

# Title 58—RECREATION

## PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 441, 443 AND 501]

### 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. §§ 1101—1904 (relating to Pennsylvania Race Horse Development and Gaming Act) (act), 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 C is entitled Slot Machine Licensing and contains Chapter 441, Slot Machine Licenses and Chapter 443, Categories of Licensure.

Chapter 441 focuses on the general licensing and application process for slot machine licenses. Chapter 443 contains regulations that pertain to specific categories of licensure.

The next portion of regulations focuses on the compulsive and problem gambling requirements of slot machine licensees. Subpart I is entitled Compulsive and Problem Gambling and contains Chapter 501, Compulsive and Problem Gambling Requirements.

#### *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 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 the public comments submitted to the Board, comments of various State agencies including the Department of Agriculture and the regulatory practices of other Commonwealth agencies and gaming jurisdictions.

To promulgate the temporary regulations in accordance with customary rulemaking procedure, the Board published its draft regulations at 35 Pa.B. 3199 (May 28, 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 3 years following the effective date of the act or upon promulgation of regulations as generally provided by 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*

The Board received public comment from approximately 18 interested parties, including State and local government officials, racetrack owners and citizens. 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](http://www.pgcb.state.pa.us). To respond to the comments in the most efficient manner, the Board has selected representative comments and formulated responses to these comments.

The Comment and Response document is available by contacting the Board at: Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060.

#### *Paperwork*

The Board is publishing Category 1 applications and other necessary forms for the administration of licensing Category 1 slot machine licensees. The Board is developing a docket process to monitor and track submitted applications.

The Board will publish notices in the *Pennsylvania Bulletin* identifying the filing period for applications, the completion date and those facilities who have been awarded licenses by the Board.

#### *Financial Impact*

Act 71 and the 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 by, provide gaming related services to, or operate gaming facilities.

The appropriations from the Commonwealth for the implementation of Act 71 and costs of administering the act will be reimbursed by the licensed gaming entities as specified within the Act 71. Individuals and entities that wish to obtain licenses as 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 licensees through fees established by the Board.

It is anticipated that all expenses of the Board and all associated activities shall 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 the act 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 the act provides that the Board's authority to adopt regulations shall expire 2 years from the effective date of the act.

#### *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 July 21, 2005, Board meeting. The temporary regulations pertain to general licensing standards for slot machine license applicants, specific licensing standards for Category 1 slot machine license applicants and compulsive and problem gambling requirements for slot machine licensees.

(b) The temporary regulations of the Board, 58 Pa. Code, are amended by adding §§ 441.1—441.12, 443.1—443.3 and 501.1—501.8 to read as set forth in Annex A.

(c) The temporary regulations are effective July 21, 2005.

(d) The temporary regulations shall be posted in their entirety on the Board's website and published 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 to further the intent of Act 71.

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

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-2. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART VII. GAMING CONTROL BOARD**  
**Subpart C. SLOT MACHINE LICENSING**

**Chap.**  
**441. SLOT MACHINE LICENSES**  
**443. CATEGORIES OF LICENSURE**

**CHAPTER 441. SLOT MACHINE LICENSES**

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441.10.	Application bond or letter of credit requirement.
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441.12.	Public input.

**§ 441.1. Definitions.**

For purposes of this subpart, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

*Applicant*—A person who applies to the Board to receive a slot machine license as defined in this section.

*Developer*—A person engaged by an applicant or licensee to construct a proposed licensed facility or to otherwise make land or buildings suitable for use as a licensed facility.

*Organization*—All legal business entities that are under common ownership or control, including, but not limited to, affiliates, subsidiaries, intermediaries and holding companies.

*Slot machine license*—For purposes of this chapter, the term includes a Category 1 slot machine license under section 1302 of the act (relating to Category 1 slot machine license), a conditional Category 1 slot machine license under section 1315 of the act (relating to Conditional Category 1 license), a Category 2 slot machine license under section 1304 of the act (relating to Category 2 slot machine license) and a Category 3 slot machine license under section 1305 of the act (relating to Category 3 slot machine license).

**§ 441.2. Initial slot machine application deadlines.**

(a) To enable the Board to consider all initial applications for every category of slot machine license together in a comprehensive Statewide manner, the Board will initiate the formal procedure for the acceptance, consideration and final resolution of all initial applications for slot machine licenses by setting a filing period for filing of all initial Category 1, 2 and 3 slot machine license applications. The filing period set by the Board shall be the same for all categories of slot machine licenses and shall be published in the *Pennsylvania Bulletin* at least 1 month prior to the start of the filing period.

(b) After the expiration of the filing period established by the Board under subsection (a), the Board will set a completion date by which all filed applications are to be deemed complete by the Board. An application that is not complete, as determined by the Board, by the filing date will not be considered. The completion date set by the Board under this subsection shall be the same for all categories of slot machine licenses and shall be published in the *Pennsylvania Bulletin* at least 45 days prior to the completion date.

(c) Subsections (a) and (b) do not apply to applications for conditional Category 1 slot machine licenses filed under § 443.3 (relating to conditional Category I licenses).

**§ 441.3. Slot machine license requirements.**

(a) An applicant for or holder of a slot machine license shall have a continuing duty to do the following:

(1) Notify the Board within 30 days of a material change in the information, materials, documents or facts relating to the license application, license or renewal application, which is relevant to the licensing requirements set forth in the act.

(2) Provide information required by the Board or the Bureau relating to licensing.

(3) Cooperate with the Board and the Bureau in investigations, hearings, enforcement and disciplinary actions.

(4) Comply with all conditions, restrictions, requirements, orders and determinations made by the Board in accordance with the act.

(b) Failure to provide the information required by this subpart shall result in an application being deemed incomplete.

(c) A copy of the local impact report required under § 441.4(a)(21) (relating to slot machine license application) shall be provided to each political subdivision in which the licensed facility will be located at least 7 days prior to the filing of the application for a slot machine license. The applicant shall file a proof of service with the Board.

**§ 441.4. Slot machine license application.**

(a) To be eligible for a slot machine license, an applicant shall submit an application which includes the following:

(1) An original and seven copies of the slot machine license Application and Disclosure Information Form.

(2) The name, address, fingerprints, photograph, handwriting exemplar and criminal history background information for the applicant, its key employee qualifiers and key employees and their current or proposed position and responsibilities within the applicant's business structure, unless granted a waiver under § 435.2(g) or § 435.3(f) (relating to key employee qualifier license; and key employee license).

(3) A license application for each key employee qualifier and key employee under Chapter 435 (relating to employees), unless granted a waiver under § 435.2(g) or § 435.3(f), including an original and seven copies of the Multi Jurisdictional Personal History Disclosure Form, the Pennsylvania Supplement and a nonrefundable background investigation deposit to be set by the Board and provided in a fee schedule for each key employee qualifier and each key employee. An additional charge may be assessed upon the applicant by the Board based on the actual expenses incurred to conduct the background investigation required by the act.

(4) An executed consent form for the Board and the Bureau to conduct background investigations for the applicant and each key employee qualifier and key employee and notarized releases necessary to obtain information from government agencies and other institutions.

(5) 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.

(6) The proposed location of slot machines at the facility.

(7) The number of slot machines requested, consistent with section 1210 of the act (relating to number of slot machines) and section 1305(c) of the act (relating to Category 3 slot machine license).

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

(9) Executed consent forms to allow inspections, searches and seizures and the examination of accounts and records.

(10) An executed waiver of liability for damages as required under § 421.1(d) (relating to general requirements).

(11) The applicant shall affirm that neither it nor any of its affiliates, intermediaries, subsidiaries or holding companies, key employee qualifiers or key employees hold 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 slot machine 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 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.

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

(13) A current Unemployment Compensation Tax clearance review and a Workers' Compensation Tax clearance review from the Department of Labor and Industry.

(14) The details of any gaming, slot machine or casino license applied for by, or granted or denied to, the applicant or an affiliate, intermediary, subsidiary or holding company in any other jurisdiction and an executed consent for the Board to acquire copies of applications, licenses and related information from the other jurisdiction.

(15) The details of existing, unpaid loans from a financial institution or other source, or loans or financing arrangements to be entered into in connection with the applicant's proposed facility.

(16) Marketing plans and proposals.

(17) The location and description of the facility and a description of the proximity of the facility to its market service area.

(18) Architectural drawings, artist renderings, plans and other depictions of the facility to be licensed.

(19) The square footage of area that will be used for the placement of slot machines and the square footage of the areas that will not be used for the placement of slot machines.

(20) Planned retail and food venues for the facility and the identification of the outside operators of each venue.

(21) A local impact report, which includes, but is not limited to, engineering reports and traffic studies, including details of any adverse impact on transportation, transit access, housing, water and sewer systems, local police and emergency service capabilities, existing tourism, including historical and cultural resources or other municipal service or resource. Local impact reports and other studies and reports shall clearly indicate all information in the study or report that the applicant considers confidential.

(22) A description of proposed parking facilities and number of spaces.

(23) Land acquisition costs and supporting documents.

(24) A compulsive or problem gambling plan.

(25) If a temporary facility is to be licensed, a plan for how the licensee will transition to a permanent facility, including a date for the completion of the permanent facility.

(26) 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).

(27) Except as provided in § 443.3(b)(12) (relating to Conditional Category 1 licenses), a bond or letter of credit required under § 441.10 (relating to application bond or letter of credit requirement).

(28) The history and success of the applicant or its affiliate in developing tourism facilities ancillary to gaming, if applicable.

(29) The degree to which the applicant's proposal will likely lead to the creation of quality, living wage jobs and full-time permanent jobs for residents of this Commonwealth and residents of the host political subdivision. The projected number of new jobs to be created if the license is granted, including the projected number of new employees at the licensed facility.

(30) The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations.

(31) The degree to which potential adverse effects related to the proposed facility, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated.

(32) The record of the applicant and its developer regarding compliance with:

(i) Federal, State and local discrimination, wage and hour, disability, and occupational and environmental health and safety laws.

(ii) State and local labor relations and employment laws.

(33) The applicant's record in dealing with its employees and their representatives at other locations.

(34) A statement demonstrating compliance with the geographical requirements of section 1302 of the act (relating to Category 1 slot machine license), section 1304 of the act (relating to Category 2 slot machine license) or section 1305 of the act.

(35) Other information requested by the Board.

#### **§ 441.5. Financial fitness requirements.**

(a) An applicant for a slot machine license shall prove by clear and convincing evidence the financial stability and integrity of the applicant and its affiliates, intermediaries, subsidiaries and holding companies in accordance with section 1313 of the act (relating to slot machine license application financial fitness requirements).

(b) The Board will not approve a slot machine license application unless it has made an affirmative determination that the applicant has established it is likely to maintain a financially successful, viable and efficient business operation and will likely be able to maintain a steady level and growth of revenue to the Commonwealth.

(c) Unless a waiver under § 435.2(g) or § 435.3(f) (relating to key employee qualifier license; key employee license) has been granted or is pending, an applicant for a slot machine license shall provide the following to the Board:

(1) An executed authorization for the Board to examine all bank accounts and records as necessary.

(2) The organization, including a chart outlining the organizational structure, and the financial structure and

nature of all businesses owned or operated by the applicant and its affiliates, intermediaries, subsidiaries or holding companies, including the name, employment history and criminal history record of each key employee qualifier and key employee of each business owned or operated by the applicant and its affiliates, intermediaries, subsidiaries or holding companies.

(3) If the applicant is a corporation, the extent to which securities are held by all key employee qualifiers and their remuneration from salary, wages, fees and other sources.

(4) Bank references.

(5) Business income, disbursement schedules, accounting, check records and ledgers for the applicant and key employee qualifiers as applicable.

(6) The applicant's and each key employee qualifier's State and Federal tax returns and other reports filed with government agencies for the past 5 years.

(7) A list and description of all existing and proposed financial backers, as well as adequate information to allow the Board to determine the integrity of the financial backers as provided under section 1313(b) of the act. The Board may waive the requirement that it determine the integrity of a financial backer for a banking or lending institution or an institutional investor.

(8) Demonstration of adequate financing for the proposed facility and terms of financing including payback period.

(9) Business and economic development plans and timetables.

(10) Projected debt service expenses.

(11) Projected EBITDA and Internal Rate of Return.

(12) Projected annual gross terminal revenue.

(13) Projected operating and capital expenses.

(14) Defined gaming market and projected visitation.

(15) Any additional documentation or information requested by the Board.

#### **§ 441.6. Character requirements.**

(a) An applicant for a slot machine license shall prove by clear and convincing evidence the good character, honesty and integrity of the applicant and its affiliates, intermediaries, subsidiaries and holding companies in accordance with section 1310 of the act (relating to slot machine license application character requirements).

(b) Prior to approval of a slot machine license, the Board will make a finding relating to the applicant's good character, honesty and integrity.

(c) Unless a waiver under § 435.2(g) or § 435.3(f) (relating to key employee qualifier license; and key employee license) has been granted or is pending, the applicant shall provide the following to the Board:

(1) Information, documentation and assurances pertaining to family and personal background, habits, character, reputation, business activities, financial affairs and business, professional and personal associates for the 10 years immediately preceding the filing date of the application for the applicant, its key employee qualifiers and key employees, to include the information required under § 435.2(b).

(2) History of insurance claims for the past 7 years or that exceed \$50,000 relating to the business activities of the applicant or its affiliate, intermediary, subsidiary or holding company.

(3) Notice of any civil judgment obtained against the applicant, or any of its key employee qualifiers or key employees pertaining to antitrust or security regulation of laws of the Federal government, the Commonwealth or other jurisdiction.

(4) A letter of reference from law enforcement agencies having jurisdiction in the applicant's and key employee qualifier's principal place of residence and place of business indicating that the agency does not have any pertinent information relating to the applicant or its key employee qualifiers. If the law enforcement agency has information pertaining to the applicant or any of its key employee qualifiers, the letter must specify the details of the information. If no letters are received within 30 days of the request, the applicant or key employee qualifier may submit a sworn or affirmed statement that the applicant, or key employee qualifier is a citizen in good standing in his jurisdiction of residence and principal place of business.

(5) If the applicant has held a gaming license in any other jurisdiction, a letter of reference from the gaming or casino enforcement or regulatory agency in the other jurisdiction. The letter must specify the experiences of the agency with the applicant, the applicant's associates and the applicant's gaming operation. If no letter is received within 30 days of request by the applicant, the applicant may submit a sworn or affirmed statement that the applicant's operation is in good standing with the regulatory agency.

(6) Additional information requested by the Board.

#### § 441.7. Procedure.

(a) If the Board determines that the applicant has proven by clear and convincing evidence that it has the financial stability, integrity and responsibility and is of good character, honesty and integrity, it may issue a slot machine license under this chapter.

(b) The Bureau may file an objection with the Board to the issuance of a license under this chapter if the Bureau determines that the applicant, a key employee qualifier, key employee or other employee or associate of the applicant, fails to meet the requirements of this chapter regarding financial fitness and character requirements. Notice of the objection will be provided to the applicant by the Bureau. The applicant shall be afforded 10 days to respond to the application.

(1) The Board will review the information contained in the objection by the Bureau and determine if the information warrants the denial of an application, divestiture under § 441.8 (relating to divestiture) or the imposition by the Board of conditions upon a license which establish the applicant's financial fitness and character as required by the Board.

(2) The Board may direct an applicant to disassociate itself with any employee or associate objected to by the Board or the Bureau, order divestiture under section 1312 of the act (relating to divestiture of disqualifying applicant) or to otherwise cure any defect that will enable the applicant to meet the financial fitness or character requirements of the act.

#### § 441.8. Divestiture.

(a) If the Board determines that a slot machine license cannot be approved because the applicant, its key employee qualifier or other person who holds a direct or indirect interest in the applicant or in an affiliate, intermediary, subsidiary or holding company of the applicant, does not meet a character or other eligibility criteria

required by section 1310 of the act (relating to slot machine license application character requirements), or has an ownership or financial interest that is prohibited by section 1330 of the act (relating to multiple slot machine license prohibition), the Board may grant the person up to 120 days following the determination to completely divest his interest in the applicant or its affiliate, intermediary, subsidiary or holding company.

(b) The person shall notify the Board of his intention to divest within 30 days of notice from the Board of the opportunity to divest. The Board may extend this time period at its discretion.

(c) Failure to divest within 120 days, or within the time period prescribed by the Board, constitutes a per se disqualification of the applicant to receive a slot machine license.

(d) Following divestiture, the Board will reconsider the applicant's suitability for licensure in an expedited procedure.

(e) The terms of divestiture will be approved by the Board.

(f) The Board will not approve a divestiture if the compensation received for the divested interest exceeds the value of the interest.

#### § 441.9. Responsibilities of licensed organizations.

(a) *General.* A Category 1 license, including a Conditional Category 1 license, may be issued to any qualifying legal business entity within an organization, if the legal business entity within the organization has been approved or issued a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct thoroughbred or harness race meetings. If a Category 1 license is issued to a legal business entity within an organization, all requirements, duties and obligations imposed by this part or the act on the licensed racing entity or a licensed racetrack shall be deemed to be requirements imposed on any legal business entity within the organization that has been approved or issued a Category 1 license. If more than one licensed racing entity, on July 5, 2004, was conducting a racing meet at the same licensed racetrack where an organization has been issued a Category 1 slot machine license, section 1303 of the act (relating to additional Category 1 slot machine license requirements) applies to each licensed racing entity at the licensed racetrack.

(b) *Specific.* If a Category 1 license is issued to a legal business entity in an organization, any legal business entity within the organization that has been approved or issued a Category 1 license shall be responsible for, in particular but not limited to, complying with:

(1) Section 1404 of the act (relating to distributions from licensee's revenue receipts).

(2) Section 1405 of the act (relating to Pennsylvania Race Horse Development Fund).

(3) Distribution allocations received from the Pennsylvania Race Horse Development Fund under section 1406 of the act (relating to Distributions from the Pennsylvania Race Horse Development Fund).

#### § 441.10. Application bond or letter of credit requirement.

(a) Except as otherwise provided in § 443.3 (relating to Conditional Category 1 licenses), an application for a slot machine license shall include an original payment bond or an original irrevocable letter of credit that includes a draw certificate, at the applicant's option, guaranteeing

the applicant's payment of the slot machine license fee required by section 1209(c) of the act (relating to slot machine license fee), if the license is issued and approved.

(1) The payment bond or irrevocable letter of credit shall be submitted and approved by the Board before the application may be deemed complete. The payment bond or irrevocable letter of credit shall be in the following amounts:

(i) \$50,000,000 for each application for a Category 1 or Category 2 license.

(ii) \$5,000,000 for each application for a Category 3 license.

(2) It is not necessary for an applicant who has paid the \$50,000,000 slot machine license fee upon the issuance of a conditional Category 1 license under § 443.3 to post an additional payment bond or letter of credit in connection with its application for a Category 1 license if the application involves the same applicant at the same licensed facility.

(b) Unless otherwise required by the Board, a payment bond or letter of credit provided under this section must comply with the following:

(1) A payment bond must be issued by a surety company that is licensed by the Insurance Department and guaranteed by a guarantor that is licensed by the Insurance Department.

(2) A letter of credit must be issued by a bank, trust company, national banking association or corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) whose unsecured obligations or uncollateralized long-term debt obligations have been assigned a rating within the two highest rating categories by Moody's and Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service.

(c) An application is not deemed complete until the Board investigates and approves the proposed terms of the payment bond or irrevocable letter of credit, the surety or financial institution that will issue the payment bond or irrevocable letter of credit and the guarantor that will guaranty the performance bond.

(d) The payment bond or irrevocable letter of credit provided under this section must state that it is payable to "The Commonwealth of Pennsylvania" as the obligee.

(e) The payment bond or irrevocable letter of credit provided under this section must provide that if the license has been approved and issued by the Board and the license fee has not been paid in full within 5 business days following the issuance of the license, the Commonwealth will have the right to request immediate payment under the payment bond or irrevocable letter of credit for payment of the slot machine license fee.

(f) The payment bond or irrevocable letter of credit must state that it runs continuously and remains in full force and effect throughout the period in which the application is on file with the Board and until the application is denied or all of the following occur:

(1) The license is issued.

(2) The license application fee is paid.

(3) The applicant is permitted by the Board to withdraw its application under § 423.5 (relating to application withdrawal).

#### § 441.11. Slot machine license issuance bond requirement.

(a) A licensed gaming entity shall post an original performance bond in the amount of \$1,000,000 upon the issuance of a slot machine license.

(b) Unless otherwise required by the Board, the performance bond must comply with the following:

(1) The performance bond must be issued by a surety company licensed by the Insurance Department and guaranteed by a guarantor that is licensed by the Insurance Department.

(2) A licensed gaming entity shall submit its proposed performance bond to the Board prior to the issuance of a slot machine license. The Board will investigate and approve the proposed terms of the performance bond and the surety that will issue the performance bond and the guarantor that will guarantee the performance bond.

(3) The performance bond must state that it is payable to "The Commonwealth of Pennsylvania" as the obligee for immediate payment of the licensed gaming entity's financial obligations to the Commonwealth under the act and as security to guarantee that the licensed gaming entity faithfully makes the payments, keeps its books and records, makes reports and conducts its operations in compliance with the act.

(4) The performance bond shall state that it runs continuously and remains in full force and effect throughout the period of time that the slot machine license is in effect. The surety shall provide the Board at least 30 days written notice of cancellation of the performance bond.

(c) The Board may demand that the slot machine licensee post a new performance bond upon the occurrence of any of the following:

(1) Liability on the existing performance bond is discharged or reduced by judgment rendered, payment made or similar occurrence.

(2) The Board determines that the surety or guarantor is no longer satisfactory.

(3) The licensed gaming entity requests the right to post a new performance bond.

(4) The Board receives notice that the performance bond will be cancelled.

#### § 441.12. Public input.

(a) If the Board determines that there is substantial public interest in a slot machine licensing proceeding, it may conduct a public hearing in the municipality where the proposed facility is to be located.

(b) The Board will develop and publish a protocol establishing the procedure to be used in the conduct of a public hearing under this section.

### CHAPTER 443. CATEGORIES OF LICENSURE

Sec.

443.1. Category 1 slot machine licenses.

443.2. Alternative Category 1 licensing standards.

443.3. Conditional Category 1 licenses.

#### § 443.1. Category 1 slot machine licenses.

(a) To be eligible to receive a Category 1 slot machine license, an applicant shall submit the following:

(1) A statement detailing the applicant's regulatory history as a licensed racing entity under the jurisdiction of the State Horse Racing Commission or State Harness Racing Commission, including the applicant's history of suitability and compliance with the Race Horse Industry

Reform Act in the operation of the racetrack and nonprimary locations and the conduct of pari-mutuel wagering.

(2) A verification from the State Horse Racing Commission or the State Harness Racing Commission stating that the applicant has satisfied the license eligibility requirements under section 1302 of the act (relating to Category 1 slot machine license).

(3) A verification from the State Horse Racing Commission or the State Harness Racing Commission stating that the applicant has satisfied the live racing requirements under section 1303 of the act (relating to additional Category 1 slot machine license requirements).

(4) An initial plan for the management and use of backside area improvement and maintenance accounts under section 1404 of the act (relating to distributions from licensee's revenue receipts).

(5) An initial plan for the management of accounts created from funds allocated under section 1406 of the act (relating to distributions from Pennsylvania Race Horse Development Fund).

(6) Information deemed necessary by the Board to determine the operational viability, financial fitness or character of the applicant.

(b) The State Horse Racing Commission or the State Harness Racing Commission may submit additional information to the Board if it believes the information will assist the Board in making a determination relating to the operational, financial or character fitness of the applicant.

(c) The Board may issue a Category 1 slot machine license if it determines that the applicant has complied with the requirements of this section and has proven by clear and convincing evidence that it has the financial stability and integrity and the good character, honesty, integrity and responsibility to qualify for a slot machine license.

(d) An applicant for a Conditional Category 1 license who has paid the fee under § 441.4(a)(3) (relating to slot machine license application) as part of its conditional license application shall only pay the additional costs of updating background information as required by the Board.

#### **§ 443.2. Alternative Category 1 licensing standards.**

(a) If an applicant for a Category 1 license, or its affiliate, intermediary, subsidiary or holding company holds a similar license in another jurisdiction in the United States or Canada, the applicant may submit a written request with its application for the Board to adopt an abbreviated licensing process under section 1314(b) of the act (relating to alternative Category 1 licensing standards).

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

(1) The Board determines, after investigation, that the licensing standards in the other jurisdiction in which the applicant or its affiliate, intermediary, subsidiary or holding company is licensed is similarly comprehensive and thorough and provides safeguards that are equal to or greater than those provided in the act and granting the request would be in the public interest.

(2) A completed application for a Category 1 license has been filed with the Board which includes the name and address of the regulatory agency in the other jurisdiction.

(3) The Board has received a copy of the completed application and all renewal applications filed in the other jurisdiction and all accompanying documents provided by the other jurisdiction.

(4) The applicant has provided current, updated information to the Board regarding the license in the other jurisdiction relating to its financial viability and suitability and good character.

(5) The applicant has no administrative or enforcement actions pending in any other jurisdiction or the applicant has disclosed and explained these actions to the satisfaction of the Board.

(6) There are no pending or ongoing investigations of possible material violations by the applicant in any other jurisdiction or the applicant has disclosed and explained these investigations to the satisfaction of the Board.

(c) The abbreviated process does not waive fees associated with obtaining a Category 1 license.

(d) The Board may determine to use an abbreviated process requiring only that information determined by the Board to be necessary to consider the issuance of the license, including the financial viability of the applicant.

(e) Following the issuance of a Category 1 license under this section, the Bureau will initiate a complete review of all information submitted under this subpart. If the applicant does not meet the requirements of the act following formal proceedings under § 441.7 (relating to procedure), the Board will revoke the license or suspend or condition the license until the applicant meets all the requirements of the act.

#### **§ 443.3. Conditional Category 1 licenses.**

(a) A person who is eligible for a Category 1 license may apply for a Conditional Category 1 license.

(b) An application for a Conditional Category 1 license shall include the following information:

(1) A statement detailing the applicant's regulatory history as a licensed racing entity under the jurisdiction of the State Horse Racing Commission or State Harness Racing Commission, including the applicant's history of suitability and compliance with the Race Horse Industry Reform Act in the operation of the racetrack and any nonprimary locations and the conduct of pari-mutuel wagering.

(2) A verification from the Horse Racing Commission or the Harness Racing Commission stating that the applicant has satisfied the license eligibility requirements under section 1302 of the act (relating to Category 1 slot machine license).

(3) A verification from the Horse Racing Commission or the Harness Racing Commission stating that the applicant has satisfied the live racing requirements under section 1303 of the act (relating to additional Category 1 slot machine license requirements).

(4) A copy of the applicant's audited financial statements for the last 5 years.

(5) A chart disclosing the organizational structure of the applicant and identifying the affiliate, intermediary, subsidiary or holding company, if any, that will operate the slot machine facility under the Conditional Category 1 license, if issued.

(6) A statement identifying and providing the required licensing information under §§ 435.2 and 435.3 (relating to key employee qualifier license; and key employee license) for all key employee qualifiers and key employees

who will conduct slot machine operations under the conditional license, unless subject to waiver under § 435.2(g) or § 435.3(f).

(7) An original and seven copies of the Multi Jurisdictional Disclosure Form for each key employee qualifier and key employee and a consent form from each of these individuals authorizing the Board to conduct a background investigation and a release signed by each key employee qualifier and key employee identified under paragraph (6) of all information required to complete the investigation, unless subject to waiver under § 435.2(g) or § 435.3(f).

(8) A detailed statement that includes the following:

(i) The location of the proposed slot machine facility.

(ii) The detailed plans for the slot machine facility to be operated under the conditional license, if issued, including architectural and engineering plans.

(iii) The number of machines which the applicant plans to operate.

(iv) A description of how the slot machine operations under the conditional license will enhance the applicant's horse racing operations.

(v) The estimated capital expenditure, including the cost of purchasing slot machines, for the applicant's proposed facility under the conditional license.

(9) A current tax clearance and lien review performed by the Department.

(10) A current Unemployment Compensation Tax clearance certificate and a Workers' Compensation Tax clearance certificate from the Department of Labor and Industry.

(11) Detailed information pertaining to any gaming, slot machine or casino license held or denied in any other jurisdiction and an executed consent form authorizing the Board to obtain documents and information relating to the license issuance or denial in the other jurisdiction.

(12) The payment bond or letter of credit required under § 441.10 (relating to application bond or letter of credit requirement). The Board may waive this requirement if the applicant provides adequate documentation regarding its ability to pay the \$50,000,000 licensing fee upon issuance of a Conditional Category 1 license.

(13) A sworn or affirmed statement that the applicant, its key employee qualifiers and key employees have not been convicted of a felony or a gambling offense in any jurisdiction within the past 15 years.

(c) An application submitted under subsection (a) and information obtained by the Board or the Bureau relating to the application shall be part of the evidentiary record of the licensing proceeding. 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 Conditional Category 1 license will be based solely on the evidentiary record before the Board.

(d) The Board will consider and evaluate the applicant's record with the State Horse Racing Commission or the State Harness Racing Commission for operating a racetrack and any nonprimary location and conducting pari-mutuel wagering as a factor in its deliberations relating to the issuance of a conditional license.

(e) The Board will not issue a Conditional Category 1 license until:

(1) Ninety days following the Board's initial approval, conditioning or denial of all filed applications for manufacturer and supplier licenses.

(2) The applicant's application for a Category 1 license has been filed and deemed complete by the Board.

(3) A filing period has been established by the Board for applications for all categories of slot machine licenses under § 441.2 (relating to initial slot machine application deadlines).

(f) If the holder of a Conditional Category 1 license does not receive Board approval for a Category 1 license within 18 months of the deadline established by the Board for the application to be deemed complete under § 441.2, the Conditional Category 1 license shall be forfeited and the authorization to place and operate slot machines at the licensed facility shall be revoked.

(g) If a Conditional Category 1 license expires without the issuance of a license or if an application for a license is denied, the applicant shall be entitled to a return of 85% of the conditional slot machine license fee submitted by the applicant.

### **Subpart I. COMPULSIVE AND PROBLEM GAMBLING**

**Chap.**  
**501.**

#### **COMPULSIVE AND PROBLEM GAMBLING**

#### **CHAPTER 501. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS**

**Sec.**

501.1.	Definitions.
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#### **§ 501.1. Definitions.**

For purposes of this subpart, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

*Qualified treatment professional*—A mental health or behavioral health professional who has produced documentation of the training, experience and competency, including a license or certification in good standing if required by the Commonwealth, necessary to treat compulsive and problem gambling. The term includes community based organizations such as Gamblers Anonymous.

#### **§ 501.2. Compulsive and problem gambling plan.**

A slot machine licensee shall submit a compulsive and problem gambling plan to the Board at the time of submission of the application. The plan must meet the minimum standards in this subpart. The maintenance of the plan approved under this subpart shall be a condition of license renewal.

#### **§ 501.3. Criteria for development.**

(a) *Content of plan.* A compulsive and problem gambling plan must include the following:

(1) The goals of the plan and procedure and timetables to implement the plan.

(2) The identification of the individual who will be responsible for the implementation and maintenance of the plan under this subpart.

(3) Policies and procedures including the following:



(i) The commitment of the licensee to train appropriate employees.

(ii) The duties and responsibilities of the key employees and gaming employees designated to implement or participate in the plan.

(iii) The responsibility of patrons with respect to responsible gambling.

(iv) Procedures to identify patrons and employees with suspected or known compulsive and problem gambling behavior.

(v) Referral of individuals self excluded from gaming activities under section 1516 of the act (relating to list of persons self excluded from gaming activities) to qualified treatment professionals, including mental health, behavioral health and other professions and to community compulsive gambling organizations.

(vi) Referral of suspected or known compulsive and problem gamblers to qualified treatment professionals. This subparagraph does not create a duty for licensed facilities or its employees to refer compulsive and problem gamblers to qualified treatment professionals.

(4) The provision of printed material to educate patrons about compulsive and problem gambling and to inform them about treatment services available to compulsive and problem gamblers and their families. The slot machine licensee shall provide examples of the materials to be used as part of its plan, including signs, brochures and other printed material and a description of how the material will be disseminated.

(5) An employee training program, including training materials to be utilized and a plan for periodic reinforcement training.

(6) A certification of an employee's completion of the training required by the plan in a form approved by the Board.

(7) An estimation of the cost of development, implementation and administration of the plan.

(8) The qualified treatment professional and community organizations to which compulsive and problem gamblers will be referred.

(9) Procedures to prevent underage gambling.

(10) Procedures to prevent intoxicated patrons from playing slot machines.

(11) If the plan includes an outreach program, the details of the program.

(12) The posting of Board approved signs within the licensed facility, containing gambling treatment referral information.

(13) Other policies and procedures to encourage responsible gambling.

(b) *Department of Health.* The Board may provide the plan submitted by the slot machine licensee to the Department of Health for evaluation. The Department of Health may provide comments and recommendations to the Board relating to the plan.

#### **§ 501.4. Employee training program.**

(a) A plan submitted under this subpart shall include an employee training program, including instruction in the following:

(1) Characteristics and symptoms of compulsive behavior, including compulsive and problem gambling.

(2) The relationship of compulsive and problem gambling to other addictive behavior.

(3) The social and economic consequences of compulsive and problem gambling, including debt, treatment costs, suicide, criminal behavior, unemployment and family counseling.

(4) Techniques to be used when compulsive and problem gambling is suspected or identified.

(5) Techniques to be used to discuss compulsive and problem gambling with patrons and to refer and advise patrons regarding community, public and private treatment services.

(6) Procedures designed to prevent serving alcohol to visibly intoxicated gaming patrons.

(7) Procedures for removing self-excluded persons from a licensed facility including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel.

(8) Procedures for preventing any person identified on the self-exclusion list from receiving any advertisement, promotion or other target mailing after 90 days of receiving notice from the Board that the person has been placed on the self-exclusion list.

(9) Procedures for the dissemination of written materials to patrons explaining the self-exclusion program.

(10) Procedures to prevent any person placed on the self-exclusion list from having access to or from receiving complimentary services, or other like benefits.

(11) Procedures designed to prevent persons from gambling after having been determined to be visibly intoxicated.

(b) Training for permanent employees shall be conducted by qualified treatment professionals within time tables approved by the Board for the completion of training.

(c) Key employees and gaming employees designated to receive training shall receive the certification under § 501.3(a)(6) (relating to criteria for development) upon completion of the training.

(d) Key employees and gaming employees who are required to receive training under the plan shall receive periodic reinforcement training, which shall be reported in a manner prescribed by the Board.

(e) A key employee or gaming employee may report suspected or identified compulsive or problem gamblers to a designated key employee or other supervisory employee. The employee who makes a report under this subsection shall be immune from liability under § 501.6 (relating to liability).

(f) The identity of an individual suspected of known compulsive or problem gambling shall be confidential except as provided under this subpart and section 1516(d) of the act (relating to list of persons self-excluded from gaming activities).

(g) Slot machine licensees may collaborate with qualified treatment professionals to develop an in-house or Internet based employee training program to provide the training and reinforcement training in accordance with this subpart. The use of the Internet based program must be approved by the Board prior to the use of the program to meet the requirements of this subsection.

(h) If the plan submitted under this subpart meets the minimum requirements of this subpart, the Board will

approve the plan. The Board will approve or disapprove the plan within 90 days of its submission. If the Board disapproves the plan, the applicant shall have 30 days to make the changes requested by the Board and to resubmit the plan to meet the minimum requirements set forth in this subpart.

**§ 501.5. Reports.**

A slot machine licensee shall submit an annual summary of its compulsive and problem gambling plan with its application for renewal of the slot machine license.

**§ 501.6. Liability.**

A licensed gaming entity or an employee thereof is not liable for damages in a civil action based on the following:

- (1) Failure to include any of the requirements of this chapter in its compulsive and problem gambling plan under this chapter.
- (2) Compliance or noncompliance with this section or a plan adopted under this chapter.
- (3) An action or failure to take action under this chapter or a plan adopted under this chapter.
- (4) Failure to withhold gambling privileges from an individual.
- (5) Permitting an individual to gamble.

**§ 501.7. Signage requirements.**

(a) Under section 1509(c) of the act (relating to compulsive and problem gambling program), each licensed gaming entity shall post signs that include the statement: "If

you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the sign will be determined by the Board. The signs shall be prominently posted at the following locations:

- (1) Within 50 feet of each entrance and exit of the facility.
- (2) Within 50 feet of each ATM, cash dispensing or change machine in each facility.

(b) Each licensee shall print a statement related to obtaining compulsive or problem gambling assistance, the text of which shall be determined by the Board, on all marketing or advertising materials that are offered to the general public by a licensee, including signs, billboards, print, radio or television advertisements.

**§ 501.8. Prohibition on check cashing.**

(a) Except as otherwise permitted in this section, a licensed gaming entity or any person acting on behalf of a licensed gaming entity, may not cash any check, including Social Security, unemployment insurance, disability payment, public assistance payment or payroll check from any person to enable such person to take part in gaming.

(b) Notwithstanding the provisions of subsection (a), a licensed gaming entity may accept a recognized traveler's check, cashier's check, money order, wire transfer check or other cash equivalent.

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