

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 2007, meeting, adopted amendments to §§ 135.41 and 135.181 (relating to State game lands; and rifle and handgun ranges).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 36 Pa.B. 7869 (December 23, 2006).

1. Purpose and Authority

In the past, the Commission widely accepted the occurrence of clay bird shooting activities on most areas of Commission owned lands. While the Commission intends to continue the promotion of these and other types of recreational shooting activities on its lands, it has determined that due to lead management and recovery concerns, clay bird shooting activities must be limited to designated locations only. Therefore, the Commission amends §§ 135.41 and 135.181 to specifically authorize clay bird shooting activities on Commission owned lands, but only in those areas designated by the Director.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 135.41 and 135.181 were adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends §§ 135.41 and 135.181 to specifically authorize clay bird shooting activities on Commission owned lands, but only in areas designated by the Director.

3. Persons Affected

Persons wishing to engage in clay bird shooting activities on Commission owned lands will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending §§ 135.41 and 135.181 to read as set forth at 36 Pa.B. 7869.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 7869 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-242 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 07-485. Filed for public inspection March 23, 2007, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings; Licenses for Rights-of-Way

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 2007, meeting, adopted Subchapter L (relating to licenses for rights-of-way).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 37 Pa.B. 315 (January 20, 2007).

1. Purpose and Authority

The Commission last set rights-of-way license fees by policy in 1999. The Commission has since determined that its current rights-of-way license fee structure occasionally fails to capture the proper value of some rights-of-way licenses. In an effort to assemble a rights-of-way license structure that better captures the appropriate value of its resources, the Commission adds Subchapter L to establish regulations governing the granting of rights-of-way licenses on Commission-owned lands and waters.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations...for its use and protection as necessary to properly manage these lands or waters." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The addition of Subchapter L was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking adds Subchapter L to establish regulations governing the granting of rights-of-way licenses on Commission owned lands and waters.

3. Persons Affected

Persons wishing to obtain rights-of-way licenses on Commission-owned lands and water will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the regulations of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by adding §§ 135.221, 135.222, 135.224 and 135.225 to read as set forth at 37 Pa.B. 315 and by adding § 135.223 to read as set forth in Annex A.

(b) The Executive Director of the Commission shall certify this order, 37 Pa.B. 315 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-241 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter L. LICENSES FOR RIGHTS-OF-WAY

§ 135.223. Application and processing fee.

(a) *Application.* A person or entity requesting a license for right-of-way shall submit a completed application on a form supplied by the Commission. A description of alternatives considered in the project location and design shall be included with the application.

(b) *Processing fee.* A nonrefundable fee of \$150 payable to the Pennsylvania Game Commission shall be submitted with the application. This fee is nonrefundable whether the license is approved or denied.

[Pa.B. Doc. No. 07-486. Filed for public inspection March 23, 2007, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 137 AND 147]

Wildlife; Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 2007, meeting, adopted amendments to §§ 137.1 and 147.203 (relating to importation, sale and release of certain wildlife; and pens, shelters and enclosures).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 36 Pa.B. 7870 (December 23, 2006).

1. Purpose and Authority

On June 29, 2006, the Governor signed into law the act of June 29, 2006 (P. L. 206, No. 51), which effectively transferred regulatory authority over cervidae propagation activities from the Commission to the Department of Agriculture as of June 29, 2006. Therefore, in an effort to

complete this transition, the Commission amended §§ 137.1 and 147.203 to eliminate the remaining regulatory language concerning cervidae livestock activities no longer regulated by the Commission.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 137.1 and 147.203 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends §§ 137.1 and 147.203 to eliminate the remaining regulatory language concerning those cervidae livestock activities no longer regulated by the Commission.

3. *Persons Affected*

Persons wishing to engage in cervidae livestock activities within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 137 and 147, are amended by amending §§ 137.1 and 147.203 to read as set forth at 36 Pa.B. 7870.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 7870 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-239 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 07-487. Filed for public inspection March 23, 2007, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Canada Geese

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 2007, meeting, adopted § 147.746 (relating to exceptions for resident Canada geese).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 37 Pa.B. 211 (January 13, 2007).

1. *Purpose and Authority*

A change in Federal regulations removed the Federal requirement for persons to obtain a joint state/Federal depredation permit to control the number of resident Canada geese on their property in certain circumstances. Therefore, in an effort to maintain compliance and consistency with the new Federal regulations, the Commission added § 147.746 to remove the State requirement for a person to obtain a joint state/Federal depredation permit to control the number of resident Canada geese on their property in certain circumstances.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The addition of § 147.746 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking adds § 147.746 to remove the necessity for persons to obtain a joint state/Federal depredation permit to control the number of resident Canada geese on their property in certain circumstances.

3. Persons Affected

Persons wishing to reduce or control the number of resident Canada geese on their property may be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by adding § 147.746 to read as set forth at 37 Pa.B. 211.

(b) The Executive Director of the Commission shall certify this order and 37 Pa.B. 211 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-237 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 07-488. Filed for public inspection March 23, 2007, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 147] Special Permits; Taxidermy

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 2007, meeting, adopted the rescission of Subchapter G (relating to taxidermy) and amended § 147.146 (relating to sale of inedible wildlife parts).

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 36 Pa.B. 7879 (December 23, 2006).

1. Purpose and Authority

On July 7, 2006, the Governor signed into law the act of July 7, 2006 (P. L. 358, No. 77), which effectively transferred regulatory authority over taxidermy activities from the Commission to the Department of Agriculture as of October 5, 2006. The statutory amendments made to the code were limited to a minor amendment to section 2904 of the code (relating to permit fees) and the rescission of section 2926 of the code. In an effort to complete this transition, the Commission rescinded Subchapter G to remove the remaining regulatory language concerning taxidermy activities no longer regulated by the Commission. However, in an intentional effort to continue certain accommodations made for taxidermists respecting the sale of unclaimed specimens, the Commission relocated and incorporated the provisions formerly in § 147.126 to § 147.146.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2312(c)(2) of the code (relating to buying and selling game) specifically states "The commission may, by regulation, authorize the buying and selling of inedible parts of game and wildlife as it deems appropriate." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The rescission of Subchapter G and amendment of § 147.146 were adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking rescinds Subchapter G to remove the remaining regulatory language concerning taxidermy activities no longer regulated by the Commission and relocated provisions permitting the sale of unclaimed specimens by taxidermists to § 147.146.

3. *Persons Affected*

Persons wishing to engage in taxidermy related activities or sell unclaimed specimens, or both, within this Commonwealth will be affected by the final-form rule-making.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rule-making, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by deleting §§ 147.121—147.129 and amending § 147.146 to read as set forth at 36 Pa.B. 7879.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 7879 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-240 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 07-489. Filed for public inspection March 23, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CH. 405]
Enforcement Actions

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2006-22-REG, the Board has the authority to amend the temporary regulations adopted on June 28, 2006, as it deems necessary in accordance with

the purpose 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), as amended by the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135) and to further the intent of Act 71. To respond to changes in the Board's enforcement procedures, the Board has decided to make an amendment to the temporary regulations, dated June 28, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 36 Pa.B. 3945 (July 22, 2006).

Therefore, the Board has deposited an amendment to Chapter 405 (relating to Bureau of Investigations and Enforcement) with the Bureau. The amendment is effective as of February 27, 2007.

The temporary regulations of the Board in Chapter 405 are amended by amending § 405.7 to read as set forth in Annex A.

Order

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

(a) Acting under the authority of Act 71, the amendment to the temporary regulations adopted by resolution at the February 27, 2007, public meeting is adopted. The amendment to the temporary regulations pertains to enforcement actions.

(b) The temporary regulations of the Board, 58 Pa. Code Chapter 405, are amended by amending § 405.7 to read as set forth in Annex A.

(c) The amendment is effective February 27, 2007.

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

(e) The Chairperson of the Board shall certify this order and deposit the amendment to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-59. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405.7. Enforcement action.

Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 493.2 (relating to complaints).

[Pa.B. Doc. No. 07-490. Filed for public inspection March 23, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 511]

Persons Required to be Excluded

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2006-7-REG, the Board has the authority to amend the temporary regulations adopted on May 19, 2006, as it deems necessary in accordance with the purpose 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), as amended by the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135) and to further the intent of Act 71. To respond to changes in the Board's program governing excluded persons, the Board has decided to make changes to the temporary regulations, dated May 19, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 36 Pa.B. 2905 (June 10, 2006).

Therefore, the Board has deposited amendments to Chapter 511 (relating to persons required to be excluded) with the Bureau. The amendments are effective as of February 27, 2007.

The temporary regulations of the Board in Chapter 511 are amended by amending Chapter 511 to read as set forth in Annex A.

Order

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

(a) Acting under the authority of Act 71, the amendments to the temporary regulations adopted by resolution at the February 27, 2007, public meeting are adopted. The amendments to the temporary regulations pertain to persons required to be excluded.

(b) The temporary regulations of the Board, 58 Pa. Code Chapter 511, are amended by deleting § 511.8 and amending §§ 511.1—511.7, 511.9 and 511.10 to read as set forth in Annex A.

(c) The amendments are effective February 27, 2007.

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

(e) The Chairperson of the Board shall certify this order and deposit the amendments to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-60. (1) State Gaming Fund; (2) Implementing Year 2006-07 is \$50,000; (3) 1st Succeeding Year 2007-08 is \$44,000; 2nd Succeeding Year 2008-09 is \$45,000; 3rd Succeeding Year 2009-10 is \$47,000; 4th Succeeding Year 2010-11 is \$49,000; 5th Succeeding Year 2011-12 is \$51,000; (4) 2005-06 Program—\$26,400,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) State Gaming Board; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart J. EXCLUSION

CHAPTER 511. PERSONS REQUIRED TO BE EXCLUDED

§ 511.1. Definitions.

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

Career or professional offender—A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities contained in section 1518(a) of the act (relating to prohibited acts; penalties).

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.

(iii) The term includes an act or acts in any jurisdiction that would constitute an offense under section 1518(a)(6) and (7) of the act.

Excluded person—A person who has been placed upon the exclusion list and who is required to be excluded or ejected from a licensed gaming facility.

Exclusion list—A list of names of persons who are required to be excluded or ejected from a licensed facility.

§ 511.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The exclusion list will be open to public inspection at the Board's central office during normal business hours and will be distributed to every slot machine licensee within this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) The following information will be provided to the slot machine licensees for each excluded person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) The person's date of birth.

(4) The date the person was added to the list.

(5) A recent photograph, if available.

(6) The last known address of record.

(7) Other identifying information available to the Board.

§ 511.3. Criteria for exclusion.

(a) The exclusion list may include a person who meets one or more of the following criteria:

(1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or a slot machine licensee, or both.

(2) An associate of a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or a slot machine licensee, or both.

(3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than 1 year in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed facility would be inimical to the interest of the Commonwealth or a slot machine licensee, or both.

(4) A person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or licensed gaming therein, including:

- (i) Cheats.
- (ii) Persons whose gaming privileges have been suspended by the Board.
- (iii) Persons whose permits, licenses or other approvals have been revoked.
- (iv) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee.
- (v) Persons with a history of conduct involving the disruption of the gaming operations of slot machine licensees.
- (vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities.
- (vii) Persons with pending charges or indictments for a gaming or gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.
- (viii) Persons who have been convicted of a gaming or gambling crime or crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.
- (ix) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, being identified with criminal activities in published reports of various Federal and state legislative and executive bodies that have inquired into criminal or organized criminal activities.

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein" if known attributes of the person's character and background meet one or more of the following criteria:

- (1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a licensed facility.
- (2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.
- (3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or another jurisdiction, or with a particular slot machine licensee or licensees or an affiliate, intermediary, subsidiary or holding company thereof.

(3) The nature and frequency of contacts or associations of the person with a slot machine licensee or licensees, or with employees or agents thereof.

(4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 511.4. Duties of the Bureau.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or a slot machine licensee, investigate a person to determine whether the person meets the criteria for exclusion provided in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511.3 (relating to criteria for exclusion).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Bureau will file a petition for exclusion with the Board, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion set forth under section 1514 or 1515 of the act (relating to repeat offenders excludable from licensed gaming facility) or this chapter.

(c) When the Bureau files a complaint alleging a violation of section 1514(e) of the act and § 511.9(b)(2) (relating to duties of slot machine licensees) against a slot machine licensee, the Bureau will file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion under § 511.3.

§ 511.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list:

(1) Upon the filing of a petition for exclusion by the Bureau in accordance with the procedures under § 511.4 (relating to duties of the Bureau).

(2) Upon receipt of an order from a court of competent jurisdiction within this Commonwealth, excluding the person from licensed facilities.

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from licensed facilities.

(c) An excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs.

(e) For the purposes of this section, winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 511.6. Demand for hearing on the placement of a person on the exclusion list.

(a) Upon placement of a person on the exclusion list, the Clerk will serve notice of the placement to the person by personal service or certified mail at the last known address of the person. When the placement is a result of a petition for exclusion filed by the Bureau, a copy of the petition will be included with the notice.

(b) Upon service of the notice by the Clerk, an excluded person shall have 30 days to demand a hearing before the Board. Failure to demand a hearing within 30 days after service shall be deemed an admission of all matters and facts alleged in the Bureau's petition for exclusion.

(c) If a hearing is demanded by the excluded person, a hearing will be scheduled as provided in § 492.6 (relating to hearings generally). At the hearing, the Bureau will have the affirmative obligation to demonstrate that the excluded person satisfies the criteria for exclusion in section 1514 or 1515 of the act (relating to regulation requiring exclusion of certain persons; and repeat offenders excludable from licensed gaming facility) or § 511.3 (relating to criteria for exclusion). Unless the matter is heard directly by the Board, the presiding officer will prepare a recommendation as provided in § 494.4 (relating to report or recommendation of the presiding officer) for consideration by the Board.

§ 511.7. Board review.

After a hearing or consideration of a petition for exclusion filed by the Bureau when no hearing was requested, the Board will:

- (1) Issue a final order affirming the placement of the person on the exclusion list.
- (2) Issue a final order removing the person from the exclusion list.
- (3) Refer the matter to the presiding officer for further hearing.

§ 511.8. (Reserved).

§ 511.9. Duties of slot machine licensees.

(a) A slot machine licensee shall have the responsibility to distribute copies of the exclusion list to its employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

(b) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

- (1) An excluded person.
- (2) A person known to the slot machine licensee to satisfy the criteria for exclusion in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511.3 (relating to criteria for exclusion).

(c) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall immediately notify the Bureau of the fact in accordance with the procedures set forth by the Board.

(d) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list and the reason for placement on the exclusion list.

(e) A slot machine licensee or employees thereof will not be liable to any person for damages in a civil action, which is based on the following:

- (1) Withholding winnings from an excluded person.
- (2) Permitting an excluded person to gamble.
- (3) Excluding an excluded person from the licensed gaming facility.

§ 511.10. Petition to remove name from exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Bureau may file an answer in accordance with § 493.5 (relating to answers).

(c) The Board may decide the petition on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition, may grant the petition, or direct that a hearing be held in accordance with § 511.6 (relating to demand for hearing on the placement of a person on the exclusion list). The Board will grant the petition or direct that a hearing be held only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the exclusion list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d) An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. However, an excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

(e) A petition for early consideration must contain the information required under subsection (b). Upon receipt of the petition, the Bureau may file an answer in accordance with § 493.5.

(f) The Board may decide the petition for early consideration on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511.6.

(g) The Board will consider the following criteria when making its decision on a petition for early consideration:

(1) Whether there are extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the exclusion list.

(2) If exclusion was ordered under § 511.5(a)(2) (relating to placement on the exclusion list), whether the excluded person has completed the period of probation or otherwise satisfied the terms of the court-ordered exclusion.

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