

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145]

Industrial Housing and Components

The Department of Community and Economic Development (Department), under section 5 of the Industrialized Housing Act (act) (35 P. S. § 1651.5), amends Chapter 145 (relating to industrialized housing and components). The purpose of this final-form rulemaking is to eliminate the exception for energy conservation for industrialized homes, adopt the model code requirements for energy efficiency bringing industrialized housing on par with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103) and reduce the number of required inspections by the Department.

Introduction

The act authorizes the Department to promulgate rules and regulations to interpret and make specific the provisions of the act. Under section 5 of the act, the rules and regulations are to be amended to “assure the health, safety and welfare of the people of Pennsylvania by requiring safe and sanitary industrial housing and shall include provisions imposing requirements reasonably consistent with recognized and accepted model codes.” The purpose of this final-form rulemaking is to provide parity with conventional housing constructed under the Pennsylvania Construction Code Act and industrialized housing constructed for other states. Adoption of the model energy standards will improve energy efficiency in housing produced and allow manufacturers to utilize newer technology in designing heating and cooling systems.

Following the public comment period, minor changes were made to the proposed rulemaking to clarify the standards. In § 145.42(a)(2)(iv) (relating to alternate standards), “stairs” was replaced with “stairways” to clarify that this standard applied to each stair in the stairway. In § 145.42(a)(2)(v), the tense of a verb was changed to make the sentence consistent.

Analysis

Section 145.41 (relating to adoption of standards) is amended to adopt the ICC International Energy Conservation Code and the ICC International Residential Code as additional standards applicable to the industrialized housing and housing components for purposes of this chapter and to remove the energy conservation and stair geometry exceptions to the ICC International Building Code.

Section 145.42 is amended to provide the International Energy Conservation Code and Pennsylvania’s Alternative Residential Energy Provisions as the alternatives to § 145.41 with respect to energy efficiency. The ICC International Residential Code is removed as an alternative because it is a standard in § 145.41. The amendment also provides alternate standards regarding stairway construction.

Section 145.93 (relating to factory inspections; right of entry) is amended to replace the biannual inspection requirement with an annual inspection requirement.

Fiscal Impact

Commonwealth. While striving to reduce the number of required inspections per year at each plant, the Department estimates the total number of inspections will remain unchanged. This is in part a result of additional production facilities seeking approval each year and increased inspections at warranted plants once granted the ability to focus Department inspection efforts.

Political subdivisions. There will be no fiscal impact on political subdivisions.

Public. Increased costs to the industry will be negligible. The majority of manufacturers presently exceeds the current provisions and builds homes that comply with the proposed standard.

Paperwork

The final-form rulemaking will not change existing paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 7, 2006, the Department submitted a copy of the notice of proposed rulemaking, published at 36 Pa. B. 3820 (July 22, 2006), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Commerce and Economic Development Committee and the Senate Community and Economic Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective April 4, 2007.

Effective Date/Sunset Date

The final-form rulemaking will become effective on June 20, 2007. The regulations are monitored on a regular basis and updated as needed.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the final-form rulemaking to Matthew J. Speicher, Assistant Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7317; or Mark Conte, Chief, Housing Standards Division, Office of Community Development, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7416.

Findings

The Department finds that:

(1) Public notice of intention to adopt the 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 final-form rulemaking is necessary and appropriate.

Order

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

(a) The regulations of the Department, 12 Pa. Code Chapter 145, are amended by amending §§ 145.41 and 145.93 to read as set forth at 36 Pa.B. 3820 and by amending § 145.42 to read as set forth in Annex A.

(b) The Department shall submit this order, 36 Pa.B. 3820 and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.

(c) The Secretary shall certify this order, 36 Pa.B. 3820 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect June 20, 2007.

DENNIS YABLONSKY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 1197 (March 10, 2007).)

Fiscal Note: Fiscal Note 4-85 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

Subpart C. COMMUNITY DEVELOPMENT AND HOUSING

CHAPTER 145. INDUSTRIAL HOUSING AND COMPONENTS

STANDARDS

§ 145.42. Alternate standards.

(a) As an alternative to the primary codes specified in § 145.41 (relating to adoption of standards), a manufacturer may elect to satisfy the requirements of the following alternate standards. Copies of these documents are available through the respective promulgating agencies as defined in § 145.47 (relating to acquisition of adopted codes and amendments):

(1) As an alternate to the ICC International Residential Code, Chapter 11, regarding energy efficiency, the manufacturer may use one of the following:

(i) The prescriptive methods for residential buildings in the International Energy Conservation Code compliance guide containing State maps, prescriptive energy packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (REScheck™).

(ii) Pennsylvania's Alternative Residential Energy Provisions developed by the Pennsylvania Housing Research Center at the Pennsylvania State University.

(2) As an alternate to the ICC International Residential Code, Chapter 3, regarding building planning, in regards to stairway construction, the manufacturer may use the following standard:

(i) The maximum riser height must be 8 1/4 inches. There may be no more than 3/8 inch variation in riser height within a flight of stairs. The riser height is to be measured vertically between leading edges of the adjacent treads.

(ii) The minimum tread depth must be 9 inches measured from tread nosing to tread nosing. There may be no more than 3/8 inch variation in tread depth within a flight of stairs.

(iii) Treads may have a uniform projection of not more than 1 1/2 inches when solid risers are used.

(iv) Stairways may not be less than 3 feet in clear width and clear head room of 6 feet 8 inches must be maintained for the entire run of the stairway.

(v) Handrails may project from each side of a stairway a distance of 3 1/2 inches into the required width of the stairway.

(b) Except as provided in § 145.43 (relating to amendment policy), the codes must be the latest edition. The effective date of code changes must be in accordance with §§ 145.44 and 145.122(b) (relating to adoption and effective dates—code amendments; and effective date).

[Pa.B. Doc. No. 07-680. Filed for public inspection April 20, 2007, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401, 433, 435, 437, 441 and 443]

Licensing, Permitting, Certification and Registration Programs for Principals, Employees, Vendors and Slot Machine Licensees

Under the Pennsylvania Gaming Control Board's (Board) Resolutions No. 2005-3-REG, 2005-6-REG and 2005-4-REG the Board has the authority to amend the temporary regulations adopted on June 16, 2005, November 2, 2005, and July 21, 2005 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) and to further the intent of Act 71. To respond to changes in the Board's licensing, permitting, certification and registration programs for principals, employees, vendors and slot machine licensees, the Board has decided to make changes to the temporary regulations, dated June 16, 2005, November 2, 2005, and July 21, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 16, 2005), 35 Pa.B. 6411 (November 19, 2005) and 35 Pa.B. 4543 (August 6, 2005).

Therefore, the Board has deposited with the Bureau amendments to Chapters 401, 433, 435, 437 and 441 and the rescission of Chapter 443. The amendments and rescission are effective as of March 27, 2007.

The temporary regulations of the Board in Chapters 401, 433, 435, 437, 441 and 443 are amended by amending Chapters 401, 433, 435, 437 and 441 and rescinding Chapter 443 to read as set forth in Annex A.

Order

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

(a) The Board, acting under the authority of Act 71, adopts the amendments to the temporary regulations adopted by resolution at the March 27, 2007, public meeting. The amendments to the temporary regulations pertain to the Board's licensing, permitting, certification and registration programs for principals, employees, vendors and slot machine licensees.

(b) The following temporary regulations of the Board, 58 Pa. Code, Chapters 401, 433, 435, 437, 441 and 443, are amended by amending §§ 401.4, 435.1, 435.3—435.6, 435.8—435.10, 437.1—437.3, 437.5, 437.7, 437.10, 441.1—441.3 and 441.8; by adding §§ 433.101—433.109, 435.4a, 435.9a, 437.4a, 437.4b, 437.4c, 437.4d, 437.13, 441.4a, 441.5a, 441.6a, 441.7a, 441.9a, 441.10a, 441.11a, 441.12a, 441.13a, 441.14a, 441.15a, 441.16a, 441.17a, 441.18a, 441.19a, 441.20, 441.21a, 441.22a and 441.23a; and by deleting §§ 433.1, 435.2, 435.7, 437.4, 437.6, 437.8, 437.9, 437.11, 437.12, 441.4—441.7, 441.9—441.19, 441.21—441.23 and 443.1—443.5 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(c) The amendments are effective March 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: 125-65. (1) Pennsylvania Gaming Fund;

	<i>Board</i>	<i>State Police</i>
(2) Implementing Year 2006-07 is	\$10,454,000	\$372,000
(3) 1st Succeeding Year 2007-08 is	\$9,696,000	\$387,000
2nd Succeeding Year 2008-09 is	\$10,083,000	\$402,000
3rd Succeeding Year 2009-10 is	\$10,487,000	\$418,000
4th Succeeding Year 2010-11 is	\$10,906,000	\$435,000
5th Succeeding Year 2011-12 is	\$11,342,000	\$452,000
	<i>Board</i>	<i>State Police</i>
(4) 2005-06 Program—	\$13,200,000	\$0
2004-05 Program—	\$2,900,000	\$0
2003-04 Program—	\$0	\$0

(7) Board Budget and State Police Budget; (8) recommends adoption.

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:

* * * * *

Gaming employee—

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

- (A) Cashiers.
- (B) Change personnel.
- (C) Count room personnel.
- (D) Slot attendants.
- (E) Hosts or other persons authorized to extend complimentary services.
- (F) Machine mechanics or computer machine technicians.
- (G) Security personnel.
- (H) Surveillance personnel.
- (I) Supervisors and managers.
- (J) Personnel with SLOTS Link security administrator access and responsibilities.

(ii) Employees of a licensed supplier, manufacturer or manufacturer designee whose duties are directly involved with the installation, repair, service or distribution of slot machines and associated equipment sold or provided to a licensed facility within this Commonwealth.

(iii) Employees of a licensed manufacturer or manufacturer designee whose duties require the employee's presence on the gaming floor or in a restricted area of a licensed facility.

(iv) Other employees that the Board determines, after a review of the work being performed, require a permit for the protection of the integrity of gaming.

* * * * *

Key employee—

An individual who is:

(i) Employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who supervises the operations of these departments or to whom these department directors or department heads report.

(ii) Employed by a slot machine licensee, manufacturer licensee or supplier licensee whose duties affect or require contact with slot machines, slot monitoring systems, casino management systems, player tracking systems and wide-area progressive systems for use or play in this Commonwealth, whether or not the individual is assigned to gaming operations in this Commonwealth.

(iii) A sales representative seeking to sell slot machines and associated equipment for use in this Commonwealth on behalf of a licensed manufacturer, manufacturer designee or supplier

(iv) Employed in other positions which the Board will determine based on detailed analyses of the employee's duties or the job descriptions.

* * * * *

Nongaming employee—An employee of a slot machine licensee or certified vendor who is not included within the definition of “principal,” “key employee” or “gaming employee” and:

(i) Whose job duties require the employee:

(A) To be on the gaming floor but do not require the employee to touch or have contact with slot machines or associated equipment other than exterior cleaning.

(B) To be in a restricted area and the employee:

(I) Is under the constant supervision of an employee of the slot machine licensee who is licensed or permitted and has appropriate access clearance to be in the restricted area.

(II) Is not required to touch or have contact with slot machines or associated equipment other than exterior cleaning.

(ii) Who the Board determines, after a review of the work being performed, requires registration for the protection of the integrity of gaming.

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CHAPTER 433. PRINCIPAL LICENSES

§ 433.1. (Reserved).

§ 433.101. Definitions.

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

Applicant—A person that has submitted an application to the Board for a slot machine license, manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license.

Director—A director of a corporation or any person performing similar functions with respect to an entity, whether incorporated or unincorporated.

Entity—A person, other than an individual.

Holding company—A person, other than an individual, that, directly or indirectly, owns, has the power or right to control or has the power or right to vote 20% or more of the outstanding voting securities of a corporation or other entity. A holding company indirectly has, holds or owns that power, right or security if it does so through an interest in a subsidiary or successive subsidiaries.

Indirect ownership interest—An ownership interest in an entity that has a direct ownership interest in an applicant or licensee, or a direct ownership interest in an entity that has a ownership interest in an applicant or licensee through one or more intervening entities.

Individual—A natural person.

Licensee—A person who has been issued a slot machine license, manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license.

Lending institution—A person who has been issued a license to lend money by a state or federal agency or a person who satisfies the definition of “qualified institutional buyer” under 17 CFR 230.144a (relating to private resales of securities to institutions).

Officer—A president, chief executive officer, chief operating officer, secretary, treasurer, principal legal officer, principal compliance officer, principal financial officer, comptroller, principal accounting officer, chief engineer or technical officer of a manufacturer, or principal slot operations officer of a slot machine licensee and any person routinely performing corresponding functions with respect to an entity whether incorporated or unincorporated.

Principal affiliate—An intermediary or holding company of an applicant or licensee.

Principal entity—An entity that meets the definition of principal in section 1103 of the act (relating to definitions) or is otherwise required to be licensed as a principal and is not an intermediary or holding company of an applicant or licensee.

Private investment fund—An entity that meets the definition of “investment company” under section 3(a)(1) of the Investment Company Act of 1940 (15 U.S.C.A. 80a-3(a)(1)), but is otherwise exempt from the definition of “investment company” under section 3(c)(7) of the Investment Company Act of 1940.

Registered investment adviser—An investment adviser that has registered with the SEC under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

Registered investment company—An investment company that has registered with the SEC under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

Voting security—A security or other interest which entitles the owner to vote for the election of:

(i) A director of a corporation.

(ii) A person performing functions similar to a director with respect to an organization, whether incorporated or unincorporated.

§ 433.102. Directors or officers.

(a) Each officer and director of an applicant or licensee shall be licensed as a principal.

(b) Each officer and director of an intermediary, subsidiary or holding company of a slot machine applicant or licensee shall be licensed as a principal.

(c) Each officer and director of an intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company shall be licensed as a principal.

(d) Notwithstanding subsection (b), an officer or director of a publicly traded intermediary or holding company of a slot machine applicant or licensee, who is not a member of the audit committee, may request that the Board waive his requirement to be licensed as a principal if he is not actively involved in the affairs of the slot machine applicant or licensee. The waiver request shall be submitted on a Principal/Key Employee Waiver Form, and require that the officer certify that he is not actively involved in the affairs of the slot machine applicant or licensee.

(e) Notwithstanding subsection (c), an outside director of a publicly traded intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company who is not a member of the audit committee of the intermediary or holding company may not be licensed as a principal unless the Board determines that the licensure of the individual is necessary to protect the integrity of gaming in this Commonwealth.

(f) Notwithstanding subsection (c), an officer of a publicly traded intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company may request that the Board waive his requirement to be license as a principal if he is not actively involved in the affairs of the applicant or licensee. The waiver request shall be submitted on a Principal/Key Employee Waiver Form and require that the officer certify that he is not actively involved in the affairs of the applicant or licensee.

§ 433.103. Individual ownership.

(a) An individual who has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an applicant or licensee shall be licensed as a principal.

(b) An individual who, indirectly or directly, has the power to control or direct the management or policies of an applicant or licensee shall be licensed as a principal.

(c) An individual who has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an intermediary or holding company of a slot machine applicant or licensee shall be licensed as a principal.

(d) An individual that has a 1% or greater indirect ownership interest in an applicant or licensee shall be licensed as a principal. An ownership interest that is held indirectly by an individual through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(e) Notwithstanding any provision to the contrary in this section, an individual who holds less than 5% of the voting securities of an applicant or licensee or an intermediary or holding company of an applicant or licensee that is a publicly traded company is not required to be licensed as a principal.

(f) Each individual who is a grantor, trustee or beneficiary of a trust that is required to be licensed as a principal under this chapter shall be licensed as a principal.

(g) The Board may require any individual who has a financial interest in, or receives an economic benefit from, an applicant or licensee to be licensed as a principal.

§ 433.104. Entity ownership.

(a) An intermediary, subsidiary or holding company of an applicant or licensee shall be licensed as a principal.

(b) An entity that, indirectly or directly, has the power to control or direct the management or policies of an applicant or licensee shall be licensed as a principal.

(c) An entity that has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an applicant or licensee shall be licensed as a principal.

(d) An entity that has a direct ownership interest in, or has a right to any profit, distribution or benefit directly from, an intermediary, subsidiary or holding company of a slot machine applicant or licensee, shall be licensed as a principal.

(e) An entity that has an indirect ownership interest of 5% or greater in an applicant or licensee shall be licensed as a principal. An ownership interest that is held indirectly by an entity through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(f) Notwithstanding subsection (e), a private investment fund, including its feeder funds, that has an indirect ownership interest in an applicant or licensee, shall be exempt from obtaining a principal license if the following apply:

(1) Neither the private investment fund, nor the investors in the private investment fund have any voting rights or any other power to control or to influence the applicant or licensee.

(2) At least 20% of the investors in the private investment fund are "institutional investors" as defined in § 401.4 (relating to definitions).

(3) No investor in the private investment fund has a right to redeem his interest in the private investment fund within 2 years of the purchase of the interest.

(4) Each individual and entity that has the ability to control the management of the private investment fund is licensed as a principal.

(5) The private investment fund agrees to provide the Board with information the Board deems necessary to evaluate the integrity of the private investment fund and its investors, and their compliance with this section. Information provided to the Board will be confidential.

(6) Each individual required to be licensed as a principal in paragraph (4) shall as part of his principal license application sign a notarized statement affirming, at a minimum, the following:

(i) The private investment fund's investment in the applicant or licensee will not violate any applicable United States, Commonwealth of Pennsylvania or international laws and regulations, including anti-money laundering regulations or conventions, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

(ii) To his best knowledge, no investor in the private investment fund:

(A) Holds an interest in the private investment fund in contravention of any applicable United States, Commonwealth of Pennsylvania or international laws and regulations, including anti-money laundering regulations or conventions, the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

(B) Is directly or indirectly affiliated with, a prohibited country, territory, individual or entity on the List of Specially Designated Nationals and Blocked Persons maintained by the United States Treasury Department's Office of Foreign Asset Control.

(C) Is currently charged with or is under indictment for any felony or gambling offense in any jurisdiction.

(D) Has been convicted of a felony where 15 years have not elapsed from the date of expiration of the sentence for the offense.

(g) A private investment fund that does not qualify for the exemption under subsection (f) solely on the basis that it fails to satisfy paragraph (3) of that subsection, may still qualify for an exemption from licensure if the private investment fund satisfies all of the other conditions under subsection (f) and its indirect ownership interest in the applicant or licensee is less than 10%.

(h) Notwithstanding any provision to the contrary, the Board may require any entity that has a financial interest in, or receives any economic benefit from, an applicant or licensee to be licensed as a principal.

§ 433.105. Institutional investors.

(a) Notwithstanding any provision to the contrary in this chapter, an institutional investor that owns less than 15% of the outstanding voting securities of a publicly traded intermediary or holding company of an applicant for or holder of a manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license shall not be required to be licensed as a principal if the following conditions are satisfied:

(1) The institutional investor or the applicant or licensee files a notice with the Board containing a description of the institutional investor's interests.

(2) The institutional investor has filed a Schedule 13G with the SEC, and the institutional investor continues to be eligible to file the Schedule 13G.

(b) Notwithstanding any provision to the contrary in this chapter, an institutional investor that owns less than 10% of the outstanding voting securities of an intermediary or holding company of a slot machine licensee or applicant shall be eligible to be receive a waiver from the requirements of licensure from the Board by filing a Principal/Key Employee Waiver Form. The waiver request must include, at a minimum, a certification by the institutional investor stating that the institutional investor has no present involvement in, and no intention of influencing or affecting the affairs of, the slot machine applicant or licensee or an intermediary or holding company of the slot machine applicant or licensee and will give the Board 30 days notice if the institutional investor intends to do so.

(c) Notwithstanding subsection (b), an institutional investor that has been granted a waiver shall be permitted to vote on matters put to the vote of the outstanding security holders.

(d) A holding company of an institutional investor may file a notice or waiver request on behalf of its institutional investor subsidiaries provided that the holding company does not own more than 5% or more of the securities of the intermediary or holding company of the applicant or licensee.

(e) A registered investment adviser or a holding company of a registered investment adviser may file a notice or waiver request, when permitted, on behalf of the registered investment companies that hold securities beneficially owned by the registered investment adviser.

§ 433.106. Lenders and underwriters.

(a) Each lender of a slot machine applicant or licensee shall be licensed as a principal.

(b) Notwithstanding subsection (a), a lender that is a bank or lending institution which makes a loan to a slot machine applicant or licensee in the ordinary course of business is not required to be licensed as a principal. The Board may require a bank or lending institution to provide information or other assurances to verify its eligibility for this exemption.

(c) An underwriter that acquires the securities of a slot machine applicant or licensee shall be licensed as a principal.

(d) An underwriter or lender of an intermediary, subsidiary or holding company of a slot machine applicant or licensee shall be required to be licensed as a principal if the Board determines that the suitability of the underwriter or lender is at issue and is necessary to consider a pending application for a slot machine license.

(e) Notwithstanding any provision to the contrary in this section, the Board may require the licensure of any lender or underwriter of a licensee or any holding or intermediary company or subsidiary of a licensee to produce information, documentation and assurances concerning the lender or underwriter if the Board has probable cause to believe that the lender or underwriter would not satisfy the character requirements of section 1310(a) of the act (relating to slot machine license application character requirements).

§ 433.107. Trusts.

(a) A trust or similar business entity that holds a direct ownership interest in an applicant or licensee shall be licensed as a principal.

(b) A trust or similar business entity that holds a 1% or greater indirect ownership interest in an applicant or licensee shall be licensed as a principal. An ownership interest that is held indirectly by an entity through one or more intervening entities will be determined by successive multiplication of the ownership percentages for each link in the vertical chain.

(c) A trust or similar business entity that receives any payment, percentage or share of revenue, profits or receipts directly from an applicant or licensee shall be licensed as a principal.

(d) A trust or similar business entity will not be issued a principal license unless each trustee, grantor and beneficiary, including a minor child beneficiary, has been granted a principal license.

(e) Notwithstanding any provision to the contrary in this section, a trust is not required to be licensed as a principal if the holdings of the trust consist of less than 5% of the voting securities of a publicly traded company.

§ 433.108. Principal applications.

(a) An individual required to be licensed as a principal shall file a completed Multi Jurisdictional Personal History Disclosure Form and the Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form and submit the applicable application fee.

(b) A principal entity required to be licensed as a principal shall file a completed Principal Entity Form and submit the applicable application fee.

(c) A principal affiliate shall apply for the principal license as if were itself applying for the slot machine license, manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license.

(d) In addition to the materials required under subsections (a) or (b), an applicant for a principal license shall:

(1) Promptly provide information requested by the Board relating to the principals' application or regulation and cooperate with the Board in investigations, hearings and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

§ 433.109 Principal license term and renewal.

(a) A principal license or renewal shall be valid for 1 year from the date on which the license or renewal is approved by the Board.

(b) A renewal application and renewal fee shall be filed at least 2 months prior to the expiration of the current license.

(c) A principal license for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the principal license that the Board has approved or denied the license.

CHAPTER 435. EMPLOYEES

§ 435.1. General provisions.

(a) An individual seeking a key employee license, occupation permit or nongaming employee registration shall apply to the Board as required by this chapter.

(b) In addition to the materials required under §§ 435.3, 435.4 and 435.5 (relating to key employee license; occupation permit; and nongaming employee registration), an applicant shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

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

(d) The holder of a key employee license, occupation permit or nongaming employee registration shall provide an updated photograph at the request of the Board.

(e) An individual may not be employed in this Commonwealth by an applicant for or holder of a license, certification or registration under this part in any capacity unless the individual is a citizen of the United States or can demonstrate that he holds a current and valid work authorization and is not restricted from working in the capacity for which employment is sought or held. Authorization to work in the United States may be demonstrated by submitting one of the following:

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

(f) A license or permit will not be issued to an individual who has been convicted of a felony or gambling offense in any jurisdiction unless 15 years have elapsed from the date of expiration of the sentence for the offense.

(g) When considering an application for a registration from an individual who has been convicted of a felony or gaming offense in any jurisdiction or an application for a license or permit from an individual who has been convicted of a felony or gaming offense in any jurisdiction when 15 years have elapsed from the date of expiration of the sentence for the offense, the Board will consider:

(1) The nature and duties of the applicant's position with the licensed entity.

(2) The nature and seriousness of the offense or conduct.

(3) The circumstances under which the offense or conduct occurred.

(4) The age of the applicant when the offense or conduct was committed.

(5) Whether the offense or conduct was an isolated or a repeated incident.

(6) Evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received and the recommendation of persons who have substantial contact with the applicant.

(h) An individual who holds a license or permit may not wager at any licensed facility in this Commonwealth.

(i) A registrant or employee who is not required to obtain a license or a permit may not wager at the licensed facility in which the registrant or employee is employed.

(j) A licensed, permitted or registered employee shall wait at least 30 days following the date that the employee either leaves employment with a slot machine licensee or is laid off or terminated from employment with a slot machine licensee before the employee may wager at the licensed facility in which the employee was formerly employed.

(k) An individual required to obtain a license or permit by this part shall demonstrate that he is current and not in arrears on any financial obligation owed to this Commonwealth or any subdivision thereof, including court-ordered child support payments.

§ 435.2. (Reserved).

§ 435.3. Key employee license.

(a) An applicant for a key employee license from the Board shall submit:

(1) An original and three copies of the Multi Jurisdictional Personal History Form and the Principal/Key Employee Form—Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form unless otherwise directed by the Board.

(2) A nonrefundable application fee.

(b) In addition to the materials required under subsection (a), an applicant for a key employee license shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

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

(d) An applicant for a key employee license will be required to reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

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

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

(g) An individual who is a key employee may request in writing that the Board waive the obligation to be licensed as a key employee by:

(1) Filing an original and three copies of a Principal/Key Employee Waiver Form.

(2) A nonrefundable waiver application fee.

(h) As part of the waiver request, the individual shall be required to demonstrate one of the following:

(1) The individual is not assigned to an applicant's or licensee's gaming operations in this Commonwealth.

(2) The individual's duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(i) The request for a waiver must include, at a minimum, the following:

(1) A description of the individual's title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

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

(j) An applicant for a key employee waiver will be required to reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

§ 435.4. Occupation permit.

(a) An applicant for an occupation permit shall submit:

(1) An original and three copies of the Gaming Employee Application and Disclosure Information Form or an electronic application using the SLOTS Link system.

(2) A nonrefundable application fee.

(3) Verification of an offer of employment from a licensed entity.

(b) In addition to the materials required under subsection (a), an applicant for an occupation permit shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(c) An applicant for an occupation permit may be required to reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

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

(e) An individual who wishes to receive an occupation permit under this chapter may authorize an applicant for or holder of a slot machine, management company, manufacturer, manufacturer designee or supplier license or vendor certification to file an application on the individual's behalf.

(f) A permit issued under this section shall be nontransferable.

§ 435.4a. Key employee license and occupation permit term and renewal.

(a) A key employee license or occupation permit issued under this chapter will be valid for 1 year from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a key employee license or occupation permit.

(c) A key employee license or occupation permit for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the key employee license or occupation permit that the Board has approved or denied the key employee license or occupation permit.

§ 435.5. Nongaming employee registration.

(a) An applicant for a nongaming employee registration shall submit:

(1) An original and three copies of the Nongaming Employee Registration Form or an electronic application using the SLOTS Link system.

(2) A nonrefundable application fee.

(b) In addition to the materials required under subsection (a), an applicant for a nongaming employee registration shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(c) After review of the information required under subsections (a) and (b), the Board may register the individual if the individual has proven that he is eligible and suitable to be registered under this section.

(d) An individual who wishes to receive a nongaming employee registration under this chapter may authorize an applicant for or holder of a slot machine license or a vendor certification to file an application on the individual's behalf.

§ 435.6. Board credentials.

(a) The following individuals shall obtain a Board credential:

(1) A principal whose duties are required to be performed at a licensed facility in excess of 12 days in a 12-month period.

(2) Key employees.

(3) Gaming employees.

(4) Nongaming employee registrants.

(5) State employees whose duties require the employee's presence at a licensed facility more frequently than once a month.

(b) The credential will contain the following information:

(1) The name, address, date of birth, sex, height, weight, hair color and eye color of the licensee, permittee or registrant.

(2) A photograph of the face of the individual to whom the credential has been issued which meets the standards of the Commonwealth Photograph Imaging Network.

(3) The inscription "Pennsylvania Gaming Control Board."

(4) The seal of the Commonwealth.

(5) A license, permit or registration number.

(6) The type of license, permit or registration.

(7) An expiration date.

(8) The signature of the employee.

(9) Other security features as determined by the Board.

(c) An individual required to obtain a Board credential shall carry the Board credential on his person at all times while engaged in the performance of his duties on the premises of a licensed facility.

(d) Except as provided in § 435.8 (relating to emergency credentials), slot machine and management company licensees are prohibited from allowing a principal who is required to obtain a credential, key employee, gaming employee or nongaming employee registrant to perform his duties on the premises of a licensed facility unless the employee has his Board-issued credential.

(e) Notwithstanding subsection (a), the Board may, upon written request by a slot machine or management company licensee and upon a showing of good cause, exempt certain positions, titles or persons from the requirements of this section.

(f) An employee whose license, permit or registration has been suspended or revoked by the Board shall surrender the Board credential to the Board.

§ 435.7. (Reserved).**§ 435.8. Emergency credentials.**

(a) An emergency credential obtained from the Board may be issued by the security department of a slot machine licensee to a principal, key employee, gaming employee or nongaming employee of the slot machine licensee who does not have the credential on his person, or whose credential has been stolen, lost or destroyed, to enable the employee to perform the employee's duties at the licensed facility, if the security department of the slot machine licensee performs the following prior to issuing the emergency credential:

(1) Verifies that the employee is listed in the slot machine licensee's current employee status report.

(2) Verifies that the employee holds a valid license, permit or registration.

(3) Confirms the employment and licensure, permit or registration information of the employee with the supervisor of the employee.

(4) Verifies that fewer than 12 emergency credentials have been issued to the particular employee in the past 12 months.

(5) Maintains, in writing, an emergency credentials log containing the following information:

(i) The name and license, permit or registration number of the employee to whom the emergency credential was issued.

(ii) The date and time that the emergency credential was issued.

(iii) The name and license, permit or registration number of the slot machine licensee security department employee issuing the emergency credential.

(iv) The badge number of the emergency credential that was issued.

(b) Each slot machine licensee shall submit a copy of its emergency credential log for the preceding year to the Bureau of Licensing by January 15 of the following year.

(c) Emergency credentials:

(1) Will be valid for a time period not to exceed 72 hours.

(2) Will be sequentially numbered.

(3) Must be stored in the offices of the security department and distributed by that department in accordance with this section and the slot machine licensee's procedures submitted to and approved by the Board.

§ 435.9. Temporary credentials for principals and key employees.

(a) A temporary credential may be issued by the Board to a principal or a key employee whose investigation for licensure by the Board is pending but whose presence is necessary in the licensed facility.

(b) A temporary credential issued under this section is void 120 days after the date of its issuance.

(c) The Board may extend the expiration date of a temporary credential if the Board determines additional time is needed to complete the investigation for licensure.

§ 435.9a. Temporary credentials for nongaming employees.

(a) A temporary credential may be issued by the Board to a nongaming employee if:

(1) The applicant has submitted all of the application materials required under § 435.5 (relating to nongaming employee registration).

(2) The applicant has been fingerprinted and photographed by the Pennsylvania State Police.

(b) Temporary credentials for nongaming employees will be issued by the Bureau.

(c) A temporary credential issued under this section will be valid for 30 days.

§ 435.10. Loss or destruction of credentials.

(a) As soon as possible, but no later than 24 hours, following the loss or destruction of a Board credential, emergency credential or temporary credential, the person to whom the credential was originally issued shall notify the security department of the slot machine licensee.

(b) The security department of the slot machine licensee shall notify the Board in writing within 24 hours and may issue an emergency credential in accordance with § 435.8 (relating to emergency credentials).

(c) An employee who has lost his Board credential may request a duplicate Board credential by submitting a Request for Duplicate PGCB Credential form and the fee established by the Board to the Bureau of Licensing.

CHAPTER 437. VENDOR CERTIFICATION AND REGISTRATION

§ 437.1. General vendor requirements.

(a) A vendor seeking to conduct business with a slot machine applicant or licensee, except as provided in § 437.10 (relating to emergency vendor), shall apply to the Board for registration if:

(1) The total dollar amount of business will be or is anticipated to be greater than \$15,000 but \$200,000 or less with a single slot machine applicant or licensee within a consecutive 12-month period.

(2) The total dollar amount of business will be or is anticipated to be greater than \$15,000 but \$500,000 or less with multiple slot machine applicants or licensees within a consecutive 12-month period.

(b) A vendor seeking to conduct business with a slot machine applicant or licensee, except as provided in § 437.10 shall apply to the Board for certification if:

(1) The total dollar amount of business will be or is anticipated to be greater than \$200,000 with a single slot machine applicant or licensee within a consecutive 12-month period.

(2) The total dollar amount of business will be or is anticipated to be greater than \$500,000 with multiple slot machine applicants or licensees within a consecutive 12-month period.

(3) The vendor's employees will have access to restricted areas or the gaming floor.

(4) The Board notifies the vendor that certification is required based upon the Board's analysis of the vendor's services.

(c) The following persons are exempt from the vendor registration and the vendor certification requirements of this chapter:

(1) Public utilities which provide only one or more of the following services to a slot machine applicant or licensee:

- (i) Water.
- (ii) Sewerage.
- (iii) Electricity.
- (iv) Natural gas.

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

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

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

(5) State, Federal and municipal operated agencies.

(6) Manufacturers and suppliers of liquor, wine and beer regulated by the Pennsylvania Liquor Control Board.

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

(8) Providers of professional services including accountants, attorneys, engineers and architects.

(9) Telecommunication service providers.

(10) Shipping services.

(11) Persons that engage 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.

(14) Newspapers, television stations, radio stations and providers of simulcast services that contract with slot machine applicants or licensees.

(d) Subsection (c) does not relieve a slot machine applicant or licensee of any reporting obligations required by § 441.12a (relating to agreements).

(e) A vendor who provides goods or services that are not listed in subsection (c) may seek a waiver of vendor certification or registration requirements by filing a completed Vendor Certification Waiver Application.

(f) The Board may, in response to misrepresentations or changes in circumstances, revoke an exemption or waiver granted under this section and require the recipient of the exemption or waiver to comply with the vendor registration and certification requirements of this chapter.

§ 437.2. Vendor registration applications.

(a) A vendor seeking registration shall complete and the slot machine applicant or licensee for whom the vendor will provide goods or services shall submit an original and four copies of a Vendor Registration Form unless otherwise directed by the Board.

(b) In addition to the materials required under subsection (a), an applicant for a vendor registration shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(c) An applicant for a vendor registration will be required to reimburse the Board for costs incurred by the Board in conducting the review of the application, up to a maximum amount of \$2,000.

(d) A vendor registration will not be issued until all fees have been paid.

§ 437.3. Vendor certification applications.

(a) A vendor seeking certification shall complete and the slot machine applicant or licensee for whom the vendor will provide goods or services shall submit:

(1) An original and four copies of a Vendor Certification Form unless otherwise directed by the Board.

(2) A nonrefundable application fee.

(3) A Vendor Certification Form for each affiliate, intermediary, subsidiary and holding company of the applicant.

(4) Applications for each principal and key employee as required by §§ 437.4 and 437.5 (relating to principal certification; and key employee certification).

(b) In addition to the materials required under subsection (a), an applicant for a vendor certification shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(c) A vendor certification will not be issued until all fees have been paid.

§ 437.4. (Reserved).**§ 437.4a. Principal certification.**

(a) Principals of certified vendors or applicants thereof, including natural persons and entities, shall obtain a principal certification from the Board.

(b) Certified principals and applicants for principal certification are subject to the requirements and waiver provisions of Chapter 433 (relating to principal licenses).

§ 437.4b. Key employee certification.

(a) Key employees of certified vendors or applicants thereof shall obtain a key employee certification from the Board.

(b) Key employee applicants for certification and certified key employees are subject to the requirements and waiver provisions of § 435.3 (relating to key employee license).

§ 437.4c. Registration and certification term and renewal.

(a) Certifications, registrations and renewals issued under this chapter shall be valid for 4 years from the date of Board approval.

(b) A renewal application and renewal fee shall be submitted to the Board at least 60 days prior to the expiration of a certification or registration.

(c) A certification or registration for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the certification or registration that the Board has approved or denied the certification or registration.

§ 437.4d. Registered and certified vendor responsibilities.

(a) A holder of a vendor certification or registration shall have a continuing duty to:

(1) Provide information requested by the Board relating to licensing or regulation; cooperate with the Board in

investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(2) Report a change in circumstances that may render the holder of a vendor certification or registration ineligible, unqualified or unsuitable to hold a certification or registration under the standards and requirements of the act and of this part.

(b) An employee of a certified vendor shall be required to obtain an occupational permit under § 435.4 (relating to occupational permit) if:

(1) The employee is the onsite supervisor of other employees of the vendor whose duties of employment or incidental activities related to employment require the employees to be on the gaming floor or in a restricted area.

(2) The employee's duties of employment or incidental activities related to employment require the employee to be on the gaming floor or in a restricted area and require the employee to touch or have contact with a slot machine or associated equipment.

(c) An employee of a certified vendor that is not required to obtain an occupational permit under subsection (b) shall be required to obtain a nongaming employee registration under § 435.5 (relating to nongaming employee registration) if:

(1) The employee's duties of employment or incidental activities related to employment require the employee to be on the gaming floor but do not require the employee to touch or have contact with a slot machine or associated equipment other than exterior cleaning.

(2) The employee's duties of employment or incidental activities related to employment require the employee to be in a restricted area, do not require the employee to touch or have contact with a slot machine or associated equipment other than exterior cleaning and the employee is under the constant supervision of an employee of the slot machine licensee who is licensed or permitted and who has the appropriate access clearance to be in the restricted area.

(d) Employees of a certified vendor who are not required to obtain an occupation permit or a nongaming employee registration under subsections (b) or (c) may be required to obtain an occupation permit or nongaming employee registration if the Board determines, after a review of the work being performed, that obtaining a permit or registration is necessary for the protection of the integrity of gaming.

§ 437.5. Approved vendors list; prohibited vendors.

(a) The Board will maintain a list of approved registered or certified 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 will be listed as a prohibited vendor:

(1) The failure of a vendor to apply for certification or registration after notice from the Board that certification or registration is required.

(2) The failure of a vendor to cooperate with the Board in the Board's review of the application for certification or registration.

(3) The vendor's certification or registration is suspended, revoked or denied.

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

(5) 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 seeking to be removed from the list of prohibited vendors shall file a petition for removal in accordance with § 493.4 (relating to petitions generally). The petition must state the specific grounds believed by the petitioner to constitute good cause for removal from the prohibited vendors list and how the vendor has cured any deficiencies that led to the vendor being placed on the prohibited vendors list.

§ 437.6. (Reserved).

§ 437.7. Permission to conduct business prior to certification or registration.

(a) Notwithstanding § 437.1 (relating to general vendor requirements), the Board may allow an applicant for a vendor certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the vendor applicant if the following criteria are met:

(1) A completed Vendor Registration Form or Vendor Certification Form has been filed by the slot machine applicant or licensee in accordance with § 437.2 or § 437.3 (relating to vendor registration applications; and vendor certification applications).

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

(3) The slot machine applicant or licensee shows good cause for granting the written request.

(b) Permission to conduct business under this section will be for a period of 6 months.

(c) The Board may extend the relief for additional 6-month periods upon a showing of good cause by the slot machine applicant or licensee.

§ 437.8. (Reserved).

§ 437.9. (Reserved).

§ 437.10. Emergency vendor.

(a) A slot machine licensee may utilize a vendor that is not registered or certified when a threat to public health, welfare or safety exists or circumstances outside the control of the slot machine applicant or licensee creates an urgency of need which does not permit the delay involved in using the formal method of vendor certification or registration.

(b) When using a vendor that is not registered or certified to respond to an emergency, the slot machine applicant or licensee shall:

(1) File a Vendor Notification Form 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.

(3) File a Vendor Registration Form or Vendor Certification Form on behalf of the vendor within 20 business days of the filing of the Vendor Notification Form.

§ 437.11. (Reserved).

§ 437.12. (Reserved).

§ 437.13. Slot machine applicants' and licensees' duty to investigate.

(a) An applicant for or holder of a slot machine license shall investigate the background and qualifications of all applicants for vendor registration or certification with whom it intends to have a contractual relationship or enter into an agreement. Certification or registration by the Board may not be relied upon as the sole criterion for entering into an agreement with a certified or registered vendor.

(b) An applicant for or holder of a slot machine license shall have an affirmative duty to avoid agreements or relationships with applicants for vendor registration or certification whose background or association is injurious to the public health, safety, morals, good order and general welfare of the people of this Commonwealth, who threaten the integrity of gaming in this Commonwealth or who discredit or tend to discredit the Commonwealth or the gaming industry in this Commonwealth.

(c) An agreement or contract between an applicant for or holder of an slot machine license and an applicant for or holder of a vendor registration or certification shall contain a cancellation clause that allows termination of the agreement or contract in the event that the Board or the slot machine applicant or licensee finds that the agreement or contract fails to meet the requirements of subsection (b). This provision applies to written and oral agreements and contracts.

CHAPTER 441. SLOT MACHINE LICENSES

§ 441.1. Definitions.

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

Amenities—Ancillary activities, services or facilities in which a registered guest or the transient public, in return for non-de minimis consideration, may participate at a resort hotel, including, but not limited to:

(i) Sports and recreational activities and facilities such as a golf course or golf driving range, tennis courts or swimming pools.

(ii) Health spa, convention, meeting and banquet facilities.

(iii) Entertainment facilities.

(iv) Restaurant facilities.

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

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

Licensing hearing—A hearing before the Board in which an applicant for a grant of a permanent slot machine license or a Conditional Category 1 slot machine license will have an opportunity to present to the Board:

(i) Evidence concerning its eligibility for a license.

(ii) Evidence concerning its suitability for a license.

(iii) Evidence of how its proposed facility and operation addresses the criteria identified in section 1325(c) of the act (relating to license or permit issuance).

(iv) For applicants seeking licensure under section 1304 of the act (relating to Category 2 slot machine license), evidence which sets forth a comparison between the applicant and other applicants within the same category of licensure on the standards and criteria in the act.

Non-de minimis consideration—A payment of \$25 or more per patron paid to a slot machine licensee.

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

Patron of amenities—An individual who is a registered attendee of a convention, meeting or banquet event or a participant in a sport or recreational event or any other social, cultural or business event held at a resort hotel or who participates in one or more of the amenities provided to registered guests of the resort hotel.

Slot machine license—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).

Well-established resort hotel—A resort hotel having no fewer than 275 guest rooms under common ownership and having substantial year-round recreational guest amenities.

§ 441.2. Slot machine application restrictions and deadlines.

(a) Under section 1304 of the act (relating to category 2 slot machine license), an applicant for a Category 2 slot machine license under section 1301 of the act (relating to authorized slot machine licenses), its affiliate, intermediary, subsidiary or holding company, may not possess any ownership or financial interest in any person eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies.

(b) The Board will initiate the formal procedure for the acceptance, consideration and final resolution of applications for slot machine licenses by setting a filing period for filing of Category 1, 2 or 3 slot machine license applications. The filing period set by the Board shall be posted on the Board's website (www.pgcb.state.pa.us).

(c) After the expiration of the filing period established by the Board under subsection (b), the Board will set a completion date by which all filed applications are to be complete. An application that is not complete, as determined by the Board, by the completion date will not be considered. The completion date set by the Board under this subsection shall be published in the *Pennsylvania Bulletin* at least 30 days prior to the completion date.

§ 441.3. Slot machine license application.

(a) An applicant for a slot machine license shall submit an application which includes the following:

(1) An original and three copies of the Conditional/Category 1, Category 2 or Category 3 Application and Disclosure Information Form.

(2) A nonrefundable application fee.

(3) A license or waiver application for each principal and key employee under Chapters 433 and 435 (relating to principal licenses; and employees), including an original and three 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 principal and each key employee.

(4) Fingerprints for the applicant and each principal and key employee.

(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) If a temporary land-based facility is to be licensed, a plan for how the licensee will transition to a permanent facility, including a date for completion of the permanent facility. A permanent facility shall be the facility proposed by the applicant, which is designated, identified and made part of the evidentiary record by the applicant at the applicant's licensing hearing. Modifications to the proposed permanent facility following the applicant's licensing hearing shall be approved by the Board.

(7) 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).

(8) 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 (relating to Category 3 slot machine license).

(b) Failure to provide the information required in subsection (a) may result in the application being returned to the applicant or result in an application being deemed incomplete.

(c) In addition to the materials required under subsection (a), an applicant for a slot machine license shall:

(1) Promptly provide information requested by the Board relating to its application, financial fitness, character, honesty and integrity, or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(d) A copy of the local impact report required as part of the application shall be provided to the political subdivisions in which the licensed facility will be located at the same time as the filing of the application for a slot machine license. The applicant shall file a proof of service with the Board.

(e) An applicant for a slot machine license will be required to reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

§ 441.4. (Reserved).

§ 441.4a. 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 required under § 441.3 (relating to slot machine license 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, renewal applications and accompanying documents filed in the other jurisdiction.

(4) The applicant has provided current, updated information to the Board regarding the license in the other jurisdiction and information 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 the information submitted under this subpart. If the applicant does not meet the requirements of the act or this part, the Board will revoke, suspend or condition the license until the applicant meets all the requirements of the act.

§ 441.5. (Reserved).

§ 441.5a. License fee payment bond or letter of credit.

(a) An application for a slot machine license shall at all times throughout the period in which the application is on file with the Board include original payment bonds or original irrevocable letters of credit, or some combination thereof, that include draw instructions 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 approved and issued.

(1) Payment bonds or irrevocable letters of credit shall be submitted and approved by the Board before an application may be accepted for filing. The Board's review will include an assessment of both the proposed terms of the payment bond or irrevocable letter of credit and of the surety or financial institution that will issue the payment bond or irrevocable letter of credit. An application will be deemed incomplete if at any time during the period the application is on file with the Board payment bonds or

letters of credit approved by the Board in the amounts required in paragraph (2) are not in full force and effect.

(2) Payment bonds or irrevocable letters of credit must aggregate to 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.

(b) Unless otherwise required by the Board, a payment bond provided under this section must be issued by a surety company that is both licensed by the Insurance Department and assigned a credit rating within the three highest categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service. Proof that the surety is licensed by the Insurance Department and has been assigned the required credit rating must accompany any payment bond submitted under this section.

(c) Unless otherwise required by the Board, a letter of credit must be issued by a bank, trust company, National banking association or corporation which is both subject to regulation by the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) and assigned a credit rating within the three highest rating categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service. Proof that the bank, trust company, National banking association or corporation is subject to regulation by the Federal Reserve System under the Bank Holding Company Act of 1956 and that the issuer has been assigned the required credit rating must accompany any letter of credit submitted under this section.

(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 slot machine 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 provided under this section must state that it will expire upon the earlier to occur of the following:

(1) A specified expiry date or any automatically extended expiry date.

(2) Receipt by the issuer of the Board's signed statement that:

(i) The application has been denied.

(ii) The slot machine license has been issued and 10 business days have elapsed following the issuance of the license.

(iii) The license fee has been paid.

(iv) The applicant has been permitted by the Board to withdraw its application under § 423.5 (relating to application withdrawal).

(g) Any expiry date applicable to a payment bond or letter of credit provided under this section must be at least 12 months from the date of issuance of the payment

bond or letter of credit. Any provision automatically renewing or extending a payment bond or letter of credit must do so at intervals of at least 3 months. Any notice provisions to the Board in a payment bond or letter of credit applicable to an election by an issuer not to renew or extend a then current expiry date must provide that the Board will receive at least 60 days written notice, by registered mail or overnight courier service, of an election not to renew or extend.

(h) This section does not preclude a slot machine license applicant from substituting or replacing a payment bond or letter of credit during the period the application is on file with the Board provided the replacement payment bond or letter of credit is approved by the Board under this section.

§ 441.6. (Reserved).

§ 441.6a. Public input.

(a) Prior to granting a slot machine license, the Board will conduct at least one public input hearing.

(b) Public input hearings relating to an application for a slot machine license shall be held in the municipality where the licensed facility will be located. The public input hearings will be organized in cooperation with the municipality.

(c) The Board will develop and post the procedures that will be used to conduct public input hearings on the Board's website (www.pgcb.state.pa.us).

(d) The Board will make public a list of all witnesses scheduled to testify at a public input hearing at least seven days prior to the hearing. The list of witnesses will be updated at least 3 days prior to the hearing. Additional witnesses will be posted on the Board's website (www.pgcb.state.pa.us) as they are added to the witness list.

§ 441.7. (Reserved).

§ 441.7a. Licensing hearings for slot machine licenses.

(a) A schedule of licensing hearings for all slot machine license applicants will be posted on the Board's website (www.pgcb.state.pa.us).

(b) The Board will allot each applicant a specified time for its presentation. The length of the presentations, which shall be the same for each applicant within each category, will be established at the prehearing conferences.

(c) At a licensing hearing, an applicant shall appear before the Board and at all times have the burden to establish and demonstrate, by clear and convincing evidence, its eligibility and suitability for licensure and to address the criteria identified in section 1325(c) of the act (relating to license or permit issuance).

(d) For the purposes of this section, an applicant's demonstration of eligibility must include a showing of:

(1) Compliance with section 1302, 1303, 1304 or 1305 of the act, as applicable.

(2) Compliance with the application requirements in § 441.3 (relating to slot machine license application).

(3) Compliance with the license fee payment bond or letter of credit requirements in § 441.5a (relating to license fee payment bond or letter of credit).

(4) Compliance with the diversity requirements in Chapter 481 (relating to general provisions) and section 1325(b) of the act.

(e) For the purposes of this section, an applicant's demonstration of suitability must include a showing of:

(1) Good character, honesty and integrity in compliance with section 1310 of the act (relating to slot machine license application character requirements).

(2) Financial fitness in compliance with section 1313 of the act (relating to slot machine license application financial fitness requirements).

(3) Operational viability, including:

(i) The quality of the proposed licensed facility, and temporary land-based facility, if applicable, including the number of slot machines proposed and the ability of the proposed licensed facility to comply with statutory, regulatory and technical standards applicable to the design of the proposed licensed facility and the conduct of slot machine operations therein.

(ii) The projected date of the start of operations of the proposed licensed facility and any accessory uses such as hotel, convention, retail and restaurant space proposed in conjunction therewith. Applicants shall provide the Board with a time line on the deliverability of any proposed temporary land-based or phased permanent licensed facilities and the accessory uses proposed in conjunction therewith.

(iii) The ability of the applicant's proposed licensed facility to generate and sustain an acceptable level of growth of revenue.

(f) For the purposes of this section, an applicant's demonstration of how it addresses the criteria identified in section 1325(c) of the act must include:

(1) The location and quality of the proposed facility, including, but not limited to, road and transit access, parking and the facility's centrality to its anticipated market service area.

(2) The potential for new job creation and economic development which are expected to result from granting a license to an applicant.

(3) The applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility.

(4) The applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant.

(5) The applicant's good faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly.

(6) The potential for enhancing tourism which is expected to result from granting a license to the applicant.

(7) The history and success of the applicant in developing tourism facilities ancillary to gaming development in other locations if applicable to the applicant.

(8) The degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular.

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

(10) The degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care and treatment of problem gamblers and their families, child care, public transportation, affordable housing and social services, will be mitigated.

(11) 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.

(12) The record of the applicant in dealing with its employees and their representatives at other locations.

(13) The applicant's business probity, experience and ability.

(14) Areas of deficiency in the applicant's application previously identified by the Bureau of Licensing or Chief Enforcement Counsel that have not been resolved.

(g) The applicant's demonstration of how it addresses section 1325(c) of the act and subsection (f) may include information relating to its affiliates, intermediaries, subsidiaries or holding companies.

(h) No later than 30 days before the first scheduled licensing hearing in the category of license for which the applicant has filed an application, the applicant shall file with the Board a memorandum identifying all evidence it intends to use in support of its presentation before the Board. At the same time, Category 1 and Category 3 applicants shall serve the memorandum on the other applicants in the same category. At the same time, Category 2 applicants shall serve the memorandum on all other applicants whose proposed facility meets the same location criteria as the applicant's proposed facility as specified in subsection (m)(1)(i)–(iii). The memorandum must include the following:

(1) The name of the applicant and docket number of the applicant's application to which the evidence will relate.

(2) Identification of each standard and criterion in subsections (f)–(i) to which the evidence will relate.

(3) As to each criterion identified, whether the evidence will be presented through oral testimony or, the proffer of documents, or both. If any portion of the evidence will be presented through oral testimony, the notice must include the name, address and telephone number of each testifying witness, the identified criteria about which the witness will testify and a detailed summary of the witness' testimony. If any portion of the evidence will be presented through the proffer of documents, including reports and exhibits, the memorandum must include a copy of each document to be proffered and the name, address and telephone number of the persons who prepared the document.

(4) If any person identified in paragraph (3) will testify as an expert, the person's qualifications, including the person's education, experience and training, and a listing of the other jurisdictions where the person has been qualified as an expert witness, within the last 5 years, shall be attached to the notice. A copy of the results or reports of any tests, experiments, examinations, studies

or documents prepared or conducted by the expert or about which the expert will testify or which will be relied upon by the expert to render an opinion shall be attached to the notice.

(i) The Board will serve on all applicants within that category any expert reports developed for and requested by the Board that pertains to the applicants.

(j) Applicants, at the time of filing, shall provide the Board with an electronic version, in a format prescribed by the Board, of the reports and exhibits provided in paper form.

(k) If an applicant designates any submitted report or exhibit as confidential under § 401.4 (relating to definitions) or section 1206(f) of the act (relating to Board minutes and records), the applicant shall:

(1) Clearly and conspicuously indicate that the report or exhibit is confidential in both the paper and electronic format and provide these exhibits separately from the nonconfidential exhibits.

(2) Request that the confidential information be presented to the Board in closed deliberations, under section 1206(a) of the act and provide an explanation of the need for the designation of confidentiality and closed deliberations or authorize the release of the report or exhibit in compliance with section 1206(f) of the act.

(l) Applicants are prohibited from relying upon or introducing new evidence, including witnesses' testimony, reports or exhibits, not identified under subsections (h) or (m), except in the following circumstances:

(1) Applicants may update or supplement evidence, including witnesses' testimony, reports or exhibits to respond to requests from the Board.

(2) Applicants may update or supplement evidence, including witnesses' testimony, reports or exhibits to respond to issues raised subsequent to the filing of the memorandum required by subsection (h) at a prehearing conference if the issues could not have been reasonably anticipated by the applicant.

(m) For Category 2 and Category 3 applicants only, in addition to the applicant's presentation of evidence to the Board relative to its eligibility and suitability for a license, an applicant may, during its licensing hearing, present evidence which sets forth a comparison between the applicant and other applicants within the same category with respect to the standards and criteria in subsections (d)–(g).

(1) Comparisons must be limited to the following:

(i) For applicants seeking to locate a licensed facility in a city of the first class, other applicants for a licensed facility in a city of the first class.

(ii) For applicants seeking to locate a licensed facility in a city of the second class, other applicants for a licensed facility in a city of the second class.

(iii) For applicants seeking to locate a licensed facility in a revenue- or tourism-enhanced location, other applicants for a licensed facility in a revenue- or tourism-enhanced location.

(iv) For applicants seeking to locate a licensed facility in a well-established resort hotel, other applicants for a licensed facility in a well-established resort hotel.

(2) If an applicant desires to present comparative evidence under this subsection, the applicant shall, no later than 20 days prior to the commencement of the first scheduled licensing hearing in the category of license for

which the applicant has filed an application, file a separate written notice evidencing the intent with the Board identifying each other applicant about whom the applicant desires to present evidence. A copy of the notice shall also be served on the applicants about whom the evidence will be presented and on the Chief Enforcement Counsel. The notice must include:

(i) The name of the applicant and docket number of the applicant's application to which the evidence will relate.

(ii) Identification of the standards and criteria in subsections (d)—(g) to which the evidence will relate.

(iii) As to each criterion identified, a copy of any document or evidence that will be used to support the comparison to be presented in compliance with subsection (h).

(3) An applicant served with notice under paragraph (2) may present, during its licensing hearing, comparative evidence concerning it and the applicant from who notice was received with respect to the standards and criteria in subsections (d)—(g). The applicant so served shall have 10 days following services to file a reply notice with the Board which contains the information required by paragraph (2). A complete copy of the reply notice shall be served on the applicant who initially served notice under paragraph (2) and on the Chief Enforcement Counsel.

(4) If the applicant plans to present evidence to the Board concerning another applicant in closed deliberations, the applicant shall provide notice to the other applicant and provide any report or exhibit relied upon to the other applicant. The other applicant may be represented in the closed deliberations.

(n) At the discretion of the Board, an applicant's presentation may include:

(1) Oral presentation.

(2) Documentary evidence submissions, including reports, photographs, audiovisual presentations, exhibits or testimony of witnesses.

(o) The Board, its designee and Chief Enforcement Counsel may:

(1) Examine or question the applicant and any witnesses called by the applicant or the Board regarding their testimony and any aspect of the applicant's application and relevant background.

(2) Recall the applicant and other witnesses called by the applicant or the Board during the licensing hearing for further questioning.

(p) A person who testifies at the licensing hearing shall be sworn and testify under oath.

(q) At its discretion, the Board may terminate, recess, reconvene and continue the licensing hearing.

(r) Each Category 1 and Category 3 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications within its category. Each Category 2 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications that meet the same location criteria as the applicant as specified in subsection (m)(1)(i)—(iii). At the prehearing conferences, applicants in any category may waive the opportunity to file briefs.

(s) At the conclusion of the presentation of all testimony and evidence, the Board will cause the record to be transcribed. The transcript and all evidence shall become

part of the evidentiary record for the Board's consideration. For good cause shown, the Board may seal portions of the record.

(t) Following submission of the applicants' briefs, applicants will have an opportunity to make final remarks in the form of oral argument before the Board in a manner and time prescribed by the Board. At the prehearing conferences, applicants in any category may waive the opportunity for oral argument.

(u) Upon the conclusion of the licensing hearings and upon review of the evidentiary record in its entirety, the Board will consider, approve, condition or deny the slot machine license applications. A final order, accompanied by the Board's written decision, will be served on the applicants for slot machine licenses.

(v) An applicant may appeal the denial of a slot machine license to the Pennsylvania Supreme Court as provided in the act.

(w) This subsection pertains exclusively to intervention in a licensing hearing for a slot machine license under this section and is not applicable to other hearings before the Board. The right to intervene in a hearing under this section is within the sole discretion of the Board.

(1) A person wishing to intervene in a licensing hearing for a slot machine license shall file a petition in accordance with this subsection.

(2) A person may file a petition to intervene under this subsection if the person has an interest in the proceeding which is substantial, direct and immediate and if the interest is not adequately represented in a licensing hearing.

(3) Petitions to intervene in a licensing hearing may be filed no later than 45 days prior to the commencement of the first scheduled licensing hearing, in the category of license for which the applicant, in whose hearing the petitioner seeks to intervene, has filed an application unless, in extraordinary circumstances for good cause shown, the Board authorizes a late filing. At the same time the petitioner files its petition with the Board, a complete copy of the petition to intervene shall be served on the Chief Enforcement Counsel and the applicant in whose licensing hearing the petitioner seeks to intervene.

(4) Petitions to intervene must set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, the position of the petitioner in the proceeding and a copy of the written statement to be offered under paragraph (6). The petitioner shall fully and completely advise the applicant and the Board of the specific issues of fact or law to be raised or controverted and cite provisions or other authority relied on.

(5) The applicant may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. If made, answers shall be filed within 10 days after the date the petition is filed with the Board, unless for cause the Board prescribes a different time. A complete copy of the answer to the petition to intervene shall be served on the Chief Enforcement Counsel and the petitioner who seeks to intervene.

(6) Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a licensing hearing will be limited to the presentation of evidence through the submission of written statements

attested to under oath. The written statements shall be part of the evidentiary record.

(x) This section supersedes any conflicting provisions of Subpart H (relating to practice and procedure) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 441.8. Divestiture.

(a) If the Board determines that a slot machine license application cannot be approved because the applicant, its principal 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) The terms of divestiture will be approved by the Board.

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

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

§ 441.9. (Reserved).

§ 441.9a. Approval of a slot machine license.

(a) An applicant for a slot machine license shall prove the following by clear and convincing evidence:

(1) 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).

(2) The good character, honesty and integrity of the applicant and its affiliates, intermediaries, subsidiaries, holding companies and principals in accordance with section 1310 of the act (relating to slot machine license application character requirements).

(b) For Category 1 slot machine applications, 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 slot machine license under this chapter if it determines that the applicant:

(1) Has demonstrated that the applicant will establish and is likely to maintain a financially successful, viable

and efficient business operation and will likely be able to maintain a steady level of growth of revenue to the Commonwealth.

(2) Is of good character, honesty and integrity.

§ 441.10. (Reserved).

§ 441.10a. Notification of anticipated or actual changes in principals or key employees.

Each slot machine applicant or licensee shall notify the Board, in writing, as soon as it becomes aware, of the proposed appointment, appointment, proposed nomination, nomination, election, hiring, intended resignation, resignation, removal, firing, incapacitation or death of any person required to be licensed as a principal or key employee under Chapter 433 and § 435.2 (relating to principal licenses; and key employee license). The notice must be addressed to the Bureau of Licensing.

§ 441.11. (Reserved).

§ 441.11a. Notification of new financial sources.

Each slot machine applicant or licensee shall notify the Board, in writing, as soon as it becomes aware that it intends to enter into a transaction which may result in any new financial backers. The notice shall be sent to the Bureau of Licensing and the Bureau of Corporate Compliance and Internal Controls.

§ 441.12. (Reserved).

§ 441.12a. Agreements.

(a) *Maintaining agreements.* Each slot machine applicant and licensee shall maintain the following:

- (1) A fully signed copy of every written agreement.
- (2) Records with respect to any oral agreement.

(b) *Changes or amendments to agreements.* Slot machine applicants and licensees shall maintain changes or amendments to the terms of the agreements subject to subsection (a).

(c) *Filing agreements.* Each slot machine licensee shall submit the following to the Board:

(1) A fully signed copy of all written agreements with manufacturer applicants or licensees, manufacturer designee applicants or licensees, supplier applicants or licensees and with vendors subject to certification under § 437.1(b) (relating to general vendor requirements).

(2) A precise written description of any oral agreement, in accordance with subsection (f), with manufacturer applicants or licensees, supplier applicants or licensees and vendors subject to certification under § 437.1(b).

(3) A fully signed copy of all written agreements relating to land and real estate.

(d) *Changes or amendments to filed agreements.* Slot machine applicants and licensees shall file all changes or amendments to the terms of the agreements subject to subsection (c).

(e) *Additional agreements.* Notwithstanding the requirements of subsections (c) and (d), slot machine applicants or licensees may be required to submit a copy of any other written agreement, change or amendment or a precise written description of any other oral agreement, change or amendment as requested by the Board.

(f) *Oral agreements.* A written description submitted under this section must 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 date or 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.

§ 441.13. (Reserved).

§ 441.13a. Board review of agreements and records of agreements.

(a) The Board may review an agreement and record maintained or filed under § 441.12a (relating to 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 applicant or licensee.

(3) Whether any 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 applicant or licensee or its employees which requires a license, permit, certification, registration or notification under act or this part, in which case the Board will direct that the appropriate application be promptly filed by the person.

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

(b) If the Board finds that an agreement is not in the public interest or is inimical to the interest of gaming in this Commonwealth, the Board may, by order, require the termination of the agreement or association of any person associated therewith or pursue any remedy or combination of remedies provided for in the act or this part. If the 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.

(c) Each agreement maintained or filed under § 441.12a shall be deemed to include a provision for its termination without liability on the part of the slot machine applicant or licensee, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon the agreement, if the Board orders that the agreement be terminated in accordance with subsection (b).

§ 441.14. (Reserved).

§ 441.14a. Master purchasing and disbursement report.

(a) Each slot machine license applicant or licensee shall generate a monthly Master Purchasing and Disbursement Report for all vendor transactions. The report shall be submitted to the Bureau of Licensing no later than the 22nd calendar day of following month. The report must include the following information:

(1) A payee register listing alphabetically by payee all nonpayroll transactions drawn by the slot machine appli-

cant or licensee, including wire transfers and credits to vendors, and the following information next to the name of each payee:

(i) The vendor certification or registration number or exemption code.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

(v) The grand total of all disbursements made during the reporting period.

(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 applicant or licensee for goods or services that benefit the slot machine applicant or licensee, including wire transfers and credits to vendors, and the following information next to the name of each payee:

(i) The vendor certification or registration number or exemption code.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The 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 applicant or licensee itself acted in the capacity of a vendor by providing goods or services. The register must include:

(i) The vendor certification or registration number or exemption code of the vendor to whom the goods or services were provided.

(ii) The date of each individual transaction.

(iii) The 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 applicant or licensee and transmitted to the Bureau of Licensing by means of electronic data transmission or in a form prescribed by the Board.

§ 441.15. (Reserved).

§ 441.15a. Slot machine license issuance bond requirement.

(a) Upon the issuance of a slot machine license, a slot machine licensee shall post an original payment bond in the amount of \$1,000,000.

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

(1) The payment bond must be issued by a surety company that is both licensed by the Insurance Department and assigned a credit rating within the three highest categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally recognized rating service. Proof that the surety is licensed by the Insurance Department and has been assigned the required credit rating must accompany any payment bond submitted under this section.

(2) A slot machine licensee shall submit its proposed payment bond to the Board prior to the issuance of a slot machine license. The Board will investigate and approve both the proposed terms of the payment bond and the surety that will issue the payment bond.

(3) The payment bond must state that it is payable to "The Commonwealth of Pennsylvania" as the obligee for immediate payment of the slot machine licensee's financial obligations to the Commonwealth under the act and as security to guarantee that the slot machine licensee faithfully makes the payments, keeps its books and records, makes reports and conducts its operations in conformity with the act, this part and the rules and orders promulgated by the Board.

(4) A payment bond issued in accordance with this section will remain in full force and effect throughout the period of time that the slot machine license is in effect. If a bond is canceled and the slot machine licensee fails to file a new bond with the Board in the required amount on or before the effective date of the cancellation, the licensee's license will be revoked or suspended.

(5) Any notice provision to the Board in a payment bond applicable to an election by a surety to cancel a then current payment bond must provide that the Board will receive at least 30 days written notice, by registered mail or overnight courier service, of the surety's election to cancel.

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

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

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

(3) The slot machine licensee requests the right to post a new payment bond.

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

§ 441.16. (Reserved).

§ 441.16a. Slot machine license term and renewal.

(a) A slot machine license issued under this chapter will be valid for 1 year from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a slot machine license.

(c) A slot machine license for which a completed renewal application has been received by the Board will continue in effect until the Board sends written notification to the holder of the slot machine license that the Board has approved or denied the slot machine license renewal application.

§ 441.17. (Reserved).

§ 441.17a. Change in ownership or control of slot machine licensee and multiple slot license prohibition.

(a) A slot machine licensee shall notify the Board prior to or immediately upon becoming aware of any proposed or contemplated change in ownership of the slot machine licensee by a person or group of persons acting in concert which involves any of the following:

(1) More than 5% of a slot machine licensee's securities or other ownership interests.

(2) More than 5% of the securities or other ownership interests of a corporation or other form of business entity that owns, directly or indirectly, at least 20% of the voting or other securities or other ownership interest of the slot machine licensee.

(3) The sale, other than in the normal course of business, of a slot machine licensee's assets.

(4) Other transactions or occurrences deemed by the Board to be relevant to license qualification.

(b) Notice to the Board and Board approval shall be required prior to completion of any proposed change of ownership of a slot machine licensee that meets the criteria in subsection (a).

(c) A person or group of persons acting in concert desiring to acquire an interest in a slot machine licensee that meets the criteria in subsection (a) shall submit an application for approval of the transfer which shall include the following:

(1) An application for transfer on a form prescribed by the Board.

(2) A copy of all documents, contracts and agreements related to the transfer.

(3) A principal license application for each person seeking to acquire an interest that does not currently hold a principal license.

(4) Application fees specified by the Board to cover the cost of investigations of the transfer application and persons seeking to acquire an interest. The applicant for the transfer shall be responsible for and remit to the Board any costs associated with the investigation of the transfer that exceed the amount covered by the fees.

(d) A person or group of persons acting in concert that acquires more than 20% of a slot machine licensee's securities or other ownership interests or purchases the assets, other than in the normal course of business, of any slot machine licensee shall independently qualify for a license in accordance with the act and this part and shall pay the licensing fee required by section 1209 (relating to slot machine license fee), except as otherwise required by the Board.

(e) The requirements in subsections (a)—(d) do not apply to:

(1) An underwriter who will hold a security for less than 90 days.

(2) An institutional investor, if:

(i) The institutional investor holds less than 10% of the securities or other ownership interests referred to in subsection (a)(1) or (2).

(ii) The securities or interests are publicly traded securities.

(iii) The institutional investor's holdings if the securities were purchased for investment purposes only and the institutional investor files a certified statement with the Board stating that the institutional investor has no intention of influencing or affecting, directly or indirectly, the affairs of the slot machine licensee.

(f) In accordance with section 1330 of the act (relating to multiple slot machine license prohibition), a slot machine licensee, its affiliates, intermediaries, subsidiaries and holding companies, may not possess an ownership or financial interest in any other slot machine licensee or in any other person eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies that exceeds 33.3%.

(g) Nothing in subsection (f) prevents a slot machine licensee from possessing ownership or financial interests of 33.3% or less, in multiple slot machine licensees or in persons eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies.

(h) If a slot machine licensee, its affiliates, intermediaries, subsidiaries or holding companies has an ownership or financial interest in another slot machine licensee that is in violation of subsection (f), the slot machine licensee will be required to divest that interest which is in excess of 33.3% in compliance with section 1330 of the act.

(i) Nothing in this section concerning ownership or financial interests applies to contractual interests including those in the nature of management contracts, options to purchase exercisable after a license has been issued or leases.

§ 441.18. (Reserved).

§ 441.18a. Employee status report.

(a) A slot machine licensee shall maintain a complete, accurate and current record of each employee that includes the information in subsection (b)(1).

(b) Each month each slot machine licensee shall generate a monthly employee status report of the slot machine licensee's and management company's employees. The report shall be submitted to the Bureau of Licensing no later than the 15th calendar day of the following month. The report must include the following information:

(1) An alphabetical listing of the individuals currently employed by the slot machine licensee and the management company and the following information with respect to each employee listed:

- (i) The name of the employee.
- (ii) The address of record of the employee on file with the slot machine licensee.
- (iii) The employee's license, permit or registration number.
- (iv) The employee's title or position.
- (v) Whether the employee is full-time or part-time.
- (vi) The date of hire of the employee.
- (vii) The access code, if any, assigned to the employee, which designates the restricted areas that the employee is permitted to enter and remain in for the purposes of performing his normal duties.

(2) The total number of persons employed by the slot machine applicant or licensee and management company during the preceding month.

(3) An alphabetical listing of all employees who have discontinued or terminated employment with the slot machine licensee or management company during the preceding month and the following information with respect to each employee listed:

- (i) The information listed in paragraph (1)(i)—(vii).
- (ii) The date on which the employee discontinued or terminated employment with the slot machine licensee or management company.

(4) The total number of employees who have discontinued or terminated employment with the slot machine licensee and management company during the preceding month.

(5) The date on which the information provided in the report was compiled.

(c) The reports shall be signed by the slot machine licensee and transmitted to the Bureau of Licensing by means of electronic data transmission or in a form prescribed by the Board.

(d) The Board may request interim employee status reports from a slot machine licensee or management company.

§ 441.19. (Reserved).

§ 441.19a. Notice of employee misconduct and offenses.

(a) A slot machine licensee or management company shall notify the Board within 5 days of the termination of an employee, of any information surrounding the termination of the employee that could be cause for suspension or revocation of the employee's license, permit or registration or any enforcement action related thereto.

(b) The notice must include the following information:

- (1) The employee's name.
- (2) The address of record of the employee on file with the slot machine licensee.
- (3) The employee's license, permit or registration number.
- (4) The employee's title or position.
- (5) A summary of the incident or misconduct by the employee, including any violations of this part or the act.
- (6) The date of termination of the employee.
- (7) The access code, if any, assigned to the employee, which designates the restricted areas that the employee was permitted to enter and remain in for the purposes of performing his normal duties.

(c) Notwithstanding subsection (a), a slot machine licensee shall, within 24 hours, notify the Board upon learning of the arrest, charging, indictment or conviction of any of its affiliates, intermediaries, subsidiaries, holding companies, principals, key employees, permittees or registrants, for any of the following:

- (1) An offense or violation under the act or this part.
- (2) The willful and knowing violation or attempt to violate an order of the Board by an employee.
- (3) An offense or violation of another applicable law which would otherwise disqualify the person from holding a license, permit or registration.
- (4) An offense or violation of a criminal law or ordinance of the United States or this Commonwealth or a comparable offense or violation in other states or foreign jurisdictions.

§ 441.20. Slot machine license agreements.

(a) An agreement or noncontractual relationship between a person and a slot machine licensee which provides for a payment to the person or an arrangement under which a person receives payment, however defined, of a direct or indirect interest, percentage or share of earnings, profits or receipts from slot machines and associated equipment of a licensed facility, shall require Board approval, regardless of the amount or percentage.

(b) An agreement will not receive Board approval if it, or if it when viewed in the aggregate as related to any of the persons who receive payment as a result of the agreement, creates a monopolization of economic opportunities or control of the licensed gaming facilities in this Commonwealth under § 421.5 (relating to monopolization of economic opportunities and control).

(c) Notwithstanding the definition of a principal, persons who receive payments under the agreements or arrangements shall be licensed by the Board prior to receiving the payments, unless the agreement or person is exempted under subsection (d).

(d) The following are exempt from the requirements of this section:

- (1) Fixed sum and hourly payments.
- (2) Junket agreements.
- (3) Employee profit sharing agreements administered by class or category.
- (4) Management contracts.
- (5) Slot system agreements for wide area progressive slot systems.
- (6) Horsemen's organizations.
- (7) Labor organizations.
- (8) Other agreements determined by the Board.

§ 441.21. (Reserved).

§ 441.21a. Management contracts.

Notwithstanding any provision to the contrary in the management contract, each slot machine licensee shall be jointly and severally liable for any act or omission by the management company in violation of the act or this part, regardless of actual knowledge by the slot machine licensee of the act or omission.

§ 441.22. (Reserved).

§ 441.22a. Category 1 slot machine licensees.

(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 a 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 Pennsylvania Race Horse Development Fund).

(i) Funds designated for purses under section 1406(a)(1)(i) of the act shall be deposited into an account established by and for the benefit of the horsemen within 36 hours of receipt from the Commonwealth.

(ii) Funds designated for health and pension benefits under section 1406(a)(1)(iii) of the act shall be deposited into an account established under the rules and regulations of the horsemen's organization within 36 hours of receipt from the Commonwealth.

§ 441.23. (Reserved).

§ 441.23a. Category 3 slot machine licensees.

(a) To qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer on its premises three or more of the following amenities:

- (1) Sports and recreational activities and facilities such as a golf course or golf driving range.
- (2) Tennis courts.
- (3) Swimming pools or water parks.
- (4) A health spa.
- (5) Meeting and banquet facilities.
- (6) Entertainment facilities.
- (7) Restaurant facilities.
- (8) Downhill or cross-country skiing facilities.
- (9) Bowling lanes.

(b) A Category 3 slot machine licensee shall monitor the gaming area to ensure compliance with Chapters 503, 511 and 513 (relating to self-exclusion; persons required to be excluded; and underage gaming) and that only the following persons are permitted to enter the gaming area:

- (1) Registered guests.
- (2) Patrons of one or more amenities.
- (3) Authorized employees.
- (4) Other persons authorized by the Board.

CHAPTER 443. CATEGORIES OF LICENSURE

§§ 443.1—443.5. (Reserved).

[Pa.B. Doc. No. 07-681. Filed for public inspection April 20, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CH. 429]
Manufacturer Designees

The Pennsylvania Gaming Control Board (Board), under 4 Pa.C.S. § 1203(a) (relating to temporary regulations), adopts temporary regulations to facilitate implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71), as amended by the act of November 1, 2006 (P. L. 1243, No. 135). The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). Chapter 429, entitled Manufacture Designees, is added to Subpart B, entitled Licensing, Registering, Certifying and Permitting.

Purpose and Background

Under 4 Pa.C.S. § 1203(a), the Board is authorized to promulgate temporary regulations to facilitate the prompt implementation of Act 71. The regulations are necessary to establish licensing requirements for manufacturer designees within this Commonwealth and to carry out the policy and purposes of the Board.

Under 4 Pa.C.S. § 1203(b), the temporary regulations adopted by the Board expire no later than 3 years following the effective date of Act 71 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—1208), known as the Commonwealth Documents Law (CDL) or the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

Financial Impact

Act 71 and the regulations 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 4 Pa.C.S. Part II will be reimbursed by the licensed entities as specified within Act 71. Individuals and entities that wish to obtain licenses as gaming entities shall pay to the Gaming Fund 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, registration, certification and permitting of individuals and other classes of applicants will be reimbursed by the applicants 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 shall have no financial impact on the State budget.

Statutory Authority

The Board is authorized under 4 Pa.C.S. § 1203(a) to adopt and publish temporary regulations to implement the policies and purposes of Act 71.

Regulatory Review

Under 4 Pa.C.S. § 1203(b), the Board's authority to adopt temporary regulations expires April 15, 2007.

Findings

The Board finds that:

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

(2) 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 temporary regulations, the proposed regulations by resolution at the March 27, 2007, public meeting. The temporary regulations pertain to manufacturer designees.

(b) The temporary regulations of the Board, 58 Pa. Code Chapter 429, are amended by adding §§ 429.1—429.7 to read as set forth in Annex A.

(c) The temporary regulations are effective March 27, 2007.

(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: 125-66. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

**Subpart B. LICENSING, REGISTERING,
 CERTIFYING AND PERMITTING**

CHAPTER 429. MANUFACTURER DESIGNEES

Sec.	
429.1.	Manufacturer designee general requirements.
429.2.	Manufacturer designee license applications and standards.
429.3.	Additional manufacturer designee licenses.
429.4.	Manufacturer designee license term and renewal.
429.5.	Responsibilities of a manufacturer designee.
429.6.	Manufacturer designee as agent.
429.7.	Manufacturer designee agreements.

§ 429.1. Manufacturer designee general requirements.

(a) A manufacturer designee seeking to supply or repair slot machines and associated equipment for use in this Commonwealth shall apply to the Board for a manufacturer designee license.

(b) In accordance with section 1317.1 of the act (relating to manufacturer licenses), an applicant for or the holder of a manufacturer designee license or any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, may not apply for or hold a slot machine license or supplier license.

(c) A licensed manufacturer designee may supply or repair slot machines or associated equipment manufactured by a manufacturer with whom the manufacturer

designee has an agreement or has executed a contract authorizing the manufacturer designee to do so.

(d) Limitations may not be placed on the number of manufacturer designee licenses issued or when an application for a manufacturer designee license may be filed.

§ 429.2. Manufacturer designee license applications and standards.

(a) An applicant for a manufacturer designee license shall submit:

(1) An original and three copies of the Manufacturer Designee Application and Disclosure Information Form unless otherwise directed by the Board.

(2) A nonrefundable application fee.

(3) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481 (relating to general provisions).

(4) An application from every key employee under § 435.2 (relating to key employee license) and principal under Chapter 433 (relating to principal licenses) as specified by the Manufacturer Designee Application and Disclosure Information Form.

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

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

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

(ii) Through defined benefit pension plans.

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

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

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

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

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

(7) 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) and a copy of the safeguards and policies.

(b) In addition to the materials required under subsection (a), an applicant for a manufacturer designee license shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(c) An applicant for a manufacturer designee license will be required to reimburse the Board for additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

(d) In determining whether an applicant will be licensed as a manufacturer designee under this section, the Board will consider the following:

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

(2) If all principals of the applicant are individually eligible and suitable under the standards of section 1317.1 of the act (relating to manufacturer licenses).

(3) The integrity of all financial backers.

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

(i) A background investigation of all principals and key employees or their equivalent in other jurisdictions.

(ii) A current tax clearance review performed by the Department.

(iii) A current Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review performed by the Department of Labor and Industry.

§ 429.3. Additional manufacturer designee licenses.

(a) A licensed manufacturer designee whose license is in good standing may apply for an additional manufacturer designee license for a different licensed manufacturer by submitting:

(1) An original and three copies of the Additional Manufacturer Designee Application and Disclosure Information Form unless otherwise directed by the Board.

(2) A nonrefundable application fee.

(b) An applicant for an additional manufacturer designee license shall also comply with § 429.2(b)(1) and (2) and (c) (relating to manufacturer designee license applications and standards).

§ 429.4. Manufacturer designee license term and renewal.

(a) A manufacturer designee license or renewal shall be valid for 1 year from the date on which the license or renewal is approved by the Board.

(b) A renewal application and renewal fee shall be filed at least 2 months prior to the expiration of the current license.

(c) A manufacturer designee license for which a completed renewal application and fee has been received by the Board will continue in effect for an additional 6-month period or until acted upon by the Board, whichever occurs first.

§ 429.5. Responsibilities of a manufacturer designee.

(a) A holder of a manufacturer designee license shall have a continuing duty to:

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

(2) Report a change in circumstances that may render a holder of a manufacturer or manufacturer designee license ineligible, unqualified or unsuitable to hold a license under the standards and requirements of the act and of this part.

(3) Provide a copy of Securities and Exchange Commission filings listed in § 427.2(a)(5) (relating to manufacturer licensing standards and application) that are filed after the date of issuance of its license. The copy shall be submitted no later than 30 days after the date of filing with the Securities and Exchange Commission.

(b) A holder of a manufacturer designee license shall establish a place of business in this Commonwealth.

(c) An employee of a licensed manufacturer designee whose duties of employment or incidental activities related to employment require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupation permit under § 435.3 (relating to occupation permit).

§ 429.6. Manufacturer designee as agent.

(a) Notwithstanding any provision to the contrary in a contract between a licensed manufacturer and a licensed

manufacturer designee, the licensed manufacturer designee shall be deemed to be an agent of the licensed manufacturer for the purposes of imposing liability for any act or omission of the licensed manufacturer designee in violation of the act or this part.

(b) Notwithstanding any provision to the contrary in a contract between a licensed manufacturer and a licensed manufacturer designee, the licensed manufacturer shall be jointly and severally liable for any act or omission by the licensed manufacturer designee in violation of the act or this part, regardless of actual knowledge by the licensed manufacturer of the act or omission.

§ 429.7. Manufacturer designee agreements.

(a) Agreements between a licensed manufacturer and a licensed manufacturer designee shall be submitted to the Bureau of Licensing for approval. An agreement between a licensed manufacturer and a licensed manufacturer designee may not become effective and a manufacturer designee license will not be issued until the Bureau of Licensing has reviewed and approved the terms and conditions of the agreement.

(b) Amendments to agreements between a licensed manufacturer and a licensed manufacturer designee shall be submitted to the Bureau of Licensing for approval at least 30 days prior to the effective date of the proposed amendment. The amendment may not become effective until the Bureau of Licensing has reviewed and approved the terms and conditions of the amendment.

(c) An agreement between a licensed manufacturer and a licensed manufacturer designee submitted for Bureau of Licensing review and approval must enumerate with specificity the responsibilities of the licensed manufacturer and the licensed manufacturer designee.

(d) Agreements must contain a provision that describes with particularity terms related to compensation of the licensed manufacturer or the licensed manufacturer designee.

[Pa.B. Doc. No. 07-682. Filed for public inspection April 20, 2007, 9:00 a.m.]