

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 86—90]

Federal Office of Surface Mining Reclamation and Enforcement Program Consistency

The Environmental Quality Board (Board) amends 25 Pa. Code Chapters 86—90 to read as set forth in Annex A. This final-form rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining regulatory program and Federal regulations. This final-form rulemaking updates requirements to comply with the Federal coal mining regulations at 30 CFR Parts 700 through 955 (relating to mineral resources) and, for general program maintenance, includes additional revisions to correct typographical errors, organization names, statutory citations, remaining requirements and the use of reference data for the sizing of stormwater control facilities.

This final-form rulemaking was adopted by the Board at its meeting on November 19, 2019.

A. *Effective Date*

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

B. *Contact Persons*

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C. *Statutory Authority*

This final-form rulemaking is authorized under the authority of section 5 of The Clean Streams Law (35 P.S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); section 7(b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7(b)); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. *Background and Purpose*

This final-form rulemaking addresses inconsistencies between the Commonwealth's coal mining program and Federal requirements. The Board also includes in this final-form rulemaking additional revisions for general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, remaining requirements and the use of reference data for the sizing of stormwater control facilities.

Required Program Amendments

The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (Federal

SMCRA) "establish[ed] a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." See 30 U.S.C.A. § 1202(a). Federal SMCRA authorizes the Secretary of the Interior, through the Office of Surface Mining Reclamation and Enforcement (OSM), to administer the programs for controlling surface coal mining operations, and to review and approve or disapprove State programs for controlling the same. See 30 U.S.C.A. § 1211(c)(1).

Federal SMCRA allows a state to assume jurisdiction over the regulation of surface coal mining and reclamation operations if the state can administer that program according to Federal standards. See 30 U.S.C.A. § 1253. When a state program is approved by OSM, the state achieves "primacy" over the regulation of its surface coal mining program. The Commonwealth achieved primacy in 1982. See 47 FR 33,050, 33,076 (July 30, 1982). To keep its jurisdiction over the regulation of coal surface mining activities, the Commonwealth must maintain a State program in accordance with the requirements of Federal SMCRA, 30 U.S.C.A. § 1255(a), and with "rules and regulations consistent with regulations issued by the Secretary." See 30 U.S.C.A. § 1253(a)(1) and (7).

OSM identified several of the Commonwealth's regulations that require revision because they are not as effective as the Federal requirements. The Commonwealth is therefore required to revise existing regulations so that they are no less stringent than the Federal standards. See 30 CFR Part 938 (relating to Pennsylvania). The required program amendments are as follows:

Augmented Seeding

OSM disapproved of the use of the term "augmented" in the last sentence of § 86.151(d) (relating to period of liability) because it found it to be less stringent than the Federal requirement for the bond liability period. See 30 CFR 938.12(d) (relating to State statutory, regulatory, and proposed program amendment provisions not approved). According to the OSM, "augmented" seeding by definition restarts the period for liability. However, the Commonwealth's proposed regulation had referred to a normal husbandry practice (per OSM) as augmented seeding that would not restart the period for which an operator is liable. Therefore, this final-form rulemaking deletes the term "augmented" from § 86.151(d) to match OSM's understanding of seeding that does not restart the period of liability.

Bonding

OSM required the Commonwealth to revise its regulations relating to the valuation of certain collateral bonds at § 86.158(b) (relating to special terms and conditions for collateral bonds). OSM's requirements are as follows:

Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value deprecia-

tion, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

30 CFR 938.16(m)—(o).

To address these issues, this final-form rulemaking includes revisions to § 86.158(b). In subsection (b)(1), “may” is changed to “will,” requiring the Department to be the entity responsible for valuing collateral at its current market value not at face value. This final-form rulemaking also adds “less any legal and liquidation costs” to subsection (b)(2) and revises subsection (b)(3) to require the posting of any needed additional bond amount with the permit renewal, which is at least every 5 years.

Haul Roads

OSM also required that the Commonwealth revise its regulations at § 88.1 (relating to definitions) regarding the use of public roads as part of an anthracite mining operation:

Pennsylvania shall submit a proposed amendment to § 88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

30 CFR 938.16(mmm).

This final-form rulemaking adds the following to the definition of a haul road at § 88.1: “The term includes public roads that are used as an integral part of the coal mining activity.” OSM’s requirement to clarify that the activity includes the right-of-way and other features of the road does not require an additional revision in this final-form rulemaking. The elements OSM requires are already included in the existing definition of “Road” at § 88.1, and the definition of “Road” includes a reference to “haul roads.”

General Consistency Amendments

Unrelated to issues of consistency with Federal law, the Department and various third parties have identified several typographical, citation and reference errors within the Department’s regulations, outdated source material, and areas of the program that require more clarity. These general consistency amendments are as follows:

Effluent Limitations for Bituminous Underground Mines

The Commonwealth currently lists effluent limitations for bituminous underground mines at § 89.52 (relating to water quality standards, effluent limitations and best management practices). Subsection (f) includes alternative effluent limitations for underground mine discharges that can be adequately treated using passive treatment technology. However, the Federal effluent limit guidelines at 40 CFR Part 434 (relating to coal mining point source category BPT, BAT, BCT limitations and new source performance standards) only include alternative limits for passive treatment systems applicable to surface mines instead of underground mines. When the Board revised the regulations to add subsection (f) related to under-

ground mines, this distinction was missed. This discrepancy came to light during a recent evaluation comparing the Federal effluent limit guidelines with the requirements in § 89.52.

Therefore, this final-form rulemaking eliminates the alternative effluent limits for underground mine passive treatment systems from subsection (f).

Temporary Cessation

The Commonwealth’s regulations regarding the temporary cessation of operations for bituminous surface mines included a 180-day upper limit on the amount of time that an operation can be in temporary cessation status. The Federal rules that address temporary cessation at 30 CFR 816.131 (relating to cessation of operations: temporary) do not include an upper limit on the duration of temporary cessation status. Therefore, this final-form rulemaking includes revisions to § 87.157 (relating to cessation of operations: temporary) removing the upper time limit.

Temporary cessation for anthracite coal mines is addressed at §§ 88.131, 88.219 and 88.332 (relating to cessation of operations: temporary) in regards to anthracite surface mines; anthracite bank removal; and anthracite coal refuse disposal. Sections 88.131 and 88.219 do not include an upper time limit for temporary cessation status. Section 88.332, applicable to anthracite coal refuse disposal, includes a 1-year upper time limit.

To ensure temporary cessation for anthracite coal mines is regulated the same way as bituminous mines, this final-form rulemaking revises §§ 87.157, 88.131 and 88.219 to include the same suite of revised requirements related to temporary cessation status, including a requirement for operators to submit information to the Department, consistent with 30 CFR 816.131, and triggers for when the status ends because of reactivation, or terminates through the permittee’s failure to comply with the law, regulations or the permit.

This final-form rulemaking also requires permittees to submit a timely renewal application when applicable. Amendments included in this final-form rulemaking do not lessen environmental protection related to surface mining because the performance standards in existing regulations focus on pollution prevention. The Department provides the same attention to sites in temporary cessation status as it does to active sites, through monthly inspections to ensure compliance with performance standards and updates to bond amounts, as appropriate.

Because the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66) includes the 1-year upper time limit, this requirement is retained in § 88.332.

Definition of Surface Mining Activities

This final-form rulemaking replaces the existing definition of “surface mining activities” in §§ 86.1 and 87.1 (relating to definitions) with a cross-reference to the Federal definition of “surface mining activities” from 30 CFR 701.5 (relating to definitions) (which in turn refers to “surface coal mining and reclamation operations” defined at 30 CFR 700.5 (relating to definitions)). This amendment is in response to issues informally raised by OSM related to the scope of the existing definition.

Civil Penalties

As outlined in § 86.194 (relating to system for assessment of penalties), the Department uses a system for assessment to determine the amount of a civil penalty

that depends on the specific circumstances of the violation. Currently, § 86.193(b) (relating to assessment of penalty) requires the Department to assess a civil penalty if the penalty the Department calculates equals \$1,100 or more. Correspondingly, § 86.193(c) affords the Department discretion whether to assess a civil penalty that equals less than \$1,100. The threshold dollar amount of \$1,100 in § 86.193(b) that triggers a mandatory assessment is based on the Federal civil penalty program found at 30 CFR 723 (relating to civil penalties).

The Federal program calculates penalty amounts by using a point system. Under this point system, a violation is given a certain number of points based on its circumstances and a formula is then used to equate those points to a dollar value. A violation that amounts to 30 points or more under the Federal system requires a penalty. Periodically, the Federal government revises the dollar amounts on the table, while the point threshold that triggers a mandatory penalty assessment remains fixed.

To address the fluctuating dollar amount from the Federal program's penalty calculations, this final-form rulemaking includes references to 30 CFR 723.12 (relating to when penalty will be assessed) and 723.14 (relating to determination of amount of penalty) instead of listing a specific penalty amount, so the Commonwealth's threshold for mandating the assessment of a penalty will always correctly reflect the Federal point system trigger.

Administrative Requirements

Two differences between the Commonwealth's requirements and the Federal requirements came to light during the recent development of the ePermitting application for new bituminous surface mines.

First, § 86.31 (relating to public notices of filing of permit applications) requires notification by registered mail to the municipality where mining is proposed. This requirement for registered mail is not in the Federal rules. Therefore, this final-form rulemaking revises § 86.31(c)(1) to retain the notification but to delete the registered mail requirement. In addition to consistency with the Federal regulations, this proposal will allow for electronic notice in cases where it is appropriate. This update will allow the Department flexibility to use registered mail and electronic notices as needed.

Second, § 86.62(a)(3) (relating to identification of interests) requires the date of issuance of the Mine Safety and Health Administration Identification Number to be provided in an application. This date of issuance is not required under the Federal rules. Therefore, this final-form rulemaking deletes the date of issuance from this subsection.

Employee Financial Interest Reporting Form

Section 86.238 (relating to what to report) lists an old OSM form number for reporting employee financial interests. The current form number is OSM Form 23. Therefore, this final-form rulemaking changes "Form 705-1" to "Form 23."

Storm Events

Sections 87.103, 88.93, 88.188, 88.293 and 89.53 each include a table of data representing the amount of precipitation for a 24-hour storm event with a recurrence interval of 10 years on a county-by-county basis. Section 90.103 (relating to precipitation event exemption) includes tables of similar data representing the 1-year and 10-year rainfall events. The Department derived the data in these tables from the climatological data available in the early 1980s, which only provided data for a limited number of stations in each county.

The regulations include the highest value in this data for each county. In subsequent years, additional data has been gathered and the National Oceanic and Atmospheric Administration (NOAA) has developed an online tool which provides the precipitation amount for various storm events for any location in the Commonwealth, currently available at <https://hdsc.nws.noaa.gov/hdsc/pfds/>.

Generally, the amount of precipitation for each storm event is lower than what is currently listed in the tables in the regulations. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance. This final-form rulemaking removes the tables and replaces them with a general reference to data available through NOAA or an equivalent resource. This will result in properly-sized stormwater controls and reduced costs for mine operators.

Remining Financial Guarantees

The Department identified and established best practices for managing accounts in the Remining Financial Guarantee (RFG) Program, similar to those established for the Land Reclamation Financial Guarantee Program. To provide stability to the RFG Program, the first best practice designates a monetary threshold and a reserve in the account. The designated threshold establishes the program limits while the reserve provides funds to pay for costs incurred when the financial guarantee program is used for land reclamation.

This final-form rulemaking includes an addition to § 86.281(b) (relating to financial guarantees to insure reclamation—general) to describe the process used to determine the amount of an individual remining financial guarantee. This final-form rulemaking also includes revisions to § 86.281(c) to clarify that the designated amount is maintained at the program level rather than on a permit-by-permit basis. This final-form rulemaking amends § 86.281(d) to refer to the designated amount when describing the permit limit, the operator limit, and the program limit and § 86.281(f) to describe the reserve.

An additional best practice targets risk management. For example, one method to manage risk includes limiting the participation of operators who previously failed to make the required payments on a timely basis. This final-form rulemaking revises § 86.282(a)(4) (relating to participation requirements) to add that to participate, the operator may not have been previously issued a notice of violation relating to maintaining bonds, including a missing or late payment. The requirement includes a 3-year window so as not to permanently prohibit participation for an operator who had a missing or late payment.

The existing regulatory language at § 86.284(d) (relating to forfeiture) differs from the statutory language in section 4.12 of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA) (52 P.S. § 1396.4(d)), which has resulted in confusion when interpreting the requirement. This final-form rulemaking revises § 86.284(d) to read the same as PA SMCRA.

Natural Resources Conservation Service

The existing regulations include numerous references to the Soil Conservation Service. This agency changed its name to the Natural Resources Conservation Service. This final-form rulemaking corrects these references.

Conservation District

Section 86.189(b)(4) (relating to reclamation of bond forfeiture sites) includes a reference to the Soil Conservation District. The current name of the agency to which

this refers is the Conservation District. This final-form rulemaking makes this revision.

Chapter 92a Reference Correction

The existing regulations include references to Chapter 92. In 2010, the Board reserved Chapter 92 and replaced it with Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). This final-form rulemaking corrects these references throughout Chapters 86—90.

Department Reference

Section 86.232 (relating to definitions) includes a reference to the Department of Environmental Resources. This final-form rulemaking updates this reference to be the Department of Environmental Protection.

Water Quality Standards Implementation

In 2000, the Board finalized Chapter 96 (relating to water quality standards implementation). The mining regulations have not been updated to include reference to Chapter 96. This final-form rulemaking corrects this by including references to Chapter 96 in §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Coal Ash and Biosolids

Section 86.54 (relating to public notice of permit revision) includes the terms “fly ash disposal” and “sewage sludge.” Section 87.100 (relating to topsoil: nutrients and soil amendments) also uses the terms “fly ash” and “sewage sludge.” The correct term instead of “fly ash” is “coal ash,” which is defined in § 287.1 (relating to definitions). This definition of coal ash includes fly ash and other materials. In addition, disposal of coal ash is not allowed in the context of active mining sites. Coal ash may be beneficially used to enhance reclamation under Chapter 290 (relating to beneficial use of coal ash). Similarly, “biosolids” is a term which includes reference to “sewage sludge,” so it is more appropriate to use. Therefore, this final-form rulemaking revises §§ 86.54 and 87.100 to correct these terms to instead refer to “coal ash” and “biosolids.”

Anthracite Mine Operators Emergency Bond Fund

In 1992, section 4.7 of PA SMCRA, (52 P.S. § 1396.4g), was revised to allow anthracite surface mining operators to participate in the Anthracite Mine Operators Emergency Bond program. Prior to this, participation was limited to only deep mine operators. This final-form rulemaking changes the references to “deep mine” to be “mine” in § 86.162a (relating to Anthracite Mine Operators Emergency Bond Fund). This clarifies that not only deep mines are eligible to participate in the Anthracite Mine Operators Emergency Bond program.

Coal Refuse Disposal Site Selection

In 2010, section 4.1 of the Coal Refuse Disposal Control Act, (52 P.S. § 30.54a), was amended to add to the list of preferred sites for siting coal refuse disposal facilities. The amendment added the following language: “An area adjacent to or an expansion of an existing coal refuse disposal site.” This final-form rulemaking reflects this statutory change in § 90.201 (relating to definitions).

Reviews of active permits

Section 86.51 (relating to reviews of active permits) includes the phrase “. . . a review of the permit shall be no less frequent than the permit midterm of every 5 years, whichever is more frequent.” The “of” underlined previously should be “or.” This final-form rulemaking corrects this error.

Mine Safety and Health Administration

Section 86.84 (relating to applications for assistance) includes a reference to the Mining Enforcement and Safety Administration. The reference should be the Mine Safety and Health Administration. This final-form rulemaking corrects this error.

“Road” Definition

The definition of “road” at § 88.1 begins with “A surface right-of-way for purposes of travel by land vehicles used in coal exploration of surface coal mining and reclamation operations.” The “of” underlined previously should be “or.” This final-form rulemaking corrects this error.

Remining Program

After the Board finalized remining regulations in October 2016, discrepancies in the citations were identified in Chapter 88 (relating to anthracite coal). In § 88.502(ii) (relating to definitions), the citation to § 88.295(b)—(g) (relating to hydrologic balance: diversions and conveyances) is incorrect. The correct citation is § 88.295(b)—(i). Similarly, in § 88.507(c) (relating to treatment of discharges) the citations are incomplete. The correct citations are §§ 88.95(b)—(g), 88.190(b)—(g) (relating to hydrologic balance: diversions) and 88.295(b)—(i). Finally, § 88.508 (relating to request for bond release) lists “Section 86.172(a), (b) and (d).” Section 90.308 (relating to request for bond release) also refers to § 86.172(d) (relating to criteria for release of bond). There is no subsection 86.172(d). This final-form rulemaking includes revisions to address each of these errors.

E. Summary of Changes to the Proposed Rulemaking

Section 86.1 and 87.1 Changes

The language incorporating the definition of “surface mining activities” from 30 CFR 701.5 is revised to include language consistent with other Department regulations to denote that the Federal definition is adopted in its entirety.

Section 86.31 Changes

This final-form rulemaking includes several revisions from the proposed rulemaking. The Board made the following two revisions to § 86.31 in response to comments on the proposed rulemaking. First, the Board will retain the existing language listing a “city, borough, incorporated town or township,” replacing the proposed term “municipality.” Second, the Board specified that the notice to local governments will be written notice.

The Board made several additional revisions for clarification and consistency with the Commonwealth’s statutes and regulations. Sections 86.54 and 87.100 were revised in the proposed rulemaking to replace the term “sewage sludge” with the term “biosolids.” To be consistent with Chapter 271 (relating to municipal waste management—general provisions) and the proposed amendment to § 87.100, the term “residential septage” is also added in this final-form rulemaking to § 86.54.

Section 88.107 Changes

The proposed rulemaking deleted language from § 88.107(g) (relating to hydrologic balance: water rights and replacement) regarding the recovery of “attorney fees and expert witness fees” by the operator because of the act of December 20, 2000 (P.L. 980, No. 2000-138). This

act created a new scheme for recovery of litigation costs in mining proceedings at 27 Pa.C.S. Chapter 77 (relating to costs and fees) in order to conform to Federal law. The proposed change also reflected a similar amendment to § 87.119(g) (relating to hydrologic balance: water rights and replacement) in 2011. See 41 Pa.B. 3084 (June 18, 2011).

The act of December 20, 2000, also repealed section 4.2(f)(5) of PA SMCRA, which provided the statutory authority for these regulations in their entirety, and not only with respect to litigation costs. OSM did not approve either § 87.119(g) or § 88.107(g) because the repeal of section 4.2(f)(5) of PA SMCRA left the regulations with no remaining statutory authority to support them. See 30 CFR 938.12(c)(6) and 70 FR 25472 and 25484 (May 13, 2005). In order to streamline OSM's review on this topic, the change to § 88.107 in this final-form rulemaking will not be made, and revisions consistent with 27 Pa.C.S. Chapter 77 and the repeal of section 4.2(f)(5) of PA SMCRA will be incorporated in proposed rulemaking # 7-545, regarding water supply replacement, adopted by the Board on June 18, 2019. The proposed rulemaking was published in the *Pennsylvania Bulletin*, opening the public comment period on November 2, 2019. The public comment period closed on December 2, 2019.

Section 88.332 Changes

Because the Coal Refuse Disposal Control Act includes a 1-year upper time limit related to requirements triggered by temporary cessation, the proposal to remove this time limit from § 88.332 has been undone. To improve clarity, this final-form rulemaking retains the current language and inserts a reference to the specific section of the Coal Refuse Disposal Control Act where this requirement is stated.

Section 89.52 Changes

In § 89.52(f)(3) (relating to water quality standards, effluent limitations and best management practices), the word "Any" which was proposed at the beginning of the section is being revised to be "A" for clarity.

F. Summary of Comments and Responses on the Proposed Rulemaking

The following summaries are based on comments that were received from three public commentators and the Independent Regulatory Review Commission (IRRC).

Related to Haul Roads

One commenter was concerned that the term "public roads," as used in the revised definition of "Haul roads" in § 88.1, is very broad and could be used to impose additional bonding and other fees on common use public roads that are shared by thousands of other business concerns. Because of these concerns, they requested that the Board include language in the preamble of the regulation to address these concerns.

In response to this comment, the language "integral part of the coal mining activity" is intended to address mining activities that normally would not occur on a public road. This includes any use of the public road by off-road vehicles or equipment that cannot be licensed for

on-road use. The length of the public road to be defined as a haul road will be limited to the length of the public road used for travel by vehicles or equipment that are an integral part of the coal mining activity. Any use of a public road by licensed on-road vehicles is not considered to be an integral part of the coal mining activity for the purpose of the definition of "haul road."

Related to Administrative Requirements

Another commenter pointed out that § 86.31 requires notification by registered mail and that the Federal rules do not change this requirement. The commenter asserts that the proposed regulation would revise § 86.31(c)(1) to retain the notice requirement but delete language that requires the notice be sent by registered mail. The commenter contends that this notification is too important to not notify by registered mail. The commenter states that since the Federal policy does not require electronic notification, the existing notification by registered mail should be retained. IRRC additionally asked the Board to explain the reasonableness of not requiring registered mail, under what circumstances electronic notice is appropriate, and how the new notification requirement adequately protects public health, safety and welfare.

In response to this comment, the Federal requirement at 30 CFR 773.6(a)(3) (relating to public participation in permit processing) requires: "[T]he regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted." The Federal requirement is to provide written notice to the local government agency and does not specify the means by which written notice is given.

The regulation has been revised to require written notification to be consistent with the Federal requirement and allow the Department flexibility to use mail or electronic notice. The Department may provide notice by registered mail on a case-by-case basis. Authorizing the Department to provide notice by means other than registered mail is reasonable because it implements part of the Department's "Permit Reform Initiative" to reduce permit backlogs, modernize the permitting process, and better utilize technology to improve both oversight and efficiency. As notice becomes automated through the Department's electronic permitting system, parties will receive notice of completed permit applications in a more timely manner, and the resources the Department saves can be committed to other work directed at protecting the public health, safety and welfare. The Department does not believe that the regulation requires standards to determine when electronic notice is appropriate because, in practice, the method of written notice should not be an issue. Local government agencies are generally involved very early in the application process (before a complete application is submitted). The transition to electronic notification requires interaction and cooperation between the Department and the local government in order to establish the appropriate contacts. This interaction will provide the opportunity for the local government to express any concerns they have about the process at that time.

IRRC further noted that the Annex proposed to delete the phrase "the city, borough, incorporated town or township" and replace that language with "the municipality."

IRRC points out that § 86.1 contains a definition of the term “municipality” that defines a municipality as, “A county, city, borough, town, township, school district, institution or an authority created by any one or more of the foregoing.” IRRC asked whether the Board intended to expand notification to all the entities listed under the definition of municipality.

In response to this comment, the Federal Rule at 30 CFR 773.6(a)(3)(i) is to provide written notice to “[l]ocal governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation. . . .” The Department interprets this requirement to apply to general purpose units of government, specifically, the city, borough, incorporated town or township. The amendment in the proposed rulemaking was not intended to expand the notification requirement to counties or special purpose local government units in addition to relevant authorities included under § 86.31(c)(2) (“Sewage and water treatment authorities that may be affected by the activities.”) and (c)(3) (“Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed activities.”). Language in this final-form rulemaking is therefore revised by reverting to the existing language listing “the city, borough, incorporated town or township.”

Related to the Regulatory Analysis Form

IRRC also pointed out that the Regulatory Analysis Form indicates that no data was the basis of the proposed rulemaking, but that the data available through the NOAA online tool for precipitation events is referred to repeatedly in the proposed regulation, so the Board should clarify that the availability of the data from the NOAA tool is the basis for the revisions proposed.

In response, the Regulatory Analysis Form has been revised to reflect the fact that the data available through the NOAA online tool was used as a basis for the regulation. The response includes a link to the web page where the tool is available.

Related to Storm Events

IRRC also asked about the term “equivalent resources,” which is used in several sections, relating to the determination of the size of storm events.

In response to this comment, this term is intended to allow for continued reliance on the data in the case where there is a government reorganization, technological advance or other factor that would cause the specific description of the tool to be outdated. While this can be corrected through further rulemaking, the “equivalent resources” reference will provide continuity.

In Support of the Regulatory Process

One commentator acknowledged the collaborative process undertaken in developing the proposed regulations. In response, the Board acknowledges the comment.

Mining and Reclamation Advisory Board Collaboration

The Department collaborated with the Mining and Reclamation Advisory Board’s (MRAB) Regulation, Legislation and Technical (RLT) committee to develop the proposed rulemaking. This included discussion at several RLT committee meetings and with the full board.

At its April 6, 2017, meeting, the MRAB voted to concur with the Department’s recommendation that the proposed rulemaking move forward in the regulatory process. At its April 25, 2019, meeting, the MRAB voted to concur with the Department’s recommendation that the final-form rulemaking move forward in the regulatory process.

G. Benefits, Costs and Compliance

Benefits

The revisions in this final-form rulemaking will resolve inconsistencies with Federal requirements, allow the Commonwealth to maintain program primacy, provide clarity to mine operators regarding compliance standards and result in properly-sized stormwater facilities. In some cases, the latter benefit will result in reduced costs, because current regulations may require larger facilities than necessary.

Compliance costs

None of the new or revised requirements are likely to increase costs. Due to the benefits described previously, this final-form rulemaking is likely to reduce costs. For example, this final-form rulemaking will result in properly-sized stormwater facilities. In many cases, this will result in reduced costs because the updated regulations may no longer require larger than necessary facilities.

Compliance assistance plan

Compliance assistance for this final-form rulemaking will be provided through the Department’s routine interaction with trade groups and individual applicants. There are about 400 licensed surface coal mining operators in this Commonwealth, most of which are small businesses that will be subject to this regulation.

Paperwork requirements

This final-form rulemaking does not require additional paperwork.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking has minimal impact on pollution prevention since it is predominantly focused on updating regulations to reflect current Federal requirements, amendments to state statutes and references to citations, names and data sources.

I. Sunset Review

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 2, 2018, the Department submitted a copy of the notice of proposed rulemaking, published at 48 Pa.B. 6844 (October 27, 2018), to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public

comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on January 30, 2020, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 31, 2020, and approved this final-form rulemaking.

K. Findings of the Board

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposal published at 48 Pa.B. 6844.

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

L. Order of the Board

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

(1) The regulations of the Department, 25 Pa. Code Chapters 86, 87, 88, 89 and 90 are amended by amending §§ 86.1, 86.31, 86.51, 86.54, 86.62, 86.84, 86.151, 86.158, 86.162a, 86.189, 86.193, 86.232, 86.238, 86.281, 86.282, 86.284, 87.1, 87.53, 87.100, 87.102, 87.103, 87.112, 87.117, 87.155, 87.157, 87.177, 87.181, 88.1, 88.32, 88.92, 88.93, 88.102, 88.103, 88.106, 88.107, 88.129, 88.131, 88.187, 88.188, 88.193, 88.197, 88.198, 88.202, 88.217, 88.219, 88.292, 88.293, 88.302, 88.303, 88.306, 88.330, 88.332, 88.491, 88.493, 88.502, 88.507, 88.508, 89.52, 89.53, 89.59, 89.86, 89.112, 89.121, 89.122, 89.134, 90.22, 90.102, 90.103, 90.112, 90.113, 90.116, 90.159, 90.161, 90.165, 90.201 and 90.308, as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(3) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

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

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

PATRICK McDONNELL,
Chairperson

(Editor's Note: See 50 Pa.B. 1001 (February 15, 2020) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7-532 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

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

* * * * *

Surface mining activities—Any activities meeting the definition of “surface mining activities” as it is defined at 30 CFR 701.5, which is adopted in its entirety and incorporated herein by reference.

* * * * *

Subchapter B. PERMITS

REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

§ 86.31. Public notices of filing of permit applications.

* * * * *

(c) Upon receipt of a complete application, the Department will publish notice of the proposed activities in the *Pennsylvania Bulletin* and send written notice to the following:

(1) The city, borough, incorporated town or township in which the activities are located.

* * * * *

PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS

§ 86.51. Reviews of active permits.

(a) The Department will review each permit issued and outstanding during the term of the permit. This review shall occur at the discretion of the Department during the permit term except as required by § 87.175 (relating to variance to contouring). For permits of longer than 5-year terms, a review of the permit shall be no less frequent than the permit midterm or every 5 years, whichever is more frequent.

* * * * *

§ 86.54. Public notice of permit revision.

A permit revision request shall be subject to the notice requirements of § 86.31 (relating to public notices of filing of permit applications) under the following circumstances:

(1) For surface mining activities:

* * * * *

(iii) The addition of coal refuse disposal, beneficial use of coal ash or biosolids, or residential septage for land reclamation to the operation.

* * * * *

MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL COMPLIANCE AND RELATED INFORMATION

§ 86.62. Identification of interests.

(a) *Application information.* An application shall contain the following information, except that the submission of a social security number is voluntary:

* * * * *

(3) The name of the proposed mine and the Mine Safety and Health Administration (MSHA) Identification Number for the mine and all mine-associated structures that require MSHA approval.

* * * * *

Subchapter C. SMALL OPERATOR ASSISTANCE PROGRAM

§ 86.84. Applications for assistance.

(a) An application for assistance shall contain the following information:

* * * * *

(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under this section. For each location, the schedule shall include:

* * * * *

(ii) The permit number and Mine Safety and Health Administration identification number, if available.

* * * * *

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

AMOUNT AND DURATION OF LIABILITY

§ 86.151. Period of liability.

* * * * *

(d) The extended period of liability which begins upon completion of augmenting seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area shall include additional time taken by the permittee to repeat augmented seeding, fertilization, irrigation or other work under a requirement by the Department but may not include selective husbandry practices approved by the Department, such as pest and vermin control, pruning, repair of rills and gullies or reseeding or transplanting, or both, which constitute normal conservation practices within the region for other land with similar land uses. Seeding, fertilization, irrigation and repair of rills and gullies performed at levels or degrees of management which exceed those normally applied in maintaining use or productivity of comparable unmined land in the surrounding area, would necessitate extending the period of liability.

* * * * *

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 86.158. Special terms and conditions for collateral bonds.

* * * * *

(b) Collateral bonds pledging negotiable government securities are subject to the following conditions:

(1) The Department will determine the current market value of government securities for the purpose of establishing the value of the securities for bond deposit.

(2) The current market value, less any legal and liquidation costs, is at least equal to the amount of the required bond amount.

(3) The Department may periodically revalue the securities and may require additional amounts if the current market value is insufficient to satisfy the bond amount requirements for the facility. At a minimum, the Department shall require any necessary additional amounts with each permit renewal.

* * * * *

§ 86.162a. Anthracite Mine Operators Emergency Bond Fund.

(a) For permitted anthracite mine operators required to post a bond under § 86.143 (relating to requirements to file a bond), and who can demonstrate to the Department that they are unable to post a conventional surety or collateral bond as described in § 86.156 (relating to the form of the bond), and do not meet the requirements of § 86.161 (relating to phased deposits of collateral), may apply to the Department for an Anthracite Mine Operator's Emergency Bond Loan. The purpose of this loan is to guarantee a collateral bond posted by the operator.

(b) Permitted anthracite mine operators who wish to use the anthracite mine emergency bond loan program shall demonstrate one of the following:

* * * * *

(c) The Department and the qualified operator shall enter into a written loan agreement, on forms provided by the Department, which shall contain at a minimum, the following provisions:

* * * * *

(d) The Department will deposit appropriations and moneys collected under this section into the Anthracite Mine Operators Emergency Bond Fund.

* * * * *

BOND FORFEITURE

§ 86.189. Reclamation of bond forfeiture sites.

* * * * *

(b) The Department will provide for reclamation of bond forfeiture sites through one of the following:

* * * * *

(4) Under cooperative agreements among the Department, the State Conservation Commission and the County Conservation District in which the bond forfeiture site is located, the District may enter into a contract with the landowner of the bond forfeiture site to reclaim the site.

* * * * *

Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES

GENERAL PROVISIONS

§ 86.193. Assessment of penalty.

* * * * *

(b) The Department will assess a civil penalty for each violation if the violation is assessable in an amount consistent with 30 CFR 723.12(b) and 723.14 under the system for assessment described in § 86.194 (relating to system for assessment of penalties).

(c) The Department may assess a penalty for each violation which is assessable in an amount consistent with 30 CFR 723.12(c) and 723.14 under the system for assessment described in § 86.194.

Subchapter I. EMPLOYEE CONFLICT OF INTEREST

§ 86.232. Definitions.

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

* * * * *

Department—The Department of Environmental Protection.

* * * * *

§ 86.238. What to report.

(a) Each employe shall report information required on the statement of employment and financial interests of the employe, the employe spouse, minor children or other relatives who are full-time residents of the employe home. The report shall be on OSM Form 23 as provided by the Department. The statement consists of three major parts:

* * * * *

**Subchapter J. REMINING AND RECLAMATION INCENTIVES
BONDING INCENTIVES**

§ 86.281. Financial guarantees to insure reclamation—general.

* * * * *

(b) The financial guarantee applies to a permit with remining areas approved by the Department. Operators who wish to participate in this program shall demonstrate, for each permit, their eligibility under §§ 86.253 and 86.282 (relating to operator and project qualification; and participation requirements). The amount will be the estimated cost for the Department to reclaim the remining area, subject to the limitations established in subsection (d).

(c) The Department will designate a specified amount of the financial guarantees special account in the Remining Financial Assurance Fund to financially assure reclamation obligations on the permits with an approved remining area.

(d) The Department may not issue financial guarantees on a permit in excess of 10% of the then current designated amount in the special account in the Remining Financial Assurance Fund. The Department will not issue financial guarantees to a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% of the then current designated amount in the special account in the Remining Financial Assurance Fund. The Department will not issue additional financial guarantees when the aggregate amount of outstanding financial guarantees exceeds that amount resulting from dividing the current designated amount in the special account in the Remining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to general) with a margin of safety determined by the Department.

(e) Upon declaration of forfeiture, the specified amount of the financial guarantee from the financial guarantee special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190. If the actual cost of reclamation by the Department exceeds the specified amount of the financial guarantee, additional funds from the Remining Financial Assurance Fund may be used to complete reclamation.

(f) The Department will hold in reserve in the remining financial assurance fund funds that are not designated to underwrite remining financial guarantees. The Department will use funds held in reserve in the remining financial assurance fund to assure the availability of funds to cover reclamation liabilities when there is a mine operator bond forfeiture under § 86.181 (relating to general).

§ 86.282. Participation requirements.

(a) Upon completion of the technical review of a permit application and receipt of a request for bond, an operator may apply to participate in the financial guarantees program for a remining area if the requirements of § 86.253 (relating to operator and project qualification) are met. To participate in this program, an operator shall demonstrate to the Department's satisfaction one of the following:

* * * * *

(4) The operator has previously participated in the remining financial guarantee program and met its reclamation obligations and made timely payments. An operator will be eligible under this subsection if it has not been cited through a notice of violation under § 86.165(a) (relating to failure to maintain proper bond) within the previous 3 years prior to the request for a remining financial guarantee.

* * * * *

§ 86.284. Forfeiture.

* * * * *

(d) The financial guarantees program may be discontinued immediately and notice published in the *Pennsylvania Bulletin*, if 25% or greater of the total outstanding financial guarantees are subject to forfeiture. If the financial guarantees program is discontinued, no additional financial guarantees may be approved. Outstanding financial guarantees will remain in effect until released under §§ 86.170—86.175.

* * * * *

CHAPTER 87. SURFACE MINING OF COAL

Subchapter A. GENERAL PROVISIONS

§ 87.1. Definitions.

* * * * *

Surface mining activities—Any activities meeting the definition of "surface mining activities" as it is defined at 30 CFR 701.5, which is adopted in its entirety and incorporated herein by reference.

* * * * *

Subchapter C. SURFACE COAL MINES: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

§ 87.53. Prime farmland investigation.

* * * * *

(b) Land will not be considered prime farmland if the applicant can demonstrate one of the following:

(1) The land has not been historically used as cropland.

(2) Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in 2 years, and the flooding has reduced crop yields.

(3) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the United States Natural Resources Conservation Service.

(c) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of subsection (b).

(d) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the United States Natural Resources Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause a survey to be made.

(1) When a soil survey, as required in this subsection, contains soil map units which have been designated as prime farmlands, the applicant shall submit a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in the *United States Department of Agriculture Handbooks 436* (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951) as amended. The soil survey shall include a map unit and representative soil profile description as determined by the United States Natural Resources Conservation Service for each prime farmland within the proposed permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States Natural Resources Conservation Service.

(2) When a soil survey, as required in this subsection, contains soil map units which have not been designated as prime farmland after review by the United States Natural Resources Conservation Service, the applicant shall submit a request for negative determination for nondesignated land with the permit soil survey establishing compliance with subsection (b).

Subchapter E. SURFACE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 87.100. Topsoil: nutrients and soil amendments.

* * * * *

(d) The use of coal ash, biosolids, and residential septage as soil amendments may be approved by the Department if demonstrated to be a suitable soil amendment and the requirements of Subpart D, Articles VIII and IX (relating to municipal waste; and residual waste management) are met.

§ 87.102. Hydrologic balance: effluent standards.

* * * * *

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

§ 87.103. Precipitation event exemption.

* * * * *

(b) The 10-year, 24-hour precipitation event for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic and Atmospheric Administration or equivalent resources.

(c) For the permittee to demonstrate that the 10-year, 24-hour precipitation event has for the permittee's mine area been exceeded or that dry weather flow conditions did not exist, the permittee shall do one of the following:

* * * * *

(3) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour precipitation event specified for the mine area.

* * * * *

§ 87.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments shall achieve the minimum design criteria contained in the United States Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350, "Sediment Basin," and 378, "Pond," as amended, or United States Natural Resources Conservation Service's Technical Release No. 60, Earth Dams and Reservoirs, whichever is applicable. The standards contained therein are incorporated by reference. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required. These structures shall also meet the following requirements:

* * * * *

§ 87.117. Hydrologic balance: surface water monitoring.

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 87.69 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

* * * * *

§ 87.155. Revegetation: standards for successful revegetation.

(a) When the approved postmining land use is cropland, or as provided in subsection (c):

(1) The standards for successful revegetation shall be based upon crop productivity or yield.

(2) The approved standards shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

§ 87.157. Cessation of operations: temporary.

(a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, revegetation, environ-

mental monitoring, and water treatment activities that will continue during the temporary cessation status.

(b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), Chapters 86—90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.

(c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in subsection (a).

(d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, Chapters 86—90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, Chapters 86—90, or the approved permit will place the mining operation in permanent cessation status, subject to the provisions of § 87.158 (cessation of operations: permanent).

§ 87.177. Prime farmland: special requirements.

(a) When the surface mining activities are being conducted on prime farmland historically used for cropland, a permit for the mining and reclamation operation may be granted by the Department if it first finds, in writing, and after consultation with the Natural Resources Conservation Service, that the applicant has demonstrated that:

* * * * *

(b) If a permit is granted under this section, the permit shall be specifically conditioned as containing the plan submitted under § 87.83 (relating to prime farmlands), including any revisions to that plan suggested by the Natural Resources Conservation Service.

* * * * *

§ 87.181. Prime farmland: revegetation.

* * * * *

(c) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

CHAPTER 88. ANTHRACITE COAL

Subchapter A. GENERAL PROVISIONS

PRELIMINARY PROVISIONS

§ 88.1. Definitions.

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

* * * * *

Haul road—Roads that are planned, designed, located, constructed, reconstructed or improved, utilized and maintained for the transportation of equipment, fuel, personnel, coal, spoil and other operating resources from a public road to points within the surface mine or between principal operations on the mine site or both, but not including roads within the pit or on unreclaimed spoil areas. The term includes public roads that are used as an integral part of the coal mining activity.

* * * * *

Road—A surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed shoulders, parking and side area, approaches, structures, ditches, surface and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or surface coal mining activities, including use by coal-hauling vehicles leading to transfer, processing or storage areas.

* * * * *

**ANTHRACITE COAL MINING ACTIVITIES:
APPLICATION REQUIREMENTS AND PREMINING
RESOURCES**

§ 88.32. Prime farmland investigation.

* * * * *

(b) Land may not be considered prime farmland if the applicant can demonstrate one of the following:

(1) The land has not been historically used for cropland.

(2) The slope of the land is 10% or greater.

(3) There are no soil map units that have been designated prime farmland by the United States Department of Agriculture Natural Resources Conservation Service, on the basis of a soil survey of lands within the permit area.

* * * * *

(d) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the United States Department of Agriculture Natural Resources Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause a survey to be made.

(e) When a soil survey as required in subsection (d) includes soil map units that have been designated as prime farmlands, the applicant shall submit with the permit application a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and the procedures in the *United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951)*, as amended. The soil survey shall include a map unit and representative soil profile description as determined by the United States Natural Resources Conservation Service for each prime farmland soil within the proposed permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States Natural Resources Conservation Service.

(f) When a soil survey as required in subsection (d) includes map units that have not been designated as prime farmland after review by the United States Department of Agriculture Natural Resources Conservation Service, the applicant shall submit with the permit application a request for negative determination for nondesignated land establishing compliance with subsection (b).

Subchapter B. SURFACE ANTHRACITE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.92. Hydrologic balance: effluent standards.

* * * * *

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with Chapters 91—93, 95, 96, 97 (reserved) and 102.

§ 88.93. Hydrologic balance: precipitation event exemption.

* * * * *

(b) The 10-year, 24-hour precipitation event for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic and Atmospheric Administration or equivalent resources.

(c) For the permittee to demonstrate that the 10-year, 24-hour precipitation event has for his mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall do one of the following:

* * * * *

(3) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour precipitation event for the mine area.

* * * * *

§ 88.102. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments that are not of the class of subsection (a) shall achieve the minimum design criteria contained in United States Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basin" and 378, "Pond" as amended. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required.

§ 88.103. Hydrologic balance: coal processing waste dams and embankments.

A dam and embankment constructed of coal processing waste or intended to impound coal processing waste, shall meet the requirement criteria established by Chapter 105 (relating to dam safety and waterway management) and the United States Natural Resources Service's *Pennsylvania Field Office Technical Guide, Section IV, Standard 378, "Pond"* as applicable.

§ 88.106. Hydrologic balance: surface water monitoring.

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to measure and record accurately the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in 88.49 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific

conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department every 3 months for each monitoring location.

* * * * *

§ 88.107. Hydrologic balance: water rights and replacement.

* * * * *

(g) *Operator cost recovery.* A surface mine operator or mine owner who appeals a Department order, provides a successful defense during the appeal to the presumptions of liability and is not otherwise held responsible for the pollution or diminution is entitled to recovery of reasonable costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, restoration or replacement costs, attorney fees and expert witness fees from the Department.

* * * * *

§ 88.129. Revegetation: standards for successful revegetation.

* * * * *

(e) When the approved postmining land use is cropland, the approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture Natural Resources Conservation Service. The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the extended period of responsibility established in § 86.151 (relating to period of liability). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(f) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

§ 88.131. Cessation of operations: temporary.

(a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation status.

(b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), Chapters 86—90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.

(c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in subsection (a).

(d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, Chapters 86—90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, Chapters 86—90, or the approved permit will place the

mining operation in permanent cessation status, subject to the provisions of § 88.132 (cessation of operations: permanent).

Subchapter C. ANTHRACITE BANK REMOVAL AND RECLAMATION: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.187. Hydrologic balance: effluent standards.

* * * * *

(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with Chapters 91—93, 95, 96, 97 (reserved) and 102.

§ 88.188. Hydrologic balance: precipitation event exemption.

* * * * *

(b) The 10-year, 24-hour precipitation event for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic and Atmospheric Administration or equivalent resources.

(c) For the permittee to demonstrate that the 10-year, 24-hour precipitation event has for the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall do one of the following:

* * * * *

(4) Prepare an analysis identifying the runoff area tributary to the treatment facility and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour precipitation event specified for the mine area.

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§ 88.193. Hydrologic balance: collection ponds within disturbed areas.

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(b) The ponds or collection areas shall be capable of treating the runoff. Runoff shall be calculated using the Natural Resources Conservation Service methods.

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§ 88.197. Hydrologic balance: ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments that are not of the class of subsection (a) shall achieve the minimum design criteria contained in United States Natural Resources Conservation Service’s Pennsylvania Field Office Technical Guide, Section IV, Standards 350 “Sediment Basin” and Standard 378, “Pond,” as amended. In addition to the requirements in “Sediment Basin,” a minimum static safety factor of 1.3 is required.

§ 88.198. Hydrologic balance: coal processing waste dams and embankments.

A dam and embankment constructed of coal processing waste or intended to impound coal processing waste, shall meet the criteria established by Chapter 105 (relating to dam safety and waterway management) and the United States Natural Resources Conservation Service’s *Pennsylvania Field Office Technical Guide, Section IV, and Standard 378 “Pond,”* as applicable.

§ 88.202. Hydrologic balance: surface water monitoring.

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 92a

(relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to measure and record accurately the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 88.49 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department every 3 months for each monitoring location.

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§ 88.217. Vegetation: standards for successful vegetation.

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(e) When the approved postmining land use is cropland, the approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture Natural Resources Conservation Service. The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the extended period of responsibility established in § 86.151 (relating to period of liability). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(f) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

§ 88.219. Cessation of operations: temporary.

(a) Before temporary cessation status of operations for a period of 30 days or more, an operator shall submit to the Department a notice of intention to temporarily cease operations. The notice shall include a statement of the exact number of acres affected in the permit area, the extent and kind of reclamation of the areas and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation status.

(b) Temporary cessation status of operations does not relieve the operator of the obligations to comply with the acts as defined in § 86.1 (relating to definitions), Chapters 86—90, or the approved permit, including the obligation to submit an application for permit renewal at least 180 days before the expiration of the existing permit. The Department may enforce these obligations during the temporary cessation status of operations.

(c) Temporary cessation status will end with the resumption of coal extraction. Any subsequent notices of temporary cessation status must include updated information outlined in subsection (a).

(d) Temporary cessation status will terminate where the Department finds a failure to comply with the acts as defined in § 86.1, Chapters 86—90, or the approved permit. Termination of temporary cessation status due to failure to comply with the acts as defined in § 86.1, Chapters 86—90, or the approved permit will place the mining operation in permanent cessation status, subject to the provisions of § 88.220 (relating to cessation of operations: permanent).

Subchapter D. ANTHRACITE REFUSE DISPOSAL: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.292. Hydrologic balance: effluent standards.

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(f) In addition to the requirements of subsections (a)—(e), the discharge of water from areas disturbed by mining activities shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

§ 88.293. Hydrologic balance: precipitation event exemption.

* * * * *

(b) The 1-year and 10-year; 24-hour precipitation events for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic and Atmospheric Administration or equivalent resources.

(c) For the permittee to demonstrate that the event has for the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall comply with one of the following:

(1) Collect 24-hour rainfall information from official United States Weather Bureau Stations within a 25-mile distance—radius—of the site.

(2) Calculate the estimated rainfall event for the site, by appropriate interpolation of the data collected under paragraph (1). Appropriate interpolation shall be accomplished by the following:

(i) Preparing a verified copy of the chart or readout from a Department approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the rainfall event for which the exemption is sought and shall be secured to prevent tampering and acts of third parties.

(ii) Preparing an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 1-year or 10-year, 24-hour rainfall event specified for the mine area.

* * * * *

(4) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 1-year or 10-year, 24-hour rainfall event specified for the mine area.

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§ 88.302. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

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(b) The design, construction and maintenance of dams, ponds, embankments and impoundments that are not of the class of subsection (a) shall achieve the minimum design criteria contained in United States Natural Resources Conservation Service’s Pennsylvania Field Office Technical Guide, Section IV, Standards 350 “Sediment Basin” and 378, “Pond,” as amended. In addition to the requirements in “Sediment Basin,” a minimum static safety factor of 1.3 is required.

§ 88.303. Hydrologic balance: coal processing waste dams and embankments.

A dam and embankment constructed of coal processing waste or intended to impound coal processing waste, shall meet the requirement criteria established under Chapter 105 (relating to dam safety and waterway management) and the United States Natural Resources Conservation Service’s *Pennsylvania Field Office Technical Guide, Section IV, Standard 378, “Pond”*, as applicable.

§ 88.306. Hydrologic balance: surface water monitoring.

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to measure and record accurately the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 88.49 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department every 3 months for each monitoring location.

* * * * *

§ 88.330. Revegetation: standards for successful revegetation.

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(e) When the approved postmining land use is cropland, the approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture, Natural Resources Conservation Service. The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the extended period of responsibility established in § 86.151 (relating to period of liability). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(f) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

§ 88.332. Cessation of operations: temporary.

(a) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation. The system for preventing precipitation from contacting the coal refuse shall be installed when the temporary cessation exceeds 90 days. The Department may approve a longer period, not to exceed 1 year, consistent with section 6.1(i) of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a(i)).

(b) Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.

(c) Temporary cessation does not relieve the operator of the obligation to comply with any provisions of the permit.

Subchapter F. ANTHRACITE UNDERGROUND MINES

§ 88.491. Minimum requirements for information on environmental resources.

* * * * *

(k) *Preapplication investigation.* The applicant shall conduct a preapplication investigation of the proposed permit area to determine whether lands within the area may be prime farmland.

(1) Land will not be considered prime farmland if the applicant can demonstrate one of the following:

- (i) The land has not been historically used for cropland.
- (ii) The slope of the land is 10% or greater.

(iii) There are no soil map units that have been designated prime farmland by the United States Department of Agriculture Natural Resources Conservation Service, on the basis of a soil survey of lands within the permit area.

(iv) The area of prime farmland is minimal in size—less than 5 acres—and has been or will be in use for an extended period of time—more than 10 years.

(2) If the applicant determines after investigation that all or part of the lands in the proposed permit area are not prime farmland, the applicant shall submit with the permit application a request for a negative determination showing that the lands meet one of the criteria of paragraph (1).

(3) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the United States Department of Agriculture Natural Resources Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed area, the applicant shall cause a survey to be made.

(4) When a soil survey as required in paragraph (3) includes soil map units that have been designated as prime farmlands, the applicant shall submit with the permit application a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in the United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951) as amended. The soil survey shall include a map unit and representative soil profile description as determined by the United States Natural Resources Conservation Service for each prime farmland soil within the proposed permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey are available and their use is approved by the State Conservationist, United States Natural Resources Conservation Service.

(5) When a soil survey as required in paragraph (3) includes soil map units that have not been designated as prime farmland after review by the United States Department of Agriculture Natural Resources Conservation Service, the applicant shall submit with the permit applica-

tion a request for negative determination for nondesignated land establishing compliance with paragraph (1).

§ 88.493. Minimum environmental protection performance standards.

A person who conducts underground mining activities shall comply with the performance standards and design requirements of this section. The following performance standards shall be met:

* * * * *

(8) Standards for determining success of restoration on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service. Soil productivity for prime farmland shall be returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed under § 88.491(k) (relating to minimum requirements for information on environmental resources).

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Subchapter G. ANTHRACITE SURFACE MINING ACTIVITIES AND ANTHRACITE BANK REMOVAL AND RECLAMATION ACTIVITIES: MINIMUM REQUIREMENTS FOR REMINING AREAS WITH POLLUTIONAL DISCHARGES

§ 88.502. Definitions.

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

* * * * *

Encountered discharge—

(i) A pre-existing discharge intercepted in the course of active surface mining activities, including, but not limited to, overburden removal, coal extraction and backfilling, or that occurs in the pit, any mining-related conveyance, sedimentation pond or treatment pond.

(ii) The term does not include diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area so long as they are designed, operated and maintained in accordance with § 88.95(b)—(g), § 88.190(b)—(g) or § 88.295(b)—(i) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances), as applicable.

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§ 88.507. Treatment of discharges.

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(c) For purposes of subsections (a) and (b), the term “encountered” may not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the pollution abatement plan which would otherwise drain into the affected area, so long as the diversions are designed, operated and maintained under §§ 88.95(b)—(g), 88.190(b)—(g) and 88.295(b)—(i) (relating to hydrologic balance: diversions; hydrologic balance: diversions; and hydrologic balance: diversions and conveyances).

* * * * *

§ 88.508. Request for bond release.

Sections 86.172(c) and 88.509 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release

of bonds for pollutional abatement areas authorized by this subchapter. Section 86.172(a) and (b) shall be inapplicable to the release of bonds.

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

**Subchapter B. OPERATIONS
PERFORMANCE STANDARDS**

§ 89.52. Water quality standards, effluent limitations and best management practices.

* * * * *

(f) *Postmining pollutional discharges.*

(1) If a postmining pollutional discharge occurs, the discharger shall immediately provide interim treatment to comply with the Group A effluent requirements in subsection (a), including modifications authorized or required under subsection (e), (g) or (h). The discharger shall also take whatever measures are necessary and available to abate the discharge, including modifying the operation and reclamation plan for the mining activity.

(2) If the discharge continues to exist, after implementation of the abatement measures required under paragraph (1), the discharger shall make provisions for sound future treatment of the discharge to achieve the Group A effluent requirements in subsection (c), including modifications authorized or required under subsection (e) or (h). If the untreated discharge can be adequately treated using a passive treatment system, in addition to achieving the effluent requirements, the passive treatment system shall be designed and constructed to accomplish the following:

(i) Prevent discharge of mine drainage into the groundwater.

(ii) Prevent extraneous sources of groundwater and surface water runoff from entering the treatment system.

(iii) Hydraulically handle the highest average monthly flow rate which occurs during a 12-month period.

(iv) Have inlet and outlet structures which will allow for flow measurement and water sampling.

(v) Prevent to the maximum extent practicable physical damage, and associated loss of effectiveness, due to wildlife and vandalism.

(vi) Be of a capacity so that it will operate effectively and achieve the required effluent quality for 15 to 25 years before needing to be replaced.

(3) Any passive treatment system shall be designed by, and constructed under the supervision of, a qualified professional knowledgeable in the subject of passive treatment of mine drainage.

* * * * *

(h) *Additional requirements.* In addition to the requirements of subsections (c)—(g), the discharge of water from the permit area shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

* * * * *

§ 89.53. Precipitation event exemption.

* * * * *

(b) The 10-year, 24-hour rainfall events for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic and Atmospheric Administration or equivalent resources.

(c) For the permittee to demonstrate that the 10-year, 24-hour event has for the mine area been exceeded, or

that dry weather flow conditions did not exist, the permittee shall comply with one of the following:

* * * * *

(2) The permittee shall comply with the following:

(i) Prepare a verified copy of the chart or readout from a Department-approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the rainfall event for which the exemption is sought and shall be secured to prevent tampering and acts of third parties.

(ii) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 10-year, 24-hour rainfall event specified for the mine area.

* * * * *

§ 89.59. Surface water and groundwater monitoring.

(a) Surface water and groundwater monitoring shall be conducted under § 89.34 (relating to hydrology) and with the monitoring plan contained in the permit. At a minimum, surface water and groundwater monitoring shall include the following conditions:

* * * * *

(3) In addition to the monitoring and reporting requirements in Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored accurately to measure and record the water quantity and quality of discharges from the permit area and the effect of the discharges on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 89.36 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, total iron, total manganese, acidity, alkalinity, pH, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

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**Subchapter C. RECLAMATION
PERFORMANCE STANDARDS**

§ 89.86. Revegetation.

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(e) Standards for successful revegetation shall be as follows:

(1) When the approved postmining land use is cropland:

(i) The standards for successful revegetation shall be based upon crop productivity, yield or soil tests.

(ii) The approved standard shall be the average yield per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture Natural Resources Conservation Service.

(iii) The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last 2 consecutive growing seasons of the 5-year responsibility period established in this section. Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

* * * * *

Subchapter D. STRUCTURAL REQUIREMENTS FOR IMPOUNDMENTS

PERFORMANCE STANDARDS

§ 89.112. Impoundments.

An impoundment shall be designed in accordance with the United States Natural Resources Conservation Service's Pennsylvania Field Office Technical Guide, Section IV, Standards 350, "Sediment Basin," and 378, "Pond," or United States Natural Resources Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs," whichever is applicable. The standards are incorporated by reference. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required. Each impoundment shall be certified that it has been constructed and is being maintained as designed and in accordance with the approved plan and all applicable performance standards. These structures shall also meet the following requirements:

* * * * *

Subchapter E. PRIME FARMLANDS INFORMATION REQUIREMENTS

§ 89.121. Prime farmland investigation.

(a) The applicant shall contact the county office of the Natural Resources Conservation Service to determine whether lands within the area may be prime farmland.

(b) Land shall not be considered prime farmland when the applicant can demonstrate one or more of the following:

* * * * *

(5) On the basis of a soil survey of the lands proposed to be affected by surface operations or facilities, there are no soil map units that have been designated prime farmland by the United States Natural Resources Conservation Service; or

* * * * *

(d) The applicant shall submit the results of the investigation along with certification by the Natural Resources Conservation Service that the conclusions are correct.

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§ 89.122. Prime farmlands.

* * * * *

(b) A person who conducts or intends to conduct underground mining activities on prime farmlands historically used for cropland, except those persons exempted under subsection (a), shall submit a plan as part of the permit application for the mining and restoration of the land. A plan shall contain, at a minimum, the following:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in *United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951)*. The soil survey shall include a map unit and representative soil profile description as determined by the United States Natural Resources Conservation Service for each prime farmland soil within the permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States Natural Resources Conservation Service. The soil profile description shall include, but not be limited to, soil horizon depths, pH and range of soil densities for each prime farmland soil unit within the proposed permit area. The Department may require the applicant to provide information on other physical and

chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of §§ 89.131—89.133 (relating to soil removal; soil stockpiling; and soil replacement).

* * * * *

(8) Standards for determining success of revegetation on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service. The current estimated yields under equivalent levels of management for each soil map unit and for each crop shall be used by the Department as the predetermined target level for determining success of revegetation. The target yields may be adjusted by the Department in consultation with the Secretary of Agriculture before approval of the permit application.

(c) Before a permit is issued for areas that include prime farmlands, the Department will consult the Natural Resources Conservation Service. The Natural Resources Conservation Service shall have the opportunity for review and comment of the proposed method of soil reconstruction in the plan submitted under subsection (b).

(d) When the underground mining activities are being conducted on prime farmland, a permit for the mining and reclamation operation may be granted by the Department, if it first finds, in writing, that:

* * * * *

(4) The permit incorporates as specific conditions the contents of the plan submitted under subsection (b), after consideration of any revisions to the plan suggested by the Natural Resources Conservation Service under subsection (c).

* * * * *

PERFORMANCE STANDARDS

§ 89.134. Revegetation.

* * * * *

(c) Standards for determining success of restoration on prime farmlands soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service.

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CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter B. MINIMUM ENVIRONMENTAL RESOURCES INFORMATION REQUIRED IN PERMIT APPLICATIONS FOR COAL REFUSE DISPOSAL

§ 90.22. Prime farmland investigation.

* * * * *

(b) Land will not be considered prime farmland when the applicant can demonstrate one or more of the following:

* * * * *

(5) There are no soil map units that have been designated prime farmland by the United States Natural Resources Conservation Service, on the basis of a soil survey of the lands proposed to be affected by coal refuse disposal activities.

* * * * *

(d) If the investigation indicates that lands within the proposed area to be affected by coal refuse disposal activities may be prime farmlands, the applicant shall contact the United States Natural Resources Conserva-

tion Service to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If a soil survey has not been made for these lands, the applicant shall cause a survey to be made.

(1) When a soil survey as required in this subsection contains soil map units which have been designated as prime farmlands, the applicant shall submit a soil survey of the proposed permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures in the *United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951)*. The soil survey shall include a map unit and representative soil profile description as determined by the United States Natural Resources Conservation Service for each prime farmland soil within the proposed permit area, unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the State Conservationist, United States Natural Resources Conservation Service.

(2) When a soil survey as required in this subsection contains soil map units which have not been designated, after review by the United States Natural Resources Conservation Service, as prime farmland, the applicant shall submit a request for negative determination for nondesignated land with the permit application establishing compliance with subsection (b).

Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL

§ 90.102. Hydrologic balance: water quality standards, effluent limitations and best management practices.

* * * * *

(f) *Additional requirements.* In addition to the requirements of subsections (a)—(e), the discharge of water from coal refuse disposal activities shall comply with this title, including Chapters 91—93, 95, 96, 97 (reserved) and 102.

* * * * *

§ 90.103. Precipitation event exemption.

* * * * *

(b) The 1-year and 10-year 24-hour rainfall events for specific areas in this Commonwealth shall be determined by reference to data provided by the National Oceanic and Atmospheric Administration or equivalent resources.

(c) For the coal refuse disposal permittee to demonstrate that the event has for the mine area been exceeded, or that dry weather flow conditions did not exist, the permittee shall comply with paragraph (1), (2) or (3).

* * * * *

(2) Complying with the following:

(i) Prepare a verified copy of the chart or readout from a Department-approved flow measuring device which continuously records the influent to the permitted treatment facility. The device shall be approved by the Department in writing prior to the event for which the exemption is sought and shall be secure to prevent tampering and acts of third parties.

(ii) Prepare an analysis identifying the runoff area tributary to the treatment facility, and compare the actual runoff as measured and depicted by the flow measuring device with the runoff expected from the 1-year or 10-year, 24-hour precipitation event specified for the mine area.

* * * * *

§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(b) The design, construction and maintenance of dams, ponds, embankments and impoundments shall achieve the minimum design criteria contained in the United States Natural Resources Conservation Service's *Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basin" and 378, "Pond,"* or United States Natural Resources Conservation Service's Technical Release No. 60, Earth Dams and Reservoirs, whichever is applicable. The standards are incorporated by reference. In addition to the requirements in "Sediment Basin," a minimum static safety factor of 1.3 is required. These structures shall meet the following requirements:

* * * * *

§ 90.113. Hydrologic balance: coal processing waste dams and embankments.

* * * * *

(c) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the United States Natural Resources Conservation Service's Technical Release No. 60, "Earth Dams and Reservoirs." The standards contained therein are hereby incorporated by reference.

* * * * *

§ 90.116. Hydrologic balance: surface water monitoring.

(a) In addition to the monitoring and reporting requirements established by the Department under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters. Surface water shall be monitored for parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in § 90.35 (relating to protection of hydrologic balance). At a minimum, total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, acidity, alkalinity, total iron, total manganese, sulfates and flow shall be monitored and reported to the Department at least every 3 months for each monitoring location.

* * * * *

§ 90.159. Revegetation: standards for successful revegetation.

(a) When the approved postdisposal land use is cropland or as provided in subsection (c), the following apply:

* * * * *

(2) The approved standard shall be the average yields per acre for the crop and soil type as specified in the soil surveys of the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

§ 90.161. Prime farmland: special requirements.

(a) When the coal refuse disposal activities are being conducted on prime farmland historically used for cropland, a permit for the mining and reclamation operation may be granted by the Department if it first finds, in

writing and after consultation with the Natural Resources Conservation Service, that the applicant has demonstrated that:

* * * * *

(b) If a permit is granted under this section, the permit shall be specifically conditioned as containing the plan submitted under § 90.33 (relating to reclamation plan), including any revisions to that plan suggested by the United States Natural Resources Conservation Service.

* * * * *

§ 90.165. Prime farmland: revegetation.

* * * * *

(c) Standards for determining success of restoration on prime farmland soils shall be based upon the soil surveys and soil interpretations and the latest yield data available from the United States Department of Agriculture Natural Resources Conservation Service.

* * * * *

Subchapter E. SITE SELECTION

§ 90.201. Definitions.

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

Preferred site—A watershed polluted by acid mine drainage; a watershed containing an unreclaimed surface mine but which has no mining discharge; a watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation; unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation; other unreclaimed areas previously affected by mining activities; or an area adjacent to or an expansion of an existing coal refuse disposal site.

* * * * *

Subchapter F. COAL REFUSE DISPOSAL ACTIVITIES ON AREAS WITH PRE-EXISTING POLLUTIONAL DISCHARGES

§ 90.308. Request for bond release.

Sections 86.172(c) and 90.309 (relating to criteria for release of bond; and criteria and schedule for release of bonds on pollution abatement areas) apply to the release of bonds for pollutional abatement areas authorized by this subchapter. Section 86.172(a) and (b) is not applicable to the release of bonds.

[Pa.B. Doc. No. 20-374. Filed for public inspection March 13, 2020, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 63 (relating to general fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments update the Commission's display requirements for fishing licenses.

A. Effective Date

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

B. Contact Person

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

C. Statutory Authority

The amendments to § 63.2 (relating to display of fishing license and verification of license purchase) are published under the statutory authority of section 2703(a) of the code (relating to possession and display of licenses).

D. Purpose and Background

The specific purpose and background of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

The Commission is constantly exploring new ways to provide greater convenience for anglers and boaters. In recent years, anglers have remarked that the Commission's requirement to display fishing licenses on an outer garment is antiquated and often inconvenient, particularly when an angler is purchasing a license online on relatively short notice and does not have a license holder. Another common complaint is that due to the display requirement, anglers often lose their license after it becomes unattached somewhere along a stream or on a boat. In these situations, the angler then incurs the added cost of purchasing a duplicate license.

Nationwide, Pennsylvania is one of only three states to still require the display of a fishing license, along with Delaware and New Jersey. In 2012, the Game Commission removed the display requirement for hunting licenses, which has generally been well received by their customers. This change added more confusion for anglers and has led to complaints fielded by waterways conservation officers and regional staff. Removing the display requirement for fishing licenses would provide greater consistency between the two agencies, as many hunters are also anglers. This final-form rulemaking would also help facilitate the eventual purchase and storage of fishing licenses on mobile applications.

In looking at all aspects of removing the display requirement, the most obvious downside is that officers will need to do a field check on every angler since that will be the only way to verify whether or not someone has a license. This practice may lead to more complaints from anglers who get checked multiple times throughout a season; however, this final-form rulemaking would allow anglers to continue displaying their license if they prefer. Additionally, the removal of the display requirement will not change the practice of giving a resident of this Commonwealth 7 days to provide proof of a license purchase when caught without a license in their possession.

A similar rulemaking was approved at the July 2017 Commission meeting. The proposed rulemaking was tabled shortly thereafter due to concerns from the Office

of the Attorney General that the measure also allowed the display of licenses using a mobile device, which would require an amendment to 30 Pa.C.S. § 2710 (relating to form and expiration of licenses) removing the requirement for licenses to be signed “in ink.” Commission staff are concurrently pursuing legislation to remove this provision so a mobile device may be used in the future. This final-form rulemaking would only remove the display requirement, not authorize display on a mobile device.

A notice of proposed rulemaking was published at 49 Pa.B. 7413 (December 21, 2019). The Commission received one public comment opposed to the proposal.

The Commission amends § 63.2 to read as set forth at 49 Pa.B. 7413.

F. Paperwork

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

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 49 Pa.B. 7413. The Commission received one comment opposed to the proposal.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and one comment was received.

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended by amending § 63.2 to read as set forth at 49 Pa.B. 7413.

(b) The Executive Director will submit this order and 49 Pa.B. 7413 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 49 Pa.B. 7413 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-295 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 20-375. Filed for public inspection March 13, 2020, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing in Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) amends Chapter 69 (relating to fishing in Lake Erie and Boundary Lakes). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments update the Commission’s season dates for walleye fishing in Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters.

A. Effective Date

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

B. Contact Person

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

C. Statutory Authority

The amendments to § 69.12 (relating to seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

The specific purpose and background of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

Past Commission actions gave authority to the Executive Director to adjust harvest limits for walleye and yellow perch based upon adaptive management methods for Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters. These flexible management strategies serve to maintain consistency in angler catch rate given the vagaries of weather and other biotic and abiotic influences upon recruitment or production of young for these species. Following that approval, Commission staff identified a slight discrepancy in the start date of walleye season for Inland Waters and Lake Erie waters. In both cases, the start date occurs within one week of one another. To maintain regulatory consistency and simplicity, staff recommend the Lake Erie, Lake Erie tributaries, Presque Isle Bay and peninsular water walleye seasonal opening days be the same as that for Commonwealth Inland Waters. This small housekeeping change is expected to be unnoticed by anglers and have negligible impact upon fishing opportunity but will serve to simplify and make clear harvest rules applicable to walleyes across much of this Commonwealth.

A notice of proposed rulemaking was published at 49 Pa.B. 7298 (December 14, 2019). The Commission did not receive any public comments regarding the proposal.

The Commission amends § 69.12 to read as set forth at 49 Pa.B. 7298.

F. Paperwork

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

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 49 Pa.B. 7298. The Commission did not receive any comments regarding the proposal.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and no comments were received.

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

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 69, are amended by amending § 69.12 to read as set forth at 49 Pa.B. 7298.

(b) The Executive Director will submit this order and 49 Pa.B. 7298 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 49 Pa.B. 7298 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-294 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 20-376. Filed for public inspection March 13, 2020, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 876]

iLottery

The Department of Revenue (Department) is promulgating permanent regulations to govern the implementation and operation of iLottery in this Commonwealth under the authority in section 503 of Act 42 of 2017 (P.L. 419, No. 42) (act) (4 Pa.C.S. § 503 (relating to iLottery authorization)) for the Secretary of the Department to offer iLottery games, and under the general authority in section 303(a) of the act of August 26, 1971 (P.L. 351, No. 91), as amended, known as the State Lottery Law (72 P.S. § 3761-303(a)). Under section 503(b)(1) of the act, the

Department issued temporary regulations which are codified in 61 Pa. Code Chapter 876 (relating to iLottery games—temporary regulations), published at 48 Pa.B. 1829 (March 31, 2018). The act requires that the temporary regulations expire no later than 2 years following publication in the *Pennsylvania Bulletin*.

The proposed rulemaking was published at 49 Pa.B. 2242 (May 4, 2019). The proposed rulemaking was printed showing revisions from the temporary regulations due to the number of changes made by the Department from the temporary regulations to the proposed rulemaking.

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to adopt regulations to govern iLottery implementation and operation in this Commonwealth. The Department, through the Secretary, is responsible for implementing iLottery through the authorization of the iLottery program and its various components, including, but not limited to, iLottery games. The Pennsylvania State Lottery (Bureau) is responsible for the operation and administration of the lottery, including iLottery.

Since iLottery's implementation in May 2018, it has generated revenue dedicated to and deposited in the State Lottery Fund. The efficient and successful administration and operation of the lottery requires that this final-form rulemaking be promulgated in a timely manner and include provisions that allow for the growth of the lottery, the availability of new lottery products and new technology, including the implementation of the latest innovations and trends in the industry.

Explanation of Regulatory Requirements

Chapter 876 in the temporary regulations addressed certain statutory requirements of the act, including iLottery terms and conditions and self-exclusion requirements. The temporary regulations also addressed iLottery games and the rules associated with those games. This final-form rulemaking reflects the direction that the Department took in implementing iLottery and more clearly establishes rules which were previously only referenced in the iLottery terms and conditions. Registered iLottery player requirements, lottery account requirements and self-exclusion requirements, along with categories of iLottery games and their associated components and rules, are addressed in this final-form rulemaking.

Each of the following paragraphs describe a specific section of this final-form rulemaking, followed by an explanation of the revisions made from the proposed rulemaking to this final-form rulemaking and ending with an explanation as to whether that section was included in the temporary regulations and how the section changed from the temporary regulations to the proposed rulemaking.

The title of the chapter is changed from "iLottery Games" in the temporary regulations to "iLottery" in this final-form rulemaking to more accurately describe the requirements set forth in the chapter. Chapter 876 establishes requirements related to all aspects of iLottery, not only iLottery games.

Section 876.1 (relating to scope) establishes what is covered by the chapter in this final-form rulemaking, including iLottery game rules, iLottery registration and participation, lottery account requirements and iLottery self-exclusion requirements. This section appears in the temporary regulations and is revised to include lottery

account requirements as part of the scope of the chapter to more accurately reflect what is covered in the chapter.

Section 876.2 (relating to definitions) includes definitions that also appear in other chapters of the State Lottery regulations, including “bureau” and “secretary,” for clarity and consistency. Definitions for terms specific to or related to iLottery include: “bonus money,” “cash-out games,” “drawing,” “fixed payouts,” “iLottery,” “iLottery game,” “instant win game,” “Internet instant game,” “lottery account,” “lottery products,” “lotto game,” “numbers game,” “pari-mutuel,” “play,” “prize or lottery prize,” “prize pool or pool,” “prize tiers,” “progressive,” “purchase price,” “randomizer,” “random number generator,” “registered iLottery player,” “responsible gambling tools,” “subscription services,” “top prize,” “traditional lottery products,” “winning play” and “winning numbers.”

This final-form rulemaking revises several definitions in the proposed rulemaking. The definition of “bonus money” is revised to change the term “registered iLottery players” to the defined term “registered iLottery player” for consistency. The proposed definitions of “drawing,” “fixed payouts,” “instant win game,” “Internet instant game” and “random number generator” are revised to replace the term “play” with the phrase “play, chance or share” for clarity and consistency.

In response to a comment from the Independent Regulatory Review Commission (IRRC), the proposed definition of “drawing” is revised to remove the following substantive language: “Drawings may be conducted by a mechanical device using balls, a random number generator, a randomizer or by using any other method authorized by the Secretary. Drawings may be on demand or at a predetermined date and time as established by the Secretary.” The proposed definitions of “iLottery” and “Internet instant game” are revised to change the word “players” to the defined term “registered iLottery player” for clarity and consistency. The proposed definition of “Internet instant game” is also revised to add the word “a” in front of the phrase “play, chance or share” and to replace the word “Lottery” with the defined term “Bureau” for clarity and consistency. The proposed definition of “lottery products” is revised to add the following language in the second sentence: “any iLottery game or lottery product authorized by the Secretary and offered by the Bureau under the act of August 26, 1971 (P.L. 351, No. 91) (72 P.S. §§ 3761-301—3761-315), known as the State Lottery Law, or Act 42 of 2017 (P.L. 419, No. 42) (4 Pa.C.S. §§ 501—505 (relating to lottery)) such as” to enable the Bureau to offer additional lottery products through iLottery. The clause “authorized for sale under the State Lottery Law” is deleted to avoid duplicative language.

The proposed definition of “lotto game” is revised to replace the word “numbers” with the phrase “numbers, letters or symbols” to clarify that lotto games may include the drawing of numbers, letters or symbols and to replace the phrase “winning plays are those in which the” with the phrase “To win, a” for clarity, since “winning play” is a defined term.

The proposed definition of “numbers game” is revised to replace the word “numbers” with the phrase “numbers, letters or symbols” to clarify that numbers games may include the drawing of numbers, letters or symbols, to clarify that the numbers, letters or symbols are required to match and to remove any suggestion that a requirement is imposed on a registered iLottery player. Specifically, the sentence, “A straight play requires the registered iLottery player to match the numbers in the same

order as the winning numbers are drawn by the Bureau” is replaced with the following sentence: “In straight play, the numbers, letters or symbols are matched in the same order as the winning numbers are drawn by the Bureau.” Additionally, the sentence, “A box play requires the registered iLottery player to match all of the winning numbers drawn by the Bureau, but in any order” is replaced with the following sentence: “In box play, the numbers, letters or symbols match all of the winning numbers drawn by the Bureau, but in any order.”

The proposed definition of “pari-mutuel” is revised to replace the term “prize pool” with “prize pool or pool” to reflect the defined terms. The proposed definition of “prize or lottery prize” is revised to add the phrase “in this chapter” to the end of the second sentence for clarity.

The proposed definition of the term “prize pool or pool” is revised to clarify that reference to a “prize pool” or “pool” can also mean a preset number of plays, chances or shares containing a predetermined number of winners. The proposed definition of “progressive” is revised to replace the hyphenated word “pre-determined” with the non-hyphenated word “predetermined” for consistency. The proposed definition of “purchase price” is revised to replace the phrase “share or chance” with the phrase “chance or share” for consistency.

The proposed definition of “registered iLottery player” is revised to change the tense of the words from “created” to “creates” and from “registered” to “registers,” for consistency. The proposed definition of “winning numbers” is revised to change the tense from “will be” to “are.”

Section 876.2 was included in the temporary regulations but was modified significantly in the proposed rulemaking. Specifically, the only defined terms which appeared in the temporary regulations were “iLottery,” “iLottery game,” “internet instant game,” “lottery account,” “play” and “registered iLottery player.”

The definition of “iLottery” in the temporary regulations is revised in the proposed rulemaking to include the phrase “but are not limited to,” so as not to limit the Bureau to existing technology, given how rapidly technology changes and to change the word “allows” to “allow.” The proposed definition is revised in this final-form rulemaking as explained previously.

The definition of “lottery account” in the temporary regulations was revised in the proposed rulemaking to replace the phrase “and participate in” with the phrase “iLottery and to participate in iLottery.” The following sentence was also added to the definition of “lottery account” in the proposed rulemaking for clarity: “A lottery account may be used to purchase or use lottery products, to participate in lottery promotions and second chance drawings and for lottery communications.” The definition of “play” in the temporary regulations was revised in the proposed rulemaking to include the following sentence for clarity: “May also be referred to as a chance or share.”

The following defined terms did not appear in the temporary regulations and were added to the proposed rulemaking and are revised in this final-form rulemaking as explained previously: “bonus money,” “drawing,” “fixed payouts,” “instant win game,” “lottery products,” “lotto game,” “numbers game,” “prize or lottery prize,” “prize pool or pool,” “progressive,” “purchase price,” “random number generator” and “winning numbers.”

The following defined terms did not appear in the temporary regulations and were added to the proposed rulemaking and are not revised from the proposed rulemaking in this final-form rulemaking: “Bureau,” “cash-out

games,” “pari-mutuel,” “prize tiers,” “randomizer,” “responsible gambling tools,” “Secretary,” “subscription services,” “top prize,” “traditional lottery products” and “winning play.”

Section 876.2a (relating to lottery products available through iLottery) reiterates the power vested with the Secretary under section 303 of the State Lottery Law to determine the type of lottery to be conducted. This section of this final-form rulemaking did not appear in the temporary regulations.

Section 876.2b (relating to traditional lottery products) establishes that traditional lottery products sold through iLottery may be electronically delivered to the registered iLottery player’s lottery account. Further, it clarifies that traditional lottery products sold through iLottery will be governed by the applicable traditional lottery regulations. Proposed subsection (b) is revised in this final-form rulemaking to remove the word “and” and replace it with the word “or.” This section did not appear in the temporary regulations.

Section 876.2c (relating to categories of iLottery games) sets forth the categories of iLottery games that the Secretary may authorize and that the Bureau may offer, the ways in which the winners or outcomes of a game or a play are determined, how often iLottery game outcomes are determined, iLottery game prize structures and the ways in which drawings may be conducted. iLottery games may combine any number of the characteristics set forth in subsections (a)—(d) and (g) of this final-form rulemaking, which is provided for under subsection (e). Subsection (f) describes the way in which drawings may be conducted. Subsection (g) describes the frequency in which iLottery game outcomes may occur.

The proposed rulemaking is revised in subsection 876.2c(c) to change the word “plays” to the phrase “plays, chances or shares” for clarity. Proposed subsection (e) is revised to include subsection (g) to the list of applicable subsections set forth in subsection (e). Subsections (f) and (g) are added since the definition of “drawing” is revised to remove the substantive provisions. The language in the proposed definition of “drawing” is revised since it is added as subsection (g) to change the specific reference to “drawing” and replace it with the more encompassing word “outcome” so as to include drawings, random number generators and randomizers as set forth in subsection (c). Section 876.2c did not appear in the temporary regulations.

Section 876.2d (relating to iLottery game rules by category of game offered) establishes how the Bureau will notify players of new games offered by the Bureau, which may include any combination of the characteristics described in § 876.2c.

Proposed subsection 876.2d(3) is revised in this final-form rulemaking to change the term “iLottery games” to “the iLottery game” and the clause “iLottery games are” to “the iLottery game is.” Proposed subsections (3) and (4) are revised to replace the word “play” with the phrase “plays, chances or shares” for clarity. Subsection (4) is also revised from the proposed rulemaking to replace the word “lottery” with the defined term “iLottery” for clarity. Subsection (6) is revised to replace the phrase “share or chance” with the phrase “chance or share” for consistency. Subsection (8) is revised to replace the word “determined” with the word “established” to more accurately reflect the Secretary’s responsibilities and for consistency. Section 876.2d did not appear in the temporary regulations.

Section 876.3 is reserved. In the temporary regulations, this section required notice of iLottery game rules. In the

proposed rulemaking, this section was removed in its entirety and the requirements for notice of iLottery game rules are set forth in §§ 876.2d and 876.4 (relating to iLottery game description).

Section 876.4 specifies the information that will be made available regarding each iLottery game, including the name of the game; the purchase price or range of purchase prices for a play, chance or share of that game; the odds of winning the game; prizes; and game instructions. This section also establishes where iLottery game descriptions will be located.

Proposed § 876.4 is revised in this final-form rulemaking to add the word “an”; to change the word “descriptions” to “description”; to remove “, including” since the Bureau’s mobile application is separate from the Bureau’s web site; to change “Bureau’s web site” to “Bureau’s iLottery web site and”; to remove the comma following the word “application”; and to add a comma following the term “iLottery game.”

Proposed subsection 876.4(2) is revised to change “play” to the phrase “play, chance or share” and subsection (6) is revised to add the word “a” in front of “mini-game” for consistency.

Section 876.4 was included in the temporary regulations but was revised in the proposed rulemaking. The first paragraph was changed as follows: the word “an” was removed from the first sentence of the section (but is reinserted in this final-form rulemaking, as explained previously); the phrase “Pennsylvania Lottery’s iLottery,” was replaced with the defined term “Bureau’s”; and the phrase “including the Bureau’s mobile application,” was added for clarity (but is revised in this final-form rulemaking as explained previously). Subsection (2) was revised from the temporary regulations to the proposed rulemaking to include the phrase “or range of purchase prices” for clarity. Subsection (6) was revised from the temporary regulations to remove the word “The” and replace it with the phrase “If applicable, the”; to remove the phrase “if applicable, and the procedure” with the term “the instructions”; and to replace the phrase “, if applicable” with “and the chances of winning the bonus game, mini-game or game within a game and the prizes which can be won.”

Section 876.5 (relating to price) establishes where a registered iLottery player can find information on the price for each iLottery game. The proposed rulemaking is revised in this final-form rulemaking to change the term “play” to the phrase “play, chance or share” for purposes of consistency. This section was included in the temporary regulations and was not otherwise revised in the proposed rulemaking or this final-form rulemaking.

Section 876.6 (relating to governing law) sets forth the laws applicable to registered iLottery players and the laws that dictate how iLottery revenues are apportioned. Subsection (a) requires registered iLottery players to comply with Federal and State law, the regulations, the iLottery terms and conditions provided for under § 876.9 (relating to iLottery terms and conditions) and final decisions of the Secretary. Subsection (b) states that the revenues generated through iLottery will be apportioned as provided by Title 4 of the *Pennsylvania Consolidated Statutes* (relating to amusements) and the State Lottery Law.

Proposed § 876.6 is revised in this final-form rulemaking to be divided into two subsections for clarity. The language in the new subsection (a) is revised from the proposed rulemaking to replace “terms and conditions for

registration and participation in iLottery,” with “iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions)” to more accurately reflect the scope of the iLottery terms and conditions. The language in the new subsection (b) is revised to add “regarding disposition of funds” following the citation to section 12 of the State Lottery Law (72 P.S. § 3761-311). This section was in the temporary regulations and was not revised from the temporary regulations to the proposed rulemaking.

Section 876.7 (relating to general provisions) sets forth certain overarching requirements for participation in iLottery. Subsection (a) requires an individual to establish a lottery account and to register for iLottery to purchase plays, chances or shares or to purchase lottery products using a lottery account. Subsection (b) requires an individual to accept, acknowledge, consent and agree to be legally bound by the iLottery terms and conditions provided for under § 876.9. Subsection (c) requires an individual to be located in this Commonwealth to purchase a play, chance or share. Subsection (d) requires an individual to be 18 years of age or older to purchase a play, chance or share or to purchase lottery products using a lottery account.

Proposed subsection 876.7(a) is revised in this final-form rulemaking to replace the word “and” with the word “or” in the phrase “to purchase a play, chance or share and to purchase. . . .” Proposed subsection (b) is revised to add a comma between “iLottery” and “to purchase” and to add the phrase “through iLottery” following the phrase “play, chance or share.” The proposed subsections (c) and (d) are revised to replace the term “play” with the phrase “play, chance or share” for consistency.

Section 876.7 was included in the temporary regulations and was revised from the temporary regulations to the proposed rulemaking. Specifically, subsection (a) is revised to replace the word “plays” with the phrase “a play, chance or share and to purchase lottery products using a lottery account.” and the proposed subsection (a) is revised in this final-form rulemaking as explained previously.

Subsection 876.7(b) of the temporary regulations was revised as follows in the proposed rulemaking: the phrase “be legally bound by” is added for clarification; the word “and” was replaced with the word “to”; and the phrase “chance or share and to purchase lottery products using a lottery account” was added (and is revised in this final-form rulemaking as explained previously). Temporary subsection (d) was revised in the proposed rulemaking to include the phrase “or to purchase lottery products using a lottery account.”

Section 876.8 (relating to applicability) specifies that the chapter only applies to iLottery, the sale of lottery products through iLottery and the purchase of lottery products using a lottery account. Proposed § 876.8 is revised in this final-form rulemaking to remove the phrase “lottery products” and replace it with the phrase “plays, chances or shares through iLottery and the purchase of lottery products using a lottery account” to clarify that the chapter applies to the purchase of plays, chances or shares through iLottery and to the sale of lottery products through a lottery account as opposed to the sale of lottery products more generally. The proposed rulemaking is also revised to add the phrase “and administered” to clarify that the Department and the Bureau both offer and administer iLottery and the sale of lottery products through iLottery. This section was included in the temporary regulations and was changed in

the proposed rulemaking to remove the word “only” and to add the phrase “and the sale of lottery products,” which is revised in this final-form rulemaking as explained previously.

Section 876.9 describes the terms and conditions associated with a lottery account and registration and participation in iLottery. This section also clarifies that the terms and conditions provided for in § 876.9 will be referred to generally as the iLottery terms and conditions. Section 876.9 also establishes where amendments to the iLottery terms and conditions will be published.

Subsection 876.9(a) establishes that the terms and conditions for the creation of a lottery account, including amendments to those terms and conditions, will be published in the *Pennsylvania Bulletin* and will also be available on the Bureau’s iLottery web site. Subsection (b) sets forth the requirements and information that will be included in the iLottery terms and conditions for the establishment of a lottery account and for registration and participation in iLottery.

Subsection 876.9(b)(1) requires an individual who wants to establish a lottery account to acknowledge, consent, accept and agree to the terms and conditions required by this chapter which relate to the following: confirmation of the applicant’s age and identity; use of a mechanism by the Bureau to determine the physical location of a registered iLottery player; end user license agreement for the software and third-party services used in the operation of iLottery and the provision of iLottery games; monitoring and recording of registered iLottery player communications and geolocation information; jurisdiction of the Commonwealth to resolve disputes; reasons for suspending or closing a lottery account; lottery account moneys and unclaimed property; withholding requirements; required deductions from lottery winnings; prize claims; use of electronic communications; responsible gambling limits; self-exclusion; methods of deposit; no interest on deposits; methods of withdrawing moneys; fraudulent and unlawful activity; dispute resolution; need for true and correct information to be provided to the Department and the Bureau; purchasing lottery products as gifts or for the benefit of another person; iLottery game rules; iLottery promotions; subscription services; and prohibited activities.

Subsection 876.9(b)(2) establishes prohibitions against the following: allowing another individual to access or use the registered iLottery player’s lottery account; purchasing a play, chance or share unless the registered iLottery player is physically located in this Commonwealth; using automated software or equivalent mechanisms to engage in iLottery, except to the extent adaptive technology is needed for a registered iLottery player with a disability; participation in iLottery by an individual under the age of 18; participation in iLottery by an individual who is self-excluded; the purchase of a play, chance or share or receipt of a prize by certain individuals involved with the operation and administration of iLottery and by certain family members of those individuals.

Subsection 876.9(b)(3) provides the authority to include additional requirements necessary and relevant to the provision of iLottery in the iLottery terms and conditions.

Subsection 876.9(a) of the proposed rulemaking is revised in this final-form rulemaking to add the following phrase at the end for clarity: “and will be known as the iLottery terms and conditions.” Proposed paragraph (a)(1) is revised to change “terms and conditions” to “iLottery terms and conditions” for consistency. Proposed paragraph

(a)(2) is revised to change “terms and conditions” to “iLottery terms and conditions” for consistency; to change “Bureau’s web site” to “Bureau’s iLottery web site” for consistency; and to replace “determined” with “established” to more accurately reflect the Secretary’s roles and responsibilities and for consistency.

Subsection 876.9(b) of the proposed rulemaking is revised in this final-form rulemaking to change “terms and conditions” to “iLottery terms and conditions” for consistency. The proposed rulemaking is revised to change the word “their” to “the” in paragraph (b)(1)(vi) for clarity. Proposed paragraph (b)(1)(vi) is also revised to change the reference to “account” to the defined term “lottery account” for consistency and clarity. Proposed paragraph (b)(1)(vii) is revised to change the reference to “account” to “lottery account” for consistency and clarity. The proposed paragraph is revised to remove “(relating to amusements).” The proposed rulemaking was revised to remove the generic reference to Title 4 of the *Pennsylvania Consolidated Statutes* and to add the specific sections of Title 4 for consistency and clarity. Proposed paragraph (b)(1)(vii)(B) was further revised to capitalize the word “state” at the end of the paragraph.

Paragraph 876.9(b)(1)(vii)(D) of the proposed rulemaking is revised to add the phrase “by a registered iLottery player” and to change the word “his” to “the” for clarification. Proposed paragraph (b)(1)(vii)(E) is revised to replace the word “determined” with the word “established” to more accurately reflect the Secretary’s roles and responsibilities and for consistency.

Paragraph 876.9(b)(1)(x) of the proposed rulemaking is revised to remove the word “that” for clarity. Paragraph (b)(1)(xi) of the proposed rulemaking is revised to remove the word “description” and replace it with the word “descriptions.” Proposed paragraph (b)(1)(xi) is also revised to change the reference to § 876.2(c) to § 876.2c. Proposed paragraph (b)(1)(xvi) is revised to change “account” to “lottery account.” Proposed paragraph (b)(1)(xvii) is revised to remove the word “funds” and replace it with the word “moneys” for consistency. Proposed paragraph (b)(1)(xx) is revised to include the phrases “or Bureau” and “registered iLottery player’s” for clarity and consistency.

The proposed rulemaking is also revised to add the following paragraphs: 876.9(b)(1)(xxii), which establishes that iLottery game rules and iLottery game descriptions are acknowledged by, consented to, agreed to and accepted by the registered iLottery player as part of the iLottery terms and conditions; (b)(1)(xxiii), which establishes that terms and conditions for iLottery promotions provided for under § 876.17 (relating to iLottery promotional prizes) are acknowledged by, consented to, agreed to and accepted by the registered iLottery player as part of the iLottery terms and conditions; and (b)(1)(xxiv), which establishes that terms and conditions related to subscription services as provided for under § 876.19 (relating to subscription services) are acknowledged by, consented to, agreed to and accepted by the registered iLottery player as part of the iLottery terms and conditions.

Paragraph 876.9(b)(2)(i) of the proposed rulemaking is revised to remove the word “from” and replace it with the word “against” and to change “account” to the defined term “lottery account” for clarity and consistency. Paragraph (b)(2)(ii) of the proposed rulemaking is revised to remove the word “from” and replace it with the word “against” and to change the term “play” to the phrase “play, chance or share” for clarity and consistency. Para-

graph (b)(2)(iii) of the proposed rulemaking is revised to remove the word “for” and replace it with the word “by.” Paragraph (b)(2)(vi) of the proposed rulemaking is revised to change the term “play” to the phrase “play, chance or share” for consistency and clarity. Proposed paragraph (b)(vi)(D) is revised to include the phrase “as a member of” and to change the word “and” to “or” for clarity and consistency.

Portions of § 876.9 were included in the temporary regulations but changed during the rulemaking process. Specifically, temporary subsection (a) was revised as follows: to add the phrase “the establishment of a lottery account and for the registration;” to remove the phrase “available on the Pennsylvania Lottery’s iLottery web site and other locations as determined by the Secretary;” and to add the phrase “published in the *Pennsylvania Bulletin*.” Subsections (a)(1) and (2) did not appear in the temporary regulations.

Subsection 876.9(b) is revised from the temporary regulations to the proposed rulemaking to include the phrase “the establishment of a lottery account and for.” Paragraphs (b)(1)(i)—(v) remain unchanged from the temporary regulations. Temporary paragraph (b)(1)(vi) was revised in the proposed rulemaking to remove the sentence, “The forfeiture and escheatment of funds remaining on deposit in the registered iLottery player’s account if that account has been dormant for 3 years,” which was replaced with the following language in the proposed paragraph: “Any moneys remaining on deposit in the registered iLottery player’s account as abandoned and unclaimed property if the registered iLottery player has not logged into their lottery account using their username and password in more than 3 years” and is revised in this final-form rulemaking as explained previously. Temporary paragraphs (b)(1)(vii), (b)(1)(vii)(A) and (B) were unchanged in the proposed rulemaking but are revised in this final-form rulemaking as explained previously. Proposed paragraphs (b)(1)(vii)(C)—(E) did not appear in the temporary regulations. Temporary paragraphs (b)(1)(viii)—(x) were not changed in the proposed rulemaking, but proposed paragraph (b)(1)(x) is revised in this final-form rulemaking as explained previously.

Paragraph 876.9(b)(1)(xi) of the temporary regulations is revised in the proposed rulemaking to remove the term “iLottery” from the phrase “iLottery prizes”; to remove the reference to “§ 876.3 (relating to notice of iLottery game rules)” because that section is reserved; to add a reference to § 876.2(c), which is corrected in this final-form rulemaking as explained previously; and to replace the reference to the Pennsylvania Lottery with the defined term “Bureau.” This paragraph is revised in this final-form rulemaking as explained previously.

Paragraph 876.9(b)(1)(xiii) of the temporary regulations is revised in the proposed rulemaking to replace the word “establish” with the phrase “use the”; to remove the clause “limits including a deposit limit, spend limit or time-based limit, as available, through the lottery account” and replace it with the phrase “tools available through iLottery.” Temporary paragraph (b)(1)(xiv) is revised to add the clause “and the extent to which the self-exclusion applies to use of the registered iLottery player’s lottery account.” Temporary paragraph (b)(1)(xv) is revised to replace the word “funds” with “moneys” throughout the paragraph.

Paragraph 876.9(b)(1)(xii) of the temporary regulations is not changed in this final-form rulemaking. Temporary paragraphs (b)(1)(xvi)—(xix) were not changed in the proposed rulemaking, but paragraphs (b)(1)(xvi) and (xx)

are revised in this final-form rulemaking as explained previously. Paragraphs (b)(1)(xxi)—(xxiv) did not appear in the temporary regulations.

Subsection 876.9(b)(2) was included in the temporary regulations, and the following paragraphs were revised in the proposed rulemaking. Temporary paragraph (b)(2)(i) was revised to replace the word “person” with the word “individual.” Temporary paragraph (b)(2)(iii) was revised to replace the word “utilizing” with the word “using” and to add the following sentence: “Nothing in this section shall prohibit the use of adaptive technologies for registered iLottery players with a disability as defined in the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213).”

In the proposed rulemaking temporary paragraphs 876.9(b)(2)(iv) and (v) were revised to change the words “a person” to “an individual.” Also in the proposed rulemaking temporary paragraph (b)(2)(vi) was revised to replace the clause “Prohibition against the sale of a play or the award of a prize as follows:” with “Prohibition against purchasing a play or receiving a prize if the registered iLottery player is:” and is revised in this final-form rulemaking as explained previously. Temporary paragraphs (b)(2)(vi)(A)—(D) were revised to replace “To an” with “An,” in the proposed rulemaking and paragraph (b)(2)(vi)(D) is revised in this final-form rulemaking as explained previously.

Paragraph 876.9(b)(3) of the temporary regulations remains unchanged.

Section 876.10 (relating to iLottery registration and participation) sets forth the requirements for registration and participation in iLottery. Subsection (a) requires an individual to create a lottery account and to register for participation in iLottery. Subsection (b) establishes that by becoming a registered iLottery player, the individual agrees to be bound by the iLottery terms and conditions as provided for under § 876.9. Subsection (c) sets forth the information that is required to establish a lottery account. Subsection (d) establishes that individuals may be asked for additional information in order to establish a lottery account. Subsection (e) requires the lottery account to have a username and password. Subsection (f) limits access to the lottery account to the registered iLottery player that established the lottery account.

Subsection 876.10(g) sets forth the circumstances in which an individual will be prohibited from establishing a lottery account and registering for iLottery. Subsection (h) prohibits the purchase of a play, chance or share or the purchase of lottery products using a lottery account if the registered iLottery player is located outside of the geographical border of this Commonwealth. Subsection (i) prohibits an individual from having more than one lottery account but provides for the creation of a new account if a previous account was closed or the reopening of a closed account, as applicable. Subsection (j) prohibits an individual from registering or attempting to register for iLottery using more than one lottery account. Subsection (k) provides for communications related to lottery accounts and iLottery to occur electronically.

Subsection 876.10(l) requires that lottery accounts be created through the Bureau’s iLottery web site or the Bureau’s mobile application. Subsection (m) allows a registered iLottery player to close their account at any time. Subsection (n) authorizes the Bureau to retain information of registered iLottery players who close their accounts to prevent fraud. Subsection (o) establishes the process of closing a lottery account.

Subsection 876.10(b) of the proposed rulemaking is revised in this final-form rulemaking to replace the phrase “terms and conditions” with the phrase “iLottery terms and conditions” and to replace the word “in” with the phrase “as provided for under.” Proposed paragraph (c)(7) was revised to replace “determined” with “established” to more accurately reflect the responsibilities of the Secretary and for consistency. Proposed subsection (d) is revised to replace “provided for” with “set forth” and to add the phrase “as provided for under § 876.9” for clarity and consistency.

Paragraph 876.10(g)(5) of the proposed rulemaking is revised to change the phrase “terms and conditions” to “iLottery terms and conditions” for clarity and consistency.

Subsection 876.10(i) of the proposed rulemaking is revised to remove the word “will” and replace it with the word “does”; to remove the word “that” and replace it with the word “who”; to remove the word “their” and replace it with the word “a”; and to replace the word “their” with the word “the.” Proposed subsection (j) is revised to change “account” with the defined term “lottery account” for clarity and consistency. Subsection (k) of the proposed rulemaking was revised to replace the word “communication” with “communications.” Proposed subsection (l) is revised to replace the phrase “Bureau’s web site” with “Bureau’s iLottery web site” for clarity and consistency.

Section 876.10 was included in the temporary regulations, and some subsections were revised in the proposed rulemaking. Temporary subsections (a) and (b) remained unchanged in the proposed rulemaking, but subsection (b) is revised in this final-form rulemaking as explained previously. Temporary subsection (c) is revised to replace the clause “The following information will be required to register for iLottery” with the clause “To establish a lottery account and register for iLottery, an individual shall provide the following information.” Temporary paragraph (c)(1) is revised to replace “Name” with “The individual’s name” and to remove the word “on.” Temporary paragraph (c)(2) was revised to replace “Date” with “The individual’s date.”

Paragraph 876.10(c)(3) of the temporary regulations is revised to replace “Entire” with “The entire” and “number” with “Number”; to add the word “comparable”; and to remove the phrase “for a foreign person such as a passport or taxpayer identification number.” Temporary paragraph (c)(4) is revised to replace “Home” with “The individual’s home.” Temporary paragraph (c)(5) is revised to replace “Telephone” with “The individual’s telephone.” Temporary paragraph (c)(6) is revised to replace “E-mail” with “The individual’s e-mail.” Temporary paragraph (c)(7) is not changed in the proposed rulemaking.

Subsection 876.10(d) of the temporary regulations is revised to add the phrase “as provided for in the iLottery terms and conditions” and is revised in this final-form rulemaking as explained previously. Temporary subsection (e) remains unchanged. Temporary subsection (f) is revised to replace the phrase “lottery account user” with “registered iLottery player.” Temporary subsection (g) is revised to add the phrase “establishing a lottery account and from.” Temporary paragraph (g)(1) remains unchanged. Temporary paragraph (g)(2) is revised to replace the word “in” with “is.” Temporary paragraphs (g)(3) and (4) remain unchanged in the proposed rulemaking, but paragraph (g)(3) is revised in this final-form rulemaking as explained previously. Temporary paragraph (g)(5) is

revised in the proposed rulemaking to remove the word “as” and in this final-form rulemaking as explained previously.

Subsection 876.10(h) of the temporary regulations is revised to add the clause “chance or share or purchase lottery products using a lottery account” and to change “verify” to “verify that.” Temporary subsection (i) is revised to replace the word “utilize” with the word “use” and to add the following sentence: “This will not prohibit a registered iLottery player that closes their lottery account from reopening their lottery account or creating a new account, as applicable, at a later date,” which is revised in this final-form rulemaking as explained previously. Temporary paragraph (j) is revised to replace the word “utilizing” with the word “using” and is revised in this final-form rulemaking as explained previously. Subsections (k)—(o) were not included in the temporary regulations.

Section 876.10a (relating to registered iLottery player lottery account requirements) establishes the requirements that registered iLottery players are subject to following the creation of a lottery account. Subsections (1) and (2) establish that registered iLottery players are subject to the end user license agreements for software and services used in the provision of iLottery. Subsection (3) requires confirmation of the registered iLottery player’s age and identity. Subsection (4) requires the registered iLottery player to provide true and correct information to the Department and the Bureau. Subsections (5) and (6) subject the registered iLottery player to the continuous monitoring and recording of account information, including transactions and physical location. Subsection (7) provides for the suspension or closure of a lottery account for violation of the iLottery terms and conditions, related to a self-exclusion request, related to the application of responsible gambling tools, related to violations of the Pennsylvania Crimes Code and Title 4 of the *Pennsylvania Consolidated Statutes* and for other reasons established by the Secretary. Subsection (8) requires a registered iLottery player to comply with all applicable statutes, regulations and the iLottery terms and conditions as provided for in § 876.9. Subsection (9) requires a registered iLottery player to agree to the iLottery privacy policy available on the Bureau’s iLottery web site and on the Bureau’s mobile application.

The proposed rulemaking is revised in this final-form rulemaking to change the title of this section from “lottery account requirements” to “registered iLottery player lottery account requirements” to clarify that it is the registered iLottery player that is subject to the lottery account requirements. Subsection (4) of the proposed rulemaking is revised to add the phrase “and the Bureau” for consistency and clarity. Proposed subsections (6) and (7) are revised to change “a registered iLottery player” to “the registered iLottery player.”

Paragraph 876.10a(7)(i) of the proposed rulemaking is revised to change “provided” to “provided for.” Proposed paragraph (7)(ii) is revised to change “relating to self-exclusion from iLottery” to “relating to self-exclusion from iLottery and responsible gambling tools” due to the change of the title of § 876.16 (relating to self-exclusion from iLottery). Proposed paragraph (7)(iii) is revised to replace “provided for” with “set forth” and to add “as provided for under § 876.9.” Proposed paragraph (7)(iv) is revised to change “charged” to “charged with” for clarity; to remove the generic reference to Title 4 of the *Pennsylvania Consolidated Statutes* and to include the specific sections of Title 4 for consistency and clarity; to remove

“(relating to amusements);” and to capitalize the word “state” at the end of the subsection. Proposed paragraph (7)(v) is revised to replace “as determined” with “established” to more accurately reflect the roles and responsibilities of the Secretary and for consistency.

Subsection 876.10a(8) of the proposed rulemaking is revised to replace “a” with “the” at the beginning of the subsection and to remove “laws,” for clarity. Additionally, proposed subsection (8) is revised to add “as provided for under § 876.9” for consistency and clarity. Proposed subsection (9) was revised to add “, available on the Bureau’s iLottery web site and on the Bureau’s mobile application” for clarity.

Section 876.10a was not included in the temporary regulations.

Section 876.11 (relating to purchase and prize restrictions) establishes the restrictions related to purchases made using a lottery account and the restrictions related to the issuance of prizes. Subsection (a) requires an individual to be at least 18 years of age to register for iLottery or to purchase a play, chance or share. Subsection (b) requires registered iLottery players to be within the geographical boundaries of this Commonwealth in order to purchase a play, chance or share through iLottery. Subsection (c) prohibits certain individuals associated with the Bureau or the Bureau’s contractors or subcontractors from purchasing a play, chance or share or being awarded a prize. Subsection (d) prohibits a registered iLottery player from cancelling the purchase of a play, chance, share or lottery product.

Subsections 876.11(a)—(c) of the proposed rulemaking are revised in this final-form rulemaking to change “play” to “play, chance or share” for clarity and consistency. Subsection (b) is revised to change the phrase “registered iLottery players” to “A registered iLottery player” for clarity and consistency. Proposed paragraph (c)(2) is revised to replace “in” with “as a member of” for clarity and consistency. Proposed paragraph (c)(4) is revised to include the phrase “residing as a member of the same household as” for clarity and consistency.

Subsections 876.11(a)—(c) of this section were included in the temporary regulations and were not changed in the proposed rulemaking but are revised in this final-form rulemaking as explained previously. Subsection (d) was not included in the temporary regulations.

Section 876.11a (relating to methods to fund a lottery account) provides the methods by which a registered iLottery player may fund a lottery account. Subsection (a) establishes that a registered iLottery player is required to deposit money or credits in the lottery account prior to purchasing a play, chance or share or other lottery products through a lottery account. Subsection (b) establishes that the Secretary will determine which specific payment methods will be available and where the information regarding acceptable payment methods can be located. Subsection (c) lists the payment methods available for funding a lottery account and allows other available payment options that are authorized by the Secretary. Subsection (d) allows the Secretary to establish conditions or limits specific to different types of deposit methods. Subsection (e) allows the Secretary to establish a minimum deposit amount.

Subsection 876.11(a) of the proposed rulemaking is revised in this final-form rulemaking to change the term “play” to the phrase “play, chance or share” for clarity and consistency. Proposed subsection (b) is revised to remove the phrase “in his sole discretion;” to change “registered

iLottery players” to “a registered iLottery player”; and to change “iLottery products” to “lottery products” for clarity and consistency. Proposed subsection (b) is also revised to add “as provided for under § 876.9 (relating to iLottery terms and conditions).” Proposed paragraph (c)(3) is revised to remove “issued by agents.” The phrase “and issued by the Bureau” is added to proposed paragraphs (c)(2) and (3) for clarity.

Section 876.11a was not included in the temporary regulations.

Section 876.11b (relating to lottery account moneys and credits) establishes requirements related to the moneys and credits in a registered iLottery player’s lottery account. Subsection (a) establishes that moneys or credits deposited in a lottery account can be used to purchase plays, chances or shares and other lottery products. Subsection (b) establishes that moneys or credits deposited in a lottery account will not earn interest. Subsection (c) establishes that moneys remaining in a dormant lottery account for more than 3 years will be considered abandoned and unclaimed property.

Subsection 876.11b(a) of the proposed rulemaking is revised in this final-form rulemaking to change “play” to “plays, chances or shares”; to add a comma after “lottery products”; and to add the phrase “and offered by the Bureau” at the end of the subsection. Proposed subsection (c) is revised to replace the word “their” with the word “the.”

Section 876.11b was not included in the temporary regulations.

Section 876.12 (relating to prizes) sets forth requirements related to prizes. Subsection (a) provides the Secretary with the authority to determine the manner in which a prize is awarded to a player, including by check, draft or electronically through the registered iLottery player’s lottery account. Subsection (b) specifies that the Bureau will report taxable prizes and events to relevant taxing authorities. Subsection (c) provides that the Commonwealth and its agents, officers and employees shall not be liable upon payment of a prize. Subsection (d) requires that prizes be reduced by the required tax withholding and other legally required deductions. Subsection (e) allows the Bureau to withhold some prizes until the Department or the Bureau can confirm the registered iLottery player has no outstanding liabilities that must be deducted from the prize. Subsection (f) establishes that winning plays are based on the information maintained by the Bureau.

Subsection 876.12(a) of the proposed rulemaking is revised in this final-form rulemaking to add the phrase “and offered by the Bureau” for clarity. Proposed subsection (c) is revised to remove the word “payment” and replace it with the word “award” for clarity and consistency. Proposed subsection (e) is revised to add the phrase “or the Bureau” and to add the “relating to” parenthetical for the reference to § 876.14, for clarity and consistency. Proposed subsection (f) is changed to replace the phrase “prize winning plays” with the term “winning plays” for clarity and consistency.

Section 876.12 was included in the temporary regulations as a single-section regulation but was revised in the proposed rulemaking. Specifically, the temporary regulations were revised to add subsections, and temporary § 876.12 became subsection (a), which is revised to change “account” to “lottery account” and to add “or other means as authorized by the Secretary.”

Section 876.12a (relating to prize claims) addresses the process required to claim a prize. Subsection (a) provides that the Bureau will generate applicable tax forms for reportable gambling and lottery winnings. Subsection (b) authorizes the Bureau to use the lottery account information provided by the registered iLottery player to complete the applicable tax forms. Subsection (c) specifies that the Bureau may require a registered iLottery player to complete a claim form and submit it in person at one of the Bureau’s claim centers. Subsection (d) states that prizes requiring a prize will not be credited to a registered iLottery player’s lottery account until the claim form is properly completed, submitted to and accepted by the Bureau. Subsection (e) provides for the expiration of certain lottery prizes if a required claim form is not properly completed or received.

Subsection 876.12(d) of the proposed rulemaking is revised in this final-form rulemaking to change “submitted to” to “submitted to and accepted by” for clarity. Proposed subsection (e) is revised to remove the phrase “prize winner” and replace it with the defined term “registered iLottery player” and to include the citation for the State Lottery Law.

Section 876.12a was not included in the temporary regulations.

Section 876.13 (relating to withholding) establishes that prize payments are subject to Federal and State withholding taxes as required by law. This section is not changed from the temporary regulations.

Section 876.14 (relating to deductions required by law) establishes that prizes may be reduced by other deductions as required by law, including 23 Pa.C.S. § 4308 (relating to lottery winnings intercept) and 72 P.S. § 215 regarding lottery winnings intercept. Proposed subsection (2) is revised to add the “relating to” parenthetical for the statutory citation.

Section 876.14 was included in the temporary regulations and is revised in the proposed rulemaking to replace the phrase “iLottery prize winnings” with the term “prizes,” to remove the period after “law”; and to add “, including those amounts required under: (1) 23 Pa.C.S. § 4308 (relating to lottery winnings intercept). (2) 72 P.S. § 215,” which is revised in this final-form rulemaking as explained previously.

Section 876.14a (relating to withdrawals from a lottery account) addresses withdrawal requirements and limitations related to a lottery account. Subsection (a) establishes that registered iLottery players may make withdrawals from their lottery accounts. Subsection (b) allows the Secretary to establish a minimum balance requirement that must exist before a withdrawal from a lottery account will be processed. Subsection (c) establishes that the withdrawal request may not occur immediately. Subsection (d) allows the Bureau to request information from a registered iLottery player to verify the registered iLottery player’s withdrawal request. Subsection (e) prohibits a registered iLottery player from withdrawing bonus money. Subsection (f) provides for a registered iLottery player’s withdrawal to be credited to whatever payment types are authorized by the Secretary and offered by the Bureau. Subsection (g) allows the Bureau to adjust a registered iLottery player’s account if money or bonus money is mistakenly credited. Subsection (h) allows the Bureau to deduct the purchase price of a lottery product from the registered iLottery player’s lottery account.

Subsection 876.14a(c) of the proposed rulemaking is revised in this final-form rulemaking to remove the

phrase “these regulations” and replace it with the phrase “this chapter” for clarity and consistency. Proposed subsection (c) is also revised to replace “provided for” with “set forth” and to add the language “as provided for under § 876.9” for clarity and consistency. Proposed subsection (e) is revised to remove the word “their” and replace it with the defined term “registered iLottery player’s” for clarity and consistency. Proposed subsection (f) is revised to add the phrase “and offered by the Bureau” for clarity.

Section 876.14a was not included in the temporary regulations.

Section 876.15 (relating to termination of a game) authorizes the Secretary to terminate an iLottery game at any time and without notice. This section is unchanged from the temporary regulations.

Section 876.16 sets forth the self-exclusion requirements for iLottery, in addition to providing for responsible gambling tools. Subsection (a) allows a registered iLottery player to request self-exclusion from iLottery. Subsection (b) establishes the way in which a registered iLottery player may request self-exclusion. Subsection (c) provides that the Bureau will offer a registered iLottery player, predetermined periods of self-exclusion from which to choose. Under subsection (d), a self-excluded, registered iLottery player is prohibited from making purchases through iLottery and from participating in iLottery promotions. Subsection (e) establishes that a self-excluded, registered iLottery player will not receive communications from the Bureau during the self-exclusion period. Subsection (f) allows the Bureau to request certain identifying information from a registered iLottery player upon a request for self-exclusion.

Subsection 876.16(g) requires a registered iLottery player, who is requesting self-exclusion, to acknowledge and agree to certain statements related to self-exclusion before the self-exclusion request is processed. Subsection (h) prohibits a registered iLottery player from accessing the lottery account until the self-exclusion period expires. Subsection (i) allows a registered iLottery player to request the release of moneys from the lottery account through a process described in the iLottery terms and conditions. Subsection (j) provides for the immediate effectiveness of the self-exclusion request. Subsection (k) makes the self-exclusion request irrevocable. Subsection (l) requires a self-excluded, registered iLottery player to contact the Bureau after the self-exclusion period ends to request reinstatement and access to the lottery account.

Subsection 876.16(m) provides for the availability of responsible gambling tools through a lottery account. Subsection (n) establishes that a self-excluded, registered iLottery player or a registered iLottery player who uses responsible gambling tools may be prohibited from participating in certain promotions, second chance drawings and marketing communications from the Bureau.

The title of proposed § 876.16 was revised in this final-form rulemaking to add “and responsible gambling tools” so that the title of the section accurately reflects the provisions of the section. Proposed subsection (b) is revised to add the phrase “and offered by the Bureau” for clarity and consistency. Proposed subsection (c) is revised to replace the word “offered” with the word “authorized” and add the phrase “and offered by the Bureau” for clarity and consistency.

Subsection 876.16(d) of the proposed rulemaking is revised to replace the word “funds” with the word “moneys” and to change “account” to “lottery account” for clarity and consistency. Proposed paragraph (f)(3) is re-

vised to add the phrase “the entire or last four digits of the individual’s” for clarity and consistency. Proposed paragraph (f)(7) is revised to replace “determined” with “established.” Proposed subsection (g)(2) is revised to replace “provided for” with “set forth” and to add the clause “as provided for under § 876.9.”

Subsection 876.16(h) of the proposed rulemaking is revised to replace “their” with “the registered iLottery player’s.” Proposed subsection (i) is revised to add replace “provided for” with “set forth” and to add the clause “as provided for under § 876.9.” Subsection (l) is revised to change the word “account” to the defined term “lottery account” for clarity and consistency. Proposed subsection (m) is revised to replace “provided for” with “set forth” and to add the clause “as provided for under § 876.9” for clarity and consistency.

Subsections 876.16(a)—(e) were in the temporary regulations and were revised in part in the proposed rulemaking. Temporary subsection (a) is not changed. Temporary subsection (b) is revised to add the phrase “or through other means authorized by the Secretary.” Temporary subsection (c) is revised to remove the phrase “through the lottery account” and to add the phrase “by the Secretary.” Temporary subsection (d) is revised to replace “plays” with “plays, shares or chances,” to remove the phrase “or withdraw funds from” and to add the phrase “funds into.” Temporary subsection (e) is not changed.

Section 876.17 (relating to iLottery promotional prizes) provides for the authority of the Secretary to conduct iLottery promotions and issue terms and conditions related to those iLottery promotions. The proposed rulemaking is revised in this final-form rulemaking to remove the word “part” and replace it with the word “chapter” for clarity and consistency. This section is unchanged from the temporary regulations.

Section 876.18 (relating to agent promotion programs) provides for the authority of the Secretary to conduct lottery agent incentive and marketing promotion programs related to iLottery. This section was included in the temporary regulations and was revised in the proposed rulemaking to change the word “retailer” to “agent” in both the section heading and in the text of the section.

Section 876.19 addresses the availability of subscription services. Subsection (a) allows the Bureau to offer subscription services authorized by the Secretary. Subsection (b) provides that the subscription services will be governed by the iLottery terms and conditions. Subsection (c) provides that information regarding a registered iLottery player’s subscription service purchase will be delivered electronically.

Subsection 876.19(a) of the proposed rulemaking is revised in this final-form rulemaking to replace “determined” with “authorized” to more accurately reflect the roles and responsibilities of the Secretary and for consistency. Proposed subsection (b) was revised to add “as provided for under § 876.9 (relating to iLottery terms and conditions)” for clarity and consistency.

Section 876.19 was not included in the temporary regulations.

Section 876.20 (relating to confidential information) specifies the information regarding iLottery and registered iLottery players that is confidential based on the authority conferred by 4 Pa.C.S. § 503(d)—(e). Information about a registered iLottery player that will be maintained as confidential includes: last name; address; telephone number; financial information; self-exclusion

information; Social Security Number or comparable equivalent; use of responsible gambling tools; play history; and play tendencies. This section was not included in the temporary regulations.

Affected Parties

Adults who choose to open a lottery account will be affected by the regulations. The impact on individuals will be determined by the amount of interaction each person has with the iLottery services. For example, an adult 18 years of age or older can attempt to establish a lottery account. Only those individuals who meet the requirements of the regulation will be able to establish a lottery account and access lottery account features, such as responsible gambling tools, account statements, iLottery games, subscription services and self-exclusion tools. Only adults who have successfully registered for a lottery account and who are located within the geographical boundaries of this Commonwealth are permitted to purchase plays, chances and shares and other lottery products through iLottery.

Pennsylvanians 65 years of age or older and Pennsylvanians with disabilities may be affected by the regulations if they are eligible to receive benefits funded with the revenue generated through the implementation and operation of iLottery and deposited into the State Lottery Fund.

Businesses, small businesses or organizations that contract with the Department to provide the iLottery system and services will be impacted as they will be required to ensure that the iLottery system and services provided conform to the requirements of the regulations.

Comment and Response Summary

The proposed rulemaking was published at 49 Pa.B. 2242. No public hearings were held. The public comment period closed on June 3, 2019.

The Department received comments from two commenters, Greenwood Gaming Entertainment, Inc. (GGE) and Penn National Gaming, Inc. (PNG). Both commenters are petitioners in litigation to challenge the Department's administration of iLottery and offered comments opposing the rulemaking. IRRC also submitted comments on July 2, 2019. Following is a summary of the comments received, and the Department's responses.

Litigation Challenging iLottery

Both GGE and PNG noted that the iLottery program is the subject of a legal challenge, *Greenwood Gaming and Entertainment, Inc. et al. v. Commonwealth of Pennsylvania Department of Revenue et al.*, No. 571 MD 2018 filed on September 6, 2018. In that litigation, seven casino operators in this Commonwealth filed suit seeking an injunction against the Department to prevent it from operating iLottery as it currently exists. Specifically, the petitioners allege that the Department is violating the act with the iLottery games currently offered through iLottery. GGE recommends tabling the regulations pending the outcome of the litigation, while PNG recommends that the Department withdraw the regulations pending resolution of the litigation.

Response

The temporary regulations were promulgated under section 503(b)(1) of Act 42 (4 Pa.C.S. § 503(b)(1)), which provides the Department with temporary rulemaking authority to facilitate the "prompt implementation of iLottery or new sales methods of traditional lottery

products over the internet." The temporary regulations expire 2 years from the date of publication of the temporary regulations.

The final-form regulations pertain to the iLottery program in its entirety, not just the games which are the subject of litigation. Further, the iLottery games challenged in *Greenwood Gaming* are Internet instant games, a subset of the iLottery games which may be offered through iLottery under the enabling legislation and the final-form regulations. Commonwealth Court issued a decision and order in the *Greenwood Gaming* litigation on July 12, 2019, denying petitioners' request for a preliminary injunction. The litigation remains pending and, given the current schedule, will likely not go to trial until after the temporary regulations expire on March 31, 2020.

Prohibiting the Department from progressing through the rulemaking process could prevent the Bureau from operating iLottery in its entirety until resolution of the litigation, which could take years, in addition to the time required to promulgate new regulations once the litigation is resolved. Such a prohibition is contrary to the legislative mandate for the Bureau's prompt implementation of iLottery. That mandate is supported by the legislative grant of authority to the Department pursuant to 4 Pa.C.S. § 503(c) (relating to prompt implementation) to enter into contracts without going through the procurement process. While both iLottery and online games offered by the casinos were both authorized with the passage of Act 42, only iLottery received the legislative authority to forgo certain statutory requirements, processes and procedures to ensure prompt implementation.

Tabling or withdrawing the regulation would thus be prejudicial to the iLottery program in its entirety and to the Department's position in the litigation that the Internet instant games offered by the Bureau do not simulate casino-style games. It would also result in lost revenues for senior citizens who benefit from a program that has been operating and generating revenue since May 2018.

Whether the Regulation Conforms to the Intention of the General Assembly

Referring to one commenter's comments, IRRC requested an explanation as to how the Bureau will evaluate iLottery games to ensure that they meet the statutory definition of iLottery games to conform to the intention of the General Assembly that casino-style games be excluded from iLottery.

Both other commenters suggested that the regulations fail to address how iLottery games are not casino-style games. Both offered a list of game features they believe are features of slot machines and proposed prohibiting the use of those features in the definition of "iLottery game" in the final-form regulation. Both commenters also recommended that language be added to the final-form regulation prohibiting the Bureau from offering iLottery games that have been certified for compliance with gaming standards in other jurisdictions, including international jurisdictions.

One commenter raised concerns that the regulation does not include specific parameters for what features or game characteristics simulate a "casino-style lottery game," and recommended the final-form regulation establish a mechanism to evaluate iLottery games to ensure that they meet the statutory definition of an iLottery game. The other commenter recommended that the final-form regulations include certain prohibitions for iLottery games regarding game name, game symbols, play me-

chanics, game certifications, payout percentages, symbol matrices, game bonuses, play denominations, use of a random number generator, and use of animated graphics and patron loyalty programs, among other things.

Response

The act specifically defines “iLottery game” to include both Internet instant games and other lottery products offered through iLottery, as does the definition of “iLottery game” in this final-form regulation. The statutory definition of “iLottery game” explicitly excludes games that represent “physical, Internet-based or monitor-based interactive lottery games which simulate casino-style lottery games, specifically including poker, roulette, slot machines or blackjack.” 4 Pa.C.S. § 502 (relating to definitions). The definition of iLottery game in the final-form regulation is consistent with the definition which appears in the act and includes the same prohibitions against offering games which simulate casino-style lottery games as in the enabling statute.

The final-form regulation sets forth various categories of iLottery games that the Bureau may offer at § 876.2c (relating to categories of iLottery games). This section sets forth characteristics of iLottery games that may be combined by the Bureau to create lottery games which may be offered through iLottery. These characteristics include types of iLottery games, when and how the outcome of iLottery games may be determined and the prize structures for iLottery games. These characteristics are features of lottery games generally, and the combination of these characteristics ensures that the iLottery games offered through iLottery are lottery games and do not violate the exclusions set forth in the definition of “iLottery game.”

The State Lottery Law confers broad authority on the Secretary to administer the lottery, which necessarily includes iLottery. Specifically, the Secretary has the power and duty to determine “the type of lottery to be conducted.” 72 P.S. § 3761-303(a)(1) (relating to powers and duties of secretary). The game types listed in subsection 876.2c(a) are generally well-known types of lottery games. The definitions of those types of games, as set forth in § 876.2 (relating to definitions) were developed using information from traditional lottery game rules published by the Bureau in the *Pennsylvania Bulletin* and using definitions from leading lottery trade organizations of which the Bureau is a member, such as the North American Association of State and Provincial Lotteries. The games as defined in this final-form rulemaking are generally accepted in the industry to be lottery games and do not simulate casino-style games.

Additionally, and consistent with the broad authority to determine the type of lottery to be conducted, the Secretary has broad discretion as to how the various types of lottery games are offered. Specifically, the Bureau offers instant games using licensed properties, various game themes, color images, art work, bonuses, multipliers, varied play mechanics and styles and the like. The Bureau offers Fast Play games offered through a lottery terminal using licensed properties, various game themes, art work, bonuses, multipliers, varied play mechanics and styles and the like. The Bureau offers some draw games in which the winning numbers are drawn on live television. The Bureau offers some draw games, the outcomes of which are determined by a random number generator and the outcomes of which are represented by an animated sequence, such as monitor games like Derby Cash and Xpress Car Racing.

The iLottery enabling legislation and the final-form regulations allow the Department to offer Internet instant games online. Internet instant games, as defined by the statute and the final-form regulations, require a reveal of numbers, letters or symbols. The enabling legislation does not dictate how that reveal is required to occur. Notably, the enabling legislation does not limit or prohibit the use of animation, sounds, bonuses, multipliers, color images, art work, game themes and varied play mechanics. The enabling statute does not require an Internet instant game to simulate any of the Bureau’s traditional lottery games, such as an instant ticket. Rather, the enabling statute specifically provides the Secretary with the authority to offer new and additional lottery products through iLottery, including, but not limited to, Internet instant games. The Department disagrees that features such as animation, sounds, bonuses, multipliers and varied play mechanics are exclusive to slot machines; rather, as explained above, the aforementioned features are regularly used in lottery products.

With respect to licensed properties and game art, the Bureau has historically utilized licensed properties, including, but not limited to, Wheel of Fortune® and Monopoly®. Generally speaking, licensed properties are used across various industries, including the gambling industry, because they are readily identifiable, trusted brands. Game names, symbols and artwork for licensed properties are dictated by the owner of the licensed property and are carefully controlled to ensure legal protections for the intellectual property. With respect to other game art, the same types of symbols and themes are used across all types of gambling, including lottery, because these themes and symbols are established through history and culture as representing luck, prosperity, wealth, fortune and the like. The Department disagrees that the use of licensed properties, specific symbols, game art or game names are exclusive to slot machines; rather, licensed properties and the like are regularly used in lottery products.

As a result, no limitations or prohibitions were placed in the regulation related to the aforementioned features, licensed property or game art. The characteristics that are relevant to an iLottery game are set forth in § 876.2c of the final-form regulation. Internet instant games are a subset of iLottery games and are comprised of the characteristics established in § 876.2c. Internet instant games, and iLottery games more generally, are necessarily lottery games and not casino-style games.

The Secretary also has the power and duty to determine “the manner of selecting the winning tickets or shares.” 72 P.S. § 3761-303(a)(4). Under subsection 876.2c(c) of the final-form regulation, the outcome of iLottery games may be determined by a randomizer, a random number generator or a drawing. Some of the Bureau’s oldest and most popular lottery games are games in which the outcome is derived using a random number generator. Because the definition of “iLottery game” includes all lottery products, including traditional lottery products, prohibiting the use of a random number generator in iLottery games would prevent the Bureau from selling most lottery products through iLottery. Such a result is contrary to the legislative mandate of the enabling legislation which sought prompt implementation of “new sales methods of traditional lottery products over the internet.” See 4 Pa.C.S. § 503(b)(1). Furthermore, the use of random number generators in lottery games in this Commonwealth predates the legalization of slots gaming in this Commonwealth. The Department therefore disagrees that a random number generator is a hallmark of

a casino-style game. No language was added to the final-form regulation to prohibit the use of a random number generator.

The Secretary is granted the power and duty to determine “the price, or prices, of tickets or shares in the lottery.” 72 P.S. § 3761-303(a)(2). Simply put, the Secretary has the statutory authority to offer a single game at more than one price point. The Secretary has in fact authorized and the Bureau has offered lottery games with multiple price points, including Keno and certain draw games. The Department disagrees with the suggestion by the commenters that adjustable bets are exclusive to slot machines.

With respect to game certifications, Act 42 does not require the certification of iLottery games to any standard. Neither the State Lottery Law nor the State Lottery regulations require certification of games or random number generators. Rather, the Bureau uses lottery best practices to ensure the randomness of the outcome of an individual game and that the prize structure for an individual game is accurate. The Bureau’s only concern is that the jurisdictional standards against which the game is certified are reputable and accurate. As a result, no language was included in the regulation prohibiting the Bureau from offering iLottery games that have been certified for compliance with gaming standards in other jurisdictions or requiring that iLottery games be certified to a specific standard.

The final-form regulations set forth the types of iLottery games that may be offered, the way in which the outcome is determined and the various prize structures that may be utilized, all of which are key characteristics of a lottery game and all of which are within the power and duty of the Secretary of Revenue to establish. The characteristics of iLottery games, as set forth in the final-form regulation, establish them as lottery games and not casino-style games. It should be noted that there is no requirement in Act 42 which restricts the Department to using characteristics of lottery games that the Department has historically offered.

While both commenters identified many features that they believe are attributable to slot machines only, some of which are specifically addressed herein, neither commenter provided legal support for those assertions.

The final-form regulation clearly establishes characteristics of lottery games that when combined necessarily ensure that iLottery games are not casino-style games. As a result, no changes were made to the final-form regulation based on GGE’s or PNG’s comments.

Determining Whether the Regulation is in the Public Interest

Comment

IRRC noted that the explanation of the proposed regulation in the Preamble and the information in the RAF were insufficient to allow it to determine if the regulation is in the public interest, as the Preamble only described amendments to the temporary regulation and did not explain sections that were not revised from temporary to proposed.

Response

The Department has included a discussion of each regulatory section, identifying the revisions made from the temporary regulations to the proposed rulemaking to the final-form rulemaking as well as those sections that were not revised from the temporary regulations, in the Preamble to the final-form regulation.

Comment

IRRC requested that the Department provide additional information in the RAF to the final-form rulemaking related to who will benefit from the regulation. IRRC also requested that the Department address the discrepancies regarding the costs of the regulation to the Commonwealth in the RAF. Finally, IRRC asked that the Department include all applicable provisions of the act in the statutory authority statements in the Preamble and RAF to the final-form rulemaking, including a reference to section 503(i) of the act, which requires the Department to establish an iLottery self-exclusion program.

Response

The RAF to the final-form rulemaking includes specific information relating to who will benefit from the regulation. The Department also provided costs of the regulation that pertain to state government. The Department specified all relevant statutory authority, including the provisions regarding the establishment of the iLottery self-exclusion program as set forth at 4 Pa.C.S. § 503(i), in the Preamble and RAF to the final-form rulemaking.

Compliance with the Provisions of the Commission’s Regulations.

Comments

IRRC noted that the Annex of the proposed regulation was not submitted in accordance with the Commission’s regulation at 1 Pa. Code § 305.1a(b) (relating to formatting the text of a proposed regulation). IRRC further noted that an agency is required under 1 Pa. Code § 307.3a(a) (relating to formatting the text of a final regulation) to use the official text of a proposed rulemaking as published in the *Pennsylvania Bulletin* when preparing the final-form regulation. Accordingly, IRRC requested that the Department indicate revisions to the Annex of the final-form regulations as required under the regulation at 1 Pa. Code § 307.3a(b).

Response

The Department used the official text of the proposed rulemaking as published in the *Pennsylvania Bulletin* to prepare the final-form rulemaking and revised the proposed rulemaking in the format prescribed in section 307.3a(b).

Cost Analysis

Comment

One commenter suggested that the Department’s cost analysis is incomplete because it included no analysis to determine the extent to which the Pennsylvania casino industry would be adversely impacted if iLottery games simulate casino-style games and the corresponding loss of revenue to the Commonwealth.

Response

The Department did not conduct a cost analysis as suggested by the commenter as the cost analysis required by the rulemaking process requires the Department to identify the costs and financial and economic impact of the regulation. The final-form regulation establishes the requirements for iLottery games as authorized by the act. As a result, no analysis was conducted of the hypothetical situation posed by the commenter.

§ 876.2. Definition of “drawing”

Comment

IRRC stated that the definition of “drawing” contained substantive provisions regarding timing and methods to

conduct a drawing. IRRC requested that the Department move substantive provisions to a section of the final-form regulation, establishing how drawings are conducted, since substantive provisions in a definition are not enforceable.

Response

The Department removed the substantive provisions from the definition of “drawing” and incorporated those provisions into subsections 876.2c(f) and (g) (relating to categories of iLottery games) in the final-form regulation.

§ 876.2. *Definition of “lotto game”*

Comment

IRRC requested that the Department clarify the terminology used to describe a lotto game in the final-form regulation because it was unclear whether a player chooses only numbers or may choose numbers, letters or symbols.

Response

The Department revised the definition of “lotto game” in the final-form rulemaking to clarify that a player may choose letters, numbers or symbols. Additionally, for clarification, the Department updated the examples included in the definition.

§ 876.2. *Definition of “play”*

Comment

IRRC noted that throughout the proposed regulation, the terms “chance” and “share” are only used in conjunction with the word “play” and are not used independently. IRRC requested that the Department explain the need for the inclusion of the terms “chance” and “share” or, in the alternative, to delete those two terms in the final-form regulation.

Response

The definition of “play” includes the terms “chance” and “share” because these terms are used throughout the Bureau’s regulations, as they relate to various traditional lottery products offered by the Bureau. Since these terms are codified in the State Lottery Regulations or are used and defined in individual game rules published in the *Pennsylvania Bulletin*, the Department determined it should not attempt to define those terms individually in this final-form regulation. Instead, where appropriate, the term “play” was replaced with the phrase “play, chance or share” in the final-form rulemaking to demonstrate that the terms are interchangeable.

§ 876.9(b)(1). *iLottery terms and conditions*

Comment

IRRC noted that in subparagraph (vii)(B) of subsection 876.9(b)(1), the Department cited specific provisions of Title 18 of the *Pennsylvania Consolidated Statutes* which could result in the suspension or closure of a lottery account, whereas the Department only generically referred to offenses in Title 4 of the *Pennsylvania Consolidated Statutes*. IRRC requested an explanation as to why specific citations under Title 4 were not included or, in the alternative, to provide specific citations.

Response

The Department revised subparagraph (vii)(B) in the final-form regulation to remove the generic reference to Title 4 and replace it with the specific sections in Title 4 which establishes criminal conduct.

Comment

IRRC identified a typographical error in subparagraph (xi) of subsection 876.9(b)(1) in the cross-reference to Section 876.2(c) and requested that the Department correct the error in the final-form regulation.

Response

The Department corrected the typographical error to cite to section 876.2c in the final-form regulation.

Comment

IRRC pointed out that subparagraph (xvii) of subsection 876.9(b)(1) referred to “funds” instead of “moneys” and requested that the correct terminology be used in the final-form regulation.

Response

The Department agreed that the term “funds” should be replaced with the term “moneys.” The change was made in the final-form regulation.

§§ 876.10a(4) and 876.12(e) *Registered iLottery player lottery account requirements; Prizes*

Comment

IRRC noted the use of the term “Department” in subsections 876.10a(4) and 876.12(e) instead of the term “Bureau.” IRRC requested that the correct terminology be used in the final-form regulation.

Response

The Department determined that the term “Department” should remain and that the term “Bureau” should be added in the aforementioned sections for purposes of consistency and clarity. Both “Department” and “Bureau” should be included as a registered iLottery player is likely to have interactions with both the Department and the Bureau in matters related to lottery account requirements and tax withholding.

§ 876.12(f) *Prizes*

Comment

IRRC noted the use of the clause “[p]rize winning plays will be determined” in subsection 876.12(f) and asked whether the Department intended to address both prizes and winning plays.

Response

The Department only intended to address winning plays in this section. As such, the phrase “prize winning plays” was replaced with the defined term “winning plays.”

Fiscal Impact

The Department determined that the amendments in this final-form rulemaking will generate revenue for the Commonwealth and will have no adverse fiscal impact on the Commonwealth. The iLottery features established by the regulations, such as lottery accounts and iLottery games, will increase revenue for the State Lottery Fund by creating more ways for the Bureau to interact with and engage lottery players, by providing registered iLottery players with an easy way in which to reinvest their lottery winnings and by providing registered iLottery players with new products and services. The increase in revenue will be used to provide benefits to Pennsylvanians 65 years of age and older.

The Department estimates that the cost to State government to implement the regulations will be approximately \$19.5 million in fiscal year 2019-2020 and approximately \$20.7 million each fiscal year thereafter. That

estimate includes the following costs related to the operation and administration of iLottery: vendor costs, including software and services needed to comply with the statutory and regulatory requirements; costs associated with lottery personnel; operating costs (such as leased building costs, electricity, heat and other utilities) and advertising costs. The Department estimates that profits from iLottery will be between \$40 million and \$50 million each fiscal year.

Paperwork

This final-form rulemaking will require minimal paperwork for the public or the Commonwealth. Registration for and participation in iLottery and the iLottery self-exclusion process for registered iLottery players, including the required forms, are completed online.

Effective Date

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

Sunset Date

The regulations are scheduled for review within 5 years of publication. No sunset date has been assigned.

Contact Person

The contact person for this final-form rulemaking is Maria L. Miller, Office of Chief Counsel, Department of Revenue, P.O. Box 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 23, 2019, the Department submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 2242, to IRRC and the Chairpersons of the House and Senate Committees on Finance 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 documentation. In preparing the final-form rulemaking, the Department 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 January 30, 2020 the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 31, 2020 and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations 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), known as the Commonwealth Documents Law, and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The amendments are necessary and appropriate for the administration and enforcement of the act.

Order

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

(a) The regulations of the Department in 61 Pa. Code Chapter 876 are amended by adding §§ 876.1, 876.2, 876.2a, 876.2b, 876.2c, 876.2d, 876.4, 876.5, 876.6, 876.7, 876.8, 876.9, 876.10, 876.10a, 876.11, 876.11a, 876.11b,

876.12, 876.12a, 876.13, 876.14, 876.14a, 876.15, 876.16, 876.17, 876.18, 876.19 and 876.20 to read as set forth in Annex A.

(*Editor’s Note:* Section 876.3 is reserved in this final-form rulemaking.)

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

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

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

C. DANIEL HASSELL,
Secretary

(*Editor’s Note:* See 50 Pa.B. 1001 (February 15, 2020) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 15-460 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 61. REVENUE

PART V. STATE LOTTERIES

CHAPTER 876. iLOTTERY

§ 876.1. Scope.

This chapter establishes procedures for the notification of iLottery game rules, iLottery registration and participation requirements, lottery account requirements and iLottery self-exclusion requirements.

§ 876.2. Definitions.

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

Bonus money—Credit issued to a registered iLottery player that does not have a cash value, but which can be converted to a predetermined cash value as further detailed in § 876.14a (relating to withdrawals from a lottery account).

Bureau—The Pennsylvania State Lottery created to administer and operate the lottery by order of the Executive Board.

Cash-out games—A type of iLottery game in which the registered iLottery player is given the option to end the game early for a predetermined amount of money.

Drawing—The process of selecting the numbers, letters or symbols that determine the winning numbers, letters or symbols or the outcome of an iLottery game or an individual play, chance or share.

Fixed payouts—The numbers and amounts of prizes established for an iLottery game, regardless of how many plays, chances or shares are sold.

iLottery—A system that provides for the distribution of lottery products through numerous channels that include, but are not limited to, web applications, mobile applications, mobile web, tablets and social media platforms that allow a registered iLottery player to interface through a portal for the purpose of obtaining lottery products and ancillary services, such as account management, game purchase, game play and prize redemption.

iLottery game—

(i) Internet instant games and other lottery products offered through iLottery.

(ii) The term does not include games that represent physical, Internet-based or monitor-based interactive lottery games which simulate casino-style lottery games, specifically including poker, roulette, slot machines and blackjack.

*Instant win game—*A type of iLottery game in which the result of a play, chance or share is the display of numbers, letters or symbols indicating whether a prize has been won. Unlike Internet instant games, no reveal is required to determine whether a prize has been won.

*Internet instant game—*A lottery game of chance in which, by the use of a computer, tablet computer or other mobile device, a registered iLottery player purchases a play, chance or share with the result of a play, chance or share being a reveal on the device of numbers, letters or symbols indicating whether a lottery prize has been won according to an established methodology as provided by the Bureau.

*Lottery account—*An account established by an individual with the Bureau that shall be used to register for iLottery and to participate in iLottery. A lottery account may be used to purchase or use lottery products, to participate in lottery promotions and second chance drawings and for lottery communications.

*Lottery products—*Plays, shares or chances offered by the Bureau as well as lottery property that may be exchanged for plays, shares or chances. The term includes any lottery game or lottery product authorized by the Secretary and offered by the Bureau under the act of August 26, 1971 (P.L. 351, No. 91) (72 P.S. §§ 3761-301—3761-315), known as the State Lottery Law, or act 42 of 2017 (P.L. 419, No. 42) (4 Pa.C.S. §§ 501—505 (relating to lottery)) such as instant tickets, terminal-based tickets, raffle games, play-for-fun games, lottery vouchers, subscription services and gift cards.

*Lotto game—*A type of iLottery game in which a registered iLottery player chooses “X” numbers, letters or symbols from a field of “Y” numbers, letters or symbols. The field of “Y” numbers, letters or symbols is established by the Bureau. To win, a registered iLottery player matches a designated combination of numbers, letters, symbols, or a specified combination thereof, with the winning numbers, letters or symbols randomly drawn by the Bureau. Examples of lotto games include Powerball and MegaMillions® and similar games in which multiple “Y” numbers, letters or symbols are chosen from a single set of numbers, letters or symbols.

*Numbers game—*A type of iLottery game in which a registered iLottery player chooses “X” numbers, letters or symbols from multiple fields of “Y” numbers, letters or symbols. The player must choose whether to purchase a straight play or a box play. In straight play, the numbers, letters or symbols are matched in the same order as the winning numbers are drawn by the Bureau. In box play, the numbers, letters or symbols match all of the winning numbers drawn by the Bureau, but in any order. Examples of numbers games include Pick 4 and Pick 5 and similar games in which “Y” numbers, letters or symbols are chosen from multiple sets of numbers, letters or symbols.

*Pari-mutuel—*A prize structure in which the total available prize pool or pool is split between all winners at a particular prize level or levels.

*Play—*An opportunity, for a predetermined price, to participate in an iLottery game. May also be referred to as a chance or a share.

*Prize or lottery prize—*The item or money that can be won in each iLottery game as determined by the prize structure for that iLottery game. A prize or lottery prize may also be referred to as lottery winnings in this chapter.

*Prize pool or pool—*Amount of money designated for payments of prizes for an iLottery game. The term can also mean a preset number of plays, chances or shares containing a predetermined number of winners.

*Prize tiers—*One or more different levels, amounts or types of prizes for an iLottery game.

*Progressive—*An iLottery game prize structure in which the top prize available begins with a minimum prize amount, as determined by the Bureau, which grows at a predetermined rate every time a play is purchased and then resets to the minimum prize amount whenever a top prize winning play is purchased.

*Purchase price—*The cost of a play, chance or share for an iLottery game.

*Randomizer—*A device or program that generates a random set of numbers.

*Random number generator—*A secured computerized system, which draws random numbers to determine the outcome of an individual play, chance or share or an iLottery game.

*Registered iLottery player—*An individual who creates a lottery account with the Bureau, registers for iLottery and is approved for participation in iLottery.

*Responsible gambling tools—*Settings available to a registered iLottery player through iLottery that promote responsible gambling.

*Secretary—*The Secretary of Revenue of the Commonwealth.

*Subscription services—*A payment, advance payment or promise of payment for multiple lottery products over a specified period of time, including payment through iLottery.

*Top prize—*The highest prize available to be won in an iLottery game.

*Traditional lottery products—*Lottery products offered by the Bureau under 61 Pa. Code Chapters 801—875 (relating to State Lotteries).

*Winning play—*A play, chance or share that has been validated by the Bureau and qualifies for a prize.

*Winning numbers—*The numbers, letters or symbols selected in a particular iLottery game that have been validated by the Bureau and are used to determine the winning plays for that particular iLottery game.

§ 876.2a. Lottery products available through iLottery.

The Secretary shall authorize and determine the availability of lottery products through iLottery and for purchase using a lottery account.

§ 876.2b. Traditional lottery products.

(a) The Secretary may authorize the sale of traditional lottery products through iLottery and for purchase using a lottery account.

(b) Traditional lottery products delivered through a lottery account may be delivered to a registered iLottery player electronically or in a form and manner determined by the Bureau.

(c) Traditional lottery products offered through iLottery are governed by applicable regulations and corresponding notices published in the *Pennsylvania Bulletin*, unless otherwise noted by the Bureau in the notice for the applicable traditional lottery product.

§ 876.2c. Categories of iLottery games.

(a) In addition to traditional lottery products, the Secretary may authorize and the Bureau may offer categories of iLottery games which include the following types of iLottery games:

- (1) Numbers games.
- (2) Instant win games.
- (3) Lotto games.
- (4) Internet instant games.
- (5) Cash-out games.

(b) The outcomes of iLottery games or plays, chances or shares of iLottery games may be determined on demand or at a predetermined date and time established by the Secretary.

(c) The outcomes of iLottery games or plays, chances or shares of iLottery games may be determined by one or more of the following methods:

- (1) Randomizer.
- (2) Random number generator.
- (3) Drawing.

(d) Prize structures for iLottery games may include one or more of the following:

- (1) Pari-mutuel.
- (2) Prize tiers.
- (3) Progressive.
- (4) Fixed-payout.
- (5) Prize pool or pools.

(e) Categories of iLottery games may contain any combination of the characteristics described in subsections (a)—(d) and (g).

(f) A drawing may be conducted by a mechanical device using balls, a random number generator, a randomizer or by using any other method authorized by the Secretary.

(g) The outcome of an iLottery game may be determined on demand or at a predetermined date and time as established by the Secretary.

§ 876.2d. iLottery game rules by category of game offered.

For each category of iLottery game authorized under §§ 876.2a, 876.2b and 876.2c (relating to lottery products available through iLottery; traditional lottery products; and categories of iLottery games), the Secretary will publish a notice in the *Pennsylvania Bulletin* with the following minimum information, as applicable:

- (1) iLottery game type or types under §§ 876.2b(c) and 876.2c(a).
- (2) Definitions.
- (3) Whether the outcome of the iLottery game or plays, chances or shares of the iLottery game is determined on

demand or at a predetermined date and time established by the Secretary under §§ 876.2b(c) and 876.2c(b).

(4) How the outcome or winning numbers of the iLottery game or play, chance or share are determined under § 876.2c(c).

(5) Prize structure of the iLottery game under § 876.2c(d).

(6) Purchase price or range of purchase prices for a play, chance or share of the iLottery game.

(7) Availability.

(8) Other relevant information as established by the Secretary.

§ 876.3. (Reserved).

§ 876.4. iLottery game description.

The Secretary will post an iLottery game description on the Bureau's iLottery web site and the Bureau's mobile application for each iLottery game, with the following minimum information:

- (1) The name of the iLottery game.
- (2) The purchase price or range of purchase prices of a play, chance or share for the iLottery game.
- (3) The chances of winning the iLottery game and the prizes which can be won.
- (4) iLottery game instructions.
- (5) The existence of a finalist, grand prize, second chance or other offering, if applicable, and the procedure for the conduct of the same, if applicable.

(6) If applicable, the existence of a bonus game, a mini-game or a game within a game, the instructions for conduct of the same and the chances of winning the bonus game, mini-game or game within a game and the prizes which can be won.

(7) Other information necessary for the conduct of the iLottery game.

§ 876.5. Price.

The purchase price of a play, chance or share for each iLottery game will be included in the iLottery game description for each game, as provided for under § 876.4 (relating to iLottery game description).

§ 876.6. Governing law.

(a) By registering to participate in iLottery, the registered iLottery player agrees to comply with and abide by Federal and State law, this chapter, the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions) and final decisions of the Secretary.

(b) Revenues generated by iLottery games will be apportioned as provided by 4 Pa.C.S. § 503(f) (relating to iLottery authorization) and section 3761-311 of the State Lottery Law (72 P.S. § 3761-311) regarding disposition of funds.

§ 876.7. General provisions.

(a) An individual shall establish a lottery account and register for iLottery as provided for under § 876.10 (relating to iLottery registration and participation) to purchase a play, chance or share or to purchase lottery products using a lottery account.

(b) An individual shall accept, consent, acknowledge and agree to be legally bound by the iLottery terms and conditions as provided for under § 876.9 (relating to

iLottery terms and conditions) to register for iLottery, to purchase a play, chance or share through iLottery and to purchase lottery products using a lottery account.

(c) An individual shall be located in this Commonwealth to purchase a play, chance or share.

(d) An individual shall be 18 years of age or older to register for iLottery, to purchase a play, chance or share or to purchase lottery products using a lottery account.

§ 876.8. Applicability.

This chapter applies to iLottery and the sale of plays, chances or shares through iLottery and the purchase of lottery products using a lottery account, as offered and administered by the Department and the Bureau.

§ 876.9. iLottery terms and conditions.

(a) The terms and conditions for the establishment of a lottery account and for the registration and participation in iLottery will be published in the *Pennsylvania Bulletin* and will be known as the iLottery terms and conditions.

(1) Amendments to the iLottery terms and conditions will be published in the *Pennsylvania Bulletin*.

(2) The iLottery terms and conditions will be available on the Bureau's iLottery web site and other locations as established by the Secretary.

(b) The iLottery terms and conditions for the establishment of a lottery account and for registration and participation in iLottery will include all of the following:

(1) Acknowledgment, consent, agreement and acceptance by the individual to all of the following:

(i) Confirmation by the Bureau of the applicant's age and identity.

(ii) The use of a mechanism by the Bureau to detect the physical location of a registered iLottery player in compliance with 4 Pa.C.S. § 503(h)(1) (relating to iLottery authorization).

(iii) The terms of the end user license agreement for the software and terms and conditions of any third-party services used for the implementation and operation of iLottery and the provision of iLottery games.

(iv) The monitoring and recording by the Department or the Bureau of any iLottery communications and geographic location information.

(v) The jurisdiction of the Commonwealth to resolve disputes arising out of the conduct of iLottery.

(vi) Any moneys remaining on deposit in the registered iLottery player's lottery account as abandoned and unclaimed property if the registered iLottery player has not logged into the lottery account using their username and password in more than 3 years.

(vii) The registered iLottery player's lottery account may be suspended or closed for reasons established by the Secretary, including any of the following:

(A) Violations of the iLottery terms and conditions as provided for under this chapter.

(B) The registered iLottery player has been charged with or convicted of an offense under 18 Pa.C.S. §§ 4106, 5111, 5512—5514, 4 Pa.C.S. § 1518 or § 3905 or conspiracy to commit offenses under 18 Pa.C.S. § 903, or equivalent crimes under Federal law or the law of another state.

(C) A self-exclusion request under § 876.16 (relating to self-exclusion from iLottery).

(D) The application of a responsible gambling tool by a registered iLottery player, as described in the iLottery terms and conditions, which limits the ability of the registered iLottery player to log into the lottery account.

(E) Other reasons as established by the Secretary.

(viii) Other terms and conditions that may apply related to registration and participation in iLottery.

(ix) Lottery winnings are subject to Federal and State withholding taxes and prizes awarded to the registered iLottery player will be reduced by the amount of withholding required under applicable law.

(x) Lottery winnings are subject to certain deductions as required by law and prizes awarded to the registered iLottery player will be reduced by any amount required to be deducted under applicable law.

(xi) To receive certain prizes, as identified and described in the iLottery game rules provided for under § 876.2c (relating to categories of iLottery games) or iLottery game descriptions as provided for under § 876.4 (relating to iLottery game description) or promotional prize notices provided for under § 811.41 (relating to promotional prizes), the registered iLottery player may be required to take additional measures to claim a prize, including to appear in person at a specified Bureau claim center.

(xii) Use of electronic communications to establish a lottery account, for iLottery registration, communications regarding the lottery account and other communications related to iLottery as determined by the Bureau.

(xiii) Ability of the registered iLottery player to use the responsible gambling tools available through iLottery.

(xiv) Ability of the registered iLottery player to self-exclude from iLottery and the extent to which the self-exclusion applies to use of the registered iLottery player's lottery account.

(xv) Methods by which moneys or credits may be deposited and under what circumstances moneys or credits may be deposited into the registered iLottery player's lottery account.

(xvi) Moneys or credits deposited and held in the registered iLottery player's lottery account do not earn interest.

(xvii) Methods by which moneys or credits may be withdrawn and under what circumstances moneys or credits may be withdrawn from the registered iLottery player's lottery account.

(xviii) Reporting of suspected fraudulent or unlawful activity related to the operation of iLottery.

(xix) Dispute resolution procedures related to iLottery.

(xx) Information provided to the Department or Bureau during the establishment, use, access or closure of the registered iLottery player's lottery account is true and correct.

(xxi) Methods by which a registered iLottery player may purchase lottery products as a gift or for the benefit of another person.

(xxii) iLottery game rules as described in § 876.2d (relating to iLottery game rules by category of game offered) and iLottery game descriptions in § 876.4.

(xxiii) Terms and conditions for iLottery promotions as provided for under § 876.17 (relating to iLottery promotional prizes).

(xxiv) Information related to subscription services as provided for under § 876.19 (relating to subscription services).

(2) Rules and obligations applicable to the registered iLottery player, other than rules of individual games, including all of the following:

(i) Prohibition against allowing another individual to access or use the registered iLottery player's lottery account.

(ii) Prohibition against purchasing a play, chance or share unless the registered iLottery player is physically located in this Commonwealth.

(iii) Prohibition against using automated computerized software or other equivalent mechanisms to engage in iLottery. Nothing in this section shall prohibit the use of adaptive technologies by registered iLottery players with a disability as defined in the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213).

(iv) Prohibition against participation in iLottery by an individual under 18 years of age.

(v) Prohibition of an individual who self-excluded from iLottery from participating in iLottery.

(vi) Prohibition against purchasing a play, chance or share or receiving a prize if the registered iLottery player is:

- (A) An officer or employee of the Bureau.
- (B) A spouse, child, brother, sister or parent residing as a member of the same household as an officer or employee of the Bureau.
- (C) An officer or employee of a contractor or subcontractor who is directly involved in the operation of iLottery or the provision of iLottery related services.
- (D) A spouse, child, brother, sister or parent residing as a member of the same household as an officer or employee of a contractor or subcontractor who is directly involved in the operation of iLottery or the provision of iLottery related services.

(3) Any other terms and conditions the Secretary deems necessary and relevant for the conduct of iLottery.

§ 876.10. iLottery registration and participation.

(a) An individual may not participate in iLottery without first creating a lottery account and registering to participate in iLottery through the Bureau as described in this chapter.

(b) A registered iLottery player agrees to be bound by the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions).

(c) To establish a lottery account and register for iLottery, an individual shall provide the following information:

- (1) The individual's name as it appears on a valid government-issued identification or tax documents.
- (2) The individual's date of birth.
- (3) The entire or last four digits of the individual's Social Security Number, or comparable equivalent.
- (4) The individual's address.
- (5) The individual's telephone number.
- (6) The individual's e-mail address.

(7) Any other information as established by the Secretary to be necessary to verify the age and identity of the individual.

(d) An individual may be required to provide additional information or documentation, as set forth in the iLottery terms and conditions as provided for under § 876.9, to establish a lottery account or register for iLottery. The information may be used for iLottery registration or to confirm information provided by that individual during the registration process.

(e) The lottery account will require a username and password.

(f) Access to the lottery account and participation in iLottery is limited to the registered iLottery player.

(g) An individual will be prohibited from establishing a lottery account and from registering for iLottery if one or more of the following occurs:

- (1) The Department is unable to verify the age of the individual.
- (2) The Department is unable to verify the identity of the individual.
- (3) The individual fails to agree to the iLottery terms and conditions as provided for under § 876.9.
- (4) The information provided to the Bureau is false or misleading.
- (5) Other reasons set forth in the iLottery terms and conditions as provided for under § 876.9.

(h) A registered iLottery player may not purchase a play, chance or share or purchase lottery products using a lottery account if the Bureau is unable to verify that the registered iLottery player is physically located within the geographical borders of this Commonwealth.

(i) An individual may not open, access, maintain or otherwise use more than one lottery account for participation in iLottery. This does not prohibit a registered iLottery player who closes a lottery account from reopening the lottery account or creating a new account, as applicable, at a later date.

(j) An individual may not register or attempt to register for iLottery using more than one lottery account.

(k) By establishing a lottery account and registering for iLottery, a registered iLottery player agrees that all communications related to the establishment and use of the lottery account may be through electronic communications. All electronic communications from the Bureau may be directed to a registered iLottery player based on the lottery account information provided by the registered iLottery player and verified by the Bureau.

(l) An individual must create a lottery account and register for iLottery through the Bureau's iLottery web site or the Bureau's mobile application.

(m) A lottery account may be closed by the registered iLottery player at any time.

(n) A registered iLottery player's lottery account information may be retained by the Bureau to prevent another individual from using the same lottery account information to open a different lottery account.

(o) To close the registered iLottery player's lottery account, the registered iLottery player is required to contact the Bureau. The Bureau may require the registered iLottery player to confirm lottery account information prior to closing the lottery account.

§ 876.10a. Registered iLottery player lottery account requirements.

A registered iLottery player is subject to all of the following:

(1) The end user license agreement or agreements for software used in the provision of iLottery.

(2) The terms and conditions of any third-party service providers used in the provision of iLottery, including electronic payment processors, electronic payment transmitters and financial institutions.

(3) The confirmation of the individual's age and identity.

(4) To at all times provide true and correct information to the Department and the Bureau during the establishment, access, use or closure of the registered iLottery player's lottery account.

(5) The continuous monitoring and recording of information communicated and transactions conducted through iLottery, including electronic communications.

(6) The use of a mechanism by the Bureau to detect the physical location of the registered iLottery player in compliance with 4 Pa.C.S. § 503(h)(1) (relating to iLottery authorization).

(7) The registered iLottery player's lottery account may be suspended or closed for any of the following reasons:

(i) Violations of the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions).

(ii) A self-exclusion request under § 876.16 (relating to self-exclusion from iLottery and responsible gambling tools).

(iii) The application of a responsible gambling tool which limits access to the registered iLottery player's lottery account as set forth in the iLottery terms and conditions as provided for under § 876.9.

(iv) The determination that the registered iLottery player has been charged with or convicted of an offense under 18 Pa.C.S. §§ 4106, 5111 and 5512—5514, 4 Pa.C.S. § 1518 or § 3905 or conspiracy to commit offenses under 18 Pa.C.S. § 903, or equivalent crimes under Federal law or the law of another state.

(v) Other reasons as established by the Secretary.

(8) The registered iLottery player's use of iLottery and software or third-party services used by the Bureau in the provision of iLottery shall comply at all times with all applicable statutes, regulations and the iLottery terms and conditions as provided for under § 876.9.

(9) The iLottery privacy policy, available on the Bureau's iLottery web site and on the Bureau's mobile application.

§ 876.11. Purchase and prize restrictions.

(a) Individuals must be at least 18 years of age or older to register for iLottery or to purchase a play, chance or share.

(b) A registered iLottery player shall be located within the geographical boundaries of this Commonwealth to purchase a play, chance or share.

(c) A play, chance or share may not be purchased by and a prize may not be awarded to the following:

(1) An officer or employee of the Bureau.

(2) A spouse, child, brother, sister or parent residing as a member of the same household as an officer or employee of the Bureau.

(3) An officer or employee of a contractor or subcontractor who is directly involved in the operation of iLottery or the provision of iLottery related services.

(4) A spouse, child, brother, sister or parent residing as a member of the same household as an officer or employee of a contractor who is directly involved in the operation of iLottery or the provision of iLottery related services.

(d) A registered iLottery player is prohibited from cancelling the purchase of a play, chance, share or lottery product.

§ 876.11a. Methods to fund a lottery account.

(a) A registered iLottery player shall deposit moneys or credits in the lottery account prior to purchasing a play, chance or share or purchasing other lottery products using a lottery account.

(b) The Secretary will determine the methods by which a registered iLottery player may fund a lottery account and purchase lottery products. The Bureau will describe those methods in the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions).

(c) Methods for funding a lottery account may include the following:

(1) A registered iLottery player's credit card or debit card, including prepaid cards.

(2) Gift cards, as authorized by the Secretary and issued by the Bureau.

(3) Player cards, as authorized by the Secretary and issued by the Bureau.

(4) Automated clearing house transfers.

(5) Bonus money, credits or promotional prizes issued by the Bureau.

(6) Prizes received from a winning play.

(7) Payment processors or payment transmitters.

(8) Any other method authorized by the Secretary.

(d) The Secretary may establish conditions of purchase applicable to credit card and debit card transactions, such as daily deposit limits.

(e) The Secretary may establish a minimum deposit amount.

§ 876.11b. Lottery account moneys and credits.

(a) Moneys or credits deposited into a registered iLottery player's lottery account may be used to purchase plays, chances or shares and lottery products, as authorized by the Secretary and offered by the Bureau.

(b) Moneys or credits deposited and held in a registered iLottery player's lottery account will not earn interest.

(c) Moneys or credits remaining on deposit in a registered iLottery player's lottery account will be considered abandoned and unclaimed property if the registered iLottery player has not logged into the lottery account using their username and password for more than 3 years.

§ 876.12. Prizes.

(a) Prizes may be awarded by check, draft or electronically through the registered iLottery player's lottery account or other means as authorized by the Secretary and offered by the Bureau.

(b) The Bureau will report taxable prizes and events to relevant taxing authorities based on established statutory thresholds.

(c) The Commonwealth and its agents, officers and employees shall be discharged of liability upon award of a prize.

(d) Prizes will be reduced by required tax withholding and any deductions for outstanding liabilities as required by law, including those set forth in § 876.14 (relating to deductions required by law).

(e) A registered iLottery player may be prohibited from accessing a prize until the Department or the Bureau determines whether there are outstanding liabilities that must be deducted from the prize, including those set forth in § 876.14.

(f) Winning plays will be determined based on the iLottery game rules as established in § 876.2d (relating to iLottery game rules by category of game offered) and by the data recorded by the Bureau on its system or systems of record.

§ 876.12a. Prize claims.

(a) The Bureau will generate applicable tax forms for reportable gambling and lottery winnings as required by State and Federal laws and regulations.

(b) The Bureau may use lottery account information provided by a registered iLottery player and verified by the Bureau to generate applicable tax forms for reportable gambling and lottery winnings.

(c) The Bureau may require a registered iLottery player to complete a claim form and to submit it in person at a claim center designated by the Bureau.

(d) A prize requiring the completion of a claim form will not be credited to the registered iLottery player's lottery account until a properly completed claim form is submitted to and accepted by the Bureau.

(e) If a registered iLottery player fails to complete a claim form as required by this section, the prize money will be retained for payment to the registered iLottery player for 1 year after the prize is won. If a claim form is not completed within that period, the ability to claim the prize will expire and the prize money will be used consistent with the State Lottery Law (72 P.S. §§ 3761-301—3761-315).

§ 876.13. Withholding.

Federal and State withholding taxes will be withheld by the Bureau from prize payments as required by law.

§ 876.14. Deductions required by law.

In addition to any withholding required by Federal and State law, the Department will deduct amounts from prizes as required by law, including those amounts required under:

- (1) 23 Pa.C.S. § 4308 (relating to lottery winnings intercept).
- (2) 72 P.S. § 215 regarding lottery winnings intercept.

§ 876.14a. Withdrawals from a lottery account.

(a) A registered iLottery player may withdraw moneys from the registered iLottery player's lottery account.

(b) The Secretary may require a minimum balance in the registered iLottery player's lottery account prior to authorizing a withdrawal.

(c) The Bureau shall not be required to grant a withdrawal request immediately. A withdrawal request from a registered iLottery player's lottery account may be delayed for reasons consistent with this chapter and as set forth in the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions).

(d) A registered iLottery player may be required to provide the Bureau with information to verify the details of a withdrawal request before the withdrawal request from the registered iLottery player's lottery account is processed.

(e) A registered iLottery player shall be prohibited from withdrawing bonus money from the registered iLottery player's lottery account where the registered iLottery player fails to convert bonus money into cash in conformance with the promotional terms and conditions issued under §§ 811.41 and 876.17 (relating to promotional prizes; and iLottery promotional prizes).

(f) A registered iLottery player may request that a withdrawal from the registered iLottery player's lottery account be credited to any payment type authorized by the Secretary and offered by the Bureau.

(g) The Bureau may make adjustments to a registered iLottery player's lottery account if the Bureau determines that moneys or bonus moneys are mistakenly credited to a registered iLottery player's lottery account.

(h) The Bureau will deduct the purchase price of a lottery product from a registered iLottery player's lottery account following the purchase of a lottery product.

§ 876.15. Termination of a game.

The Secretary may terminate an iLottery game at any time and without notice.

§ 876.16. Self-exclusion from iLottery and responsible gambling tools.

(a) A registered iLottery player may request self-exclusion from iLottery under this section.

(b) A registered iLottery player may request self-exclusion through the registered iLottery player's lottery account or through other means authorized by the Secretary and offered by the Bureau.

(c) A registered iLottery player may select from the predetermined periods of self-exclusion authorized by the Secretary and offered by the Bureau.

(d) During a period of self-exclusion, a self-excluded, registered iLottery player may not purchase plays, shares or chances, deposit moneys into the registered iLottery player's lottery account, or otherwise participate in iLottery and iLottery promotions prior to the conclusion of the self-exclusion period.

(e) During a period of self-exclusion, a registered iLottery player elects not to receive e-mails or other communications about iLottery.

(f) The Bureau may require a registered iLottery player to verify any of the following lottery account information to request self-exclusion:

- (1) The individual's name as it appears on a valid government-issued identification or tax documents.
- (2) The individual's date of birth.

(3) The entire or last four digits of the individual's Social Security Number or comparable equivalent.

(4) The individual's address.

(5) The individual's telephone number.

(6) The individual's e-mail address.

(7) Any other information as established by the Secretary to be necessary to verify the age and identity of the individual.

(g) To request self-exclusion, a registered iLottery player must:

(1) Acknowledge and agree that self-exclusion is requested voluntarily.

(2) Acknowledge and agree that self-exclusion applies to iLottery but may apply to other lottery products, promotions and drawings as set forth in the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions).

(3) Acknowledge and agree to waive and release the Commonwealth and its agents and employees from all liability relating to the processing and enforcement of self-exclusion.

(h) A self-excluded, registered iLottery player shall be prohibited from logging into the registered iLottery player's lottery account using their username and password until the self-exclusion period expires.

(i) A self-excluded, registered iLottery player may request the release of moneys in the registered iLottery player's lottery account as set forth in the iLottery terms and conditions as provided for under § 876.9.

(j) The self-exclusion period will become effective immediately upon submission and verification of the request.

(k) A request for self-exclusion is irrevocable.

(l) At the conclusion of any period of self-exclusion, a self-excluded, registered iLottery player must contact the Bureau to reinstate the registered iLottery player's lottery account.

(m) The Bureau may offer responsible gambling tools applicable to iLottery and the purchase of lottery products through a lottery account as set forth in the iLottery terms and conditions provided for under § 876.9.

(n) During any period of self-exclusion or through the use of responsible gambling tools, a registered iLottery player may be prohibited from participating in second chance drawings, promotions offered by the Bureau and marketing communications from the Bureau.

§ 876.17. iLottery promotional prizes.

The Secretary may authorize iLottery promotions and issue the terms and conditions related thereto under this chapter and § 811.41 (relating to promotional prizes).

§ 876.18. Agent promotion programs.

Agent incentive and marketing promotion programs may be implemented at the discretion of the Secretary. Funds for the programs, if needed, will be drawn from the Lottery Fund.

§ 876.19. Subscription services.

(a) The Bureau may offer subscription services for lottery products as authorized by the Secretary.

(b) The subscription services will be governed by the iLottery terms and conditions as provided for under § 876.9 (relating to iLottery terms and conditions).

(c) Details of subscription services purchased through iLottery will be available electronically through a registered iLottery player's lottery account.

§ 876.20. Confidential information.

The following information about a registered iLottery player is confidential, exempt from being disclosed and will be maintained by the Bureau:

(1) The individual's last name.

(2) The individual's address.

(3) The individual's telephone number.

(4) The individual's financial information.

(5) The individual's self-exclusion information.

(6) The individual's Social Security Number or comparable equivalent.

(7) Information related to the individual's use of responsible gambling tools.

(8) The individual's play history, including information related to wins and losses.

(9) The individual's play tendencies.

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