RULES AND REGULATIONS

Title 22—EDUCATION

PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

[22 PA. CODE CH. 235]

Code of Professional Practice and Conduct for Educators

The Professional Standards and Practices Commission (Commission) amends Chapter 235 (relating to code of professional practice and conduct for educators) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

This final-form rulemaking is authorized by section 5(a)(10) of the Educator Discipline Act (act) (24 P.S. § 2070.5(a)(10)).

Background and Purpose

The General Assembly has charged the Commission with adopting and maintaining a code for professional practice and conduct applicable to all educators under section 5(a)(10) of the act. The Commission adopted the Code of Professional Practice and Conduct for Educators (Code) in 1992 and it has not been updated since. These amendments are designed to update and revise the Code to make it relevant and applicable to current educators. The amendments present new or expanded guidelines addressing educators' responsibilities to students, colleagues and the profession.

Summary of Amendments

§ 235.2(b) (relating to introduction): The changes frame educators' responsibilities under the Code within the context of the educator's commitment to students, colleagues and the profession. This language appeared in § 235.5 (relating to conduct) of the proposed rulemaking and is moved here due to the deletion of § 235.5 in this final-form rulemaking.

§ 235.2(c): The changes clarify that the Department is not precluded from pursuing discipline, including suspension or revocation, on other available grounds for conduct that constitutes an independent basis for a public or private reprimand under the Code. This section is amended in this final-form rulemaking for additional clarity in response to public comments. It is revised to specify that all violations of the Code, not just violations of specified sections, may be an independent basis for a public or private reprimand. Throughout this final-form rulemaking, non-regulatory language is deleted to provide educators with clear and precise standards for compliance. Therefore, it is appropriate that a violation of any of these standards may serve as an independent basis for a public or private reprimand.

§ 235.2(d): The changes create a new subsection and clarify that nothing in the Code shall be interpreted to require educators to violate any of the doctrines, tenets, policies or practices of any religious or religiously-affiliated school in which the educator is employed. This subsection was not included in the proposed rulemaking. It is added to this final-form rulemaking in response to comments received from the public and from the Independent Regulatory Review Commission (IRRC).

§ 235.3 (relating to purpose): The changes delete this section because the language is non-regulatory in nature and more appropriate for a statement of policy. The changes are made in response to comments received from IRRC following the public comment period.

§ 235.3a (relating to definitions): The definition for "unauthorized drugs" was not included in the proposed rulemaking and is added in response to comments received from IRRC. The changes delete definitions for the following terms that were included in the proposed rulemaking but are not included in this final-form rulemaking: "dual or multiple relationships;" "fiduciary relationship;" "safe environment;" "safety;" and "transparency." These terms appeared in sections that were deleted because they were determined to be non-regulatory.

§ 235.4 (relating to professional practices): The changes delete this section because most of the language is non-regulatory in nature or redundant of other sections. The changes are made in response to comments received from IRRC following the public comment period. Section 235.4(b)(1) of the proposed rulemaking is replaced by § 235.5c(1) (relating to commitment to the profession) without changes. Section 235.4(b)(11) of the proposed rulemaking is replaced by § 235.5a(b)(4) (relating to commitment to students) with minor changes for clarity and consistency. Section 235.4(b)(12) of the proposed rulemaking is replaced by § 235.5a(b)(1) with minor changes for clarity.

§ 235.5: This section is replaced by § 235.2(c) of this final-form rulemaking.

Section 235.5a sets forth standards for professional conduct in fulfillment of the educator's commitment to students. The changes add standards addressing appropriate boundaries; sexual misconduct; maintenance of confidentiality; an educator's use, possession, or distribution of alcoholic beverages or illegal or unauthorized drugs; and inappropriate communication, including inappropriate communication achieved through electronic means. Proposed § 235.5a was reordered in this final-form rulemaking and amended to add paragraphs (1), (4), (6) and (7) and delete proposed subsection (e). These changes were prompted by the deletion of § 235.4 in this final-form rulemaking, as well as comments received during and after the public comment period.

Section 235.5b (relating to commitment to colleagues) sets forth standards for professional conduct in fulfillment of the educator's commitment to colleagues. This section includes prohibitions against sexual harassment; intentional distortion of evaluations; threats, coercion or discrimination against colleagues who report violations; the use of improper means to influence professional decisions; and the unauthorized disclosure of confidential health or personnel information. Proposed § 235.5b was reordered and amended in this final-form rulemaking to add paragraphs (4) and (5). This change is prompted by the deletion of subsections (h) and (i) of § 235.5c in this final-form rulemaking.

Section 235.5c (relating to commitment to the profession) sets forth standards for professional conduct in

fulfillment of the educator's commitment to the profession. The amendments add or expand standards addressing misrepresentation and document fraud; reporting and cooperation during official investigations and proceedings; security of standardized testing; and improper personal or financial gain. Proposed § 235.5c is reordered in this final-form rulemaking and amended to add paragraph (1). Proposed subsections (h) and (i) are replaced by §§ 235.5a(b)(6) and (7) and 235.5b(4) and (5) in response to comments received from the public and from IRRC. Proposed subsections (a) (renamed paragraph (2) in this final-form rulemaking) and (g) (renamed paragraph (8) in this final-form rulemaking) are amended for clarity in response to public comments. Proposed subsection (l) was renamed paragraph (11) and amended for clarity.

Comment and Response

Notice of the proposed rulemaking was published at 49 Pa.B. 1905 (April 20, 2019), with a public comment period as required by law. The public comment period ended on May 20, 2019. The Commission received comments from the Independence Law Center, the Pennsylvania Catholic Conference (PCC) and the Pennsylvania School Boards Association (PSBA). The Commission received comments from IRRC following the close of the public comment period. On January 6, 2021, the Commission received comments from the Pennsylvania State Education Association (PSEA). Although PSEA's comments were received after the close of the public comment period, the Commission's responses are included as follows.

Independence Law Center

Comment:

The Independence Law Center commented that the enumeration in proposed §§ 235.4(b)(4) and 235.5c(h) of special categories, such as gender identity and expression, and the deletion of "sex" in proposed § 235.4(b)(4) creates harmful hierarchies of dignity and worth of students; removes "sex" as a basis for respecting the dignity, worth and uniqueness of each student; causes harassment and discrimination; harms a real culture of non-discrimination and civility; and is incompatible with prohibitions on sex stereotyping. The Independence Law Center commented that the Commission's reliance on Pennsylvania Human Relations Commission Guidance is flawed.

Response:

Proposed §§ 235.4(b)(4) and 235.5c(h) were deleted in the final-form rulemaking and replaced by §§ 235.5a(b)(6) and 235.5b(4). Section 235.5a(b)(6) provides that educators "[s]hall exhibit consistent and equitable treatment and shall not unlawfully discriminate against students." Section 235.5b(4) provides that educators "[s]hall not unlawfully discriminate against colleagues."

PCC

Comment:

PCC commented that the proposed amendments improperly expand the bases for claims of discrimination set forth in the Pennsylvania Human Relations Act (43 P.S. §§ 951—963) and that, if applied to Catholic educators, the proposed amendments would violate constitutionally-protected religious liberties and the Pennsylvania Religious Freedom Protection Act (PRFPA) (71 P.S. §§ 2401—2408). The PCC also commented that an express disclaimer that the offending provisions of the Code must not conflict with the lawful policies of religiously-affiliated schools should be incorporated in the final-form rulemaking.

Response:

The Commission worked with representatives of the PCC to develop the disclaimer language found in § 235.2(d), which reads: "Nothing in this chapter shall be construed or interpreted to require an educator to violate any of the doctrines, tenets, policies, or practices of any religious or religiously-affiliated school in which that educator is employed." Additionally, proposed §§ 235.4(b)(4) and 235.5c(h) are deleted in the final-form rulemaking and replaced by §§ 235.5a(b)(6) and 235.5b(4). Section 235.5a(b)(6) provides that educators "[s]hall exhibit consistent and equitable treatment and shall not unlawfully discriminate against students." Section 235.5b(4) provides that educators "[s]hall not unlawfully discriminate against colleagues." The revised language avoids conflict with existing anti-discrimination laws.

PSBA

PSBA expressed general support for the amendments. PSBA offered the following suggestions:

Comment:

PSBA suggested that the following clarifying language be added to proposed § 235.2(c): "Discipline for conduct that constitutes both an independent basis for suspension or revocation of an educator's certificate or employment eligibility and a violation of this chapter shall not be limited to public or private reprimand. Nothing in this chapter shall be construed to otherwise limit the Department of Education's authority to initiate an action under the act to discipline an educator's certificate or employment eligibility, or both."

Response:

Proposed § 235.2(c) was revised in this final-form rulemaking to read as follows: "Violations of any of the duties prescribed by this chapter may be used as supporting evidence in disciplinary proceedings conducted by or on behalf of the PSPC under the act. Violations of this chapter may also be an independent basis for a public or private reprimand. Discipline for conduct that constitutes both a basis for discipline under the Act and an independent basis for discipline under this chapter shall not be limited to a public or private reprimand. Nothing in this chapter shall be construed to otherwise limit the Department of Education's authority to initiate an action under the act to suspend, revoke or otherwise discipline an educator's certificate or employment eligibility, or both."

Comment:

PSBA suggested that proposed § 235.5a(d) be revised to read as follows: "Shall not sexually harass others or engage in sexual misconduct."

Response:

The Commission agrees with PSBA that the language "including sexual relationships" is not necessary since § 235.3a incorporates the act's definition of sexual misconduct, which includes sexual relationships with students. The Commission, however, declined to replace the word "students" with "others" because § 235.5a specifically articulates educators' responsibilities to students. Accordingly, in the final-form rulemaking § 235.5a(d) is renamed subsection (b)(3) and revised to read as follows: "Shall not sexually harass students or engage in sexual misconduct."

Comment:

PSBA commented that many of the "factors" included in proposed § 235.5a(j) for assessing whether a communication is inappropriate are patently inappropriate in and of

themselves, and suggested that the following language be added at the beginning of § 235.5a(j) (renamed subsection (b)(13) in the final-form rulemaking): "Inappropriate communication includes communications that are sexually explicit, that include images, depictions, jokes, stories or other remarks of a sexualized nature, that can be reasonably interpreted as flirting or soliciting sexual contact or a romantic relationship, or that comment on the physical or sexual attractiveness or the romantic or sexual history, activities, preferences, desires or fantasies of either the educator or the student. Factors that may be considered in assessing whether other communications are inappropriate include. . ." PSBA suggested the addition of the following language: "(4) whether the communication involved disclosure of personal or family problems, relationships, or secrets; and (5) whether the communication encouraged or condoned the student's addressing the educator using terms of endearment, pet names or other overly familiar language."

Response:

The Commission agreed with PSBA that some of the "factors" outlined in proposed § 235.5a(j) (renamed subsection (b)(13) in the final-form rulemaking) are better characterized as examples of inappropriate communications and made the suggested change. However, the Commission declined to incorporate proposed subsections (4) and (5). The Commission believes that the language is very broad and could potentially capture communications that are not inherently inappropriate. The Commission also believes that the language is unnecessary because the subject matter of the communication is already a factor for considering whether the communication is inappropriate.

Comment:

PSBA suggested that the words "a colleague" be replaced by the word "others" in proposed § 235.5b(c) (relating to sexual harassment).

Response:

The Commission declined to make the suggested change in the final-form rulemaking because § 235.5b(c) (renamed paragraph (3) in the final-form rulemaking) specifically articulates an educator's responsibility to colleagues.

Comment:

PSBA suggested that proposed § 235.5c(a) be revised to read as follows: "Shall apply for, accept, or assign a position or a responsibility only on the basis of professional qualifications and abilities."

Response:

The Commission agreed with PSBA that the words "and abilities" should be added to the end of proposed § 235.5c(a) (renamed paragraph (2) in the final-form rulemaking) and made the change. The Commission believes that the addition of the word "only" is unnecessary and declined to make the suggested change.

Comment:

PSBA suggested that the following be included in proposed § 235.5c(g): "providing unauthorized assistance to students, unauthorized alteration of test responses, results or data. . ."

Response:

The Commission appreciates PSBA's comment and made the suggested change to proposed § 235.5c(g) (renamed paragraph (8) in the final-form rulemaking).

Comment:

PSBA suggested that the words "for personal gain or advantage" be deleted from proposed § 235.5c(l) for clarity.

Response:

The Commission agreed that proposed § 235.5c(l) required clarity. However, the Commission was concerned that simply deleting the words "for personal gain or advantage" would not provide the needed clarity. Accordingly, proposed § 235.5c(l) (renamed paragraph (11) in the final-form rulemaking) is revised to read as follows: "Shall use school funds, property, facilities, and resources only in accordance with local policies and local, state, and federal laws."

IRRC

Comment:

IRRC commented that section 5(a)(10) of the act provides the Commission authority to adopt a code of conduct, but it does not provide the authority to promulgate that code as a regulation under the Regulatory Review Act. IRRC further commented that section 206 of the Commonwealth Documents Law (CDL) (45 P.S. § 1206) provides the Commission authority to promulgate a code of conduct in a form and manner other than a regulation.

Response:

Under the Rules of Statutory Construction, statutes or parts of statutes in pari materia are to be construed together. 1 Pa.C.S. § 1932 (relating to statutes in pari materia). Contrary to the comment that there is a lack of statutory authority, the Commission is authorized to promulgate regulations establishing and enforcing a code of conduct for educator discipline when the relevant sections of the act are read in pari materia. Further, the history and the legislative intent of the act also support this authorization.

To begin, the following is a brief history of the evolution of the relevant statutory provisions relating to the Commission's regulatory authority and the code for professional practice and conduct.

The Commission was first established by the act of December 12, 1973 (P.L. 397, No. 141) (24 P.S. §§ 12-1251—12-1268), referred to as the Teacher Certification Law. Sections 12-1251 to 12-1268 were renumbered as 24 P.S. §§ 2070.1—2070.18 in 1994. As originally constituted, the Commission was an advisory group to the State Board of Education. The authority to discipline educators for misconduct was vested in the Secretary of Education. The Teacher Certification Law provided in pertinent part that the Commission shall have the power and its duty shall be "[t]o adopt *rules and regulations* as may be necessary to carry out the purposes of this act." Formerly (24 P.S. § 12-1255(a)(5)) (Emphasis added). The Commission was subsequently terminated, effective December 31, 1988, after the sunset provision was not extended.

The act of December 14, 1989 (P.L. 612, No. 71) (24 P.S. §§ 12-1251—12-1268) re-established the Commission and amended the underlying act. The amendments maintained the Commission's advisory functions, while also imbuing it with significant new duties and responsibilities, including the authority to discipline educators for misconduct. The General Assembly also charged the Commission for the first time with adopting a code of conduct. Specifically, section 5(a)(10) of the Teacher Certification Law provided that the Commission shall have the

power and its duty shall be "[t]o adopt by July 1, 1991, a code for professional practice and conduct, pursuant to the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law." Formerly 24 P.S. § 12-1255(a)(10). Section 5(a)(10) further provided that "the code may specify those sections the violation of which may constitute a basis for a reprimand." Id. Section 5(a)(14) empowered the Commission "[t]o adopt, pursuant to the act of July 31, 1968 (P.L. 769, No. 240), referred to as the CDL, operating and procedural rules and *regulations* necessary to carry out the purposes of this act." Formerly 24 P.S. § 12-1255(a)(14) (Emphasis added). Finally, section 8 provided that "[e]ach *rule and regulation* of the Professional Standards and Practices Commission in effect on December 31, 1988, shall remain in effect until repealed or amended by the commission." Formerly 24 P.S. § 12-1258 (Emphasis added).

The act of December 20, 2000 (P.L. 918, No. 123) (24 P.S. §§ 2070.1—2070.18a) amended the Teacher Certification Law and renamed it the Professional Educator Discipline Act (PEDA). Sections 5(a)(10) (relating to the code for professional practice and conduct) and (14) (relating to rules and regulations) remained intact.

Finally, the act of December 18, 2013 (P.L. 1205, No. 120) (24 P.S. §§ 2070.1a—2070.18c) amended the PEDA and renamed it the Educator Discipline Act (EDA). Section 5(a)(10) was amended to read as follows: "To adopt and maintain a code for professional practice and conduct that *shall be applicable to any educator* as defined in this act, pursuant to the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law." (Emphasis added). Section 9c(a)(8) of the EDA (24 P.S. § 2070.9c(a)(8)) provides that the Commission "*shall* direct the department to impose discipline against any educator for conduct found by the commission to constitute. . .[a] violation of the code of professional practice and conduct adopted pursuant to section 5(a)(10)." (Emphasis added). Further, under section 5(a)(14) (24 P.S. § 2070.5(a)(14)), the Commission maintains its general authority to adopt rules and regulations necessary to carry out the purposes of the Act.

Two things are clear: (1) from its inception in 1973, the Commission has always had the statutory authority to promulgate regulations; and (2) the General Assembly clearly intended the code for professional practice and conduct required by section 5(a)(10) to be enforced and to have the force and effect of law.

This is supported by the fact that the Code of Professional Practice and Conduct for Educators (Code) has been enforced as a regulation for 27 years. Further, the failure to reference the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.14) in section 5(a)(10) of the act does not mean that the Code may only be adopted as a statement of policy.

While the RRA provides for oversight and review by IRRC and the General Assembly, the procedures by which all Commonwealth agencies exercise their statutory power to promulgate regulations are set forth in the CDL. See *Germantown Cab Co. v. Phila. Parking Auth.*, 36 A.3d 105 (Pa. 2012). "It is well settled that agency regulations must be promulgated pursuant to the procedures found in the [CDL] in order to have the force and effect of law. Statements of policy, on the other hand, need not comply with these procedures." *Hillcrest Home, Inc. v. Commonwealth, Dep't of Public Welfare*, 553 A.2d 1037 (Pa. Cmwlth. 1989). When the General Assembly provided that the Code shall be adopted under the CDL, it clearly meant that the Code shall be adopted under the procedures established in the CDL, that is, the procedures for promulgation of a regulation. If the General Assembly intended the Code to be anything other than a regulation, the language "to adopt pursuant to the Commonwealth Documents Law" would be superfluous.

Section 5(a)(14) of the EDA provides additional support for the conclusion that the General Assembly intended the Code to be promulgated as a regulation. That section provides that the Commission shall have the power and duty to adopt "*rules and regulations*" under the "Commonwealth Documents Law." (Emphasis added). The CDL requires notice of proposed rulemaking, the review and consideration of comments, the requirement for regulations to be within the scope of the original purpose, a minimum effective date of 30 days, the review by the Office of Attorney General, and the deposit of regulations with the Legislative Reference Bureau. 45 P.S. §§ 1201—1208. Clearly, here, the General Assembly's reference to the CDL was intended to invoke the rulemaking process. Similarly, the reference to the CDL in section 5(a)(10) was also intended as a reference to the rulemaking process.

Further, the EDA provides that the Code "shall be applicable to any educator" and that the Commission "shall direct the department to impose discipline against any educator" found guilty of violating the Code. 24 P.S. § 2070.5(a)(10); 24 P.S. § 2070.9c(a)(8). This language clearly evidences the General Assembly's intent that the Code create a binding norm, that is, that it have the force and effect of law. It is axiomatic that a statement of policy, unlike a regulation, cannot bind third parties. See *Eastwood Nursing & Rehab. Ctr. v. Dep't of Pub. Welfare*, 910 A.2d 134 (Pa. Cmwlth. 2006). Therefore, the General Assembly simply could not have intended that the Code be adopted as a statement of policy.

The legislative history of the act of December 14, 1989 (P.L. 612, No. 71), which first charged the Commission with adopting a code for professional practice and conduct, lends further support for this conclusion. The following exchange between the Honorable Representative Cohen and the Honorable Representative Cowell (a prime-sponsor of the law), is instructive.

> Representative Cohen: "Does this commission have the power to issue regulations? Can new regulations be issued for new standards of conduct under this act?"
>
> Representative Cowell: "Let me find the exact language, Mr. Speaker. Page 9, section (10), provides that the commission will promulgate a code for professional practice and conduct by July 1 of 1991. As I recall, that is similar to the language that we had in the version of the bill that we approved earlier this year. It also includes a caveat that we included in our original bill, and that is the language that 'Nothing in the code for professional practice and conduct shall be an independent basis for the suspension or revocation of a certificate. . .'"

House Legislative Journal, October 4, 1989, No. 58 at 1566-1567.

In response to the question whether the Commission has the authority to adopt regulations establishing new standards of conduct, the Honorable Representative Cowell specifically invoked section 5(a)(10). This is convincing evidence that the General Assembly intended that the Commission establish enforceable standards of conduct through the rulemaking process.

It is fundamental that the object of all interpretation and construction of statutes is to ascertain and effectuate

the intention of the General Assembly, and that every statute shall be construed to give effect to all its provisions. 1 Pa.C.S. § 1921(a) (relating to legislative intent controls); *MERSCORP, Inc. v. Del. Cty.*, 207 A.3d 855 (Pa. 2019). In ascertaining legislative intent, it is presumed that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. 1 Pa.C.S. § 1922(1) (relating to presumptions in ascertaining legislative intent). That is, the body charged with regulating the conduct of the Commonwealth's educators has to both be able to adopt and enforce those provisions.

Comment:

IRRC commented that language found in the existing regulation and in proposed amendments is nonregulatory in nature and recommended that the entire final-form regulation be amended to set standards that are clear, binding and enforceable.

Response:

The Commission appreciates IRRC's comment and agrees that much of the language in the existing regulation and the proposed rulemaking is more appropriate for a statement of policy. Throughout this final-form rulemaking, non-regulatory language is deleted to provide educators with clear and precise standards for compliance.

Comment:

IRRC requested that the Commission explain why the proposed amendments do not conflict with the PRFPA.

Response:

IRRC's comment was prompted by comments submitted by the Pennsylvania Catholic Conference (PCC). In response to the PCC's comments, the Commission adds § 235.2(d) to this final-form rulemaking. Additionally, proposed §§ 235.4(b)(4) and 235.5c(h) are deleted in this final-form rulemaking and replaced by §§ 235.5a(b)(6) and 235.5b(4). These changes avoid conflict with existing anti-discrimination laws and the PRFPA.

Comment:

IRRC requested that the Commission explain the rationale for including the word "justifiably" in the proposed definition of "fiduciary relationship" or to delete the word if it is not needed.

Response:

The definition and all references to the term "fiduciary relationship" are deleted in the final-form rulemaking.

Comment:

IRRC suggested that the Commission define the term "short-term" in this final-form rulemaking to add clarity to proposed § 235.4(b)(2).

Response:

Section 235.4 is deleted in its entirety in this final-form rulemaking.

Comment:

IRRC recommended that the Commission define the term "unauthorized drugs" in this final-form rulemaking to add clarity to proposed § 235.5a(g) and (h) (renamed subsection (b)(11) and (12) in this final-form rulemaking).

Response:

This final-form rulemaking defines "unauthorized drugs" as "Any controlled substance or other drug possessed by a person not authorized by law to possess such controlled substance or other drug." With the inclusion of this definition, the Commission believes that § 235.5a(b)(11) and (12) are clear and capable of enforcement.

Comment:

IRRC commented that the definitions of "dual or multiple relationships," "electronic communications" and "fiduciary relationship" include the terms that are being defined and recommended that the definitions be amended to comply with the *Pennsylvania Code & Bulletin Style Manual (Manual)*.

Response:

The definitions of "fiduciary relationship" and "dual or multiple relationships" are deleted in this final-form rulemaking. The Commission made the recommended change to the definition of "electronic communications."

Comment:

IRRC commented that the definitions of "school entity" and "sexual misconduct" in § 235.3a include an incorrect statutory citation to § 1.2 of the act.

Response:

The proposed rulemaking as submitted by the Commission contained the correct statutory citation to section 1b of the act (24 P.S. § 2070.1b). The change to the incorrect citation was made prior to publication in the *Pennsylvania Bulletin*. The Commission corrected the citation in this final-form rulemaking.

(*Editor's Note*: The inconsistent citation to section 1b or section 1.2 of the act (24 P.S. § 2070.1b) in the definitions of "educator," school entity" and "sexual misconduct" has been corrected to be consistent as section 1.2 of the act (24 P.S. § 2070.1b).)

Comment:

IRRC recommended that the phrase "including, but not limited to" be replaced by the term "includes" in proposed §§ 235.4(b)(9) and 235.5a(j) as suggested by the *Manual*.

Response:

Section 235.4 is deleted in its entirety in this final-form rulemaking. The Commission made the recommended change to proposed § 235.5a(j) (renamed subsection (b)(13) in this final-form rulemaking).

Comment:

IRRC commented that the language "including sexual relationships, with students" should be deleted from proposed § 235.5a(d) (renamed subsection (b)(3) in the final-form rulemaking) because "sexual relationship" is included in the defined term "sexual misconduct."

Response:

The Commission appreciates IRRC's comment and made the suggested change in this final-form rulemaking.

PSEA

PSEA submitted comments on January 6, 2021. The comments reference new draft revisions that were circulated to stakeholders on November 17, 2020. Where applicable, the responses as follow reference the relevant section(s) of the proposed rulemaking.

Comment:

PSEA commented that the language "be cognizant that. . .requires the educator to" in proposed § 235.4(b)(12) (renamed § 235.5a(b)(1) in the final-form rulemaking) does not set a clear standard for compliance and should be eliminated.

Response:

The Commission appreciates PSEA's comment and made the suggested change in this final-form rulemaking.

Comment:

PSEA commented that proposed § 235.4(b)(14) does not set a clear standard for compliance and should be eliminated.

Response:

The Commission appreciates PSEA's comment and made the suggested change in this final-form rulemaking.

Comment:

PSEA commented that the term "embarrassment" is a subjective term that does not set a clear standard for compliance and should be eliminated from proposed § 235.5a(f) (renamed subsection (b)(5) in this final-form rulemaking).

Response:

The Commission appreciates PSEA's comment and made the suggested change in this final-form rulemaking.

Comment:

PSEA suggested that the word "unlawfully" be added immediately before "discriminate" in §§ 235.5a(b)(6) and 235.5b(4) (these sections replaced section 235.5c(h) of the proposed rulemaking).

Response:

The Commission appreciates PSEA's comment and made the suggested change in this final-form rulemaking.

Comment:

PSEA commented that proposed § 235.4(b)(8) does not set a clear standard for compliance and should be eliminated.

Response:

The Commission appreciates PSEA's comment and made the suggested change in this final-form rulemaking.

Comment:

PSEA suggested that the Commission add the word "lawful" immediately before "written school policies" in proposed § 235.4(b)(1) (renamed section § 235.5c(1) in the final-form rulemaking) and proposed § 235.5c(e) (renamed § 235.5c(6) in the final-form rulemaking) because school entities sometimes create and attempt to implement policies that are unlawful.

Response:

The Commission appreciates PSEA's comment but declined to make the suggested change in this final-form rulemaking. The Commission was concerned that the suggested language would make the Commission the arbiter of which school policies are and are not lawful, which is the exclusive province of the courts. The suggested language would also potentially place an additional burden on the Department to establish the lawfulness of a school policy before an educator could be disciplined for a violation. Moreover, under this final-form rulemaking a violation of school policy may be an independent basis for a public or private reprimand. Therefore, if serious questions exist regarding the lawfulness of a school policy, the Commission could decline to impose discipline or could defer discipline until the courts have had an opportunity to rule.

Affected Parties

This chapter affects all educators who have been certified by the Department, as well as all noncertified charter or cyber charter school staff members and contracted educational provider staff members who work in positions for which certification would be required in a traditional public school but who are legally exempted from the certification requirements.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking has no fiscal impact and imposes no additional reporting or paperwork requirements on affected parties.

Sunset Date

There is no sunset date. The effectiveness of this final-form rulemaking will be reviewed and evaluated on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 8, 2019, the Commission submitted a copy of the proposed rulemaking, published at 49 Pa.B. 1905, to IRRC and to the Chairpersons of the House and Senate Education Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period. In preparing the final-form rulemaking, the Commission considered all comments from IRRC and the public.

On May 12, 2021, the Commission submitted a copy of this final-form rulemaking to IRRC and the Chairpersons of the House and Senate Education Committees in accordance with 71 P.S. § 745.5a(b) of the Regulatory Review Act. 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 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 the final-form rulemaking.

Contact Persons

For further information, contact Shane Crosby, Executive Director, 333 Market Street, 14th Floor, Harrisburg, PA 17126, (717) 787-6576, shcrosby@pa.gov.

Findings

The Commission finds that:

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

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

(3) The amendments to this final-form rulemaking do not enlarge the scope of the proposed rulemaking published at 49 Pa.B. 1905.

(4) This final-form rulemaking adopted by this order is necessary and appropriate for the administration and enforcement of the act.

Order

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

(a) The regulations of the Commission at 22 Pa. Code Chapter 235 are amended by deleting §§ 235.3, 235.4,

235.5 and 235.6—235.11, amending 235.1 and 235.2, and adding 235.3a, 235.5a, 235.5b and 235.5c to read as set forth in Annex A.

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

(c) The Executive Director of the Commission shall submit this order and Annex A to IRRC and the House and Senate Committees as required by the Regulatory Review Act.

(d) The Executive Director of the Commission shall certify this order and Annex A to the Legislative Reference Bureau as required by law.

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

MYRON YODER,
Chairperson Pro Tempore

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

Fiscal Note: Fiscal Note 6-340 remains valid for the final adoption of the subject regulations.

Requests for Final-Form Rulemaking

In accordance with section 5.1(a) of Act 1997-24, requests for information concerning the final-form rulemaking may be submitted to the Commission. Commentators that request information regarding the final-form rulemaking will receive a copy of the rulemaking when the Commission submits the final-form rulemaking to the Independent Regulatory Review Commission and the House and Senate Education Committees.

The Commission will send a copy of the final-form rulemaking to the following commentators:

Emily Kreps, Legal Assistant
Independence Law Center
23 North Front Street
Harrisburg, PA 17101
(717) 657-4990
Fax: (717) 545-8107
ekreps@indlawcenter.org

Eric A. Failing
Executive Director
Pennsylvania Catholic Conference
P.O. Box 2835
Harrisburg, PA 17105-2835
EFailing@pacatholic.org

Stuart L. Knade
Senior Director of Legal Services
Pennsylvania School Boards Association
400 Bent Creek Boulevard
Mechanicsburg, PA 17050-1873
stuart.knade@psba.org

Annex A

TITLE 22. EDUCATION

PART XIV. PROFESSIONAL STANDARDS AND PRACTICES COMMISSION

CHAPTER 235. CODE OF PROFESSIONAL PRACTICE AND CONDUCT FOR EDUCATORS

§ 235.1. Mission.

The Professional Standards and Practices Commission (PSPC) is committed to providing leadership for improving the quality of education in this Commonwealth by establishing high standards for preparation, certification, practice and ethical conduct in the teaching profession.

§ 235.2. Introduction.

(a) Professional conduct defines interactions between the individual educator and students, the employing agencies and other professionals. Generally, the responsibility for professional conduct rests with the individual educator. However, in this Commonwealth, the Professional Standards and Practices Commission (PSPC) is charged with the duty to adopt and maintain a code for professional practice and conduct that shall be applicable to any educator. See section 5(a)(10) of the Educator Discipline Act (act) (24 P.S. § 2070.5(a)(10)).

(b) In recognition of the magnitude of the responsibility inherent in the education process and by virtue of the desire to maintain the respect and confidence of their colleagues, students, parents and the community, educators shall be guided in their conduct by their commitment to their students, colleagues and profession.

(c) Violations of any of the duties prescribed by this chapter may be used as supporting evidence in disciplinary proceedings conducted by or on behalf of the PSPC under the act. Violations of this chapter may also be an independent basis for a public or private reprimand. Discipline for conduct that constitutes both a basis for discipline under the act and an independent basis for discipline under this chapter shall not be limited to a public or private reprimand. Nothing in this chapter shall be construed to otherwise limit the Department of Education's authority to initiate an action under the act to suspend, revoke or otherwise discipline an educator's certificate or employment eligibility, or both.

(d) Nothing in this chapter shall be construed or interpreted to require an educator to violate any of the doctrines, tenets, policies, or practices of any religious or religiously-affiliated school in which that educator is employed.

§ 235.3. (Reserved).

§ 235.3a. Definitions.

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

Act—The Educator Discipline Act (act) (24 P.S. §§ 2070.1a—2070.18c).

Boundaries—The verbal, physical, emotional and social distances between an educator and a student.

Educator—As defined in section 1.2 of the act (24 P.S. § 2070.1b).

Electronic communication—A communication transmitted by means of an electronic device such as a telephone, cellular telephone, computer, computer network, personal data assistant or pager, including e-mails, text messages, instant messages and communications made by means of an Internet web site, such as social media and social networking web sites, or mobile device applications.

Harm—The impairment of learning or any physical, emotional, psychological, sexual or intellectual damage to a student or a member of the school community.

School entity—As defined in section 1.2 of the act (24 P.S. § 2070.1b).

Sexual misconduct—As defined in section 1.2 of the act (24 P.S. § 2070.1b).

Unauthorized drugs—Any controlled substance or other drug possessed by a person not authorized by law to possess such controlled substance or other drug.

§ 235.4. (Reserved).

§ 235.5. (Reserved).

§ 235.5a. Commitment to students.

(a) The primary professional obligation of educators is to the students they serve.

(b) In fulfillment of the commitment to students, educators:

(1) Shall exercise their rights and powers in good faith and for the benefit of the student.

(2) Shall maintain appropriate professional relationships and boundaries with all students at all times, both in and outside the classroom.

(3) Shall not sexually harass students or engage in sexual misconduct.

(4) Shall exert reasonable effort to protect students from harm.

(5) Shall not intentionally expose a student to disparagement.

(6) Shall exhibit consistent and equitable treatment and shall not unlawfully discriminate against students.

(7) Shall not interfere with a student's exercise of political or civil rights and responsibilities.

(8) Shall not knowingly or intentionally distort or misrepresent evaluations of students or facts regarding students.

(9) Shall not knowingly or intentionally misrepresent subject matter or curriculum.

(10) Shall respect a student's right to privacy and comply with all Federal and State laws and regulations, and local policies concerning student records and confidential communications of students.

(11) Shall not be on school premises or at a school-related activity involving students, while under the influence of, possessing or consuming alcoholic beverages or illegal or unauthorized drugs.

(12) Shall not furnish, provide, or encourage students or underage persons to use, possess or unlawfully distribute alcohol, tobacco, vaping products, illegal or unauthorized drugs or knowingly allow any student or underage person to consume alcohol, tobacco, vaping products, or illegal or unauthorized drugs in the presence of the educator.

(13) Shall refrain from inappropriate communication with a student or minor, including, inappropriate communication achieved by electronic communication. Inappropriate communication includes communications that are sexually explicit, that include images, depictions, jokes, stories or other remarks of a sexualized nature, that can be reasonably interpreted as flirting or soliciting sexual contact or a romantic relationship, or that comment on the physical or sexual attractiveness or the romantic or sexual history, activities, preferences, desires or fantasies of either the educator or the student. Factors that may be considered in assessing whether other communication is inappropriate include:

(i) the nature, purpose, timing and amount/extent of the communication;

(ii) the subject matter of the communication; and

(iii) whether the communication was made openly or the educator attempted to conceal the communication.

§ 235.5b. Commitment to colleagues.

In fulfillment of the commitment to colleagues, educators:

(1) Shall not knowingly and intentionally deny or impede a colleague in the exercise or enjoyment of a professional right or privilege in being an educator.

(2) Shall not knowingly and intentionally distort evaluations of colleagues.

(3) Shall not sexually harass a colleague.

(4) Shall not unlawfully discriminate against colleagues.

(5) Shall not interfere with a colleague's exercise of political or civil rights and responsibilities.

(6) Shall not use coercive means or promise special treatment to influence professional decisions of colleagues.

(7) Shall not threaten, coerce or discriminate against a colleague who in good faith reports or discloses to a governing agency actual or suspected violations of law, agency regulations or standards.

(8) Shall respect a colleague's right to privacy and comply with all Federal and State laws and regulations, and local policies concerning confidential health or personnel information.

§ 235.5c. Commitment to the profession.

In fulfillment of the commitment to the profession, educators:

(1) Shall comply with all Federal, State, and local laws and regulations and with written school entity policies.

(2) Shall apply for, accept or assign a position or a responsibility on the basis of professional qualifications and abilities.

(3) Shall not knowingly assist entry into or continuance in the education profession of an unqualified person or recommend for employment a person who is not certificated appropriately for the position.

(4) Shall not intentionally or knowingly falsify a document or intentionally or knowingly make a misrepresentation on a matter related to education, criminal history, certification, employment, employment evaluation or professional duties.

(5) Shall not falsify records or direct or coerce others to do so.

(6) Shall accurately report all information required by the local school board or governing board, State education agency, Federal agency or State or Federal law.

(7) Shall not knowingly or intentionally withhold evidence from the proper authorities and shall cooperate fully during official investigations and proceedings.

(8) Shall comply with all local, State or Federal procedures related to the security of standardized tests, test supplies or resources. Educators shall not intentionally or knowingly commit, and shall use reasonable efforts to prevent, any act that breaches test security or compromises the integrity of the assessment, including copying or teaching identified test items, publishing or distributing test items or answers, discussing test items, providing unauthorized assistance to students, unauthorized alteration of test responses, results or data, and violating local school board or State directions for the use of tests.

(9) Shall not accept or offer gratuities, gifts or favors that impair or appear to influence professional judgment, decisions, or actions or to obtain special advantage. This section shall not restrict the acceptance of de minimis gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

(10) Shall not exploit professional relationships with students, parents or colleagues for personal gain or advantage.

(11) Shall use school funds, property, facilities, and resources only in accordance with local policies and local, State and Federal laws.

§§ 235.6—235.11. (Reserved).

[Pa.B. Doc. No. 21-1312. Filed for public inspection August 20, 2021, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 1101a—1120a]

Video Gaming

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. §§ 3301(a) and (b)(30) and 3302 (relating to general and specific powers; and regulatory authority of the board) promulgates final-form governing the licensing, conduct and regulatory oversight of video gaming in the Commonwealth as set forth in Annex A.

Purpose of the Final-Form Rulemaking

This final-form rulemaking will provide a regulatory oversight structure for the conduct of video gaming at licensed truck stop establishments in this Commonwealth.

The regulations are necessary to implement 4 Pa.C.S. Part III (relating to video gaming) added under the act of October 30, 2017 (P.L. 419, No. 42) (Act 42 of 2017), whose intent is to provide truck stops which meet certain eligibility criteria the option of providing video gaming through a terminal operator licensee on the premises of the licensed truck stop establishment, and to ensure the integrity of the acquisition and operation of the video gaming terminals, redemption terminals and associated equipment. See 4 Pa.C.S. § 3301.

Explanation

Part VII, Subpart N (relating to video gaming) establishes the complete regulatory package necessary for the Board to commence licensing of truck stop establishments which elect to host video gaming activities, of terminal operators who place and operate video gaming terminals in truck stop establishments, of manufacturers, suppliers and gaming service providers. In addition, the subpart provides for testing of all equipment used in video gaming operations and establishes rules for the possession of video gaming terminals, accounting and internal controls and the conduct of video gaming in this Commonwealth. Finally, the subpart addresses compulsive and problem gambling, self-exclusion and Board-imposed exclusion upon persons whose presence in a video gaming area would be inimical to the Commonwealth's interests.

Subpart N establishes a broad regulatory oversight structure for video gaming. Section 1101a.2 (relating to definitions) provides the relevant definitions used throughout the chapter for the conduct of video gaming.

The regulation identifies numerous categories of licensees based upon the statutory criteria for licensure in the Act. Those categories of persons subject to licensure include terminal operators, establishment licensees and their principal qualifiers and key qualifiers, principals, key employees, suppliers, manufacturers, gaming service providers and occupation permittees. Chapters 1102a through 1109a establish the application and general requirements licensees and permittees must comply with to apply with the Board to participate in the regulated conduct of video gaming.

Sections 1110a.1 through 1111a.1 provide for a preliminary review of the application, followed by the processing of the applications by Board staff, addressing deficient and abandoned applications, avenues for withdrawing an application from consideration, and the terms and renewal periods for licenses.

Chapter 1112a (relating to video gaming terminal, redemption terminal and associated equipment testing and certification) addresses the testing and certification standards and processes for video gaming terminals, redemption terminals and associated equipment used in the conduct of video gaming. Testing of the video gaming terminals, redemption terminals and associated equipment is vital to assuring the proper operation of the machines within statutorily mandated guidelines as well as to assure fairness to patrons utilizing video gaming terminals.

Chapters 1113a, 1114a and 1115a (relating to possession of video gaming terminals; accounting and internal controls; and record retention) address the possession of video gaming terminals and establish video gaming accounting and internal control as well as record retention requirements. The purpose of these sections is to ensure accountability for revenues, play of games and overall integrity of the video gaming product.

Chapter 1116a (relating to conduct of video gaming) establishes standards for the video gaming area, video gaming terminals, redemption terminals, automated teller machines and restrictions on terminal operators, establishment licensees and employees of licensees in relation to the operation and conduct of video gaming.

Chapter 1117a (relating to video terminal placement agreements) requires that video terminal placement agreements between terminal operators and establishment licensees must be approved by the Board. It also establishes the standards which those agreements must satisfy in order to achieve Board approval.

Chapters 1118a and 1119a (relating to compulsive and problem gaming; and self-exclusion) relate to compulsive and problem gaming and establish requirements for signage in video gaming areas, the provision of problem gaming information and training as well as for the creation of a video gaming self-exclusion list as required by 4 Pa.C.S. § 3903(a) (relating to self-exclusion) and procedures by which individuals may self-exclude from the conduct of video gaming as well as removing oneself from the self-exclusion list.

Finally, Chapter 1120a (relating to exclusion of persons from video gaming) provides a mechanism establishing the Board's mandatory exclusion list and lists the basis upon which exclusion can be imposed, that is, generally if the persons conduct and presence at an establishment licensees' premises would be inimical to the interests of the Commonwealth and licensed gaming therein. The

chapter further establishes the process which must be undertaken to initiate proceedings to exclude a person, including notice and a right to be heard, outlines a licensed establishments obligation to exclude the person, and provides an opportunity for an excluded person to seek his removal from the list of excluded persons.

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:

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

The Board acted with all possible due diligence in getting this final-form rulemaking promulgated to regulate the video gaming industry. After the passage of Act 42 of 2017, the Board was tasked with promulgating regulations for five separate forms of expanded gaming in rapid succession. In November 2020, Governor Tom Wolf signed the act of November 23, 2020 (P.L. 1140, No. 114) (Act 114 of 2020), making amendments to the Fiscal Code of the Commonwealth. Act 114 on 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 temporary regulations for video gaming, originally published at 48 Pa.B. 1524 (March 17, 2018) did not expire until March 17, 2021. To date, the Board has not had any issues involved in the regulatory oversight of video gaming in this Commonwealth.

Compliance with the Regulatory Review Act and regulations of IRRC

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

§ 1101a.2. Definitions; Clarity; Reasonableness

The legislature did not include a definition of "commercial motor vehicle" in Act 42 of 2017 when making amendments to the act. The Board deemed that it was most appropriate to use the definition of "commercial motor vehicle" from 75 Pa.C.S. § 1603 (relating to definitions), as those are the laws that govern vehicles in the Commonwealth and the only place the term is defined in the Commonwealth's laws. The Board believes this is the approach most consistent with ensuring that the truck stop establishments have adequate parking spaces for what the legislature has previously defined as commercial motor vehicles.

§ 1102a.3. Conditional terminal operator and procurement agent licenses; Clarity

The title of the section has been amended to reflect the recommended changes.

Subsection (a) is amended to indicate that the applicant must specifically request the conditional licensure when the original application is filed, to document that it is a separate and distinct request. The same changes are made in §§ 1103a.3 and 1104a.2 (relating to conditional establishment licenses; and conditional procurement agent principal licenses).

§ 1102a.4. Terminal operator licensee change of control; Clarity

The definition of "controlling interest" is added to § 1101a.2 (relating to definitions) as requested.

The language found in §§ 1102a.4, 1103a.4(a), 1106a.1(g)(1) and 1107a.1(g)(1) regarding change of control and controlling interests is consistent with the Board's existing body of regulations and other expanded gaming regulations that the Board has adopted. The gaming industry has not expressed any concern or confusion regarding the language, and therefore, no modifications have been made.

§ 1103a.1. Establishment licenses; Need; Reasonableness

The Board included this size language to ensure that the parking spaces at the truck stop establishments would be able to accommodate all types of commercial motor vehicles that meet the legislature's definition of the term, and not just some of the smaller vehicles. If the Board's requirements for parking spaces did not require adequately sized spaces to accommodate all of the types of vehicles in the definition of "commercial motor vehicle" under 75 Pa.C.S. § 1603 (relating to definitions), the 20 required spaces could only be made to accommodate vehicles as small as a 16-passenger vans or small school buses, which would preclude larger commercial motor vehicles from being able to park at and frequent the truck stop establishment. It is believed that the legislature would intend to require adequate parking spaces for larger commercial motor vehicles with sizes and weights included in the section, as that comports most with the traditional nature and character of a truck stop.

§ 1106a.1. Supplier licenses; Protection of the public health, safety and welfare; Clarity; Reasonableness

Section 3306(b) of 4 Pa.C.S. (relating to reporting) states that an applicant for a terminal operator license or an establishment license needs to file a diversity plan but does not impose the same requirement for supplier licensees or manufacturer licensees. The Board determined that the omission of suppliers and manufacturers from the diversity plan requirements by the legislature was intentional, and therefore the Board did not impose this requirement on suppliers and manufacturers.

Sections 1106a.1(b)(5) and 1107a.1(b) (relating to supplier licenses; and manufacturer licenses) are amended to reflect the recommended changes.

Chapter 1112a. Video gaming terminal, redemption terminal and associated equipment testing and certification; Clarity

The definition of "educational institution" is moved to § 1101a.2 as the terms does not appear in Chapter 1112a or subsequent chapters. Some of the terms included in the definitions section of Chapter 1112a are also used in Chapter 1113a, so language is added to clarify that the definition of the terms also applies to when the term is used in subsequent chapters.

§ 1112a. Redemption Terminals; Clarity

This section is amended to reflect the recommended changes.

§ 1112a.9. Redemption terminals; Clarity

This language is amended to reflect the recommended changes.

§ 1113a.1. Possession of video gaming terminals generally; Clarity

This section is amended to reflect the recommended changes.

§ 1116a.3. Redemption terminals; Clarity

The Board believes this section is not ambiguous or unclear. It directs that as it pertains to redemption tickets, a redemption terminal shall only accept redemp-

tion tickets produced by video gaming terminals at the truck stop establishment where the redemption terminal is located. This section is independent of any other use or function of redemption terminals. Inclusion of the language from § 1112a.9(e) (relating to redemption terminals) would be redundant and therefore unnecessary.

§ 1118a.5. Penalties; Clarity

This section is amended to reflect the recommended changes.

Chapter 1119a. Self-exclusion; Protection of the public health, safety and welfare; Clarity

This chapter has been updated to reflect the proposed changes to the self-exclusion procedures in Final Form Rulemaking # 125-225 and to be consistent with the other forms of expanded gaming.

Chapter 1120a. Exclusion of persons from video gaming; Clarity

The language in this chapter is amended to provide more clarity as to the exclusion of persons from establishment licensee facilities.

Miscellaneous clarity

The sections are amended to reflect the recommended changes.

Fiscal Impact

Commonwealth. The Board expects that the provisions contained in this final form rulemaking will have a relatively minimal fiscal impact on the Board or any other Commonwealth agency which primarily is the result of the need for some additional personnel needed to process applications and review, monitor and regulate the conduct of video gaming. Some of the additional duties will be absorbed by existing Board staff. The costs of the regulation will be paid for by an assessment against the gross terminal revenue generated by terminal operator licensees.

Political subdivisions. This final form rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private sector. This final form rulemaking is not anticipated to impose a negative fiscal impact on the regulated entities. The decision to participate in video gaming by an eligible truck stop establishment is not mandated by the act but is left to the discretion of those qualifying establishments.

If pursued, there will be some equipment costs for video gaming terminals, redemption terminals and surveillance and security-related equipment, as well as some limited renovation within the truck stop premises to obtain a segregated video gaming area. In addition, regulated video gaming terminal operators and establishment licensees may need to hire, train and license a limited number of staff in the conduct of video gaming. Any costs incurred to hire, train and license employees or purchase/lease equipment should be offset by the proceeds of the video gaming activity.

General public. This final form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

A terminal operator, establishment licensee, manufacturer, suppliers and person employed by those entities, will be required to file applications with the Board providing information regarding the person's proposed activity, security and surveillance as well as accounting and internal control protocols as well as background information of each individual sufficient to permit the Board to determine the individual's suitability for licensure. Applications for licensure and other relevant forms/documents can be found on the Board's public website at https://gamingcontrolboard.pa.gov/.

Individuals who wish to join the video gaming self-exclusion list may do so online on the Board's responsible play and self-exclusion portal by filling out a web-based form. The 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 August 5, 2020, the Board submitted a copy of the proposed rulemaking, published at 50 Pa.B. 4516 (September 5, 2020) to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board is required to submit to IRRC and the 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 June 16, 2021, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 17, 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 II (relating to gaming).

Order

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

(1) The regulations of the Board, 58 Pa. Code, are amended by deleting §§ 1101.1, 1101.2, 1102.1—1102.3, 1103.1—1103.3, 1104.1, 1105.1, 1106.1, 1107.1, 1108.1—1108.3, 1109.1, 1109.2, 1110.1—1110.4, 1111.1, 1112.1—1112.17, 1113.1—1113.7, 1114.1, 1115.1, 1116.1—1116.8, 1117.1, 1117.2, 1118.1—1118.5, 1119.1—1119.5 and 1120.1—1120.9 and adding 1101a.1, 1101a.2, 1102a.1—1102a.4, 1103a.1—1103a.4, 1104a.1, 1104a.2, 1105a.1, 1106a.1, 1107a.1, 1108a.1—1108a.3, 1109a.1, 1109a.2, 1110a.1—1110a.4, 1111a.1, 1112a.1—1112a.17, 1113a.1—1113a.6, 1114a.1, 1115a.1, 1116a.1—1116a.9, 1117a.1, 1117a.2, 1118a.1—1118a.5, 1119a.1—1119a.8 and 1120a.1—1120a.9 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*: See 51 Pa.B. 4035 (July 24, 2021) for IRRC's approval order.)

Fiscal Note: Fiscal Note 125-230 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart N. VIDEO GAMING

Chapter 1101. (Reserved)

Sec.
1101.1. (Reserved).
1101.2. (Reserved).

CHAPTER 1101a. VIDEO GAMING GENERALLY

Sec.
1101a.1. Scope.
1101a.2. Definitions.

§ 1101a.1. Scope.

The purpose of this subpart is to govern the operation of video gaming terminals in this Commonwealth. Parts I, II and III of 4 Pa.C.S. (relating to amusements generally; gaming; and video gaming) and the Board's regulations promulgated thereunder otherwise apply when not in conflict with this subpart.

§ 1101a.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, applies for permission to engage in an act or activity that is regulated under this subpart.

Associated equipment—Equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with video gaming terminals or redemption terminals, including replacement parts, hardware and software.

Background investigation—A security, criminal, credit and suitability investigation of a person as provided for in this part that includes the status of taxes owed to the United States, the Commonwealth and political subdivisions.

Bureau—The Bureau of Investigations and Enforcement of the Board.

Bureau of Licensing—The Bureau of Licensing of the Board.

Cash—United States currency and coin.

Cash equivalent—A ticket, token, chip, card or other similar instrument or representation of value that the Board deems a cash equivalent in accordance with this part.

Central control computer—A central site computer controlled by the Department and accessible by the Board to which all video gaming terminals communicate for the purpose of auditing capacity, real-time information retrieval of the details of a financial event that occurs in the operation of a video gaming terminal or redemption terminal, including coin in, coin out, ticket in, ticket out, jackpots, video gaming terminal and redemption terminal door openings and power failure, and remote video gaming terminal or redemption terminal activation, and disabling of video gaming terminals or redemption terminals.

Cheat—

(i) To defraud or steal from a player, terminal operator licensee, establishment licensee or the Commonwealth while operating or playing a video gaming terminal, including causing, aiding, abetting or conspiring with another person to do so.

(ii) The term also means to alter or causing, aiding, abetting or conspiring with another person to alter the elements of chance, method of selection or criteria that determine any of the following:

(A) The result of a video gaming terminal game.

(B) The amount or frequency of payment in a video gaming terminal game.

(C) The value of a wagering instrument.

(D) The value of a wagering credit.

(iii) The term does not include altering a video gaming terminal or associated equipment for maintenance or repair with the approval of a terminal operator licensee and the Board.

Cheating or *thieving device*—A device, software or hardware:

(i) Used or possessed with the intent to be used to cheat during the operation or play of a video gaming terminal; or

(ii) Used to alter a video gaming terminal without the terminal operator licensee's and the Board's approval.

Commercial motor vehicle—As defined in 75 Pa.C.S. § 1603 (relating to definitions).

Conduct of video gaming—The licensed placement, operation and play of video gaming terminals under this subpart as authorized and approved by the Board.

Controlling interest—Any of the following:

(i) For a publicly traded domestic or foreign corporation, the term means a person has a controlling interest in a legal entity, applicant or licensee if a person's sole voting rights under state law or corporate articles or bylaws entitle the person to elect or appoint one or more of the members of the board of directors or other governing board or the person holds an ownership or beneficial holding of 5% or more of the securities of the publicly traded corporation, partnership, limited liability company or other form of publicly traded legal entity, unless this presumption of control or ability to elect is rebutted by clear and convincing evidence.

(ii) For a privately held domestic or foreign corporation, partnership, limited liability company or other form of privately held legal entity, the term means the holding of any securities in the legal entity, unless this presumption of control is rebutted by clear and convincing evidence.

Convenience store—A retail establishment which sells a limited selection of packaged foods, drug store items, food for consumption on or off the premises, and basic supplies for the home and table, which may include the retail sale of liquid fuels.

Conviction—

(i) A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has

been imposed as determined by the law of the jurisdiction in which the prosecution was held.

(ii) The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or had an order of accelerated rehabilitative disposition entered.

Corporation—The term includes a publicly traded corporation.

Educational institution—A facility that teaches and certifies students in video gaming terminal design, operation, repair or servicing.

Establishment license—A license issued by the Board authorizing a truck stop establishment to permit a terminal operator licensee to place and operate video gaming terminals on the truck stop establishment's premises under this part.

Establishment licensee—A truck stop establishment that holds an establishment license.

Financial backer—An investor, mortgagee, bondholder, noteholder, or other sources of equity or capital provided to an applicant or licensed entity.

Gaming employee—

(i) Any of the following individuals:

(A) An employee of a terminal operator licensee, establishment licensee or supplier licensee that is not a key employee who is involved in the conduct of video gaming, including servicing and maintaining video gaming terminals, redemption terminals, and security and surveillance equipment, and monitoring the conduct of video gaming and patrons in the video gaming area of an establishment licensee.

(B) An employee of a supplier or manufacturer licensee whose duties are directly involved with the repair or distribution of video gaming terminals or associated equipment sold or provided to a terminal operator licensee in this Commonwealth as determined by the Board.

(C) An employee of a gaming service provider who, in connection with the performance of his duties, has access to a video gaming area, video terminals, redemption terminals, and the security and surveillance systems monitoring a video gaming area.

(ii) The term does not include nongaming personnel as determined by the Board or an employee of an establishment licensee who does not have duties involving the conduct or monitoring of video gaming.

Gaming service provider—

(i) A person who is not required to be licensed as a terminal operator, manufacturer, supplier or establishment licensee who provides goods or services to a terminal operator licensee that directly relates to the operation and security of a video gaming terminal or redemption terminal.

(ii) The term does not include a person who supplies goods or services that, at the discretion of the Board, does not impact the integrity of video gaming, video gaming terminals or the connection of video gaming terminals to the central control computer system, including all of the following:

(A) Seating to accompany video gaming terminals.

(B) Structural or cosmetic renovations, improvements or other alterations to a video gaming area.

Gross terminal revenue—

(i) The total of cash or cash equivalents received by a video gaming terminal minus the total of cash or cash equivalents paid out to players as a result of playing a video gaming terminal.

(ii) The term does not include counterfeit cash or cash taken in a fraudulent act perpetrated against a terminal operator licensee for which the terminal operator licensee is not reimbursed.

Incentive—Consideration, including a promotion or prize, provided to a player or potential player as an enticement to play a video gaming terminal.

Inducement—

(i) Any of the following:

(A) Consideration paid directly or indirectly, from a manufacturer, supplier, terminal operator, procurement agent, gaming employee, employee or another person on behalf of an applicant or anyone licensed under this part, to a truck stop establishment, establishment licensee, establishment licensee owner or an employee of the establishment licensee, directly or indirectly, as an enticement to solicit or maintain the establishment licensee or establishment licensee owner's business.

(B) Cash, incentive, marketing and advertising cost, gift, food, beverage, loan, prepayment of gross terminal revenue and other contribution or payment that offsets an establishment licensee's operational costs, or as otherwise determined by the Board.

(ii) The term does not include costs paid by a terminal operator applicant or terminal operator licensee related to making video gaming terminals operate at the premises of an establishment licensee, including for improvements and renovations to the video gaming area, wiring and rewiring, software updates, ongoing video gaming terminal maintenance, redemption terminals, network connections, site controllers and costs associated with communicating with the central control computer system.

Key employee—An individual who is employed by a manufacturer licensee, supplier licensee or terminal operator licensee who is determined by the Board to be a director or department head or otherwise empowered to make discretionary decisions that regulate the conduct of video gaming.

Key employee licensee—An individual who holds a key employee license.

Key employee qualifier—An individual required to be qualified as part of the truck stop establishment, including an individual who is part of an entity that leases a truck stop establishment or operates a truck stop establishment pursuant to a management or other agreement, who is determined by the Board to be a director or department head or otherwise empowered to make discretionary decisions that regulate the conduct of video gaming.

Law enforcement authority—The power to conduct investigations of or to make arrests for criminal offenses.

Licensed entity—A terminal operator licensee, establishment licensee, manufacturer licensee or supplier licensee under this part.

Licensed facility—As defined in section 1103 of the act (relating to definitions).

Licensed gaming entity—As defined in section 1103 of the act.

Licensee—A person listed under this part.

Manufacturer—A person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to a video gaming terminal, redemption terminal or associated equipment for use or play of video gaming terminals in this Commonwealth for video gaming purposes.

Manufacturer license—A license issued by the Board authorizing a manufacturer to manufacture or produce video gaming terminals, redemption terminals or associated equipment for use in this Commonwealth for video gaming purposes.

Manufacturer licensee—A person that holds a manufacturer license.

Minor—An individual under 21 years of age.

Nongaming employee—An individual who is employed by a terminal operator licensee, manufacturer licensee, supplier licensee, gaming service provider or establishment licensee and whose duties do not involve the conduct of video gaming or the monitoring of a video gaming area, either directly or through surveillance.

Nonkey employee—An individual employed by a terminal operator licensee who, unless otherwise designated by the Board, is not a key employee.

Occupation permit—A permit authorizing an individual to be employed or to work as a gaming employee for a terminal operator licensee, an establishment licensee, a gaming service provider, a supplier licensee or as an employee of a manufacturer who performs duties at the premises of a terminal operator or establishment licensee relating to video gaming terminals or redemption terminals.

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

Player—An individual who wagers cash or a cash equivalent in the play or operation of a video gaming terminal and the play or operation of which may deliver or entitle the individual playing or operating the video gaming terminal to receive cash or a cash equivalent from a terminal operator licensee.

Principal—An officer, director or person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee under this part as a terminal operator, manufacturer or supplier or who has a controlling interest in an applicant or licensee as a terminal operator, manufacturer or supplier under this part or has the ability to elect a majority of the board of directors of a terminal operator, manufacturer or supplier licensee or to otherwise control anyone licensed under this part, procurement agent, lender or other licensed financial institution of an applicant or a terminal operator, manufacturer or supplier licensee under this part, 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 or anyone licensed under this part or other person or employee of a terminal operator licensee, manufacturer licensee or supplier licensee deemed to be a principal by the Board, including a procurement agent.

Principal qualifier—Each owner, officer and director of the truck stop establishment, including each individual or owner, officer and director of an entity that leases a truck stop establishment or operates a truck stop establishment pursuant to a management or other agreement who is required to be qualified as part of the truck stop establishment application. For purposes of this definition, an owner is each individual who has a direct or indirect ownership or beneficial interest of 10% or more or an entity who has a direct ownership or beneficial interest of 20% or more in the truck stop establishment or other person as determined by the Board. An officer is a president, chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

Procurement agent—A person that shares in the gross terminal revenue or is otherwise compensated for the purpose of soliciting or procuring a terminal placement agreement.

Progressive payout—A video game terminal wager payout that increases in a monetary amount based on the amounts wagered in a progressive system.

Progressive system—A computerized system linking video gaming terminals on the premises of an establishment licensee and offering one or more common progressive payouts based on the amounts wagered.

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 obligations imposed by 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).

Redemption terminal—The collective hardware, software, communications technology and other ancillary equipment used to facilitate the payment of cash or a cash equivalent to a player as a result of playing a video gaming terminal.

Registrant—A holder of a nongaming registration under this part.

Security—As defined in the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-703.1).

Subsidiary—As defined in section 1103 of the act.

Supplier—A person that sells, leases, offers or otherwise provides, distributes or services any video gaming terminal, redemption terminal or associated equipment to a terminal operator licensee for use or play in this Commonwealth.

Supplier license—A license issued by the Board authorizing a supplier to provide products or services related to video gaming terminals, redemption terminals or associated equipment to terminal operator licensees for use in this Commonwealth for the conduct of video gaming.

Supplier licensee—A person that holds a supplier license.

Terminal operator—A person that owns, services or maintains video gaming terminals for placement and operation on the premises of an establishment licensee.

Terminal operator license—A license issued by the Board authorizing a terminal operator to place and operate video gaming terminals in an establishment licensee's premises under this part.

Terminal operator licensee—A person that holds a terminal operator license.

Terminal placement agreement—The formal written agreement or contract between an applicant for a terminal operator license or terminal operator licensee and an applicant for an establishment license or establishment licensee that establishes the terms and conditions regarding the conduct of video gaming.

Truck stop establishment—A premises that:

(i) Is equipped with diesel islands used for fueling commercial motor vehicles.

(ii) Has sold on average 50,000 gallons of diesel or biodiesel fuel each month for the previous 12 months or is projected to sell an average of 50,000 gallons of diesel or biodiesel fuel each month for the next 12 months.

(iii) Has at least 20 parking spaces dedicated for commercial motor vehicles as defined in 75 Pa.C.S. § 1603.

(iv) Has a convenience store.

(v) Is situated on a parcel of land of not less than 3 acres that the truck stop establishment owns or leases.

(vi) Is not located on any property owned by the Pennsylvania Turnpike Commission.

Video gaming area—The area of an establishment licensee's premises where video gaming terminals and redemption terminals are installed for operation and play.

Video gaming employees—The term includes gaming employees, key employees and nonkey employees.

Video gaming terminal—

(i) A mechanical or electrical contrivance, terminal, machine or other device approved by the Board that, upon insertion of cash or cash equivalents, is available to play or operate one or more gambling games, the play of which utilizes a random number generator and:

(A) May award a winning player either a free game or credit that shall only be redeemable for cash or cash equivalents at a redemption terminal.

(B) May utilize video displays.

(C) May use an electronic credit system for receiving wagers and making payouts that are only redeemable at a redemption terminal.

(ii) Associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.

(iii) The term does not include a slot machine operated at a licensed facility in accordance with the act or a coin-operated amusement game.

(iv) The term does not include "lottery" as defined in section 302 of the State Lottery Law (72 P.S. § 3761-302).

Chapter 1102. (Reserved)

Sec.
1102.1—1102.3. (Reserved).

CHAPTER 1102a. TERMINAL OPERATOR LICENSEES

Sec.

§ 1102a.1. Terminal operator licenses.

(a) An applicant for a terminal operator license may conduct video gaming upon approval by the Board and in accordance with 4 Pa.C.S. Part III (relating to video gaming) and this chapter.

(b) An applicant shall submit all of the following:

(1) An Enterprise Entity Application and Disclosure Information Form.

(2) The nonrefundable application fee of $25,000 in accordance with 4 Pa.C.S. § 4101(a) (relating to fees).

(3) A diversity plan as set forth in 4 Pa.C.S. § 3307 (relating to diversity).

(4) A current tax lien certificate issued by the Department.

(5) An application for each proposed key employee under Chapter 1105a (relating to key employees) and principal under Chapter 1104a (relating to principals) as specified in the Enterprise Entity Application and Disclosure Information Form.

(6) A statement that the applicant has developed and implemented internal safeguards and policies to prevent a violation of 4 Pa.C.S. § 4305 (relating to political influence) and a copy of the safeguards and policies.

(7) Details of any loans or other financial commitments to fund license costs and costs of operating video gaming.

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

(9) A consent authorizing the Board to conduct a background investigation, the scope of which is to be determined by the Bureau, in its discretion consistent with 4 Pa.C.S. Part III (relating to video gaming), and a release signed by all persons subject to investigation of all information required to complete the investigation.

(10) Information concerning maintenance and operation of video gaming terminals in other jurisdictions.

(11) Proof that the applicant has or will establish a place of business in this Commonwealth.

(12) A copy of, or a detailed description of, the terms and conditions of any terminal placement agreement entered into with an establishment licensee applicant or licensee.

(13) Any other information as the Board or the Bureau may require.

(c) Upon request of the Board or the Bureau, 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 a time is not specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth 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 application or amendments thereto.

(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.

§ 1102a.2. Terminal operator license issuance and statement of conditions.

(a) *Criteria*. In addition to the criteria in 4 Pa.C.S. Part III (relating to video gaming), the Board will not issue a terminal operator license unless all of the following criteria have been established by the applicant:

(1) The applicant has fulfilled each condition set by the Board, 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 terminal operator license.

(b) *Statement of conditions*.

(1) The applicant, as a condition precedent to the issuance of a terminal operator 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 contained in the Statement of Conditions by the applicant.

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

§ 1102a.3. Conditional terminal operator licenses.

(a) Upon accepting a terminal operator application for filing, the Board will issue a conditional terminal operator license if requested by the applicant and the applicant has satisfied, as determined by the Board, all of the following:

(1) The applicant has submitted a completed application for a terminal operator license.

(2) The applicant has never had a similar gaming license denied or revoked in another jurisdiction.

(3) The applicant has never been convicted of a felony in any jurisdiction.

(4) The applicant has never been convicted of a gambling law violation in any jurisdiction.

(5) The applicant is current on all State taxes.

(6) The applicant attests by affidavit under penalty of perjury that the applicant is not otherwise prohibited from licensure under 4 Pa.C.S. Part III (relating to video gaming).

(b) The Board will issue a conditional terminal operator license within 60 days after the completed application has been received by the Board, and the Board has determined that the criteria in subsection (a) have been satisfied.

(c) If the Board determines that the criteria in subsection (a) have not been satisfied, the Board will give the applicant written notice and explanation of that determination.

(d) A conditional license issued under this section will be valid until:

(1) The Board approves or denies the application for a terminal operator license.

(2) The conditional license is terminated for a violation of the act or this part.

(3) One calendar year has passed since the conditional license has been issued.

(e) The Board may extend the duration of a conditional license for 1 year.

(f) A request for conditional licensure must include a $100 fee in addition to the applicable fee required under 4 Pa.C.S. § 4101 (relating to fees).

§ 1102a.4. Terminal operator licensee change of control.

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

(1) More than 20% of a terminal operator licensee'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 terminal operator licensee.

(3) Any other interest in a terminal operator licensee which allows the acquirer to control the terminal operator licensee.

(b) A terminal operator licensee shall notify the Bureau and the Bureau of Licensing in a manner prescribed by the Bureau of Licensing immediately upon becoming aware of any proposed or contemplated change of control of the terminal operator licensee.

(c) Prior to acquiring a controlling interest in a terminal operator licensee, 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 as required under Chapters 433a and 1104a (relating to principal licenses; and principals) and key employees as required under § 435a.2 (relating to key employee license) and Chapter 1105a (relating to key employees).

(d) A person or group of persons seeking to acquire a controlling interest in a terminal operator licensee 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).

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

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

(1) The acquirer is an existing licensed terminal operator licensee.

(2) The existing licensed terminal operator licensee has provided the Bureau and the Bureau of Licensing notification 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 1103. (Reserved)

Sec.
1103.1—1103.3. (Reserved).

CHAPTER 1103a. ESTABLISHMENT LICENSEES

Sec.
1103a.1. Establishment licenses.
1103a.2. Establishment principal and key employee qualification.
1103a.3. Conditional establishment licenses.
1103a.4. Establishment licensee change of control.

§ 1103a.1. Establishment licenses.

(a) A truck stop establishment in this Commonwealth seeking to offer video gaming terminals through a licensed terminal operator on its premises shall apply for an establishment license by filing a Video Gaming Terminal Establishment License Application with the Board.

(b) To be eligible to file an application for an establishment license, the truck stop establishment must meet all of the following requirements:

(1) Be equipped with diesel islands for the fueling of commercial motor vehicles and have sold on average 50,000 gallons of diesel or biodiesel fuel each month for the previous 12 months or is projected to sell an average of 50,000 gallons of diesel or biodiesel fuel each month for the next 12 months.

(2) Have at least 20 parking spaces dedicated for commercial motor vehicles. For purposes of this paragraph, "parking spaces dedicated for commercial motor vehicles" must be of sufficient size to accommodate vehicles which are 8 feet in width and 53 feet in length or which otherwise have a gross combination weight rating or gross combination weight of 26,000 pounds inclusive of a tow unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater.

(3) Have a convenience store.

(4) Be situated on a parcel of land not less than 3 acres and which is not located on property owned by the Pennsylvania Turnpike Commission.

(5) Be licensed as a lottery sales agent under section 305 of the State Lottery Law (72 P.S. § 3761-305).

(c) An applicant for an establishment license shall submit all of the following:

(1) A Video Gaming Terminal Establishment License Application.

(2) The nonrefundable application fee of $1,000 in accordance with 4 Pa.C.S. § 4101(a) (relating to fees).

(3) Documentation to establish its eligibility to apply to be an establishment licensee as set forth in subsection (b).

(4) A to-scale schematic or architectural rendering of the floor plan of the establishment which shows all of the following:

(i) Total square footage of the video gaming area.

(ii) A depiction of the video gaming area where video gaming will be offered in relation to the overall facility.

(iii) Location of the video gaming terminals and redemption terminals, and security and surveillance equipment locations.

(iv) A detailed description of the surveillance to be utilized.

(5) A description of the proposed surveillance and security measures to ensure the security of the proposed video gaming area.

(6) An executed terminal placement agreement between the establishment licensee and terminal operator.

(7) A diversity plan as set forth in 4 Pa.C.S. § 3307 (relating to diversity).

(8) A current tax lien certificate issued by the Department.

(9) Information for each key employee qualifier and principal qualifier as specified in the Video Gaming Terminal Establishment License Application.

(10) The consent to a background investigation by the Bureau of the applicant, its principal qualifiers and key employee qualifiers or other persons required by the Board and a release to obtain the information necessary for the completion of the background investigation.

§ 1103a.2. Establishment principal and key employee qualification.

(a) In addition to the information required under § 1103a.1(c)(8) (relating to establishment licenses), a principal qualifier and key employee qualifier shall apply for qualification as follows:

(1) Submit fingerprints in a manner prescribed by the Bureau.

(2) Consent to a background investigation by the Bureau of the principal qualifier and key employee qualifier and a release to obtain the information necessary for the completion of the background investigation.

(3) Provide any other information required by the Board.

(b) In addition to individuals meeting the definition of principal qualifier and key employee qualifier, the Board may require the submission of fingerprints or any other information required by the Board from a person who holds any direct or indirect ownership or beneficial interest in a truck stop establishment, or has the right to any profits or distributions directly or indirectly, from the truck stop establishment if the Bureau determines that the submission of fingerprints of the person is necessary to protect the public interest or to enhance the integrity of gaming in this Commonwealth.

(c) Each of the individuals required to submit fingerprints under subsections (a) and (b) must be found qualified by the Board. An individual who is found qualified and is also a gaming or nongaming employee as defined in §§ 401a.3 and 1101a.2 (relating to definitions) shall obtain a gaming employee occupation permit in accordance with § 435a.3 (relating to occupation permit) or a nongaming employee registration in accordance with § 435a.5 (relating to nongaming employee registration) and Chapter 1109a (relating to occupation permits) of this subpart.

§ 1103a.3. Conditional establishment licenses.

(a) Upon accepting an establishment license application for filing, the Board will issue a conditional establishment license if requested by the applicant and the applicant has satisfied, as determined by the Board, all of the following:

(1) The applicant has submitted a completed application for an establishment license.

(2) The applicant has never been convicted of a felony in any jurisdiction.

(3) The applicant has never been convicted of a gambling law violation in any jurisdiction.

(4) The applicant is current on all State taxes.

(5) The applicant attests by affidavit under penalty of perjury that the applicant is not otherwise prohibited from licensure under 4 Pa.C.S. Part III (relating to video gaming).

(b) The Board will issue a conditional license within 60 days after the completed application has been received by the Board, and the Board has determined that the criteria in subsection (a) have been satisfied.

(c) If the Board determines that the criteria in subsection (a) have not been satisfied, the Board will give the applicant written notice and explanation of that determination.

(d) A conditional license issued under this section will be valid until:

(1) The Board approves or denies the application for an establishment license.

(2) The conditional license is terminated for a violation of this part.

(3) One calendar year has passed since the conditional license has issued.

(e) The Board may extend the duration of a conditional license for 1 year.

(f) A request for a conditional license must include a $100 fee which shall be in addition to the applicable fee required under 4 Pa.C.S. § 4101 (relating to fees).

§ 1103a.4. Establishment licensee change of control.

(a) For purposes of this section, a change of control of an establishment licensee will be deemed to have occurred when a person or group of persons acquires:

(1) More than 20% of an establishment licensee'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 establishment licensee.

(3) Any other interest in an establishment licensee which allows the acquirer to control the establishment licensee, including a lease agreement, management agreement, or other agreement that permits the acquirer operational control of the establishment licensee.

(b) An establishment licensee shall notify the Bureau and the Bureau of Licensing in a manner prescribed by the Bureau of Licensing immediately upon becoming aware of any proposed or contemplated change of control of the establishment licensee.

(c) Prior to acquiring a controlling interest or operational control in an establishment licensee, 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, lease agreement or management agreement.

(2) Completed applications for the acquiring company, principal qualifiers and key employee qualifiers as required under this chapter.

(d) A person or group of persons seeking to acquire a controlling interest or operational control in an establishment licensee 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).

(e) A person or group of persons may not acquire a controlling interest or operational control in an establishment licensee until the petition required under subsection (c) has been approved. A person or group of persons seeking to acquire a controlling interest in an establishment licensee and the establishment may enter into an agreement of sale, lease agreement or management agreement that is contingent on Board approval of the petition.

(f) The requirements in this section do not apply to the acquisition of a controlling interest or operational control in an establishment licensee when all of the following conditions are met:

(1) The acquirer of the controlling interest or operational control is a person or group of persons currently licensed as principal qualifier of an existing licensed establishment licensee.

(2) The person or group of persons currently licensed as principal qualifier of an existing licensed establishment licensee has provided the Bureau and the Bureau of Licensing notification and a copy of all documents governing the acquisition, lease agreement or management agreement 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 1104. (Reserved)

Sec.
1104.1. (Reserved).

CHAPTER 1104a. PRINCIPALS

Sec.
1104a.1. Principal licenses.
1104a.2. Conditional procurement agent principal licenses.

§ 1104a.1. Principal licenses.

(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 file all of the following:

(1) Verification of status as a principal from a terminal operator licensee, a manufacturer licensee or supplier licensee.

(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 of the principal applicant 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 issue 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 applicant if the Board determines additional time is needed to complete an investigation for licensure.

§ 1104a.2. Conditional procurement agent principal licenses.

(a) Upon accepting a procurement agent's principal application for filing, the Board will issue a conditional procurement agent principal license if requested by the applicant and the applicant has satisfied, as determined by the Board, all of the following:

(1) The applicant has submitted a completed application for a principal license.

(2) The applicant has never had a similar gaming license denied or revoked in another jurisdiction.

(3) The applicant has never been convicted of a felony in any jurisdiction.

(4) The applicant has never been convicted of a gambling law violation in any jurisdiction.

(5) The applicant is current on all State taxes.

(6) The applicant attests by affidavit under penalty of perjury that the applicant is not otherwise prohibited from licensure under 4 Pa.C.S. Part III (relating to video gaming).

(b) The Board will issue a conditional procurement agent principal license within 60 days after the completed application has been received by the Board, and the Board has determined that the criteria in subsection (a) have been satisfied.

(c) If the Board determines that the criteria in subsection (a) have not been satisfied, the Board will give the applicant written notice and explanation of that determination.

(d) A conditional license issued under this section will be valid until:

(1) The Board approves or denies the application for a procurement agent's principal license.

(2) The conditional license is terminated for a violation of the act or this part.

(3) One calendar year has passed since the conditional license has been issued.

(e) The Board may extend the duration of a conditional license for 1 year.

(f) A request for conditional licensure must include a $100 fee in addition to the applicable fee required under 4 Pa.C.S. § 4101 (relating to fees).

Chapter 1105. (Reserved)

Sec.
1105.1. (Reserved).

CHAPTER 1105a. KEY EMPLOYEES

Sec.
1105a.1. Key employee licenses.

§ 1105a.1. Key employee licenses.

(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 file all of the following:

(1) Verification of status as a key employee from a terminal operator licensee, an establishment licensee, manufacturer licensee or supplier licensee.

(2) A description of employment responsibilities.

(3) The consent to a background investigation by the Bureau of the applicant, and a release to obtain the information necessary for the completion of the background investigation, including information from governmental agencies, employers and other organizations.

(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 issue 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 key employee license is not transferable.

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

(f) 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.

Chapter 1106. (Reserved)

Sec.
1106.1. (Reserved).

CHAPTER 1106a. SUPPLIERS

Sec.
1106a.1. Supplier licenses.

§ 1106a.1. Supplier licenses.

(a) *Application for licensure*. A supplier as defined in this subpart shall apply for licensure in accordance with § 431a.2 (relating to supplier license applications and standards).

(1) A supplier filing an application for licensure under this chapter shall not be required to file a diversity plan as set forth in § 431a.2(a)(3).

(b) *Submittals*. In addition to the information submitted under § 431a.2, an applicant for a supplier license shall submit all of the following:

(1) The name and business address of the applicant and the applicant's affiliates, intermediaries, subsidiaries and holding companies, the principals and key employees of each business, and a list of employees and their positions within each business, as well as financial information required by the Board.

(2) A statement that the applicant and each affiliate, intermediary, subsidiary or holding company of the applicant are not terminal operator licensees or establishment licensees.

(3) Proof that the applicant has or will establish a place of business in this Commonwealth. A supplier licensee shall maintain a place of business in this Commonwealth to remain eligible for licensure.

(4) The consent to a background investigation by the Bureau of the applicant, its principals and key employees or other persons required by the Board and a release to obtain the information necessary for the completion of the background investigation.

(5) The details of any supplier license issued by the Board to the applicant under section 1317 of the act (relating to supplier licenses) and details of any application for a supplier license that was denied by the board, if applicable.

(6) The details of any equivalent license granted or denied by other jurisdictions where gaming activities similar to those authorized by the act or this part are permitted.

(7) The type of products and services to be supplied and whether those products and services will be provided through purchase, lease, contract or otherwise.

(8) Other information determined by the Board to be appropriate.

(c) *Approval and issuance of license*. Upon being satisfied that the requirements in subsections (a) and (b) have been met, the Board may approve the application and issue the applicant a supplier license consistent with all of the following:

(1) A licensee shall have an affirmative duty to notify the Board of a change relating to the status of its license or to information in the application materials on file with the Board.

(2) The license is nontransferable.

(3) Other conditions established by the Board.

(d) *Considerations*. In determining whether an applicant is suitable to be licensed as a supplier under this section, the Board will consider all of the following:

(1) The financial fitness, good character, honesty, integrity and responsibility of the applicant.

(2) If all principals and key employees of the applicant are eligible and suitable for licensure.

(3) The integrity of financial backers.

(4) The suitability of the applicant and principals and key employees of the applicant based on the satisfactory results of:

(i) A background investigation of the applicant and its principals and key employees.

(ii) A current tax clearance review performed by the Department.

(iii) A current Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review performed by the Department of Labor and Industry.

(e) *Submittal of agreements*. A supplier shall submit to the Bureau of Licensing for review any agreements with a licensed manufacturer or with a terminal operator licensee. The review may include financing arrangements, inventory requirements, warehouse requirements, warehouse space, technical competency, compensative agreements and other terms or conditions to ensure the financial independence of the supplier licensee from any licensed manufacturer or terminal operator.

(f) *Occupation permit or nongaming registration*. An employee of a supplier licensee who is a gaming employee or nongaming employee as defined in § 1101a.2 (relating to definitions) shall obtain an occupation permit under § 1109a.1 (relating to gaming employee occupation permits) or a nongaming registration under § 1109a.2 (relating to nongaming employee registrations).

(g) *Change of control of a supplier licensee*.

(1) For purposes of this subsection, a change of control of a supplier licensee will be deemed to have occurred when a person or group of persons acquires:

(i) More than 20% of a supplier licensee's securities, assets or other ownership interests.

(ii) 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 supplier licensee.

(iii) Any other interest in a supplier licensee which allows the acquirer to control the supplier licensee.

(2) A supplier licensee shall notify the Bureau and the Bureau of Licensing in a manner prescribed by the Bureau of Licensing immediately upon becoming aware of any proposed or contemplated change of control of the supplier licensee.

(3) Prior to acquiring a controlling interest in a supplier licensee, 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:

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

(ii) Completed applications for the acquiring company, as required under this chapter, principals as required under § 1104a.1 (relating to principal licenses) and key employees as required under § 1105a.1 (relating to key employee licenses).

(iii) An affirmation that neither the acquirer nor any of its affiliates, intermediaries, subsidiaries or holding companies is a terminal operator licensee or establishment licensee.

(4) A person or group of persons seeking to acquire a controlling interest in a supplier licensee 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 this subsection.

(5) A person or group of persons may not acquire a controlling interest in a supplier licensee until the petition required under this subsection, has been approved. A person or group of persons seeking to acquire a controlling interest in a supplier licensee and the supplier licensee may enter into a sales agreement that is contingent on Board approval of the petition.

(6) The requirements in this section do not apply to the acquisition of a controlling interest in a supplier licensee when all of the following conditions are met:

(i) The acquirer is an existing licensed supplier licensee.

(ii) The existing licensed supplier licensee has provided the Bureau and the Bureau of Licensing notification and a copy of all documents governing the acquisition at least 60 days prior to the acquisition.

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

Chapter 1107. (Reserved)

Sec.
1107.1. (Reserved).

CHAPTER 1107a. MANUFACTURERS

Sec.
1107a.1. Manufacturer licenses.

§ 1107a.1. Manufacturer licenses.

(a) *Application for licensure*. A manufacturer as defined in this subpart who seeks to manufacture video gaming terminals, redemption terminals and associated equipment for use in this Commonwealth shall apply for licensure in accordance with §§ 427a.1 and 427a.2 (relating to manufacturer general requirements; and manufacturer license applications and standards).

(1) A manufacturer filing an application for licensure under this chapter shall not be required to file a diversity plan as set forth in § 427a.2(a)(3).

(b) *Submittals*. In addition to the information submitted under § 427a.2 an applicant shall include all of the following:

(1) The name and business address of the applicant and the applicant's affiliates, intermediaries, subsidiaries and holding companies, the principals and key employees of each business, and a list of employees and their positions within each business, as well as financial information required by the Board.

(2) A statement that the applicant and each affiliate, intermediary, subsidiary or holding company of the applicant are not terminal operator licensees or establishment licensees.

(3) The consent to a background investigation by the Bureau of the applicant, its principals and key employees or other persons required by the Board and a release to obtain the information necessary for the completion of the background investigation.

(4) The details of any equivalent manufacturer license granted or denied by other jurisdictions where gaming activities similar to those authorized by this part are permitted.

(5) The details of any manufacturer license issued by the Board to the applicant under section 1317.1 of the act (relating to manufacturer licenses) or details of any application for a manufacturer license that was denied by the Board, if applicable.

(6) The type of video gaming terminals, redemption terminals or associated equipment to be manufactured or repaired.

(7) Other information determined by the Board or the Bureau to be appropriate.

(c) *Approval and issuance of license*. Upon being satisfied that the requirements in subsections (a) and (b) have been met, the Board may approve the application and issue the applicant a manufacturer license consistent with all of the following:

(1) A licensee shall have an affirmative duty to notify the Board of a change relating to the status of its license or to information in the application materials on file with the Board.

(2) The license shall be nontransferable.

(3) Other conditions established by the Board.

(d) *Considerations*. In determining whether an applicant is suitable to be licensed as a manufacturer under this section, the Board will consider all of the following:

(1) The financial fitness, good character, honesty, integrity and responsibility of the applicant.

(2) If all principals and key employees of the applicant are eligible and suitable for licensure.

(3) The integrity of financial backers.

(4) The suitability of the applicant and principals and key employees of the applicant based on the satisfactory results of:

(i) A background investigation of principals and key employees.

(ii) A current tax clearance review performed by the Department.

(iii) A current Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review performed by the Department of Labor and Industry.

(e) *Submittal of agreements*. A manufacturer shall submit to the Bureau of Licensing for review any agreements with a licensed supplier, terminal operator or establishment licensee. The review may include financing arrangements, inventory requirements, warehouse requirements, warehouse space, technical competency, compensative agreements and other terms or conditions to ensure the financial independence of the licensed manufacturer from any licensed supplier, terminal operator or establishment licensee.

(f) *Occupation permit* or *nongaming registration*. An employee of a manufacturer licensee who is a gaming employee or nongaming employee as defined in § 1101a.2 (relating to definitions) shall obtain an occupation permit under § 1109a.1 (relating to gaming employee occupation permits) or a nongaming registration under § 1109a.2 (relating to nongaming employee registrations).

(g) *Change of control of a manufacturer licensee*.

(1) For purposes of this subsection, a change of control of a manufacturer licensee will be deemed to have occurred when a person or group of persons acquires:

(i) More than 20% of a manufacturer licensee's securities, assets or other ownership interests.

(ii) 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 manufacturer licensee.

(iii) Any other interest in a manufacturer licensee which allows the acquirer to control the manufacturer licensee.

(2) A manufacturer licensee shall notify the Bureau and the Bureau of Licensing in a manner prescribed by the Bureau of Licensing immediately upon becoming aware of any proposed or contemplated change of control of the manufacturer licensee.

(3) Prior to acquiring a controlling interest in a manufacturer licensee, 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:

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

(ii) Completed applications for the acquiring company, as required under this chapter, principals as required under Chapter 433a (relating to principal licenses) and key employees as required under § 435a.2 (relating to key employee license).

(iii) An affirmation that neither the acquirer nor any of its affiliates, intermediaries, subsidiaries or holding companies is a terminal operator licensee or establishment licensee and that the acquirer has neither applied for nor holds a terminal operator license or establishment license.

(4) A person or group of persons seeking to acquire a controlling interest in a manufacturer licensee 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 (a).

(5) A person or group of persons may not acquire a controlling interest in a manufacturer licensee until the

petition required under subsection (g) has been approved. A person or group of persons seeking to acquire a controlling interest in a manufacturer licensee and the manufacturer licensee may enter into an agreement of sale that is contingent on Board approval of the petition.

(6) The requirements in this section do not apply to the acquisition of a controlling interest in a manufacturer licensee when all of the following conditions are met:

(i) The acquirer is an existing licensed manufacturer licensee.

(ii) The existing licensed manufacturer licensee has provided the Bureau and the Bureau of Licensing notification and a copy of all documents governing the acquisition at least 60 days prior to the acquisition.

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

Chapter 1108. (Reserved)

Sec.
1108.1—1108.3. (Reserved).

CHAPTER 1108a. GAMING SERVICE PROVIDERS

Sec.
1108a.1. Gaming service providers.
1108a.2. Interim authorization.
1108a.3. Emergency gaming service provider.

§ 1108a.1. Gaming service providers.

(a) A gaming service provider providing goods or services to a terminal operator licensee that directly relates to the operation and security of a video gaming terminal or redemption terminal shall apply to the Board to be registered as a gaming service provider.

(b) A gaming service provider seeking registration shall complete a Gaming Service Provider Registration Form. The original copy and the fee toward the cost of the investigation of the applicant posted on the Board's web site shall be submitted to the Bureau of Licensing by the terminal operator applicant or licensee for whom the gaming service provider will provide goods or services unless otherwise directed by the Bureau of Licensing.

(c) In addition to the materials required under subsection (b), an applicant for a gaming service provider registration shall do all of the following:

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

(2) Submit fingerprints of the following individuals in a manner prescribed by the Bureau:

(i) Each officer and director of the registered gaming service provider applicant. For purposes of this paragraph, "officer" means a president, a chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

(ii) Each individual who has a direct or indirect ownership or beneficial interest of 10% or more in the registered gaming service provider applicant.

(iii) Each salesperson of a registered gaming service provider applicant who solicits business from, or has regular contact with, any representatives of a terminal operator applicant or licensee.

(d) A person who holds any direct or indirect ownership or beneficial interest in a registered gaming service provider or applicant for gaming service provider registration, or has the right to any profits or distributions directly or indirectly, from the registered gaming service provider or applicant for gaming service provider registration may be required to submit fingerprints if the Bureau determines that the submission of fingerprints of the person is necessary to protect the public interest or to enhance the integrity of gaming in this Commonwealth.

(e) Each of the individuals required to submit fingerprints under subsection (b)(2) must be found qualified by the Board.

(f) A gaming service provider registration will not be issued until all fees and costs have been paid.

§ 1108a.2. Interim authorization.

(a) Notwithstanding § 1108a.1 (relating to gaming service providers), the Bureau of Licensing may authorize an applicant for a gaming service provider registration to conduct business with a terminal operator applicant or licensee prior to the registration of the gaming service provider applicant if all of the following criteria are met:

(1) A completed Gaming Service Provider Registration application has been filed by the gaming service provider.

(2) The terminal operator applicant or licensee contracting or doing business with the gaming service provider certifies that it has performed due diligence on the gaming service provider and believes that the applicant meets the qualification to be a gaming service provider under 4 Pa.C.S. Part III (relating to video gaming) and § 1108a.1.

(3) The applicant for gaming service provider registration agrees, in writing, that the grant of interim authorization to conduct business prior to Board approval of registration does not create a right to continue to conduct business if the Board determines that the applicant is not suitable or continued authorization is not in the public interest.

(b) If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to an applicant for registration, the Bureau of Licensing may rescind the permission granted to the applicant to conduct business with a terminal operator applicant or licensee under subsection (a). If the permission is rescinded, the applicant for registration shall cease conducting business with the terminal operator applicant or licensee by the date specified in the notice of the rescission by the Bureau of Licensing under subsection (c).

(c) The Bureau of Licensing will notify the applicant and the terminal operator applicant or licensee by registered and electronic mail that permission to conduct business with the terminal operator applicant or licensee under subsection (a) has been rescinded and that the terminal operator applicant or licensee shall cease conducting business with the applicant by the date specified in the notice.

§ 1108a.3. Emergency gaming service provider.

(a) A terminal operator licensee may utilize a gaming service provider that is not registered when a threat to public health, welfare or safety exists, or circumstances outside the control of the terminal operator licensee require immediate action to mitigate damage or loss to the licensee's video gaming terminals.

(b) When using a gaming service provider that is not registered to conduct business to respond to an emergency, the terminal operator licensee shall do all of the following:

(1) Immediately notify the Board's Bureau of Casino Compliance and Bureau of Licensing of the emergency and the gaming service provider that was selected to provide emergency services.

(2) File a Gaming Service Provider Emergency Notification Form with the Bureau of Licensing within 72 hours after commencement of the gaming service provider's services and a written explanation of the basis for the procurement of the emergency gaming service provider.

(c) If the terminal operator licensee continues to utilize the gaming service provider after the emergency circumstances have passed or if the Bureau of Licensing determines that the circumstances did not necessitate the use of an emergency gaming service provider, the gaming service provider shall comply with the requirements in this chapter.

Chapter 1109. (Reserved)

Sec.
1109.1. (Reserved).
1109.2. (Reserved).

CHAPTER 1109a. OCCUPATION PERMITS

Sec.
1109a.1. Gaming employee occupation permits.
1109a.2. Nongaming employee registrations.

§ 1109a.1. Gaming employee occupation permits.

(a) A gaming employee as defined in this subpart shall apply for an occupation permit in accordance with § 435a.3 (relating to occupation permit).

(b) In addition to the requirements in subsection (a), a gaming employee applying for an occupation permit shall submit all of the following:

(1) Verification of an offer of employment from, or employment by a terminal operator licensee, an establishment licensee, a manufacturer licensee, a supplier licensee or a gaming service provider and the nature and scope of the proposed duties of the person.

(2) The previous employment history of the person.

(3) The details of an occupation permit or similar license granted or denied to the applicant in other jurisdictions.

(4) A current photograph of the person.

(5) The criminal history record of the person, as well as the person's consent for the Bureau to conduct a background investigation.

(6) Other information as determined by the Board.

(c) After reviewing the application and the results of the applicant's background investigation, the Board may issue a gaming employee occupation permit if the individual has proven that he is a person of good character, honesty and integrity, and is eligible and suitable to hold an occupation permit.

§ 1109a.2. Nongaming employee registrations.

A person who is employed by an terminal operator licensee, establishment licensee, manufacturer, supplier or gaming service provider and whose duties do not involve monitoring a video gaming area or the conduct of video gaming may be required to apply for a nongaming employee registration in accordance with § 435a.5 (relating to nongaming employee registration) if the Board or the Bureau of Licensing determines that submitting an application and obtaining a registration is required to ensure the integrity of video gaming in this Commonwealth.

Chapter 1110. (Reserved)

Sec.
1110.1—1110.4. (Reserved).

CHAPTER 1110a. APPLICATIONS GENERALLY

Sec.
1110a.1. Preliminary application submission review.
1110a.2. Application processing.
1110a.3. Deficient and abandoned applications.
1110a.4. Application withdrawal.

§ 1110a.1. 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 4 Pa.C.S. Part III (relating to video gaming) 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.

§ 1110a.2. 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 on any entity.

(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 part 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 license.

(c) 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.

§ 1110a.3. Deficient and abandoned 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 or in the application being declared abandoned by the Bureau of Licensing under § 423a.4 (relating to deficient and abandoned applications).

(c) When an application is denied or declared abandoned under subsection (b), the applicant will be given written notice of this action.

§ 1110a.4. Application withdrawal.

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

Chapter 1111. (Reserved)

Sec.
1111.1. (Reserved).

CHAPTER 1111a. LICENSE TERMS AND RENEWALS

Sec.
1111a.1. Terms and renewals.

§ 1111a.1. Terms and renewals.

(a) All licenses, permits and registrations issued under this part will be for a term of 5 years from the date of approval.

(b) An application for renewal of an establishment license shall be submitted at least 6 months prior to the expiration of the license and must include an update of all information in the initial application and any prior renewal applications and any renewal fee.

(c) Except for renewal applications submitted under subsection (b), applications for renewal shall be submitted to the Board at least 180 days prior to the expiration of the license, permit or registration and must include an update of all information in the initial application and any prior renewal applications and the payment of any renewal fee.

(d) A license, permit 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.

Chapter 1112. (Reserved)

Sec.
1112.1—1112.17. (Reserved).

CHAPTER 1112a. VIDEO GAMING TERMINAL, REDEMPTION TERMINAL AND ASSOCIATED EQUIPMENT TESTING AND CERTIFICATION

Sec.
1112a.1. Definitions.
1112a.2. Protocol requirements.
1112a.3. Testing and approval generally.
1112a.4. Submission for testing and approval.
1112a.5. Video gaming terminal conversions.
1112a.6. Revocations and additional conditions.
1112a.7. Video gaming terminal minimum design standards.
1112a.8. Gaming vouchers.
1112a.9. Redemption terminals.
1112a.10. Progressive video gaming terminals.
1112a.11. Video gaming terminal monitoring systems.
1112a.12. Remote system access.
1112a.13. Video gaming terminals and associated equipment utilizing alterable storage media.
1112a.14. Waivers.
1112a.15. Disputes.
1112a.16. Testing and software installation in the live video gaming area.
1112a.17. RAM clear.

§ 1112a.1. Definitions.

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

Asset number—A unique number assigned to a video gaming terminal by a terminal operator for the purpose of tracking the video gaming terminal, while owned or leased by the terminal operator.

Bill validator—An electronic device designed to interface with a video gaming terminal for the purpose of accepting and validating any combination of United States currency, gaming vouchers, coupons or other instruments authorized by the Board for incrementing credits on a video gaming terminal.

Conversion—A change or alteration to a video gaming terminal that does not affect the manner or mode of play or operation of the video gaming terminal.

Currency cassette—A container that holds banknotes that are available for dispensing.

Finance department—The department that is responsible for the management of the financial and accounting activities relating to video gaming terminals being utilized in a licensed establishment.

Gaming day—The period of time from 6 a.m. to 5:59 a.m. the following calendar day, corresponding to the beginning and ending times of gaming activities for the purpose of accounting reports and determination of gross terminal revenue.

Gaming voucher—An instrument that upon insertion into a bill validator entitles the patron inserting the gaming voucher to cashable credits on a video gaming terminal corresponding to the value printed on the gaming voucher.

Gaming voucher system—The collective hardware, software, communications technology and other ancillary equipment used to facilitate the issuance of gaming vouchers and the redemption of gaming vouchers by video gaming terminals and automated gaming voucher redemption terminals.

Machine displayed payout percentage—The selectable payout percentage that is set by the terminal operator during the initial configuration or a subsequent reconfiguration of a video gaming terminal and is displayed in the video gaming terminal's service menu during normal operation.

Minimum payout percentage—The lowest aggregate awards expected to be paid out over one cycle of the game divided by the total number of combinations in the cycle of the game.

Modification—

(i) A change or alteration in a video gaming terminal or associated equipment that affects the manner or mode of play or operation of the video gaming terminal or associated equipment.

(ii) The term includes a change to control or graphics programs and to the theoretical hold percentage.

(iii) In the case of video gaming terminals, the term does not include:

(A) A conversion.

(B) Replacement of one approved component with an identical component.

(iv) In the case of a progressive system, the term includes a change in:

(A) A system name or theme.

(B) The odds to win the progressive payout.

(C) The reset amount.

(D) The rate at which a progressive award increases.

(E) The wager necessary to win the progressive payout.

Paytable—A selectable part of a video gaming terminal program that contains video gaming terminal characteristics including the theoretical payout percentage, reel strips and awards.

Progressive awards—The award to be paid out when the event in the progressive game that triggered the award occurs.

Progressive controller—A program or computer system, other than an approved program that controls the operation of the video gaming terminal, which controls, adjusts and displays the amount of the progressive jackpot.

Progressive payout—A video gaming terminal payout that increases in a monetary amount based on the amounts wagered in a progressive system.

Progressive video gaming terminal—A video gaming terminal that offers a jackpot that may increase in value based upon the video gaming terminal wagers placed.

Pseudo random number generator—Software or hardware, or both, that ensures the randomness of video gaming terminal outcomes.

RAM—Random access memory.

RAM clear—A process initiated by a service technician that results in the zeroing out of any meter information, configuration information or data stored in the memory of a video gaming terminal.

Randomness—The observed unpredictability and absence of pattern in a set of elements or events that have definite probabilities of occurrence.

Reel strips—Components of a video gaming terminal which display symbols.

Related systems—Systems which interface with video gaming terminals.

Remote system access—Connectivity to terminal operator systems from outside the terminal operator's network.

Reset amount—The award value that a progressive award reverts to after the progressive award is paid out.

Server supported video gaming terminal system—One or more video gaming terminals connected to a video gaming terminal server and an associated computer network.

Theme—A concept, subject matter and methodology of design of a video gaming terminal.

Theoretical payout percentage—The aggregate awards expected to be paid out over one cycle of the game divided by the total number of combinations in the cycle of the game.

Unredeemed gaming voucher—A gaming voucher that has not been redeemed in a ticket redemption unit or a video gaming voucher that has been found and returned to an establishment licensee.

Video gaming terminal bill validator—A component made up of software and hardware that accepts and reads instruments such as bills or vouchers into gaming devices such as video gaming terminals and automated gaming voucher redemption terminals.

Video gaming terminal monitoring system—The collective hardware, software, communications technology and other ancillary equipment used to collect, monitor, interpret, analyze, authorize, report and audit data with regard to activity at video gaming terminals, inclusive of video gaming terminal meter readings, error conditions, video gaming terminal security, accounting, player tracking and productivity analysis.

Video gaming terminal operations department—The department of a terminal operator that is responsible for all operations in any truck stop establishment where video gaming terminals are kept.

Video gaming terminal server—A computer configured to receive, store, authenticate and download to video gaming terminals, Board-approved video gaming terminal game themes and other approved software.

Video gaming terminal system operator—The persons designated in a video gaming terminal system agreement as being responsible for the operation and administration of a wide area progressive system.

Wager—Placing at risk in a video gaming terminal a bill or video gaming voucher.

§ 1112a.2. Protocol requirements.

In accordance with 4 Pa.C.S. §§ 3309 and 3518 (relating to central control computer system; and video gaming accounting controls and audits), manufacturer licensees, supplier licensees and terminal operators are required to ensure all video gaming terminals are enabled to communicate with the Department's central control computer for the purpose of transmitting auditing program information and activating and disabling video gaming terminals.

§ 1112a.3. Testing and approval generally.

(a) In accordance with 4 Pa.C.S. § 3701 (relating to testing and certification of terminals), video gaming terminals and redemption terminals and associated equipment operated in this Commonwealth shall be tested and approved in accordance with § 1112a.4 (relating to submission for testing and approval).

(b) The fees for testing and certification of video gaming terminals, redemption terminals and associated equipment at the Board's testing facility shall be paid by each manufacturer licensee on a quarterly basis based upon the time spent testing and certifying each manufacturer's number of products reviewed according to a fee schedule adopted by the Board.

(c) The Board will require payment of all costs for the testing and approval of video gaming terminals and redemption terminals and associated equipment submitted by manufacturers or gaming related gaming service providers or installed at an establishment licensee's facility based on the actual direct costs incurred by the Board.

(d) The Board will require a manufacturer licensee seeking approval of a video gaming terminal and redemption terminal and associated equipment to pay all costs of transportation, inspection and testing.

§ 1112a.4. Submission for testing and approval.

(a) A video gaming terminal, redemption terminal and associated equipment identified in subsection (c) (collectively referred to as "products" or "equipment, device or software"), or a modification thereto, may not be offered for sale, lease or distribution for ultimate use by a manufacturer or supplier licensee in this Commonwealth unless a prototype identical in all mechanical, electrical, electronic and other respects has been tested by the Bureau of Gaming Laboratory Operations and approved by the Board's Executive Director.

(b) When an applicant for, or holder of a terminal operator license develops software or a system that is functionally equivalent to any of the video gaming system enumerated in subsection (c), that software or system is subject to the testing and approval process of this subpart to the same extent as if the software or system were developed by an applicant for, or holder of, a manufacturer license. A reference in this subpart to the responsibilities of a manufacturer applies to an applicant for, or holder of, a terminal operator license developing software or systems subject to testing and approval under this subpart.

(c) For the purposes of this section, video gaming terminals, redemption terminals and associated equipment that shall be submitted for testing and approval include all of the following:

(1) Video gaming terminals, including bill validators and printers.

(2) Video gaming monitoring systems, to the extent the systems interface with video gaming terminals and related systems.

(3) Progressive systems, including wide area progressive systems.

(4) Gaming voucher systems.

(5) Machines performing gaming voucher payout transactions.

(6) Other related systems.

(d) Video gaming terminal prototypes and modifications thereto, which are subject to testing and approval under this section, will be evaluated by the Bureau of Gaming Laboratory Operations for overall operational integrity and compliance with 4 Pa.C.S. Part III (relating to video gaming), this subpart and technical standards adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site. In addition, with regard to any video gaming terminal or modification thereto, the Bureau of Gaming Laboratory Operations will test for compatibility and compliance with the central control computer and protocol specifications approved by the Department including the ability to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval and activation, and disabling of slot machines and fully automated electronic gaming tables.

(e) The Bureau of Gaming Laboratory Operations may prescribe a standard product submission checklist, together with supplemental product specific submission checklists for completion by an applicant for, or holder of, a manufacturer license, to facilitate the examination and analysis of a prototype or modification.

(f) The Board may require the chief engineer of the applicant for, or holder of, a manufacturer license or the engineer in charge of the division of the manufacturer responsible for producing the product submitted to attest that the product was properly and completely tested by the manufacturer prior to its submission to the Bureau of Gaming Laboratory Operations.

(g) When an applicant for, or holder of, a manufacturer license seeks Board approval of a video gaming terminal prototype, associated equipment prototype or any modification thereto as described in subsection (c), the manufacturer shall submit to the Bureau of Gaming Laboratory Operations all of the following:

(1) A prototype of the equipment, device or software accompanied by a written request for testing and approval. The manufacturer shall transport the equipment, device or software at its own expense and deliver it to the Bureau of Gaming Laboratory Operations in accordance with provided instructions.

(2) Certifications required under subsection (f) providing assurances from the manufacturer that the product was properly and completely tested and emulated by the manufacturer prior to its submission to the Bureau of Gaming Laboratory Operations and that the product, device or software complies with 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site, including applicable requirements related to the central control computer.

(3) An executed copy of a current product submission checklist and any product specific supplemental submission checklists applicable to the submitted equipment, device or software.

(4) A complete, comprehensive and technically accurate description of the equipment, device or software, accompanied by applicable diagrams, schematics and specifications, together with documentation with regard to the manner in which the product was tested and emulated by the manufacturer prior to its submission to the Bureau of Gaming Laboratory Operations.

(5) Any hardware, software and other equipment, inclusive of technical support and maintenance applicable thereto, required by the Bureau of Gaming Laboratory Operations to conduct the testing and approval process contemplated by 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

(6) In the case of a video gaming terminal prototype, all of the following additional information:

(i) A copy of all executable software, including data and graphics information, on electronically readable, unalterable media.

(ii) A copy of all source code for programs that cannot be reasonably demonstrated to have any use other than in a video gaming terminal on electronically readable, unalterable media.

(iii) A copy of all graphical images displayed on the video gaming terminal, including reel strips, rules, instructions and paytables.

(iv) A mathematical explanation of the theoretical return to the player, listing all assumptions, all steps in the formula from the first principles through to the final results of all calculations including bonus pays and, when a game requires or permits player skill in the theoretical derivations of the payout return, the source of strategy.

(v) Hardware block diagrams of the major subsystems.

(vi) A complete set of schematics for all subsystems.

(vii) A wiring harness connection diagram.

(viii) A technical and an operator manual.

(ix) A description of security methodologies incorporated into the design of the video gaming terminal, including, when applicable, encryption methodology for all alterable media, auto-authentication of software and recovery capability of the video gaming terminal for power interruption.

(x) For meters required by this subpart or technical standards adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site, a cross-reference of product meters to the required meters, if necessary.

(xi) A description of error conditions and the corresponding action required by the operator.

(xii) A description of the use and function of available dip switch settings or configurable options.

(xiii) A description of the pseudo random number generator or generators used to determine game outcome, including a detailed explanation of operational methodology, and a description of the manner by which the pseudo random number generator and random number selection

process is impervious to outside influences, interference from electro-magnetic, electrostatic and radio frequencies, and influence from ancillary equipment by means of data communications. Test results in support of representations shall be submitted. For the purposes of this subparagraph, "game outcome" means the results of a wager.

(xiv) Specialized hardware, software or testing equipment, inclusive of technical support and maintenance, needed to complete the evaluation, which may include an emulator for a specified microprocessor, personal computers, extender cables for CPU boards, target reel strips and door defeats. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

(xv) A compiler, or reasonable access to a compiler, for the purpose of building applicable code modules.

(xvi) Program storage media including EPROMs, EEPROMs and any type of alterable media for video gaming terminals.

(xvii) Technical specifications for any microprocessor or microcontroller.

(xviii) A complete, comprehensive and technically accurate description of the manner in which the video gaming terminals were tested for compatibility and compliance with the central control computer and protocol specifications approved by the Department including the ability to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval and activation and disabling of video gaming terminals.

(xix) Additional documentation requested by the Bureau of Gaming Laboratory Operations relating to the video gaming terminals.

(7) In the case of a modification to a video gaming terminal prototype, including a change in theme, all of the following additional information:

(i) A complete, comprehensive and technically accurate description of the proposed modification to the video gaming terminals prototype, accompanied by applicable diagrams, schematics and specifications.

(ii) When a change in theme is involved, a copy of the graphical images displayed on the video gaming terminals including reel strips, rules, instructions and paytables.

(iii) When a change in the manner in which the theoretical payout percentage is achieved is involved, a mathematical explanation of the theoretical return to the player, listing all assumptions, all steps in the formula from the first principles through to the final results of all calculations including bonus pays and, when a game requires or permits player skill in the theoretical derivations of the payout return, the source of strategy.

(iv) A complete, comprehensive and technically accurate description of the manner in which the video gaming terminals were tested for compatibility and compliance with the central control computer and protocol specifications approved by the Department including the ability to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval and activation and disabling of video gaming terminals.

(v) Additional documentation requested by the Bureau of Gaming Laboratory Operations relating to the modification of the video gaming terminals.

(8) In the case of a video gaming terminals monitoring system or automated gaming voucher machine, or any other equipment or system required to be tested and approved under subsection (c), all of the following:

(i) A technical and an operator manual.

(ii) A description of security methodologies incorporated into the design of the machine to include, when applicable, password protection, encryption methodology and its application, auto-authentication, network redundancy, back-up and recovery procedures.

(iii) A complete schematic or network diagram of the machine's major components accompanied by a description of each component's functionality and a software object report. The description must disclose the functions performed by each component.

(iv) A description of the data flow, in narrative and in schematic form, including specifics with regard to data cabling.

(v) A list of computer operating systems and third-party software incorporated into the system together with a description of their interoperability.

(vi) System software and hardware installation procedures.

(vii) A list of available system reports.

(viii) When applicable, features for each machine which may include employee card functions, reconciliation procedures and patron services.

(ix) A description of the interoperability testing including test results for each submitted machine's connection to, as applicable, computerized systems for counting money and vouchers. This list must identify the tested products by manufacturer, model and software identification and version number.

(x) A narrative describing the method used to authenticate software.

(xi) All source code.

(xii) A complete, comprehensive and accurate description, accompanied by applicable diagrams, schematics and specifications, of the creation of a voucher and the redemption options available.

(xiii) Any specialized hardware, software or other equipment, inclusive of technical support and maintenance applicable thereto, required by the Bureau of Gaming Laboratory Operations to conduct the testing and approval process contemplated by 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

(xiv) Additional documentation requested by the Board related to the equipment or system being tested.

(9) In the case of a modification to any of the systems identified in paragraph (8), all of the following additional information:

(i) A complete, comprehensive and technically accurate description of the proposed modification to the machine, accompanied by applicable diagrams, schematics and specifications.

(ii) A brief narrative disclosing the purpose for the modification.

(iii) Additional documentation requested by the Bureau of Gaming Laboratory Operations relating to the modification.

(h) At the conclusion of testing of a prototype or modification by the Bureau of Gaming Laboratory Operations, but prior to a decision to approve a prototype or modification, the Board's Executive Director may require a trial period of scope and duration as he deems appropriate to assess the operation of the prototype or modification in a live gaming environment. The conduct of the trial period is subject to compliance by the licensed manufacturer, applicable licensed suppliers, gaming service provider and the terminal operator with specific terms and conditions as may be required by the Board's Executive Director, which may include development and implementation of product specific accounting and internal controls, periodic data reporting to the Board's Executive Director and compliance with technical standards on trial periods or the prototype or modification adopted by the Board as published in the *Pennsylvania Bulletin* and posted on the Board's web site. The Board's Executive Director may authorize the receipt of compensation by a licensed manufacturer, licensed supplier or gaming service provider during the trial period. The Board's Executive Director may terminate the trial period if he determines that the licensed manufacturer, licensed suppliers, gaming service provider or terminal operator conducting the trial period has not complied with the terms and conditions required by the Board's Executive Director or that the product is not performing as expected.

(i) At the conclusion of testing of a prototype or modification, the Bureau of Gaming Laboratory Operations will report to the Board's Executive Director the results of its testing. Upon receipt of the Bureau of Gaming Laboratory Operations' report, the Board's Executive Director will:

(1) Approve, approve with conditions or reject the submitted prototype or modification.

(2) Require additional testing or a trial period under subsection (h).

(j) The Board's Executive Director approval of a prototype or modification does not constitute a guarantee of the prototype's or modification's safety.

(k) A terminal operator is prohibited from installing in an establishment licensee's facility a video gaming terminal or associated equipment, or modification thereto, that is required to be tested unless the equipment, device or software has been approved by the Board's Executive Director. A terminal operator may not modify, alter or tamper with an approved video gaming terminal or associated equipment. A video gaming terminal or associated equipment installed in an establishment licensees' facility in contravention of this requirement will be subject to seizure by the Board.

(l) Notwithstanding subsection (k), the Board's Executive Director may authorize installation of a modification to a video gaming terminal prototype, or associated equipment prototype on an emergency basis to prevent cheating or malfunction, upon the written request of a licensed manufacturer. The request must expressly detail the name and employer of any persons to be involved in the installation of the modification and the manner in which it is to be effected. Within 15 days of receipt of any authorization to install an emergency modification, the manufacturer shall submit the modification for full testing and approval in accordance with this subpart.

(m) A terminal operator shall immediately notify the Bureau of Casino Compliance of any known or suspected defect or malfunction in any video gaming terminal or associated equipment installed in its licensed facility. The terminal operator shall comply with instructions issued by the Bureau of Gaming Laboratory Operations with regard to the continued operation of the video gaming terminal or associated equipment.

(n) Concurrent with the initial receipt of video gaming terminals, a terminal operator shall file a video gaming terminal master list.

(o) The testing of equipment, devices or software under this subpart may require the dismantling of the product and testing that may result in damage to, or destruction of, one or more systems or components. Once submitted for testing, equipment, devices or software will not be returned to the manufacturer.

§ 1112a.5. Video gaming terminal conversions.

A terminal operator shall do all of the following:

(1) Maintain complete and accurate records of all conversions.

(2) Give prior notice of a video gaming terminal conversion to the Bureau of Casino Compliance in writing.

(3) Notify the Department in accordance with § 463a.4 (relating to notice and connection to the central control computer system).

§ 1112a.6. Revocations and additional conditions.

The Board may revoke the approval of or impose additional conditions on a video gaming terminal prototype or associated equipment prototype, or modification thereto, if the equipment, device or software meets either of the following criteria:

(1) The equipment, device or software is not in compliance with 4 Pa.C.S. Part III (relating to video gaming), this subpart or technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(2) The video gaming terminal, or modification thereto, is not compatible with, or compliant with the central control computer and protocol specifications approved by the Department or is unable to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval, and activation and disabling of video gaming terminal.

§ 1112a.7. Video gaming terminal minimum design standards.

(a) A video gaming terminal may not be set to pay out less than the theoretical payout percentage, which may not be less than 85%, calculated using the lowest possible wager that could be played for any single play, or equal or exceed 100%, calculated using the highest eligible wager available. The theoretical payout percentage for the total value of video gaming terminal wagers will be calculated using the following:

(1) The defined set of all symbols that will be displayed using spinning reels or video displays, or both.

(2) The finite set of all possible combinations which shall be known as the cycle of the game. All possible combinations in a video gaming terminal cycle must be independent of each other and of all possible combinations from cycles in other video gaming terminal.

(3) The value of each winning combination that corresponds with the set from paragraph (2) which, whether by reason of skill or application of the element of chance, or both, may deliver or entitle the person or persons playing the video gaming terminal to wins.

(4) The odds of any winning combination may not exceed 50 million to 1.

(b) The calculation of the theoretical payout percentage may not include the amount of any progressive wins in excess of the initial or reset amount.

(c) A play offered by a video gaming terminal may not have a theoretical payout percentage which is less than, when calculated to one hundredth of a percentage point, the theoretical payout percentage for any other play offered by that video gaming terminal which is activated by a video gaming terminal wager in a lesser amount than the video gaming terminal wager required for that play. Notwithstanding the foregoing, the theoretical payout percentage of one or more particular plays may be less than the theoretical payout percentage of one or more plays which require a lesser wager provided that:

(1) The aggregate total of the decreases in the theoretical payout percentage for plays offered by the video gaming terminal is not more than 1/2 of 1%.

(2) The theoretical payout percentage for every play offered by the video gaming terminal is equal to or greater than the theoretical payout percentage for the play that requires the lowest possible wager that will activate the video gaming terminal.

(d) The selection from the set of all possible combinations of symbols shall be made applying a pseudo random number generator. At a minimum, a pseudo random number generator must adhere to all of the following criteria:

(1) The random selection process must meet a 95% confidence interval.

(2) A random number generator must pass a standard chi-squared test for goodness of fit.

(3) Each possible video gaming terminal combination which produces winning or losing video gaming terminal outcomes must be available for random selection at the initiation of each play.

(4) A video gaming terminal payout percentage that may be affected by reason of skill must meet the theoretical payout requirements in this subpart when evaluated by the Board using a method of play that will provide the greatest return to the player.

(5) Once a random selection process has occurred, the video gaming terminal must do all of the following:

(i) Display an accurate representation of the randomly selected outcome.

(ii) Not make a secondary decision which affects the result shown to the person playing the video gaming terminal.

(e) A video gaming terminal is prohibited from automatically altering any function of the video gaming terminal based on internal computation of the hold percentage.

(f) The available winning combinations and applicable rules of play for a video gaming terminal must be available at all times the video gaming terminal is idle to the patron playing the video gaming terminal. The award schedule of available winning combinations may not include possible aggregate awards achievable from free plays. A video gaming terminal that includes a strategy choice must provide mathematically sufficient information for a patron to use optimal skill. Information regarding a strategy choice need not be made available for any strategy decisions whenever the patron is not required, in addition to the initial wager, to make an additional wager and, when as a result of playing a strategy choice, the patron cannot lose any credits earned thus far during that game play.

(g) Video gaming terminals approved for use in an establishment licensee's facility must be equipped with all of the following meters that comply with the technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site:

(1) *Coin in*. A meter that accumulates the total value of all wagers, whether the wager results from the insertion of currency, gaming vouchers, credits won or any other means. This meter must, for multigame and multidenomination/multigame video gaming terminal, monitor the information necessary, on a per paytable basis, to calculate a weighted average actual payout percentage.

(2) *Coin out*. A meter that accumulates the total value of all amounts directly paid by the video gaming terminal as a result of winning wagers, whether the payout is made directly from the printer by issuance of a gaming voucher, directly to a credit meter or by any other means. This meter may not record amounts awarded as the result of a progressive payout.

(3) *Attendant paid cancelled credits*. A meter that accumulates the total value of all amounts paid by an attendant resulting from a player initiated cash-out that exceeds the physical or configured capability of the video gaming terminal.

(4) *Bill in*. A meter that accumulates the total value of currency accepted. The video gaming terminal must also have a specific meter for each denomination of currency accepted that records the number of bills accepted for each denomination.

(5) *Voucher in—cashable/value*. A meter that accumulates the total value of cashable gaming vouchers accepted by the video gaming terminal.

(6) *Voucher in—cashable/count*. A meter that accumulates the total number of cashable gaming vouchers accepted by a video gaming terminal.

(7) *Voucher out—cashable/value*. A meter that accumulates the total value of cashable gaming vouchers issued by the video gaming terminal.

(8) *Voucher out—cashable/count*. A meter that records the total number of cashable gaming vouchers issued by a video gaming terminal.

(9) *Video gaming terminal paid progressive payout*. A meter that accumulates the total value of credits paid as a result of progressive awards paid directly by the video gaming terminal. This meter may not record awards paid as a result of an external bonusing system.

(10) *Attendant paid progressive payout*. A meter that accumulates the total value of credits paid by a video gaming terminal attendant as a result of progressive awards that are not capable of being paid by the video gaming terminal. This meter may not include awards paid as a result of an external bonusing system.

(11) *Additional requirements*. Other meters required by technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(h) A video gaming terminal that does not meter one or more of the events required to be metered under subsection (g) may be approved when a terminal operator'ssystem of internal controls establishes that the meter is not required to capture all critical transactions occurring on the video gaming terminal.

(i) The meters required under subsection (g) must continuously and automatically increment in units equal to the denomination of the video gaming terminal or, in the case of a video gaming terminal configured for multidenomination play, must display the required information in dollars and cents.

(j) A video gaming terminal approved for use in an establishment licensee's must be equipped with all of the following noncumulative meters:

(1) *Credits wagered*. A meter, visible from the front exterior of a video gaming terminal, known as a credit wagered meter that advises the patron of the total value of amounts wagered in a particular game or round of video gaming.

(2) *Win meter*. A meter, visible from the front exterior of the video gaming terminal, known as a win meter that advises the patron of the total value of amounts won in the immediately concluded game or round of video gaming play.

(3) *Credits paid*. A meter, visible from the front exterior of the video gaming terminal, known as a credits paid meter that advises the patron of the total value of the last:

(i) Cash out initiated by the patron.

(ii) Attendant paid cancelled credit.

(4) *Credit meter*. A meter, visible from the front exterior of the video gaming terminal and specifically labeled as a credit meter, which advises the patron as to the number of credits or monetary value available for wagering on the video gaming terminal.

(k) A video gaming terminal must have a meter which stores the number of games played, in the manner and for a duration specified in this subpart or in technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site, since the following events:

(1) Power reset.

(2) Door close.

(3) Game initialization (RAM clear).

(l) A video gaming terminal must be equipped with a device, mechanism or method for retaining the total value of all meters required under subsection (g) for 72 hours subsequent to a power loss.

(m) The required meters on a video gaming terminal must be accessible and legible without access to the interior of the video gaming terminal.

(n) A video gaming terminal must be equipped with a tower light capable of effectively communicating the status of the video gaming terminal in accordance with technical standards on tower lights and error conditions.

(o) A video gaming terminal must be equipped with a device, mechanism or method for detecting, displaying and communicating to a video gaming terminal monitoring system error conditions. The error conditions detected, displayed and communicated by a video gaming terminal, and the method to be utilized to clear the message with regard to the error condition, must be in accordance with technical standards on tower lights and error conditions.

(p) A video gaming terminal must, in accordance with 4 Pa.C.S. § 3309 (relating to central control computer system), comply with the comprehensive protocol specifications necessary to enable the video gaming terminal to communicate with the Department's central control computer as that protocol is amended or supplemented, for the purpose of transmitting auditing program information, real time information retrieval and slot machine activation and disabling.

(q) Printers incorporated into a video gaming terminal must be:

(1) Designed to allow the video gaming terminal to detect and report a low paper level, paper out, presentation error, printer failure and paper jams.

(2) Mounted inside a lockable compartment within the video gaming terminal.

(r) Seating made available by a terminal operator licensee for use during video gaming play may be fixed and stationary or nonfixed. When fixed and stationary seating is used, it shall be installed in a manner that effectively precludes its ready removal by a patron but permits controlled removal, for example for American With Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213) purposes. When nonfixed seating is used, the terminal operator shall maintain a minimum aisle width of 48 inches, measured from the seat back to a wall, divide or another seat back when the nonfixed seating is vacant and is touching or is as close as possible to the video gaming terminal at which the nonfixed seating is being used.

(s) Unless a terminal operator's video gaming terminal monitoring system is configured to automatically record all of the information required by this subsection, the terminal operator is required to physically house in each video gaming terminal all of the following entry authorization logs:

(1) A machine entry authorization log that documents each time a video gaming terminal or any device connected thereto which may affect the operation of the video gaming terminal is opened. The log must contain, at a minimum, the date, time, purpose for opening the video gaming terminal or device, and the signature and license or permit number of the person opening and entering the video gaming terminal or device. Each log must have recorded thereon a sequence number and the manufacturer's serial number or the asset number corresponding to the video gaming terminal in which it is housed.

(2) A progressive entry authorization log that documents each time a progressive controller not housed within the cabinet of the video gaming terminal is opened. The log must contain, at a minimum, the date, time, purpose for accessing the progressive controller, and the signature and license or permit number of the person accessing the progressive controller. Each log must be maintained in the progressive controller unit and have recorded thereon a sequence number and the manufacturer's serial number of the progressive controller.

(t) A video gaming terminal must be equipped with a lock controlling access to the card cage door securing the microprocessor, the key to which must be different from any other key securing access to the video gaming terminal's components including its belly door or main door, bill validator or video gaming terminal cash storage box. Access to the key securing the microprocessor shall be limited to an employee of a terminal operator whopossesses a valid gaming occupation permit, unless another person is specifically authorized to possess a key by the Board's Executive Director.

(u) A video gaming terminal must be equipped with a mechanism for detecting and communicating to a video

gaming terminal monitoring system any activity with regard to access to the card cage door securing its microprocessor.

(v) A video gaming terminal that does not require a full-time attendant for operation must be equipped with a service button designed to allow the player of a video gaming terminal to request assistance or report a terminal malfunction. The service button must:

(1) Be visible to and within easy reach of the player of the video gaming terminal.

(2) Communicate directly or through the video gaming terminal to the video gaming terminal's tower light which will provide a signal that is in compliance with the technical standards on video gaming terminal tower lights.

(w) A video gaming terminal on the gaming floor must have a label on the top of the video gaming terminal and on the front of the video gaming terminal near the bill validator that displays the asset number and the gaming floor plan location number of the video gaming terminal. The labels must have white lettering on a black background or other color combination approved by the Bureau of Casino Compliance, may not be easily removed and must be easily visible to surveillance cameras. The label on the top of the slot machine must be at least 1.5 inches by 5.5 inches and the label on the front of the video gaming terminal must be a least 1 inch by 2.5 inches or other sizes approved by the Bureau of Casino Compliance.

§ 1112a.8. Gaming vouchers.

(a) A terminal operator may utilize gaming vouchers and a gaming voucher system that has been tested and approved by the Board under § 461a.4 (relating to submission for testing and approval).

(b) The design specifications for a gaming voucher, the voucher verification methodologies utilized and any limitation on the value of a gaming voucher must be in compliance with technical standards on gaming vouchers.

(c) The design specifications for a gaming voucher system must be in compliance with technical standards on gaming voucher systems.

(d) Prior to issuing a gaming voucher, a terminal operator shall establish a system of internal controls for the issuance and redemption of gaming vouchers. The internal controls shall be submitted and approved by the Board and address all of the following:

(1) Procedures for assigning an asset number and identifying other redemption locations in the system, and enabling and disabling voucher capabilities for video gaming terminal and redemption locations.

(2) Procedures for issuance, modification and termination of a unique system account for each user.

(3) Procedures used to configure and maintain user passwords.

(4) Procedures for restricting special rights and privileges, such as administrator and override capabilities.

(5) The duties and responsibilities of the information technology, internal audit, video gaming terminal operations and finance departments, respectively, and the level of access for each position with regard to the gaming voucher system.

(6) A description of physical controls on all critical hardware such as locks and surveillance, including the location and security protocols applicable to each piece of equipment.

(7) Procedures for the backup and timely recovery of critical data in accordance with technical standards.

(8) Logs used to document and maintain the details of Board-approved hardware and software modifications upon implementation.

(9) Procedures for the retention, tracking and payment of the value of unredeemed gaming vouchers to the State Treasurer as required under Article XIII.1 of The Fiscal Code (72 P.S. §§ 1301.1—1301.29), regarding the disposition of abandoned and unclaimed property.

(e) The system of internal controls required to be submitted and approved by the Board under subsection (d) must also include the procedures to be applied in all of the following instances:

(1) The procedures used by the terminal operator to pay a patron the value of a video gaming voucher when the gaming voucher system is inoperable.

(2) The procedures used by the terminal operator to pay a patron the value of a video gaming voucher when the redemption terminal is inoperable.

(f) At the end of each gaming day, the video gaming voucher system must generate reports and the reports must be provided to the terminal operator, either directly by the system or through the information technology department. The report, at a minimum, must contain all of the following information:

(1) A report of all gaming vouchers that have been issued which includes the asset number and the serial number of the video gaming terminal, and the value, date and time of issuance of each gaming voucher.

(2) A report of all gaming vouchers that have been redeemed and cancelled by redemption location, including the asset number of the video gaming terminal, the serial number, the value, date and time of redemption for each voucher, and the total value of all vouchers redeemed.

(3) The unredeemed liability for gaming vouchers.

(4) The readings on gaming voucher related video gaming terminal meters and a comparison of the readings to the number and value of issued and redeemed video gaming vouchers, as applicable.

(5) Exception reports and audit logs.

(g) A terminal operator shall immediately report to the Board evidence that a video gaming voucher has been counterfeited, tampered with or altered in any way which would affect the integrity, fairness, reliability or suitability of the voucher.

(h) Upon presentation of a gaming voucher for redemption at a video gaming terminal, the total value of which gaming voucher cannot be completely converted into an equivalent value of credits that match the denomination of the video gaming terminal, the video gaming terminal must perform one of the following procedures:

(1) Automatically issue a new gaming voucher containing the value that cannot be completely converted.

(2) Not redeem the gaming voucher and immediately return the gaming voucher to the patron.

(3) Allow for the additional accumulation of credits on an odd cents meter or a meter that displays the value in dollars and cents.

(i) A terminal operator that utilizes a system or a video gaming terminal that does not print a test gaming voucher that is visually distinguishable from a valid gaming voucher whenever the video gaming terminal is tested on the video gaming floor must have in place

internal controls approved by the Board for the issuance of test currency and the return and reconciliation of the test currency and any gaming vouchers printed during the testing process.

(j) Except as provided by the approved internal controls procedures outlined in § 1114a.1(c)(8) (relating to video gaming accounting and internal controls) with regard to employee redemption of gaming vouchers, a gaming voucher shall be redeemed by a patron for a specific value of cash through a redemption terminal on the premises of the establishment licensee or at a video gaming terminal. Notwithstanding the forgoing, a terminal operator may not permit a gaming voucher that is presented for redemption to be redeemed if it knows, or has reason to know, that the gaming voucher:

(1) Is materially different from the sample of the gaming voucher approved by the Board.

(2) Was previously redeemed.

(3) Was printed as a test gaming voucher.

(k) Gaming vouchers redeemed at automated gaming voucher redemption terminals shall be retained by the terminal operator representatives with no incompatible functions shall perform, at a minimum, all of the following:

(1) On a weekly basis, or other period approved by the Board:

(i) Compare gaming voucher system report data to any redemption terminal report data available to ensure proper electronic cancellation of the gaming voucher.

(ii) Calculate the unredeemed liability for gaming vouchers, either manually or by means of the gaming voucher system.

(2) On a weekly basis, compare appropriate video gaming terminal meter readings to the number and value of issued and redeemed gaming vouchers per the gaming voucher system. Meter readings obtained through a video gaming terminal monitoring system may be utilized to complete this comparison.

(l) A terminal operator shall provide written notice to the Bureau of Casino Compliance of any adjustment to the value of any gaming voucher. The notice shall be made prior to, or concurrent with, the adjustment.

(m) A gaming voucher system must be configured to alert a terminal operator to any malfunction. Following a malfunction of a system, a terminal operator shall notify the Bureau of Casino Compliance within 24 hours of the malfunction and may not utilize the system until the malfunction has been successfully eliminated. Notwithstanding the foregoing, the Bureau of Casino Compliance may permit a terminal operator to utilize the system prior to its being successfully restored, for a period not to exceed 72 hours, provided all of the following apply:

(1) The malfunction is limited to a single storage media device, such as a hard disk drive.

(2) In addition to the malfunctioning storage media device, the system contains a backup storage media device not utilized in the normal operation of the system. The backup device must immediately and automatically replace the malfunctioning device to permit a complete and prompt recovery of all information in the event of an additional malfunction.

(3) Continued use of the malfunctioning system would not inhibit the ability to perform a complete and prompt recovery of all information, and would not otherwise harm or affect the normal operation of the system.

(n) Other than a modification to a gaming voucher system required on an emergency basis to prevent cheating or malfunction and approved by the Board, a modification to a gaming voucher system may not be installed without the gaming voucher system having undergone the testing and approval process required under § 1112a.4 (relating to submission for testing and approval).

§ 1112a.9. Redemption terminals.

(a) A terminal operator shall utilize an automated redemption terminal that has been tested and approved by the Board under § 1112a.4 (relating to submission for testing and approval).

(b) Redemption terminals must be located in the video gaming area of an establishment licensee and subject to surveillance coverage as approved by the Board. Each redemption terminal must have a label on the top of the redemption terminal and on the front of the redemption terminal that displays the asset number of the redemption terminal. The labels must have white lettering on a black background or other color combination approved by the Bureau of Casino Compliance and may not be easily removed. The label on the top of the redemption terminal must be at least 1.5 inches by 5.5 inches and the label on the front of the redemption terminal must be at least 1 inch by 2.5 inches or other sizes approved by the Bureau of Casino Compliance.

(c) A redemption terminal must have the capability of establishing the validity of a gaming voucher by comparing the instrument's unique serial number, automatically generated by the respective gaming voucher system in accordance with this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site with electronic records within the gaming voucher system.

(d) The methods utilized to comply with the requirements in subsection (c) shall be submitted to and approved by the Board under § 1112a.4 in the context of the testing of a gaming voucher system.

(e) A redemption terminal may function as a bill breaker changing bills of one denomination into bills of a smaller denomination.

(f) A redemption terminal must contain a lockable gaming voucher and currency storage box which retains any gaming vouchers or currency accepted by the machine. The gaming voucher and currency storage box located inside the terminal must also have imprinted, affixed or impressed thereon the asset identification number of the corresponding terminal.

(g) A redemption terminal must have, at a minimum, all of the following:

(1) One lock securing the compartment housing the storage box and one lock securing the storage box within the compartment.

(2) One lock securing the compartment housing the currency cassettes.

(3) One lock securing the contents of the storage box.

(4) The four keys that control the four locks described in paragraphs (1)—(3) must be different from each other.

(h) A redemption terminal shall be designed to resist forced illegal entry.

(i) A redemption terminal's currency cassettes shall be designed to preclude access to its interior.

(j) Access controls relating to the operating system or applications of the redemption terminal, and ancillary

systems, applications and equipment associated with the reconciliation thereof, must employ security measures that require authentication of the user and recording and maintaining of data regarding access and modifications made. Authentication must be in accordance with this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(k) A gaming voucher accepted by a redemption terminal shall be cancelled immediately upon exchange in a manner that effectively prevents its subsequent redemption by the same or another redemption terminal or its acceptance in a video gaming terminal bill validator. The methods utilized to comply with this requirement must be in accordance with this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(l) A redemption terminal shall be designed to be impervious to outside influences, interference from electro-magnetic, electro-static and radio frequencies, and influence from ancillary equipment.

(m) A redemption terminal must include a means to protect against transaction failure and data loss due to power loss.

(n) A redemption terminal machine must detect, display and record electronically power reset, door open, door just closed and system communication loss error conditions. These error conditions may be automatically cleared by the redemption terminal when the condition no longer exists and upon completion of a new transaction.

(o) A redemption terminal must detect, display and record electronically all of the following error conditions that disable the redemption terminal and prohibit new transactions:

(1) Failure to make payment, if the gaming voucher is not returned and a receipt is not issued.

(2) Failure to make complete payment if a receipt for the unpaid amount is not issued.

(3) Bill validator failure.

(4) Printer failure due to printer jam or lack of paper.

(p) A redemption terminal shall be designed to evaluate whether sufficient funds are available before stacking the voucher and completing the transaction.

(q) A redemption terminal must be capable of maintaining synchronization between its real-time clock and that of the gaming voucher system.

(r) A redemption terminal must be equipped with electronic digital storage meters. The information must be readily available through system reports. When a value is maintained, the value must be in dollars and cents. A redemption terminal must accumulate all of the following information:

(1) *Physical coin out*. The total value, by denomination, of coins paid by the redemption terminal.

(2) *Voucher in—value*. The value of cashable gaming vouchers accepted.

(3) *Voucher in—count*. The number of cashable gaming vouchers accepted.

(4) *Bill in*. The value of currency accepted by the redemption terminal. A redemption terminal must also have specific meters for each denomination of currency accepted that records the number of bills accepted.

(5) *Bill out*. The total value of currency dispensed. A redemption terminal must also provide for specific meters for each denomination of currency dispensed that record the number of bills dispensed.

(6) *Additional requirements*. Other meters as may be required by technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(s) A redemption terminal must have the capacity to record and retain, in an automated transaction log, all critical transaction history for at least 30 days. Transaction history must include records with the date, time, amount and disposition of each complete and incomplete transaction, error conditions, logical and physical access, and attempted access to the redemption terminal. If a redemption terminal is capable of redeeming multiple vouchers in a single transaction, the transaction history must include a breakdown of the transaction with regard to the individual gaming vouchers.

(t) A redemption terminal or ancillary systems, applications and equipment associated with the reconciliation thereof, must be capable of producing all of the following reports upon request:

(1) *Gaming voucher transaction report*. The report must include the disposition (paid, partial pay and unpaid) of gaming vouchers accepted by a redemption terminal which must include the validation number, the date and time of redemption, amount requested and the amount dispensed. This information must be available by reconciliation period which may be by day, shift or drop cycle.

(2) *Reconciliation report*. The report must include all of the following:

(i) Report date and time.

(ii) Unique asset identification number of the redemption terminal.

(iii) Total cash balance of the currency cassettes.

(iv) Total count of currency accepted by denomination.

(v) Total dollar amount of vouchers accepted.

(vi) Total count of gaming vouchers accepted.

(3) *Gaming voucher and currency storage box report*. The report must be generated, at a minimum, whenever a gaming voucher, and currency storage box is removed from a redemption terminal. The report must include all of the following:

(i) Report date and time.

(ii) Unique asset identification number of the machine.

(iii) Unique identification number for each storage box in the machine.

(iv) Total value of currency accepted.

(v) Total number of bills accepted by denomination.

(vi) Total count of gaming vouchers accepted.

(4) *Transaction repor*t. The report must include all critical patron transaction history including the date, time, amount and disposition of each complete and incomplete transaction. If a redemption terminal is capable of redeeming multiple vouchers in a single transaction, the transaction history must include a breakdown of the transaction with regard to the individual gaming vouchers accepted.

§ 1112a.10. Progressive video gaming terminals.

(a) A progressive video gaming terminal may stand alone or be linked with other progressive video gaming terminals in the same establishment licensee's facility.

(b) Each video gaming terminal that offers a progressive jackpot must have all of the following:

(1) A progressive meter, visible from the front of the video gaming terminal, which may increase in value based upon wagers, that advises the player of the amount which can be won if the player receives the combination on the video gaming terminal that awards the progressive jackpot.

(2) A video gaming terminal paid progressive payout meter.

(3) A cumulative progressive payout meter that continuously and automatically records the total value of progressive jackpots paid directly by the video gaming terminal.

(4) A key and key switch or other reset mechanism to reset the progressive meter or meters.

(5) A key locking the compartment housing the progressive meter or meters or other means by which to preclude any unauthorized alterations to the progressive meters. The key or alternative security method must be different than the key or reset mechanism in paragraph (4).

(6) If the progressive controller is not secured in a video gaming terminal, the progressive controller:

(i) Must be maintained in a secure area approved by the Bureau of Casino Compliance.

(ii) Must be dual key controlled with one key controlled by the terminal operator's operations department and the other key controlled by a different designated department with no incompatible functions, as specified in the licensee's internal controls.

(iii) May not be accessed until the Bureau of Gaming Laboratory Operations is electronically notified.

(c) In addition to the requirements in subsection (b), a video gaming terminal that is connected to a common progressive meter for the purpose of offering the same progressive jackpot on two or more video gaming terminals must:

(1) Have the same probability of hitting the combination that will award the progressive jackpot as every other video gaming terminal linked to the common progressive meter.

(2) Require that the same amount in wager be invested to entitle the player to a chance at winning the progressive jackpot and that each increase in wager increment the progressive meter by the same rate of progression as every other video gaming terminal linked to the common progressive meter.

(d) Notwithstanding the provisions of subsection (c), two or more linked video gaming terminals offering the same progressive jackpot may be of different denominations or have different wagers, or both, required to win the progressive jackpot, provided that all of the following apply:

(1) The probability of winning the progressive jackpot is directly proportional to the wager required to win that jackpot.

(2) Notice indicating the proportional probability of hitting the progressive jackpot on the linked progressive system is conspicuously displayed on each linked video gaming terminal.

(e) A terminal operator seeking to utilize a linked video gaming terminal shall submit for approval in accordance with § 1112a.4 (relating to submission for testing and approval) the location and manner of installing any progressive meter display mechanism.

(f) A video gaming terminal that offers a progressive jackpot may not be placed in the video gaming area until the terminal operator has submitted all of the following to the Bureau of Casino Compliance for review and approval in accordance with § 1112a.4:

(1) The initial and reset amounts at which the progressive meter or meters will be set.

(2) The proposed system for controlling the keys and applicable logical access controls to the video gaming terminal.

(3) The proposed rate of progression for each progressive jackpot.

(4) The proposed limit for the progressive jackpot, if any.

(5) The calculated probability of winning each progressive jackpot. The probability may not exceed 50 million to 1.

(g) A video gaming terminal that offers either a new progressive jackpot or undergoes a modification or RAM clear of an existing progressive jackpot may not be made available for play by the public until the video gaming terminal has been tested and certified by the Bureau of Gaming Laboratory Operations. For purposes of this subsection, a modification includes any change in the software, hardware, including controllers, and any associated equipment that relates to progressive functionality.

(h) Progressive jackpot meters may not be turned back to a lesser amount unless one of the following occurs:

(1) The amount indicated has been actually paid to a winning patron and the progressive jackpot amount has been recorded in accordance with a system of internal controls.

(2) With written approval, the progressive jackpot has been transferred to another progressive video gaming terminal in accordance with subsection (k)(4).

(3) The change is necessitated by a video gaming terminal or meter malfunction. An explanation for the change shall be entered on the progressive video gaming terminal summary required under this subpart and the Bureau of Gaming Laboratory Operations shall be notified of the resetting in writing.

(i) Once an amount appears on a progressive meter, the probability of hitting the combination that will award the progressive jackpot may not be decreased unless the progressive jackpot has been won by a patron, has been transferred to another progressive video gaming terminal or has been removed in accordance with subsection (k).

(j) When a video gaming terminal has a progressive meter with digital limitations on the meter, the terminal operator shall set a limit on the progressive jackpot not to exceed the display capability of the progressive meter.

(k) A terminal operator may limit, transfer or terminate a progressive jackpot offered in a video gaming area only under the following circumstances:

(1) A terminal operator shall establish a payout limit for a progressive jackpot of $1,000.

(2) A terminal operator may terminate a progressive jackpot concurrent with the winning of the progressive jackpot provided its video gaming terminal program or progressive controller was configured prior to the winning of the progressive jackpot to establish a fixed reset amount with no progressive increment.

(3) A terminal operator may immediately and permanently remove one or more linked video gaming terminal from a gaming floor, provided that the terminal operator retains at least one video gaming terminal offering the same progressive jackpot in its video gaming area.

(4) A terminal operator may transfer a progressive jackpot amount on a standalone video gaming terminal or the common progressive jackpot on an entire link of video gaming terminal with a common progressive meter from a video gaming area provided the terminal operator receives written approval from the Bureau of Gaming Laboratory Operations prior to the transfer and the accrued amount minus the seed amount of the progressive jackpot is:

(i) Transferred in its entirety.

(ii) Transferred to one of the following:

(A) The progressive meter for a video gaming terminal with the same or similar probability of winning the progressive jackpot, the same or lower wager requirement to be eligible to win the progressive jackpot and the same type of progressive jackpot.

(B) The progressive meters of two separate video gaming terminals provided that each video gaming terminal to which the jackpot is transferred individually satisfies the requirements in clause (A).

(iii) Notice of intent to transfer the progressive jackpot is conspicuously displayed on the front of each video gaming terminal for at least 30 days.

(5) If a transfer cannot be made in accordance with paragraph (4) or with good cause shown, a terminal operator may remove progressive functionality, change the game theme or permanently remove a standalone progressive video gaming terminal, or an entire link of video gaming terminal with a common progressive jackpot from a video gaming area, provided all of the following:

(i) Notice of intent to remove the progressive video gaming terminals is conspicuously displayed on the front of each video gaming terminal for at least 30 days.

(ii) Prior to posting the notice of intent required under subparagraph (i), the terminal operator licensee receives written approval from the Bureau of Gaming Laboratory Operations to remove the progressive video gaming terminal.

(l) Progressive video gaming terminal removed from the video gaming area in accordance with subsection (k)(5) may not be returned to the gaming floor for 90 days.

(m) The amount indicated on the progressive meter or meters and coin in meter on each video gaming terminal governed by subsection (b) must be recorded on a progressive video gaming terminal summary report at least once every 7 calendar days and each report shall be signed by the preparer. If not prepared by the terminal operator's finance department, the progressive video gaming terminal summary report shall be forwarded to the finance department by the end of the gaming day on which it is prepared. A representative of the finance department shall be responsible for calculating the correct amount that should appear on a progressive meter. If an adjustment to the progressive meters is necessary, the adjustment shall be made by a member of the video gaming terminal operations department as follows:

(1) Supporting documentation shall be maintained to explain any addition or reduction in the registered amount on the progressive meter. The documentation must include the date, asset number of the video gaming terminal, the amount of the adjustment, and the signatures of the finance department member requesting the adjustment and of the video gaming terminal operations department member making the adjustment.

(2) The adjustment shall be effectuated within 48 hours of the meter reading.

(n) Except as otherwise authorized by this section, a video gaming terminal offering a progressive jackpot that is temporarily removed from the video gaming area shall be returned to active play or replaced in the video gaming area within 5 gaming days. The amount on the progressive meter or meters on the returned or replacement video gaming terminal may not be less than the amount on the progressive meter or meters at the time of removal.

(o) When a video gaming terminal is located adjacent to a video gaming terminal offering a progressive jackpot, the terminal operator shall conspicuously display a notice advising patrons that the video gaming terminal is not participating in the progressive jackpot of the adjacent video gaming terminal.

§ 1112a.11. Video gaming terminal monitoring systems.

(a) A terminal operator may utilize a video gaming terminal monitoring system which has an interface between it and video gaming terminals and related systems that has been tested and approved by the Board under § 1112a.4 (relating to submission for testing and approval).

(b) A video gaming terminal monitoring system must comply with 4 Pa.C.S. (relating to amusements), this subpart and technical standards on video gaming terminal monitoring systems adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

§ 1112a.12. Remote system access.

(a) In emergency situations or as an element of technical support, an employee of a licensed manufacturer may perform analysis of, or render technical support with regard to, a terminal operator's video gaming terminal monitoring system, gaming voucher system or other Board-approved system from a remote location.

(b) Remote system access shall be performed in accordance with the provisions on remote system access under § 461a.19 (relating to remote system access).

(c) Prior to granting remote system access, a terminal operator shall establish a system of internal controls applicable to remote system access. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols). The internal control procedures submitted by the terminal operator shall be designed to protect the physical integrity of the systems in subsection (a) and the related data and be capable of limiting the remote access to the system or systems requiring technical support.

§ 1112a.13. Video gaming terminals and associated equipment utilizing alterable storage media.

(a) *Definition*. The following term, when used in this section, has the following meaning, unless the context clearly indicates otherwise:

Alterable storage media—

(i) Memory or other storage medium, such as an EEPROM, flash, optical or magnetic storage device, that is contained in a video gaming terminal or associated equipment subject to approval under § 461a.4 (relating to

submission for testing and approval), that allows the modification of programs or data on the storage media during the normal operation of the video gaming terminal or associated equipment.

(ii) The term does not include the following:

(A) Memory or other storage medium typically considered to be alterable but through either software or hardware means approved by the Board have been rendered unalterable and remain verifiable by the central control computer system.

(B) Associated equipment using alterable storage media that the Board determines are incapable of influencing the integrity or outcome of game play.

(b) *Use of alterable storage media*. Any use of alterable storage media in a video gaming terminal or associated equipment must be in compliance with 4 Pa.C.S. Part III (relating to video gaming), this subpart and technical standards on alterable storage media adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

§ 1112a.14. Waivers.

(a) The Board may, on its own initiative, waive one or more of the requirements in this chapter or the technical standards applicable to video gaming terminal and associated equipment adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site upon a determination that the nonconforming video gaming terminal or associated equipment or modification as configured meets the operational integrity requirements in 4 Pa.C.S. Part III (relating to video gaming), this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(b) A manufacturer may submit a written request to the Board for a waiver for one or more of the requirements in this chapter or the technical standards applicable to video gaming terminal and associated equipment adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site. The request must:

(1) Be submitted as a petition under § 493a.4 (relating to petitions generally).

(2) Include supporting documentation demonstrating how the video gaming terminal or associated equipment for which the waiver has been requested will still meet the operational integrity requirements in 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(3) Be approved by the Board.

§ 1112a.15. Disputes.

(a) If a dispute arises with a patron, the terminal operator shall attempt to resolve the dispute. If the dispute cannot be resolved, the terminal operator shall notify the Bureau of Casino Compliance who will attempt to resolve the dispute. If the dispute is not resolved, the Bureau of Casino Compliance will provide the patron with a Board Patron Dispute/Complaint Form and Instructions for Submitting a Patron Dispute/Complaint and assist the patron in completing the Board Patron Dispute/Complaint Form.

(b) When a patron files a complaint, the Bureau will conduct an investigation of the complaint.

§ 1112a.16. Testing and software installation in the live video gaming area.

(a) Prior to the testing of video gaming terminals, associated equipment and displays in a live video gaming area during a terminal operator's normal hours of operation, the terminal operator shall notify the Bureau of Casino Compliance in writing at least 72 hours prior to the test date and receive the required approvals from the Bureau of Gaming Laboratory Operations prior to beginning testing. The notification must include all of the following:

(1) A detailed narrative description of the type of testing to be conducted, including the reason for the testing, a list of individuals conducting the testing and the terminal operator's procedures for conducting the testing.

(2) The date, time and approximate duration of the testing.

(3) The model, video gaming terminals location number and asset number of the video gaming terminals to be tested.

(4) The location within the licensed facility where the testing will occur.

(b) A terminal operator shall notify the Bureau of Casino Compliance at least 72 hours prior to the installation of any new software or the installation of any change in previously approved software and receive the required approvals prior to the installation of any of the following:

(1) Automated gaming voucher redemption terminals.

(2) Video gaming terminals monitoring systems.

(3) Additional automated bill breaker machines, automated gaming voucher redemption terminals and automated teller machines in the video gaming area.

(4) Gaming voucher systems.

(c) The notification required under subsection (b) must include all of the following:

(1) A description of the reasons for the new installation or change in previously approved software.

(2) A list of the current computer components, software identifications or versions that are to be modified or replaced.

(3) A list of the proposed computer components, software identifications or versions that will modify or replace the existing components or software.

(4) The method to be used to complete the proposed installation.

(5) The date and time that the proposed modification will be installed and the estimated time for completion.

(6) The name, title and employer of the persons performing the installation.

(7) The plan to handle disruptions, if any, to the video gaming area.

(8) The approximate length of time the video gaming area or systems will be disrupted.

(9) Plans for system backup prior to any proposed installation.

§ 1112a.17. RAM clear.

(a) When a terminal operator becomes aware of a nonresponsive video gaming terminals, and communication between the video gaming terminals and the central control computer cannot be re-established, the terminal operator shall immediately notify the Department's opera-

tor of the central control computer and the Bureau of Casino Compliance. The terminal operator may not do a RAM clear on the affected video gaming terminals or associated equipment until the information on the financial meters has been accurately recorded and provided to the Bureau of Casino Compliance.

(b) For planned RAM clears, the terminal operator shall provide notice to the Department's operator of the central control computer and the Bureau of Casino Compliance at least 48 hours prior to the scheduled RAM clear. A second notice shall be provided to the Department's operator of the central control computer and the Bureau of Casino Compliance immediately prior to actually conducting the RAM clear.

Chapter 1113. (Reserved)

Sec.
1113.1—1113.4. (Reserved).
1113.5. (Reserved).
1113.6. (Reserved).
1113.7. (Reserved).

CHAPTER 1113a. POSSESSION OF VIDEO GAMING TERMINALS

Sec.
1113a.1. Possession of video gaming terminals generally.
1113a.2. Transportation of video gaming terminals into, within and out of this Commonwealth.
1113a.3. Video gaming terminals location in video gaming area.
1113a.4. Notice and connection to the central control computer system.
1113a.5. Video gaming terminal master lists.
1113a.6. Off-premises storage of video gaming terminals.

§ 1113a.1. Possession of video gaming terminals generally.

(a) Except as otherwise provided in this section and 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.), a person may not possess any video gaming terminals in this Commonwealth that may be used for gambling activity.

(b) The following persons and any employee or agent acting on their behalf may possess video gaming terminals in this Commonwealth for the purposes described herein provided that video gaming terminals located outside of a establishment licensee's facility may not be used for gambling activity:

(1) A terminal operator, for the purpose of maintaining for use, training or operating video gaming terminals in an establishment licensee's facility.

(2) The holder of a manufacturer license for the purpose of manufacturing, exhibiting, demonstrating, training or preparing for transfer to a supplier licensee or terminal operator.

(3) The holder of a manufacturer or supplier license for the purpose of distributing, repairing, servicing, exhibiting or demonstrating video gaming terminals and any training with regard thereto.

(4) An educational institution for the purpose of teaching video gaming terminals design, operation, repair or servicing.

(5) A manufacturer or supplier of video gaming terminals not licensed in this Commonwealth for the limited purpose of temporary exhibition or demonstration.

(6) A common carrier, for the purpose of transporting video gaming terminals in accordance with § 1113a.2 (relating to transportation of video gaming terminals into, within and out of this Commonwealth).

(7) An employee or agent of the Board, the Department, the Pennsylvania State Police or any law enforcement agency of this Commonwealth for the purpose of fulfilling official duties or responsibilities.

(8) Other persons upon a finding that the possession of video gaming terminals by those persons in this Commonwealth is not contrary to the goals and objectives of 4 Pa.C.S. (relating to amusements).

(c) Persons seeking to possess video gaming terminals under subsection (b)(4), (5) and (8) shall submit a petition to the Board as required under § 493a.4 (relating to petitions generally). The petition to the Board must contain all of the following:

(1) The purpose for having the video gaming terminals.

(2) The proposed location of the video gaming terminals.

(3) The time period for which the video gaming terminals will be kept.

(4) How the video gaming terminals will be secured.

(d) Requests approved by the Board may be subject to specific terms and conditions imposed by the Board.

(e) A person authorized to possess video gaming terminals under subsection (d) who wishes to store the video gaming terminals at a location other than the location specified in subsection (c)(2) shall obtain approval from the Board's Executive Director prior to storing the video gaming terminals at the other location.

§ 1113a.2. Transportation of video gaming terminals into, within and out of this Commonwealth.

(a) In furtherance of 4 Pa.C.S. § 4502 (relating to declaration of exemption from Federal laws prohibiting video gaming terminals), prior to the transport or movement of a video gaming terminals, into, within or out of this Commonwealth, from one person authorized to possess video gaming terminals under § 1113a.1 (relating to possession of video gaming terminals generally) to another person, the persons causing the video gaming terminals to be transported or moved shall notify the Bureau of Casino Compliance in writing or in an electronic format approved by the Bureau of Casino Compliance. The notice shall be submitted no later than the day the video gaming terminals is transported and must include all of the following information:

(1) The name and address of the person shipping or moving the video gaming terminals.

(2) The name and address of the person who owns the video gaming terminals if different from the person shipping or moving the video gaming terminals.

(3) The name and address of a new owner if ownership is being changed in conjunction with the shipment or movement.

(4) The method of shipment or movement and the name and address of the common carrier or carriers, if applicable.

(5) The name and address of the person to whom the video gaming terminals is being sent and the destination of the video gaming terminals if different from that address.

(6) The quantity of video gaming terminals being shipped or moved and the manufacturer's serial number of each machine.

(7) The expected date and time of delivery to, or removal from, any authorized location in this Commonwealth.

(8) The port of entry, or exit, if any, of the video gaming terminals if the origin or destination of the video gaming terminals is outside the continental United States.

(9) The reason for transporting or moving the video gaming terminals.

(b) In addition to the requirements in subsection (a), if a terminal operator is shipping video gaming terminals to or from the terminal operator's approved, off-premises storage location, the terminal operator shall comply with the requirements in subsection (a) and record the movement in the terminal operator's movement log as required under § 1113a.5(e) (relating to video gaming terminal master lists).

(c) If a video gaming terminal is being transported to the establishment licensee's facility from the terminal operator's approved, off-premises storage location, the terminal operator shall specify in the notice required under subsection (a) whether the video gaming terminals will be placed directly onto the video gaming area or stored off the video gaming area in a restricted area within the establishment licensee's facility.

(d) If a video gaming terminal is being transported to the Bureau of Gaming Laboratory Operations, the notice required under subsection (a) shall also be provided to the Bureau of Gaming Laboratory Operations.

§ 1113a.3. Video gaming terminals location in video gaming area.

(a) A video gaming area must consist of one area within an establishment licensee's premises approved by the Board or Executive Director for the placement and operation of all video gaming terminals.

(b) The location of each video gaming terminal must correspond to a specifically identified space in the video gaming area identified numerically and listed on the master list with the identifying asset and serial number of the corresponding video gaming terminal.

§ 1113a.4. Notice and connection to the central control computer system.

(a) Prior to utilization for gambling activity, unless otherwise authorized by the Board's Executive Director, a video gaming terminal in a video gaming area must be connected or linked to a central control computer system having the capabilities and in compliance with the terms of 4 Pa.C.S. § 3309 (relating to central control computer system).

(b) To ensure activation or disabling, as appropriate, in the central control computer system and the retrieval of real time meter information from the video gaming terminal in conjunction with the movement of a video gaming terminal, the terminal operator shall provide the Department with written notice of the video gaming terminal movement, prior to any of the following:

(1) Placement of a video gaming terminal in a video gaming area.

(2) Movement of a video gaming terminal location in the video gaming area.

(3) Removal of a video gaming terminal from the video gaming area.

§ 1113a.5 Video gaming terminal master lists.

(a) Prior to the commencement of operations at an establishment licensee's facility, a terminal operator shall file all of the following with the Bureau of Casino Compliance in an electronic format approved by the Bureau of Casino Compliance:

(1) Video Gaming Area Video Gaming Terminal Master List.

(2) Restricted Area/Off Premises Video Gaming Terminal Master List.

(b) A Video Gaming Area Video Gaming Terminal Master List must list all video gaming terminals located in the video gaming area in consecutive order by the device location number under § 1113a.3 (relating to video gaming terminals location in video gaming area) and contain all of the following:

(1) The date the list was prepared.

(2) A description of each video gaming terminal that includes all of the following:

(i) The location number.

(ii) The asset number.

(iii) The manufacturer's serial number.

(iv) The base denomination, or if configured for multiple denominations, a list of the denominations.

(v) The game software/program ID.

(vi) The operating system/base ROM.

(vii) The manufacturer.

(viii) The video gaming terminal model.

(ix) The model type (reel or video), if applicable.

(x) The game themes/description.

(xi) The minimum payout percentage, if applicable.

(xii) The machine displayed payout percentage, if applicable.

(xiii) The paytable ID.

(xiv) If the video gaming terminal is a progressive, the type of progressive, the progressive controller type and the progressive software.

(xv) The fund transfer/voucher system software.

(c) If a video gaming terminal is configured to allow a patron to select from multiple games or game themes, each game or game theme, minimum and machine displayed payout percentages, if applicable, and paytable ID must be listed in the Video Gaming Area Video Gaming Terminal Master List. Instead of listing each game or game theme, minimum and machine displayed payout percentage and paytable ID for a video gaming terminal configured to offer multiple game themes with the video gaming terminal, a terminal operator may use a unique generic code for the game theme and attach an appendix which lists the game themes, minimum and machine displayed payout percentages and paytable IDs that correspond to each unique generic game theme code.

(d) A Restricted Area/Off Premises Video Gaming Terminal Master List must include all video gaming terminals located off the video gaming area in an approved restricted area within the establishment licensee's facility, or in storage locations in this Commonwealth off the premises of the establishment licensee approved under § 1113a.6 (relating to off-premises storage of video gaming terminals) grouped by the location where the video gaming terminal are located. A Restricted Area/Off Premises Video Gaming Terminal Master List must include all of the following information:

(1) The date the list was prepared.

(2) A description of each video gaming terminal that includes all of the following:

(i) The location of the video gaming terminal.

(ii) The asset number.

(iii) The manufacturer's serial number.

(iv) The game software/program ID.

(v) The operating system/base ROM.

(vi) The game theme/description.

(vii) The manufacturer.

(viii) The video gaming terminal model.

(ix) The model type (reel or video), if applicable.

(e) Once a video gaming terminal has been placed in an authorized location in the video gaming area, stored in a restricted area off the video gaming area but within the establishment licensee's facility approved under this section or in a location in this Commonwealth off the premises of the establishment licensee's facility approved under § 1113a.6, all subsequent movements of that video gaming terminal shall be recorded by a terminal operator employee in a video gaming terminal movement log which includes all of the following:

(1) The asset number and model and manufacturer's serial number of the moved video gaming terminal.

(2) The date and time of movement.

(3) The location from which the video gaming terminal was moved.

(4) The location to which the video gaming terminal was moved.

(5) The date and time of any required notice to the Department in connection with activation or disabling of the video gaming terminal in the central control computer system.

(6) The signature of a key employee of the terminal operator verifying the movement of the video gaming terminal in compliance with this section.

(f) Documentation summarizing video gaming terminal movements, as described in subsection (e), shall be submitted to the Bureau of Casino Compliance in an electronic format approved by the Bureau of Casino Compliance on a weekly basis.

(g) On the first Tuesday of each month a terminal operator shall file an updated Video Gaming Area Video Gaming Terminal Master List and an updated Restricted Area/Off Premises Video Gaming Terminal Master List containing the information required under subsections (b)—(d). The Video Gaming Area Video Gaming Terminal Master List and the Restricted Area/Off Premises Video Gaming Terminal Master List shall be filed in an electronic format with the Bureau of Casino Compliance.

(h) Persons authorized by the Board to possess video gaming terminals under § 1113a.1(c) (relating to possession of video gaming terminals generally) shall file with the Bureau of Casino Compliance, in an electronic format approved by the Bureau of Casino Compliance, a complete list of video gaming terminals possessed by the person. The list must comply with all of the following:

(1) Be denoted as a Video Gaming Terminal Master List.

(2) Be filed within 3 business days of the initial receipt of video gaming terminals.

(3) Contain all of the following information:

(i) The date on which the list was prepared.

(ii) A description of each video gaming terminal including all of the following:

(A) The manufacturer.

(B) The manufacturer's serial number.

(C) The video gaming terminals model.

(D) The model type (reel or video), if applicable.

(E) Whether or not the video gaming terminal is a progressive, and if it is, the type of progressive.

(i) On the first Tuesday of each month following the initial filing of a Video Gaming Terminal Master List, the persons enumerated in subsection (h) shall file with the Bureau of Casino Compliance, in an electronic format approved by the Bureau of Casino Compliance, an updated Video Gaming Terminals Master List containing all of the information required under subsection (h).

§ 1113a.6. Off-premises storage of video gaming terminals.

(a) A terminal operator may not store video gaming terminals off the premises of an establishment licensee's facility without prior approval from the Board's Executive Director.

(b) A terminal operator seeking to store video gaming terminals off the premises of an establishment licensee's facility shall submit a written request to the Bureau of Casino Compliance for off premise storage. The written request must include all of the following:

(1) The location and a physical description of the proposed storage facility.

(2) A description of the type of surveillance system that has been or will be installed at the proposed storage facility.

(3) The plan to provide 24-hour, 7-day a week security at the proposed storage facility.

(4) The anticipated number of video gaming terminals that may be stored at the proposed storage facility.

(c) Before the Board's Executive Director will act on a request for off premise storage of video gaming terminals, the Bureau of Casino Compliance will inspect the proposed storage facility.

(d) The Board's Executive Director will approve or disapprove requests within 60 days. Requests approved by the Board's Executive Director may be subject to specific terms and conditions imposed by the Board's Executive Director.

Chapter 1114. (Reserved)

Sec.
1114.1. (Reserved).

CHAPTER 1114a. ACCOUNTING AND INTERNAL CONTROLS

Sec.
1114a.1. Video gaming accounting and internal controls.

§ 1114a.1. Video gaming accounting and internal controls.

(a) At least 90 days before the commencement of video gaming, a terminal operator licensee or an applicant for a terminal operator license shall submit to the Board for approval all internal control systems and audit protocols for the video gaming operations.

(b) A terminal operator licensee'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 video gaming, including reports to the Board related to video gaming.

(2) Provide for accurate and reliable financial records related to the conduct of video gaming.

(3) Establish procedures and security for the recordation of wagering, winnings, gross terminal revenue and taxation.

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

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

(6) Establish procedures for the collection, recording and deposit of revenue from the conduct of video gaming.

(7) Establish reporting procedures and records required to ensure that all money generated from video gaming is accounted for.

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

(9) Permit access to the establishment licensee premises and terminal operator premises used in connection with video gaming for the Board, the Bureau, the Department and the Pennsylvania State Police to facilitate the ability to perform regulatory oversight and law enforcement functions, respectively.

(c) The submission required under subsection (a) must include a detailed description of the terminal operator's administrative and accounting procedures related to video gaming, including its written system of internal controls which must include:

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

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

(3) The record retention policy of the terminal operator.

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

(5) An overview and description of the video gaming terminal monitoring system used by the terminal operator licensee, including:

(i) The name of the system being utilized, and the gaming equipment connected to the system.

(ii) The procedures and reports utilized by the terminal operator to calculate gross terminal revenue.

(6) The procedures and controls for ensuring that video gaming terminals directly provide and communicate all required activities and financial details to the central control computer system as established by the Board.

(7) 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.

(8) Procedures to be utilized by an employee of a terminal operator and establishment licensee in the event of a malfunction of a video gaming terminal that fails to dispense a redemption ticket, or of a redemption terminal which fails to dispense cash upon redemption of the ticket.

(9) Procedures to be utilized by an establishment to prevent minors from entering the video gaming area, which include acceptable documentation relating to proof of age and the examination of these documents by a responsible employee.

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

(d) Prior to authorizing a terminal operator licensee to commence the conduct of video gaming, the Board will review the system of internal controls and audit protocols submitted under subsection (a) to determine whether it conforms to the requirements in this chapter and whether it provides adequate and effective controls for the conduct of video gaming.

(e) If a terminal operator licensee 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 terminal operator licensee may implement the change or amendment on the 30th calendar day following the filing of a complete submission unless the terminal operator licensee receives written notice tolling the change or amendment in accordance with subsection (f) 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 preliminarily determines that a procedure in a submission contains an insufficiency likely to negatively affect the integrity of video gaming or the control of revenue generated from video gaming, the Bureau of Gaming Operations, by written notice to the terminal operator licensee, will do all of the following:

(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 (e) be tolled and that any internal controls at issue not be implemented until approved.

(g) Examples of submissions that may contain an insufficiency likely to negatively affect the integrity of video gaming include the following:

(1) Submissions that fail to provide information sufficient to permit the review of video gaming.

(2) Submissions that fail to provide for the segregation of incompatible functions so that an employee is not in a position to commit an error or perpetrate a fraud and conceal the error or fraud in the normal course of the employee's duties.

(3) Submissions that do not include forms or other materials referenced in the submission or required under 4 Pa.C.S. (relating to amusements) or this part.

(4) Submissions that would implement operations or accounting procedures not authorized by 4 Pa.C.S. or this part.

(5) Submissions that are dependent upon the use of equipment or related devices or software not approved by the Board 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), the terminal operator licensee may submit a revised change or amendment within 30 days of receipt of the written notice from the Bureau of Gaming Operations. The terminal operator licensee may imple-

ment 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 terminal operator licensee receives written notice tolling the change or amendment in accordance with subsection (f) or written notice from the Board's Executive Director rejecting the change or amendment.

Chapter 1115. (Reserved)

Sec.
1115.1. (Reserved).

CHAPTER 1115a. RECORD RETENTION

Sec.
1115a.1. Video gaming record retention.

§ 1115a.1. Video gaming 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 video gaming by a terminal operator licensee or an establishment licensee 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 terminal operator licensee or an establishment licensee shall agree to maintain all books, records and documents pertaining to the conduct of video gaming in a manner and location in this Commonwealth as approved by the Board. All books, records and documents must meet all of the following:

(1) Be organized in a manner to clearly depict by separate records the total amount of money wagered and paid as winnings in all video gaming activity.

(2) Be segregated by separate accounts within the terminal operator licensee or establishment licensee's books, records and documents.

(3) Be immediately available for inspection upon request of the Board, the Bureau, the Department, the Pennsylvania State Police or the Attorney General, or agents thereof, during all hours of operation of video gaming by a terminal operator licensee or establishment licensee.

(4) Be 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) Be retained in a secure location by a terminal operator licensee or establishment licensee that is equipped with a fire suppression system or in a fire proof location on the premises.

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

(7) Be destroyed only after expiration of the minimum retention period of 5 years, unless the Board, upon the written request of a terminal operator licensee or an establishment licensee and for good cause shown, permits the destruction at an earlier date.

Chapter 1116. (Reserved)

Sec.
1116.1—1116.8. (Reserved).

CHAPTER 1116a. CONDUCT OF VIDEO GAMING

Sec.
1116a.1. Video gaming area.
1116a.2. Video gaming terminals.
1116a.3. Redemption terminals.
1116a.4. Automated teller machines.
1116a.5. Commencement of video gaming generally.
1116a.6. Establishment licensee restrictions.
1116a.7. Terminal operator licensee restrictions.
1116a.8. Restriction on wagering.
1116a.9. Surveillance system standards.

§ 1116a.1. Video gaming area.

(a) A video gaming area must be within an establishment licensee's premises and it must be separate and distinct through the installation of a physical barrier from a convenience store or other amenity available to patrons under 21 years of age.

(b) An establishment licensee shall notify and receive approval of the Board, the Bureau or designated staff of the Board prior to making any modification to the video gaming area.

(c) An establishment licensee shall provide all of the following:

(1) The entrance to the video gaming area and the conduct of video gaming are visible to at least one employee of the establishment licensee who holds an occupation permit.

(2) The video gaming area must have one entrance point which serves as the exit point.

(3) The video gaming area must be separated from the remaining establishment premises by a physical barrier which may consist of a wall, partition, gate or other barrier which may not obstruct the view of the conduct of video gaming by an employee who holds an occupation permit.

(4) The video gaming area shall, at all times, be monitored, either directly or through live monitoring of video surveillance, by an employee of the establishment licensee who is at least 18 years of age, holds an occupation permit and has completed mandatory training relating to compulsive and problem gambling.

(5) Every employee of the establishment licensee who has a valid occupation permit issued by the Board and who has duties which include monitoring the video gaming area of an establishment licensee shall display the Board-issued occupation permit credential on the outer clothing in a manner clearly visible to patrons and security and surveillance cameras.

(6) Every employee of a terminal operator who has a valid occupation permit issued by the Board and who has duties which require him to enter a video gaming area of an establishment licensee shall, while on the premises of an establishment licensee, display the Board-issued occupation permit credential on the outer clothing in a manner clearly visible to patrons and security and surveillance cameras.

(d) A video gaming area must have at least one redemption terminal which must be the sole and exclusive method to exchange a redemption ticket for cash.

(e) An establishment licensee shall prominently display in a place and manner conspicuous to all patrons entering and exiting the video gaming area signs containing the following statement printed in bold lettering of sufficient

size to be visible and readable: "The video gaming area including the entrance and exit is subject to surveillance and video recording."

(f) A video gaming area must comply with §§ 1118a.1 and 1118a.2 (relating to signage requirements; and problem gambling information).

(g) A video gaming area must have a sign prominently displayed that sets forth the maximum wager amount and maximum prize per individual game as set forth in the act.

§ 1116a.2. Video gaming terminals.

(a) A terminal operator licensee may place up to five video gaming terminals in the video gaming area of an establishment licensee.

(b) A video gaming terminal may not be made available for use prior to being tested and certified by the Board as meeting the requirements in 4 Pa.C.S. § 3701 (relating to testing and certification of terminals).

(c) Video gaming terminals may not have the ability to dispense cash, tokens or anything of value, except redemption tickets which shall only be exchangeable at a redemption terminal or reinserted into another video gaming terminal in the same video gaming area.

§ 1116a.3. Redemption terminals.

(a) A terminal operator licensee shall place at least one redemption terminal in the video gaming area of an establishment licensee.

(b) A redemption terminal in a video gaming area must be equipped with an integrated camera which must record the image of all persons using the redemption terminal and maintain those images for a minimum period of 30 days, or the surveillance system utilized in the video gaming area must have camera coverage of the redemption terminal that makes it possible to identify the individual using the redemption terminal.

(c) A redemption terminal may not be made available for use prior to being tested and certified by the Board as meeting the requirements in 4 Pa.C.S. § 3701 (relating to testing and certification of terminals).

(d) The redemption terminal must only accept redemption tickets from video gaming terminals in the same video gaming area.

(e) Redemption tickets shall only be exchanged for cash through a redemption terminal located within the same video gaming area.

§ 1116a.4. Automated teller machines.

(a) Automated teller machines may be placed at any location within an establishment licensee's facility. Automated teller machines that offer credit card advances may not be placed in the video gaming area.

(b) An automated teller machine in a video gaming area must be equipped with an integrated camera which must record the image of all persons using the automated teller machine and maintain those images for a minimum period of 30 days, or the surveillance system utilized in the video gaming area must have camera coverage of the automated teller machine that makes it possible to identify the individual using the automated teller machine.

(c) An automated teller machine located in the video gaming area must have a label on the top and front of the automated teller machine that displays a unique identification number of the automated teller machine. The labels must have white lettering on a dark-colored background, may not be easily removed and must be easily visible by surveillance equipment. The label on the top of the automated teller machine must be at least 1.5 inches by 5.5 inches and the label on the front of the automated teller machine must be at least 1 inch by 2.5 inches.

(d) Automated teller machines located within a video gaming area may not accept ACCESS/Electronic Benefits Transfer Cards.

§ 1116a.5. Commencement of video gaming generally.

(a) Prior to offering video gaming terminals, a terminal operator shall demonstrate all of the following:

(1) The video gaming area complies in all respects with 4 Pa.C.S. Part III (relating to video gaming), this subpart and any technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(2) Video gaming terminals utilized in the conduct of video gaming have been tested and approved by the Board in compliance with 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(3) The video gaming area has been approved by the Board in compliance with 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(4) The terminal operator licensee's internal control systems and audit protocols have been approved by the Board in compliance with 4 Pa.C.S. Part III, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(5) The terminal operator licensee is prepared to implement necessary management controls, surveillance and security precautions to insure the efficient conduct of video gaming.

(6) The terminal operator licensee and establishment licensee's employees are licensed or permitted by the Board and trained in the performance of their responsibilities.

(b) Upon a terminal operator licensee and an establishment licensee meeting the criteria in subsection (a), the Board may authorize the date and time at which the establishment licensee may commence video gaming in the video gaming area.

§ 1116a.6. Establishment licensee restrictions.

(a) An establishment licensee may not permit a person under 21 years of age to play a video gaming terminal or enter the video gaming area.

(b) An establishment licensee may not offer or provide an incentive to a person to engage in video gaming activity.

(c) An establishment licensee may not permit a visibly intoxicated person to play a video gaming terminal.

(d) An establishment licensee may not extend credit or accept a credit card or debit card for play of a video gaming terminal.

(e) An establishment licensee may not make structural alterations or significant renovations to a video gaming area unless the establishment licensee has notified the terminal operator licensee and obtained prior approval from the Board.

(f) An establishment licensee may not move a video gaming terminal or redemption unit after installation by a terminal operator licensee.

§ 1116a.7. Terminal operator licensee restrictions.

(a) No more than five video gaming terminals may be placed on the premises of an establishment licensee.

(b) Redemption tickets may only be redeemed for cash through a ticket redemption terminal located in the same video gaming area or reinserted into another video gaming terminal in the same video gaming area for continued play.

(c) Video gaming terminals located in the video gaming area of an establishment licensee must be placed and operated under a terminal placement agreement approved by the Board.

(d) A terminal operator licensee may not offer or provide an incentive to a person to engage in video gaming activity.

(e) A terminal operator licensee may not extend credit or accept a credit card or debit card for play of a video gaming terminal.

(f) A terminal operator licensee may not give or offer to give, directly or indirectly, any type of inducement to a truck stop establishment to secure or maintain a terminal operator placement agreement. For purposes of this subsection, an "inducement" may not include payment by a terminal operator licensee for the actual costs of renovating an existing area of the footprint of the truck stop establishment for the purpose of making the video gaming area and associated areas available for the conduct of video gaming. The term, as used in this subsection, does not include making the area operate at the premises including wiring, rewiring, software updates, ongoing video gaming terminal maintenance, redemption terminals, network connections, site controllers and costs associated with communicating with the central control computer system, as well as renovations to include flooring, lighting and barriers. Nothing in this section shall preclude a truck stop establishment from making further modifications to its facility to accommodate video gaming terminal.

(g) A terminal operator licensee may not give an establishment licensee a percentage of gross terminal revenue other than 15% of the gross terminal revenue of the video gaming terminals operating in the establishment licensee's premises.

(h) A terminal operator licensee may not operate, install or otherwise make available for public use a video gaming terminal or redemption terminal that has not been obtained from a manufacturer licensee or supplier licensee.

(i) A terminal operator licensee may not make structural alterations or significant renovations to a video gaming area unless the terminal operator licensee has notified the establishment licensee and obtained prior approval from the Board.

(j) A terminal operator licensee may not move a video gaming terminal or redemption unit after installation unless prior approval of the Board is obtained.

§ 1116a.8. Restriction on wagering.

(a) An individual who holds a license, occupation permit or registration and is currently employed by or is a principal associated with an establishment licensee may not wager at a video gaming terminal in the establishment where the individual is employed or associated.

(b) An individual who holds a license, occupation permit or registration and is currently employed by or is a principal associated with a terminal operator licensee, manufacturer licensee or supplier licensee may not wager at any video gaming terminal in a truck stop establishment at which the individual operates, services, or installs video gaming terminals or associated equipment.

§ 1116a.9. Surveillance system standards.

(a) In accordance with § 1116.5(a)(5) (relating to commencement of video gaming generally), the terminal operator licensee or establishment licensee shall implement all necessary surveillance systems in each establishment in which video gaming is offered prior to the commencement of video gaming.

(b) The surveillance systems implemented in each establishment shall, at a minimum, provide for all of the following:

(1) Must operate on a 24-hours per day, 7-days per week basis.

(2) Must be capable of recording all activity in images clearly displaying facial detail of players, as well as details of the video gaming terminals, redemption terminals, automated teller machines and all other areas as require by Board regulation.

(3) Must be capable of recording and storing all images by each surveillance camera for a minimum of 30 days in a format that may be easily accessed for investigative purposes. If a proprietary video player for the recording and playback of surveillance footage is used, a terminal operator shall provide the necessary program files to the Board or Bureau upon request of surveillance footage for investigative purposes.

(4) Must provide the Board and the Bureau with remote access to the surveillance system to view surveillance footage in real-time.

(5) Must be capable of clearly and accurately displaying the time and date, synchronized and set correctly, which shall not significantly obscure the surveillance footage.

(6) Must be capable of operating under normal lighting conditions, with the entire area covered by the surveillance system having lights on 24-hours per day, 7-days per week.

(7) Must be capable of producing a clear, still photograph or video in digital format that can be provided in unaltered form within 2 business days following a request by the Board or the Bureau.

(8) Must undergo quarterly maintenance inspections to ensure that any repairs, alterations or upgrades to the surveillance system are made for the proper operation of the system.

(c) If a terminal operator or establishment licensee has been notified by the Board, the Bureau, or law enforcement of a pending criminal or administrative investigation for which a recording may contain relevant information, the terminal operator or establishment licensee shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the terminal operator or establishment licensee that it is not necessary to retain the recording.

(d) A terminal operator or establishment licensee shall make available to the Board or its authorized agents, upon request, a current list of authorized employees and

service employees or contractors who may have access to any of the surveillance areas.

(e) A terminal operator may have a centralized location for the server and surveillance room for the establishments in which video gaming is operated if the terminal operator also places the necessary equipment in each establishment so that the surveillance footage may also be viewed onsite.

(f) The terminal operator may provide remote, real-time access to the surveillance system to the owner or operator of the establishment.

(g) The terminal operator or establishment licensee shall notify the Bureau of Casino Compliance within 1 hour of any incident of equipment failure within the surveillance system, including the time and cause of the malfunction, if known.

(h) If at any time surveillance coverage of the video gaming area cannot be maintained, the video gaming area shall be closed, unless approved by the Board.

Chapter 1117. (Reserved)

Sec.
1117.1. (Reserved).
1117.2. (Reserved).

CHAPTER 1117a. VIDEO TERMINAL PLACEMENT AGREEMENTS

Sec.
1117a.1. Board approval of video terminal placement agreements.
1117a.2. Minimum standards for terminal placement agreements.

§ 1117a.1. Board approval of video terminal placement agreements.

A terminal operator licensee may not place and operate video gaming terminals on the premises of an establishment licensee unless under a terminal placement agreement approved by the Board.

§ 1117a.2. Minimum standards for terminal placement agreements.

(a) A terminal placement agreement submitted to the Board for approval must include all of the following:

(1) A provision that the term of the terminal placement agreement shall be valid for a minimum of 60 months and may not exceed 120 months.

(2) A provision that renders the terminal placement agreement invalid if either the terminal operator license or terminal operator application or the establishment license or the establishment license application is denied, revoked, not renewed, withdrawn or surrendered.

(3) A provision that provides the establishment licensee shall receive 15% of gross terminal revenue from each video gaming terminal located on the premises of the establishment licensee.

(4) The identity of the person who solicited the terminal placement agreement on behalf of a terminal operator licensee or applicant.

(5) Signatures of a representative authorized to bind an applicant for an establishment license or an establishment licensee and a representative authorized to bind an applicant for a terminal operator license or a terminal operator licensee.

(6) A provision acknowledging that a terminal placement agreement may not be transferred or assigned without prior notice to the Board and verification that the individual or entity making the assignment is either a terminal operator applicant or terminal operator licensee and the individual or entity receiving the assignment of the terminal placement agreement is either a terminal operator applicant or terminal operator licensee.

(b) A terminal placement agreement entered into by a truck stop establishment prior to October 31, 2017, with a person or entity for the placement, operation, service or maintenance of video gaming terminals, including an agreement granting a person or entity the right to enter into an agreement or match any offer made after October 31, 2017, is void and will not be approved by the Board.

Chapter 1118. (Reserved)

Sec.
1118.1—1118.5. (Reserved).

CHAPTER 1118a. COMPULSIVE AND PROBLEM GAMING

Sec.
1118a.1. Signage requirements.
1118a.2. Problem gambling information.
1118a.3. Problem gambling training.
1118a.4. Advertising.
1118a.5. Penalties.

§ 1118a.1. Signage requirements.

(a) An establishment licensee shall conspicuously post signs that include a statement providing all of the following:

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

(2) At least one sign as provided in paragraph (1) shall be posted within the video gaming area and at least one sign shall be posted above or below the cash dispensing opening on each automated teller machine within the establishment licensee's premises.

(b) An establishment licensee shall post signs that include a statement providing all of the following:

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

(2) The sign as provided in paragraph (1) shall be prominently posted at the entrance to a video gaming area.

§ 1118a.2. Problem gambling information.

An establishment licensee shall make available materials provided by the Board regarding compulsive and problem gaming as approved by the Board. The material shall be displayed conspicuously within the video gaming area of each establishment licensee.

§ 1118a.3. Problem gambling training.

(a) The Board will provide a mandatory training program addressing responsible gaming and compulsive and problem gambling issues for employees and management of an establishment licensee who oversee the establishment licensee's video gaming area.

(b) Establishment licensees shall pay a fee assessed by the Board to reimburse the Board for the cost of annual training to establishment licensee's employees and management subject to the training.

(c) At least one employee of the establishment licensee who holds a valid occupation permit and has successfully completed the training program shall be located on the premises and supervising the video gaming area during all times the video gaming terminals are available for play.

(d) Employees are required to receive the training at least once every calendar year.

(e) *Employee Training Verification*:

(1) The Office of Compulsive and Problem Gambling will provide a verification form template to each terminal operator licensee or may allow for another approved method of verification.

(2) Verifications will be maintained by the establishment licensee or the terminal operator licensee. The training verification must be completed by employee who receives the training.

(3) Each employee must provide the date of training completion, the employee's name and signature verifying the employee received the training.

§ 1118a.4. Advertising.

(a) Advertisements related to video gaming used by a terminal operator or establishment licensee or its agent may not:

(1) Contain false or misleading information.

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

(3) Use a font, type size, location, lighting, illustration, graphic depiction or color obscuring conditions or limiting factors associated with the advertisement or the statement required under subsection (b).

(b) Advertisements must contain a gambling assistance message that is similar to one of the following:

(1) If you or someone you know has a gambling problem, help is available. Call (toll free telephone number).

(2) Gambling Problem? Call (toll free telephone number).

(3) The text of the gambling assistance message and the font to be used for the statement must comply with in § 501a.7(e) (relating to advertising).

(c) A terminal operator or establishment licensee or its agent shall discontinue as expeditiously as possible the use of a particular advertisement 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 video gaming.

§ 1118a.5. Penalties.

An establishment licensee that fails to fulfill any of the requirements in this chapter shall be assessed an administrative penalty and may have its establishment license suspended or revoked by the Board, or may have a renewal of its licensed denied.

Chapter 1119. (Reserved)

Sec.
1119.1—1119.5. (Reserved).

CHAPTER 1119a. SELF-EXCLUSION

Sec.
1119a.1. Scope.
1119a.2. Definitions.
1119a.3. Requests for video gaming self-exclusion.
1119a.4. Video gaming self-exclusion list.
1119a.5. Duties of video gaming establishment licensees.
1119a.6. Removal from video gaming self-exclusion list.
1119a.7. Exceptions for individuals on the video gaming self-exclusion list.
1119a.8. Disclosures of information related to persons on the self-exclusion list.

§ 1119a.1. Scope.

The purpose of this chapter is to provide players with a process to self-exclude from video gaming activities in this Commonwealth and detail the process by which individuals may self-exclude themselves from video gaming activity and restore their ability to participate in video gaming activity in this Commonwealth.

§ 1119a.2. Definitions.

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

OCPG—The Office of Compulsive and Program Gambling of the Board.

Video gaming activity—The play of video gaming terminals at the premises of an establishment licensee.

Video gaming related activity—An activity related to the play of video gaming terminals including applying for player club memberships or credit, cashing checks, or accepting a complimentary gift, service, promotional item or other thing of value at an establishment licensee's premises.

Video gaming self-excluded person—A person whose name and identifying information is included, at the person's own request, on the video gaming self-exclusion list maintained by the Board.

Video gaming self-exclusion list—A list of names and identifying information of persons who, under this chapter, have voluntarily agreed to all of the following:

(i) Excluded from the video gaming area where video gaming activity is conducted.

(ii) Excluded from engaging in all video gaming related activities at an establishment licensee's facility.

(iii) Prohibited from collecting any winnings or recovering any losses resulting from video gaming activity.

Winnings—Any money or thing of value received from, or owed by, an establishment licensee or terminal operator licensee as a result of a fully executed video gaming transaction.

§ 1119a.3. Requests for video gaming self-exclusion.

(a) A person requesting placement on the video gaming self-exclusion list shall submit a completed Request for Voluntary Self-Exclusion from Gaming 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 shall contact the OCPG at (717) 346-8300 or problemgambling@pa.gov.

(b) A request for video gaming self-exclusion must include all of the following identifying information:

(1) Name, including any aliases or nicknames.

(2) Date of birth.

(3) Address of current residence.

(4) Telephone number.

(5) 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).

(6) Physical description of the person, including height, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(c) The information provided in subsection (b) shall be updated by the video gaming 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 OCPG 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

(d) The length of video gaming self-exclusion requested by a person must be one of the following:

(1) One year (12 months).

(2) Five years.

(3) Lifetime.

(e) A request for self-exclusion from video gaming activities in this Commonwealth must include a signed release which:

(1) Acknowledges that the request for video gaming self-exclusion has been made voluntarily.

(2) Certifies that the information provided in the request for video gaming self-exclusion is true and accurate.

(3) Acknowledges that the individual requesting video gaming self-exclusion is or may be a problem gambler.

(4) Acknowledges that a person requesting a lifetime exclusion may only request removal from the video gaming self-exclusion list in accordance with the procedures set forth in § 1119a.6 (relating to removal from the video gaming self-exclusion list) and that a person requesting a 1-year or 5-year exclusion will remain on the video gaming self-exclusion list until the period of exclusion expires, unless removed from the list pursuant to the provisions of § 1119a.6(b).

(5) Acknowledges that if the individual is discovered participating in video gaming that individual's winnings will be subject to confiscation and remittance to support compulsive and problem gambling programs.

(6) Releases, indemnifies, holds harmless and forever discharges the Commonwealth, the Board and all terminal operator licensees and establishment licensees from claims, damages, losses, expenses or liability arising out of, by reason of or relating to the 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 terminal operator licensee or establishment licensee to withhold video gaming privileges from or restore video gaming privileges to a video gaming self-excluded person.

(ii) Otherwise permitting or not permitting a video gaming self-excluded person to engage in video gaming activities in this Commonwealth while on the list of video gaming self-excluded persons.

(iii) Confiscation of the individual's winnings.

(f) A person submitting a video gaming self-exclusion request shall present or submit electronically a copy of that person's valid government-issued identification containing the person's signature and photograph when the person submits the request, or if the person does not possess a valid government-issued identification, some other documentation to verify the identity of the person (for example, a utility or other bill in the person's name at the same address provided).

(g) A person requesting video gaming self-exclusion under this chapter shall have a photograph taken by the Board, or agent thereof, upon submission of the request to be on the list.

(h) A person requesting video gaming self-exclusion electronically on the Board's web site shall submit a copy of a recent passport-style photograph of the person upon submission of the request to be on the list.

§ 1119a.4. Video gaming self-exclusion list.

(a) The Board will maintain the video gaming self-exclusion list and will make all necessary additions or deletions of individuals removed from the list under 1119a.6 (relating to removal from video gaming self-exclusion list) within 5 business days of the verification of the information received under § 1119a.3 (relating to requests for video gaming self-exclusion) and shall make the video gaming self-exclusion list available to terminal operator licensees and establishment licensees electronically by the Board's self-exclusion system.

(b) The information made available to terminal operator licensees and establishment licensees by the Board's self-exclusion system will include the following information concerning a person who has been added to the video gaming self-exclusion list:

(1) Name, including any aliases or nicknames.

(2) Date of birth.

(3) Address of current residence.

(4) Telephone number.

(5) Social Security number, or the last 4 digits of the individual's Social Security number, when voluntarily provided by the person requesting video gaming self-exclusion under section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552a).

6) Physical description of the person, including height, gender, hair color, eye color and other physical characteristic, that may assist in the identification of the person.

(7) A copy of the photograph taken by the Board or submitted electronically under § 1119a.3.

(c) The information made available to terminal operator licensees and establishment licensees by the Board concerning a person whose name has been removed from the video gaming self-exclusion list will include the name and date of birth of the person.

(d) A terminal operator licensee and establishment licensee shall maintain a copy of the video gaming self-exclusion list and establish procedures to ensure that the copy of the video gaming self-exclusion list is updated at least every 2 business days with the information made available by the Board's self-exclusion system and that all appropriate employees and agents of the establishment licensee are notified of any additions to or deletions from the 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.

(f) Terminal operator licensees and establishment licensees, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion from video gaming to anyone other than employees and agents of the terminal operator licensee or establishment licensee whose duties and functions require access to the information. Notwithstanding

the foregoing, a terminal operator licensee or establishment licensee may disclose the identity of a video gaming self-excluded person to appropriate employees of affiliated gaming entities in this or other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs.

(g) A video gaming 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 video gaming activity for the entire period of time that the person is on the Board's video gaming self-exclusion list.

(h) Winnings incurred by a video gaming 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, found on or about or redeemed by a video gaming self-excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 1119a.5. Duties of video gaming establishment licensees.

(a) An establishment licensee shall train its employees and establish procedures to do all of the following:

(1) Identify a video gaming self-excluded person when present in the video gaming area and, upon identification, immediately notify employees of the establishment licensee whose duties include the removal of video gaming self-excluded persons.

(2) Deny video gaming related activities to a video gaming self-excluded person.

(3) Ensure that video gaming self-excluded persons do not receive, either from the video gaming establishment licensee or any agent thereof, targeted advertisements of video gaming activities at its premises.

(4) Notify the Pennsylvania State Police and the Bureau of the presence of a video gaming self-excluded person in the video gaming area.

(5) Prepare a report of the presence of a video gaming self-excluded person in a video gaming area on a form provided by the Board and to submit that completed form to the OCPG and the Bureau within 24 hours for each occurrence of a video gaming self-excluded person being present in a video gaming area, which may be submitted by the terminal operator.

(6) Make available to patrons written materials provided by the OCPG explaining the video gaming self-exclusion program.

(b) The list of video gaming self-excluded persons is confidential, and any distribution of the list to an unauthorized source constitutes a violation of 4 Pa.C.S. Part III (relating to video gaming).

(c) Under section 3903 of the act (relating to self-exclusion), establishment licensees and employees thereof may not be liable for damages in any civil action, which is based on the following:

(1) Failure to withhold video gaming privileges from or restore video gaming privileges to a video gaming self-excluded person.

(2) Permitting or not permitting a video gaming self-excluded person to gamble.

(3) Good faith disclosure of the identity of a video gaming self-excluded person to someone, other than those authorized by this chapter, for the purpose of complying with this chapter.

(d) An establishment licensee shall report the discovery of a video gaming self-excluded person that did or attempted to engage in video gaming related activities to the director of the OCPG within 24 hours.

§ 1119a.6. Removal from the video gaming self-exclusion list.

(a) For individuals who are on the video gaming self-exclusion list for 1 year or 5 years, upon the conclusion of the period of self-exclusion, the individual will be removed from the video gaming self-exclusion list without further action on the individual's part.

(b) For individuals who have elected to be video gaming self-excluded for less than lifetime but has not yet reached the date of completion of the selected self-exclusion period, the individual may be removed from the video gaming self-exclusion list if all of the following has occurred:

(1) The individual has filed a petition with the Board's Office of Hearings and appeals requesting to be removed from the video gaming self-exclusion list.

(2) The individual has presented facts and circumstances which, in the Board's discretion, demonstrate a compelling reason for the Board to grant early removal from the video gaming self-exclusion list.

(3) The Board has found by a preponderance of the evidence that the person should be removed from the video gaming self-exclusion list and issues an order to that effect.

(c) For individuals who selected lifetime video gaming self-exclusion under § 1119a.3(d)(3) (relating to requests for video gaming self-exclusion):

(1) After being on the video gaming self-exclusion list for a period of 10 years, the individual may petition the Board to be removed from the video gaming self-exclusion list.

(2) The petition shall be filed with the Board in writing, and shall be accompanied by all of the following:

(i) Documentation from a treatment provider who is certified by the International Gambling Counselor Certification Board or who has received a Problem Gambling Endorsement from the Pennsylvania Certification Board to conduct problem gambling assessments that the individual has completed a problem gambling assessment.

(ii) Documentation from a treatment provider that the individual has completed the treatment recommendation, if any, made after the assessment by the state-funded problem gambling treatment provider.

(3) After the petition is filed, OCPG will provide documentation to the Office of Enforcement Counsel regarding whether the individual has been known to engage in or attempt to engage in video gaming while self-excluded, including dates and times.

(4) The petition shall be handled in accordance with the procedures for petitions found in Subpart H of the Board's regulations, including all confidentiality provisions.

(5) As the petitioner, the video gaming self-excluded individual filing the petition for removal from the video gaming self-exclusion list bears the burden of proof in showing that removal from the list would not be detrimental to the individual's physical or mental well-being and would not have a negative impact on gaming in the Commonwealth.

(6) If the Board:

(i) Grants the petition, it shall deliver to the individual by first class mail an Order approving the petition for removal from the video gaming self-exclusion list, and provide to the individual the contact information for the OCPG for information on how to complete the removal process.

(ii) Denies the petition, it shall deliver to the individual by first class mail an Order denying the petition for removal from the video gaming self-exclusion list, which shall notify the individual that he or she shall remain on the video gaming self-exclusion list and include the reason for denial.

(7) Any petitioner whose petition is denied by the Board shall be prohibited from filing a subsequent petition for removal from the lifetime video gaming self-exclusion list for a period of 5 years from the date of denial.

§ 1119a.7. Exceptions for individuals on the video gaming self-exclusion list.

The prohibition against allowing video gaming self-excluded persons to engage in activities related to video gaming does not apply to an individual who is on the video gaming self-exclusion list if all of the following apply:

(1) The individual is carrying out the duties of employment or incidental activities related to employment.

(2) The individual does not otherwise engage in any video gaming activities.

§ 1119a.8. Disclosures of information related to persons on the self-exclusion list.

(a) The Board may periodically release to the public demographics and general information regarding the video gaming self-exclusion lists such as the total number of individuals on the list, gender breakdown and age range.

(b) The Board may make selected data available, upon request, for the limited purpose of assisting in the proper administration of responsible gaming programs.

(c) The Board will not disclose identifying information or confirm or deny the existence of an individual's name on the Board's video gaming self-exclusion list.

Chapter 1120. (Reserved)

Sec.
1120.1—1120.9. (Reserved).

CHAPTER 1120a. EXCLUSION OF PERSONS FROM VIDEO GAMING

Sec.

§ 1120a.1. Definitions.

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

Career or *professional offender*—A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to Crimes Code) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities in section 1518(a) of the act (relating to prohibited acts; penalties).

Excluded person—A person who has been placed upon the exclusion list and who is required to be excluded or ejected from an establishment licensee facility.

Exclusion list—A list of names of persons who are required to be excluded or ejected from an establishment licensee's facility.

OCPG—The Office of Compulsive and Problem Gambling of the Board.

§ 1120a.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from an establishment licensee facility.

(b) The exclusion list will be distributed to every terminal operator licensee and establishment licensee in this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) All of the following information will be provided to the terminal operator licensee and establishment licensee for each person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes, and other physical characteristics which may assist in the identification of the person.

(3) The person's date of birth.

(4) The date the person was added to the list.

(5) A recent photograph, if available.

(6) The last known address of record.

(7) Other identifying information available to the Board.

(8) The reason for placement on the excluded persons list.

§ 1120a.3. Criteria for exclusion or ejection.

(a) The exclusion list may include a person who meets one or more of the following criteria:

(1) A career or professional offender whose presence in an establishment licensee's facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or of licensed video gaming therein, or both.

(2) An individual with a known relationship or connection with a career or professional offender whose presence in an establishment licensee's facility would be inimical to the interest of the Commonwealth or of licensed video gaming therein, or both.

(3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by 1 year or more in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a establishment licensee facility would be inimical to the interest of the Commonwealth or of licensed video gaming therein, or both.

(4) A person whose presence in a establishment licensee facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both, including:

(i) Persons who cheat.

(ii) Persons whose gaming privileges have been suspended by the Board.

(iii) Persons whose Board permits, licenses, registrations, certifications or other approvals have been revoked.

(iv) Persons who pose a threat to the safety of the patrons, employees or persons on the property of an establishment licensee's facility.

(v) Persons with a history of conduct involving the disruption of the gaming operations within a licensed facility or establishment licensee facility.

(vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities or establishment licensee facilities.

(vii) Persons who have been charged, indicted or convicted of a gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(viii) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming.

(b) For purposes of subsection (a), a person's presence may be considered inimical to the interest of the Commonwealth or of licensed video gaming therein, or both if known attributes of the person's character and background meet one or more of the following criteria:

(1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a establishment licensee facility.

(2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by 4 Pa.C.S. Part III (relating to video gaming).

(3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or another jurisdiction.

(3) The nature and frequency of contacts or associations of the person with an establishment licensee.

(4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of video gaming operations.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 1120a.4. Duties of the Bureau and the Office of Enforcement Counsel.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or an establishment licensee, investigate a person to determine whether the person meets the criteria for exclusion provided in 4 Pa.C.S. § 3901 (relating to exclusion or ejection of certain persons) and § 1119a.3 (relating to requests for video gaming self-exclusion).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Office of Enforcement Counsel will file a petition for exclusion with the Clerk identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion or ejection under 4 Pa.C.S. § 3901 or this chapter.

§ 1120a.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list upon any of the following:

(1) Entry of an order of the Board.

(2) Receipt of an order from a court of competent jurisdiction in this Commonwealth, excluding or ejecting the person from establishment licensee facilities in this Commonwealth.

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from establishment licensee facilities.

(c) An 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 Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(e) For the purposes of this section, any winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 1120a.6. Demand for hearing on the exclusion of a person.

(a) Upon the filing of a petition for exclusion, the Office of Enforcement Counsel will serve the petition upon the person by personal service or certified mail at the last known address of the person. The notice will inform the person of the right to a hearing under 4 Pa.C.S. § 3901(h) (relating to exclusion or ejection of certain persons) and include a copy of the petition.

(b) Upon service of the petition, the person subject to the petition shall have 30 days to demand a hearing before the Board or presiding officer. Failure to demand a hearing within 30 days after service will be deemed an admission of all matters and facts alleged in the Office of Enforcement Counsel's petition for exclusion and preclude the person from having an administrative hearing.

(c) If a formal hearing is demanded by the person named in the petition for exclusion, a hearing will be scheduled as provided in § 491a.8 (relating to hearings generally). At the hearing, the Office of Enforcement Counsel will have the burden of proof to demonstrate that the person named in the petition for exclusion satisfies the criteria for exclusion in 4 Pa.C.S. § 3901 or § 1120a.3 (relating to criteria for exclusion or ejection). Unless the matter is heard directly by the Board, the presiding officer will prepare a report and recommendation as provided in § 494a.4 (relating to report or report and recommendation of the presiding officer) for consideration by the Board.

§ 1120a.7. Board review.

After a hearing, or if a hearing was not requested and the facts in the petition are deemed admitted, the Board may:

(1) Issue an order placing the person's name on the exclusion list.

(2) Issue an order removing or denying the placement of the person's name on the exclusion list.

(3) Refer the matter to a presiding officer for further hearing.

§ 1120a.8. Duties of establishment licensees.

(a) Establishment licensees shall establish procedures to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the establishment licensee's facility. An establishment licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The establishment licensee may not commence operations until the Director of OCPG approves the procedures. Amendments to these procedures shall be submitted to and approved by the Director of OCPG prior to implementation.

(b) Establishment licensees shall distribute copies of the exclusion list to the appropriate employees. Additions, deletions or other updates to the list shall be distributed by an establishment licensee to its employees within 2 business days of the establishment licensee's receipt of the updates from the Board.

(c) An establishment licensee shall exclude or eject from its establishment licensee facility all of the following:

(1) An excluded person.

(2) A self-excluded person.

(d) If an excluded person enters, attempts to enter or is in an establishment licensee facility and is recognized by employees of the establishment licensee, the establishment licensee shall do all of the following:

(1) Immediately notify law enforcement with jurisdiction over the establishment licensee's facility.

(2) Notify the Director of OCPG and the Bureau in writing within 24 hours.

(e) The establishment licensee has the continuing duty to inform the Bureau, in writing, of the names of persons the establishment licensee believes are appropriate for placement on the exclusion list.

§ 1120a.9. Petition to remove name from the exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition shall be signed by the excluded person, contain supporting affidavits and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Office of Enforcement Counsel may file an answer in accordance with § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(c) An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. An excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

(d) A petition for early consideration must contain the information required under subsection (b). Upon receipt of the petition, the Office of Enforcement Counsel may file an answer in accordance with § 493a.5.

(e) The Board will consider, when making its decision on a petition for early consideration, the nature of the facts and circumstances giving rise to the person's placement on the exclusion list, and whether there are extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the exclusion list.

[Pa.B. Doc. No. 21-1313. Filed for public inspection August 20, 2021, 9:00 a.m.]

Title 70—WEIGHTS, MEASURES AND STANDARDS

DEPARTMENT OF GENERAL SERVICES

[70 PA. CODE CH. 110]

State Metrology Laboratory Fee Schedule

The Department of General Services (Department or DGS) amends § 110.2 (relating to State Metrology Laboratory fee schedule) to read as set forth in Annex A.

This final-form rulemaking increases the existing State Metrology Laboratory fees and updates description fields to accurately reflect the parameters and ranges covered under the National Institute of Standards and Technology (NIST) Office of Weights and Measures Certificate of Metrological Traceability and the NIST National Voluntary Laboratory Accreditation Program Scope of Accreditation used by the State Metrology Laboratory.

Authority

This final-form rulemaking is authorized under 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act). under 3 Pa. C.S. § 4178 (relating to fees) the Department is required to establish, by regulation, fees for metrology laboratory calibration, type evaluation and other testing services. Section 4178 of 3 Pa. C.S. provides that the Department shall alter these fees by regulation. This final-form rulemaking increases fees to ensure the costs for the testing services rendered by the laboratory are borne by the parties who are receiving the services and not by the taxpayers.

Need for the Final Regulation

The final regulation fulfills the statutory requirement that the Department establish, charge and collect the fees described in 3 Pa. C.S. § 4178. Currently, the State Metrology Laboratory (Laboratory) provides these services based upon a fee schedule established in 2010. This final-form rulemaking will allow the Commonwealth to charge fees for the services provided that ensure that the cost of performing these testing services is borne by the parties who are receiving the services and not by the taxpayers.

This final-form rulemaking will increase the fees charged for metrology laboratory calibration, type evaluation and other services performed by the Laboratory. These fees were last increased in 2010. The amount of that increase was based upon average metrology fees charged by other state metrology laboratories in 2006. By the time the metrology laboratory began charging the fees that were increased by regulation in 2010, the fees

collected were insufficient to cover the costs for the testing services rendered by the Laboratory, and this trend continued. For example, in Fiscal Year (FY) 2016-2017, the cost to run the Laboratory was $682,503.69, and the fees collected totaled $292,421.85, resulting in a shortfall of $390,081.84. In FY 2017-2018, the cost to run the Laboratory was $701,509.06, and the fees collected totaled $247,403.86, resulting in a shortfall of $454,105.20. In FY 2018-2019, the cost to run the Laboratory was $735.898.19, and the fees collected totaled $265,586.10 resulting in a shortfall of $470,312.09. In FY 2019-2020, the cost to run the Laboratory was $728,769.70, and the fees collected totaled $244,846.55, resulting in a shortfall of $483,923.15. Over the past 4 years, the Metrology Laboratory has had a total shortfall of $1,798,422.28. This $1,798,422.28 has not been borne by the primarily commercial customers of the laboratory who have benefited from the low fees charged by the Laboratory for the past 10 years. Instead, it has been borne by the taxpayers, and will continue to be borne by the taxpayers unless the fees are increased to cover this shortfall.

This final-form rulemaking updates the description fields to accurately reflect the parameters and ranges covered under the NIST Office of Weights and Measures Certificate of Metrological Traceability and the NIST National Voluntary Laboratory Accreditation Program Scope of Accreditation used by the State Metrology Laboratory.

In summary, the Department is satisfied there is a need for the final regulation, and that it is otherwise consistent with Executive Order 1996-1, Regulatory Review and Promulgation.

Summary of the Final Regulation

This final-form rulemaking increases the fees charged for metrology laboratory calibration, type evaluation and other services performed by the Laboratory to cover the costs for the testing services rendered by the Laboratory. The Department calculated each fee by averaging the fees reported from a 2013 survey the Department conducted of seven State-operated laboratories and one county-operated laboratory, then updating those averages by 16.71% which is the historical average fee increase calculated from data in the National Conference of Standards Laboratories (NCSL) State Laboratory Program Workload Surveys. The Department then rounded those fees to the nearest $5. The Department benchmarked these fees against fees charged by other jurisdictions and commercial companies. While the proposed fees will be higher than the fees charged by some states in some instances, many other states' fees have also not been increased in many years. In addition, the fees charged by commercial companies are generally higher than the proposed fees.

This final-form rulemaking updates description fields to accurately reflect the parameters and ranges used by the State Metrology Laboratory.

Persons Likely to be Affected

Persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices will be charged fees according to the proposed fee schedule. State Metrology Laboratory customers, including small businesses, have benefitted from the fees that have not increased since 2010 despite increasing personnel costs for State Metrology Laboratory employees and increasing costs to maintain or replace Laboratory equipment.

Updates to the description fields will accurately reflect the parameters and ranges used by the State Metrology Laboratory and should not affect any group or entity.

Fiscal Impact

Commonwealth

The estimated annual revenue to the Commonwealth (the Department) from this final-form rulemaking is approximately $645,094. This final-form rulemaking should not result in additional costs to the Commonwealth.

Political Subdivisions

No other government entity will incur any costs or realize any savings.

General public

This final-form rulemaking will impose no costs and have no fiscal impact on the general public. However, the fee increase will ensure that the cost of performing State Metrology Lab testing services is borne by the parties who are receiving the services and not by the taxpayers.

Private sector

Persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighting and measuring devices will be charged fees according to the proposed fee schedule. The anticipated fee per user is estimated to be $1,233, which is a $736 increase from the current $497 average fee per user. All State Metrology Laboratory customers, including small businesses, have benefitted from the fees that have not increased since 2010 despite increasing personnel costs for State Metrology Laboratory employees and increasing costs to maintain or replace Laboratory equipment.

Paperwork Requirements

This final-form rulemaking will not result in an increase in paperwork for the Laboratory, which already is required to issue invoices, collect payments and transmit payments to the State Treasury. Similarly, under 3 Pa. C.S. 4193(c) (relating to disposition of funds), the Treasury Department will have no increase in paperwork. There will be no increase in paperwork for the regulated community.

Effective Date

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

Sunset Date

There is no sunset date for this final-form rulemaking. The Department will review the efficacy of this regulation on an ongoing basis.

Public Comment Period

During the public comment period, the Department received one comment from the former House State Government Committee Chairman, the Honorable Representative Garth Everett, who raised concerns regarding the magnitude of the proposed fees and their impact on small businesses. In an effort to alleviate House State Government Chairman, the Honorable Garth Everett's concerns, the Department invited Chairman Everett to the Laboratory and gave him a tour of its operations, explained its functions, and demonstrated its cost drivers. The Department believes that Metrology is not a field that many people understand, and many likely do not even know such a field exists. The Department hopes that the meeting with the Honorable Chairman Garth Everett alleviated his concerns regarding the fee increase and

helped him to understand why the fee increase is necessary. Notwithstanding the Honorable Chairman Garth Everett's concerns, this fee increase is necessary to ensure that the increasing costs to run the Metrology Laboratory are no longer borne by the taxpayers but are instead borne by those entities that directly benefit from the Metrology Lab's services and who have benefitted from 10 years of low fees.

Independent Regulatory Review Commission (IRRC) Comment/Response

The Department states in response to RAF # 10 that the regulation will allow the Commonwealth to charge an appropriate fee for the services provided, this ensuring that the cost of performing these testing services is borne by the parties who are receiving the services and not by taxpayers. The Preamble states that over the past four years, the State Metrology Laboratory (Laboratory) has had a total shortfall of approximately $1.6 million. Based on the Department's response to RAF # 15, we note that the fees appear to be increasing on average by 160 percent. While we recognize that the Department is statutorily required by Section 4178 of the Consolidated Weights and Measures Act to charge and collect fees for actual metrology laboratory calibration, type evaluation and any other testing services which may be rendered (3 Pa.C.S. § 4178), this increase is significant. House State Government Chairman Garth Everett comments that Pennsylvania's fees would be among the highest in the cost comparison study submitted by the Department. We ask the Department to explain how the economic impact of the fees and the percentage increase of fees are reasonable and in the public interest.

DGS recognizes that these fee increases are substantial. However, the regulation will simply allow the Commonwealth to charge an appropriate fee for the services provided, thus ensuring that the cost of performing these testing services is borne by the parties who are receiving the services and not by the taxpayers. DGS is not seeking to profit from this fee increase; they are simply looking to shift the cost burden of running the Laboratory from the taxpayers (who do not receive the direct benefit of the Laboratory's services) to those entities that are commercially benefiting from its use. This increase should not be seen as a financial burden to those entities; rather it is "righting the ship" to place the burden on those who receive the benefit, which is clearly in the public interest.

Also, while the percentage of the increase is large, it is a reasonable increase for two reasons. First, the increase is necessary to cover the costs of running the Laboratory. Second, the parties that use the services provided by the Laboratory have benefitted from ten years of fees that were significantly lower than the actual costs to provide the services. Although the fees would be among the highest charged per our cost comparison study, those other jurisdictions that DGS used as a benchmark for their comparisons have not raised their fees since 2012 or 2013, suggesting that their fees may now be outdated based upon the continually increasing costs to run these types of laboratories.

In an effort to alleviate House State Government Chairman Garth Everett's concerns, DGS invited Chairman Everett to the Laboratory and gave him a tour of its operations, explained its functions, and demonstrated its cost drivers. We believe that Metrology is not a field that many people understand, and many likely do not even know such a field exists. We hope that our meeting with Chairman Everett alleviated his concerns regarding the fee increase and helped him to understand why the fee increase is necessary.

DGS also recognizes that the need for such a significant increase is due in a large part to DGS not seeking more incremental fee increases over the past ten years. To avoid the need for such a substantial increase in the future, DGS commits to conducting an analysis at the end of each fiscal year to ensure that the fee increase was sufficient to cover the costs of the State Metrology Laboratory for that fiscal year. DGS will also make the commitment to closely monitor the fees and take steps to do fee adjustments in the future that are more incremental.

In response to RAF # 28, the Department explains that in October 2013, the Department calculated the average of the fees charged by seven state laboratories (California, Hawaii, Missouri, Oklahoma, South Carolina, Virginia and Vermont) and one county laboratory (Los Angeles County, California) over a twelve-year period for each parameter and used that as the baseline fee. The Department then updated those average baseline fees by a calculated historical average fee increase of 16.71 percent (using data from 2000 to 2012 biennial NCSL State Laboratory Program Workload Surveys) to determine the fees in the proposed regulation. It has been six years since the Department's last fee increase; why is the Department using a 12-year average rather than a six-year average? We ask the Department to provide the specific fees charged by the labs in the seven states and one county, and to show how each fee in the final-form regulation is calculated and that each fee is in line with the other states. Additionally, we ask the Department to explain why the method used for calculating fees in the final-form regulation is reasonable and in the public interest.

In October 2013 DGS conducted a survey of fees charged by reporting laboratories in the NCSL State Laboratory Program Workload Survey. There were seven state operated laboratories (California, Hawaii, Missouri, Oklahoma, South Carolina, Virginia and Vermont) and one county laboratory (Los Angeles County, California) that raised their fees in 2012 or 2013 due to increasing costs. DGS averaged the fees reported from these laboratories for each parameter as the baseline fee. DGS then updated those average baseline fees by the calculated historical average fee increase of 16.71% using data from 2000 to 2012 biennial NCSL State Laboratory Program Workload Surveys. DGS then rounded those fees to the nearest $5. DGS used the twelve years in calculating the historical average fee increase because that was all the published data available at that time. DGS's methodology in calculating the increase in this way was completed in good faith. In addition, the increased fees calculated based upon this methodology were sufficient to cover the Laboratory's anticipated costs starting in Fiscal Year 2021/22.

The specific fees charged by the labs in the seven states and one county, and the methodology showing how each fee in the final-form regulation is calculated and is in line with the other states, are set forth in the Fee Proposal and Justification for Cost Increase workbook. The tabs in this workbook provide calculations outlining both the historical and projected shortages by fiscal year if the current fees were to remain in place, a projected calculation of the amounts in which the proposed fees would cover the Laboratory's costs, national fee comparisons for 2016 and 2018, an analysis of the difference between the current and proposed fees, a description of how the

baseline fees were calculated, a historical change table showing the average fee increases over a 10 year period for laboratories participating in the state laboratory program workload survey, and a survey of fees charged by laboratories in neighboring states.

DGS's methodology for calculating fees in this way is reasonable and in the public interest for the following reasons. First and most importantly, the fee increase would help to cover increasing costs (in the form of salary and benefit increases, purchases to maintain metrological traceability for laboratory standards, training required to maintain laboratory accreditation and necessary equipment replacement) associated with Pennsylvania's State Metrology Laboratory's services. This is important because the cost burden of running the Laboratory has, for the past 10 years, been borne by taxpayers who do not receive the direct benefit of the Laboratory's services. This fee increase would shift that burden to those entities that are commercially benefiting from its use (and who have benefitted from the low fees for the past 10 years). Finally, the fees are in line with fees charged by other jurisdictions as further outlined in Fee Proposal and Justification for Cost Increase, Baseline Fee Calculation tab.

In response to RAF # 12, the Department states that the proposed fees are in line with fees charged by the labs in the seven states and one county referenced above. Why did the Department choose those states rather than states surrounding Pennsylvania? Did the Department consider using Pennsylvania-based data? The Department states in the Preamble that the 2010 fee increases were based on data from other states, as well, and, as indicated by the approximately $1.6 million deficit, were inadequate to meet the cost to run the Laboratory. We ask the Department to evaluate the use of data specific to Pennsylvania in determining the fees in the final-form regulation, and to explain why the data used for calculating fees in the final regulation is reasonable and in the public interest.

When DGS first considered pursuing a fee increase in 2013, we conducted a survey of all state labs and decided to use the labs that raised their fees in 2012 and 2013 as the baseline for our survey, which is the reason for choosing the seven states and one county laboratory to use as a comparison benchmark. Since those fees had been recently evaluated at the time, we were hopeful they would be reflective of the amounts required to cover those state laboratories' costs.

In September 2019, DGS also conducted a metrology fee survey of our neighboring state labs (Maryland, Ohio, New York, New Jersey and West Virginia). See, Fee Proposal and Justification for Cost Increase, Neighbor Labs Fee Survey 2019 tab. Below are the key points from our survey which demonstrate why our neighboring states' fees should only be used as a benchmark for the reasonableness of our Laboratory fees and should not be looked at as a direct comparison:

1. On average, our neighboring states' lab fees were last updated in 2008;

2. The New York state lab fee structure has not been updated since the fees were put in place in 1998;

3. The laboratory scopes and ranges of the fees charged by other states do not necessarily align with our scopes and ranges. For example, New Jersey can't calibrate above 1,000 lbs. and Maryland doesn't calibrate above 50 lbs. However, Pennsylvania has no limits on the calibration weights. The additional range requires more standards and greater material handling capability, resulting in a greater cost; and

4. The calibration intervals in different states' Weights and Measures laws do not align. For example, New York requires calibration on Class F Weight Sets every five years, and West Virginia requires calibration on provers (liquid flow calibration device) over 400 gallons every five years, but Pennsylvania requires annual calibration for all items. Therefore, New York and West Virginia only suffer the loss every five years, while Pennsylvania suffers the loss every year.

DGS has not considered using Pennsylvania-based data for a number of reasons. We are the only state-run laboratory in Pennsylvania. The other metrology laboratories in Pennsylvania that DGS is aware of are typically lower-level labs that rely on the Pennsylvania laboratory for their own calibration. In addition, the scopes of accreditation for the Pennsylvania laboratory do not align with services provided by other Pennsylvania-based laboratories. For example, DGS is unaware of any Pennsylvania-based laboratories that conduct volume calibrations in Pennsylvania.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 18, 2019, the Department submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 3313 (June 29, 2019), to IRRC and the Chairpersons of the House State Government Committee and Senate State Government Committee on June 18, 2019, for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department is required to submit to IRRC and the House State Government Committee and Senate State Government Committee copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC and the House State Government Committee and Senate State Government Committee. The Department did not receive any comment from the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 14, 2021, the final-form rulemaking was deemed approved by the House State Government Committee and the Senate State Government Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2021, and approved the final-form rulemaking.

Contact Person

Additional information may be obtained by contacting Mary Fox, Assistant Chief Counsel, Department of General Services, North Office Building, 401 North Street, Room 603, Harrisburg, PA 17120 or by e-mail at maryfo@pa.gov.

Findings

The Department of General Services finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1969 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The increases to the existing State Metrology Laboratory fees and updates description fields to accurately reflect the parameters and ranges covered under the NIST Office of Weights and Measures Certificate of Metrological Traceability and the NIST National Voluntary Laboratory Accreditation Program Scope of Accreditation used by the State Metrology Laboratory are necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

The Department acting under the authorizing statues orders that:

(a) The regulations of the Department of General Services, 70 Pa. Code Chapter 110, are amended by amending § 110.2, to read as set forth in Annex A.

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

(c) The Department of General Services shall submit this final-form regulation to IRRC and the Legislative Standing Committees as required by law.

(d) The Department of General Services shall certify this final-form regulation, as approved for form and legality, and shall deposit it with the Legislative Reference Bureau as required by law.

(e) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

CURTIS M. TOPPER,
Secretary

(*Editor's Note*: See 51 Pa.B. 4174 (July 31, 2021) for IRRC's approval order.)

Fiscal Note: Fiscal Note 8-27 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

PART V. STATE METROLOGY LABORATORY

CHAPTER 110. GENERAL PROVISIONS

§ 110.2. State Metrology Laboratory fee schedule.

* * * * *

(c) *Schedule of fees.* The State Metrology Laboratory shall charge the following fees for the indicated calibration services:

General type of test	*Description*	*Fee*
Precision mass	ASTM or OIML Class weights calibrated by use of the Mass Code 50 lb to 0.001 lb, 30 kg to 1 mg	$75 per man-hour
Precision mass	ASTM Class 1, 2, 3, 4 OIML Class E2, F1, F2 or best calibration not to a specific class 1000 lb to 0.001 lb 30 kg to 1 mg	$65 per weight
Ordinary mass, Small	NIST Class F ASTM 5, 6, 7 OIML M1, M1-2, M2, M2-3, M3 10 lb to 0.001 lb 5 kg to 1 mg	$20 per weight (without adjustment) $40 per weight (with adjustment)
Ordinary mass, Medium	NIST Class F ASTM 5, 6, 7 OIML M1, M1-2, M2, M2-3, M3 100 lb to >10 lb 50 kg to >5 kg	$20 per weight (without adjustment) $40 per weight (with adjustment)
Ordinary mass, Large	NIST Class F ASTM 5, 6, 7 OIML M1, M1-2, M2, M2-3, M3 6,000 lb to >100 lb 2,500 kg to >50 kg	$45 per weight (without adjustment) $70 per weight (with adjustment)
Ordinary mass	Weight Carts 2,000 lb to 6,000 lb	$315 per cart
Volume transfer	Test Measures 5 gallon 5 liter to 20 liter	$120 per measure (includes adjustment)
Volume transfer	Provers 10 gallon to 100 gallon 40 liter to 378 liter	$440 per prover (includes adjustment)

General type of test	*Description*	*Fee*
Volume transfer	Provers 101 gallon to 1,500 gallon 379 liter to 5,000 liter	$440 plus $1 per each additional gallon over 100 gallon (includes adjustment)
Gravimetric Calibrations	Test Measures 1 gallon to 10 gallon 5 liter to 20 liter	$825 per item
Gravimetric Calibrations	Provers 11 gallon to 130 gallon 21 liter to 500 liter	$1,640 per item
Length Calibrations	Metal Tapes to 200 feet	$40 per point tested
Timing Devices	Stopwatches to 24 hours	$70 per item
Wheel Load Weighers	NIST Handbook 44 Class IIII Scales to 20,000 lb	$70 per scale
Force Gauges	to 50 lbf	$180 per gauge
Special Tests		$75 per man-hour

(d) *Payment of fees.* A nonrefundable deposit for the estimated fee shall be submitted when the calibration request is made. Fees are payable at the time the metrology service is provided, regardless of whether the item calibrated is certified or approved.

[Pa.B. Doc. No. 21-1314. Filed for public inspection August 20, 2021, 9:00 a.m.]