

RULES AND REGULATIONS

Title 7—AGRICULTURE

MILK MARKETING BOARD

[7 PA. CODE CH. 143]

Transactions Between Dealers and Producers; Termination of Dealer—Producer Contract

The Milk Marketing Board (Board) amends §§ 143.31 and 143.33 (relating to written notice required; and individual variations) and deletes § 143.32 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 301 of the Milk Marketing Law (act) (31 P.S. § 700j-301) gives the Board the authority to “supervise, investigate and regulate the entire milk industry of this Commonwealth, including the . . . purchase and sale of milk . . . in this Commonwealth, and including the establishment of reasonable trade practices. . . .” Section 307 of the act (31 P.S. § 700j-307) gives the Board the authority to adopt and enforce regulations necessary or appropriate to carry out the provisions of the act.

Purpose and Explanation

This is an amendment extending the current 28-day notice requirement to terminate a dealer-producer relationship to 90 days. It also provides for waivers to address situations where a 90-day notice would financially imperil a milk dealer.

At the beginning of March 2018 approximately 27 independent dairy farmers in this Commonwealth received termination notices from the milk dealer purchasing their milk. These producers received 90 days’ notice that their agreements would be terminated, yet many had difficulty finding new markets. One purpose of the amendment is to provide additional time for dairy farmers to find an alternative market when they lose their current market.

In the case of the 27 producers that received notices in March 2018, their dealer could not, from a financial and economic standpoint, continue to purchase their milk. The exceptions to the 90-day notice requirement in the amendment are intended to provide a shorter notice period in the case of a dealer’s financial hardship, business loss or catastrophic event. The exceptions also provide for a dealer to make a charitable donation of packaged milk and maintain its purchasing agreement with a producer.

The amendment is intended to provide additional time to producers in a manner that minimizes adverse impact on milk dealers.

Description of Proposed Amendments

Section 143.31(a) is amended to increase the required notice period for dealers to terminate a dealer-producer purchasing agreement from 28 days to 90 days. Carried over from the current regulation is the requirement that dealers provide the reasons for termination in the notice; providing the reasons for termination provides producers an opportunity to correct any issues under their control as they attempt to find a new market for their milk.

The proposed version of subsection (a) also required producers to give 90 days’ notice to terminate a dealer-producer relationship. This requirement has been removed from this final-form rulemaking. As evidenced by past milk marketing conditions, and due to current and foreseeable milk marketing conditions, 28 days is sufficient time for a dealer to acquire any milk necessary to make up for the loss of a producer or producers.

The payment provision is also carried forward in a modified manner to account for the extended notice period. The time period provides that producers who may be searching for a new milk market receive income as they search.

Subsection (c) is added to provide an exception to the 90-day notice requirement for dealers in “financial distress.” Financial distress is determined objectively by calculating the dealer’s Ohlson O-Score. The O-Score was developed in the 1980s using financial information from over 2,000 companies. It is generally considered to be more accurate than its predecessor, the Altman Z-Score, which was developed in the 1960s using information from just 66 companies. The O-Score was selected as the primary objective metric for determination of dealer financial distress because of its reliability (consistent results over time) and validity (accurate results over time) in financial accounting since 1980. It is a result of a 9-factor linear combination of business-related ratios readily obtained through milk dealer financial statements currently filed with the Board by milk dealers on an annual basis. The O-Score is significantly more reliable than its predecessors as it was derived from a study of over 2,000 companies; it has over 90% accuracy. The O-Score provides an accurate determination of dealer financial distress to be used in a review of dealer applications for waiver of the 90-day producer termination notice requirement.

“Necessary documentation” is defined in the regulation and includes reports already filed annually with the Board. “Necessary documentation” is the Balance Sheet and Statement of Operations found in the Milk Dealer’s Financial Statement (PMMB-60), and the Statement of Cash Flows which is prepared annually with a dealer’s financial statements.

Subsection (d) is added as an objective backup to address cases of potential dealer financial distress that are not captured in the O-Score.

Subsection (e) is added to provide an exception to the 90-day notice requirement for dealers not in financial distress but which lose customers or sales, or both, resulting in potential financial distress if required to continue to make producer purchases for which there is no customer for the packaged milk.

Subsection (f) was included in the proposed form to provide an opportunity for milk dealers with producer milk purchase obligations in excess of customer sales to make a charitable donation of the associated excess packaged milk rather than to terminate producers. This section was not intended to limit or affect other charitable contributions that milk dealers make. As the Board drafted this final-form rulemaking it decided that charitable-related contributions should be addressed in the context of a complete review of charitable contributions. The Board concluded that this final-form rulemaking is not the place to undertake such a review and has deleted this section from this final-form rulemaking.

Subsection (g) is added to provide an exception to the 90-day notice requirement when a dealer suffers a sudden and large scale (“catastrophic”) event affecting its ability to handle, process or sell/deliver packaged milk products.

Subsection (h) is added to clarify when the exceptional 28-day notice requirement begins.

Subsections (i) and (k) are added to clarify that the notice period does not apply when contracts between dairy farmers and their cooperatives, and producers and dealers, respectively provide for a different notice requirement.

Proposed subsection (k), now subsection (j), is added because a common issue raised by producers who received termination notices in March 2018 was that they did not know who to contact for assistance. The Board will develop through industry contacts a list of government agencies and non-governmental organizations that provide services and assistance to address issues faced by producers who are losing a market and who want to find a new market. Dealers will be able to download the list from the Board’s web site to include with termination notices. Any person, including producers, will be able to independently access the list as well.

Section 143.32 is deleted. As milk marketing conditions have changed and evolved, and continue to change and evolve, there is a likelihood that a producer may be selling some of its milk to a dealer while also processing, packaging and selling its own milk at its farm. At one time, exempting those producers from receiving notice may have been appropriate, but the Board has determined that current conditions are such that these producers should receive the same notice as other producers.

Public Comments

The Board received comments from the Pennsylvania Association of Milk Dealers (PAMD) and the Independent Regulatory Review Commission (IRRC).

The Board deleted two provisions in this final-form rulemaking. First, the Board deleted the requirement that producers provide a 90-day notice to dealers when producers want to terminate a contract. The Board deleted this provision for two main reasons: (1) no party requested this provision; and (2) milk marketing conditions are, have been and are anticipated to continue to be such that dealers can replace producer milk in 28 days or less if a producer terminates its contract with a dealer. Second, the Board removed § 143.31(f) regarding charitable donations. The Board concluded that charitable donations should be addressed in a separate regulation. The Board concluded that keeping regulations involving charitable donations together in one regulation is more logical and would be best for the industry, as opposed to requiring the regulated community to search for regulations related to charitable donations throughout the *Pennsylvania Code*. Comments regarding the 90-day producer notice and subsection (f) related to charitable donations will not be further addressed.

Based on comments from IRRC and PAMD the Board provided additional detail in the Regulatory Analysis Form (RAF) and made changes to Annex A.

Regarding § 143.31(a), based on IRRC comments, the Board clarified that payment from dealers to producers would be due by the 20th day of the month following actual termination; this would essentially mirror the provision in the existing regulation and there was no request to change it. Similarly, the Board carried forward the requirement in the current regulation that dealers

provide reasons to producers when producers are terminated. No change to this provision was requested, and it has been used and followed by dealers since 1978 with no issue.

The Board added additional detail to the RAF regarding the definition of “necessary documentation” in subsection (c). “Necessary documentation” is defined in the regulation and consists of items already filed each year with the Board by dealers. In developing the regulation, the Board attempted to minimize any additional requirements for dealers. Based on IRRC comments, the Board added detail regarding notification requirements to the regulation and described those additions in the RAF. The regulation maintains the existing 28-day notice requirement for dealers to terminate a contract in cases of financial hardship as determined by the objective measures found in the regulation.

The Board added detail to the RAF regarding the requirements of subsection (k), now subsection (j). When producers are terminated, they have many questions and concerns. The Board added this section to ensure that producers received information regarding resources to assist them with their questions and concerns when they receive a termination notice from a dealer. The information will be available on the Board’s web site at mmb.pa.gov at any time for any interested individual to download.

PAMD commented, and IRRC suggested the Board address, that the proposal to enlarge the notice period from 28 days to 90 days exceeds the Board’s authority. PAMD based its comment on section 404(1) of the Milk Marketing Law (31 P.S. § 700j-404(1)). As the Board interprets section 404(1), that section is expressly not applicable to a milk dealer terminating a contract; inclusion in section 404(1) of the phrase “. . . except where the contract has been lawfully terminated. . .” establishes that.

Section 404(1) applies to situations where a dealer rejects “without either reasonable cause, or reasonable advance notice, milk delivered or made available. . . in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated[.]” Section 404(1) defines “reasonable advance notice” as not less than 14 days nor more than 45 days in the absence of an express or implied term in the contract specifying a longer period. However, section 404(1) does not provide a definition of “lawfully terminated” or “reasonable cause.” The legislature, by including the phrase “except where the contract has been lawfully terminated” left it to the Board’s discretion to adopt regulations regarding the lawful termination of a contract, just as the legislature left to the Board’s discretion to adopt regulations regarding “reasonable cause” to reject producer milk.

The legislature expressly provided a standard for reasonable advance notice to reject producer milk. If the legislature had meant that reasonable notice standard to apply to lawfully terminating a contract, the legislature would have either expressly said so, or not included in section 404(1) the phrase “except where the contract has been lawfully terminated.” Therefore, the Board adopted § 143.31 to provide direction regarding the notice period required to terminate a contract. Similarly, the Board adopted § 143.44 to provide direction regarding reasonable cause to reject producer milk. The milk marketing conditions that were present in 1978 when the Board adopted existing § 143.31 have changed. Therefore, the Board has concluded that it is necessary to amend

§ 143.31 to recognize those changed conditions and provide for a 90-day notice period for a dealer to terminate a dealer-producer relationship.

Based on IIRC and PAMD comments, the Board clarified that any notice required by the regulation to be given by dealers to producers shall be made by certified mail return receipt requested and filed simultaneously with the Board. This clarification is important and necessary because the period of notice begins when a producer receives the notice. The notice period begins on the date of delivery, or the date of first attempted delivery, whichever is earlier. PAMD also suggested that provision be made for hand delivery or express delivery. To maintain consistency and reduce potential for confusion regarding effective dates of notice, the Board is not providing for hand delivery or express delivery in this final-form rulemaking.

IIRC commented that the Board should explain the reasonableness of the 10-business day period to perform the analyses required in subsections (c), (e) and (f). The 10-business day period was chosen to account for the possibility that the two employees who would perform the analysis would be on vacation or otherwise unable to complete the analysis more quickly. As of the drafting of this preamble the Board has a total of 15 employees and there are no opportunities to cross-train additional employees to perform the analysis. The Board also anticipates that dealers contemplating terminating producers under an exception to the 90-day notice requirement will be in contact with the Board for a sufficient time prior to petitioning for an exception to plan for the unlikely, but potential unavailability of the Board employees who would perform the analysis. In practice the analysis and notice of approval/disapproval from the Board to the dealer and producers should take less than five business days.

IIRC suggested that the regulation be revised to explicitly provide for dealer notice under subsections (c), (d), (e) and (f). IIRC also suggested that the regulation be revised to explicitly provide that the Board would notify dealers and affected producers of its decision under those sections. These changes were made to this final-form rulemaking submission.

IIRC asked if a plant shut down or slow down should be considered “catastrophic” in the same category as a massive fire or tornado damage and whether it would be more appropriate to include such an event as a separate exception to the notice requirement. The Board relied on the definition of “catastrophic” found in Google’s English dictionary as provided by Oxford Languages (<https://www.google.com/search?q=catastrophic+definition>) as “involving a sudden and large-scale alteration in state.” A sudden plant shut down or slow down would thus be “catastrophic” and it is not possible to define every circumstance that may lead to a sudden shut down or slow down. Since it is not possible to define every circumstance that may lead to a sudden shut down or slow down, the Board concluded that a separate exception would not be appropriate.

IIRC also suggested that the Board take into account the Federal Worker Adjustment and Retraining Notification (WARN) Act (29 U.S.C.A. §§ 2101–2109) when it prepared this final-form rulemaking. Producers do not fall within the criteria of the WARN Act.

IIRC and PAMD commented that subsection (h), now subsection (g) in this final-form rulemaking, could potentially have the effect of turning a 28-day notification

period into a 43-day notification period. The Board understands this possibility and its impact on dealers. The Board has weighed the potential effects on dealers and producers. Given the nature of milk markets and the difficulty producers can have finding new markets, the nature of the producer-dealer relationship and the relative general financial conditions of producers and dealers, the Board concluded that the 28-day notice should begin upon the Board’s approval of the request for exemption from the 90-day requirement. The Board also considered, and took into account, that Board staff would in most cases complete its analysis and notify affected dealers and producers in less than 10 business days of its decision on an exemption petition. The required analysis can be completed by one Board employee; only in cases where both Board employees qualified to perform the analysis are not able to due to vacation, illness, and the like, will the analysis potentially take longer than 5 business days.

In determining the fiscal impact, the Board has noted that the costs associated with purchasing milk are different for each dealer and are based on many factors, such as utilization, location, monthly milk price, and volume purchased. In the RAF, the Board determines the fiscal impact based on the January 2021 simple average of minimum value due from 15 Class I processing dealers to producers. January 2021 was chosen because it is the most recent month for which the Board has audited data. The Board uses a simple average because weighting the average based on any factor would potentially materially mis-state the illustrative amount due from any dealer by mis-weighting any particular factor as it applies to any specific dealer. This regulation will basically apply only to Class I processors and their independent producers and the 15 Class I processing dealers that comprise the cross-section are used for this example purchase the majority of independent producer milk.

IIRC suggested that the Board clarify where the subsection (k), now subsection (j), list of resources to be provided by dealers with termination notices could be found. The Board will maintain this list on its web site, as provided in this final-form rulemaking. This final-form rulemaking is also changed based on IIRC’s suggestion to refer to this list in subsection (a).

Based on an IIRC comment the “=” before “0.285Y” in subsection (c) was changed to a “+.”

Based on an IIRC comment § 143.32 is now marked “(Reserved),” instead of being bracketed, to denote its deletion.

Based on an IIRC comment the Board included in this final-form rulemaking a change to § 143.33 to remove the reference to deleted § 143.32.

Based on an IIRC comment the phrase “include, but not limited to” has been changed to “including” in § 143.31(f)(1).

Fiscal Impact

The proposed amendments will have little fiscal impact on the Commonwealth, its political subdivisions or the public.

Exceptions to the amended 90-day notice requirement that would allow milk dealers to essentially provide the current 28-day notice requirement would not be effective for up to 10 business days after a dealer requests the exception. Therefore, there is the possibility that a dealer may be required to purchase producer milk for up to 10 business days longer under the amendment than dealers are currently required. The cost associated with

purchasing milk is different for each dealer and is based on many factors, including, but not limited to, utilization, location, monthly milk price and volume purchased. Given the uncertainties, a precise quantification of this impact is not possible, but at a minimum could be as much as \$14,000.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 1, 2019, the Board submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 3606 (July 13, 2019) to IRRC and to the Chairs of the House and Senate Committees on Agriculture and Rural Affairs for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5(a)(j.2)), on June 16, 2021, 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 June 17, 2021, and approved this final-form rulemaking.

Contact Person

Interested persons may obtain information regarding this final-form rulemaking by contacting Doug Eberly, Chief Counsel, Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110, ra-pmmb@pa.gov, within 30 days after publication in the *Pennsylvania Bulletin*. Individuals who require this information in a different format may call the Board at (717) 787-4194 or the Pennsylvania Hamilton Relay Service for TDD Users at (800) 654-5984.

Findings

The Board finds that:

(1) Public notice of the intention to adopt these final-form regulations 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), known as the Commonwealth Documents Law, and the regulations promulgated thereunder in 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) The regulation is necessary and appropriate for the administration of the act.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 7 Pa. Code Chapter 143, are amended by amending §§ 143.31 and 143.33 and deleting § 143.32 to read as set forth in Annex A.

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

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

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

ROBERT N. BARLEY,
Chairperson

(Editor's Note: See 51 Pa.B. 3680 (July 3, 2021) for IRRC's approval order.)

Fiscal Note: Fiscal Note 47-18 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 143. TRANSACTIONS BETWEEN DEALERS AND PRODUCERS

TERMINATION OF DEALER—PRODUCER CONTRACT

§ 143.31. Written notice required.

(a) No dealer shall terminate its contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer except by giving such producer at least a 90-day written notice before termination. No producer shall terminate its contract or purchasing agreement or ordinary continuance of a previous course of dealing with a dealer except by giving such dealer at least a 28-day written notice before termination. The period of notice shall begin when the producer or dealer receives the notice. The dealer shall specify in such notice the reasons for termination, shall include the list of agencies and organizations required by section (j), and shall pay in full the producer whose contract has been terminated by the 20th day of the month following actual termination. If a dealer petitions for a shorter notice period under subsections (c), (d), (e) and (f), the notice to the producer must inform the producer that the dealer is petitioning for the shorter notice period, this notice must be provided simultaneously to the Board, and this notice shall be sent by certified mail return receipt requested to affected producers and the Board with notice effective no later than on the first date of attempted delivery. If a dealer petitions for a shorter notice period under subsections (c), (d), (e) or (f), the Board shall notify the dealer and affected producers by certified mail return receipt requested within 10 business days of receiving from the dealer the information required by the respective clause its decision to either approve or disapprove the petition.

(b) Repetitions of the causes set forth in § 143.44 (relating to rejection of producer's milk) may, however, cause termination of the contract without the requisite notice.

(c) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day written notice if the dealer is in financial distress. "Financial distress" means an Ohlson O-score of 0.5 and higher. The dealer's Ohlson O-score shall be calculated as follows:

$$O = -1.32 - 0.407 \log(TA_t / GNP) + 6.03 TL_t / TA_t - 1.43 WC_t / TA_t + 0.0757 CL_t / CA_t - 1.72X - 2.37 NI_t / TA_t - 1.83 FFO_t / TL_t + 0.285Y - 0.521 (NI_t - NI_{t-1}) / (|NI_t| + |NI_{t-1}|)$$

Where

TA = total assets

GNP = Gross National Product price index level found at (<https://fred.stlouisfed.org/series/A001RG3A086NBEA>)

TL = total liabilities

WC = working capital = (current assets) - (current liabilities)

CL = current liabilities
 CA = current assets
 X = 1 if TL > TA, 0 otherwise
 NI = net income after taxes
 FFO = cash flow from operating activities
 Y = 1 if a net loss for the last 2 years, 0 otherwise
 t = most recent year data
 t-1 = prior year data

The Board shall complete its computation and review of the Ohlson O-score, and notify the dealer and affected producers, within 10 business days of receiving the necessary documentation from a dealer. "Necessary documentation" is the Balance Sheet and Statement of Operations found in the Milk Dealer's Financial Statement (PMMB-60), and the Statement of Cash Flows prepared annually with the dealer's financial statements.

(d) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day written notice if the dealer's Ohlson O-score is between -1.0 and 0.5 if any three of the following five solvency ratio conditions are met:

- (1) Quick ratio less than or equal to 0.6, where quick ratio = (cash on hand + accounts receivable)/current liabilities.
- (2) Current ratio less than 1.0, where current ratio = current assets/current liabilities.
- (3) Current liabilities/total equity greater than 2/3.
- (4) Total liabilities/total equity greater than 1.0.
- (5) Fixed assets/total equity greater than 3/4.

(e) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day written notice if the dealer has raw milk volumes for which there are insufficient customer sales. Raw milk volumes for which there are insufficient customer sales shall be determined as follows:

- (1) Identify sales reductions or customer losses experienced within any 90-day rolling period.
- (2) Document weekly average sales history in pounds for the customer(s) decreased volume or for the lost customer(s) based on a 26-week rolling average, or a lesser time period if such customer was a customer for less than 26 weeks or was a school(s) and the school contract was lost during the school year.
- (3) Affirm that good faith efforts were made to replace the lost sales.
- (4) If the lost sales calculated according to paragraph (2) amount to at least 40,000 pounds or 3% of raw milk receipts, whichever is less, of raw milk per week and the dealer has made the affirmation required by paragraph (3), the Board shall approve the 28 day written notice based on the dealer having raw milk volumes for which there are insufficient customer sales.
- (5) The Board shall determine if a dealer has raw milk volumes for which there are insufficient customer sales, and notify the dealer and affected producers, within 10 business days of receiving the necessary documentation from a dealer.

(f) A dealer may terminate a contract or purchasing agreement or ordinary continuance of a previous course of dealing with a producer by giving a 28-day notice if the dealer has raw milk volumes for which there is insufficient plant output due to a verifiable catastrophic event

affecting a milk plant's ability to handle, process or sell/deliver historical volumes of packaged milk products, which is reasonably expected to last beyond 28-days. Raw milk volumes for which there is insufficient plant output shall be determined as follows:

(1) Identify catastrophic event to including mechanical failure; weather-related damage; infrastructure-related damage; shut down or slow down of plant operations; government-imposed plant shutdown, partial or otherwise; or other similar catastrophic circumstance.

(2) Document weekly average plant output as measured by sales in pounds of packaged milk products prior to catastrophic event based on a 26-week rolling average.

(3) Document weekly average raw milk receipts in pounds prior to catastrophic event based on a 26-week rolling average.

(4) Document reasons, nature and extent (estimated in pounds) of reduced ability to handle, process or sell/deliver historical output of packaged milk products.

(5) Affirm that good faith efforts have been made to return to historical plant output documented under paragraph (2).

(6) Affirm that despite good faith efforts the reduction in output will last beyond 28-days.

(7) If the reduction in plant output documented in paragraph (4) amounts to at least 40,000 pounds or 3% of historical raw milk receipts in paragraph (3), whichever is less, of raw milk per week and the dealer has made the affirmations required in paragraphs (5) and (6), the Board shall approve the 28-day written notice based on the dealer having raw milk volumes for which there is insufficient plant capacity due to a catastrophic event.

(8) The Board shall determine if a dealer has raw milk volumes for which there is insufficient output due to catastrophic event and notify the dealer and affected producers within 10 business days of receiving the information required by this subsection.

(g) Any 28-day notice period as provided by this section shall commence on the day the 28-day notice is approved by the Board.

(h) If a contract between a cooperative and a member of the cooperative provides for the amount of notice required to terminate the contract, this section shall not apply.

(i) Notwithstanding subsection (a), a producer and dealer may contract for either more or less than a 90-day notice period to terminate a contract or purchasing agreement. Subsection (a) shall apply when the contract, purchasing agreement or ordinary continuance of a previous course of dealing between a producer and dealer does not contain a termination provision.

(j) The Board shall maintain and make available on its web site a current list of government agencies and nonprofit organizations which are available to assist producers who receive a termination notice. The termination notice shall not be considered received by the producer unless it includes this list.

§ 143.32. (Reserved).

§ 143.33. Individual variations.

Nothing in § 143.31 (relating to written notice required) shall prohibit a contract or agreement providing

for a longer period of notice, or severing a relation between dealer and producer by mutual agreement on shorter period of notice.

[Pa.B. Doc. No. 21-1224. Filed for public inspection July 30, 2021, 9:00 a.m.]

Title 40—LIQUOR

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 5]

Cleaning of Malt or Brewed Beverage Dispensary Systems

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), amends § 5.51 (relating to cleaning of malt or brewed beverage dispensing systems) to read as set forth in Annex A.

Summary

The Board amends its regulations regarding the cleaning of malt or brewed beverage dispensing systems, which delivers what is commonly known as “draft beer.” In this amendment, the frequency of dispensary system cleaning is decreased from every 7 days to every 14 days. The amendment also clarifies that every licensee using such a dispensary system for selling malt or brewed beverages (beer)—including but not limited to limited wineries, limited distilleries and distilleries—is subject to this regulation.

A dispensing system begins with beer that is stored in a keg. Pressurized gas enters the keg and forces the beer up and into a plastic hose, whose length it travels until it reaches a faucet. The beer waits in the plastic hose until the faucet is opened, whereupon the beer is poured into a container. For purposes of this amendment, the dispensing system runs from the keg to the faucet.

A dispensing system is, because of its function, usually wet and located in a dark area. As a result, dispensing systems can readily harbor bacteria, yeast, mold and “beer stones,” which occur when organic compounds in the beer bind with compounds in the brewing water and form calcium oxalate, the chemical name for beer stones. Cleaning the dispensing system is necessary to prevent these items from spoiling the beer.

However, the licensee incurs costs for cleaning the dispensing system, as well as the loss of the beer that is present in the hose. Therefore it is important to find the right frequency for cleaning, so as to avoid requiring the licensee to incur unnecessary expense and avoid needless waste of beer.

The Pennsylvania Restaurant and Lodging Association (PRLA) and the Brewers of Pennsylvania (BOP) asked the Board to consider revising the cleaning frequency requirement from once every 7 days to once every 14 days. PRLA and BOP note that the Brewer’s Association, an organization of more than 5,000 United States brewery members, advocates cleaning a dispensing system every 14 days.¹ Based on this information, this amendment changes the frequency of cleaning the dispensing system from once every 7 days to once every 14 days. Licensees are still required to maintain clean dispensary systems, under

¹ <https://www.brewersassociation.org/educational-publications/draught-beer-quality-manual/>

§§ 5.51(b) and 5.54 (relating to responsibility for condition of equipment), regardless of how often the lines are cleaned.

Section 5.51(a) is amended to clarify that all licensees who use a dispensing system are subject to the regulation. The current language—“A licensee that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense”—was proposed in 2007 and finalized in 2010. At that time, Pennsylvania-licensed limited wineries, limited distilleries and distilleries did not have the authority to serve malt or brewed beverages on their licensed premises.

However, Act 39 of 2016 (P.L. 273, No. 39) gave Pennsylvania-licensed manufacturers the right to sell, for on-premises consumption, products made by other Pennsylvania-licensed manufacturers. As a result, Pennsylvania-licensed limited wineries, limited distilleries and distilleries may sell beer produced by Pennsylvania-licensed breweries for on-premises consumption. 47 P.S. §§ 5-505.2(a)(6.1) and 5-505.4(b)(1) and (c)(1). The amendment clarifies that if the Pennsylvania-licensed manufacturer serves beer through a dispensing system, the manufacturer is subject to the regulation regarding the cleaning of the dispensing system.

Affected Parties

The affected parties include any licensee that sells draft beer, including licensed restaurants, hotels and clubs, as well as licensed breweries, limited wineries, distilleries and limited distilleries. As of April 6, 2021, there were approximately 15,000 active licensees that could potentially serve draft beer.

Paperwork Requirements

This final-form rulemaking does not impose any new paperwork requirements on licensees.

Fiscal Impact

It is anticipated that the fiscal impact would be beneficial to licensees, since it will effectively halve the annual expenses of cleaning the dispensing system.

Effective Date

These regulations will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Contact Person

Questions regarding this final-form rulemaking should be addressed to Rodrigo Diaz, Chief Counsel, Jason Worley, Deputy Chief Counsel or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 28, 2020, the Board submitted a copy of the notice of proposed rulemaking, published at 50 Pa.B. 1650 (March 21, 2020) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate Committees copies of the comments received during the public comment period, as well as other documents when requested. The Board received comments from the Pennsylvania State Police, Bureau of Liquor Control Enforcement, the Pennsylvania Restaurant and Lodging Associa-

tion, the Pennsylvania Licensed Beverage & Tavern Association and IRRC. The Board has responded to each of the commenters in separate documents. In preparing the final-form rulemaking the Board has considered all comments from IRRC, the House and Senate Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 16, 2021, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective June 17, 2021.

Findings

The Board finds that:

(1) Public notice of intention to adopt the administrative 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

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

Order

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

(a) The regulations of the Board, 40 Pa. Code Chapter 5, are amended by amending § 5.51 to read as set forth in Annex A.

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

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

TIM HOLDEN,
Chairperson

(Editor’s Note: See 51 Pa.B. 5680 (July 3, 2021) for IRRC’s approval order.)

Fiscal Note: 54-101. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter D. SANITARY CONDITIONS AND LIGHTING AND CLEANING OF MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

CLEANING OF MALT OR BREWED BEVERAGE SYSTEMS

§ 5.51. Cleaning of malt or brewed beverage dispensing systems.

(a) Any licensee, including but not limited to a retail licensee, a brewery, a limited winery, a limited distillery or a distillery, that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense. One licensee may not clean a malt or brewed beverage dispensing system for another licensee.

(b) The method of cleaning must leave the entire malt or brewed beverage dispensing system in a clean and sanitary condition. The cleaning method used must include cleaning the entire system with a chemical cleaning solution or other cleaning method approved by the Board. The following alternative cleaning methods have Board approval:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(c) The frequency of cleaning for the malt or brewed beverage dispensing system shall be as follows:

(1) Once every 14 days for the faucets.

(2) Once every 14 days for the dispensing lines, valves, joints, couplers, hose fittings, washers, o-rings, empty beer detectors (known as “FOBS”) and draft foam control units, except if the licensee has an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing lines. If such a system is installed and operating, the licensee shall follow the cleaning frequency and cleaning method guidelines of the system’s manufacturer.

(3) The Board may approve different cleaning frequencies.

[Pa.B. Doc. No. 21-1225. Filed for public inspection July 30, 2021, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 1001a and 1201a—1209a]

Casino Simulcasting; Fantasy Contests

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 311 and 13F06(a) (relating to general and specific powers of board; and regulations), promulgates final-form regulations governing casino simulcasting and fantasy contests in Chapters 1001a and 1201a—1209a to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

This final-form rulemaking provides Category 2, 3 and 4 casinos with the option to provide live simulcasting of horse racing and associated simulcast wagering as a gambling product in this Commonwealth. Additionally, this final-form rulemaking provides a regulatory oversight structure for the conduct of fantasy contests in this Commonwealth.

Explanation

Chapter 1001a. Casino simulcasting

Section 1001a.1 (relating to definitions) provides the relevant definitions used throughout Chapter 1001a (relating to casino simulcasting) for the conduct of casino simulcasting.

Section 1001a.2 (relating to general requirements) establishes the general requirements a Category 2, 3 or 4 casino licensee shall fulfill to obtain a casino simulcasting permit including submitting an application for a casino simulcasting permit and providing supplemental information as requested by the Board.

Sections 1001a.3 and 1001a.4 (relating to preliminary application submission review; and application processing) provide for a preliminary review of the application and processing by Board staff. Section 1001a.5 (relating to deficient applications) deals with deficient applications. Section 1001a.6 (relating to application withdrawal) provides how an applicant withdraws an application from consideration.

Section 1001a.7 (relating to casino simulcasting permit issuance and statement of conditions) establishes the criteria for the Board's issuance of a casino simulcasting permit upon a finding that the applicant fulfills each condition set by the Board and 4 Pa.C.S. Part II (relating to Pennsylvania Race Horse Development and Gaming Act) (act), is found suitably consistent with the laws of the Commonwealth and is otherwise qualified to be issued the casino simulcasting permit.

Section 1001a.8 (relating to license, registration or permitting of employees) provides for the licensing, registration or permitting of persons employed by the licensed gaming entity or licensed racing entity engaged directly in wagering-related activities at a simulcast facility.

Section 1001a.9 (relating to casino simulcasting agreements) establishes a requirement that agreements between licensed gaming entities and licensed racing entities to facilitate casino simulcasting shall be approved by the Board and the State Horse Racing Commission (Commission), and prescribes requirements for each agreement which must be present for the agreement to be effective.

Sections 1001a.10—1001a.18 provide the requirements for a casino simulcasting facility, permissible hours of operation, mandate compliance with rules of the Commission, permissible areas of wagering and wagering prohibitions, forfeiture, signage requirements restricted areas, and transmissions and displays of live races.

Sections 1001a.19 and 1001a.20 (relating to casino simulcasting accounting controls and audit protocols; and casino simulcasting record retention) address casino simulcasting accounting controls and audit protocols as well as record retention. These latter provisions provide assurances of mechanisms to audit and assure proper payments of taxes, and fairness of wagering and patron dispute resolution.

Subpart O. Fantasy Contests

Subpart O (relating to fantasy contests) establishes the regulations necessary for the Board to license fantasy contest operators who make fantasy contests available through an Internet connection and through fantasy contest terminals in licensed gaming facilities, as well as of the principals and key employees of the licensed operators. In addition, Subpart O provides rules for player accounts, licensed operator duties and restrictions, and accounting and internal controls governing the conduct of fantasy contests. Finally, Subpart O addresses advertising, compulsive and problem gambling, and self-exclusion of players from fantasy contest activities in this Commonwealth.

Subpart O establishes a broad regulatory oversight structure for fantasy contests. Section 1201a.2 (relating to definitions) provides definitions of terms used throughout Subpart O for the conduct of fantasy contests.

This final-form rulemaking establishes the categories of licensees based upon the statutory criteria for licensure in 4 Pa.C.S. Chapter 3 (relating to fantasy contests). Categories subject to licensure include fantasy contest operators

and their principals and key employees, as well as licensed gaming entities which elect to receive a fantasy contest license permitting them to operate fantasy contest terminals within the facility and gaming service providers.

Chapter 1202a (relating to application requirements) establishes the application and general requirements under which fantasy contest operators, licensed gaming entities, principals, key employees and gaming service providers shall apply to the Board for approval to participate in the regulated conduct of fantasy contests.

Chapter 1203a (relating to application process) provides for a preliminary review of the application, the processing of applications by Board staff, deficient applications, avenues for withdrawing an application from consideration, the terms and renewal periods for licenses and the registration of licensed entity representatives with the Board.

Chapter 1204a (relating to fantasy contest licenses) addresses the issuance of the fantasy contest license and the conditions placed thereon. Section 1204a.2 (relating to licensed fantasy contest operator change of ownership or control) was added to this chapter in this final-form rulemaking. The provisions of this added section provide the necessary steps that must be taken when a change in ownership or control of a licensed fantasy contest operator is contemplated. This added section and its requirements are consistent with the provisions of 4 Pa.C.S. § 327 (relating to change in ownership or control of licensed operators) and prior Board practice.

Sections 1205a.1 and 1205a.2 (relating to fantasy contests generally; and procedures to govern the conduct of fantasy contests) address the requirements for a fantasy contest and the procedures by which fantasy contests shall be operated. Section 1205a.3 (relating to fantasy contest accounts) sets forth the requirements for player fantasy contest accounts assuring age, location and identity verifications, funding of player accounts, password access, account options to restrict or limit play as elected by the player, and account withdrawal and closing procedures.

Section 1205a.4 (relating to fantasy contest licensed operator duties) imposes affirmative duties on fantasy contest operators to ensure compliance with statutory and regulatory mandates designed to assure integrity of the fantasy contests as well as safeguarding of player's information and assets. Section 1205a.5 (relating to fantasy contest licensed operator restrictions) sets forth restrictions on fantasy contest operations which provide a minimum age for players, limit the sports which can form the basis of fantasy contests, fulfill requirements that a player have established a verified account prior to play, prohibit the issuance of credit to a player and impose a host of restrictions designed to promote fairness in the play of fantasy contests. Section 1205a.6 (relating to licensed gaming entities) provides for licensed gaming entities to obtain fantasy contest terminals if desired. Section 1205a.7 (relating to record and data retention) addresses record and data retention requirements designed to enhance auditing and accountability.

Chapter 1206a (relating to accounting and internal controls) addresses the accounting and internal control requirements for fantasy contest operators. Chapter 1206a requires submission to the Board and approval prior to beginning of play.

Chapter 1207a (relating to advertising) addresses advertising of fantasy contests and provides standards to

prohibit false or misleading advertising, portraying minors in the advertisements, representing endorsements by sports prohibited from forming the basis of fantasy contest and marketing to persons on the self-exclusion list.

Chapter 1208a (relating to compulsive and problem gaming) requires signage providing information sources for individuals experiencing compulsive or problem gaming.

Chapter 1209a (relating to fantasy contest self-exclusion) establishes a self-exclusion procedure for individuals who voluntarily seek to be prohibited from playing fantasy contests. The provisions have been amended to conform with the Board's changes to the self-exclusion process done in Chapter 503a (relating to casino self-exclusion) of the Board's regulations.

Response to Comments

The Board did not receive any public comments from the regulated community or the general public. Comments were received from the Independent Regulatory Review Commission (IRRC), and responses to the comments are as follows:

Implementation procedures; Protection of the public health, safety and welfare

The Board acted with all possible due diligence in getting the final-form regulations promulgated for casino simulcasting and fantasy contests. After the passage of the act of October 30, 2017 (P.L. 419, No. 42), the Board was tasked with promulgating regulations for five separate forms of expanded gaming in rapid succession. In December 2020, Governor Tom Wolf signed the act of November 23, 2020 (P.L. 1140, No. 114), making amendments to the Fiscal Code of the Commonwealth. Act 114 of 2020 included a provision that extended the expiration date of temporary regulations of the Board from 2 years after publication to 3 years after publication. Therefore, the Casino Simulcasting temporary regulations only expired on January 6, 2021, and the Fantasy Contest temporary regulations did not expire until April 28, 2021. To date, no entities have sought to offer Casino Simulcasting under the Board's and the Commission's temporary regulations, and Fantasy Contests have seen no regulatory oversight issues.

Compliance with the Regulatory Review Act or the regulations of IRRC

All matters addressed in this comment have been remedied in the final-form Regulatory Analysis Form.

Whether the regulation is consistent with the intent of the General Assembly; Possible conflict with or duplication of statutes or existing regulations; Implementation procedures

The Board consulted with the Commission when developing the temporary regulations for Casino Simulcasting. As the proposed regulations only possessed minor amendments from the temporary regulations, the Board did not consult with the Commission when crafting the proposed rulemaking. The Commission did not provide any comments on the Board's proposed rulemaking package after it was published in the *Pennsylvania Bulletin*.

The Board, however, did contact the Commission when preparing this final-form rulemaking. Representatives of the Commission reviewed the proposed rulemaking and raised no issues with any provisions in the Board's regulations. The Board did make certain amendments in this final-form rulemaking to ensure that any reference to

Commission regulations would not be impacted by the current state of the Commission's regulations being temporary. Additionally, both the Board and Commission are satisfied that there is no risk of conflict or duplication between the provisions of this final-form rulemaking and the Commission's regulations, as it pertains to Casino Simulcasting.

§ 1001a.13. Wagering limited to simulcasting facility.—Clarity

This section is updated to reflect the correct reference to the Commission's regulations moving to Title 7 of the *Pennsylvania Code*. Additionally, clarifications were made later in the section to highlight that simulcasts of races can be visually displayed in other areas, but wagering may only take place in simulcasting facilities. Therefore, an entity that offers casino simulcasting at its licensed facility may broadcast the simulcasts of races in other areas of the casino for patrons to view, but the wagering may only occur in the formal simulcasting location in the licensed facility. As no wagering will take place by individuals watching the races broadcast outside of the simulcasting facility, the additional broadcast of these races bears no relationship to the integrity of simulcasting operations. Therefore, the requirement that the Board and Commission approve other locations in a licensed facility where the simulcast horse races may be shown was removed.

§ 1001a.19. Casino Simulcasting accounting controls and audit protocols.—Clarity

This section is amended to remove any ambiguity and document exactly what would make a submission under this section insufficient. The same amendments have also been made to § 1206a.1(h) (relating to fantasy contest accounting and internal controls).

§ 1202a.2. Fantasy contest licenses.—Legislative intent; Implementation procedures;—Clarity

This section is amended to provide clarity on the abbreviated application process by highlighting that the abbreviated application only needs to provide information that the Board does not already possess, in accordance with the act.

§ 1203a.3. Renewals;—Clarity

The term "permit" is stricken from this section and in § 1203a.2(d) (relating to application withdrawal), as no one involved in provision of fantasy contests requires a permit.

§ 1203a.4. Licensed entity representative;—Clarity

A definition for "licensed entity representative" is added to § 1201a.2. This definition is modeled after the definition of "licensed entity representative" in section 1103 of the act (relating to definitions).

§ 1205a.2. Procedures to govern the conduct of fantasy contests;—Clarity

The language requested voiding the participant's contest entry is added to subsections (b)(5) and (6). As it pertains to the 15-day ban under subsection (b)(5), that ban applies not just to the contests the individual is not eligible for, but all contests. As such the language is needed to effectuate that 15-day temporary ban from all fantasy contests. The word "all" was added to clarify that point. To bring subsection (b)(6) into conformity with 4 Pa.C.S. § 325(4.2) (relating to conditions of licensure), the temporary suspension language was deleted, as section 325(4.2) requires a permanent suspension and ban.

§ 1205a.3. *Fantasy contest accounts;—Clarity*

This section is updated to reflect the recommended change.

§ 1206a.1. *Fantasy contest accounting and internal controls;—Clarity*

This section is updated to reflect the recommended change.

§ 1209a. *Fantasy contest self-exclusion.—Legislative intent; Possible conflict or duplication of statutes and existing regulations; Implementation procedures; Protection of the public health, safety and welfare;—Clarity*

First, the language is amended to bring the fantasy contest self-exclusion procedures in Chapter 1209a in line with the amendments the Board has made to the self-exclusion procedures of Chapter 503a in final-form rulemaking # 125-225 published at 51 Pa.B. 2966 (May 29, 2021). The reason an e-mail address is requested information is because when an individual creates an online fantasy gaming account, they are required to provide their e-mail address. By gathering this information during the fantasy contest self-exclusion process, it makes the list more thorough and makes it more likely that a self-excluded individual will be prevented from opening a new fantasy contest account, and outstanding accounts with fantasy contest operators can be easily identified and closed.

Second, if an individual self-excludes under Chapter 503a, as amended by final-form rulemaking # 125-225 published at 51 Pa.B. 2966, that person is only self-excluding from gaming at licensed facilities, including retail sports wagering. If a licensed facility contains a fantasy contest terminal, the individual who self-excluded under Chapter 503a would be unable to access that fantasy contest terminal, as he or she would be prohibited from entering the licensed facility. However, an individual who chooses casino self-exclusion under Chapter 503a is not explicitly prohibited from engaging in fantasy contests online through a fantasy contest operator, as the lists under Chapters 503a and 1209a are separate self-exclusion lists. Licensed gaming entities may choose, at their own discretion, to prevent individuals who self-exclude from fantasy contests from participating in other forms of gaming.

Third, the Board's self-exclusion process allows an individual to self-exclude from multiple forms of gaming simultaneously if he or she wishes to do so. For example, if an individual wants to self-exclude from fantasy contests and interactive gaming so as to not have 24/7 access to gaming, but still wants to be able to visit brick-and-mortar casinos, they may choose to do so. Both the online portal and in-person self-exclusion processes allow for this option.

Fourth, the requested language is added to require individuals to update their information with the Board.

Fifth, the link to the fantasy contest self-exclusion information and portal is required to be on the operator's responsible gaming webpage under § 1209a.2(d) (relating to fantasy contest self-exclusion procedure), and therefore, inclusion of this language in § 1208a.2 (relating to problem gambling information) would be redundant.

Sixth, individuals who choose to avail themselves of the fantasy contest self-exclusion process are required to identify as a problem gambler. The Board's Office of Compulsive and Problem Gambling determined that having a self-exclusion period for less than 1 year would be inconsistent with the entire purpose of self-exclusion.

Additionally, all other forms of gaming in this Commonwealth have a minimum self-exclusion period of 1 year, making the 1-year minimum for fantasy contests consistent with Board precedent.

Miscellaneous clarity

Section 1001a.19(f)(2) is updated to reflect the recommended change.

The definition of "applicant" in § 1201a.2 is consistent with the definition in the act, and therefore was not amended.

Section 1204a.1(a) (relating to fantasy contest license issuance and statement of conditions) is updated to reflect the recommended change.

Section 1207a.1(a) (relating to fantasy contest advertising) is updated to reflect the recommended change.

Section 1209a.4(b) (relating to duties of fantasy contest licensees) is updated to reflect the recommended change.

Fiscal Impact

Commonwealth. The Board expects that this final-form rulemaking will have a very minimal fiscal impact on the Board and other Commonwealth agencies, which primarily is the result of the need for some additional personnel to process applications and review, as well as to monitor and regulate the conduct of fantasy contests. Most of the additional duties will be absorbed by existing Board staff. The costs of the final-form regulations will be paid for by an assessment against the licensed fantasy contest operators' fantasy contest adjusted revenue as determined by the Department of Revenue.

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

Private sector. This final-form rulemaking will not have a fiscal impact on the private sector other than for those who elect to participate in fantasy contests by an eligible fantasy contest operator.

If pursued, there will be licensing costs as set forth by 4 Pa.C.S. Chapter 3. Otherwise, additional costs to operators will likely be negligible since fantasy contests are currently operated in other regulated jurisdictions or in unregulated jurisdictions. Any costs incurred to operate fantasy contests in this Commonwealth should be offset by the operator proceeds of the fantasy contests.

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

Paperwork Requirements

A Category 2, 3 or 4 casino licensee that wishes to offer casino simulcasting at its facility will be required to file a petition with the Board providing information regarding the proposed simulcasting area and equipment, security and surveillance, as well as updated accounting and internal control protocols. In addition, applications for licensure for any individuals to conduct and oversee the simulcast wagering will be submitted to the Board, either in paper form or electronically.

A fantasy contest licensed operator, licensed gaming entity, gaming service provider, and principals and key employees thereof involved in the provision of fantasy contests in this Commonwealth will be required to file applications with the Board providing information regarding the person's proposed activity, as well as accounting and internal control protocols and background information of each individual sufficient to permit the Board to determine the individual's suitability for licensure.

If an individual wishes to join the fantasy self-exclusion list, the person may do so online on the Board's web site by filling out a webform. The Board's self-exclusion web site address is <https://responsibleplay.pa.gov/self-exclusion/>.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 5, 2019, the Board submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 7414 (December 21, 2019) to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board is required to submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees, and the public. With regard to this final-form rulemaking, no comments were received from the Committees.

Under section 5a(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 19, 2021, 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 May 20, 2021, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments 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), 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) This final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part I (relating to amusements generally and Part II.

Order

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

(1) The regulations of the Board, 58 Pa. Code Chapters 1001, 1001a, 1201—1209 and 1201a—1209a, are amended by deleting §§ 1001.1—1001.20, 1201.1, 1201.2, 1202.1—1202.6, 1203.1—1203.5, 1204.1, 1205.1—1205.7, 1206.1, 1207.1, 1208.1, 1208.2 and 1209.1—1209.5 and adding 1001a.1—1001a.20, 1201a.1, 1201a.2, 1202a.1—1202a.5, 1203a.1—1203a.4, 1204a.1, 1204a.2, 1205a.1—1205a.7, 1206a.1, 1207a.1, 1208a.1, 1208a.2 and 1209a.1—1209a.5 to read as set forth in Annex A.

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

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

DAVID M. BARASCH,
Chairperson

(*Editor's Note:* For IRRC's approval order, see 51 Pa.B. 3210 (June 5, 2021).)

Fiscal Note: Fiscal Note 125-226 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart M. CASINO SIMULCASTING

CHAPTER 1001. (Reserved)

Sec.
1001.1—1001.20. (Reserved).

CHAPTER 1001a. CASINO SIMULCASTING

- Sec.
1001a.1. Definitions.
1001a.2. General requirements.
1001a.3. Preliminary application submission review.
1001a.4. Application processing.
1001a.5. Deficient applications.
1001a.6. Application withdrawal.
1001a.7. Casino simulcasting permit issuance and statement of conditions.
1001a.8. License, registration or permitting of employees.
1001a.9. Casino simulcasting agreements.
1001a.10. Simulcasting facilities.
1001a.11. Hours of operation.
1001a.12. Rules of Commission.
1001a.13. Wagering limited to simulcasting facility.
1001a.14. Prohibition of wagering.
1001a.15. Forfeited winnings.
1001a.16. Signage requirements.
1001a.17. Restricted areas.
1001a.18. Transmission and display of live races.
1001a.19. Casino simulcasting accounting controls and audit protocols.
1001a.20. Casino simulcasting record retention.

§ 1001a.1. Definitions.

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

Casino simulcasting—The simultaneous transmission of live thoroughbred or harness horse race meetings from an in-State sending track, out-of-State sending track or a satellite facility, regardless of licensure status or whether the horse race meetings originate in this Commonwealth or any other state or jurisdiction, to a simulcasting facility in this Commonwealth by satellite devices, television cables, television lines or any other telecommunications technology for the purposes of conducting pari-mutuel wagering.

Casino simulcasting permit or simulcasting permit—A permit awarded by the Board under section 13F12 of the act (relating to casino simulcasting permit) which authorizes a licensed gaming entity to conduct casino simulcasting.

Casino simulcasting permit holder—A licensed gaming entity that holds a casino simulcasting permit issued by the Board in accordance with section 13F12 of the act.

Commission—The State Horse Racing Commission.

In-State sending track—A racetrack in this Commonwealth which is operated by a licensed racing entity and is permitted to conduct casino simulcasting.

Licensed gaming entity—A person who has been approved for and issued a Category 2 slot machine license, a Category 3 slot machine license or a Category 4 slot

machine licensed in accordance with sections 1304, 1305, 1305.1 and 1325 of the act, and who holds a casino simulcasting permit.

Licensed racing entity—A person that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from the Commission under 3 Pa.C.S. Chapter 93 (relating to race horse industry reform).

Out-of-State sending track—An interstate or international racetrack in a state or jurisdiction other than this Commonwealth which is equipped to conduct casino simulcasting and the operator of which is lawfully permitted to conduct horse race meetings and to provide simulcast horse races to slot machine licensees in this Commonwealth.

Pari-mutuel wagering—A form of wagering, including manual, electronic, computerized and other forms as approved by the Commission, on the outcome of a horse racing event in which all wagers are pooled and held by a licensed racing entity or secondary pari-mutuel wagering organization for distribution of the total amount, less the deductions authorized by law, to holders of winning tickets.

Simulcast horse race—A thoroughbred or harness horse race meeting conducted at a racetrack, whether within or outside this Commonwealth, which is simultaneously transmitted by an approved telecommunications technology to racetracks or simulcasting facilities in this Commonwealth in accordance with regulations of the Commission.

Simulcasting facility—An area of a licensed facility established and maintained by a licensed gaming entity for the conduct of casino simulcasting in accordance with this chapter, 3 Pa.C.S. Chapter 93, and regulations of the Board and the Commission.

Totalisator—A computer system used to pool wagers, record sales, calculate payoffs and display wagering data on a display device that is located at a simulcasting facility.

§ 1001a.2. General requirements.

(a) A casino simulcasting permit holder may conduct casino simulcasting in a simulcasting facility in accordance with the act and this chapter.

(b) An application for a casino simulcasting permit shall be submitted on forms or in an electronic format supplied or approved by the Board and contain all of the following information:

(1) The name, business address and contact information of the applicant.

(2) The name and location of the applicant's licensed facility.

(3) The name, business address, job title and a photograph of each principal and key employee of the applicant who will be involved in the conduct of casino simulcasting who is not currently licensed by the Board or the Commission, if known. If the principal and key employee are currently licensed by the Board, the application must specifically identify their participation in the conduct of casino simulcasting.

(4) The estimated number of full-time and part-time employment positions that will be created at the licensed facility if casino simulcasting is authorized and an updated hiring plan under section 1510(a) of the act (relating to labor hiring preferences) which outlines the appli-

cant's plan to promote the representation of diverse groups and Commonwealth residents in the employment positions.

(5) A brief description of the economic benefits expected to be realized by the Commonwealth, the Department of Agriculture and the race horse industry in this Commonwealth if casino simulcasting is authorized at the applicant's licensed facility.

(6) The details of any financing, if applicable, obtained or that will be obtained to fund an expansion or modification of the licensed facility to accommodate casino simulcasting or construct a simulcasting facility or to otherwise fund the cost of commencing casino simulcasting operations.

(7) Information and documentation concerning financial background and resources, as the Board may require, to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant.

(8) A copy of or a detailed description of the terms and conditions of any agreement the licensed gaming entity has entered into or will enter into with a licensed racing entity to facilitate the conduct of casino simulcasting.

(9) A detailed description of any financial arrangements between a licensed gaming entity and a licensed racing entity related to the conduct of casino simulcasting.

(10) Detailed site and architectural plans of the proposed simulcasting facility within the applicant's licensed facility.

(11) A statement demonstrating compliance with the Interstate Horseracing Act of 1978 (15 U.S.C.A. §§ 3001—3007).

(12) Any other information as the Board may require.

(c) Upon request of the Board or Board staff, the applicant shall cooperate and provide supplemental information in support of its application. The applicant shall provide requested documents, records, supporting data and other information within the time period specified in the request or, if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period in the request, the Board may deny the application.

(d) The application, and amendments thereto, and other specific documents designated by the Board shall be filed promptly with the Board.

(e) An application and related materials that have been submitted to the Board will become the property of the Board and will not be returned to the applicant.

§ 1001a.3. Preliminary application submission review.

(a) Upon receipt, an application will be reviewed to ensure that it contains all of the following:

(1) The applicable application forms and additional information and accompanying documentation required by the act or the Board.

(2) Completed authorization forms, if required, for release of information from governmental agencies and other entities.

(b) If an applicant fails to include any required information, the applicant will be notified and given an opportunity to cure the deficiency in accordance with § 1001a.5 (relating to deficient applications).

§ 1001a.4. Application processing.

(a) Upon a determination that the prerequisites for filing have been met, the application will be accepted for filing and Board staff, if applicable, will:

- (1) Obtain information as may be necessary to determine the qualifications of the applicant and any matter relating to the application.
- (2) Promptly conduct an investigation of the applicant and on any matter relating to the application.
- (3) Request the Department to promptly conduct a tax clearance review.
- (4) Request the Department of Labor and Industry to perform an Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review.
- (5) Request any agencies, entities or persons to provide information to the Board as deemed necessary by the Board.

(b) An application submitted under this subpart and information obtained by Board staff relating to the application will be part of the evidentiary record to be utilized by the Board when deciding to approve, condition, issue or deny a casino simulcasting permit.

§ 1001a.5. Deficient applications.

- (a) If an application is found to be deficient, Board staff will notify the applicant of the deficiencies in the application and provide an opportunity for the applicant to cure the deficiencies within a specified time period.
- (b) Failure to provide the information necessary to cure the deficiencies required under subsection (a) may result in the denial of the application.
- (c) When an application is denied under subsection (b), the applicant will be given written notice of this action.

§ 1001a.6. Application withdrawal.

A request for withdrawal of an application may be made at any time prior to the Board taking action by letter sent to the Office of Hearings and Appeals.

§ 1001a.7. Casino simulcasting permit issuance and statement of conditions.

- (a) *Issuance criteria.* In addition to the criteria in the act, the Board will not issue a casino simulcasting permit unless all of the following criteria have been established by the applicant:
 - (1) The applicant has fulfilled each condition set by the Board or in the act, including the execution of a statement of conditions.
 - (2) The applicant is found suitable consistent with the laws of the Commonwealth and is otherwise qualified to be issued a casino simulcasting permit.
- (b) *Statement of conditions.*

(1) The applicant, as a condition precedent to the issuance of a casino simulcasting permit, shall execute a Statement of Conditions in the manner and form required by the Board. Execution of the Statement of Conditions constitutes the acceptance of each provision in the Statement of Conditions by the applicant.

(2) Failure to fully comply with any provision in an executed Statement of Conditions constitutes a violation and may result in Board-imposed administrative sanctions, up to and including revocation, against a casino simulcasting permit holder.

§ 1001a.8. License, registration or permitting of employees.

Except as provided for under section 13F15 of the act (relating to key employees and occupation permits), individuals engaged directly in wagering-related activities at a simulcasting facility, whether employed by the licensed gaming entity or licensed racing entity and all other employees of the licensed gaming entity or licensed racing entity who work or will work in the simulcasting facility, shall be licensed, registered or permitted by the Board in accordance with §§ 433a.8, 435a.2, 435a.3 and 435a.5.

§ 1001a.9. Casino simulcasting agreements.

(a) An agreement between a licensed gaming entity and a licensed racing entity to facilitate casino simulcasting shall be filed with an application for a casino simulcasting permit and shall be approved by the Board and separately by the Commission. An agreement is not effective until approved by the Board and the Commission.

(b) An agreement must include all of the following:

- (1) The percentage of the money wagered each racing day at the simulcasting facility and remaining in the wagering pools after the required distributions under 3 Pa.C.S. § 9335 (relating to pari-mutuel pool distribution) that will be paid to the licensed gaming entity. The amount retained by the licensed gaming entity may not exceed 25% of the money retained by the licensed racing entity under 3 Pa.C.S. § 9335.
- (2) The times during which a licensed gaming entity may conduct casino simulcasting.
- (3) A provision that provides the grounds and mechanisms for modifying or terminating the contract upon approval by the Board and the Commission.
- (4) Provisions that contain a mechanism to resolve patron disputes and disputes between the licensed gaming entity and the licensed racing entity.
- (5) Design, implementation and amendment of the system of internal controls required under section 13F11 of the act (relating to application for permit and requirements) and this chapter including the financial reporting requirements.
- (6) Hiring, terminating, training and promoting of employees and the employment practices attendant thereto.
- (7) The payment of local, State and Federal taxes, and slot machine license deposits required under the act and this chapter and any penalties imposed by the Board for violations thereof.
- (8) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage.
- (9) Selection of the casino simulcasting permit holder's independent auditor which may be the same as the independent auditor employed by the licensed gaming entity.

§ 1001a.10. Simulcasting facilities.

- (a) A licensed gaming entity approved for and issued a casino simulcasting permit to operate casino simulcasting shall establish a simulcasting facility as part of its licensed facility.
- (b) A simulcasting facility may be adjacent to, but may not be a part of, a room or location in which slot machines or table gaming are operated or conducted.

(c) The space or area required for the establishment of a simulcasting facility may not be used to decrease the number of slot machines or table games in operations at the licensed facility or to reduce the space approved by the Board for the operation of slot machines and the conduct of table games.

(d) A casino simulcasting permit holder shall establish and maintain a simulcasting facility of sufficient square footage to promote:

(1) Efficient operation of the facility.

(2) Viewing of simulcast horse races by patrons in a manner which is not obtrusive to the conduct of gaming within the licensed facility.

(e) Security of the simulcasting facility shall include the installation and maintenance of security and surveillance equipment, including closed circuit television equipment, according to specifications approved by the Board. The Board shall have direct access to the system or its signal.

§ 1001a.11. Hours of operation.

The time during which a licensed gaming entity may conduct casino simulcasting shall be set forth in the licensed gaming entity's casino simulcasting agreement under § 1001a.9 (relating to casino simulcasting agreements).

§ 1001a.12. Rules of Commission.

Except as otherwise provided in the act or this chapter, the standards and rules of racing, simulcasting and the conduct of pari-mutuel wagering in simulcasting facilities are subject to 3 Pa.C.S. Chapter 93 (relating to race horse industry reform), regulations of the Commission promulgated under 3 Pa.C.S. (relating to Agriculture Code), and the Interstate Horseracing Act of 1978 (15 U.S.C.A. §§ 3001—3007).

§ 1001a.13. Wagering limited to simulcasting facility.

Except as provided for in 7 Pa. Code Part VIII (relating to State Horse Racing Commission), wagering on simulcast horse races within the premises of a licensed facility shall be conducted only in a simulcasting facility. Simulcast horse races may be shown in other areas of the licensed facility, but no wagering on a simulcast horse race shall take place in any area that is not a simulcasting facility.

§ 1001a.14. Prohibition of wagering.

A casino simulcasting permit holder shall establish procedures:

(1) To prohibit an individual under 21 years of age from entering a simulcasting facility at a licensed facility, except that an individual 18 years of age or older who is employed by a slot machine licensee, a gaming service provider, the Board, or other regulatory or emergency response agency may enter and remain in that area while engaged in the performance of the individual's employment duties.

(2) To train employees and establish policies to:

(i) Identify and remove individuals who are under 21 years of age and not otherwise authorized to be in the simulcasting facility.

(ii) Immediately notify a casino compliance representative at the licensed facility and the Pennsylvania State Police at a time an individual under 21 years of age is discovered in the simulcasting facility.

(iii) Refuse wagers from an individual under 21 years of age.

(iv) Deny check cashing privileges, extensions of credit, complementary goods and services, and other similar privileges and benefits to an individual under 21 years of age.

(v) Ensure that individuals under 21 years of age do not receive, either from the casino simulcasting permit holder or an agent thereof, targeted mailing, telemarketing promotions or other promotional materials relating to casino simulcasting activity as provided for under 4 Pa.C.S. Chapter 13F (relating to casino simulcasting).

§ 1001a.15. Forfeited winnings.

(a) An individual under 21 years of age may not collect in any manner or in any proceeding, whether personally or through an agent, winnings or recover losses arising as a result of any casino simulcasting activity.

(b) Winnings incurred by an individual under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

§ 1001a.16. Signage requirements.

(a) A casino simulcasting permit holder shall post signs that include a statement providing the following:

(1) "It is unlawful for any individual under 21 years of age to enter or remain in a simulcasting facility. Individuals violating this prohibition will be removed and may be subject to arrest and criminal prosecution."

(2) "If you or someone you know has a gambling problem, help is available. Call (1-800-GAMBLER)."

(b) The signs shall be prominently posted at each entrance and exit of the simulcasting facility.

§ 1001a.17. Restricted areas.

(a) A casino simulcasting permit holder who wishes to conduct casino simulcasting shall, unless otherwise approved by the Board, in consultation with the Commission, establish and maintain restricted areas, which are not accessible to the general public, including all of the following:

(1) A satellite cage in its simulcasting facility utilized for conducting pari-mutuel wagering and the counting and recording of assets.

(2) Designated areas for the placement and operation of all of the following:

(i) A totalisator system used to pool wagers, records sales, calculate payoffs and display wagering data on a display device.

(ii) Audio/video equipment utilized to receive and transmit simulcast signals.

(b) A casino simulcasting permit holder shall develop and submit to the Board, as part of the submission required under § 1001a.19 (relating to casino simulcasting accounting controls and audit protocols), procedures for safeguarding and limiting access to the totalisator system and audio/video equipment utilized to transmit simulcast signals.

§ 1001a.18. Transmission and display of live races.

(a) Video display monitors shall be installed in approved areas of a licensed facility to deliver simulcast horse race meetings to patrons on video walls or other video display technology.

(b) A casino simulcasting permit holder shall offer all of the following to patrons at a simulcasting facility:

(1) Audio and video coverage of every race upon which patrons of the simulcasting facility are permitted to wager.

(2) Video coverage of race-related information for every race upon which patrons of the simulcasting facility are permitted to wager.

(c) A simulcasting facility shall be equipped with a system permitting the reception of transmissions of races and race-related information without interference or interception.

(d) All simulcast signals shall be encoded, and a casino simulcasting permit holder may not send the signals anywhere other than the licensed facility authorized in the act or this chapter.

(e) A casino simulcasting permit holder shall develop and implement a security system to protect the equipment being used to receive transmissions of races and race-related information from tampering.

(f) If the reception of the video coverage of a race is interrupted, the audio coverage of the race must continue to be presented.

(g) If the reception of the audio coverage of the race is interrupted, the video coverage of the race must continue to be displayed.

(h) If the reception of the audio and video coverage of a race is interrupted during the running of the race, wagering being conducted on future races at the simulcasting facility shall cease until the transmissions are restored. If the interruption of audio or video coverage, or both, prevents the display of a race at the simulcasting facility, a replay of the interrupted race must be displayed at the simulcasting facility as soon after the restoration as possible.

(i) At least 30 minutes prior to the beginning of wagering at the simulcasting facility, a test of the equipment used to receive and display races and race-related information at the simulcasting facility shall be conducted to ensure that the system is operating properly.

(j) A licensed racing entity which operates interstate or international simulcasting of horse race meetings in this Commonwealth shall have discretion to transmit all or some of the live races conducted at the racetrack to the licensed facility of a licensed gaming entity which has established a simulcasting facility. A race which is transmitted from an in-State sending track may be transmitted to all licensed gaming entities which have established simulcasting facilities.

(k) A licensed gaming entity which establishes a simulcasting facility and conducts casino simulcasting shall, as a condition of continued operation of casino simulcasting, receive all live races which are transmitted by in-State sending tracks.

(l) Casino simulcasting shall be limited to the transmission and display of thoroughbred horse racing and standardbred harness racing permitted under 3 Pa.C.S. Chapter 93 (relating to race horse industry reform).

(m) The Board and the Commission shall have access to the simulcast system or its signal.

§ 1001a.19. Casino simulcasting accounting controls and audit protocols.

(a) At least 90 days before the beginning of casino simulcasting, a casino simulcasting permit holder shall submit to the Board for approval all internal control

systems and audit protocols for the casino simulcasting permit holder's casino simulcasting operations.

(b) A casino simulcasting permit holder's internal controls and audit protocols shall:

(1) Provide for reliable records, accounts and reports of any financial event that occurs in the conduct of casino simulcasting, including reports to the Board and the Commission related to casino simulcasting.

(2) Provide for accurate and reliable financial records related to the conduct of casino simulcasting and the pari-mutuel system of wagering.

(3) Establish procedures and security for the counting, recording and storage of money generated from the conduct of casino simulcasting.

(4) Establish procedures and security standards for the maintenance of telecommunications equipment and video display technology used in connection with the conduct of casino simulcasting.

(5) Establish procedures and rules to govern the conduct of casino simulcasting and the responsibility of employees related to casino simulcasting.

(6) Establish procedures for the collection, recording and deposit of revenue from the conduct of casino simulcasting, including the roles of the Commission, the Department, licensed racing entities and licensed gaming entities in the collection and recording of the revenue.

(7) Establish reporting procedures and records required to ensure that all money generated from casino simulcasting is accounted for and winners' names, when required under applicable Federal or State law, are filed with the appropriate taxing authorities.

(8) Ensure that the system of pari-mutuel wagering used in the conduct of casino simulcasting is in accordance with 3 Pa.C.S. Chapter 93 (relating to race horse industry reform) and regulations of the Commission promulgated under 3 Pa.C.S. (relating to Agriculture Code).

(9) Ensure, in consultation with the Commission, the proper and timely accounting for and retention of percentages for pari-mutuel pools and the proper and timely distribution of money in any pari-mutuel pool generated from casino simulcasting.

(10) Ensure that all functions, duties and responsibilities related to casino simulcasting are appropriately segregated and performed in accordance with sound financial practices by qualified employees.

(11) Permit use of its simulcasting facility by the Board, the Bureau, the Commission and other persons authorized by the Board and the Commission to facilitate their ability to perform regulatory and oversight functions.

(c) The submission required under subsection (a) must include a detailed description of the casino simulcasting permit holders administrative and accounting procedures related to casino simulcasting, including its written system of internal controls. Each written system of internal controls must include all of the following:

(1) An organizational chart depicting appropriate functions and responsibilities of employees involved in casino simulcasting.

(2) A description of the duties and responsibilities of each position shown on the organizational chart.

(3) The record retention policy of the casino simulcasting permit holder.

(4) The procedure to be utilized to ensure that money generated from the conduct of casino simulcasting is safeguarded, including mandatory counting and recording procedures.

(5) Other items the Board, in consultation with the Commission, may request in writing to be included in the internal controls.

(6) A statement signed by the casino simulcasting permit holder's chief financial officer or other competent person attesting that the signatory believes, in good faith, that the system satisfies the requirements of the act and this section.

(d) Prior to authorizing a casino simulcasting permit holder to begin the conduct of casino simulcasting, the Board, in consultation with the Commission, will review the system of internal controls submitted under subsection (c) to determine whether it conforms to the requirements of this subchapter and whether it provides adequate and effective controls for the conduct of casino simulcasting.

(e) If a casino simulcasting permit holder intends to make a change or amendment to its system of internal controls, it shall submit the change or amendment electronically to the Bureau of Gaming Operations, in a manner prescribed by the Bureau of Gaming Operations. The casino simulcasting permit holder may implement the change or amendment on the 30th calendar day following the filing of a complete submission unless the casino simulcasting permit holder receives written notice tolling the change or amendment in accordance with subsection (f)(2) or written notice from the Board's Executive Director rejecting the change or amendment.

(f) If during the 30-day review period in subsection (e), the Bureau of Gaming Operations, in consultation with the Commission, preliminarily determines that a procedure in a submission contains an insufficiency likely to negatively affect the integrity of casino simulcasting or the control of revenue generated from pari-mutuel wagering, the Bureau of Gaming Operations, by written notice to casino simulcasting permit holder, will:

(1) Specify the nature of the insufficiency and, when possible, an acceptable alternative procedure.

(2) Direct that the 30-calendar-day review period in subsection (f) be tolled and that any internal controls at issue not be implemented until approved.

(g) A submission under this section shall be deemed insufficient and likely to negatively affect the integrity of casino simulcasting and the pari-mutuel system of wagering if the submission:

(1) Fails to provide information sufficient to permit the review of casino simulcasting or the reconstruction of pari-mutuel wagering handle and pari-mutuel wagering pool distributions.

(2) Fails to provide for the segregation of incompatible functions so that no employee is in a position to both commit an error or perpetrate a fraud and to conceal the error or fraud in the normal course of the employee's duties.

(3) Does not include forms or other materials referenced in the submission or required under the act or this chapter.

(4) Would implement operations or accounting procedures not authorized by the act or this subpart.

(5) Is dependent upon the use of equipment or related devices or software not approved by the Board or the Commission, unless the submissions are required as part of an authorized test of the equipment or related device or software.

(h) Whenever a change or amendment has been tolled under subsection (f)(2), the casino simulcasting permit holder may submit a revised change or amendment within 30 days of receipt of the written notice from the Bureau of Gaming Operations. The casino simulcasting permit holder may implement the revised change or amendment upon receipt of written notice of approval from the Board's Executive Director, in consultation with the Commission, or on the 30th calendar day following the filing of the revision unless the casino simulcasting permit holder receives written notice tolling the change or amendment in accordance with subsection (g) or written notice from the Board's Executive Director, in consultation with the Commission, rejecting the change or amendment.

§ 1001a.20. Casino simulcasting record retention.

(a) For the purposes of this section, "books, records and documents" means any book, record or document pertaining to, prepared in or generated by the operation of the licensed facility including all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records.

(b) As a condition of continued operation, a casino simulcasting permit holder shall agree to maintain all books, records and documents pertaining to casino simulcasting in a manner and location in this Commonwealth as approved by the Board, in consultation with the Commission. All books, records and documents shall:

(1) Be organized in a manner to clearly depict by separate records the total amount of money contributed to every pari-mutuel pool in accordance with the applicable provisions of 3 Pa.C.S. Chapter 93 (relating to race horse industry reform) and any regulation promulgated under 3 Pa.C.S. Chapter 93.

(2) Be segregated by separate accounts within the licensed gaming entity's books, records and documents, except for any books, records and documents that are common to slot machine operations, table game operations and casino simulcasting, as determined by the Board, in consultation with the Commission.

(3) Be immediately available for inspection upon request of the Board, the Commission, the Bureau, the Department, the Pennsylvania State Police or the Attorney General, or agents thereof, during all hours of operation of the casino simulcasting permit holder's simulcasting facility.

(4) Prepared and maintained in a complete, accurate and legible form. Electronic data must be stored in a format that ensures readability, regardless of whether the technology or software that created or maintained it has become obsolete.

(5) Retained in a secure location in the licensed facility that is equipped with a fire suppression system or at another location approved under subsection (d).

(6) Organized and indexed in a manner to provide immediate accessibility to the Board, the Commission, the Bureau, the Department, the Pennsylvania State Police or the Attorney General, or agents thereof.

(7) Destroyed only after expiration of the minimum retention period specified in subsection (c), except that

the Board may, in consultation with the Commission, upon the written request of a casino simulcasting permit holder and for good cause shown, permit the destruction at an earlier date.

(c) Original books, records and documents shall be retained by a casino simulcasting permit holder for a minimum of 5 years.

(d) A casino simulcasting permit holder may request, in writing, that the Board's Executive Director, in consultation with the Commission, approve a location outside the licensed facility to store original books, records and documents. The request must include all of the following:

(1) A detailed description of the proposed location, including security and fire suppression systems.

(2) The procedures under which of the Board, the Commission, the Bureau, the Department, the Pennsylvania State Police or the Attorney General, or agents thereof, shall be able to gain access to the original books, records and documents retained at the location outside the licensed facility.

(e) A casino simulcasting permit holder may request, in writing, that the Board's Executive Director, in consultation with the Commission, approve the electronic copying and storage of original books, records and documents. The request must include representations regarding all of the following:

(1) The processing, preservation and maintenance methods which will be employed to ensure that the books, records and documents are available in a format which makes them readily available for review and copying.

(2) The inspection and quality control methods which will be employed to ensure that the electronic books, records and documents exhibit a high degree of legibility and readability when displayed electronically or reproduced on paper.

(3) The availability of a computer and printer for use by the Board, the Commission, the Bureau, the Department, the Pennsylvania State Police or the Attorney General, or agents thereof, at the licensed facility or other location approved by the Board, in consultation with the Commission, and the readiness with which the books, records or documents being stored electronically can be located, read and reproduced.

(4) The availability of a detailed index of all information maintained electronically and arranged in a manner to permit the immediate location of any particular book, record or document.

(f) Nothing herein shall be construed as relieving a casino simulcasting permit holder from meeting any obligation to prepare or maintain any book, record or document required by any Federal, State or local government body, authority or agency.

Subpart O. FANTASY CONTESTS

CHAPTER 1201. (Reserved)

Sec.
1201.1. (Reserved).
1201.2. (Reserved).

CHAPTER 1202. (Reserved)

Sec.
1202.1—1202.6. (Reserved).

CHAPTER 1203. (Reserved)

Sec.
1203.1—1203.5. (Reserved).

CHAPTER 1204. (Reserved)

Sec.
1204.1. (Reserved).

CHAPTER 1205. (Reserved)

Sec.
1205.1—1205.7. (Reserved).

CHAPTER 1206. (Reserved)

Sec.
1206.1. (Reserved).

CHAPTER 1207. (Reserved)

Sec.
1207.1. (Reserved).

CHAPTER 1208. (Reserved)

Sec.
1208.1—1208.2. (Reserved).

CHAPTER 1209. (Reserved)

Sec.
1209.1—1209.5. (Reserved).

Chap.

- 1201a. FANTASY CONTESTS GENERALLY
- 1202a. APPLICATION REQUIREMENTS
- 1203a. APPLICATION PROCESS
- 1204a. FANTASY CONTEST LICENSES
- 1205a. FANTASY CONTESTS
- 1206a. ACCOUNTING AND INTERNAL CONTROLS
- 1207a. ADVERTISING
- 1208a. COMPULSIVE AND PROBLEM GAMING
- 1209a. FANTASY CONTEST SELF-EXCLUSION

CHAPTER 1201a. FANTASY CONTESTS GENERALLY

Sec.
1201a.1. Scope.
1201a.2. Definitions.

§ 1201a.1. Scope.

The purpose of this subpart is to implement and govern the operation and conduct of fantasy contests in this Commonwealth as provided for in 4 Pa.C.S. Chapter 3 (relating to fantasy contests).

§ 1201a.2. Definitions.

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

Applicant—A person who, on his own behalf or on behalf of another, is applying for permission to engage in any act or activity which is regulated under this subpart. If the applicant is a person other than an individual, the Board will determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

Beginner—A participant who has entered fewer than 51 contests offered by a single licensed operator or who does not meet the definition of "highly-experienced player."

Entry fee—The cash or cash equivalent paid by a participant to a licensed operator to participate in a fantasy contest.

Fantasy contest—

(i) An online fantasy or simulated game or contest with an entry fee and a prize or award in which all of the following apply:

(A) The value of all prizes or awards offered to winning participants is established and made known to participants in advance of the contest and the value is not determined by the number of participants or the amount of any fees paid by those participants.

(B) All winning outcomes reflect the relative knowledge and skill of participants and are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events.

(C) The winning outcome is not based on the score, point spread or performance of a single actual team or combination of teams, or solely on a single performance of an individual athlete or player in a single actual event.

(ii) The term does not include social fantasy contests.

Fantasy contest account—The formal electronic system implemented by a licensed operator to record a participant's entry fees, prizes or awards and other activities related to participation in the licensed operator's fantasy contests.

Fantasy contest license—A license issued by the Board authorizing a person to offer fantasy contests in this Commonwealth in accordance with this subpart.

Fantasy contest terminal—A computerized or electronic terminal or similar device within a licensed facility that allows participants to do all of the following:

- (i) Register for a fantasy contest account.
- (ii) Pay an entry fee.
- (iii) Select athletes for a fantasy contest.
- (iv) Receive winnings.
- (v) Otherwise participate in a fantasy contest.

Highly experienced player—

- (i) Any participant who has done one of the following:
 - (A) Entered more than 1,000 fantasy contests.
 - (B) Won more than three fantasy contest prizes or awards valued at \$1,000 or more.

(ii) Once a participant is classified as a highly-experienced player, a player shall remain classified as a highly-experienced player.

Key employee—An individual who is employed by an applicant for a fantasy contest license or a licensed operator in a director or department head capacity or who is empowered to make discretionary decisions that regulate fantasy contest operations as determined by the Board.

Licensed entity representative—A person, including an attorney, agent or lobbyist, acting on behalf of or authorized to represent the interest of any applicant, licensee, or other person authorized by the Board to engage in any act or activity which is regulated under the provisions of this subpart regarding any matter before, or which may reasonably be expected to come before, the Board.

Licensed facility—

(i) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines and, if authorized by the Board, to conduct table games.

(ii) The term includes any of the following:

(A) An area of a licensed racetrack at which was previously authorized under section 1207(17) (relating to regulatory authority of board) of the act to operate slot machines prior to April 28, 2018.

(B) A Board-approved interim facility or temporary facility.

(C) An area of a hotel which the Board determines is suitable to conduct table games.

(D) An area of a licensed facility where casino simulcasting is conducted, as approved by the Board.

Licensed operator—A person who holds a fantasy contest license.

Participant—An individual who participates in a fantasy contest, whether the individual is located in this Commonwealth or another jurisdiction.

Person—A natural person, corporation, publicly traded corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association or any other form of legal business entity.

Principal—An officer, director or person who directly holds a beneficial interest in or ownership of the securities of an applicant for a fantasy contest license or a licensed operator, a person who has a controlling interest in an applicant for a fantasy contest license or a licensed operator or who has the ability to elect a majority of the board of directors of a licensed operator or to otherwise control a licensed operator, lender or other licensed financial institution of an applicant for a fantasy contest license or a licensed operator, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business, underwriter of an applicant for a fantasy contest license or a licensed operator or other person or employee of an applicant for a fantasy contest license or a licensed operator deemed to be a principal by the Board.

Prize or award—Anything of value worth \$100 or more, or any amount of cash or cash equivalents.

Publicly traded corporation—A person, other than an individual, who:

(i) Has a class or series of securities registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq).

(ii) Is a registered management company under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(iii) Is subject to the reporting requirements under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o(d)) by reason of having filed a registration statement that has become effective under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

Script—A list of commands that a fantasy contest related computer software program can execute that is created by a participant or third party not approved by the licensed operator to automate processes on a licensed operator's fantasy contest platform.

Season-long fantasy contest—A fantasy contest offered by a licensed operator that is conducted over an entire sports season.

Social fantasy contest—A fantasy contest which meets one or more of the following criteria:

(i) Nothing is offered to participants other than game-based virtual currency that cannot be redeemed for cash, merchandise or anything of value outside the context of game play.

(ii) The contest is free to all participants.

(iii) The entity offering the contest does not receive compensation other than an administrative fee for the maintenance of statistical information in connection with the contest.

(iv) The winnings offered are of no greater value than the lowest individual fee charged to a single participant for entering or participating in the contest.

(v) The contest encompasses an entire season of the activity in which the underlying competition is being conducted and the winnings offered, if any, are determined by agreement of the participants only to distribute fully the participants' contributions to a fund established to grant the winnings for the contest.

Suspicious transaction—A transaction between a licensed operator or an employee of a licensed operator and an individual that involves the acceptance or redemption by a person of cash or cash equivalent involving or aggregating \$5,000 or more which a licensed operator or employee of a licensed operator knows, suspects or has reason to believe:

(i) Involves funds derived from illegal activities or is intended or conducted to conceal or disguise funds or assets derived from illegal activities.

(ii) Is part of a plan to violate or evade a law or regulation to avoid a transaction reporting requirement under the laws or regulations of the United States or the Commonwealth, including a plan to structure a series of transactions to avoid a transaction reporting requirement under the laws of the United States or the Commonwealth.

(iii) Has no apparent lawful purpose or is not the type of transaction in which a person would normally be expected to engage and the licensed operator or employee knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

CHAPTER 1202a. APPLICATION REQUIREMENTS

Sec.

- 1202a.1. General licensing requirements.
- 1202a.2. Fantasy contest licenses.
- 1202a.3. Principals.
- 1202a.4. Key employees.
- 1202a.5. Gaming service providers.

§ 1202a.1. General licensing requirements.

A fantasy contest license holder may conduct fantasy contests in this Commonwealth in accordance with 4 Pa.C.S. Chapter 3 (relating to fantasy contests) and this subpart.

§ 1202a.2. Fantasy contest licenses.

(a) An application for a fantasy contest license shall be submitted on forms or in an electronic format supplied or approved by the Board and must contain all of the following information:

(1) The identity of the applicant as follows:

(i) If the applicant is an individual, the name, social security number, contact information and address of the applicant.

(ii) If the applicant is a corporation, the name and business address of the corporation, Federal employer identification number, the state of its incorporation, and the full name, contact information and business address of each officer and director thereof.

(iii) If the applicant is a foreign corporation, the name and business address of the corporation, whether it is qualified to do business in this Commonwealth, and the full name, contact information and business address of each officer and director thereof.

(iv) If the applicant is a partnership or joint venture, the name, contact information and business address of each officer thereof.

(2) The name and location of the applicant's licensed facility, if applicable.

(3) The name, contact information and business address of the person having custody of the applicant's financial records.

(4) The name and business address, job title, fingerprints and a photograph of each principal and key employee of the applicant who will be involved in fantasy contests and who is not currently licensed by the Board, if known. If the principal and key employee are currently licensed by the Board, the application must specifically identify their participation in offering fantasy contests.

(5) Information and documentation concerning financial background and resources, as the Board may require, to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant.

(6) A copy of any agreement or agreements the applicant has entered into or a detailed description of the terms and conditions of any agreement the applicant will enter into to facilitate the operation or conduct of fantasy contests.

(7) Any other information the Board may require.

(b) Upon request of the Board or Board staff, the applicant shall cooperate and provide supplemental information in support of its application. The applicant shall provide requested documents, records, supporting data and other information within the time period specified in the request or, if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period in the request, the Board may deny the application.

(c) The application, and amendments thereto, and other specific documents designated by the Board shall be filed promptly with the Board with the applicable application fee.

(d) An application and related materials that have been submitted to the Board will become the property of the Board and will not be returned to the applicant.

(e) An abbreviated application for a fantasy contest license by an applicant that is also a licensed gaming entity may be submitted on forms or in an electronic format supplied or approved by the Board, and the applicant shall not be required to submit the information required under subsection (a) if the applicant has previously provided the information to the Board in conjunction with a prior application to become a licensed gaming entity.

§ 1202a.3. Principals.

(a) A principal as defined in this subpart shall apply for licensure as a principal in accordance with § 433a.8 (relating to principal applications).

(b) In addition to information required under § 433a.8, an individual required to be licensed as a principal, unless otherwise directed by the Board, shall submit all of the following:

(1) The nonrefundable application fee posted on the Board's web site.

(2) A description of responsibilities as a principal.

(3) Details relating to a similar license, permit or other authorization obtained in another jurisdiction.

(4) The consent to a background investigation by the Bureau and a release to obtain the information necessary for the completion of the background investigation.

(5) Other information required by the Board.

(c) Following review of the application and background investigation, the Board may approve a principal license if the applicant has proven by clear and convincing evidence that the applicant is a person of good character, honesty and integrity, and is eligible and suitable to be licensed as a principal.

(d) A principal license is not transferable.

(e) A temporary credential, which may be valid up to 270 days, may be issued by the Board to a principal if the Board determines additional time is needed to complete an investigation for licensure.

§ 1202a.4. Key employees.

(a) A key employee as defined in this subpart shall apply for licensure as a key employee in accordance with § 435a.2 (relating to key employee license).

(b) In addition to information required under § 435a.2, an individual required to be licensed as a key employee, unless otherwise directed by the Board, shall submit all of the following:

(1) The nonrefundable application fee posted on the Board's web site.

(2) A description of employment responsibilities.

(3) The consent to a background investigation by the Bureau and a release to obtain the information necessary for the completion of the background investigation.

(4) Details relating to a similar license or other authorization obtained in another jurisdiction.

(5) Other information required by the Board.

(c) Following review of the application and background investigation, the Board may approve a key employee license if the applicant has proven by clear and convincing evidence that the applicant is a person of good character, honesty and integrity, and is eligible and suitable to be licensed as a key employee.

(d) A temporary credential, which may be valid up to 270 days, may be issued by the Board to a key employee if the Board determines additional time is needed to complete an investigation for licensure.

(e) An individual may not perform duties associated with a position that requires a key employee license prior to receiving a temporary or permanent credential unless otherwise authorized by the Board.

§ 1202a.5. Gaming service providers.

The Board may, in its discretion, require a licensed operator who is not a licensed gaming entity to apply for a certificate or registration as a gaming service provider to provide fantasy contests to, or on behalf of, a licensed gaming entity under 4 Pa.C.S. § 342 (relating to licensed gaming entities).

CHAPTER 1203a. APPLICATION PROCESS

Sec.

1203a.1. Application review and processing.

1203a.2. Application withdrawal.

1203a.3. Renewals.

1203a.4. Licensed entity representatives.

§ 1203a.1. Application review and processing.

(a) The Board will review applications submitted under this subpart to ensure compliance with 4 Pa.C.S. Chapter 3 (relating to fantasy contests) and Board regulations.

(b) If an applicant fails to include any required documentation or information, the applicant will be notified and given an opportunity to cure the deficiency.

(c) Upon a determination that the prerequisites for filing have been met, the application will be accepted for filing and Board staff, if applicable, will:

(1) Obtain information as may be necessary to determine the qualifications of the applicant and any matter relating to the application.

(2) Promptly conduct an investigation of the applicant and on any matter relating to the application, if applicable.

(3) Request the Department to promptly conduct or update a tax clearance review.

(4) Request the Pennsylvania State Police or Federal Bureau of Investigation to conduct or update a criminal history review.

(5) Request any agencies, entities or persons to provide information to the Board as deemed necessary by the Board.

(d) An application submitted under this subpart and information obtained by Board staff relating to the application will be part of the evidentiary record to be utilized by the Board when deciding to approve, condition, issue or deny a fantasy contest license.

(e) A determination as to the merit of the applicant to receive a fantasy contest license will be made within 120 days. If the license is not approved, the Board will provide the applicant with the justification for not issuing the fantasy contest license.

§ 1203a.2. Application withdrawal.

(a) A request for withdrawal of an application may be made at any time prior to the Board taking action on the application in accordance with all of the following requirements:

(1) A request for withdrawal of an entity applying for a license, certification or registration, or an individual applying for a principal license shall be made by filing a petition with the Board in accordance with § 493a.4 (relating to petitions generally).

(2) A request for withdrawal of an individual applying for a key employee license shall be made on a form supplied by the Bureau of Licensing. If Board staff objects to the request for withdrawal, the person filing the form will be notified and may be required to file a petition for withdrawal with the Board in accordance with § 493a.4.

(b) The petition or form must set forth the reasons for the withdrawal.

(c) When rendering a decision on a petition for withdrawal, the Board may set the conditions of withdrawal and may deny or grant the request with or without prejudice.

(d) Unless the Board otherwise directs, fees or other payments relating to an application, license, registration or certification are not refundable by reason of the withdrawal.

§ 1203a.3. Renewals.

(a) Licenses and registrations issued under this subpart will be for a term of 5 years from the date of issuance.

(b) An application for renewal of a license or registration shall be submitted at least 180 days prior to the

expiration of the license or registration and must include an update of the information in the initial application and any prior renewal applications.

(c) A license or registration for which an application for renewal has been timely filed will continue in effect until the Board acts upon the application for renewal.

§ 1203a.4. Licensed entity representatives.

(a) A licensed entity representative shall register with the Board in a manner prescribed by the Board. The registration must include the name, employer or firm, business address and business telephone number of the licensed entity representative and any licensed operator, applicant for licensure or other person being represented.

(b) A licensed entity representative has an affirmative duty to update its registration information on an ongoing basis. Failure to update a registration is punishable by the Board.

CHAPTER 1204a. FANTASY CONTEST LICENSES

Sec.

- 1204a.1. Fantasy contest license issuance and statement of conditions.
- 1204a.2. Licensed fantasy contest operator change of ownership or control.

§ 1204a.1. Fantasy contest license issuance and statement of conditions.

(a) *Issuance criteria.* In addition to the criteria in 4 Pa.C.S. Chapter 3 (relating to fantasy contests), the Board will issue or renew a fantasy contest license if all of the following criteria have been established by the applicant:

(1) The applicant has fulfilled each condition set by the Board or contained in 4 Pa.C.S. Chapter 3, including the execution of a statement of conditions.

(2) The applicant is found suitable consistent with the laws of the Commonwealth and is otherwise qualified to be issued a fantasy contest license.

(b) *Statement of conditions.*

(1) The applicant, as a condition precedent to the issuance of a fantasy contest license, shall execute a Statement of Conditions in the manner and form required by the Board. Execution of the Statement of Conditions constitutes the acceptance of each provision in the Statement of Conditions by the applicant.

(2) Failure to fully comply with any provision in an executed Statement of Conditions constitutes a violation and may result in Board-imposed administrative sanctions, up to and including revocation, against a licensee.

§ 1204a.2. Licensed fantasy contest operator change of ownership or control.

(a) A licensed fantasy contest operator shall notify the Board upon becoming aware of any proposed change of ownership of the licensed fantasy contest operator by a person or group of persons acting in concert which involves any of the following:

(1) more than 15% of a licensed fantasy contest operator's securities or other ownership interests.

(2) the sale, other than in the ordinary course of business, of a licensed fantasy contest operator's assets.

(3) any other transaction or occurrence deemed by the Board to be relevant to fantasy contest license qualifications.

(b) Notwithstanding the provisions of subsection (a), a licensed fantasy contest operator shall not be required to notify the Board of any acquisition by an institutional

investor under subsection (a)(1) or (2) if the institutional investor holds less than 10% of the securities or other ownership interests referred to in subsection (a)(1) or (2), the securities or interests are publicly traded securities and its holdings of such securities were purchased for investment purposes only and the institutional investor files with the Board a certified statement to the effect that the institutional investor has no intention of influencing or affecting, directly or indirectly, the affairs of the licensed fantasy contest operator. However, the institutional investor may vote on matters put to the vote of the outstanding security holders. Notice to the Board shall be required prior to completion of any proposed or contemplated change of ownership of a licensed fantasy contest operator that meets the criteria of this section.

(c) For purposes of this section, a change of control of a licensed fantasy contest operator will be deemed to have occurred when a person or group of persons acquires:

(1) more than 20% of a licensed fantasy contest operator's securities, assets or other ownership interests.

(2) more than 20% of the securities or other ownership interests of a corporation or other form of business entity that owns directly or indirectly at least 20% of the voting or other securities or other ownership interests of the licensed fantasy contest operator.

(3) any other interest in a licensed fantasy contest operator which allows the acquirer to control the licensed fantasy contest operator.

(d) A licensed fantasy contest operator shall notify the Bureau and the Bureau of licensing by filing a notification of proposed transfer of interest form immediately upon becoming aware of any proposed or contemplated change of control of the licensed fantasy contest operator.

(e) Prior to acquiring a controlling interest in an licensed fantasy contest operator, the acquirer shall file a petition in accordance with § 493a.4 (relating to petitions generally) requesting Board approval of the acquisition. The petition must include all of the following:

(1) A copy of all documents governing the acquisition.

(2) Completed applications for the acquiring company, as required under this chapter, principals and key employees.

(f) A person or group of persons seeking to acquire a controlling interest in a licensed fantasy contest operator shall promptly provide any additional information requested by the Board and Board staff and cooperate with the Bureau in any investigations related to the petition filed under subsection (c).

(g) A person or group of persons may not acquire a controlling interest in a licensed fantasy operator until the petition required under subsection (c) has been approved. A person or group of persons seeking to acquire a controlling interest in a licensed fantasy contest operator and the licensed fantasy contest operator may enter into an agreement of sale that is contingent on Board approval of the petition.

(h) The requirements in this section do not apply to the acquisition of a controlling interest in a licensed fantasy contest operator when all of the following conditions are met:

(1) The acquirer is an existing licensed fantasy contest operator.

(2) The existing licensed fantasy contest operator has provided the Bureau and the Bureau of licensing notifica-

tion and a copy of all documents governing the acquisition at least 60 days prior to the acquisition.

(3) After reviewing the documentation, the Bureau and the Bureau of licensing determine that the filing of a petition is not required.

CHAPTER 1205a. FANTASY CONTESTS

Sec.

- 1205a.1. Fantasy contests generally.
- 1205a.2. Procedures to govern the conduct of fantasy contests.
- 1205a.3. Fantasy contest accounts.
- 1205a.4. Fantasy contest licensed operator duties.
- 1205a.5. Fantasy contest licensed operator restrictions.
- 1205a.6. Licensed gaming entities.
- 1205a.7. Record and data retention.

§ 1205a.1. Fantasy contests generally.

A fantasy contest licensee may offer a fantasy contest only under all of the following conditions:

(1) The value of all prizes or awards offered to winning participants is established and made known in advance of the fantasy contest.

(2) The value of the prize or award is not determined by the number of participants or the amount of fees paid by the participants.

(3) The winning outcome reflects the relative knowledge and skill of the participant.

(4) The winning outcome is not based on the score, point spread or performance of a single actual team or combination of teams, or solely on a single performance of an individual athlete or player in a single actual event.

(5) The winning outcome is based on statistical results accumulated from fully completed athletic sports contests or events, except that participants may be credited for statistical results accumulated in a suspended or shortened sports event which has been partially completed on account of weather or other natural or unforeseen event.

§ 1205a.2. Procedures to govern the conduct of fantasy contests.

(a) Each fantasy contest license holder shall establish and implement procedures governing the conduct of fantasy contests, as approved by the Board.

(b) The governing procedures must include, at a minimum, all of the following:

(1) A participant may not be eligible to engage in a fantasy contest by a licensed operator without first establishing a fantasy contest account, unless the fantasy contest is through a fantasy contest terminal in a licensed facility.

(2) Prior to a participant engaging in a fantasy contest or making a deposit in a fantasy contest account, the licensed operator shall verify the age, location and identity of the participant. A person under 18 years of age located in this Commonwealth may not engage in a fantasy contest by a licensed operator. If the participant is utilizing a fantasy contest terminal in a licensed facility, the participant shall be 21 years of age or older to engage in a fantasy contest.

(3) Each time a participant enters his registered fantasy account, he shall enter his unique username and password, or other means as approved by the Board, to verify his identity.

(4) Prior to accepting of a participant's entry fee for a specific fantasy contest, all Board-approved rules, prizes and award values must be posted on the specific fantasy contest homepage in a clear and decipherable manner.

(5) Provisions to prohibit a participant who is not a beginner from participating in beginner fantasy contests, except as provided by 4 Pa.C.S. § 325(4.1)(ii) (relating to conditions of licensure). If a participant who is not a beginner attempts to and successfully enters a beginner contest, the participant's contest entry shall be voided, the participant's account shall be temporarily suspended from all further fantasy contest participation for 15 days and the licensed operator shall ban the participant from further participation in beginner fantasy contests offered by the licensed operator.

(6) Provisions to prohibit a highly experienced player from participating in fantasy contests that exclude highly experienced players. In accordance with 4 Pa.C.S. § 325(4.2) if a participant who is a highly experienced player attempts to and successfully enters a fantasy contest for which the participant is ineligible, the participant's contest entry shall be voided, the participant's account shall be suspended and the licensed operator shall ban the individual from further participation in fantasy contests offered by the licensed operator.

(7) Upon the creation of a fantasy contest account or the engagement of a fantasy contest terminal in a licensed facility, the licensed operator shall require the participant to identify any professional sports in which he currently engages in and which are subject to a fantasy contest and shall limit the participant's account from entering into contests of that sport.

(8) Allowing a person to restrict himself from entering a fantasy contest or accessing a fantasy contest account for a specific period of time as determined by the participant and implement procedures to prevent the person from participating in the licensed operator's fantasy contests.

(9) Allowing a person to restrict the total amount of deposits that the participant may pay to the licensed operator for a specific time period established by the participant and implement procedures to prevent the participant from exceeding the limit.

(10) Establishing procedures to monitor for and prevent the use of scripts.

(11) Establishing procedures determining when a fantasy contest locks and when no further entries or substitutions can be made. The procedures must require that the prize stipulated in the entry rules is available and can be demonstrated upon request of the Board.

(12) A process for a fantasy contest operator to receive and respond to participant complaints and reconciling a participant's fantasy contest account.

§ 1205a.3. Fantasy contest accounts.

(a) A participant may only enter a fantasy contest by a licensed operator by first establishing a fantasy contest account with the fantasy contest operator, unless the fantasy contest is through a fantasy contest terminal in a licensed facility.

(b) The licensed operator shall perform all of the following with respect to each participant account:

(1) Verify the age, location and identity of participants in a fantasy contest prior to accepting an entry in a fantasy contest by the participant account holder.

(2) Assure the participant has funds on account sufficient to pay the fantasy contest entry fee at the time of entry.

(3) Require that each time a participant enters his registered fantasy account, the participant shall enter his unique username and password to verify his identity.

(4) Provide the account holder the option to:

(i) Restrict the participant from entering a fantasy contest or accessing a fantasy contest account for a specific period of time as determined by the account holder.

(ii) Restrict the total amount of deposits that the participant may pay to the licensed operator for a specific time period established by the participant.

(iii) Restrict the total amount of entry fees that the participant may pay to the licensed operator for a specific time period established by the participant.

(iv) Restrict the number of fantasy contests the participant may enter for a specific time period as determined by the account holder.

(v) With respect to subparagraphs (i)—(iv), a participant may make his limits more restrictive at any time but any increase to these limits must become effective only after the time-period of the previous limit has expired and the player reaffirms the requested increase.

(5) Prevent unauthorized withdrawals from a fantasy contest account.

(6) Establish protocols for participants to withdraw funds whether the account is open or closed.

(7) Establish procedures for closing accounts and paying balances.

(8) Establish procedures for the disbursement of unclaimed prizes.

§ 1205a.4. Fantasy contest licensed operator duties.

(a) A licensed operator shall comply with the conditions of licensure in 4 Pa.C.S. Chapter 3 (relating to fantasy contests) and the Board’s regulations.

(b) A licensed operator shall continually monitor fantasy contests for conduct which violates the provisions and restrictions of 4 Pa.C.S. Chapter 3 and the Board’s regulations, and immediately take steps to report this conduct to the Bureau upon discovery.

(c) A licensed operator shall implement measures to ensure the confidentiality of participants’ personal, financial and account information, and to prevent the public disclosure of this information except as provided by law.

(d) A licensed operator shall timely remit all taxes and assessments to the Department as provided for in 4 Pa.C.S. Chapter 3.

(e) A licensed operator shall cooperate with the Board, the Bureau, the Department and law enforcement authorities performing any function or duties related to monitoring, investigating or enforcing 4 Pa.C.S. Chapter 3 or regulations relating to fantasy contest-related activities.

(f) A licensed operator shall permit access to the licensee’s premises and fantasy contest terminal premises used in connection with the conduct of fantasy contests for the Board, the Bureau, the Department and the Pennsylvania State Police to facilitate the ability to perform regulatory oversight and law enforcement functions.

(g) A licensed operator shall maintain a record of all participant complaints along with a description of how

the complaint was resolved and reconciled, which shall be made available to the Board upon request.

(h) A licensed operator shall submit to the Bureau a record of any suspicious transactions as provided in 4 Pa.C.S. § 325(4.5) (relating to conditions of licensure) within 2 business days of having reason to know that a suspicious transaction has occurred.

(i) Each licensed operator shall maintain an office, place of business, or registered agent for service of process in this Commonwealth and shall file with the Board the address and contact information for a person or representative in this Commonwealth authorized to receive service of process, documents and requests issued by the Board. If the Board makes a request for information or delivers documents or a notice to that address, it shall constitute receipt of those documents or requests by the licensed operator or applicant. If the Board will require access to the database for the licensed operator, this information shall be kept and be made available to the Board at the Pennsylvania office, place of business, or registered agent address, or at the offices of the Board.

§ 1205a.5. Fantasy contest licensed operator restrictions.

A licensed operator shall not do any of the following:

(1) Permit an individual under 18 years of age in this Commonwealth to participate in a fantasy contest.

(2) Permit an individual under 21 years of age to participate in a fantasy contest which is conducted within a licensed facility.

(3) Offer a fantasy contest based in whole or in part on collegiate or high school events or players.

(4) Permit a participant to enter a fantasy contest prior to establishing a fantasy contest account, unless the licensed operator is also a licensed gaming entity and the participant enters the fantasy contest through a fantasy contest terminal located within the licensed gaming entities licensed facility.

(5) Establish a fantasy contest account for a person who is not an individual.

(6) Alter the rules established for a fantasy contest after a participant has entered the fantasy contest.

(7) Issue credit to a participant to establish or fund a fantasy contest account.

(8) Permit the use of scripts by participants. A licensed operator shall implement technologies to prevent the use of scripts.

(9) Knowingly market to a participant during a time period in which the participant has self-excluded from the licensed operator’s fantasy contests.

(10) Knowingly allow a self-excluded person to collect, keep or retain a prize or award.

(11) Knowingly accept a deposit or entry in excess of a limit established by a participant for the specific time period established by the participant.

(12) Share confidential information that could affect fantasy contest play with third parties until the information is made publicly available.

(13) Knowingly permit a principal, an employee of a licensed operator or a relative living in the same household of an employee, or a principal of a licensed operator to become a participant in a fantasy contest offered by any licensed operator in which the licensed operator offers a prize or award.

§ 1205a.6. Licensed gaming entities.

(a) A licensed gaming entity which holds a fantasy contest license may petition the Board for authority to place and operate fantasy contest terminals within the licensed gaming entity's licensed facility.

(b) A licensed gaming entity may not place a fantasy contest terminal on its approved gaming floor. The Board's Executive Director will approve the placement of terminals within the licensed facility.

(c) A participant entering a fantasy contest through a fantasy contest terminal is not required to establish an account with the licensed gaming entity prior to entering the fantasy contest.

(d) A licensed gaming entity which offers a fantasy contest through a fantasy contest terminal may offer slot machine promotional play or table game match play to a participant who is at least 21 years of age or older as a prize or award or for participating in a fantasy contest conducted by the licensed gaming entity, as approved by the Board.

(e) A licensed gaming entity which obtains authorization from the Board to conduct fantasy contests through fantasy contest terminals is subject to all requirements and restrictions, except for those relating to prior account establishment, in this chapter and Chapters 1206a—1209a.

§ 1205a.7. Record and data retention.

(a) A licensed operator shall retain account information for a 5-year period, including records of deposits into and out of a fantasy contest account, winnings, payouts and withdrawals, and record of participant play of fantasy contests.

(b) A licensed operator shall retain records of each fantasy contest conducted by the licensed operator for a 5-year period.

(c) A licensed operator shall retain copies of all advertisements for at least 2 years from the date of the last use of the advertisement and shall retain records to identify where advertisements were placed.

CHAPTER 1206a. ACCOUNTING AND INTERNAL CONTROLS

Sec.

1206a.1. Fantasy contest accounting and internal controls.

§ 1206a.1. Fantasy contest accounting and internal controls.

(a) At least 45 days prior to commencing fantasy contests under this subpart, a fantasy contest licensee or an applicant for a fantasy contest license shall submit to the Board for approval all internal control systems and audit protocols for the fantasy contest operations.

(b) An applicant for a fantasy contest license who is conducting fantasy contests in this Commonwealth prior to the effective date of 4 Pa.C.S. Chapter 3 (relating to fantasy contests) shall submit a copy of its internal control systems and audit protocols for the fantasy contest operations simultaneously with its application for a fantasy contest license.

(c) A fantasy contest licensed operator's internal controls and audit protocols must include all of the following:

(1) Provide for reliable records, accounts and reports of any financial event that occurs in the conduct of fantasy contests, including reports to the Board related to fantasy contests.

(2) Provide for accurate and reliable financial records related to the conduct of fantasy contests, including by or through participants located in this Commonwealth.

(3) Establish procedures and security for the recordation of wagering, winnings, and fantasy contest adjusted revenue and taxation.

(4) Establish procedures and security standards for the maintenance of fantasy contests and associated equipment used in connection with the conduct of fantasy contests.

(5) Establish procedures and rules to govern the conduct of fantasy contests and the responsibility of employees related to fantasy contest.

(6) Establish procedures for the collection, recording and deposit of revenue from the conduct of fantasy contests by or through participants located in this Commonwealth.

(7) Establish reporting procedures and records required to ensure that all money generated from fantasy contests by or through participants located in this Commonwealth is accounted for.

(8) Ensure that all functions, duties and responsibilities related to fantasy contests are appropriately segregated and performed in accordance with sound financial practices by qualified employees.

(9) Ensure the confidentiality of the participant's personal and financial information.

(10) Ensure the segregation of participant funds from operational funds in separate accounts and maintain a reserve in the form of cash, cash equivalents, security deposits held by banks and processors, an irrevocable letter of credit, payment processor reserves and receivables, a bond or a combination thereof in an amount sufficient to pay all prizes and awards offered to winning participants.

(d) The submissions required under subsections (a) and (b) must include a detailed description of the fantasy contest license operator's administrative and accounting procedures related to fantasy contests, including its written system of internal controls. Each written system of internal controls must include all of the following:

(1) An organizational chart depicting appropriate functions and responsibilities of employees involved in fantasy contests.

(2) A description of the duties and responsibilities of each position shown on the organizational chart.

(3) A detailed narrative description of the administrative and accounting procedures to satisfy the requirements in 4 Pa.C.S. § 325 (relating to conditions of licensure).

(4) The record retention policy of the licensed operator.

(5) The procedure to be utilized to ensure that money generated from the conduct of fantasy contests is safeguarded, including mandatory counting and recording procedures.

(6) Procedures to ensure that recorded accountability for assets is compared with actual assets at intervals required by the Board and appropriate action is taken with respect to discrepancies.

(7) Procedures to be utilized by an employee of a licensed operator in the event of a malfunction of a fantasy contest terminal or other equipment used in the conduct of fantasy contests.

(8) Procedures to be utilized by a licensed operator to prevent individuals under the age of 18 or fantasy contest self-excluded individuals from entering fantasy contests.

(9) Other items the Board may request in writing to be included in the internal controls.

(10) A statement signed by the chief financial officer of the proposed licensed operator or other competent person and the chief executive officer of the proposed licensed operator or other competent person attesting that the officer believes, in good faith, that the system satisfies the requirements in 4 Pa.C.S. § 325.

(e) Prior to authorizing a licensed operator to begin the conduct of fantasy contests, the Board will review the system of internal controls and audit protocols submitted under subsections (a) and (b) to determine whether it conforms to the requirements in this chapter and whether it provides adequate and effective controls for the conduct of fantasy contests.

(f) If a licensed operator intends to make a change or amendment to its system of internal controls, it shall submit the change or amendment electronically to the Bureau of Gaming Operations in a manner prescribed by the Bureau of Gaming Operations. The licensed operator may implement the change or amendment upon receipt of approval or on the 30th calendar day following the filing of a complete submission unless the fantasy contest licensee receives written notice tolling the change or amendment in accordance with subsection (g) or written notice from the Board's Executive Director rejecting the change or amendment.

(g) If during the 30-day review period in subsection (f), the Bureau of Gaming Operations preliminarily determines that a procedure in a submission contains an insufficiency likely to negatively affect the integrity of fantasy contests or the control of revenue generated from fantasy contests, the Bureau of Gaming Operations, by written notice to the licensed operator, will:

(1) Specify the nature of the insufficiency and, when possible, an acceptable alternative procedure.

(2) Direct that the 30-calendar day review period in subsection (f) be tolled and that any internal controls at issue not be implemented until approved under subsection (i).

(h) A submission under this section shall be deemed insufficient and likely to negatively affect the integrity of fantasy contests if the submission:

(1) Fails to provide information sufficient to permit the review of fantasy contests.

(2) Fails to provide for the segregation of incompatible functions so that no employee is in a position to commit an error or perpetrate a fraud and to conceal the error or fraud in the normal course of the employee's duties.

(3) Does not include forms or other materials referenced in the submission or required under 4 Pa.C.S. Chapter 3 or this subpart.

(4) Would implement operations or accounting procedures not authorized by 4 Pa.C.S. Chapter 3 or this subpart.

(i) When a change or amendment has been tolled under subsection (g), the licensed operator may submit a revised change or amendment within 30 days of receipt of the written notice from the Bureau of Gaming Operations. The licensed operator may implement the revised change or amendment upon receipt of written notice of approval from the Board's Executive Director or on the 30th

calendar day following the filing of the revision unless the licensed operator receives written notice tolling the change or amendment in accordance with subsection (g) or written notice from the Board's Executive Director rejecting the change or amendment.

CHAPTER 1207a. ADVERTISING

Sec.
1207a.1. Fantasy contest advertising.

§ 1207a.1. Fantasy contest advertising.

(a) Advertisements related to fantasy contests used by a licensed operator through any form of media, Internet application, or fantasy contest terminal or its agent may not do any of the following:

(1) Contain false or misleading information. An advertisement will be considered misleading if it makes representations about average winnings without equally prominently representing the average net winnings of all players and that not all players will achieve the results referenced.

(2) Portray participation in sporting events by minors (other than professional athletes who may be minors), students, schools, colleges or their settings.

(3) Represent endorsements by minors, college athletes, colleges or college athletic associations.

(4) Appear in a publication that is aimed exclusively or primarily at minors, or individuals attending an elementary or secondary school or school-related event.

(5) Fail to disclose conditions or limiting factors associated with the advertisement.

(b) A licensed operator may not directly market to a person on the Board's fantasy contest self-exclusion list.

(c) Any advertisement directed specifically towards participants in this Commonwealth shall include a statement providing the following: "If you or someone you know has a gambling problem, help is available. Call (1-800-GAMBLER)."

(d) A licensed operator or fantasy contest terminal operator or its agent shall discontinue as expeditiously as possible the use of a particular advertisement in this Commonwealth or directed to residents in this Commonwealth upon receipt of written notice that the Board's Office of Compulsive and Problem Gaming has determined that the use of the particular advertisement in this Commonwealth could adversely impact the public or the integrity of fantasy gaming.

CHAPTER 1208a. COMPULSIVE AND PROBLEM GAMING

Sec.
1208a.1. Signage requirements.
1208a.2. Problem gambling information.

§ 1208a.1. Signage requirements.

(a) A fantasy contest licensee shall conspicuously post notices on the licensee's web site, including on the account registration and access page, a statement providing the following: "If you or someone you know has a gambling problem, help is available. Call (1-800-GAMBLER)."

(b) The operator of any fantasy contest terminal shall conspicuously post notice on the front of the fantasy contest terminal and notices on the opening screen and on an account registration or access screen, if applicable, a statement providing the following: "If you or someone you know has a gambling problem, help is available. Call (1-800-GAMBLER)."

§ 1208a.2. Problem gambling information.

A licensed operator shall make available through its web site a Responsible Gaming page, as approved by the Board's Office of Compulsive and Problem Gaming (Office), containing links to compulsive and problem gaming treatment information and provider sites and materials provided by the Office regarding compulsive and problem gaming.

CHAPTER 1209a. FANTASY CONTEST SELF-EXCLUSION

Sec.

- 1209a.1. Fantasy contest self-exclusion definitions.
- 1209a.2. Fantasy contest self-exclusion procedure.
- 1209a.3. Fantasy contest self-exclusion list.
- 1209a.4. Duties of fantasy contest licensees.
- 1209a.5. Removal from fantasy contest self-exclusion list.

§ 1209a.1. Fantasy contest self-exclusion definitions.

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

Fantasy contest activity—The play of fantasy contests at any location in this Commonwealth.

Fantasy contest related activity—An activity related to the play of fantasy contests including creating a player account, funding a player account or withdrawing funds on account.

Fantasy contest self-excluded person—A person whose name and identifying information is included, at the person's request, on the fantasy contest self-exclusion list maintained by the Board.

Fantasy contest self-exclusion list—A list of names and identifying information of persons who, under this chapter, have voluntarily agreed to be excluded from the conduct of fantasy contests for a period of time as selected by the person.

Winnings—Any money or thing of value received from, or owed by, a fantasy contest licensee as a result of a fully executed fantasy contest transaction.

§ 1209a.2. Fantasy contest self-exclusion procedure.

(a) A person requesting to be self-excluded from fantasy contest activity shall submit a completed Request for Voluntary Self-Exclusion from Fantasy Contest Activities Form to the Board by one of the following methods:

- (1) Electronically on the Board's web site.
- (2) In person by scheduling an appointment at the Board's Harrisburg office, one of the Board's other offices or at a licensed facility. To make an appointment, a person may contact the Office of Compulsive and Problem Gaming at (717) 346-8300 or problemgambling@pa.gov.
- (b) When requesting fantasy contest self-exclusion, the person shall do all of the following:
 - (1) Provide all of the following information:
 - (i) The individual's complete name, including any aliases or nicknames.
 - (ii) Current address.
 - (iii) Telephone number.
 - (iv) E-mail address.
 - (v) Age.
 - (vi) Date of birth.

(vii) Social security number, or the last 4 digits of the individual's social security number, when voluntarily provided in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552a).

(2) Identify the period of time in years for which the individual seeks to self-exclude, which shall not be less than 1 year.

(3) Agree that, during any period of voluntary self-exclusion, the person may not collect any winnings or recover any losses resulting from any fantasy contest activity.

(4) Agree to release, indemnify, hold harmless and forever discharge the Commonwealth, the Board and all fantasy contest licensees from claims, damages, losses, expenses or liability arising out of, by reason of or relating to the fantasy contest self-excluded person or to any other party for any harm, monetary or otherwise, which may arise as a result of one or more of the following:

(i) The failure of a fantasy contest licensee to withhold fantasy contest privileges from or restore fantasy contest privileges to a fantasy contest self-excluded person.

(ii) Otherwise permitting or not permitting a fantasy contest self-excluded person to engage in fantasy contest activity while on the list of fantasy contest self-excluded persons.

(iii) Confiscation of the individual's winnings.

(5) Agree to other conditions established by the Board.

(c) A link to the form to be used to request placement on the fantasy contest self-exclusion list must be available on the responsible gaming webpage of each fantasy contest licensed operator's web site.

(d) The information provided in subsection (b) shall be updated by the fantasy contest self-excluded person within 30 days of a change. Updated information shall be submitted on a change of information form to the following address, or submitted online in the "Update My Information" webform on the Board's web site. A copy of the form can be obtained by calling the OPG at (717) 346-8300, by e-mail at problemgambling@pa.gov, or by writing to:

PENNSYLVANIA GAMING CONTROL BOARD
OFFICE OF COMPULSIVE AND
PROBLEM GAMBLING
P.O. BOX 69060
HARRISBURG, PA 17106-9060

§ 1209a.3. Fantasy contest self-exclusion list.

(a) The Board will maintain the official fantasy contest self-exclusion list and shall make the fantasy contest self-exclusion list available to each licensed operator by means of the Board's self-exclusion system.

(b) The information made available to licensed operators by the Board will include all of the following information concerning a person who has been added to the fantasy contest self-exclusion list:

- (1) The individual's complete name, including any aliases or nicknames.
- (2) Current address.
- (3) Telephone number.
- (4) E-mail address.
- (5) Age.
- (6) Date of birth.

(7) Social security number, or the last 4 digits of the individual's social security number, when voluntarily provided in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552A).

(c) A licensed operator shall establish procedures to ensure that its database of self-excluded persons is updated to correspond with the Board's current fantasy contest self-exclusion list.

(d) A licensed operator shall maintain a copy of the fantasy contest self-exclusion list and establish procedures to ensure that the copy of the fantasy contest self-exclusion list is updated at least every 2 business days with the information made available to licensed operators by means of the Board's self-exclusion system and that all appropriate employees and agents of the licensed operator are notified of the updates to the fantasy contest self-exclusion list.

(e) Information furnished to or obtained by the Board under this chapter will be deemed confidential and will not be disclosed except in accordance with this chapter and 4 Pa.C.S. § 325(6)(ii) (relating to conditions of licensure).

(f) Except as provided in 4 Pa.C.S. § 325(6)(ii), licensed operators and employees or agents thereof may not disclose the name of, or any information about, a person who has requested fantasy contest self-exclusion to anyone other than employees and agents of the licensed operator whose duties and functions require access to the information.

(g) A fantasy contest self-excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the fantasy contest self-exclusion list.

(h) Winnings incurred by a fantasy contest self-excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(i) For the purposes of this section, winnings issued to or redeemed by a fantasy contest self-excluded person will be presumed to constitute winnings subject to remittance to the Board.

§ 1209a.4. Duties of fantasy contest licensees.

(a) A fantasy contest licensee shall do all of the following:

(1) Deny fantasy contest related activities to a fantasy contest self-excluded person.

(2) Ensure that a fantasy contest self-excluded persons may not establish an account or deposit money in an established account while the person is on the fantasy contest self-exclusion list.

(3) Retain a record of any attempts of a fantasy contest self-excluded person to engage in fantasy contest related activity and to provide the record to the Board's Office of Compulsive and Problem Gaming (Office) in a form and manner as approved by the Office. The record must include the name of the self-excluded person, the date of the occurrence and a description of the attempted fantasy contest related activity.

(4) Notify the Office within 24 hours of identifying that an individual on the self-exclusion list has gained access to the individual's account or has entered a fantasy contest.

(5) Make available to patrons materials explaining the fantasy contest self-exclusion program.

(b) The list of fantasy contest self-excluded persons is confidential, and any distribution of the list to an unauthorized source constitutes a violation of 4 Pa.C.S. Chapter 3 (relating to fantasy contests).

§ 1209a.5. Removal from fantasy contest self-exclusion list.

An individual who has elected to self-exclude from fantasy contest related activity will remain on the self-exclusion list for the duration of the period selected and will be removed from the fantasy contest self-exclusion list only upon the conclusion of the period of self-exclusion.

[Pa.B. Doc. No. 21-1226. Filed for public inspection July 30, 2021, 9:00 a.m.]

