

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD [58 PA. CODE CHS. 401, 435, 437 AND 441]

Draft Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P.L. 572, No. 71). Included in this group of draft regulations are proposed amendments to § 401.4 (relating to definitions). Upon adoption of the regulations and amendments by the Board, the Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). By publishing these regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations to the Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060, Attn: Public Comment. The public comment period will end on Monday, October 10, 2005.

THOMAS A. DECKER,
Chairperson

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

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

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Gaming area—Any portion of a licensed facility where slot machines have been installed for use or play.

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Nongaming employee—An employee of a slot machine licensee or vendor licensee whose duties are required to be performed in a gaming area or restricted area but who is not included within the definition of key employee qualifier, key employee or gaming employee, including, but not limited to, the following positions, regardless of job title:

- (i) Bartender.
- (ii) Cocktail server.
- (iii) Persons solely engaged in preparing or serving food or beverages.
- (iv) Clerical or secretarial personnel.
- (v) Janitorial personnel.
- (vi) Stage, sound and light technicians.
- (vii) Other positions the Board will determine based on detailed analyses by the Board of job descriptions as provided in the internal controls of the slot machine licensees as approved by the

Board or provided in the slot machine licensee's verification of the location of vendor services included with the vendor registration or license application.

* * * * *

Regular or continuing basis—A vendor will be deemed to conduct business on a regular or continuing basis if:

- (i) The total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than \$150,000 within any consecutive 12 month period.
- (ii) The total dollar amount of transactions with slot machine licensees or applicants is or will be greater than \$500,000 within any consecutive 12 month period.

Restricted area—An area specifically designated by the Board as restricted, including:

- (i) The cashiers' cage.
- (ii) The soft count room.
- (iii) The hard count room.
- (iv) The slot booths.
- (v) The surveillance room.
- (vi) The slot machine repair room.
- (vii) The progressive controller room.
- (viii) The central control computer room.
- (ix) The information technology department.
- (x) The specific areas designated and approved by the Board for the conduct of gaming in the licensed facility.
- (xi) Any additional area that a slot machine licensee designates a restricted in its approved internal controls.

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VLA—Vendor License Application.

VRF—Vendor Registration Form.

Vendor—A person who provides goods or services to a slot machine licensee or applicant, but who is not required to be licensed as a manufacturer, supplier or junket enterprise. These persons include:

- (i) Suppliers of alcoholic beverages (other than the Pennsylvania Liquor Control Board), food and nonalcoholic beverages.
- (ii) Refuse handlers.
- (iii) Vending machine providers and service personnel.
- (iv) Linen and uniform suppliers.
- (v) Janitorial and maintenance companies, not relating to the repair of slot machines or associated equipment.
- (vi) Tenant businesses or franchises located within licensed facilities.
- (vii) Providers of transportation services.
- (viii) Companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant.
- (ix) Lessors of real property or goods.

(x) Other entities which the Board determines based on detailed analyses by the Board of vendor contracts.

Vendor license—A license issued by the Board authorizing a vendor to provide goods or services to a slot machine licensee or applicant.

Vendor licensee—A vendor that holds a vendor license.

Vendor registrant—A vendor that is registered with the Board.

Vendor registration—A registration issued by the Board authorizing a vendor to provide goods or services to a slot machine licensee or applicant.

Subpart B. LICENSING, REGISTERING AND PERMITTING

CHAPTER 435. EMPLOYEES

§ 435.5. Nongaming employee registration.

(a) In accordance with section 1318 of the act (relating to occupation permit application), the Board has the power to classify a category of nongaming employees.

(b) Nongaming employees shall apply for and receive a nongaming employee registration from the Board.

(c) An application for a nongaming employee registration will be on a form prescribed by the Board and include the following information:

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

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

(9) A description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee or vendor licensee.

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

(11) A description of the individual's arrests and convictions, if any.

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

(13) As deemed necessary by the Board, 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.

(14) Details relating to any similar licenses, permits or registrations obtained, denied or revoked in other jurisdictions.

(15) A nonrefundable application processing fee.

(16) Additional information requested by the Board.

(d) After review of the information required under subsection (c), the Board may register the individual if the individual has proven that he is qualified to be registered under this section.

(e) Nongaming employee registrations shall be submitted to the Board by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant of the location of the nongaming employee's duties at the licensed facility.

CHAPTER 437. VENDOR REGISTRATION AND LICENSING

Sec.	
437.1.	Vendor registration requirements.
437.2.	VRF.
437.3.	Vendor license requirements.
437.4.	Vendor license application.
437.5.	Active vendors list; prohibited vendors.
437.6.	Existing agreements.
437.7.	Permission to conduct business prior to licensure.
437.8.	Disqualification criteria.
437.9.	Exemption from vendor registration or licensing requirements.
437.10.	Emergency vendor.

§ 437.1. Vendor registration requirements.

(a) Each slot machine licensee shall file a VRF with the Board to conduct business with a vendor, except as provided in §§ 437.3 and 437.7 (relating to vendor license requirements; and permission to conduct business prior to licensure).

(b) VRFs shall be submitted by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

§ 437.2. VRF.

A VRF shall be in a format prescribed by the Board requesting the following information:

(1) Any official or trade name used.

(2) Business address.

(3) Telephone number.

(4) The nature of the applicant's business and the type of goods or services to be provided and the name of the slot machine licensees or applicants to which the goods or services will be provided.

(5) Federal Employer Identification Number/Tax Identification Number.

(6) Whether the vendor is minority- or women-owned and controlled and the vendor's enterprise certification number, if any, as required by § 481.3 (relating to diversity participation).

(7) Form of business, state and date of incorporation or formation, if applicable.

(8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a description thereof including the expected duration and compensation.

(9) The names and addresses of all subsidiaries.

(10) The name, address and percentage of ownership of each entity directly owning more than 5% of the vendor or its business.

(11) The names and addresses of each of the following:

(i) An individual who entered into an agreement with or will deal directly with the slot machine licensee or applicant, including sales representatives; the immediate supervisors of the persons; and the persons responsible for the office out of which the supervisors work.

(ii) Any officer, partner or director who will be significantly involved in the conduct of the vendor business with the slot machine licensee or applicant.

(iii) If the vendor is a sole proprietorship, the name of the sole proprietor.

(iv) Each beneficial owner of more than 5% of the vendor and the percentage of that ownership.

(12) The name, position or title and signature of the individual who supplied the information in the VRF.

(13) 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.

(14) Verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

(15) Other information requested by the Board.

§ 437.3. Vendor license requirements.

(a) If a vendor will conduct business with a slot machine licensee on a regular or continuing basis, the vendor must be licensed by the Board prior to conducting business, except as provided in §§ 437.6 and 437.7 (relating to existing agreements; and permission to conduct business prior to licensure).

(b) Notwithstanding the definition of "regular or continuing basis," the Board may require a vendor to apply for licensure from the Board if one of the following exists:

(1) The Board determines licensure is appropriate based on the Board's analysis of the vendor's services.

(2) The vendor's employees will have access to a restricted area or gaming area.

(c) VLAs shall be submitted by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

§ 437.4. Vendor license application.

A VLA shall consist of an application processing fee and shall be in a format prescribed by the Board requesting the following information:

(1) Any official or trade name used.

(2) Current and former business addresses.

(3) Telephone number.

(4) The nature of the applicant's business and the type of goods or services to be provided and the name of the slot machine licensees or applicants to which the goods or services will be provided.

(5) Federal Employer Identification Number/Tax Identification Number.

(6) Whether the vendor is minority- or women-owned and controlled and the vendor's enterprise certification number, if any.

(7) Form of business and a copy of the certificate of incorporation, charter, by-laws, partnership agreement, trust agreement or other basic documentation of the vendor.

(8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a copy of the agreement or in the absence of a written agreement, a description thereof, including the expected duration and compensation.

(9) The names and addresses of all subsidiaries.

(10) Whether the applicant has had any registration, license, permit or certificate granted, denied, suspended, conditioned or revoked by any government agency in the Commonwealth or any other jurisdiction, the nature of the registration, license, permit or certificate, the agency and its location, the date of the action and the facts related thereto.

(11) The names and addresses of each of the following:

(i) Any individual who entered into the agreement with or will deal directly with the slot machine licensee or applicant, including sales representatives; the immediate supervisors of the persons; and all persons responsible for the office out of which the supervisors work.

(ii) Any officer, partner or director who will be involved in the conduct of the vendor business with the slot machine licensee or applicant.

(iii) If the vendor is a sole proprietorship, the name of the sole proprietor.

(iv) Each beneficial owner of more than 5% of the vendor and the percentage of that ownership.

(12) The name, address and percentage of ownership of each entity directly owning more than 5% of the vendor or its business.

(13) A Vendor Application Disclosure Information Form for the applicant and for each affiliate, intermediary, subsidiary and holding company of the applicant.

(14) A Multi-Jurisdictional Personal History Disclosure Form and a Pennsylvania Supplement for each key employee qualifier and key employee.

(15) The applicant's Federal tax returns and related documents for the 3 years, State tax returns, when appropriate and related documents for the 1 year preceding application.

(16) Information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the Federal Bankruptcy Act (11 U.S.C.) or a state insolvency law.

(17) Information regarding any civil, criminal, administrative and investigatory proceedings relating to the applicant and its key employees and key employee qualifiers.

(18) 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), signed by the chief executive officer of the applicant.

(19) The name, position or title and signature of the individual who supplied the information in the VRF.

(20) 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.

(21) Verification provided by the slot machine licensee or applicant of the location of the vendor's services at the licensed facility.

(22) Additional information requested by the Board.

§ 437.5. Active vendors list; prohibited vendors.

(a) The Board will maintain a list of active registered or licensed vendors and a list of prohibited vendors.

(b) A slot machine licensee or applicant may not enter into an agreement or continue to do business with a vendor listed as a prohibited vendor.

(c) The Board will consider the following factors in determining whether a vendor shall be listed as a prohibited vendor:

(1) The vendor has been found disqualified under § 437.8 (relating to disqualification criteria).

(2) The vendor's registration or license is suspended, revoked or denied.

(3) The vendor is restricted from reapplication by action of the Board.

(4) The vendor is temporarily prohibited from doing business with slot machine license applicants or licensees by action of the Board.

(d) A person or entity may not be removed from the list of prohibited vendors except as follows:

(1) By order of the Board.

(2) Upon expiration of the applicable period of restriction.

§ 437.6. Existing agreements.

(a) An applicant for a Conditional Category 1 license who maintains an existing agreement with an unlicensed or unregistered vendor is permitted to continue doing business with that vendor during the Category 1 license application process if the applicant demonstrates the following:

(1) The applicant has had an existing relationship with the vendor for 2 years immediately preceding the date of application.

(2) The applicant certifies that it has performed due diligence on the vendor.

(3) The applicant has filed a VRF or VLA on behalf of the vendor.

(4) Unless otherwise submitted under paragraph (3), the applicant has submitted a copy of an existing written agreement or a precise written description of an oral agreement with the vendor to the Board.

(b) Notwithstanding the provisions of subsection (a), upon its review of the information pertaining to the vendor, the Board may require termination of the agreement if the Board makes one or more of the following determinations:

(i) Disapproval of the agreement.

(ii) Disapproval of the owners, officers, employees or directors of the vendor.

(iii) Denial of the vendor registration or licensure.

§ 437.7. Permission to conduct business prior to licensure.

(a) Notwithstanding §§ 437.1 and 437.3 (relating to vendor registration; and vendor license requirements), the Board may, upon the petition of a slot machine licensee or applicant for each business transaction, allow an applicant for a vendor license to conduct a business transaction with the slot machine licensee or applicant prior to the licensure of the vendor applicant if all of the following criteria are met:

(1) A completed VLA has been filed by the slot machine licensee or applicant in accordance with § 437.3.

(2) The slot machine licensee or applicant shows good cause for granting the petition.

(b) Permission to conduct business under this section will be limited to 6 months, except that the Board may

extend the relief for additional 6-month periods upon a showing of good cause by the applicant.

§ 437.8. Disqualification criteria.

A vendor registration or license may be denied to any applicant who has failed to prove by clear and convincing evidence that the applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and this part, or who has violated the act or this part.

§ 437.9. Exemption from vendor registration or license requirements.

(a) The following persons are exempt from the vendor registration requirements of § 437.1 (relating to vendor registration requirements) and the vendor license requirements of § 437.3 (relating to vendor license requirements):

(1) Entities which provide only one or more of the following services to slot machine licensee which are the sole source provider of the services:

(i) Water.

(ii) Sewerage.

(iii) Electricity.

(iv) Natural gas.

(2) Regulated insurance companies providing insurance to the slot machine licensee or applicant and its employees.

(3) Employee benefit and retirement plans and related administrator plans, including incorporated 401K plans and employee stock purchase programs.

(4) National or local professional associates that receive funds from the slot machine licensee for the cost of enrollment, activities and membership.

(5) All State, Federal and municipal operated agencies.

(6) All liquor and wine industries regulated by the Pennsylvania Liquor Control Board.

(7) State and Federally regulated banks or savings and loan associations where funds are deposited by licensees, notwithstanding those sources or transactions provided to a licensee which require Board approval.

(8) Providers of professional services including accountants, attorneys or any person otherwise required to be licensed as such.

(9) Telecommunication service providers.

(10) Nationwide shipping services.

(11) A person that engages in efforts to influence legislative action or administrative action on behalf of a principal for economic consideration.

(12) Public institutions of higher education.

(13) Professional entertainers, sports figures and other celebrities engaged by a slot machine licensee to appear at a slot machine licensee-sponsored special entertainment or promotional event.

(b) This section does not bar any other business entities from seeking a waiver of vendor registration or licensing requirements upon a showing of good cause.

(c) The Board may revoke an exemption or waiver granted under this section and require a person to submit to the vendor registration and licensing requirements under this part.

(d) This section does not relieve a slot machine licensee of reporting obligations required by § 441.15 (relating to maintaining agreements; filing of agreements).

§ 437.10. Emergency vendor.

A slot machine licensee may utilize an unregistered or unlicensed vendor when a threat to public health, welfare or safety exists or circumstances outside the control of the slot machine licensee creates an urgency of need which does not permit the delay involved in using the formal method of vendor registration or licensure. To make an emergency vendor procurement the slot machine licensee shall:

- (1) File a VRF or VRA with the Board within 72 hours of the vendor's commencement of services.
- (2) Provide a written explanation to the Board of the basis for the emergency vendor procurement and for the selection of the particular vendor.

Subpart C. SLOT MACHINE LICENSING

Chapter 441. SLOT MACHINE LICENSES

§ 441.15. Maintaining agreements; filing of agreements.

(a) Each slot machine licensee and applicant shall be required to maintain all of the following:

- (1) A fully signed copy of every written agreement.
 - (2) Records with respect to any oral agreement.
- (b) Slot machine licensees and applicants are under a continuing duty to maintain all changes or amendments to the terms of the agreements subject to subsection (a).
- (c) Each slot machine licensee shall submit the following to the Board:
- (i) A fully signed copy of any written agreement with a supplier licensee or applicant or with a vendor subject to licensure under § 437.3 (relating to vendor license requirements).
 - (ii) A precise written description of any oral agreement, in accordance with the requirements of subsection (f), with a supplier licensee or applicant or with a vendor subject to licensure under § 437.3.
- (d) Slot machine licensees and applicants are under a continuing duty to file all changes or amendments to the terms of the agreements subject to subsection (c).

(e) Notwithstanding the requirements of subsection (c), slot machine licensees or applicants may be required to submit a copy of a written agreement or a precise written description of any oral agreement as requested by the Board.

(f) A written description submitted under this section shall provide, at a minimum, the following:

- (1) The nature of the goods or services to be provided to the slot machine licensee or applicant.
- (2) The full name and business address of the non-slot machine licensee or applicant party to the agreement.
- (3) The duration of the agreement, or if provided in the agreement, the specific dates of performance.
- (4) The financial terms of the agreement.
- (5) A description of the goods or services provided, including the expected duration and compensation.

§ 441.16. Board review of agreements and records of agreements.

(a) The Board may review each agreement and record maintained or filed under § 437.4 or § 441.15 (relating to vendor license application; and maintaining agreements; filing of agreements) to determine the following:

(1) The reasonableness of the terms of the agreement, including the terms of compensation.

(2) The qualifications of the persons involved in and associated with the agreement, after which the Board may make a finding as to the suitability of the persons to be involved or associated with the slot machine licensee or applicant.

(3) Whether a person involved therein or associated therewith is providing or likely to provide goods or services to, or conducting or likely to conduct business with, a slot machine licensee or applicant or its employees which requires a supplier license or a manufacturer license under section 1317 of the act (relating to supplier and manufacturer licenses application), in which case the Board will direct that a supplier or a manufacturer license application be promptly filed by the person.

(4) Whether any action is desirable or necessary to regulate, control or prevent economic concentration in a vendor industry or to encourage or preserve competition in a vendor industry.

(b) If the Board disapproves of an agreement or a person associated therewith, the Board may by order require the termination of the agreement or association or pursue a remedy or combination of remedies provided for in the act or this part. If the disapproved agreement or association is not thereafter promptly terminated, the Board may pursue any remedy or combination of remedies provided for in the act or this part. This subsection applies notwithstanding that the Board has granted an exemption under § 437.9 (relating to exemption from vendor registration or licensing requirements) to a person involved in or associated with the agreement from the vendor license requirements set forth therein.

(c) Each agreement maintained or filed under §§ 437.4 and 441.15 shall be deemed to include a provision for its termination without liability on the part of the slot machine licensee or applicant, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon the agreement, in the event that the Board disapproves the agreement in accordance with subsection (b).

§ 441.17. Master purchasing and disbursement report.

(a) Each slot machine licensee or applicant shall generate a Master Purchasing and Disbursement Report for all vendor transactions. The report shall be submitted to the Board's Bureau of Licensing on the 22nd calendar day of each month by 5 p.m., unless that day is a Saturday, Sunday or a State or Federal holiday, in which case the report shall be provided by 5 p.m. on the first weekday thereafter. The report must include the following information:

(1) A payee register listing alphabetically by payee all nonpayroll transactions drawn by the slot machine licensee or applicant, including wire transfers and credits to vendors, and the following information next to the name of each payee:

(i) Vendor license or registration number or exemption code.

- (ii) Amount of each individual disbursement or credit.
- (iii) Date of each individual disbursement or credit.
- (iv) Subtotal of disbursements or credits by payee.
- (v) The grand total of all disbursements made during the reporting periods.
- (vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

(2) A payee register listing alphabetically by payee all transactions drawn by any affiliate, intermediary, subsidiary, holding company or agent of the slot machine licensee or applicant for goods or services that benefit the slot machine licensee or applicant, including wire transfers and credits to vendors, and the following information next to the name of each payee:

- (i) Vendor license or registration number or exemption code.
- (ii) Amount of each individual disbursement or credit.
- (iii) Date of each individual disbursement or credit.
- (iv) Subtotal of disbursements or credits by payee.
- (v) The grand total of all disbursements made during the reporting periods.
- (vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

(3) A register listing alphabetically by vendor all transactions, including wire transfers and credits, in which the slot machine licensee or applicant itself acted in the capacity of a vendor by providing goods or services. The register must include:

- (i) Vendor licensee or registration number or exemption code of the vendor to whom the goods or services were provided.
 - (ii) Date of each individual transaction.
 - (iii) Amount of each individual transaction.
 - (iv) A general description of the type of goods or services provided.
 - (v) By vendor subtotals of payments or credits received by the slot machine licensee or applicant or disbursements or credits made by the slot machine licensee or applicant during the reporting period.
 - (vi) By vendor totals of payments or credits received or disbursements or credits made by the slot machine licensee or applicant within the applicable 12 month period.
- (b) The reports shall be signed by the slot machine licensee or applicant and transmitted to the Board's Bureau of Licensing by means of electronic data transmission or in a form prescribed by the Board.

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