directly with the financial institution upon which the personal check is drawn.

(3) An authorization and guarantee of the personal check shall be obtained from a check verification and warranty service that is a registered or certified gaming service provider.

(c) The \$2,500 per day limitation on acceptance of personal checks in § 465a.20(b)(6) (relating to personal check cashing) does not apply to the redemption or partial redemption of Counter Checks.

(d) If a patron has more than one unredeemed Counter Check, the most recently dated Counter Check shall be redeemed or partially redeemed first.

(e) Except as provided in subsection (h), a patron shall initiate all redemptions or partial redemptions at the cashier's cage.

(f) When a patron redeems a Counter Check at the cashiers' cage, the cage cashier shall verify the identity of the patron and, after receiving the cash, cash equivalents, a check issued by the slot machine licensee to the patron, value chips, gaming plaques or any combination thereof, shall return the original Counter Check to the patron.

(g) When a patron partially redeems a Counter Check at the cashiers' cage, the cage cashier shall verify the identity of the patron and, after receiving the cash, cash equivalents, a check issued by the slot machine licensee to the patron, value chips, gaming plaques or any combination thereof, shall prepare a replacement Counter Check for the unredeemed balance. The replacement Counter Check shall be dated with the date of the Counter Check being redeemed. After the replacement Counter Check has been completed, the Counter Check being redeemed shall be returned to the patron.

(h) A patron may redeem a Counter Check by mail by sending a written request and cash equivalents, a check issued by the slot machine licensee to the patron, value chips, gaming plaques or any combination thereof, to the certificate holder. When a patron uses a personal check to redeem a Counter Check by mail, the personal check must meet one of the conditions in subsection (b).

(i) When a patron redeems a Counter Check by mail, the identity of the patron shall be verified by comparing the signature on the patron's written redemption request to the signature in the patron's signature file created under § 465a.20(c) or § 526.3(f) (relating to application and verification procedures for granting credit) and, after receiving the cash, cash equivalents, a check issued by the slot machine licensee to the patron, value chips, gaming plaques or any combination thereof, shall mark the original Counter Check "void" and mail it to the address in the patron's credit file.

(j) Any redemption or partial redemption of a Counter Check shall be recorded in the patron's credit file.

#### § 526.15. Substitution of Counter Checks.

(a) A patron may substitute a personal check for a Counter Check if any of the following apply:

(1) The personal check is drawn on the bank account in patron's credit file upon which all Counter Checks are to be drawn.

(2) The validity of the personal check is verified directly with the financial institution upon which the personal check is drawn.

(3) An authorization and guarantee of the personal check is obtained from a check verification and warranty service that is a registered or certified gaming service provider.

(b) The \$2,500 per day limitation on acceptance of personal checks in § 465a.20(b)(6) (relating to personal check cashing) does not apply to the substitution of Counter Checks.

**PENNSYLVANIA GAMING CONTROL BOARD**  
**[ 58 PA. CODE CH. 569 ]**

**Ultimate Texas Hold 'Em Poker; Temporary Regulations**

(c) A patron shall initiate all substitutions at the cashier's cage.

(d) When a patron substitutes a personal check for a Counter Check, the cage cashier shall verify the identity of the patron and, after receiving the patron's personal check, shall return the original Counter Check to the patron.

(e) A personal check that is being substituted for a Counter Check shall be dated with the same date as the Counter Check for which it is being substituted.

(f) Any substitution of a Counter Check shall be recorded in the patron's credit file.

**§ 526.16. Deposit of Counter Checks and personal checks substituted for Counter Checks.**

(a) Counter Checks and personal checks that have been substituted for Counter Checks shall be deposited in accordance with the time periods established in the certificate holder's internal controls. The time periods established by a certificate holder may not exceed:

(1) Fifteen days after the date of the Counter Check or the date on the personal check that has been substituted for the Counter Check if the amount of the check is less than \$5,000.

(2) Thirty days after the date of the Counter Check or the date on the personal check that has been substituted for the Counter Check if the amount of the check is \$5,000 or more.

(b) If the last day of a time period specified in subsection (a) falls on a Saturday, Sunday or Federal or State holiday, the time period runs until the next business day.

(c) Notwithstanding subsection (a)(2), a certificate holder may extend the deposit date up to an additional 15 days beyond the date specified in the certificate holder's internal controls for checks of \$5,000 or more for good cause. The length of the extension and the reason for the extension shall be recorded in the patron's credit file.

**§ 526.17. Collection of returned checks.**

(a) A certificate holder may designate specific employees with no incompatible functions, including the certificate holder's general counsel or an outside attorney, to engage in efforts to collect Counter Checks or personal checks returned by a patron's bank.

(b) The certificate holder, and any outside attorney acting on behalf of the certificate holder, that is engaged in efforts to collect returned checks shall comply with applicable Federal and State laws pertaining to debt collection including, but not limited to, the Fair Debt Collection Practices Act (15 U.S.C.A. §§ 1692—1692p), the Fair Credit Extension Uniformity Act (73 P.S. §§ 2270.1—2270.5) and the Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1—210-6).

(c) The certificate holder shall include in the patron's credit file copies of all statements and other documents supporting collection efforts.

(d) The certificate holder shall maintain records, for the Board's inspection, that describe credit collection arrangements and any written contracts entered into with an outside attorney engaged in efforts to collect Counter Checks or personal checks returned by a patron's bank on behalf of the certificate holder.

[Pa.B. Doc. No. 10-1161. Filed for public inspection June 25, 2010, 9:00 a.m.]

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1303A (relating to temporary table game regulations) enacted by the act of January 7, 2010 (P.L. 1, No. 1) (Act 1) and the specific authority in 4 Pa.C.S. § 1302A(1) and (2) (relating to regulatory authority), adopts temporary regulations in Chapter 569 (relating to Ultimate Texas Hold 'Em Poker) to read as set forth in Annex A. The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

*Purpose of the Temporary Rulemaking*

This temporary rulemaking contains the rules for conducting the game of Ultimate Texas Hold 'Em Poker.

*Explanation of Chapter 569*

Chapter 569 contains the rules for the game of Ultimate Texas Hold 'Em Poker. Included are provisions governing the following: the layout of the table; the decks of cards to be used; the opening of table; the procedures for shuffling and cutting the cards; the ranking of hands; the different wagers that may be made; the procedures for dealing the cards; the procedures for the actual play of each round of the game; the collection of losing wagers and payment of winning wagers; the minimum payout odds and paytables that may be used; and how irregularities in play are to be handled.

*Affected Parties*

Certificate holders who elect to offer Ultimate Texas Hold 'Em Poker will be required to hire and train dealers for this game and purchase the equipment necessary to conduct the game.

While the Board will generally experience increased regulatory demands resulting from the hiring of additional casino compliance agents to oversee the operation of the table games at the licensed facilities and the increased number of license and occupation permit applications that will have to be processed by the Bureau of Licensing, the impact of adding this new game should be insignificant.

*Fiscal Impact*

*Commonwealth*

The Board expects that it will experience increased costs regarding adding additional staff at the licensed facilities and at its offices to handle the increased licensing and oversight requirements that will result from the introduction of table games. However, the Board does not expect these increased costs to exceed the additional funding provided to the Board under Act 1. Additionally, the direct costs from the addition of this game to the games a certificate holder may offer are anticipated to be insignificant.

*Political subdivisions*

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

*Private sector*

This temporary rulemaking will result in additional costs for certificate holders who elect to offer Ultimate Texas Hold 'Em Poker. More specifically, certificate holders will be required to meet the requirements in these temporary regulations, to purchase equipment to conduct this game and to hire and train dealers for this game. It is anticipated that these costs will be offset by the revenues generated from the play of the game.

*General public*

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

*Paperwork Requirements*

This temporary rulemaking will require a certificate holder to file a Rules Submissions to indicate which paytables they will use for this game. The Board has developed standardized checklist Rules Submissions for all of the table games. Therefore, the Rules Submission should be relatively simple to fill out.

*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 this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-124.

*Contact Person*

The contact person for questions about this temporary rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

*Regulatory Review*

Under 4 Pa.C.S. § 1303A, the Board is authorized to adopt temporary regulations which are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—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. § 1303A, the temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the CDL and sections 204(b) and 301(10) of the Commonwealth Attorneys Act.

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

*Order*

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

(1) The temporary regulations of the Board, 58 Pa. Code Chapter 569, are amended by adding §§ 569.1—569.13 to read as set forth in Annex A.

(2) The temporary regulations are effective June 26, 2010.

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

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

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

GREGORY C. FAJT,  
Chairperson

**Fiscal Note:** 125-124. No fiscal impact; (8) recommends adoption.

**Annex A****Title 58. RECREATION****PART VII. GAMING CONTROL BOARD****Subpart K. TABLE GAMES****CHAPTER 569. ULTIMATE TEXAS HOLD 'EM POKER**

Sec.	Definitions.
569.1.	Ultimate Texas Hold 'Em Poker table; physical characteristics.
569.2.	Cards; number of decks.
569.3.	Opening of the table for gaming.
569.4.	Shuffle and cut of the cards.
569.5.	Ultimate Texas Hold 'Em Poker hand rankings.
569.6.	Wagers.
569.7.	Procedure for dealing the cards from a manual dealing shoe.
569.8.	Procedure for dealing the cards from the hand.
569.9.	Procedures for dealing the cards from an automated dealing shoe.
569.10.	Procedures for completion of each round of play; collection and payment of wagers.
569.11.	Payout odds.
569.12.	Irregularities.
569.13.	

**§ 569.1. Definitions.**

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

*Ante Wager*—An initial wager required to be made prior to any cards being dealt to participate in the round of play.

*Blind Wager*—An initial wager required to be made prior to any cards being dealt to participate in the round of play.

*Burn*—To remove the top or next card from the deck and place it face down in the discard rack without revealing it to anyone.

*Check*—Waiving the right to place a Play Wager but remaining in the round of play.

*Community card*—Any of the five cards dealt face up in the center of the table, all of which may be used by each player and the dealer together with the player's or dealer's own two cards to form the best possible five-card poker hand.

*Flop*—The first three community cards dealt face up in the area designated for the placement of the community cards.

*Fold*—The withdrawal of a player from a round of play by not making a Play Wager.

*Hand*—Five-cards formed from any combination of the five community cards and the two cards dealt to a player or the dealer.

*Play Wager*—A wager made after two cards have been dealt to each player and the dealer, and before the dealer reveals his two cards.

*Rank or ranking*—The relative position of a card or group of cards as set forth in § 569.6 (relating to Ultimate Texas Hold 'Em Poker hand rankings).

*Round of play or round*—One complete cycle of play during which all players playing at the table have been dealt cards, have wagered or folded, and have had their wagers paid or collected in accordance with this chapter.

*Trips Wager*—An optional wager that a player may make prior to any cards being dealt, that the player's best five-card hand will be a three-of-a-kind or better.

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

(a) Ultimate Texas Hold 'Em Poker shall be played on a table having positions for six players on one side of the table and a place for the dealer on the opposite side.

(b) The layout for an Ultimate Texas Hold 'Em Poker table shall be approved by the Bureau of Gaming Operations and contain, at a minimum:

- (1) The name or logo of the certificate holder.
- (2) Four separate designated betting areas at each player position for the placement of Ante, Blind, Play and Trips Wagers, configured with the Trips Wager area closest to the dealer, the Play Wager area farthest from the dealer, the Ante Wager area arrayed between the Trips Wager area and the Play Wager area, and the Blind Wager area to the right of the Ante Wager area and separated from the Ante Wager area by an "=" symbol.
- (3) A separate designated area for the placement of the five community cards, located in the center of the table between the table inventory container and the player betting areas.
- (4) A separate designated area for the placement of the dealer's two cards, located between the table inventory container and the designated area for the five community cards.

(5) An inscription indicating that an Ante Wager must tie if the dealer has less than a pair.

(6) Except as permitted under subsection (c), an inscription at each player position describing the following:

- (i) The payout odds for Blind and Trips Wagers.
- (ii) A Blind Wager may not be paid unless the player's hand ranks higher than the dealer's hand.
- (iii) The rules governing the required amount of a Play Wager as a multiple of the player's Ante Wager.

(c) If the information required under subsection (b) is not inscribed on the layout, a sign shall be posted at the Ultimate Texas Hold 'Em Poker table that sets forth the required information.

(d) Each Ultimate Texas Hold 'Em Poker table must have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of, the dealer, in locations approved by the Bureau of Gaming Operations.

(e) Each Ultimate Texas Hold 'Em Poker table must have a discard rack securely attached to the top of the

dealer's side of the table in a location approved by the Bureau of Gaming Operations.

**§ 569.3. Cards; number of decks.**

(a) Except as provided in subsection (b), the game of Ultimate Texas Hold 'Em Poker shall be played with one deck of 52 cards and 2 additional cover cards.

(b) If an automated card shuffling device is used, a certificate holder may use a second deck of cards to play the game, provided that:

- (1) Each deck of cards complies with subsection (a).
- (2) The backs of the cards in the two decks are different colors.
- (3) One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game.
- (4) Both decks are continually alternated in and out of play, with each deck being used for every other round of play.

(5) The cards from only one deck shall be placed in the discard rack at any given time.

(c) The decks of cards used in Ultimate Texas Hold 'Em Poker shall be changed at least:

- (1) Every 4 hours if the cards are dealt by hand.
- (2) Every 8 hours if the cards are dealt from a manual or automated dealing shoe.

**§ 569.4. Opening of the table for gaming.**

(a) After receiving the cards at the table, the dealer shall inspect the cards for defects.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, 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 out in horizontal fan shaped columns by deck according to suit and in sequence.

(c) After the first player arriving at the table is 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, they shall be shuffled in accordance with § 569.5 (relating to shuffle and cut of the cards).

(d) If a certificate holder uses an automated card shuffling device to play the game and two decks of cards are received at the table as permitted under § 569.3 (relating to cards; numbers of decks), each deck of cards shall be separately spread, inspected, verified, spread, inspected, mixed, stacked and shuffled in accordance with subsections (a), (b) and (c).

(e) If the decks of cards received at the table are preinspected and reshuffled in accordance § 523.16(u) or (v) (relating to cards; receipt, storage, inspections and removal from use), subsections (a)—(d) do not apply.

**§ 569.5. Shuffle and cut of the cards.**

(a) Immediately prior to the beginning of play, unless the cards were reshuffled in accordance with § 523.16(u) or (v) (relating to cards; receipt, storage, inspections and removal from use), and after each round of play has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that they are randomly intermixed. Upon completion of

the shuffle, the dealer or device shall place the deck of cards in a single stack, provided, however, that nothing in this section prohibits the use of 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 that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present is being used and 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 do the following:

(1) If the cards were shuffled using an automated card shuffling device, deal or deliver the cards in accordance with § 569.8, § 569.9 or § 569.10 (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 subsection (d).

(d) If a cut of the cards is required, the dealer shall:

(1) Cut the deck, using one hand, by:

(i) Placing a cover card on the table in front of the deck of cards.

(ii) Taking a stack of at least ten cards from the top of the deck and placing them on top of the cover card.

(iii) Placing the cards remaining in the deck on top of the stack of cards that were cut and placed on the cover card.

(2) Deal the cards in accordance with § 569.8, § 569.9 or § 569.10.

(e) Notwithstanding subsection (d), 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 he determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

(f) Whenever there is no gaming activity at an Ultimate Texas Hold 'Em Poker table that is open for gaming, the cards shall be spread out on the table either face up or face down. If the cards are spread face down, the cards shall be turned face up once a player arrives at the table. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, the procedures in § 569.4(c) (relating to opening of the table for gaming) and this section shall be completed.

**§ 569.6. Ultimate Texas Hold 'Em Poker hand rankings.**

(a) The rank of the cards used in Ultimate Texas Hold 'Em Poker, for the determination of winning hands, in order of highest to lowest rank, must 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 formed with a 2, 3, 4 and 5.

(b) The permissible five-card poker hands at the game of Ultimate Texas Hold 'Em Poker, in order of highest to lowest rank, must 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 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 2's 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 2's and two 3's 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; provided however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (for example, queen, king, ace, two and three).

(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 2's 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 3's and two 2's being the lowest ranking two pair.

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

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

**§ 569.7. Wagers.**

(a) Wagers at Ultimate Texas Hold 'Em Poker shall be made by placing value chips or gaming plaques on the appropriate betting areas of the table layout. A verbal wager accompanied by cash may not be accepted.

(b) Ante, Blind and Trips Wagers shall be placed prior to the dealer announcing "no more bets" in accordance with the dealing procedure in § 569.8, § 569.9 or § 569.10 (relating to procedure for dealing cards from a manual dealing shoe; procedure for dealing cards from the hand; and procedures for dealing the cards from an automated dealing shoe). Except as provided in § 569.11 (relating to procedures for completion of each round of play; collection and payment of wagers), no wager shall be made, increased, or withdrawn after the dealer has announced "no more bets."

(c) To participate in a round of play, a player shall be required to make both an Ante Wager and a Blind Wager. The amounts of the Ante Wager and the Blind Wager must be the same.

(d) A player may also place a Trips Wager by placing a wager on the Trips Wager betting area of the layout. The outcome of the Trips Wager shall have no bearing on any other wager made by the player at the game of Ultimate Texas Hold 'Em Poker.

(e) Play Wagers shall be made in accordance with § 569.11.

(f) Only players who are seated at the Ultimate Texas Hold 'Em Poker table may place a 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.

(g) A player may not simultaneously play and wager on more than one player position at an Ultimate Texas Hold 'Em Poker table.

**§ 569.8. 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 Gaming Operations. Once the procedures required under § 569.5 (relating to shuffle and cut of the cards) have been completed, the stacked deck of cards shall be placed in the dealing shoe either by the dealer or by the automated card shuffling device.

(b) Prior to dealing the cards and after all Ante, Blind and Trips Wagers are placed, the dealer shall announce "no more bets."

(c) Each card shall be removed from the dealing shoe with the hand of the dealer that is the closest to the dealing shoe and placed on the appropriate area of the layout with the opposite hand.

(d) The dealer shall, starting with the player farthest to the dealer's left who has placed an Ante and Blind Wager and continuing around the table in a clockwise manner, deal the cards as follows:

- (1) One card face down to each player.
- (2) One card face down to the area designated for the dealer's hand under a cover card.
- (3) A second card face down to each player.
- (4) A second card face down to an area designated for the dealer's hand under a cover card.

(e) After two cards have been dealt to each player and to the area designated for the dealer's hand, and after all community cards have been dealt in accordance with § 569.11 (relating to procedures for completion of each round of play; collection and payment of wagers), the dealer shall remove the stub from the manual dealing shoe and, except as provided in subsection (f), place the stub in the discard rack without exposing the cards.

(f) If an automated card shuffling device that 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 stub at least once every 5 rounds of play to determine that the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(g) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(h) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been

misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards have not been misdealt, all hands shall be considered void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

**§ 569.9. 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 § 569.5 (relating to shuffle and cut of the cards) have been completed, the dealer shall place the stacked deck of cards in either hand.

(i) After the dealer has chosen the hand in which he will hold the cards, the dealer shall continue to use that hand whenever holding the cards during that round of play.

(ii) The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.

(3) The dealer shall announce "no more bets" and then deal each card by holding the deck of cards in the chosen hand and using the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout.

(b) The dealer shall, starting with the player farthest to his left who has placed an Ante and Blind Wager and continuing around the table in a clockwise manner, deal the cards as follows:

- (1) One card face down to each player.
- (2) One card face down to the area designated for the dealer's hand under a cover card.
- (3) A second card face down to each player.
- (4) A second card face down to the area designated for the dealer's hand under a cover card.

(c) After two cards have been dealt to each player and the area designated for the hand of the dealer and all community cards have been dealt in accordance with § 569.11 (relating to procedures for completion of each round of play; collection and payment of wagers), the dealer shall, except as provided in subsection (d), place the stub in the discard rack without exposing the cards.

(d) If an automated card shuffling device that 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 stub at least once every 5 rounds of play to determine that the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(e) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(f) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards have not been misdealt, all hands shall be

considered void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

**§ 569.10. 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 § 569.5 (relating to shuffle and cut of the cards) have been completed, the cards shall be placed in the automated dealing shoe.

(2) The dealer shall then announce “no more bets” prior to dispensing any stacks of cards.

(b) The dealer shall deal the first stack of two cards dispensed by the automated dealing shoe face down to the player farthest to the dealer’s left who has placed an Ante and Blind 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 and Blind Wager. The dealer shall then deliver a stack of two cards face down under a cover card to the area designated for the dealer’s hand.

(c) After each stack of two cards has been dispensed and delivered in accordance with this section, the dealer shall remove the remaining cards from the automated dealing shoe and, following the procedures in § 569.9(a)(2) and (3) (relating to procedure for dealing cards from the hand), deal from his hand the five community cards in accordance with § 569.11 (relating to procedures for completion of each round of play; collection and payment of wagers). After all community cards have been dealt, the dealer shall, except as provided in subsection (d), place the stub in the discard rack without exposing the cards.

(d) If an automated card shuffling device that 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 stub at least once every 5 rounds of play to determine that the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(e) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(f) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards have not been misdealt, all hands shall be considered void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

**§ 569.11. Procedures for completion of each round of play; collection and payment of wagers.**

(a) After the dealing procedures required under § 569.8, § 569.9 or § 569.10 (relating to procedure for dealing cards from a manual dealing shoe; procedure for dealing cards from the hand; and procedures for dealing the cards from an automated dealing shoe) have been completed, each player shall examine his cards without exposing them to any other person and replace the cards face down on the layout. The dealer shall then, starting with the player farthest to his left and proceeding in a

clockwise manner around the table, ask each player if the player wishes to place a Play Wager prior to the dealing of the Flop. The player may either check or place a Play Wager in an amount equal to four times the amount of the player’s Ante Wager.

(1) If a player places a Play Wager, the wager shall be placed in the designated Play Wager betting area.

(2) If a player checks, the player shall remain in the game and defer his decision to place a Play Wager to the next betting opportunity.

(b) Once all players have either placed a Play Wager or checked, the dealer shall burn the next card. The dealer shall then deal the Flop face up to the designated area for the community cards.

(c) After the Flop has been dealt, the dealer shall, starting with the player farthest to his left and proceeding in a clockwise manner around the table, ask each player who has not placed a Play Wager if he wishes to place a Play Wager prior to the dealing of the final two community cards. The player may either check or place a Play Wager in an amount equal to two times the amount of the player’s Ante Wager.

(1) If a player places a Play Wager, the wager shall be placed in the designated Play Wager betting area.

(2) If a player checks, the player shall remain in the game and defer his decision to place a Play Wager to the next betting opportunity.

(d) Once all players have either placed a Play Wager or checked, the dealer shall burn the next card. The dealer shall then deal the next two cards in the deck face up to the designated area for the community cards.

(e) After the final two community cards have been dealt, the dealer shall, starting with the player farthest to his left and proceeding in a clockwise manner around the table, ask each player who has not yet placed a Play Wager whether he wishes to fold or place a Play Wager equal in amount to his Ante Wager.

(1) If a player places a Play Wager, the wager shall be placed in the designated Play Wager betting area.

(2) If a player folds, the Ante and Blind Wagers of the player shall be collected by the dealer and placed in the table inventory container.

(i) If the player has also placed a Trips Wager, the dealer shall place the cards of the player face down underneath the player’s Trips Wager pending its resolution at the conclusion of the round of play.

(ii) If the player has not placed a Trips Wager, the dealer shall immediately spread the cards of the folded hand face down and then place them in the discard rack.

(f) After each player has either folded or placed a Play Wager, the dealer shall remove the cover card from the top of the dealer’s cards and place it on the table layout. The dealer shall then turn his two cards face up, position the combination of the dealer’s cards and either three, four or five of the community cards that can be used to form the best possible five-card hand and announce the dealer’s hand to the players.

(g) If the dealer’s best possible five-card hand is lower than a pair, the dealer shall, starting with the player farthest to the dealer’s right who has placed a Play Wager and proceeding in a counterclockwise manner around the table, return each player’s Ante Wager and resolve all other wagers in accordance with subsection (h).

(h) If the dealer's best possible five-card hand is a pair or above, the dealer shall, starting with the player farthest to the dealer's right who has placed a Play Wager and proceeding in a counterclockwise manner around the table, turn the two cards of each player who has placed a Play Wager face up and announce the best possible five-card poker hand that can be formed using the player's two cards and the five community cards. The wagers of each player shall be resolved one player at a time regardless of outcome. After all wagers placed by a player are settled, the player's cards shall then be immediately collected by the dealer and placed in the discard rack.

(1) If the player's five-card hand is ranked lower than the dealer's five-card hand, the player shall lose and the dealer shall immediately collect the Ante, Blind and Play Wagers made by the player and place the wagers in the table inventory container.

(2) If the player's five-card hand is ranked higher than the dealer's five-card hand, the player shall win and the dealer shall pay the Ante, Blind and Play Wagers made by the player in accordance with the payout odds in § 569.12 (relating to payout odds); provided, however, that the Blind Wager may not be paid unless the player's winning hand has a rank of straight or higher.

(3) If the player's five-card hand and the dealer's five-card hand are of equal rank, the hand shall be a tie. In this case, the dealer may not collect or pay the player's Ante, Blind or Play Wagers.

(4) After settling a player's Ante, Blind and Play Wagers, the dealer shall settle any Trips Wager made by the player by determining whether the player's five-card hand qualifies for a payout in accordance with § 569.12(d). A winning Trips Wager shall be paid without regard to the outcome of any other wager made by the player.

<i>Hand</i>	<i>Paytable A</i>	<i>Paytable B</i>
Royal flush	50 to 1	50 to 1
Straight flush	40 to 1	40 to 1
Four-of-a-kind	30 to 1	30 to 1
Full house	9 to 1	8 to 1
Flush	7 to 1	6 to 1
Straight	4 to 1	5 to 1
Three-of-a-kind	3 to 1	3 to 1

(e) Notwithstanding the payout odds in subsections (b), (c) and (d), the aggregate payout limit on all winning Ante, Play, Blind and Trips Wagers for any hand may not exceed \$50,000 or the maximum amount that one patron could win per round when betting the minimum wager, whichever is greater.

**§ 569.13. Irregularities.**

(a) If any card dealt to the dealer in Ultimate Texas Hold 'Em Poker is exposed prior to each player having either folded or placed a Play Wager as provided for under § 569.11 (relating to procedures for completion of each round of play; collection and payment of wagers), all hands shall be void and all Ante, Blind and Play Wagers shall be returned to the players. Notwithstanding the foregoing, if a player has placed a Trips Wager, the community cards shall be dealt and each Trips Wager

(i) All cards collected by the dealer shall be picked up in order and placed in the discard rack in a way that the cards can be readily arranged to reconstruct each hand in the event of a question or dispute.

**§ 569.12. Payout odds.**

(a) The payout odds for winning wagers at Ultimate Texas Hold 'Em Poker printed on any sign or in any brochure or other publication distributed by a certificate holder shall be stated through the use of the word "to" and odds may not be stated through the use of the word "for."

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

(c) If a player's five-card hand ranks higher than the dealer's five-card hand, a certificate holder shall pay the player's Blind Wager in accordance with the following odds:

<i>Player's Five-Card Hand</i>	<i>Payout Odds</i>
Royal flush	500 to 1
Straight flush	50 to 1
Four-of-a-kind	10 to 1
Full house	3 to 1
Flush	3 to 2
Straight	1 to 1
Less than a straight	Return the player's Blind Wager

(d) A certificate holder shall pay each winning Trips Wager at the game of Ultimate Texas Hold 'Em Poker at the odds from one of the following paytables designated in the certificate holder's Rule Submission under § 521.2 (relating to table games Rules Submissions):

<i>Paytable C</i>	<i>Paytable D</i>
50 to 1	50 to 1
40 to 1	40 to 1
30 to 1	20 to 1
8 to 1	7 to 1
7 to 1	6 to 1
4 to 1	5 to 1
3 to 1	3 to 1

shall be settled in accordance with the payout odds in § 569.12(d) (relating to payout odds).

(b) A card that is found face up in the shoe or the deck while the cards are being dealt may not be used in the game 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. Notwithstanding the foregoing, if the cards are found face up after each player and the dealer has received their initial two cards, the community cards shall be dealt and any Trips Wager shall be settled in accordance with the payout odds in § 569.12(d).

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

(d) If a player or the dealer is dealt an incorrect number of cards, the round of play 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 can not 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.

[Pa.B. Doc. No. 10-1162. Filed for public inspection June 25, 2010, 9:00 a.m.]

\_\_\_\_\_