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| <h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;"><small>(All Comments submitted on this regulation will appear on IRRC's website)</small></p>  |  | <p style="margin: 0;"><b>INDEPENDENT REGULATORY<br/>REVIEW COMMISSION</b></p> <h1 style="margin: 0;">RECEIVED</h1> <p style="margin: 0;">MAY 23 2023</p> <p style="margin: 0;">Independent Regulatory<br/>Review Commission<br/>IRRC Number: 3340</p> |  |
| <p>(1) Agency<br/>Pennsylvania Gaming Control Board</p>   |  |   |  |
| <p>(2) Agency Number: 125<br/>Identification Number: 240</p>  |  |   |  |
| <p>(3) PA Code Cite: 58 Pa.Code §§ 461a and 469a</p>  |  |   |  |
| <p>(4) Short Title:<br/>Private Testing and Certification Facilities</p>  |  |   |  |
| <p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact:<br/>Robert Wood<br/>Assistant Chief Counsel<br/>Pennsylvania Gaming Control Board<br/>P.O. Box 69060<br/>Harrisburg, PA 17101-8323<br/>Phone: (717) 317-5733<br/>Email: rmwood@pa.gov</p> <p>Secondary Contact:</p> |  |   |  |
| <p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>  |  | <p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>   |  |
| <p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p><b>This final form rulemaking is to provide standards for the registration of Private Testing and Certification Facilities in the Commonwealth.</b></p>  |  |   |  |
| <p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p><b>The Pennsylvania Gaming Control Board has the general authority in 4 Pa.C.S. § 1202(b)(30) and the specific authority in 4 Pa.C.S. §§ 1320(b.1), 13A41(b.1), 13B02, 13C02, and 3302.</b></p>   |  |   |  |

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**The Pennsylvania Race Horse Development and Gaming Act of 2004, as amended, in §§ 1320(b.1) and 13A41(b.1) directs the Board to adopt regulations regarding the registration of private testing and certification facilities. Use of these private testing and certification facilities was also referenced §§ 13B02(a)(2) and 3701(e) of the Act. The Board was directed to promulgate regulations one year after the effective date of the section, which was October 30, 2017.**

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

**As directed by the above-referenced sections in the Act, these regulations provide a licensure structure of private testing and certification facilities and provide the standards that make a facility suitable to obtain a registration. These regulations will ensure that games and gaming devices that are being tested by private testing and certification facilities are being thoroughly vetted prior to submission to the Board's Bureau of Gaming Laboratory Operations for abbreviated review. The regulated gaming industry as a whole will benefit from the regulations. Patrons will be provided with games and gaming devices that have been properly evaluated for fairness and regulatory compliance. Manufacturers and gaming-related service providers will have their products made available for use or implementation quicker under the abbreviated approval process.**

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

**There are no corresponding federal standards for any of these provisions in this rulemaking.**

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

**This rule making is comparable to the licensing and regulation standards imposed by New York and Massachusetts. In New York and Massachusetts, the comparable licensing and regulatory standards provide a framework for the certification of independent laboratories. These certified independent laboratories are then empowered to offer to interested manufacturers the lab's services to test and render opinion on gaming products. The independent labs are then required to issue a report of their findings to the gaming oversight body of the jurisdiction and that body then determines, based upon the independent lab report, whether to allow the proposed gaming product in their jurisdiction. The regulatory language and framework being offered by the Pennsylvania Gaming Control Board is consistent with rules and procedures of other jurisdictions for independent lab testing of gaming products. Competition with other states is not at issue with this set of regulations.**

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**This regulation will not affect any other regulations of the PGCB nor any other state agency.**

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

**No other persons or groups were involved in the development and drafting of the regulation. Concerns presented in comments from IRRC, FanDuel, and BMM Test Labs were addressed in this final form rulemaking.**

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

**The Board has previously worked with and accepted reports from two private testing and certification facilities, both of whom would likely seek registration. The Board has not made conclusions as to the size classification of these entities, and whether they would be classified as small businesses. The Board is aware of at least three other private testing and certification facilities that have inquired about working with the Board and/or seeking information regarding licensure. It is unknown to the Board at this time whether any of these entities would qualify as small businesses as defined in the United States Small Business Administration's Small Business Size Regulations, under 13 C.F.R. Ch. 1 Part 121.**

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

**Any private testing and certification facility seeking registration with the Board would be required to comply with this regulation. Additionally, any manufacturer or gaming-related gaming service provider would need to follow the updated submission guidelines to be considered under the abbreviated certification and approval process. It is anticipated there are at least 5 private testing and certification facilities that would apply for registration. As of March 24, 2023, there are currently 116 manufacturers (slot machine, table game, iGaming, sports wagering, and VGT) and 4 gaming related gaming service providers who are licensed or have pending renewals or initial applications with the Board.**

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

**It is not anticipated that this rulemaking will have a negative financial or economic impact on the regulated community. Private testing and certification facilities will be required to pay for initial registration and renewal, and manufacturers and gaming related gaming service providers that wish to enlist their testing services will be required to pay any applicable fees. The regulation will provide for all games and gaming devices to be thoroughly vetted by an independent third-party testing facility, and received abbreviated certification and approval when submitted to the Board's Bureau of Gaming Laboratory Operations.**

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

**The regulation will provide for all games and gaming devices to be thoroughly vetted by an independent third-party testing facility, and received abbreviated certification and approval when submitted to the Board's Bureau of Gaming Laboratory Operations. It is not anticipated that there will be any adverse effects associated with the regulation.**

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**Any private testing and certification facility will be required to pay an initial \$500 application fee for the entity and \$60 per principal or other individual requiring submission. The initial registration fee is \$2,500 for a 5 year term, and \$2,500 per 5 year renewal thereafter.**

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**This rulemaking will have no fiscal impact on local governments.**

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

**The Board does not expect that the requirements of this rulemaking will have any fiscal impact on the Board or any other Commonwealth agency. Licensing processes will be handled by existing Board staff.**

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**Private testing and certification facilities will be required to file an application for registration and a supplemental form. Rather than create a new form specifically for private testing and certification facilities, the entity must simply file an application to be a registered gaming service provider, and sign a supplemental attestation that it meets the requirements of the regulation.**

(22a) Are forms required for implementation of the regulation?

**The application for registration and supplement can be found on the Board's website for**

**submission.**

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

**The applications for licensure are voluminous. They can be found at <https://gamingcontrolboard.pa.gov/?p=297>. The applicable applications are the Gaming Service Provider Registration and the Private Testing and Certification Facility Supplement.**

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

**The intent of the regulation is to provide an additional track for the review and implementation of gaming devices. The regulation has no effect on gaming revenues, and should result the regulated community to bringing products to the Pennsylvania market faster, thereby realizing revenues sooner. Second, local governments are not subject to these regulatory provisions and therefore will feel no fiscal impact. The regulation is anticipated to be economically neutral to PGCB; PGCB is not proposing this regulation to generate revenue, nor is this regulation anticipated to affect PGCB's incurred costs or staffing levels. To the extent that effects may be felt by the regulated community, costs for certified lab testing are not being established by this regulation and therefore cannot be purported in answering this question. Additionally, this regulation does not preclude the regulated industry from continuing to use PGCB as the testing laboratory. The regulated industry simply will be able to make a determination as to whether the PGCB testing (as currently established) or certified independent lab testing track (being established by this regulatory framework) is in their best fiscal interest.**

|                            | <b>Current FY<br/>Year</b> | <b>FY +1<br/>Year</b> | <b>FY +2<br/>Year</b> | <b>FY +3<br/>Year</b> | <b>FY +4<br/>Year</b> | <b>FY +5<br/>Year</b> |
|----------------------------|----------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| <b>SAVINGS:</b>            | <b>\$</b>                  | <b>\$</b>             | <b>\$</b>             | <b>\$</b>             | <b>\$</b>             | <b>\$</b>             |
| <b>Regulated Community</b> | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>Local Government</b>    | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>State Government</b>    | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>Total Savings</b>       | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>COSTS:</b>              |                            |                       |                       |                       |                       |                       |
| <b>Regulated Community</b> | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>Local Government</b>    | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>State Government</b>    | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |
| <b>Total Costs</b>         | N/A                        | N/A                   | N/A                   | N/A                   | N/A                   | N/A                   |

|                             |     |     |     |     |     |     |
|-----------------------------|-----|-----|-----|-----|-----|-----|
| <b>REVENUE LOSSES:</b>      |     |     |     |     |     |     |
| <b>Regulated Community</b>  | N/A | N/A | N/A | N/A | N/A | N/A |
| <b>Local Government</b>     | N/A | N/A | N/A | N/A | N/A | N/A |
| <b>State Government</b>     | N/A | N/A | N/A | N/A | N/A | N/A |
| <b>Total Revenue Losses</b> | N/A | N/A | N/A | N/A | N/A | N/A |

(23a) Provide the past three year expenditure history for programs affected by the regulation.

| <b>Program</b>      | <b>FY -3<br/>2019-2020</b> | <b>FY -2<br/>2020-2021</b> | <b>FY -1<br/>2021-2022</b> | <b>Current FY<br/>2022-2023</b> |
|---------------------|----------------------------|----------------------------|----------------------------|---------------------------------|
| PGCB Overall Budget | \$46,067,000               | \$43,357,000               | \$46,637,000               | \$ 48,189,000                   |
|                     |                            |                            |                            |                                 |

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

**It is unknown whether any of the private testing and certification facilities that would be subject to the regulation or manufacturers and gaming related gaming service providers are small businesses. However, it is not anticipated that the regulation will have any adverse impact on any business.**

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

**Other than the initial application and renewals thereof, it is not anticipated that there will be any significant reporting, recordkeeping or other administrative costs associated with this regulation that a private testing and certification facility does not already perform based upon licensure in other jurisdictions or as a matter of industry best practices.**

- (c) A statement of probable effect on impacted small businesses.

**As stated above, it is not known whether any of the entities subject to the regulation are small businesses. However, any impact will be limited to the need for registration with the Board, which would not be an adverse impact.**

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

**It is not believed that there is a less intrusive or less costly alternative method available.**

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

**No special provisions have been added.**

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

**No alternative regulatory approaches were considered as this rulemaking is based upon a directive in the Act to provide for registration of private testing and certification facilities. This regulation reflects the least burdensome means of maintaining regulatory oversight of this activity.**

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

**It is believed there will be no adverse impact on small businesses. By way of further explanation, the framework proposed would treat any potential applicant for registration as an outside testing lab on an equal footing regardless of the size of their business. Eligibility for registration is based upon demonstration of independent accrediting based upon industry standards (ISO/IEC 17025), and demonstration of technical competence to test the gaming devices contemplated. Compliance reporting is equally applied to all registrants, regardless of business size, so as not to create unfair business advantage, or lesser testing requirements to the detriment of the intent of the Gaming Act and the Board's stated oversight responsibilities.**

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

**There is no data, as defined under section (3) of the Regulatory Review Act (71 P.S. § 745.3), upon which this rulemaking is based.**

(29) Include a schedule for review of the regulation including:

- |   |   |
|---|---|
| A. The length of the public comment period:   | <b>n/a</b>  |
| B. The date or dates on which any public meetings or hearings will be held:                   | <b>Held January 19, 2022 (proposed rulemaking)<br/>April 26, 2023 (final form rulemaking)</b> |
| C. The expected date of delivery of the final-form regulation:                                | <b>This submission</b>  |
| D. The expected effective date of the final-form regulation:                                  | <b>Upon final publication</b>   |
| E. The expected date by which compliance with the final-form regulation will be required:     | <b>Upon final publication</b>   |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <b>Ongoing</b>  |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

**No formal review schedule has been established. Instead, the Board consistently reviews its regulations and proposes amendments as the need arises.**



CDL-1

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

**RECEIVED**

**MAY 23 2023**

**Independent Regulatory  
Review Commission**

DO NOT WRITE IN THIS SPACE

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| <p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____<br/>(DEPUTY ATTORNEY GENERAL)</p> <p>_____<br/>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable<br/>Copy not approved. Objections attached.</p> | <p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Gaming Control Board</u><br/>(AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>125-240</u></p> <p>DATE OF ADOPTION: <u>April 26, 2023</u></p> <p>BY: <u><i>Denise J. Smyler</i></u><br/>TITLE <u>Denise J. Smyler, Chair</u><br/>(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p> | <p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u><i>Stephen S. Cook</i></u><br/>Stephen S. Cook, Chief Counsel</p> <p><u>April 26, 2023</u><br/>DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency)<br/>(Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p> |
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**FINAL-FORM RULEMAKING 125-240**

**PENNSYLVANIA GAMING CONTROL BOARD**

**58 PA. CODE CH. 461a and 469a**

**Slot Machine, Table Game and Associated Equipment Testing and Control; Accounting and Internal Controls**

**Private Testing and Certification Facilities**

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1320(b.1), 13A41(b.1), 13B02, 13C02, and 3302 (relating to slot machine testing and certification standards; table game device and associated equipment testing and certification standards; regulatory authority; regulatory authority; and regulatory authority), proposes to amend Chapter 461a (relating to slot machine and table game device testing and control) and add Chapter 469a (relating to private testing and certification facilities) to read as set forth in Annex A.

*Purpose of the Final-Form Rulemaking*

This final-form rulemaking will revise and add to the existing body of regulation to provide standards for the registration of Private Testing and Certification Facilities in the Commonwealth.

*Explanation*

Chapter 461a is amended to provide procedures for the testing of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment at private testing and certification facilities. Previously this chapter only applied to slot machines, table game devices and associated equipment. However, with the gaming expansion in the amendments to the Pennsylvania Race Horse and Development Act of 2004 to include interactive gaming, sports wagering, and video gaming, the addition of these forms of games and gaming equipment to the testing requirements was necessary.

In addition to adding interactive gaming, sports wagering, and video gaming, Section 461a.3 is being amended to become inclusive of the games and gaming devices which were authorized

as part of the 2017 gaming expansion. Additional amendments include appropriate cross references to interactive gaming, sports wagering, and video gaming terminal sections of the Board's regulations. Subsection (e) is being added to authorize testing of gaming devices at registered private testing and certification facilities (independent testing labs). Subsection (f) is being added to clarify the process by which gaming devices that have been reviewed by approved independent labs shall become available for play in the Commonwealth.

Section 461a.4 is being amended to become inclusive of the games and gaming devices which were authorized as part of the 2017 gaming expansion. Subsection (g)(11) is being added to provide required submission of a detailed report after an independent test lab review. Subsections (p), (q), (r), and (s) are being added to provide for the abbreviated review and approval process required by 4 Pa.C.S. §§ 1320(b.1) and 13A41(b.1). Additionally, under these provisions, the Board's Executive Director shall approve or deny a completed submission to the Office of Gaming Laboratory Operations within 30 days of the submission when the game or gaming device submitted for testing has been reviewed by a private testing and certification facility. If the Office of Gaming Laboratory Operations requires more time to complete the review of the report from the testing facility, or the submission is deemed not complete, the 30 days may be tolled.

Chapter 469a is a new addition to the Board's regulations. This chapter provides for the registration of a private testing and certification facility as a Registered Gaming Service Provider and sets forth the standard and requirements for registration. Section 469a.1 sets forth the general provisions of use of a private testing and certification facility by a manufacturer or gaming-related gaming service provider. Section 469a.2 provides the registration process for private testing and certification facilities, including application requirements for both the entity and individuals who own or are in a position of authority of the facility. Section 469a.3 establishes the standards that a private testing and certification facility must meet in order to be considered suitable for registration. Section 469a.4 provides the responsibilities that a private testing and certification facility must fulfill during its term of registration with the Board. Lastly, section 469a.5 sets forth the term and renewal of a registration.

## *Responses to Comments*

The Board received comments from two members of the regulated/prospective regulated community, as well as comments from the Independent Regulatory Review Commission (IRRC). The responses the comments are below:

1. Fanduel: Request for clarification on modifications to internet games.

Concern was raised as to the interaction between the proposed amendment to 461a.4(a) and section 810a.7 of the Board's regulations which cover changes made to interactive games. It was concerned that as written, amended 461a.4(a) would require lab testing for all changes made to interactive games approved for play under the interactive gaming regulations. Currently, pursuant to 810a.7 of the regulations and associated Board policy and procedures, changes made in the normal course of business to Board approved interactive games are evaluated pursuant to change management guidelines. The Board does not intend to change its established process and procedures for evaluating changes made to interactive games as a result of the revision to 461a.4(a).

2. BMM: General recommendation for adoption of collective terminology in the proposed regulation

A general comment was given suggesting that the Board use the collective terminology of "gaming products and associated equipment" in lieu of "slot machines, table games, table games devices, interactive games, sports wagering devices, video gaming terminals and all associated equipment" and "submitting entity" rather than "applicant for or holder of a manufacturer license to manufacture slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment, or a gaming related gaming service provider." The Board declined to adopt this recommendation to avoid potential confusion, as well as to retain consistent terminology usage throughout the entirety of the Board's regulations.

3. BMM: Clarification requested as to the timeline for document retention under 469a.4(n).

A concern was raised as to the indeterminate timeline that was created under the initially proposed regulation language. The final-form regulation has been revised to provide that submission and testing-related documentation shall be retained for such time as the tested item remains approved or authorized. This revised language is consistent with the document retention that the Board's Bureau of Gaming Laboratory Operations utilizes under the internal review process. Additionally, the independent test labs maintain the option to turn over the covered documents to the Board in lieu of maintaining such records themselves.

Additionally, the following comments were received from IRRC:

1. Compliance with the RRA and regulations of IRRC

The Preamble and RAF to this Final-Form Rulemaking have been updated as requested to further expand on the explanations provided and rationale for the regulatory revisions.

2. Section 461a.3. Testing and approval of games and gaming devices, generally-Clarity.

These clarity issues were addressed in Annex A of this final form rulemaking.

3. Section 461a.4. Submission for Testing and approval-Clarity; Need; and Fiscal or economic impact.

IRRC reiterated the concerns expressed by Fanduel above which expressed concern regard the interaction of 461a.4 and 810a.7 relating to changes to interactive games. Additionally, as there is no intention to change the current procedures for evaluation of changes to interactive games, there is no anticipated fiscal or economic impact.

4. Section 469.2. Registration of private testing and certification facilities. -Clarity.

These clarity issues were addressed in Annex A of this final form rulemaking.

5. Section 469a.3. Standards for private testing and certification facilities. -Clarity.

These clarity issues were addressed in Annex A of this final form rulemaking.

6. Section 469a.4. Responsibilities of a private testing and certification facility. -Clarity; Reasonableness of the requirements; and Economic and fiscal impacts.

This clarity issue was further clarified above. Based upon the revisions made as part of Annex A, there is not anticipated to be an economic impact upon the regulated community.

#### 7. Miscellaneous-Clarity

This clarity issue was addressed in Annex A of this final form rulemaking.

#### *Fiscal Impact*

*Commonwealth.* The Board does not expect that this final-form rulemaking will have a fiscal impact on the Board or other Commonwealth agencies. All registration applications will be handled by existing Board staff, as will review of game or gaming device submissions.

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

*Private sector.* This final-form rulemaking will provide manufacturers and gaming-related gaming service providers the opportunity to have their products review by private testing and certification facilities and seek abbreviated approval by the Board. The testing by private testing and certification facilities will likely require fees to be paid by the party submitting a product for review but will provide for an expedited approval process with the Board, allowing the product to be offered for play or implementation quicker. The Board is not proposing a fee structure for registered private testing facilities to charge.

With regards to entities seeking registration with the Board as a private test facility, they will be required to pay an initial \$500 application fee for the entity and \$60 per principal or other

individual requiring submission. The initial registration fee is \$2,500 for a 5 year term, and \$2,500 per 5 year renewal thereafter.

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

#### *Paperwork Requirements*

The private testing and certification facility seeking registration will be required to file an application and supplement with the Board. Additionally, any game or gaming product that is submitted to the Bureau of Gaming Laboratory Operations must be accompanied by a testing report prepared by the private testing and certification facility, in addition to the other required submission documents.

#### *Effective Date*

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

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees are provided with copies of comments received during the public comment period, as well as other documents when requested. With regards to this rulemaking, no comments were received from the Committees.

Under section 5a(j.2) of the Regulatory Review Act, on [insert date] the final-form rulemaking was deemed approved by the Committees. IRRC met on [insert date], and approved the regulations in accordance with section 5a(3) of the Regulatory Review Act.

#### *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) 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 and Part III.

*Order*

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

(1) The regulations of the Board, 58 Pa. Code 461a, be amended to read as set forth in Annex A.

(2) The regulations of the Board, be amended to add 58 Pa. Code 469a, to read as set forth in Annex A.

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

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

DENISE J. SMYLER,  
Chairperson



Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

SUBPART E. SLOT MACHINE, TABLE GAME DEVICE AND ASSOCIATED  
EQUIPMENT TESTING AND CONTROL; ACCOUNTING AND CONTROLS

CHAPTER 461a. Slot Machine, [and] Table Game Device, Interactive  
Game, Sports Wagering Device, Video Game Terminal, and  
Associated Equipment Testing and Controls

\* \* \* \* \*

§ 461a.3. Testing and approval of games and gaming devices,  
generally.

(a) In accordance with sections 1320, [and] 13A41, 13B41,  
and 3701 of the act (relating to slot machine testing and  
certification standards; [and] table game device and associated  
equipment testing and certification standards; interactive games  
and interactive gaming devices and associated equipment testing  
and certification standards; and testing and certification of  
terminals), slot machines, table games, table game devices,  
interactive games, sports wagering devices, video gaming  
terminals, and all associated equipment operated in this  
Commonwealth must be tested and approved in accordance with  
§ 461a.4(g), Chapters 810a, 1112a, and 1407a (relating to  
submission for testing and approval; interactive gaming testing  
and controls; video gaming terminal, redemption terminal and

associated equipment testing and certification; and sports wagering testing and controls).

(b) The general cost of establishment and operation of the Board's testing facility shall be paid by each manufacturer licensee and gaming related gaming service provider on a quarterly basis based upon each manufacturer's or gaming related gaming service provider's proportion of the total number of products reviewed.

(c) The Board will require payment of all costs for the testing and approval of slot machines, tables games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment submitted by manufacturers or gaming related gaming service providers or installed at a licensed facility or offered on an approved interactive gaming or interactive sports wagering website or mobile application, OR OFFERED AT A LICENSED TRUCK STOP ESTABLISHMENT, based on the actual direct costs incurred by the Board.

(d) The Board will require a manufacturer licensee or gaming related gaming service provider seeking approval of a slot machine, table games, table game device, interactive game, sports wagering device, video gaming terminal, or all associated equipment to pay all costs of transportation, inspection and testing.

(e) Testing of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment may also be conducted at registered private testing and certifications facilities in accordance with sections 1320(b.1), 13A41(b.1), 13B02(a)(2), and 3701(e) of the act and chapter 469a (relating to private testing and certification facilities), and a report of the testing shall be provided to the Board for abbreviated certification and approval.

(f) The Bureau of Gaming Laboratory Operations shall review the report from the registered private testing and certification facility, and prior to installation or use of a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment at a licensed facility, on an authorized interactive gaming or sports wagering website or mobile application, or at a licensed truck stop establishment shall report the findings to the Board's Executive Director for abbreviated certification and approval in accordance with § 461a.4.

§ 461a.4. Submission for testing and approval.

(a) A slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, or all 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 **[slot machine]** 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 **[slot machine]** license develops software or a system that is functionally equivalent to any of the slot systems or table game systems enumerated in subsection (c), interactive game systems, sports wagering systems, or video gaming terminal systems, that software or system shall be 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. Any reference in this subpart to the responsibilities of a manufacturer applies to an applicant for, or holder of, a **[slot machine]** license developing software or systems subject to testing and approval under this subpart.

(c) For the purposes of this section, slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment that shall be submitted for testing and approval include:

- (1) Slot machines, including bill validators and printers.
- (2) Slot monitoring systems, to the extent the systems interface with slot machines and related systems.
- (3) Casino management systems, to the extent the systems interface with slot machines and related systems.
- (4) Player tracking systems, to the extent the systems interface with slot machines and related systems.
- (5) Progressive systems, including wide area progressive systems.
- (6) Gaming voucher systems.
- (7) External bonusing systems.
- (8) Cashless funds transfer systems.
- (9) Machines performing gaming voucher, coupon or jackpot payout transactions.
- (10) Coupon systems, to the extent the systems interface with slot machines and related systems.
- (11) Other related systems.
- (12) Table game devices including:
  - (i) Electronic gaming tables as described in § 605a.4 (relating to electronic gaming tables).
  - (ii) Fully automated electronic gaming tables as described in § 605a.5 (relating to fully automated electronic gaming tables and electronic wagering terminals).

(iii) Progressive table game systems as described in § 605a.7 (relating to progressive table games).

(iv) Automated card shuffling devices as described in § 603a.17 (relating to dealing shoes; automated card shuffling devices).

(v) Electronic dealing shoes as described in § 603a.17.

(vi) Electronic wagering systems as described in § 605a.2 (relating to electronic wagering systems).

(vii) Electronic wagering terminals as described in § 605a.5.

(viii) Hybrid gaming tables as described in § 605a.9 (relating to hybrid gaming tables).

**(13) Interactive games and interactive gaming platforms and systems.**

**(14) Sports wagering terminals and ticket redemption terminals.**

**(15) Video gaming terminals, including bill validators and ticket printers.**

**(16) Video gaming voucher redemption terminals.**

**(16) Video gaming terminal tracking and reporting systems.**

(d) Slot machine prototypes, **table game prototypes**, table game device prototypes, **interactive game and platform**

prototypes, sports wagering device prototypes, video gaming terminal prototypes, and all associated equipment 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 the act, 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 slot machine, fully automated electronic gaming table, electronic wagering 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, fully automated electronic gaming tables and electronic wagering terminals.

\* \* \* \* \*

(g) When an applicant for, or holder of, a manufacturer license to manufacture slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or a gaming related gaming service provider seeks Board approval of a slot

machine prototype, table game prototype, table game device prototype, as described in subsection (c)(12), interactive game and platform prototypes, sports wagering device prototype, video gaming terminal prototype, associated equipment prototype, or any modification thereto, the manufacturer or gaming related gaming service provider shall submit to the Bureau of Gaming Laboratory Operations the following:

\* \* \* \* \*

(11) In the case of slot machines, table games, table games devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or modifications thereto that have been tested by a registered private testing and certification facility, the manufacturer or gaming related gaming service provider shall direct the facility to provide to the Bureau of Gaming Laboratory Operations for review a detailed report from the registered private testing and certification facility regarding the scope of the testing and the results of the testing performed on the slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment or modification made thereto, in addition to all other items required in the specific submission checklist to be provided by the manufacturer or gaming related gaming service provider.

\* \* \* \* \*



(i) At the conclusion of testing of a prototype or modification or after review of the report provided by the registered private testing and certification facility, the Bureau of Gaming Laboratory Operations will report to the Board's Executive Director the results of its testing and the results from the private testing and certification facility, if applicable. Upon receipt of the Bureau of Gaming Laboratory Operations' report, the Board's Executive Director will:

\* \* \* \* \*

(k) A [slot machine] licensee is prohibited from installing in its licensed facility [a slot machine, table game device or associated equipment] or otherwise offering for play equipment, device or software, 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 [slot machine] licensee may not modify, alter or tamper with an approved slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment. [A slot machine, table game device or associated equipment] Equipment, devices, or software installed in a licensed facility or otherwise offered for play 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 slot machine prototype, table game prototype, table game device prototype, interactive game or platform prototype, sports wagering device prototype, video gaming terminal prototype or any 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 [**slot machine**] licensee shall immediately notify the Bureau of Gaming Laboratory Operations and the casino compliance representatives at the licensed facility, the Bureau of Gaming Operations for interactive gaming, the Office of Sports Wagering Operations, or the Bureau of Casino Compliance for video gaming of any known or suspected defect or malfunction in any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment installed in its licensed facility or on its interactive gaming website or mobile application. The [**slot**

machine licensee shall comply with instructions issued by the Bureau of Gaming Laboratory Operations with regard to the continued operation of the slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment.

\* \* \* \* \*

(p) The Executive Director shall approve, approve with conditions, reject the submitted prototype or modification or require additional testing or a trial period under subsection (h) within 30 days of the complete submission of a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment by a manufacturer or gaming related gaming service provider that has been submitted to the Board for abbreviated certification with a testing report from a registered private testing and certification facility.

(i) A submission will not be considered complete if it does not contain all necessary documentation as required by subsection (g) (11).

(ii) If after the submission is made the Bureau of Gaming Laboratory Operations determines that a submission is incomplete, the manufacturer or gaming related gaming service provider will be given written notice of the deficiencies in the submission.

(iii) In the instance of an incomplete submission, the 30-day review for abbreviated certification will only begin when the manufacturer or gaming related gaming service provider provides the supplemental information to the Bureau of Gaming Laboratory Operations.

(q) If the Executive Director fails to approve, approve with conditions, reject the submitted prototype or modification or require additional testing or a trial period under subsection (h) within 30 days of the completed submission a slot machine, table game device, interactive game, sports wagering device, video gaming terminal and all associated equipment submitted to the Board for abbreviated certification, the abbreviated certification shall be deemed conditionally approved until the Executive Director renders a decision under subsection (i).

(r) If a manufacturer or gaming related gaming service provider has provided a complete submission to the Bureau of Gaming Laboratory Operations for abbreviated certification but the review of the submission cannot feasibly be completed within 30 days, the manufacturer or gaming related gaming service provider will receive written notice tolling the review of the submission until a such time as a review of the submission can be completed.

(s) If during the 30-day review period in subsection (p), the Bureau of Gaming Laboratory Operations preliminarily

determines that a complete submission of a slot machine, table game, interactive game, sports wagering device, video gaming terminal and all associated equipment contains an issue or insufficiency likely to negatively affect the integrity of gaming operations, the Bureau of Gaming Laboratory Operations, by written notice to the manufacturer or gaming related gaming service provider, will:

(i) Specify the nature of the insufficiency.

(ii) Direct that the 30-day review period in subsection (p) be tolled and that any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment not be implemented until approved under subsection (q).

\* \* \* \* \*

#### CHAPTER 469a. PRIVATE TESTING AND CERTIFICATION FACILITIES

Sec.

- 469a.1. Private testing and certification facilities generally.
- 469a.2. Registration of private testing and certification facilities.
- 469a.3. Standards and procedures for private testing and certification facilities.
- 469a.4. Responsibilities of a private testing and certification facility.
- 469a.5. Registration term and renewal.

§ 469a.1. Private testing and certification facilities generally.

(a) Manufacturers of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or gaming related gaming service providers may submit products required to be tested under Chapter 461a (relating to slot machine and table game device testing and control) to a private testing and certification facility registered with the Board under this Chapter.

(b) Manufacturers of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or gaming related gaming service providers shall be responsible for any fees or costs imposed by the private testing and certification facility.

(c) Manufacturers of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or gaming related gaming services providers shall be responsible for all costs incurred by the Board in reviewing the report issued by the private testing and certification facility and approving the slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal or any associated equipment.

(d) Slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment tested by a private testing and certification facility shall be considered under the abbreviated certification and approval process under § 461a.4 (relating to submission for testing and approval).

§ 469a.2. Registration of private testing and certification facilities.

(a) A private testing and certification facility seeking to test slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment for use in this Commonwealth shall register with the Board.

(b) A private testing and certification facility shall:

(1) Submit a completed Gaming Service Provider Registration Form and Private Testing and Certification Facility supplement.

(2) Submit the nonrefundable application fee posted on the Board's website, which includes the costs of all background investigation.

(3) Comply with the general application requirements in Chapters 421a and 423a (relating to general provisions; and applications; statement of conditions; wagering restrictions).

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

(i) Each officer and director of the private testing and certification facility. For purposes of this subparagraph, ``officer`` means 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.

(ii) Each individual who has a direct or indirect ownership or beneficial interest of 10% or more or the officers and directors of an entity who has a direct ownership or beneficial interest of 20% or more in the private testing and certification facility, IF NOT OTHERWISE REQUIRED UNDER SUBPART (I).

(c) A person who holds any direct or indirect ownership or beneficial interest in private testing and certification facility or has the right to any profits or distributions directly or indirectly, from the private testing and certification facility 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.



(d) Each of the individuals required to submit fingerprints under subsections (b) (4) and (c) must be found qualified by the Board under § 437a.4 (relating to qualification of individuals and entities).

(e) A private testing and certification facility registration will not be issued until all fees and costs have been paid.

(f) The Board will maintain a list of registered private testing and certification facilities.

§ 469a.3. Standards for private testing and certification facilities.

(a) A private testing and certification facility shall:

(1) Be independent from any manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or gaming related gaming service provider licensed by the Board.

(2) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement.

(3) Demonstrate it is technically competent in testing of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, or all

associated equipment in a manner acceptable to and verified by the Bureau of Gaming Laboratory Operations.

(b) A private testing and certification facility and its owners, managers, supervisory personnel and employees:

(1) Shall not have a financial interest OR A CONTROLLING INTEREST, direct or otherwise, in a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or gaming related gaming service providers licensed by the Board.

(2) Shall not participate, consult or otherwise be involved in the design, development, programming or manufacture of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment.

(3) Shall not have any other interest in or involvement with a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or gaming related gaming service providers that could cause the private testing and certification facility to act in a manner that is not impartial.

§ 469a.4. Responsibilities of a private testing and certification facility.

(a) A holder of a private testing and certification facility registration shall have a continuing duty to comply with the general requirements in Chapters 421a and 423a (relating to general provisions; and applications; statement of conditions; wagering restrictions).

(b) A private testing and certification facility shall notify the Board immediately if a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals, and all associated equipment or a gaming related gaming service provider licensed by the Board:

(1) Attempts, directly or indirectly, to influence improperly a private testing and certification facility or its owners, managers, supervisory personnel and employees, in regard to a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminals, or all associated equipment, that it, or another person or entity, has submitted for testing or certification for use in a licensed facility, ON AN AUTHORIZED INTERACTIVE GAMING OR SPORTS WAGERING WEBSITE OR MOBILE APPLICATION, OR AT A LICENSED TRUCK STOP ESTABLISHMENT.

(2) Engages in any transaction with a private testing and certification facility that such manufacturer or gaming related gaming service provider is using, has used or intends to

use to inspect or certify a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminals, or all associated equipment for use in a licensed facility, ON AN AUTHORIZED INTERACTIVE GAMING OR SPORTS WAGERING WEBSITE OR MOBILE APPLICATION, OR AT A LICENSED TRUCK STOP ESTABLISHMENT, in which the private testing and certification facility is required to participate, consult or otherwise be involved in the design, development, programming or manufacture of such items. This restriction does not limit a manufacturer or gaming related gaming service provider from engaging such private testing and certification facility to provide consulting services, provided that such services do not directly or indirectly indicate, suggest or imply how to design, develop, program or manufacture such items.

(c) Private testing and certification facilities shall maintain copies of the results of any ISO/IEC 17025 audits or reviews and shall notify the Board in writing of the availability of such results within 15 days of when such results become available to the private testing and certification facility. Such copies shall be provided to the Board upon request.

(d) In the interest of preserving the integrity of gaming in the Commonwealth, a private testing and certification

facility shall not implement or maintain any procedure or policy or take any action that would:

(1) Inhibit or prevent a manufacturer or gaming related gaming service provider from submitting a slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment, for testing and certification for use in any form of regulated gaming in the Commonwealth.

(2) Call into question or tend to erode the independence of the private testing and certification facility from any clients that use the services of such facility.

(e) A private testing facility shall maintain a version-controlled system of testing documentation and methodologies that such facility uses to provide certification and such materials shall be made available to the Board upon request.

(f) All testing shall be conducted in accordance with Chapters 461a, 810a, 1112a, and 1407a (relating to slot machine and table game device testing and control; interactive gaming testing and controls; video gaming terminal, redemption terminal and associated equipment testing and certification; sports wagering testing and controls) and all technical standards, policies and industry notices that the Board may implement or issue.

(g) A private testing and certification facility shall not use, rely on or otherwise refer to any testing, results or work product performed by another private testing and certification facility for any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment that has not previously been approved in writing by the Board.

(h) A private testing and certification facility shall implement and maintain a system of peer review to monitor the quality of the testing and certification procedures performed by such facility.

(i) A private testing and certification facility shall consult with the Board prior to testing, evaluating, analyzing, certifying, verifying or rendering opinions for or on behalf of the Board relating to any new technology or concept.

(j) A private testing and certification facility shall consult the Board on any questions relating to the testing and certification of any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment.

(k) A private testing and certification facility shall keep confidential all information and data prepared or obtained as part of the testing and certification process.

(l) A private testing and certification facility shall implement and maintain security and access control systems designed to secure and protect the confidentiality of all equipment, software and other information entrusted to it as part of the testing and certification process.

(m) A private testing and certification facility shall maintain all test equipment in accordance with the manufacturer's specifications and recommendations and shall provide the Board with evidence of such upon demand.

(n) A private testing and certification facility shall retain all submission and testing-related documentation FOR SUCH TIME AS THE TESTED ITEM REMAINS APPROVED OR AUTHORIZED FOR USE IN PENNSYLVANIA. Such records may be maintained in electronic form. The obligation to maintain such records continues even if the private testing and certification facility ceases to be registered with the Board or otherwise ceases its business operation. The private testing and certification facility may turn all such records over to the Board in electronic form as an alternative to having to maintain such records after such facility is no longer registered or after such facility ceases business operation.

(o) The Board may conduct periodically an onsite evaluation and review of each private testing and certification facility to

evaluate certification results and to verify continued compliance with all registration requirements and protocols.

(p) The Board may establish a system to evaluate the continued quality of the testing and certification performed by a private testing and certification facility which would be posted on the Board's website.

(q) A private testing and certification facility, its employees, management and owners shall remain independent of any licensed manufacturer of slot machines, table games, table game devices, interactive games, sports wagering device, video gaming terminals and all associated equipment or gaming related gaming service provider.

(r) No private testing and certification facility employee who was employed by, or performed any work for, a manufacturer or gaming related gaming service provider licensed by the Board within one year prior to such person's date of employment with such private testing and certification facility shall be permitted to inspect or certify any slot machine, table game, table game device, interactive game, sports wagering device, video gaming terminal, and all associated equipment for use in a licensed facility, ON AN AUTHORIZED INTERACTIVE GAMING OR SPORTS WAGERING WEBSITE OR MOBILE APPLICATION, OR AT A LICENSED TRUCK STOP ESTABLISHMENT, with which such person had any involvement



whatsoever while employed by such manufacturer or gaming related gaming service provider.

(s) Failure to fully comply with any provision contained herein constitutes a violation and may result in Board-imposed administrative sanctions, up to and including revocation, against the individual or entity to whom the registration was issued.

§ 469a.5. Registration term and renewal.

(a) Private testing and certification facility registrations and renewals issued under this chapter will be valid for 5 years from the date of Board approval.

(b) Registered private testing and certification facilities shall submit to the Board a completed renewal application or form and renewal fee at least 6 months prior to the expiration of a registration.

\* \* \* \* \*



PENNSYLVANIA GAMING CONTROL BOARD  
303 Walnut Street  
Commonwealth Tower, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
www.gamingcontrolboard.pa.gov

ROBERT WOOD  
*Assistant Chief Counsel*  
303 Walnut Street  
Commonwealth Tower, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
Phone: (717) 346-8300  
Fax: (717) 346-8350  
Email: rmwood@pa.gov

May 23, 2023

*Chair*  
DENISE J. SMYLER

*Commissioners*  
FRANK DERMODY  
SHAWN DILLON  
DAVID S. HICKERNELL  
SARA MANZANO-DÍAZ  
NEDIA RALSTON  
FRANCES J. REGAN

*Ex-Officio Members*  
PAT BROWNE  
STACY GARRITY  
RUSSELL C. REDDING

Delivered via e-mail

David Sumner, Executive Director  
Independent Regulatory Review Commission  
333 West Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120

**RE: PGCB Final Form Rulemaking #125-240: Private Testing and Certification Facilities**

Dear Mr. Sumner:

Enclosed with this letter please find a copy of a final form rulemaking for review by the Independent Regulatory Review Commission ("Commission") from the Pennsylvania Gaming Control Board ("Board"). This final form rulemaking sets forth the regulatory framework for the use of Private Testing and Certification Facilities in the Commonwealth, in accordance with the provisions of the Pennsylvania Race Horse Development and Gaming Act of 2004, as amended. This final form rulemaking was adopted by the Board on April 26, 2023.

This proposed rulemaking was e-Delivered to the Majority Chair and Minority Chair of the House Gaming Oversight Committee, and the Majority Chair and Minority Chair of the Senate Community, Economic and Recreational Development Committee. Confirmation of the deliveries to the Committees is contained in the final form rulemaking packet.

Sincerely,

Robert Wood  
Assistant Chief Counsel

Enclosure

**Shani Shenk**

---

**From:** Taylor, Jerome <Jerome.Taylor@pasenate.com>  
**Sent:** Tuesday, May 23, 2023 2:08 PM  
**To:** Wood, Robert (PGCB)  
**Subject:** RE: e-Delivery of PGCB Final Form Rulemaking #125-240

Hi Robert,

I received your email.

*Jerome "Al" Taylor*

Legislative Director  
State Senator Anthony H. Williams  
11 East Wing, Capitol Building | Harrisburg, PA 17021  
Ph. 717-787-5970 | Fax 717-772-0574  
Email: [Jerome.Taylor@pasenate.com](mailto:Jerome.Taylor@pasenate.com)

RECEIVED

MAY 23 2023

Independent Regulatory  
Review Commission

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**From:** Wood, Robert (PGCB) <rmwood@pa.gov>  
**Sent:** Tuesday, May 23, 2023 1:58 PM  
**Subject:** RE: e-Delivery of PGCB Final Form Rulemaking #125-240  
**Importance:** High

EXTERNAL EMAIL

---

Since I have not heard back, I wanted to follow up and make sure you received and saw the below email.

Robert Wood, Esq.  
Assistant Chief Counsel  
Pennsylvania Gaming Control Board  
Phone: (717) 317-5744

**CONFIDENTIALITY NOTICE:**

*The information in this transmission is intended only for the individual or entity named above. It may be legally privileged and confidential. If you have received this information in error, notify us immediately by calling our operator at (717) 346-8300. Send the original transmission to us by mail. Return postage is guaranteed. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication or its contents is strictly prohibited.*

---

**From:** Wood, Robert (PGCB)  
**Sent:** Tuesday, May 23, 2023 8:46 AM  
**To:** Derek Clepper (PA Sen Maj (R)) <[dclepper@pasen.gov](mailto:dclepper@pasen.gov)>; Hank Beaver (PA House Majority (D)) <[HBeaver@pahouse.net](mailto:HBeaver@pahouse.net)>; Jen Weeter (PA House Minority (R)) <[jweeter@pahousegop.com](mailto:jweeter@pahousegop.com)>; Jerome "Al" Taylor <[Jerome.Taylor@pasenate.com](mailto:Jerome.Taylor@pasenate.com)>  
**Cc:** Posavec, Cheryl (PGCB) <[cposavec@pa.gov](mailto:cposavec@pa.gov)>

**Subject: e-Delivery of PGCB Final Form Rulemaking #125-240**

**Importance: High**

Good Morning:

This email serves as electronic delivery of Final Form Rulemaking #125-240 from the Pennsylvania Gaming Control Board, relating to Private Testing and Certification Facilities. Attached to this email are the following documents:

1. Regulatory Analysis Form (PDF Format)
2. Face Sheet (PDF Format)
3. Preamble (PDF Format)
4. Annex A text (PDF format)

Additionally, PGCB received comments from BMM Labs and FanDuel, to which responses have been addressed in the Preamble and Final Regulatory language. Although these entities did not expressly request additional information regarding the Final Form Rulemaking, copies of the final regulatory language and PGCB's response to their comments are being provided to them.

**Please reply to this email confirming receipt of the materials on behalf of the Committee Chairs.** A confirmatory email is required in order to be able to document delivery for IRRRC. Thank you, and please let me know if you need anything else from the PGCB.

**RECEIVED**

**MAY 23 2023**

Robert Wood, Esq.  
Assistant Chief Counsel  
Pennsylvania Gaming Control Board  
Phone: (717) 317-5744

Independent Regulatory  
Review Commission

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**Shani Shenk**

---

**From:** Clepper, Derek <dclepper@pasen.gov>  
**Sent:** Tuesday, May 23, 2023 9:30 AM  
**To:** Wood, Robert (PGCB)  
**Subject:** RE: e-Delivery of PGCB Final Form Rulemaking #125-240

Robert,  
I am confirming receipt of this document.  
Thank you.

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MAY 23 2023

Independent Regulatory  
Review Commission

**Derek R. Clepper, Esq.**  
Executive Director  
Senate Community, Economic & Recreational Development  
Senator Chris Gebhard  
15 East Wing Capitol Building  
Harrisburg, PA 17120  
Phone: 717-787-5708  
[dclepper@pasen.gov](mailto:dclepper@pasen.gov)

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**From:** Wood, Robert (PGCB) <rmwood@pa.gov>  
**Sent:** Tuesday, May 23, 2023 8:46 AM  
**To:** Clepper, Derek <dclepper@pasen.gov>; Hank Beaver (PA House Majority (D)) <HBeaver@pahouse.net>; Jen Weeter (PA House Minority (R)) <jweeter@pahousegop.com>; Jerome "Al" Taylor <Jerome.Taylor@pasenate.com>  
**Cc:** Posavec, Cheryl (PGCB) <cposavec@pa.gov>  
**Subject:** e-Delivery of PGCB Final Form Rulemaking #125-240  
**Importance:** High

Ⓞ CAUTION : External Email Ⓞ

Good Morning:

This email serves as electronic delivery of Final Form Rulemaking #125-240 from the Pennsylvania Gaming Control Board, relating to Private Testing and Certification Facilities. Attached to this email are the following documents:

1. Regulatory Analysis Form (PDF Format)
2. Face Sheet (PDF Format)
3. Preamble (PDF Format)
4. Annex A text (PDF format)

Additionally, PGCB received comments from BMM Labs and FanDuel, to which responses have been addressed in the Preamble and Final Regulatory language. Although these entities did not expressly request

## Shani Shenk

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**From:** Beaver, Hank III <HBeaver@pahouse.net>  
**Sent:** Tuesday, May 23, 2023 9:44 AM  
**To:** Wood, Robert (PGCB)  
**Cc:** Patrick J. Harkins; King Christopher  
**Subject:** RE: e-Delivery of PGCB Final Form Rulemaking #125-240

Good Morning,

On behalf of Chairman Harkins, we have received the materials. Thanks and have a good day!

Sincerely,

**Hank Beaver**  
Executive Director  
House Gaming Oversight Committee  
Rep. Pat Harkins, Majority Chairman  
331 Irvis Office Building  
Harrisburg, PA 17120  
Office: 717-787-7406  
Mobile: 717-810-7677

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**From:** Wood, Robert (PGCB) <rmwood@pa.gov>  
**Sent:** Tuesday, May 23, 2023 8:46 AM  
**To:** Derek Clepper (PA Sen Maj (R)) <dclepper@pasen.gov>; Beaver, Hank III <HBeaver@pahouse.net>; Jen Weeter (PA House Minority (R)) <jweeter@pahousegop.com>; Jerome "Al" Taylor <Jerome.Taylor@pasenate.com>  
**Cc:** Posavec, Cheryl (PGCB) <cposavec@pa.gov>  
**Subject:** e-Delivery of PGCB Final Form Rulemaking #125-240  
**Importance:** High

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2. Face Sheet (PDF Format)
3. Preamble (PDF Format)
4. Annex A text (PDF format)

Additionally, PGCB received comments from BMM Labs and FanDuel, to which responses have been addressed in the Preamble and Final Regulatory language. Although these entities did not expressly request additional information regarding the Final Form Rulemaking, copies of the final regulatory language and PGCB's response to their comments are being provided to them.

**Please reply to this email confirming receipt of the materials on behalf of the Committee Chairs. A confirmatory email is required in order to be able to document delivery for IRRC. Thank you, and please let me know if you need anything else from the PGCB.**

Robert Wood, Esq.  
Assistant Chief Counsel  
Pennsylvania Gaming Control Board  
Phone: (717) 317-5744

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**MAY 23 2023**

**Independent Regulatory  
Review Commission**

**Shani Shenk**

---

**From:** Jennifer Weeter <Jweeter@pahousegop.com>  
**Sent:** Tuesday, May 23, 2023 3:05 PM  
**To:** Wood, Robert (PGCB)  
**Subject:** RE: e-Delivery of PGCB Final Form Rulemaking #125-240

Hi,

Yes, I did but have been engulfed in Committee work for the Commerce Committee this week (I am the Executive Director of both)

So, sorry for the delay. They have been received.

*Jennifer Weeter*

Executive Director,  
Commerce Committee (R)  
Gaming Oversight Committee (R)  
PA House of Representatives  
717-787-1119

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**From:** Wood, Robert (PGCB) <rmwood@pa.gov>  
**Sent:** Tuesday, May 23, 2023 1:58 PM  
**Subject:** RE: e-Delivery of PGCB Final Form Rulemaking #125-240  
**Importance:** High

Since I have not heard back, I wanted to follow up and make sure you received and saw the below email.

Robert Wood, Esq.  
Assistant Chief Counsel  
Pennsylvania Gaming Control Board  
Phone: (717) 317-5744

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**From:** Wood, Robert (PGCB)  
**Sent:** Tuesday, May 23, 2023 8:46 AM  
**To:** Derek Clepper (PA Sen Maj (R)) <dclepper@pasen.gov>; Hank Beaver (PA House Majority (D)) <HBeaver@pahouse.net>; Jen Weeter (PA House Minority (R)) <jweeter@pahousegop.com>; Jerome "Al" Taylor <Jerome.Taylor@pasenate.com>  
**Cc:** Posavec, Cheryl (PGCB) <cposavec@pa.gov>



**Subject:** e-Delivery of PGCB Final Form Rulemaking #125-240

**Importance:** High

Good Morning:

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2. Face Sheet (PDF Format)
3. Preamble (PDF Format)
4. Annex A text (PDF format)

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Robert Wood, Esq.  
Assistant Chief Counsel  
Pennsylvania Gaming Control Board  
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**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

**I.D. NUMBER:** 125-240

**SUBJECT:** Private Testing and Certification Facilities

**AGENCY:** Pennsylvania Gaming Control Board

**TYPE OF REGULATION**






- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - With Revisions       Without Revisions

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**FILING OF REGULATION**

| <u>DATE</u>                      | <u>SIGNATURE</u>   | <u>DESIGNATION</u>  |
|----------------------------------|--|---|
| <b><u>HOUSE COMMITTEE -</u></b>  |  |   |
| <u>5/23/23</u>                   | <u></u> | <b>MAJORITY CHAIR</b> <u>Rep. Patrick J. Harkins, via e-delivery</u>                  |
| <u>5/23/23</u>                   | <u></u> | <b>MINORITY CHAIR</b> <u>Rep. Russ Diamond, via e-delivery</u>                        |
| <b><u>SENATE COMMITTEE -</u></b> |  |   |
| <u>5/23/23</u>                   | <u></u> | <b>MAJORITY CHAIR</b> <u>Sen. Chris Gebhard, via e-delivery</u>                       |
| <u>5/23/23</u>                   | <u></u> | <b>MINORITY CHAIR</b> <u>Sen. Anthony H. Williams, via e-delivery</u>                 |
| <u>5/23/23</u>                   | <u></u> | <b><u>INDEPENDENT REGULATORY REVIEW COMISSION</u></b><br>David Sumner, via e-delivery |
| <u>          </u>                | <u>          </u>  | <b><u>ATTORNEY GENERAL (for Final Omitted only)</u></b>                               |
| <u>          </u>                | <u>          </u>  | <b><u>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</u></b>                        |