

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 401, 403, 407, 421, 423, 427, 433, 435, 451, 461, 471, 481, 491, 495, 497 AND 499]

Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202(b)(14) (relating to general and specific powers), adopts temporary regulations to facilitate implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71). The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). Subpart A is entitled General Provisions and contains Chapter 401, Preliminary Provisions, Chapter 403, Board Operation and Organization and Chapter 407, Public Access to Board Records.

The next portion of regulations focuses primarily on the licensing and application process. Subpart B is entitled Licensing, Registering and Permitting and contains Chapter 421, General Provisions, Chapter 423, Applications, Chapter 427, Manufacturer Licenses, Chapter 433, License Renewal and Chapter 435, Employees. Subpart D is entitled Recordkeeping and contains Chapter 451, Licensee Recordkeeping Requirements. Subpart E is entitled Slot Machine Testing and Certification and contains Chapter 461, Slot Machine Testing and Certification Requirements. Subpart F is entitled Fees and contains Chapter 471, Filing fees.

The next portion of regulations focuses on the diversity requirements of licensees. Subpart G is entitled Minority and Women's Business Enterprises and contains Chapter 481, General provisions.

The final portion of the regulations pertains to practice before the Board. Subpart H is entitled Practice and Procedure and contains Chapter 491, General Rules of practice, Chapter 495, Documentary filings, Chapter 497, Time and Chapter 499, Representation Before the Board.

Purpose and Background

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board is required to promulgate temporary regulations to facilitate the prompt implementation of Act 71. The temporary regulations are necessary to enhance the credibility of the licensed operation of slot machines and associated equipment in this Commonwealth and to carry out the policy and purposes of the Board. In adopting the temporary regulations, the Board has considered public comments submitted to the Board, comments of the Department of Revenue and the regulatory practices of other Commonwealth agencies.

In order to promulgate the temporary regulations in accordance with customary rulemaking procedure, the Board published its draft regulations in the Pennsylvania Bulletin at 35 Pa.B. 2569 (April 23, 2005). A 30-day public comment period was provided.

Under 4 Pa.C.S. § 1203, the temporary regulations adopted by the Board shall expire no later than 2 years following the effective date of Act 71 or upon promulgation of regulations as generally provided by the law. These temporary regulations are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), or to the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

Comment and Responses

The Board received public comment from more than 35 interested parties, including industry members, citizens and political representatives. The Board thoroughly reviewed and considered all comments submitted. All public comments received by the Board are available for review on the Board's website, www.pgcb.state.pa.us. In order to respond to the comments in the most efficient manner, the Board has selected representative comments and formulated responses to these comments. These comments and responses are published herein.

Comment

Measures should be taken to prevent losses of machines through theft or changes to them through tampering or by damage. It is therefore respectfully submitted that the Board consider developing minimum standards to address these concerns while the equipment is in transit and while at the suppliers' facilities. This could include strict requirements for documentation and inspection, for the type and quality of transportation, for the location and quality of storage facilities, for alarm systems, environmental controls, etc.

Response

The Board acknowledges the security concerns of both manufacturers and suppliers. The Board agrees to review this recommendation and believes that these issues are essential to protecting the integrity of the gaming industry in this Commonwealth.

Comment

Through amendments to the Proposed Regulations or its actual conduct, the Board needs to clarify how and when it will permit—indeed encourage—industry communication with its members and staff. Our view is that gaming operations run more smoothly and efficiently in those jurisdictions that facilitate free and open communication between (i) the gaming regulatory agency and/or its staff and (ii) members of the public including, without limitation, licensees, vendors, manufacturers, facility operators, etc.

Response

The Board agrees to review this recommendation and will consider the most appropriate and effective means of communication between the Board and the licensees.

Chapter 401. Preliminary Provisions

§ 401.4 Definitions.

Comment

Amend definition of "associated equipment" to include "other equipment as approved by the Board."

Response

The Board agrees that additional parts or equipment not presently included in the definition may need to be treated as associated equipment to ensure appropriate regulation for manufacturers and has added similar language.

Comment

Two different manufacturers of currency or bill validators presented different views on whether they should be licensed as a manufacturer.

Response

The Board is reviewing the inclusion of bill validators in the manufacturer licensing provisions. The Board believes that if the bill validator is inserted and made part of the slot machine by a slot machine manufacturer, a separate license would not be required. However, for a bill validator that is directly installed by the maker of the validator, a manufacturer license would be required. In addition, a manufacturer of associated equipment would have to use a supplier to install and repair the equipment. If the validation system is a free-standing machine, it is deemed "associated equipment" and therefore the manufacturer must be licensed by the Board and the machine must be provided through a licensed supplier.

Comment

Does a manufacturer of associated equipment located in Pennsylvania need to sell through a supplier?

Response

The act requires the use of a licensed supplier to sell and distribute any associated equipment. It also gives suppliers the responsibility of repair of all slot machines and associated equipment.

Comment

The definition of "associated equipment" should be amended to exclude seats, light bulbs and decals.

Response

The Board does not believe that the definition of "associated equipment" as written includes decals, seats or light bulbs as they are not part of the machine that constitutes "gaming."

Comment

What happens if the central computer malfunctions?

Response

The Department of Revenue will require that the vendor for the central computer have adequate back-up systems to prevent and respond to a malfunction and to have adequate personnel on hand to repair any malfunction. This will be part of the contract between the provider and the Department of Revenue. However, if a malfunction occurs that requires time to repair, play would cease until the central system is once again operational.

Comment

What is an example of "unwarranted invasion of personal privacy?"

Response

An example of the type of information that if released would constitute an unwarranted invasion of privacy would be certain medical issues. For example, a background investigation could reveal a child or other family member with a mental illness. While the regulation makes medical records confidential, an investigator would not require medical records to learn of a particular mental health issue.

Comment

How will confidential and nonconfidential folders be secured?

Response

The use of separate folders for confidential and nonconfidential information is modeled on PUC adminis-

trative procedures. Storage and access issues will be addressed when the physical offices of the Board are fully equipped and operational.

Comment

Does a company have to release its source code or other proprietary information to the Board?

Response

The Board does not anticipate collecting information regarding source codes. However, the Board is authorized to do so if necessary to enforce the act. If the need arose to collect source codes, they would be treated as proprietary information.

Comment

Request to amend the definition of controlling interest to be "a holder of a majority of the securities."

Response

The definition of "controlling interest" in Act 71 includes a person who holds security in a privately held corporation. This statutory provision cannot be altered in regulation. However, the definition allows a person to rebut the presumption of control by clear and convincing evidence.

Comment

Request to amend definition of "controlling interest" to exclude institutional investors of publicly held companies.

Response

The Board should retain the ability to qualify institutional investors. Section 1313 of Act 71 allows the Board to waive qualification requirements for institutional investors. An applicant or licensee could petition the Board for a waiver. However, the authority to qualify may be needed in certain instances, such as when there is a financial investigation of financial wrongdoing by the SEC. The Board is willing to add additional language to clarify the ability to obtain a waiver.

Comment

What is an example of personal property?

Response

Examples of personal property would be a car, appliances, jewelry or other items given to patrons.

Comment

Clarify the definition of key employee for manufacturers.

Response

The Board agrees to review the definition of "key employee" as it applies to a manufacturer to determine if it can be modified to include only those individuals who will be present on the gaming floor as part of their employment.

Comment

Request to narrow the definition of "key employee qualifier," particularly for manufacturers because of the time and expense necessary to perform a background investigation and to license each qualifier.

Response

The Board agrees to review the definition of "key employee qualifier" to determine if it can be modified to include only those individuals with direct control over gaming operations.

Comment

Definition of slot machine is too broad and would include skeeball and toy crane machines.

Response

The definition of "slot machine" comes directly from the statute. The Board believes that the definition does not include the previously mentioned games.

Comment

Add a definition of "cash equivalents."

Response

The Board will review the need for a definition of "cash equivalents."

Comment

Consider Michigan rules of construction.

Response

Pennsylvania has its own Statutory Construction Act and case law which the Board will rely upon.

Comment

Consider addition of definition of "weapons in a gaming area" as provided in Michigan law.

Response

The Board will review the Michigan provision.

*Chapter 403. Board Operations and Organization**§ 403.1 Participation at meetings and voting.**Comment*

A member should have no interest in a license in order to vote on it.

Response

Section 1202(f)(3) of the statute requires a Board member to disclose the nature of a disqualifying interest, financial or otherwise, and to abstain from voting on the issue relating to the disqualifying interest. The Board will review the provisions of section 403.1(c) relating to member abstention to ensure that it adequately reflects the requirements of section 1202.

*§ 403.2 Meetings.**Comment*

Request for inclusion of meeting locations and agenda on the Board's Internet website. A similar request has been made with regard to minutes and annual reports.

Response

The Board has been posting meeting times and locations on its Internet website and would anticipate continuation of this practice. The Board will review the potential inclusion of annual reports and minutes on the site.

*Chapter 407. Public Access to Board Records**§ 407.1 Case files.**Comment*

Request the prohibition of access to personal information of key employees and key employee qualifiers.

Response

Personal information is included in the definition of "confidential information." Therefore, release of this information is prohibited by the current regulation.

However, the Board will continue to review the provisions relating to confidential information to ensure that it protects personal and proprietary information.

Comment

Request for clarification of how the Board will determine if information is confidential and how such determinations will be appealed.

Response

The Board agrees to review further clarification of the issue. The process to appeal determinations relating to confidentiality will be similar to procedures used in other Commonwealth agencies. An applicant, licensee or other party could petition the Board to reverse a determination relating to the confidentiality of a document.

Comment

Will the full record be in the confidential file and a redacted form in the non-confidential file?

Response

It is anticipated that some documents may require redaction. This will be decided on a case by case basis.

*Chapter 421. General Provisions**§ 421.2. Licenses and permits (formerly Licensed entities).**Comment*

Consider the issuance of temporary licenses for key employees and key employee qualifiers.

Response

The Board will consider the issuance of temporary employee licenses.

*§ 421.3 Disqualification criteria.**Comment*

Requests that the disqualification of a license only for a material violation of the act.

Response

The Board declines to accept this recommendation. Section 421.3 includes various enforcement tools available to the Board, including disqualification of an individual and the denial, suspension or revocation of a license. The Board believes it should retain broad discretion to utilize these enforcement measures in a way that fairly addresses the violation in question. For example, the Board may decide to suspend a license for a brief period of time for certain nonmaterial violations if necessary to ensure compliance with the act.

*Chapter 423. Applications**§ 423.1. General requirements.**Comment*

Requests the modification of the English translation requirement for documents submitted to the Board to only require the translation of documents specifically requested by the Board.

Response

The Board will consider the inclusion of a waiver provision which would allow the applicant or licensee to request a waiver of the translation requirement from the Board. However, the Board believes the general rule

should be the requirement of English translations to ensure the enforcement of the act.

Comment

Request change in reference from "financial stability" to "financial fitness."

Response

The Board agrees and has amended the regulations to reflect this change.

Comment

Section 423.1(h) appears to provide immunity to Board contractors who provide background investigations.

Response

The Board accepts this recommendation and has amended the regulations to reflect this change.

§ 423.2 Application processing.

Comment

Request to remove the requirement [in § 423.2(b)] of submission of a handwriting exemplar as a condition of the application process.

Response

The Board declines to accept this suggestion because the Board believes that this tool enhances the existing statutory provision for the investigatory process, furthers the Board's enforcement capabilities and should be applicable to manufacturer applicants as well.

Comment

Request that "tax clearance review" in § 423.2(a)(5) be amended to "tax lien certificate," consistent with the language of the statute. Commentators expressed concern that a tax clearance requires over one year to complete.

Response

The Board accepts this recommendation in part, but not for the reason asserted. It has amended the term to be consistent with the statutory language but has chosen to retain the term "clearance." The term "clearance" is more encompassing and would include delinquencies where no lien has been filed. Non-filed tax periods would be an example. Accordingly the proposed term is replaced with "tax clearance and lien review." Further, the Department of Revenue has given its assurances to the Board that the tax clearance and lien review will be performed in an efficient and timely manner.

Comment

[Section 423.2(a)] Request the Board to require that all information collected by the Board during the application process, including the information prescribed by section 423.2(a), be placed into the evidentiary record of the application proceeding and served upon the applicant.

Response

The Board accepts this recommendation and has added language to the regulations that pertains to the evidentiary record of the applicant and that such information shall be served upon the applicant.

§ 423.3 License issuance.

Comment

[Section 423.3(a)(1)]

(1) The diversity requirements should not apply to manufacturers.

(2) The NJCC Act and regulations promulgated thereunder had requirements for diversity plans and goals. The USDC for the District of New Jersey found that the regulations of the NJCCC governing diversity goals and plans violated the Equal Protection Clause of the Fourteenth Amendment to the US Constitution and permanently enjoined the NJCCC from enforcing a licensee's Equal Employment and Business Opportunity Plan.

(3) Does this mean that applicants would have to establish a plan to bring in minority or women in an ownership position in our company, and is minority or women ownership mandated as a requirement for licensing?

Response

The Board declines to accept these interpretations of the statutory provisions regarding diversity compliance. Further, the Board disagrees with the legal conclusions made by the commentators. Pursuant to section 1325(b), the Board is authorized to ensure that "all persons are accorded equality of opportunity in employment and contracting." This language pertains to all entities licensed by the Board, including licensed manufacturers and suppliers. There is no specific exclusion of any entity licensed by the Board. The diversity plan pertains to employment and business transactions. The Board is authorized to ensure diversity by promulgating regulations that require licensees to comply with diversity provisions. The diversity component in the licensing regulations requires applicants to establish a diversity plan as a prerequisite to license issuance. This requirement is distinguishable from the New Jersey regulations as it does not make any numerical or quota-like mandates and therefore does not raise similar constitutional concerns.

The diversity requirements are within the general goal and intent of the legislature, which is to encourage diversity throughout every aspect of gaming. The regulations allow the Board to review and monitor each applicant's diversity plan on a case by case basis in order to evaluate the individual needs of each applicant. The Board has amended this provision to allow applicants to submit a diversity plan upon filing an application or certify that a diversity plan will be submitted within 30 days of filing the application.

Comment

The issue regarding the development and implementation of a Diversity Program should include a requirement that manufacturers be compliant with federal law regarding equal opportunity.

Response

The Board has not amended the regulations in response to this comment because it believes that the statute and the Board's regulations in no way interfere with the application of federal law in this area.

§ 423.5 Application withdrawal.

Comment

Requiring Board approval to withdraw an application is not respectful of the individual rights of applicants. Certain applicants may not understand the rigorous nature of the application process and may not want to

subject themselves or their families to intense public scrutiny.

Response

The Board declines to accept this recommendation. It is the standard practice of most state gaming agencies to promulgate regulations pertaining to an application withdrawal procedure. The Board has found from researching other jurisdictions that there are valid enforcement reasons for requiring Board approval of application withdrawals.

Chapter 427. Manufacturer Licenses

§ 427.1 Manufacturer license requirements.

Comment

[Section 427.1(a)] should be amended to include the terms "slot machines" and "associated equipment."

Response

The Board accepts this recommendation and has amended the language of this section.

§ 427.2 Manufacturer licensing standards and application.

Comment

The definition of key employee qualifier is too broad and will preclude small businesses in Pennsylvania from participating as manufacturers. The Board should add a waiver provision that allows the Board to waive the key employee qualifier licensing requirements for institutional investors and certain officers and directors, similar to the New Jersey Casino Control Commission regulatory provisions.

Response

The Board accepts this recommendation and has added waiver language to § 435.3(g) of the regulations, pertaining to the key employee qualifier license. Such language could narrow the potential number of key employee qualifiers that are required to be licensed by the Board.

Comment

The deposit of \$5,000 per application for each key employee qualifier is excessive and exceeds similar fees in other states.

Response

The Board declines to accept this recommendation. In determining the proper amount of the deposit accompanying each key employee qualifier application, the Board inquired into other jurisdictions as to the actual costs associated with such background investigations. This amount is based on the recommendation of jurisdictions and a projection of the average costs associated with these types of investigations. The Board may revisit this issue as the Board continues to collect data relevant to this issue on an ongoing basis.

Comment

The Board is not investigating a crime and therefore the applicant should not have to consent to "search and seizure."

Response

The Board declines to accept this recommendation. In section 1331(a)(2) of the act, the licensee is required to consent to "searches and seizures" as a duty associated with licensure. Accordingly an applicant for licensure must agree to comply with this duty as well. Further this

consent is consistent with other states' requirements of licensure and Pennsylvania law governing regulatory agency licensing powers.

Comment

[In subsection (b)] insert the words "copies of" between the words "of" and "financial" in the second line.

Response

The Board accepts this recommendation and has amended the regulations to reflect this change.

Comment

The requirement [in subsection (b)] that the manufacturer must provide books, records, documentation to attest to "the integrity of all financial backers, investors, bondholders, etc.," is too difficult and should be limited to those investors holding a controlling interest of greater than 5% interest in the manufacturer, which do not otherwise fall within the definition of an institutional investor.

Response

The Board declines to accept this recommendation as the Board believes that this requirement is necessary to further the integrity of gaming in this Commonwealth.

Comment

The regulation should clarify that the tax clearance and unemployment compensation tax review performed by the Department only applies to applicants filing returns with or having employees in the Commonwealth.

Response

The Board declines to accept this recommendation. The tax lien and clearance review performed by the Department applies to all applicants. If the applicant does not have any employees in the Commonwealth, the review will confirm this fact and demonstrate that the applicant has no outstanding taxes in this Commonwealth.

Comment

[Subsection (d)] eliminates the right to appeal contained in section 12 of the PA Gaming Act, and therefore, is beyond the powers authorized by the Act and likely unconstitutional.

Response

The Board disagrees with this legal conclusion. This section is consistent with section 1308(c) of the act. The Board has chosen to remove this section from the regulations as it believes that the statute speaks for itself.

§ 427.3 Alternative manufacturer licensing standards.

Comment

The Board has to determine that the licensing standard of another jurisdiction is similar for the alternative licensing process. As the Board during the best practices analysis reviewed the licensing requirements of a number of jurisdictions, the Board has likely determined that certain licensing standards are similar. The regulation should state that licenses issued by Nevada, New Jersey, Mississippi and licenses or approvals from the Department of Revenue in connection with services to be provided pursuant to the Act are similar, as well as other licenses as determined by the Board.

Response

The Board declines to accept this recommendation. While the Board agrees that certain states share similar regulatory requirements for licensees, the Board will not

include within this regulation a list of the acceptable jurisdictions. Regulatory requirements of various jurisdictions are subject to change and alteration year to year and thus the Board must retain the authority to review the licensing standards of various jurisdictions and to deem the licensing standards of a particular jurisdiction acceptable.

Comment

The Board should limit administrative or enforcement actions to those that are "material" as well.

Response

The Board has amended the language of this provision to allow the applicant who has a pending administrative action existing in another jurisdiction to adequately disclose and explain the action to the satisfaction of the Board.

Chapter 433. License Renewal

§ 433.1 Renewal of manufacturer and supplier license.

Comment

If the Board has a limited renewal form that only requires the licensee to update changes from the previous application, this requirement is not burdensome. As a recommendation, we ask that this be clarified in the regulation, so an entire new application is not required each year. Since updated applications can become unmanageable over time, the Board may wish to consider requiring the submission of a new, completed corporate application form every five years (but not key employee qualifiers).

Response

It is the intent of the Board to have a limited renewal application form that would not be as comprehensive as the entire application form. However, at its discretion, the Board may require periodic filing of a full application by the applicant upon the occurrence of significant events.

Comment

Would it be possible to issue an initial two-year supplier's license and then have annual renewals thereafter?

Response

The Board declines to accept this recommendation. Pursuant to section 1326(a) of the act, all permits and licenses are subject to renewal on an annual basis.

Chapter 435. Employees

§ 435.1 General provisions.

Comment

Should this section include a statement that § 435.1 pertains to employee licenses and permits?

Response

The Board accepts this recommendation and has amended the regulations to reflect this change.

Comment

In subsection (f), is the Board suggesting that manufacturers with offices and employees located and working internationally must all have U. S. work authorizations, notwithstanding such employee may not work in the U. S.? This requirement is too far reaching and should be limited to such employees regularly performing work on behalf of the manufacturer in the U. S. who are required to have work visas.

Response

The Board accepts this recommendation and has amended the regulations to limit the work authorization requirements to those employees located in this Commonwealth.

Comment

In subsection (g), the term "in consideration for" is certainly ambiguous. Is it a "reward" to transport a member of the PGCB or an employee thereof to view an applicant's manufacturing facility? Is it intended that, under such cases, the member or employee would have to require that the Board pay for such a trip and the Board would then bill the applicant for the trip?

Response

The Board has amended this section to read "in consideration or in exchange for obtaining a license . . ." This section is intended to prohibit the possibility of impropriety or the appearance of impropriety.

§ 435.2 Key employee qualifier license.

Comment

Please provide detail on the photograph requirement in subsection (b)(14). Must an applicant be physically present at a location in PA in order to meet this requirement?

Response

The Board acknowledges that applicants need not be photographed in Pennsylvania. The Board has amended the regulations to reflect this change in § 435.2(b)(20).

Comment

In subsection (b)(15), can you clarify that fingerprint cards do not need to be administered in the Commonwealth, but must be administered through either a law enforcement agency or person holding the proper certification and credentials to administer fingerprints?

Response

The Board accepts this recommendation and has amended the regulations to reflect this change in § 435.2(b)(21).

Comment

Subsection (b) should be clarified to indicate if the information in this section is for a supplemental form or is part of the multi-jurisdictional form.

Response

The Board declines to accept this recommendation as the language of the regulation sufficiently distinguishes this license application from the Multi-jurisdictional Personal History Disclosure Form.

§ 435.3 Key employee license.

Comment

Subsection (a) refers to "key employees as defined by the act." However, generally in the act, "key employee" refers to an employee of a slot machine licensee. This section of the draft regulations applies to slot machine licenses, manufacturer licenses and supplier licensees. Please clarify this point.

Response

Under section 1202 of the act, the Board has broad discretionary power to license individuals or entities associated with gaming. The Board has determined that the key employee license requirement shall apply to slot

machine licensees, manufacturer licensees and supplier licensees. The Board believes that this is an appropriate level of investigation for employees in these positions at each of the licensed entities. As way of further response, key employees are referenced in section 1317(b)(2) of the act, which pertains to suppliers and manufacturers. Accordingly the Board's inclusion of key employee licensing for manufacturers and suppliers is consistent with the intent of the act. The Board has amended this section to provide for a waiver of certain employees whose duties are not assigned to this Commonwealth.

Comment

In subsection (c), a law enforcement letter of reference is not something that is typically issued.

Response

The requirement of a "letter of reference" from a law enforcement agency is consistent with application requirements for casino licenses in other jurisdictions. As way of further response, this provision is consistent with section 1310(b) of the act which provides for an alternative means of meeting this requirement if no letter is issued from the law enforcement agency.

§ 435.4 Occupation permit.

Comment

Recommendation to add the following language to subsection (a): An individual employed by a slot machine licensee, "a manufacturer licensee," a supplier licensee, or a gaming employee as defined under section 1103 of the act and § 401.4 must apply for and receive an occupation permit from the Board.

Response

The Board declines to accept this recommendation as it is inconsistent with the definition of "gaming employee." However, because the Board has amended the regulations to permit employees of manufacturers who are exempted from the supplier requirement, the Board has also amended this section to require these employees to be permitted.

Chapter 451. Licensee Recordkeeping Requirements

§ 451.1 Recordkeeping generally.

Comment

This chapter does not address the method or form by which licensees must keep required records. The Board should specify that records may be kept by any available method or means, including paper, magnetic and electronic.

Response

The Board declines to accept this recommendation as there is nothing in the language of this regulation precluding a licensee from keeping records electronically. The Board's primary concern is that the records are secure from theft, loss or destruction.

Comment

Add "general accounting records" to the list of required records.

Response

The Board accepts this recommendation and has amended the regulations to reflect this change.

Comment

In subsection (a)(3), the requirement that all promotional material and advertising be maintained is extremely broad and could be needlessly burdensome.

Response

The Board declines to accept this recommendation as the Board believes these materials are legally relevant and should be retained.

Comment

The Board should specify the matters it wishes the employer to retain in a personnel file in subsection (a)(4).

Response

The Board declines to accept this recommendation. The Board seeks to have the licensees retain a personnel file for each employee for the purpose of monitoring employee licenses and permits. The contents of the file will not be prescribed by the Board.

Comment

The Board should define "sales representative" in subsection (a)(4).

Response

The Board has stricken the term sales representative from this subsection as it is captured by the reference to each employee of the licensee in this subsection.

Chapter 461. Slot Machine Testing and Certification Requirements

§ 461.1 Protocol requirements.

Comment

It would expedite implementation of gaming to perform the necessary protocol testing of a few control monitoring systems with the central control system to ensure the required information is being properly communicated rather than testing the protocol and reporting of each and every machine model with the central control system. Any hardware or software modification to a slot machine model would require testing with the central control computer that could result in slowing entry of new products into the Commonwealth.

Response

The Department of Revenue is in the process of developing a protocol for the central control computer system. The Board is reviewing the practices of other jurisdictions and feasibility of testing large numbers of slot machines. The Board will consider these recommendations in its consultations with the Department of Revenue.

Comment

This section should address a substantive protocol requirement as required in section 1323(a)(2) of the Act.

Response

At a future point in time, the Board intends to accept public comment from manufacturers regarding protocol regulations, as required in section 1324 of the Act. The Board is aware of the need to promulgate regulations in this area.

§ 461.2 Testing and certification generally.

Comment

Would associated equipment also be required to be tested and certified through an independent lab?

Response

The Board will consider the extent to which associated equipment will require testing and certification.

Comment

In subsection (c), add "or both" after "either" in order to give the Board greater latitude in game certification.

Response

The Board accepts this recommendation and has amended the regulations to reflect this change.

Comment

Subsections (a) and (b) should be amended to include "slot machine models, games and associated equipment designed specifically for and integral to gaming operations."

Response

The Board declines to accept this recommendation. The terms offered to modify the existing language are not defined terms. However, the Board has amended the language in subsection (a) to further clarify the intent of this section.

Comment

In subsection (c)(1), the Board should indicate that the acceptable jurisdictions include, but not be limited to, Nevada, New Jersey and Mississippi.

Response

The Board declines to accept this recommendation. The Board will not include a list of states with acceptable testing and certification standards in this regulation. As technology continually improves, the testing and certification capabilities of a particular jurisdiction are subject to change and alteration. Accordingly the Board must retain the authority to review the testing and certification standards of various jurisdictions and to deem the standards of a particular jurisdiction acceptable.

Comment

The Board should add the following language to subsections (c)(1) and (2): "pursuant to such gaming jurisdictions' current published testing and technical standards."

Response

The Board declines to accept this recommendation as it feels that this section adequately references the statutory language governing this form of certification. Further, the Board believes the statute speaks for itself.

Comment

Subsection(c)(2) should be amended to read: "Utilize the services of approved slot machine testing and certification facilities, which are recognized by major gaming jurisdictions within the United States, to conduct testing . . ."

Response

The Board declines to accept this recommendation as it is not clear by whom the facilities would be approved. Further, the Board is not bound to utilize testing facilities that are recognized by other gaming jurisdictions. The Board recognizes the need to utilize a testing facility that is reputable and will ensure the integrity of gaming in this Commonwealth.

Comment

Subsection (c)(2) should be amended to permit the Board to utilize the services of more than one slot machine testing and certification facility before it establishes a permanent facility.

Response

The Board agrees to review this recommendation.

*Chapter 471. Filing Fees**§ 471.1 Fees generally.**Comment*

The Board should include language that would tie the fees that the Board could levy and collect to the Board's annual operating budget. Such a requirement would act to constrain the Board's authority in setting fees to that which is reasonable to fund the Board's operations.

Response

The Board acknowledges the financial concerns of potential applicants with regard to the fees associated with licensing. The Board feels that this recommendation is not consistent with the Board's statutory authority and declines to accept this recommendation. Although the Board is given broad authority to levy and collect fees from the applicants, licensees and permittees pursuant to section 1208 of the act, the Board's authority to raise fees is subject to statutory limitation. In section 1208(2) of the Act, the Board is prohibited from raising the fees until two years after the passage of the Act and may only increase fees by an amount not to exceed an annual cost-of-living adjustment.

*§ 471.3 Schedule of fees (formerly Schedule of fees for manufacturer and supplier licenses).**Comment*

We request that the Board make it clear in this section that slot machine licensees will not be responsible for the costs associated with the licensing of suppliers and manufacturers.

Response

The Board declines to accept this recommendation as it believes that it is clear from the statute and the regulations that the fees will be collected directly from the manufacturer and supplier applicants and licensees, and not from any other licensee.

Comment

Subsection (a) does not address the disposition of surplus amounts should the cost of a manufacturer's or supplier's Key Employee Qualifier background investigations be less than \$5,000 per person. We recommend that any surplus be credited back to the specific manufacturer or supplier applicant.

Response

The Board declines to accept this recommendation at this time. Section 1208(1)(iii) requires the Board to collect a nonrefundable fee set by the Board for the cost of a background investigation. This amount is based on the recommendation of jurisdictions and a projection of the average costs associated with these types of investigations. The Board may revisit this issue as the Board continues to collect data relevant to this issue on an ongoing basis.

Comment

We would request that the language in subsection (c) allowing the Board the option to increase fees annually be amended so that the Board may only increase fees every 2 to 3 years, and then only when warranted.

Response

The Board acknowledges the concerns of business owners and potential licensees and will consider the financial

needs of the licensees when the Board has the authority to raise fees. The Board declines to accept this recommendation as it is inconsistent with the Board's statutory authority in section 1208(2) of the act. As way of further response, the Board's ability to increase fees commences two years after the passage of the act. At that time, the Board may only increase fees by an amount not to exceed an annual cost-of-living adjustment.

Chapter 481. General Provisions

§ 481.2 Definitions.

Comment

This section defines participation plan as a plan developed by a licensed entity, including manufacturers and suppliers, that requires the utilization of a minority or women owned business enterprise for a specific minimum percentage of the value of the contract. This may not be constitutionally permissible.

Response

In order to negate a unconstitutional interpretation of this provision, the Board has amended this definition.

§ 481.3 Diversity participation.

Comment

How is the list of minority and women's business compiled?

Response

The Bureau of Minority and Women's Business Enterprises of the Department of General Services compiles a list of certified minority and women's businesses through an application and approval process. Minority- and women-owned businesses apply for certification through the Bureau of Minority and Women's Business Enterprises and once they are approved and certified, the companies are added to the list.

§ 481.4 Establishment of diversity plan required.

Comment

Section (a) should describe the steps that Minority and Women's Business Enterprise can take with the Licensee before filing a formal complaint with the Board.

Response

The Board agrees to review this recommendation.

Comment

In sections (a) and (b), construction activities, i.e. construction of the facilities, should be identified as areas for Minority and Women's Business Enterprises participation.

Response

Prior to an entity submitting an application, the Board does not have jurisdiction to enforce diversity participation. However, the Board agrees to review this recommendation.

Chapter 495. Documentary Filings

§ 495.1 Form of documentary filings generally.

Comment

Add a new subpart (d) before the existing subpart (d) as follows: "Pleadings shall be endorsed with an address where papers may be served in connection with the pending proceedings as well as a phone number. Endorsement with a fax number shall constitute endorser's agreement to accept papers connected with the proceeding by fax. Notation of counsel's current Supreme Court

identification number issued by the Court Administrator of Pennsylvania shall constitute proof of the right to practice in the Commonwealth." This conforms to PA Rules of Civil Procedure Section 205.1 and 4401(d)(1).

Response

The Board agrees to review this recommendation.

§ 495.5 Execution of documents.

Comment

The Board should consider permitting all filings to be made by fax or electronic means.

Response

It is the Board's intent to make electronic filings possible at a future date. The Board continues to review electronic document filing and management systems and those used by other jurisdictions. While the Board seeks to create the most efficient means of filing possible, the Board likewise must ensure the integrity and security of the filing system in place.

Comment

In section (b)(2), the reference to supplemental documentation "may be required" seems like an after-the-fact requirement. Is the document deemed filed if the Board requires supplemental information? We suggest that the document should have information evidencing signor's authority rather than request the evidence after-the-fact.

Response

The Board declines to follow the recommendation that such documents be required to include such supplemental evidence upon their filing. This provision of the Board's regulations is consistent, verbatim, with 1 Pa. Code § 33.11(b)(2) (Execution) as well as 52 Pa. Code § 1.35(b)(2) (Execution), and is standard administrative practice in the Commonwealth.

Chapter 497. Time

§ 497.4 Effective dates of Board orders.

Comment

All Board orders promulgating regulations should be published on the Internet concurrently with their publication in the *Pennsylvania Bulletin*.

Response

The Board agrees with this comment and intends to proceed in this fashion by making its public meeting minutes, orders, and regulations available both on the Internet and in the *Pennsylvania Bulletin*.

Paperwork

The Board is publishing manufacturer applications and other necessary forms for the administration of licensing manufacturers. The Board is developing a docket process to monitor and track submitted applications.

The Board will publish notices in the *Pennsylvania Bulletin* identifying those manufacturers who have been awarded licenses by the Board.

Financial Impact

Act 71 and the temporary regulations will provide for the implementation and management of gaming within this Commonwealth and the collection of fees and taxes from entities and individuals authorized by the Board to be employed in, provide gaming related services or operate gaming facilities.

The appropriations from the Commonwealth for the implementation of Act 71 and costs of administering Act 71 will be reimbursed by the licensed gaming entities as specified within Act 71. Individuals and entities that wish to obtain licenses as manufacturers, suppliers or gaming entities shall pay to the gaming fund significant licensing fees to obtain the authority to do business within this Commonwealth. Part of these fees shall reimburse the Board and the Pennsylvania State Police for licensing processes and background investigations. The licensing and registration of individuals and other classes of licensees will be reimbursed by the individuals and or licensees through fees established by the Board.

It is anticipated that all expenses of the Board and all associated activities will be reimbursed by the applicants and gaming entities as previously specified. The Board will have no financial impact on the State budget.

Statutory Authority

Section 1203 of 4 Pa.C.S. provides the Board authority to adopt and publish temporary regulations to implement the policies and purposes of Act 71.

Regulatory Review

Under 4 Pa.C.S. § 1203, the Board may adopt temporary regulations that are exempted from the Regulatory Review Act and sections 201—205 of the CDL. Section 1203 of 4 Pa.C.S. provides that the Board's authority to adopt regulations expires 2 years from the effective date of Act 71.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 1203, the temporary regulations are exempt from the requirements of the Regulatory Review Act and sections 201—205 of the CDL.

(2) A 30-day public comment period was held prior to the adoption of the temporary regulations. All comments received by the Board were reviewed and considered.

(3) The adoption of the temporary regulations provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(a) The Board, acting under the authority of Act 71, adopts as its final form temporary regulations the draft regulations adopted by resolution at the June 16, 2005, Board meeting. The temporary regulations concern general administrative practice and procedure before the Board and the specific licensing standards for gaming equipment manufacturers.

(b) The following temporary regulations of the Board, 58 Pa. Code, are added: §§ 401.1—401.5, 403.1—403.4, 407.1—407.3, 421.1—421.4, 423.1—423.5, 427.1—427.3, 433.1, 435.1—435.4, 451.1, 461.1, 461.2, 471.1—471.3, 481.1—481.5, 491.1, 491.2, 495.1—495.7, 497.1—497.5 and 499.1—499.7 to read as set forth in Annex A.

(c) The temporary regulations are effective June 16, 2005.

(d) The temporary regulations shall be posted in their entirety on the Board's website and in the *Pennsylvania Bulletin*.

(e) The temporary regulations shall be subject to amendment as deemed necessary by the Board in accordance with the purpose of Act 71 and in order to further the intent of Act 71.

(f) The Chairperson of the Board shall certify the preceding order and deposit the regulations with the Legislative Reference Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-1. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subp.

- A. GENERAL PROVISIONS**
- B. LICENSING, REGISTERING AND PERMITTING**
- C. (Reserved)**
- D. RECORDKEEPING**
- E. SLOT MACHINE TESTING AND CERTIFICATION FEES**
- F. MINORITY AND WOMEN'S BUSINESS ENTERPRISES PRACTICE AND PROCEDURE**

Subpart A. GENERAL PROVISIONS

Chap.

- 401. PRELIMINARY PROVISIONS**
- 403. BOARD OPERATIONS AND ORGANIZATION**
- 407. PUBLIC ACCESS TO BOARD RECORDS**

CHAPTER 401. PRELIMINARY PROVISIONS

Sec.

- 401.1. Purpose.
- 401.2. Scope.
- 401.3. Construction.
- 401.4. Definitions.
- 401.5. Jurisdiction.

§ 401.1. Purpose.

The purpose of this part is to facilitate the implementation of the act.

§ 401.2. Scope.

(a) This subpart governs the practice and procedure before the Board.

(b) This subpart is intended to supersede the applicability of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to practice and procedure before the Board.

§ 401.3. Construction.

(a) This part shall be liberally construed to secure the just, speedy and efficient determination of every action or proceeding to which it is applicable. The Board at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(b) The Board at any stage of an action or proceeding may waive a requirement of this part when necessary or appropriate, if the waiver does not adversely affect a substantive right of a participant as determined by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.2 (relating to liberal construction).

§ 401.4. Definitions.

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

Act—The Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §§ 1101—1904).

Affiliate or affiliated company—A person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

Applicant—A person, officer, director or key employee, who on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under the act. In cases in which the applicant is a corporation, foundation organization, business trust, estate, limited liability company, trust, partnership, limited partnership, association or any other form of legal business entity, the Board will determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

Application—A written request, on a form or forms approved by the Board, for permission to engage in an act or activity which is regulated under the act. An application shall include supplements, reports, documentation or other information requested by the Board as part of the application process.

Application fee—The amount of money required to be paid by an applicant for processing an application submitted to the Board. Payments are nonrefundable.

Approved, approval or approve—When used in reference to an application submitted to the Commissions to conduct harness or thoroughbred race meetings or to the Board to authorize and regulate the placement and operation of slot machines, the terms refer to the date that an application to the Commissions or the Board is granted regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of either Commission or the Board.

Associated equipment—Equipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming, including linking devices which connect to progressive slot machines or slot machines, replacement parts needed to conduct slot machine gaming, equipment which affects the proper reporting of gross revenue, computerized systems for controlling and monitoring slot machines, including the central control computer and devices for weighing or counting money.

Authority—An authority created by the Commonwealth which purchases State gaming receipts under section 1202 of the act (relating to general and specific powers).

Authorized personnel—A member or designated employee of the Board or a designated employee or agent of the Bureau.

Background investigation—A security, criminal, credit and suitability investigation of a person as provided for in the act. The investigation shall include the status of taxes owed to the United States and to the Commonwealth and its political subdivisions.

Backside area—

(i) Those areas of the racetrack facility that are not generally accessible to the public and which include facilities commonly referred to as barns, track kitchens, recreation halls, backside employee quarters and training tracks, and roadways providing access thereto.

(ii) The term does not include those areas of the racetrack facility which are generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surfaces, paddock enclosures and walking rings.

Board—The Pennsylvania Gaming Control Board established under section 1201 of the act (relating to Pennsylvania Gaming Control Board established).

Bonds—Bonds, notes, instruments, refunding notes and bonds and other evidences of indebtedness or obligations, which an authority issues to fund the purchase of State gaming receipts.

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

Central control computer—A central site computer controlled by the Department and accessible by the Board to which all slot machines 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 slot machine, including coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure, and remote machine activation and disabling of slot machines.

Cheat—

(i) To alter without authorization the elements of chance, method of selection or criteria which determine:

(A) The result of a slot machine game.

(B) The amount or frequency of payment in a slot machine game.

(C) The value of a wagering instrument.

(D) The value of a wagering credit.

(ii) The term does not include altering for required maintenance and repair.

Clerk—The Clerk to the Board.

Commission or Commissions—The State Horse Racing Commission or the State Harness Racing Commission, or both, as the context may require.

Complainants—Persons who complain to the Board or Bureau of an act or omission by an applicant, licensee, permittee or person, or alleged violation of the act, or of this part, or of an order of the Board.

Confidential information—

(i) Background investigation information, including all information provided under section 1310(a) of the act (relating to slot machine license application character requirements), submitted in connection with an application required for the issuance of any license or permit under this part, Board rules, discovery procedures or cross-examination or that is provided as a courtesy to a party in a formal proceeding received by the Board or the Department as well as records obtained or developed by the Board or the Department as part of an investigation related to an applicant, licensee or permittee containing any of the following:

(A) Personal information, including home addresses, telephone numbers, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, credit-worthiness, or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.

(B) Documents and information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategy which may include customer-identifying information or customer prospects for services subject to competition.

(C) Security information including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures.

(D) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy as determined by the Board.

(E) Records or information that is designated confidential by statute or the Board.

(F) Records of an applicant or licensee not required to be filed with the United States Securities and Exchange Commission by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 781) or are required to file reports under section 15D of that act (15 U.S.C.A. § 780-6).

(G) Records considered nonpublic matters or information by the United States Securities and Exchange Commission as provided by 17 CFR 200.80 (relating to Commission records and information).

(ii) *Exceptions.* Notwithstanding anything contained in subparagraph (i) to the contrary:

(A) Records containing information received by the Board or the Department or information obtained or developed as part of an investigation related to the applicant, licensee or permittee may be disclosed to State or Federal law enforcement agencies or entities when the Attorney General or a court of competent jurisdiction determines that the information contains evidence of a possible violation of laws, rules or regulations enforced by those agencies or entities.

(B) Records from an applicant, licensee or permittee may be disclosed to the applicant, licensee or permittee upon written request. Records from an applicant, licensee or permittee may be disclosed to a person with the written consent of the applicant, licensee or permittee.

(C) Records containing information from an applicant, licensee or permittee that is already in the public domain or subsequently becomes a part of the public domain by an action by the applicant, licensee or permittee is not subject to the confidentiality requirement set forth in subparagraph (i).

Controlling interest—A person shall be deemed to have the ability to control a publicly traded entity, or to elect one or more of the members of its board of directors, if the holder owns or beneficially holds 5% or more of the securities of the publicly traded domestic or foreign corporation, partnership, limited liability company or other form of legal entity, unless the presumption of control or ability to elect is rebutted by clear and convincing evidence. A person who is a holder of securities of a privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity shall be deemed to possess a controlling interest unless the presumption of control is rebutted by clear and convincing evidence.

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 an order of Accelerated Rehabilitative Disposition.

Department—The Department of Revenue of the Commonwealth.

Final order—Includes the following:

(i) An order by the Board which approves, issues, renews, revokes, suspends, conditions, denies issuance or renewal of a license or permit.

(ii) An action by the Board which affects personal or property rights, privileges, immunities, duties, liabilities or obligations and disposes of all claims by or against parties before the Board.

(iii) An action by the Board which is designated by the Board as final.

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

Formal record—The pleadings in a matter or proceeding, a notice or Board order initiating the matter or proceeding, and if a hearing is held, the following shall be included in the formal record: transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, determinations made by the Board thereon, and certifications to the Board.

Federal tax identification number—The Social Security number of an individual or the Employer Identification Number of a business entity, fiduciary or other person.

Fund—The State Gaming Fund established under section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

Gaming employee—

(i) An employee of a slot machine licensee, including:

(A) Cashiers.

(B) Change personnel.

(C) Counting room personnel.

(D) Slot attendants.

(E) Hosts or other persons authorized to extend complimentary services.

(F) Machine mechanics or computer machine technicians.

(G) Security personnel.

(H) Surveillance personnel.

(I) Supervisors and managers.

(ii) The term includes employees of a person holding a supplier license whose duties are directly involved with the repair or distribution of slot machines and associated equipment sold or provided to a licensed facility within this Commonwealth as determined by the Board.

(iii) The term does not include bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the Board.

Gross terminal revenue—The total of wagers received by a slot machine minus the total of:

(i) Cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine.

(ii) Cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine.

(iii) Any personal property distributed to a patron as the result of playing a slot machine. This does not include travel expenses, food, refreshments, lodging or services.

(iv) The term does not include counterfeit money or tokens, coins or currency of other countries which are received in slot machines (except to the extent that they are readily convertible to United States currency), cash taken in fraudulent acts perpetrated against a slot machine licensee for which the licensee is not reimbursed or cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

Horsemen of this Commonwealth—

(i) A thoroughbred or standardbred horse owner or trainer who enters and runs his horse at a licensed racing entity in the current or prior calendar year and meets the requirements of the horsemen's organization of which he is a member to participate in the receipt of benefits therefrom.

(ii) The term includes an employee of a trainer who meets the requirements of the horsemen's organization of which he is a member to participate in the receipt of benefits therefrom.

*Horsemen's organization—*A trade association which represents the majority of owners and trainers who own and race horses at a licensed racetrack.

*IRS—*The Internal Revenue Service of the United States.

*Institutional investor—*A retirement fund administered by a public agency for the exclusive benefit of Federal, State or local public employees, investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed end investment trust, chartered or licensed life insurance company or property and casualty insurance company, banking and other chartered or licensed lending institution, investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21), and other persons as the Board may determine consistent with this part.

*Issued, issuance or issue—*When used in reference to an application submitted to the State Horse Racing Commission or the State Harness Racing Commission to conduct harness or thoroughbred race meetings or the Board to authorize the placement and operation of slot machines, the terms refer to the date when a determination by the Commissions or the Board approving an application brought before the agencies becomes final, binding and nonappealable and is not subject to a pending legal challenge.

*Key employee—*Any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage and credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptroller and any employee who supervises the operations of these departments or to whom these department directors or department heads report and other positions which the Board will determine based on detailed analyses of job descriptions as provided

in the internal controls of the applicant or licensee as approved by the Board under section 1322(c) of the act (relating to slot machine accounting controls and audits). All other gaming employees unless otherwise designated by the Board, will be classified as nonkey employees.

*Key employee qualifier—*Officers; directors; persons who directly or indirectly hold any beneficial interest in or ownership of the securities of an applicant or licensee; a person who has the ability to control the applicant or licensee, has a controlling interest in the applicant or licensee, elects a majority of the board of directors of the applicant or licensee, or otherwise has the ability to control the applicant or licensee; a lender, 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; an underwriter; and an employee of a slot machine applicant or licensee, manufacturer applicant or licensee or supplier applicant or licensee required to be licensed by the Board.

*License fee—*The amount of money required to be paid for the issuance or renewal of any type of license required by the act, this part, or as directed by the Board.

*Licensed entity—*A slot machine licensee, manufacturer licensee, supplier licensee or other person licensed by the Board under this part.

*Licensed facility—*The physical land-based location and associated areas at which a licensed gaming entity is authorized to place and operate slot machines.

*Licensed gaming entity or slot machine licensee—*A person that holds a slot machine license under this part.

*Licensed racetrack or racetrack—*The term includes the physical facility and grounds where a person has obtained a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct live thoroughbred or harness race meetings respectively with pari-mutuel wagering. The term "racetrack or "its racetrack" means the physical land-based location at which live horse racing is conducted even if not owned by the person.

*Licensed racing entity—*A legal entity that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from either the State Horse Racing Commission or the State Harness Racing Commission under the Race Horse Industry Reform Act.

*Manufacturer—*A person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth for gaming purposes.

*Manufacturer license—*A license issued by the Board authorizing a manufacturer to manufacture or produce slot machines or associated equipment for use in this Commonwealth for gaming purposes.

*Manufacturer licensee—*A manufacturer that obtains a manufacturer license.

*Manufacturer's serial number—*The unique number permanently assigned to a slot machine by a manufacturer for identification and control purposes, which number shall be affixed to the outside of the slot machine cabinet in a location as approved by the Board.

*Municipality—*A city, borough, incorporated town or township.

Net terminal revenue—The net amount of the gross terminal revenue less the tax and assessments imposed under sections 1402, 1403, 1405 and 1407 of the act.

Nonprimary location—A facility in which pari-mutuel wagering is conducted by a licensed racing entity other than the racetrack where live racing is conducted.

Occupation permit—A permit authorizing an individual to be employed or work as a gaming employee.

Permit fee—The amount of money required to be paid for issuance or renewal of any type of permit required by the act, this part or as directed by the Board.

Permittee—A holder of a permit issued under this part.

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

Progressive payout—A slot machine wager payout that increases in a monetary amount based on the amounts wagered in a progressive system.

Progressive system—A computerized system linking slot machines in one or more licensed facilities within this Commonwealth and offering one or more common progressive payouts based on the amounts wagered.

Qualified majority—A vote by the Board consisting of at least one member of the Board who is a gubernatorial appointee and each of the four legislative-appointees.

Race Horse Industry Reform Act—45 P. S. §§ 325.101–325.402.

Respondents—Persons subject to the jurisdiction of the Board, who are required to respond to an order or notice issued by the Board or the Bureau instituting a proceeding or investigation.

Revenue or tourism-enhanced location—Any location within this Commonwealth determined by the Board, which will maximize net revenue to the Commonwealth or enhance year-round recreational tourism within this Commonwealth, in comparison to other proposed facilities and is otherwise consistent with the act and its declared public policy purposes.

SEC—The Securities and Exchange Commission of the United States.

Securities—As defined in the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101–1-703).

Slot machine—

(i) A mechanical or electrical contrivance, terminal, machine or other device approved by the Board which, upon insertion of a coin, bill, ticket, token or similar object therein or upon payment of any consideration, including the use of electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance, or both, may deliver or entitle the person playing or operating the contrivance, terminal, machine or other device to receive cash, billets, tickets, tokens or electronic credits to be exchanged for cash or to receive merchandise or anything of value, whether the payoff is made automatically from the machine or manually. A slot machine:

(A) May utilize spinning reels or video displays, or both.

(B) May or may not dispense coins, tickets or tokens to winning patrons.

(C) May use an electronic credit system for receiving wagers and making payouts.

(ii) The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.

Slot machine license—A license issued by the Board authorizing a person to place and operate slot machines under the act.

Slot machine licensee—A person that holds a slot machine license.

State gaming receipts—Revenues and receipts required by the act to be paid into the State Gaming Fund, the Pennsylvania Race Horse Development Fund and the Pennsylvania Gaming Economic Development and Tourism Fund, and all rights, existing on July 5, 2004, or coming into existence after July 5, 2004, to receive any of those revenues and receipts.

State Treasurer—The State Treasurer of the Commonwealth.

Supplier—A person that sells, leases, offers or otherwise provides, distributes or services slot machines or associated equipment for use or play of slot machines in this Commonwealth at a licensed gaming facility.

Supplier license—A license issued by the Board authorizing a supplier to provide products or services related to slot machines or associated equipment to licensed gaming entities.

Supplier licensee—A supplier that holds a supplier license.

Trade secret—A private formula, pattern, device, cost study or compilation of information which is used in a business and which, if disclosed, would provide the opportunity to obtain an advantage over competitors who do not know or use it.

§ 401.5. Jurisdiction.

The Board will have exclusive jurisdiction over all matters within the scope of its powers under the act.

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

Sec.	
403.1.	Participation at meetings and voting.
403.2.	Meetings.
403.3.	Board office hours.
403.4.	Public communication.

§ 403.1. Participation at meetings and voting.

(a) *Qualified majority vote.* Any action by the Board, except as set forth in subsections (b) and (c), including the approval, issuance, denial or conditioning of a license or the making of an order or the ratification of a permissible act done or order made by one or more of the members of the Board shall require a qualified majority vote.

(b) *Majority vote.* Any action by the Board to suspend, revoke, not renew, void or require forfeiture of a license or permit previously issued by the Board, to impose an administrative fine or penalty or to issue cease and desist orders under section 1201 of the act (relating to Pennsylvania Gaming Control Board established), shall require a majority vote of all the Board members.

(c) *Disqualifying interest.* If a Board member has a disqualifying interest in a voting matter, the member shall disclose the nature of his disqualifying interest, disqualify himself and abstain from voting in a proceeding in which his impartiality may be reasonably questioned, including instances where he knows that he

possesses a substantial financial interest in the subject matter of the proceeding or an interest that could be substantially affected by the outcome of the proceeding. If it is a legislative appointee member that has disqualified himself, the qualified majority shall consist of the remaining three legislative appointees and at least two gubernatorial appointees.

(d) *Member abstention.* When a member has disqualified himself, his abstention from voting shall apply only to the singular voting matter that led to his disqualification and not apply to other matters under consideration by the Board for which he is otherwise qualified.

§ 403.2. Meetings.

(a) *Public sessions.* The proceedings of all public sessions will be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act).

(b) *Regularly scheduled meetings.* The Board will meet in Harrisburg once a month, and on other dates, times and locations as the Board determines.

(c) *Participation via telephone or video teleconference.* When it is possible, Board members will attend meetings in person. A Board member may participate in a meeting by means of telephone or video teleconference when it is impractical for the Board member to attend the meeting in person.

(d) *Record of proceedings.* The Board will cause to be kept a record of all proceedings held at public meetings of the Board. A verbatim transcript of those proceedings will be prepared by the Board and posted on the Board's website.

§ 403.3. Board office hours.

Board offices will be open from 9 a.m. to 5 p.m. on business days except Saturdays, Sundays and legal holidays or unless otherwise directed by the Board.

§ 403.4. Public communication.

Requests for information regarding the Board may be directed to:

Office of Communications
Pennsylvania Gaming Control Board
P. O. Box 69060
Harrisburg, Pennsylvania 17106-9060

CHAPTER 407. PUBLIC ACCESS TO BOARD RECORDS

- Sec. 407.1. Case files.
- 407.2. Minutes of public meeting and annual report.
- 407.3. Extensions of time to review folders.

§ 407.1. Case files.

(a) *Records.* Formal records in proceedings before the Board or the Bureau shall contain a file for nonconfidential records and a file for confidential records.

(b) *Contents.* Contents of folders containing records relating to a particular proceeding shall conform to the following:

(1) A nonconfidential file shall contain formal records, complaints, petitions, answers, replies, motions, briefs, orders and opinions that are nonconfidential. The file shall also include correspondence, reports and other materials that are nonconfidential.

(2) A confidential folder shall contain confidential information which may include formal records, complaints, petitions, answers, replies, motions, briefs, orders and

opinions. The file shall also include correspondence, reports and other materials that are confidential.

(c) *Access.* Access to formal records shall conform to the following:

(1) Nonconfidential formal records shall be available for inspection upon request made during normal Board business hours.

(2) Requests for confidential formal records shall be made to determine if the material may be released for inspection. The Board or the Bureau shall review the request and provide its determination and notice to the requestor within 30 days of the request.

(d) The Board or its designee may issue protective orders or establish standards governing the protection of proprietary or confidential documents for a given proceeding or a given type of proceeding. All parties to a proceeding shall submit, classify and mark documents in accordance with the directives of the Board or its designee. In the absence of any protective order or standard, parties shall clearly mark documents that are deemed to be proprietary or confidential, which documents shall be treated as marked by the Board. Any party or member of the public may dispute the designation of a document as submitted by filing a notice of dispute with the Board. The Board will determine the proper classification of documents subject to a notice of dispute as soon as administratively possible.

§ 407.2. Minutes of public meeting and annual report.

Minutes of the public meeting and annual reports shall be available for public inspection and copying upon request to the Office of the Clerk during normal Board business hours and for a certain cost for copying as the Board may determine through a schedule published in the *Pennsylvania Bulletin*.

§ 407.3. Extensions of time to review folders.

For good cause the Board may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Board considers confidential, the Board may direct the appropriate treatment thereof.

Subpart B. LICENSING, REGISTERING AND PERMITTING

- Chap. 421. GENERAL PROVISIONS
- 423. APPLICATIONS
- 427. MANUFACTURER LICENSES
- 433. LICENSE RENEWAL
- 435. EMPLOYEES

CHAPTER 421. GENERAL PROVISIONS

- Sec. 421.1. General requirements.
- 421.2. Licenses and permits.
- 421.3. Disqualification criteria.
- 421.4. Investigations; supplementary information.

§ 421.1. General requirements.

(a) A license issuance, renewal or other licensing approval issued by the Board is deemed a revocable privilege. No person holding a license, renewal, or other licensing approval is deemed to have any property rights.

(b) An application submitted under the act constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

(c) An application for license, renewal or other licensing approval from the Board will constitute a request to

the Board for a decision on the applicant's general suitability, financial suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in this Commonwealth. By filing an application with the Board, the applicant specifically consents to investigation to the extent deemed appropriate by the Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant, and other persons as determined by the Board.

(d) By applying for a license, renewal or other licensing approval from the Board, the applicant agrees to:

(1) Abide by all provisions of the act.

(2) Waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during an investigation of the applicant.

(3) Consent to execute all releases requested by the Board.

(e) No applicant, permittee or licensee may give or provide, or offer to give or provide, compensation or reward or a percentage or share of the money or property played or received through gaming in consideration or in exchange for obtaining a license or permit issued pursuant to this part.

(f) An individual regulated by this part shall have a duty to inform the Board and the Bureau of an action which the individual believes would constitute a violation of the act. No person who so informs the Board or the Bureau will be discriminated against by an applicant, licensee or person for supplying the information.

§ 421.2. Licenses and permits.

(a) Licenses that may be issued by the Board include:

(1) Manufacturer license, which authorizes the approved licensee to manufacture, build, rebuild, fabricate, assemble, produce, program, design or otherwise make modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(2) Supplier license, which authorizes the approved licensee to sell, lease, offer or otherwise provide, distribute or service slot machines or associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(3) Slot machine license, which authorizes the approved licensee to place and operate slot machines and associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(4) Key employee qualifier license, which authorizes the approved key employee qualifier to hold a designated position or be associated with an applicant or holder of a manufacturer license, a supplier license or a slot machine license.

(5) Key employee license, which authorizes the approved key employee to be employed in a designated position by an applicant or holder of a manufacturer license, supplier license or slot machine license.

(b) Permits that may be issued by the Board include occupation permits which authorize individuals to be employed as gaming employees by slot machine licensees and supplier licensees.

§ 421.3. Disqualification criteria.

A manufacturer license, a supplier license or a slot machine license or a renewal thereof, may be denied, suspended or revoked to or from a person or applicant who has failed to provide to the satisfaction of the Board that the person or applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and with this part, who has violated the act or this part, who is disqualified under the criteria set forth in the act, who has materially departed from representation made in the application for licensure or renewal, or who has failed to comply with applicable Federal or state laws or regulations. A suspension, non-renewal or denial of a license or license application may be made for a sufficient cause consistent with the act and the public interest.

§ 421.4. Investigations; supplementary information.

The Board and the Bureau may make an inquiry or investigation concerning an applicant, licensee or any associate of the applicant or licensee as it may deem appropriate either at the time of the initial application and licensure or at any time thereafter. It shall be the continuing duty of all applicants and licensees to provide full cooperation to the Board and the Bureau in the conduct of the inquiry or investigation and to provide supplementary information requested by the Board or the Bureau.

CHAPTER 423. APPLICATIONS

Sec.	
423.1.	General requirements.
423.2.	Application processing.
423.3.	License issuance.
423.4.	Incomplete applications.
423.5.	Application withdrawal.

§ 423.1. General requirements.

(a) Every application shall be submitted on forms supplied or approved by the Board and shall contain all information and documents as required by the Board.

(b) The applicant shall file with the application all supplemental forms provided by the Board. The forms require full disclosure of all details relative to the applicant's suitability to conduct business in this Commonwealth under the act.

(c) Upon request of the Board, the applicant shall further supplement any information provided in the application. The applicant shall provide all requested documents, records, supporting data and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request, the Board may deny the application.

(d) An applicant shall submit evidence to the Board of the applicant's financial fitness, integrity and responsibility. The Board's review will include: the applicant's bank references, business and personal income and disbursement schedules, annual financial statements and tax returns, whether the applicant has adequate financing available to pay all current obligations and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

(e) All information provided to the Board shall be true and complete. If there is any change in the information provided to the Board, the applicant shall promptly file a written amendment in a form prescribed by the Board.

(f) The application and any amendments or supplements must be sworn to or affirmed by the applicant before a notary public.

(g) The Board will automatically deny the application of any applicant that refuses to submit to a background investigation or provide requested information as required under the act.

(h) An applicant that submits a document to the Board which is in a language other than English shall also submit an English translation of the non-English language document. The translation shall include the signature, printed name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation. At its discretion, the Board may accept an English summary of a document in lieu of a complete translation of the document.

§ 423.2. Application processing.

(a) Upon a determination that all prerequisites for filing have been met, the Board will:

(1) Accept the application for filing and cause it to be docketed.

(2) Notify the applicant or the applicant's attorney, if any, in writing of the fact that the application has been accepted for filing and docketed, the date of the acceptance for filing and the docket number assigned to the applicant. The Board will also notify the applicant that the acceptance for filing and docketing of the application will not constitute evidence that any requirement of the act has been satisfied.

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

(4) Request the Bureau to promptly conduct an investigation and provide the information necessary to determine the qualifications of the applicant and any matter relating to the application.

(5) Request the Pennsylvania State Police to provide a criminal history background investigation report, determine employee eligibility consistent with § 435.1 (relating to general provisions), conduct fingerprinting, receive handwriting exemplars, photograph applicants and perform duties as directed by the Board.

(6) Request the Department to promptly conduct a tax clearance and lien review.

(7) Request the Department of Labor and Industry to perform an Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review.

(8) Request any agencies, entities or persons to conduct investigations or evaluations or to provide information on behalf of the Board or the Bureau, as deemed necessary by the Board.

(b) The Board will keep and maintain a list of all applicants for licenses under this part together with a record of all actions taken with respect to applicants.

(c) An application submitted under this part and all information obtained by the Board or the Bureau relating to the application shall be part of the evidentiary record of the licensing proceeding. All information obtained, including background investigation information and documents and information from other jurisdictions shall be served on the applicant. The Board's decision to issue or deny a license shall be based solely on the evidentiary record before the Board.

§ 423.3. License issuance.

(a) In addition to criteria provided under the act, the Board will not issue or renew a license unless the Board finds that the applicant has established it has met the following criteria:

(1) The applicant has developed and implemented or agreed to develop and implement a diversity plan, in accordance with section 1325(b) of the act (relating to license or permit issuance), to assure that all persons are accorded equality of opportunity in employment and contracting by the applicant, its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

(2) The applicant has paid all applicable fees.

(3) The applicant has fulfilled any conditions required by the Board or provided by the act.

(4) The applicant in all other respects is found suitable consistent with the laws of the Commonwealth and is otherwise qualified to be issued a license or permit.

(b) Nothing contained in the act is intended or may be construed to create an entitlement to a license by any person.

§ 423.4. Incomplete applications.

(a) The Board will not consider an application that is incomplete. An application will be deemed incomplete if it fails to include one or more of the following requirements:

(1) Applicable fees paid.

(2) Information and accompanying documentation as may be requested by the Board.

(b) If an application is deemed incomplete, the Board will notify the applicant of the deficiencies in the application and permit the applicant to revise the application and resubmit the application to the Board within a time period prescribed by the Board.

(c) Refusal to provide information as requested by the Board, its designees or agents or the Pennsylvania State Police shall result in the immediate denial of a license or permit.

§ 423.5. Application withdrawal.

(a) Except as provided in subsection (e), a written notice of withdrawal of application may be filed by an applicant at any time prior to the Board's final decision.

(b) An application will not be permitted to be withdrawn, however, unless the applicant has first established to the satisfaction of the Board that withdrawal of the application would be consistent with the public interest and the policies of the act.

(c) The Board will have the authority to direct that any applicant so permitted to withdraw his application will not be eligible to apply again for licensure, permit, or registration until a designated time as the Board determines.

(d) Unless the Board otherwise directs, no fee or other payment relating to any application will be refunded by reason of withdrawal of the application.

(e) When a hearing on an application has been requested by a party or directed by the Board, the Board will not permit withdrawal of the application after one of the following applies:

(1) The application matter has been assigned to a hearing examiner authorized by law to hear a matter.

(2) The Board has made a determination to hear the application matter directly.

CHAPTER 427. MANUFACTURER LICENSES

Sec.	
427.1.	Manufacturer license requirements.
427.2.	Manufacturer licensing standards and application.
427.3.	Alternative manufacturer licensing standards.

§ 427.1. Manufacturer license requirements.

(a) In determining whether an applicant shall be licensed as a manufacturer under this section, the Board will consider whether the applicant satisfies the criteria listed in this section and whether the applicant manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to slot machines or associated equipment at a licensed facility which:

- (1) Are specifically designed for use in the operation of a slot machine.
- (2) Are needed to conduct an authorized game.
- (3) Have the capacity to affect the outcome of the play of a game.
- (4) Have the capacity to affect the calculation, storage, collection or control of gross terminal revenue.

(b) An applicant for or holder of a manufacturer license shall have a continuing duty to promptly:

(1) Notify the Board of a material change in the information, materials and documents submitted in the license application or renewal application submitted by the applicant or licensee or a change in circumstances that may render the applicant or licensee ineligible, unqualified or unsuitable to hold the license under the licensing standards and requirements of the act and of this part.

(2) Provide any information requested by the Board or the Bureau relating to licensing or regulation; cooperate with the Board or the Bureau in investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(c) In accordance with section 1317 of the act (relating to supplier and manufacturer licenses application), neither an applicant for or the holder of a manufacturer license or slot machine license nor any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, is eligible to apply for or hold a supplier license.

§ 427.2. Manufacturer licensing standards and application.

(a) The standards and requirements for qualification for a manufacturer license are set forth as follows and in section 1317 of the act (relating to supplier and manufacturer licenses application). The applicant shall submit:

- (1) A nonrefundable application processing fee.
- (2) An original and seven copies of the Manufacturer/Supplier Application and Disclosure Information Form for the applicant that has applied for the license under this part.
- (3) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481 (relating to general provisions), which shall be signed by the chief executive officer of the applicant.
- (4) An application from every key employee and key employee qualifier as specified by the Manufacturer Application and Disclosure Information Form or as determined by the Board, which shall consist of the following:

(i) An original and seven copies of the Multi Jurisdictional Personal History Disclosure Form with a nonrefundable deposit to be set by the Board and provided in a fee schedule for each key employee and key employee qualifier.

(ii) The applicant may be subject to additional fees based on the actual expenses incurred by the Board in conducting the background investigation.

(5) If applicable, copies of all filings required by the Securities and Exchange Commission during the 2 immediately preceding fiscal years, including all annual reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o-6), quarterly reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934, current reports filed with the United States Securities Exchange Commission, under sections 13 or 15D of the Securities Exchange Act of 1934, and proxy statements issued by the applicant.

(6) Properly executed forms for consents to inspections, searches and seizures; waivers of liability for disclosures of information and consents to examination of accounts and records in forms as prescribed by the Board.

(7) The applicant shall affirm that neither it nor any of its affiliates, intermediaries, subsidiaries or holding companies, holds any direct or indirect ownership interest in any applicant for or holder of a supplier license, or employs, directly or indirectly, any person who satisfies the definition of a key employee qualifier or key employee of a supplier licensee. In applying this provision to an applicant for a manufacturer license, the Board will not include interests that are held by individuals in any of the following manners:

(i) In mutual funds when the value of the interest owned does not exceed 1% of the total fair market value of the applicant or licensee and provided that the mutual fund is not a nondiversified fund invested primarily in entities operating in, or connected with, the gaming industry.

(ii) Through defined benefit pension plans.

(iii) Through deferred compensation plans organized and operated under section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457).

(iv) In blind trusts over which the holder may not exercise any managerial control or receive income during the time period the holder is subject to these provisions.

(v) Through tuition account plans organized and operated under section 529 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 529).

(vi) Through plans described in section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 401(k)).

(vii) An interest held by a spouse if an action seeking a divorce and dissolution of marital status has been initiated in any jurisdiction by either party to the marriage.

(8) Other information or documentation as may be requested by the Board.

(b) Each application for a manufacturer license shall include the production of copies of financial books, records, information, documentation and assurances to satisfy the Board of the following:

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

(2) That all key employee qualifiers individually qualify under the standards of section 1317 of the act.

(3) The integrity of all financial backers.

(4) The suitability of the applicant and all key employee qualifiers of the applicant based on the satisfactory results of:

(i) A background investigation of all owners, officers, members of the board of directors and key employees or their equivalent in other jurisdictions.

(ii) A current tax clearance and lien 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.

(c) A sworn or affirmed statement that the applicant has developed and implemented internal safeguards and policies to prevent a violation of section 1513 of the act (relating to political influence).

§ 427.3. Alternative manufacturer licensing standards.

(a) If an applicant for a manufacturer license holds a similar license in another jurisdiction in the United States, the applicant may submit a written request with its application for the Board to adopt an abbreviated licensing process under section 1319 of the act (relating to alternative manufacturer licensing standards) to review a manufacturer license application.

(b) The Board may use the abbreviated process if:

(1) The Board determines, after investigation, that the licensing standards in a jurisdiction in which the applicant is licensed are similarly comprehensive, thorough and provide equal, if not greater, safeguards as provided in the act and that granting the request is in the public interest.

(2) A completed application has been filed by the applicant.

(3) The applicant has provided current, updated information to the Board associated with the similar license in the other jurisdiction related to its financial viability and suitability.

(4) The applicant has no administrative or enforcement actions pending in another jurisdiction or the applicant has adequately disclosed and satisfactorily explained the action to the satisfaction of the Board.

(5) There are no pending or ongoing investigations of possible material violations by the applicant in another jurisdiction or the applicant has adequately disclosed and satisfactorily explained the investigation to the satisfaction of the Board.

(c) This section may not be construed to waive fees associated with obtaining a license through the application process in this Commonwealth.

CHAPTER 433. LICENSE RENEWAL

Sec. 433.1. Renewal of manufacturer and supplier license.

§ 433.1. Renewal of manufacturer and supplier license.

(a) A license issued under this part shall be valid for a term of 1 year and for all subsequent renewals. An

application for renewal shall be filed by a licensed entity no later than 60 days prior to the expiration of the license.

(b) The licensed entity shall complete and file an original and seven copies of a Manufacturer/Supplier License Renewal Application Form which shall, without limitation, disclose all changes in ownership of the licensed entity, and the new owner shall be required to submit an application for licensure and evidence that it is qualified for licensure.

(1) The licensed entity shall disclose all changes in personnel who are to be licensed by the Board.

(2) The licensed entity shall pay the license renewal fee, as established by the Board under section 1208 of the act (relating to collection of fees and fines), when the Renewal Application Form is filed.

(3) Once a Renewal Application Form has been filed and the renewal fee has been paid, the original license shall remain in effect until the Board sends written notification to the licensed entity that the Board has denied renewal of the license.

CHAPTER 435. EMPLOYEES

Sec. 435.1. General provisions.
435.2. Key employee qualifier license.
435.3. Key employee license.
435.4. Occupation permit.

§ 435.1. General provisions.

(a) The issuance or renewal of a license or permit by the Board shall be a revocable privilege. No individual holding a license or permit under this part shall be deemed to have a property interest in the license or permit.

(b) It shall be the affirmative responsibility of each individual applying for a license or permit under this part to establish his individual qualifications. All information provided to the Board must be true and complete. If there is a change in the information provided to the Board, an applicant shall promptly file a written amendment in a manner prescribed by the Board. An applicant who fails to cooperate with the review of its application under this part will not be granted a license or permit.

(c) An individual applying for a license or permit under this part will provide all information required by the act and this part and satisfy all requests for information pertaining to qualification in a form required by the Board. An individual who fails to provide information, documentation and disclosures required by this part or by the Board or who fails to reveal a fact material to qualification will not be granted a license or permit under this part. An applicant agrees to waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of material or information acquired during an investigation of the applicant.

(d) An individual applying for a license or permit under this part shall have the continuing duty to provide assistance or information requested by the Board or the Bureau, and to cooperate in an inquiry, investigation or hearing conducted by the Board or the Bureau. If, upon issuance of a formal request for information, evidence or testimony, an applicant, licensee or permittee refuses to comply with requests for assistance or information, the application, license or permit shall be denied or revoked by the Board.

(e) An individual who receives a license or permit under this part shall have the continuing duty to report to the Board an arrest or conviction for an offense under 18 Pa.C.S. (relating to crimes and offenses), or an offense under 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or of comparable offenses in other states or foreign jurisdictions.

(f) An individual may not be employed in this Commonwealth by a slot machine licensee, manufacturer licensee or supplier licensee in any capacity unless he is a citizen of the United States or can demonstrate that he holds a current and valid work authorization and is not restricted from working in the capacity for which employment is sought or held. Authorization to work in the United States may be demonstrated by submitting one of the following:

- (1) A permanent resident alien card.
- (2) A temporary employment authorization card.
- (3) A document which the Board deems to be sufficient evidence or authorization.

(g) No applicant, licensee or permittee may give or provide, or offer to give or provide, compensation or reward or a percentage or share of the money or property played or received through gaming in consideration or in exchange for obtaining a license or permit issued under this part.

(h) An individual regulated by this part shall have a duty to inform the Board and the Bureau of any action which the individual believes would constitute a violation of the act. No person who so informs the Board or the Bureau will be discriminated against by an applicant, licensee or person for supplying the information.

(i) An applicant who submits a document to the Board which is in a language other than English shall also submit an English translation of the non-English language document. The translation shall include the signature, printed name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation. At its discretion, the Board may accept an English summary of a document in lieu of a complete translation of the document.

(j) Sixty days prior to the expiration of a license or permit under this part, a licensee or permittee may submit a renewal application to the Board. If the renewal application meets all the requirements of this part, the license or permit shall remain in effect until the Board sends written notification to the licensee or permittee that the Board has denied renewal of the license or permit. A new background investigation is not required unless ordered by the Board. All licensees and permittees shall provide an updated photograph at least every 2 years.

(k) A reference to a slot machine licensee, manufacturer licensee or supplier licensee under this chapter includes an applicant for a slot machine license, manufacturer license or supplier license in addition to a person who is already licensed.

(l) The Board will maintain a list of all individuals who have applied for a license or permit under this part as well as a record of all actions taken with respect to each applicant, which list shall be open to public inspection.

§ 435.2. Key employee qualifier license.

(a) All key employee qualifiers shall obtain a key employee qualifier license from the Board.

(b) An application for licensure as a key employee qualifier shall be on a form prescribed by the Board and include the following:

- (1) The name and address of the individual to include the home address and history of residence and all current business addresses.
- (2) Daytime and evening telephone numbers.
- (3) Date of birth.
- (4) Physical description of the applicant.
- (5) Social Security number.
- (6) Citizenship, resident alien status or authorization to work in the United States.
- (7) Marital status.
- (8) Military history.
- (9) Employment history, including gaming-related employment and contact information for prior employers.
- (10) Education history.
- (11) Family and marital history, including any current court orders relating to alimony, spousal support or child support.
- (12) Credit history.
- (13) History of insurance claims relating to the business activities of the applicant or its affiliates, intermediaries, subsidiaries or holding companies.
- (14) Information relating to any health-related issues involving alcohol or controlled substances.
- (15) A list of at least five references, to include contact information for each.
- (16) Verification of the applicant's status as a key employee qualifier from a slot machine licensee, manufacturer licensee or a supplier licensee.
- (17) If the applicant is an employee, a description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee, manufacturer licensee or supplier licensee and of all education, training and experience that qualifies the individual for the position.
- (18) A signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions about the applicant.
- (19) The individual's criminal history records information and arrests or criminal charges brought against the individual.
- (20) A photograph that meets the requirements prescribed by the Board.
- (21) A set of fingerprints taken by the Pennsylvania State Police or a criminal justice agency designated by the Pennsylvania State Police and transmitted to the Pennsylvania State Police.
- (22) A list of civil judgments consistent with section 1310(b) of the act (relating to slot machine license application character requirements).
- (23) Details relating to any similar licenses obtained in other jurisdictions.
- (24) A tax clearance and lien review from the Department.
- (25) A nonrefundable application processing fee.
- (26) Any additional information requested by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference under section 1310(b) of the act (relating to slot machine license application character requirements).

(d) After review of the information submitted under subsections (b) and (c), including the background investigation, the Board may issue a key employee qualifier license if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified and suitable to be licensed as a key employee qualifier.

(e) A license issued under this section will be nontransferable.

(f) An individual who receives a license under this chapter need not obtain an additional license as a key employee.

(g) Notwithstanding the definition of key employee qualifier in § 401.4 (relating to definitions), any of the following persons may request in writing that the Board waive their obligation to be licensed as a key employee qualifier as part of a manufacturer, supplier or slot machine license issuance or renewal by making the appropriate showing:

(1) If the person required to be licensed is a key employee qualifier as an officer of an entity, the person shall be required to demonstrate that he is not significantly involved in and has no authority over the conduct of business with a licensee. The request shall include, at a minimum, the following:

(i) A description of his title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(ii) The terms of his compensation.

(iii) A certification by the officer stating that the officer is not significantly involved in and has no authority over the conduct of business with any slot machine licensee or applicant.

(2) If the person required to be licensed as a key employee qualifier as an outside director of an affiliate, intermediary, subsidiary or holding company of an applicant or licensee, the person shall be required to demonstrate that he is not significantly involved in the management or ownership of the applicant or licensee. The request shall include, at a minimum, the following:

(i) A description of his title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(ii) The terms of his compensation.

(iii) Any board committee memberships, including a description of the functions and responsibilities of any such committee.

(iv) A description of his ownership interest.

(v) A certification by the director stating that the director is not significantly involved in the management of the applicant or licensee.

(3) If the person required to be licensed is a key employee qualifier as an owner of the applicant or licensee or any of its affiliates, intermediaries, subsidiaries or holding companies, and requests a waiver as an institutional investor, the person shall be required to demonstrate the following:

(i) The institutional investor shall demonstrate that its ownership interest consists of one of the following:

(A) Under 10% of the equity securities of a licensee's holding or intermediary companies, if the securities are those of a publicly traded corporation and its holdings of the securities were purchased for investment purposes only.

(B) Debt securities of a licensee's affiliates, intermediaries, subsidiaries or holding companies or another affiliate, intermediary, subsidiary or holding company of a licensee's affiliate, intermediary, subsidiary or holding company which is related in any way to the financing of the licensee, where the securities represent a percentage of the outstanding debt of the company not exceeding 20% or a percentage of any issue of the outstanding debt of the company not exceeding 50%, if the securities are those of a publicly traded corporation and its holdings of the securities were purchased for investment purposes only.

(ii) A request for waiver by an institutional investor shall include, at a minimum, the following:

(A) The number of shares or units held by it and the percentage of ownership of the entity that the shares or units represent.

(B) A copy of the most recent notice filed by it with the Securities and Exchange Commission.

(C) A list of any direct or indirect owners of the institutional investor.

(D) An explanation as to why the investor should be considered an institutional investor under the definition in § 401.4.

(E) A certification by the investor stating that the investor has no present involvement in, and no intention of influencing the business activities of, the applicant or licensee or any of its affiliates, intermediaries, subsidiaries or holding companies and will give the Board 30 days notice if the investor intends to become involved in or to influence the activities in the future.

(h) A request for a waiver of a key employee qualifier license shall include a nonrefundable application processing fee. The Board may charge additional fees based on the actual expenses incurred in processing the waiver request.

§ 435.3. Key employee license.

(a) All key employees shall obtain a key employee license from the Board.

(b) An application for licensure as a key employee shall be on a form prescribed by the Board and include the following:

(1) The name and address of the individual, to include the home address and history of residence and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description of the applicant.

(5) Social Security number.

(6) Citizenship, resident alien status or authorization to work in the United States.

(7) Marital status.

(8) Military history.

(9) Employment history, including gaming-related employment and contact information for prior employers.

(10) Education history.

(11) Family and marital history, including any current court orders relating to alimony, spousal support or child support.

(12) Credit history.

(13) History of insurance claims relating to the business activities of the applicant or its affiliate, intermediary, subsidiary or holding company.

(14) Information relating to any health-related issues involving alcohol or controlled substances.

(15) A list of at least five references, to include contact information for each.

(16) Verification of the applicant's employment or an offer of employment from a slot machine licensee, manufacturer licensee or a supplier licensee.

(17) A description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee, manufacturer licensee or supplier licensee and of all education, training and experience that qualifies the individual for the position.

(18) A signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions about the applicant.

(19) The individual's criminal history records information and arrests or criminal charges brought against the individual.

(20) A photograph that meets the requirements prescribed by the Board.

(21) A set of fingerprints taken by the Pennsylvania State Police or a criminal justice agency designated by the Pennsylvania State Police and transmitted to the Pennsylvania State Police.

(22) A list of civil judgments consistent with section 1310(b) of the act (relating to slot machine license application character requirements).

(23) Details relating to any similar licenses obtained in other jurisdictions.

(24) A tax clearance and lien review from the Department.

(25) A nonrefundable application processing fee.

(26) Any additional information requested by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act.

(d) After review of the information submitted under subsections (b) and (c), including the background investigation, the Board may issue a key employee license if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified to be licensed as a key employee.

(e) A license issued under this section will be nontransferable.

(f) Notwithstanding the definition of key employee in § 401.4 (relating to definitions), any of the following persons may request in writing that the Board waive their obligation to be licensed as a key employee as part of a manufacturer, supplier or slot machine license issuance or renewal by making the appropriate showing:

(1) The person shall be required to demonstrate one of the following:

(i) He is not assigned to the licensee's gaming operations in this Commonwealth.

(ii) His duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(2) The request shall include, at a minimum, the following:

(i) A description of his title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(ii) A certification by the chief executive officer stating that the employee is not assigned to the licensee's gaming operations in this Commonwealth or that the employee's duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(g) A request for a waiver of a key employee license must include a nonrefundable application processing fee. The Board may charge additional fees based on the actual expenses incurred in processing the waiver request.

§ 435.4. Occupation permit.

(a) All gaming employees shall apply for and receive an occupation permit from the Board.

(b) An application for an occupation permit shall be on a form prescribed by the Board and include the following:

(1) The name and address of the individual, to include the home address and residence history and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description of the applicant.

(5) Social Security number.

(6) Citizenship, and, if applicable, resident alien status, including employment authorization.

(7) Marital status.

(8) Military history.

(9) Employment history, including gaming-related employment and contact information for prior employers.

(10) Education history.

(11) Family and marital history, including any current court orders relating to alimony, spousal support or child support.

(12) Credit history.

(13) History of insurance claims relating to the business activities of the applicant or its affiliate, intermediary, subsidiary or holding company.

(14) Information relating to any health-related issues involving alcohol or controlled substances.

(15) A list of at least five references, to include contact information for each.

(16) Verification of the applicant's employment or an offer of employment from a slot machine licensee or a supplier licensee.

(17) A description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee or supplier licensee and of all education, training and experience that qualifies the individual for the position.

(18) A signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions about the applicant.

(19) A description of the individual's criminal history records information and arrests or criminal charges brought against the individual.

(20) A photograph that meets the requirements prescribed by the Board.

(21) A set of fingerprints taken by the Pennsylvania State Police or a criminal justice agency designated by the Pennsylvania State Police and transmitted to the Pennsylvania State Police.

(22) A list of civil judgments consistent with section 1310(b) of the act (relating to slot machine license application character requirements).

(23) Details relating to any similar licenses obtained in other jurisdictions.

(24) A tax clearance and lien review from the Department.

(25) A nonrefundable application processing fee.

(26) Any additional information requested by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act (relating to slot machine license application character requirements).

(d) After review of the information submitted under subsections (b) and (c), including a background investigation, the Board may issue a permit if the individual has proven that he is a person of good character, honesty and integrity and is qualified to hold an occupation permit.

(e) An individual who wishes to receive an occupation permit under this chapter may provide the slot machine licensee or supplier with written authorization to file the application on the individual's behalf.

(f) A license issued under this section shall be non-transferable.

(g) An individual who is employed by a licensed manufacturer that is specifically excluded from the supplier requirement shall be required to obtain a permit under this section.

(h) The Board may issue, renew or deny a permit under this section, consistent with 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies). If the Board provides an individual with the opportunity to demonstrate rehabilitation, the individual shall provide certification from the Pennsylvania Board of Probation and Parole or the County Probation and Parole Office, whichever is applicable, that all obligations for restitution, fines and penalties have been met. The Board will provide notice to the district attorney of the individual's county of residence of the individual's request for a determination of rehabilitation. The district attorney shall have 15 days from receipt of the notice to provide input into the determination.

(i) Nothing in subsection (h) shall be construed to authorize the issuance of an occupation permit to an applicant who has been convicted of an offense under 18 Pa.C.S. (relating to crimes and offenses) or the criminal laws of any other jurisdiction which conviction indicates that the issuance of the occupation permit to the applicant would be inimical to the public policy of the act or this part.

Subpart C. (Reserved).

Subpart D. RECORDKEEPING

Chap. 451.

LICENSEE RECORDKEEPING REQUIREMENTS

CHAPTER 451. LICENSEE RECORDKEEPING REQUIREMENTS

Sec.

451.1. Recordkeeping generally.

§ 451.1. Recordkeeping generally.

(a) All manufacturer, supplier and slot machine licensees shall maintain in a place secure from theft, loss or destruction, adequate records of business operations which shall be made available to the Board upon request. These records include:

(1) All correspondence with the Board and other governmental agencies on the local, State and Federal level.

(2) All correspondence concerning gaming equipment with a slot machine licensee or other licensed entity.

(3) Copies of all promotional material and advertising.

(4) A personnel file on each employee of the licensee.

(5) Financial records of all transactions concerning slot machines and associated equipment with a licensed entity.

(6) Copies of all tax returns, reports and other tax documents filed with a taxing entity of the Federal government as well as a State or local taxing entity for 7 years or a longer period as prescribed by the taxing entity.

(7) Copies of all general accounting records.

(b) Except as provided in subsection (a)(6) regarding tax documents, the records listed in subsection (a) shall be held for at least 5 years.

Subpart E. SLOT MACHINE TESTING AND CERTIFICATION

Chap. 461.

SLOT MACHINE TESTING AND CERTIFICATION REQUIREMENTS

CHAPTER 461. SLOT MACHINE TESTING AND CERTIFICATION REQUIREMENTS

Sec.

461.1. Protocol requirements.

461.2. Testing and certification generally.

§ 461.1. Protocol requirements.

In accordance with section 1324 of the act (relating to protocol information), all manufacturer licensees and supplier licensees shall be required to enable all slot machine terminals to communicate with the Department's Central Control Computer for the purpose of transmitting auditing program information and activating and disabling slot machine terminals.

§ 461.2. Testing and certification generally.

(a) In accordance with section 1320 of the act (relating to slot machine testing and certification standards), the Board will determine the manner and scope in which slot machine terminals are to be tested and certified prior to operation and use in a licensed facility in this Commonwealth.

(b) All slot machines operated in this Commonwealth must be approved by the Board.

(c) The Board has the authority to require one or more of the following procedures with respect to testing and certifying a slot machine:

(1) Accept other gaming jurisdiction certification under section 1320 of the act.

(2) Utilize the services of a slot machine testing and certification facility to conduct the testing until a slot machine testing and certification facility is created by the Board.

(d) On or before July 5, 2007, the Board will establish and maintain an independent slot machine testing and certification facility. The cost of establishment and operation of the facility shall be paid by each manufacturer licensee in accordance with a schedule adopted by the Board.

(e) The Board will require payment of all costs for the testing and certification of all slot machines through procedures prescribed by the Board.

(f) The Board will require a manufacturer licensee seeking approval of a slot machine to pay all costs of transportation, inspection and testing.

Subpart F. FEES

Chap.
471. FILING FEES

CHAPTER 471. FILING FEES

Sec.	
471.1.	Fees generally.
471.2.	Obligation to pay fees; nonrefundable nature of fees.
471.3.	Schedule of fees.

§ 471.1. Fees generally.

(a) In accordance with section 1208 of the act (relating to collection of fees and fines), the Board has the power and duty to levy and collect fees from various applicants, licensees and permittees to fund the operations of the Board.

(b) A pleading or other document for which a filing fee is required to be charged will be received, but will not be deemed filed, until the filing fee, bond, letter of credit or other cost that may be required by statute or regulation has been paid.

(c) The fees collected by the Board will be deposited into the State Gaming Fund as established in section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

(d) Fees shall be paid by money order or check made payable to the "Commonwealth of Pennsylvania." Cash will not be accepted by the Board.

§ 471.2. Obligation to pay fees; nonrefundable nature of fees.

(a) A fee required under the act or this part shall be due and payable notwithstanding the withdrawal or abandonment of an application or the termination of an existing license.

(b) Except as otherwise provided in section 1209 of the act (relating to slot machine license fee), amounts actually paid by the applicant, licensee or permittee in accordance with the act and this part are not refundable.

§ 471.3. Schedule of fees.

(a) In accordance with section 1208 of the act (relating to collection of fees and fines), the Board has the power and duty to levy and collect fees from applicants for manufacturer licenses and supplier licenses. The licensing fee schedule shall be published by the Board in the *Pennsylvania Bulletin* and available on the Board's website.

(b) In order to recover the cost of the investigation and consideration of license and permit applications by manufacturers and suppliers, each application for a manufacturer license or a supplier license must be accompanied by a nonrefundable fee to be set by the Board and provided in a fee schedule for each key employee and key employee qualifier to be licensed. The applicant may be subject to additional fees based on the actual expenses incurred by the Board in conducting the background investigation.

(c) On or after July 5, 2006, and annually thereafter, the Board may increase the fees listed in the fee schedule by an amount not to exceed an annual cost-of-living adjustment calculated as set forth in section 1208(2) of the act.

Subpart G. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Chap.
481. GENERAL PROVISIONS

CHAPTER 481. GENERAL PROVISIONS

Sec.	
481.1.	Statement of purpose and policy.
481.2.	Definitions.
481.3.	Diversity participation.
481.4.	Establishment of diversity plan required.
481.5.	Report of participation.

§ 481.1. Statement of purpose and policy.

(a) This part establishes and prescribes the procedures for promoting and ensuring that licensed entities and applicants for licensure foster participation and diversity in all aspects of their operations in this Commonwealth.

(b) It is the policy of the Board to promote and ensure that licensed entities and applicants for licensure conduct all aspects of their operations in a manner that assures diversity of opportunity as follows:

(1) In the ownership, participation and operation of licensed entities in this Commonwealth.

(2) Through the ownership, participation and operation of business enterprises associated with or utilized by licensed entities.

(3) Through the provision of goods and services utilized by licensed entities.

(c) It is further the policy of the Board to promote and ensure diversity in employment and contracting by each licensed entity or applicant for a license and its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

§ 481.2. Definitions.

The following words and terms, when used in this part, have the meanings given to them in this section, unless the context clearly indicates otherwise.

Diversity plan—A plan developed by a licensed entity or an applicant for a license which promotes and ensures diversity in ownership, participation and operation of licensed entities; and in employment and contracting by a licensed entity.

Minority—The ethnic/racial categories identified in employer survey reports that are required by the United States Equal Opportunity Commission and the Office of Federal Contract Compliance Programs of the United States Department of Labor under section 709 of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000(e)-8) or by subsequent amendments to that Federal act.

Participation plan—An obligation imposed by a licensed entity or applicant as part of its contract with a contrac-

tor that requires the contractor to perform the contract through the utilization of minority or women owned business enterprises.

§ 481.3. Diversity participation.

(a) The Board will compile a list of the minority and women's business enterprises that are certified by the Bureau of Minority and Women's Business Enterprises of the Department of General Services under 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code) and will make the list available to all licensed entities and applicants for licensure. The list developed by the Board will be reviewed annually to determine that each minority business enterprise and women's business enterprise continues to remain eligible for participation as minority and women's business enterprises.

(b) The list of minority business enterprises and women's business enterprises compiled by the Board may be relied upon by a licensed entity or applicant to establish the eligibility of the enterprise as a minority or women's business enterprise for the purpose of promoting and ensuring minority and women's business participation.

§ 481.4. Establishment of diversity plan required.

(a) Each applicant shall include a diversity plan in its application for licensure that establishes a separate goal of diversity in the ownership, participation and operation of, and employment at, the proposed licensed entity or by the applicant in this Commonwealth. The Board will determine whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorded equality of opportunity in contracting and employment by a licensed entity or an applicant for a license, and its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

(b) A licensed entity or applicant may achieve its diversity goals through one of the following:

(1) Contracting or transacting directly with minority and women's business enterprises.

(2) Contracting with a nonminority business enterprise under terms and conditions that establish a participation plan.

(c) Onsite audits may be performed on an annual basis or at the discretion of the Board to ensure compliance with this subpart.

§ 481.5. Report of participation.

(a) As part of an application to renew a license under the act and this part, each licensed entity shall file a report with the Board concerning the performance of its diversity plan. The report shall contain all of the following:

(1) Employment data, including information on minority and women representation in the workforce in all job classifications; salary information; and recruitment and training information, including executive and managerial level recruitment and training; and retention and outreach efforts.

(2) The total number and value of all contracts or transactions awarded for goods and services.

(3) The total number and value of all contracts or transactions awarded to minority and women's business enterprises.

(4) The total number and value of all contracts awarded that contain a participation plan.

(5) The total number and value of all subcontracts to be awarded to minority and women's business enterprises under contracts containing a participation plan.

(6) An identification of each subcontract actually awarded to a minority or women's business enterprise under contracts containing a participation plan during each calendar quarter and the actual value of each subcontract.

(7) An identification of each contract or transaction awarded to a minority or women's business enterprise.

(8) A comprehensive description of all efforts made by the licensed entity or applicant to monitor and enforce the participation plan.

(9) Information on minority and women investment, equity ownership, and other ownership or management opportunities initiated or promoted by the licensed entity.

(10) Other information deemed necessary by the Board to ensure compliance with the act and this part.

(b) The Board will use the report required under subsection (a) to monitor compliance with this part. The Board may request that the Bureau of Minority and Women's Business Enterprises, of the Department of General Services, assist the Board in determining whether the licensed entity or applicant complies with the requirements of this part.

Subpart H. PRACTICE AND PROCEDURE

Chap.

491. GENERAL RULES OF PRACTICE

495. DOCUMENTARY FILINGS

497. TIME

499. REPRESENTATION BEFORE THE BOARD

CHAPTER 491. GENERAL RULES OF PRACTICE

Sec.

491.1. Office of the Clerk.

491.2. Filing generally.

§ 491.1. Office of the Clerk.

(a) The Board will have within its organization an Office of the Clerk whose duties will be as follows:

(1) Provide information as to practice and procedure before the Board, under this subpart.

(2) Receive and docket applications and pleadings and other documents filed with the Board. Receipt and transmission of the information may be by electronic means, only under a policy established by the Board.

(b) All filings and requests for practice and procedure information should be directed to:

Office of the Clerk
 Pennsylvania Gaming Control Board
 P. O. Box 69060
 Harrisburg, Pennsylvania 17106-9060

(c) The Clerk will maintain a docket of all proceedings, and each proceeding as initiated will be assigned an appropriate designation. The docket will be available for inspection and copying by the public during the Board's office hours.

§ 491.2. Filing generally.

(a) Pleadings and other documents filed with the Board should clearly designate the docket number or similar identifying symbols, if any, employed by the Board, and should set forth a short title. The identity of the individual making the submission, including name, mailing address, and status (for example, party, attorney for a party, and the like) shall appear on the document.

(b) Pleadings, including documents filed under this chapter, must also comply with Chapter 495 (relating to documentary filings).

(c) If the Board is of the opinion that a pleading tendered for filing does not comply with this subpart or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the Board may decline to accept it for filing and may return it without filing, or the Board may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The Board may order redundant, immaterial, obscene or otherwise inappropriate comments stricken from documents filed with it.

CHAPTER 495. DOCUMENTARY FILINGS

Sec.	
495.1.	Form of documentary filings generally.
495.2.	Form of documents.
495.3.	Incorporation by reference.
495.4.	Single pleading covering more than one matter.
495.5.	Execution of documents.
495.6.	Verification.
495.7.	Number of copies.

§ 495.1. Form of documentary filings generally.

(a) Applications, petitions, complaints, answers or similar documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, permits or other writings referred to in the application or petition may be attached as exhibits. Copies of writings or orders already of record with the Board need not be attached to the application or petition if reference by docket number is made to the proceeding in which they were filed.

(c) Pleadings or other documents filed with the Board in a proceeding shall clearly show the docket number or similar identifying symbols, if any, and title of the proceeding before the Board. They must also show, in the title of a particular pleading or other document filed the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Pleadings shall be endorsed with an address and phone number where papers may be served in connection with the pending proceedings. Endorsement with a fax number shall constitute endorser's agreement to accept papers connected with the proceeding by fax. Notation of counsel's current Supreme Court identification number issued by the Court Administrator of Pennsylvania constitutes proof of the right to practice in the Commonwealth.

(e) Subsections (a)—(c) supersede 1 Pa. Code § 31.5 (relating to communications and filings generally).

§ 495.2. Form of documents.

(a) The method of receipt and transmission of information will be under a policy established by the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.2 (relating to form).

§ 495.3. Incorporation by reference.

(a) Except as otherwise provided in subsection (b), documents on file with the Board may be incorporated by reference into a subsequently filed pleading or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was physically filed.

(b) No document which has been on file with the Board for more than 7 years may be incorporated by reference

in a current document unless the person filing the current document first makes inquiry to the Office of the Clerk and ascertains that the earlier document continues to be readily available in the active records of the Board.

§ 495.4. Single pleading covering more than one matter.

(a) Except as otherwise provided under this chapter (relating to formal proceedings), a single pleading may be accepted for filing with respect to a particular transaction and one or more related transactions and shall be deemed to be a single filing for purposes of the computation of fees under Chapter 471 (relating to schedule of fees payable to the Board).

(b) If, upon review, the Board determines that the transactions are not closely related or otherwise properly joined, the Board will direct that the single pleading be refiled as two or more separate pleadings each subject to a separate filing fee.

(c) Subsection (a) supersedes 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).

§ 495.5. Execution of documents.

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original copy of a pleading, or other document shall be signed in ink by the party in interest, or by his attorney, as required by subsection (b), and show the office and post office address of the party or attorney. Other copies filed shall conform thereto.

(b) *Subscription.*

(1) A pleading or other document filed with the Board shall be subscribed by one of the following:

(i) The person filing the documents, and severally if there is more than one person so filing.

(ii) An officer if it is a corporation, trust, association or other organized group.

(iii) An officer or authorized employee thereof if it is another agency, a political subdivision or other governmental authority, agency or instrumentality.

(iv) An attorney having authority with respect thereto.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.

(c) *Effect.*

(1) The signature of the person subscribing a document filed with the Board constitutes a certificate by the individual that:

(i) The person has read the document being subscribed and filed, and knows the contents thereof.

(ii) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the Board, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 1518 of the act (relating to prohibited acts; penalties).

(d) *Supersession.* Subsections (a)—(c) are identical to 1 Pa. Code § 33.11 (relating to execution).

§ 495.6. Verification.

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed, written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the facts. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____
(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of _____ with that corporation,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the facts.

(Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 20 _____.

(Signature of official administering oath)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Board shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 495.7. Number of copies.

(a) An original and seven copies of pleadings or documents other than correspondence shall be furnished to

the Board at the time of filing, except as may be otherwise required by statute or ordered or requested by the Board.

(b) In the case of applications and petitions, one of the copies filed with the Board may be filed without exhibits.

(c) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 33.15 (relating to number of copies).

CHAPTER 497. TIME

Sec.	
497.1.	Date of filing.
497.2.	Computation of time.
497.3.	Issuance of Board orders.
497.4.	Effective dates of Board orders.
497.5.	Extensions of time and continuances.

§ 497.1. Date of filing.

(a) Whenever a pleading or other document is required or permitted to be filed under this part or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the Office of the Clerk.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) Except as otherwise permitted by the Board, a document transmitted by facsimile or electronically to the Board will not be accepted for filing within the meaning of this section.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

§ 497.2. Computation of time.

(a) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action runs until the next preceding day which is neither a Saturday, Sunday or holiday. A part-day

holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.12 (relating to computation of time).

§ 497.3. Issuance of Board orders.

(a) In computing a period of time involving the date of the issuance of an order by the Board, the day of issuance of an order will be the date the Office of the Clerk enters the order. An order will not be made public prior to its entry except when, in the Board's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Board. The Clerk will clearly indicate on each order the date of its adoption by the Board and the date of its entry.

(b) The date of entry of an order which is subject to review by the Supreme Court of Pennsylvania is governed by 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action). The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Board action.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 497.4. Effective dates of Board orders.

(a) An order of the Board promulgating regulations will be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Board will be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

§ 497.5. Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Board, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the Board, for good cause shown allows a shorter time.

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this part or by order of the Board, shall be by motion in writing, timely filed with the Board, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Board. The requests shall be submitted at least 5 days prior to the hearing date. Only for good cause shown will requests for continuance be considered.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.15 (relating to extensions of time).

CHAPTER 499. REPRESENTATION BEFORE THE BOARD

Sec.	
499.1.	Appearance in person.
499.2.	Appearance by attorney.
499.3.	Other representation prohibited at hearings.
499.4.	Notice of appearance or withdrawal.
499.5.	Form of notice of appearance.
499.6.	Contemptuous conduct.
499.7.	Suspension and disbarment.

§ 499.1. Appearance in person.

(a) Individuals may represent themselves.

(b) In adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only under § 499.2 (relating to appearance by attorney). For purposes of this section, without limitation, a request for licensure under sections 1302, 1304, 1305, 1315 and 1317 of the act or a license or permit determined by the Board, will be considered to be an adversarial proceeding.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.21 (relating to appearance in person).

§ 499.2. Appearance by attorney.

(a) Individuals, partnerships, associations, corporations or governmental entities may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania.

(b) An attorney licensed in a jurisdiction which does not accord like privileges to members of the bar of this Commonwealth may appear before the Board with the permission of the Board consistent with Pa.B.A.R. 301 (relating to admission pro hac vice).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.22 (relating to appearance by attorney).

§ 499.3. Other representation prohibited at hearings.

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Board except:

(1) As stated in §§ 499.1 and 499.2 (relating to appearance in person; and appearance by attorney).

(2) As otherwise permitted by the Board in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

§ 499.4. Notice of appearance or withdrawal.

(a) An individual appearing without representation before the Board shall file with the Office of the Clerk an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk promptly.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Office of the Clerk shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Office of the Clerk a written notice of the appearance, which states his name, address and telephone number and the name and address of the person on whose behalf he appears. The notice shall be served on the participants in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk promptly.

(c) A person appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his authority to act in that capacity.

(d) An attorney who wishes to withdraw an appearance shall file with the Office of the Clerk a written notice of withdrawal. The notice shall be served on the participants.

(e) Subsections (a) and (d) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

§ 499.5. Form of notice of appearance.

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA GAMING CONTROL
BOARD

In the Matter of:

[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of _____ .

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

[] On the basis of this notice, I request a copy of each document hereafter issued by the Board in this matter.

[] I am already receiving or have access to a copy of each document issued by the Board in this matter and do not on the basis of this notice require an additional copy.

Signature

Attorney Identification Number

Name (Printed)

P. O. Address

City, State and Zip Code

Telephone Number
(including area code)

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to form of notice of appearance).

§ 499.6. Contemptuous conduct.

(a) Contemptuous conduct at a hearing before the Board shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 31.27 (relating to contemptuous conduct).

§ 499.7. Suspension and disbarment.

(a) The Board may deny, temporarily or permanently, the privilege of appearing or practicing before it to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous or improper conduct before the Board.

(3) Repeatedly failed to follow Board directives.

(b) For the purpose of subsection (a), practicing before the Board include:

(1) Transacting business with the Board.

(2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Board in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.

(3) Appearances at a hearing before the Board.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to suspension and disbarment).

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