

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations (Big Brook, et al.)

The Environmental Quality Board (Board) proposes to amend §§ 93.9b, 93.9f, 93.9g, 93.9n, 93.9o and 93.9r to read as set forth in Annex A.

This proposed rulemaking was adopted by the Board at its meeting of February 20, 2007.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Richard H. Shertzer, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection (Department) website at www.depweb.state.pa.us.

C. *Statutory and Regulatory Authority*

This proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Proposed Rulemaking*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Organizations, businesses or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV waters must be maintained

at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

These streams were evaluated in response to five petitions, as well as requests from the Department's regional and central offices as follows:

Petition

Big Brook (Lebanon Township (Wayne County) Board of Supervisors)
Brooke Evans Creek (Larry Piasecki)
Wissahickon Creek (Upper Gwynedd Township, Montgomery County)
Furnace Run (students from Conestoga Valley High School, Lancaster County)
Clarion River (Iron Furnace Chapter of Trout Unlimited, the Alliance for Wetlands and Wildlife, the Commissioners of Clarion County and Reliant Energy Mid-Atlantic Power Holding LLC)

Department

Beaver Creek
Mill Creek
Stone Creek

These proposed amendments were developed as a result of aquatic studies conducted by the Department. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality of Exceptional Value Waters). Based upon the data collected in these surveys, the Department recommends the designations described in this preamble and to read as set forth in Annex A.

Copies of the Department's stream evaluation reports for these waterbodies are available on the Department's website or from the contacts whose addresses and telephone numbers are listed in Section B.

The following is a brief explanation of the recommendations for each waterbody:

Big Brook—Big Brook is a tributary to Dyberry Creek in the Delaware River drainage. The basin is located in Dyberry, Oregon, Lebanon and Damascus Townships, Wayne County. The Big Brook basin is currently designated HQ-CWF and was evaluated for redesignation based on a petition submitted by the Lebanon Township (Wayne County) Board of Supervisors. The reference station was located on Sawkill Creek. Sawkill Creek is an EV stream in Pike County. Sawkill Creek was used because of its close proximity, similar drainage area and similar geologic setting. The Department recommends that the Big Brook basin be redesignated EV based on waters with biological conditions scores at all five sampling stations greater than 92% of the reference, thus satisfying the regulatory criterion for redesignation as EV. Big Brook should also retain its current designation as MF.

Mill Creek—Mill Creek is a tributary to Tulpehocken Creek in the Schuylkill River watershed. The stream is located in Jefferson and Tulpehocken Townships, Berks County. Mill Creek was inadvertently omitted from Chapter 93 (relating to water quality standards). The Department documented the presence of a coldwater fishery in the basin. Species identified include blacknose dace and creek chub. Based on the presence of cold water species, the Department recommends that the Mill Creek basin be designated as CWF. Since there are two Mill Creeks that are tributaries to Tulpehocken Creek within Berks County, and both were inadvertently omitted from Drainage List F in Chapter 93, it is proposed that the stream code and river mile location (Stream Code 01936 at RM 20.3) be added to the stream name within the Chapter 93 drainage list to clarify which Mill Creek is being added through this proposed rulemaking. The other Mill Creek, which originates and has most of its basin within Lebanon County (Stream Code 1956 at RM 29.6) needs further evaluation and will be the subject of a future rulemaking action once that use determination has been completed.

Brooke Evans Creek—Brooke Evans Creek is a tributary to the Schuylkill River in the Delaware River watershed. The candidate basin is a freestone stream in Limerick Township, Montgomery County. Brooke Evans Creek is currently designated WWF and was evaluated for redesignation in response to a petition from Larry Piasecki. Rock Run is an EV stream in the French Creek basin, which was chosen as a reference stream because both are freestone streams, have similar drainage area, are close in proximity to each other and are found in similar geologic settings. The candidate basin failed to meet the 83% comparison standard required to qualify as HQ waters; a pre-requisite for redesignation to EV waters. The Department recommends that Brooke Evans Creek basin retain its current WWF designation.

Wissahickon Creek—The Wissahickon Creek is a tributary to the Schuylkill River in the Delaware River basin. The Wissahickon Creek watershed is located in Landsdale, Montgomery, Upper Gwynedd, Horsham, Worcester, Lower Gwynedd, Whitpain, Upper Dublin,

Abington, Whitemarsh, Springfield and Cheltenham Townships, in Montgomery and Philadelphia Counties and the Boroughs of North Wales, Landsdale and Ambler. The Wissahickon Creek basin is currently designated Trout Stocking (TSF) and was evaluated based on the petition submitted by Upper Gwynedd Township. American eel have been found throughout the main stem of the Wissahickon Creek. Based on applicable regulatory criteria, the Department recommends that the Wissahickon Creek basin from its source to the Route 73 Bridge remain designated TSF. The Department also recommends that Migratory Fishes (MF) designation be added due to the presence of the migratory American eel.

Beaver Creek—Beaver Creek is a tributary to the East Branch Brandywine Creek in the Delaware River Basin and flows through East and West Brandywine and Caln Townships, Chester County. The designated use of the upper Beaver Creek basin (upstream of the east Brandywine/Caln Township border) is not defined in Chapter 93, whereas downstream of the referenced border, the designated use is TSF, MF. To correct this omission, Department and Fish and Boat Commission staff members conducted an evaluation which extended to the entire basin. The presence of a reproducing trout population was confirmed by these surveys. American eel were found at all five sample stations, including upstream of the impoundment at Bondsville Road, which indicates that the impoundment is not a barrier to the migration of this species. Based on these survey findings, the Department recommends that the Beaver Creek basin be designated CWF, MF.

Stone Creek—Stone Creek is a tributary to Dunning Creek in East St. Clair Township, Bedford County and it is included in the Susquehanna River Basin. It was determined that during the compilation of Chapter 93, the Stone Creek basin was not assigned a designated use. The Department recommends that the Stone Creek basin from its source to its confluence with UNT 14908 at RM 0.34 be designated WWF as these stream segments are normally dry during the summer months. The Department recommends that the remainder of Stone Creek basin be designated CWF based upon temperature data and the established use of these waters by the Reynoldsdale Hatchery for the maintenance and propagation of brook trout.

Furnace Run—Furnace Run is located in the Susquehanna River Basin. Furnace Run originates in Heidelberg Township, Lebanon County and flows through Elizabeth and Clay Townships, Lancaster County where it enters Middle Creek. Furnace Run basin is currently designated TSF, except for Segloch Run, a tributary which is designated EV. Furnace Run basin was evaluated for redesignation based on a petition that was submitted by students from Conestoga Valley High School. The presence of an established, naturally reproducing brook trout population was documented in the headwaters of Furnace Run. The HQ integrated benthic macroinvertebrate scoring criterion of greater than 83% was met for the headwaters of Furnace Run. Segloch Run is an EV stream and was used as reference because it is an adjacent watershed with the same geologic setting and similar drainage area to the upper reaches of Furnace Run. The Department recommends that the protected use of the upper portion of the Furnace Run basin from its source to the SR 1026 road crossing be designated HQ-CWF. The lower portion of Furnace Run downstream from SR 1026 should remain TSF.

Clarion River—The Clarion River is a large tributary to the Allegheny River located in the Ohio River basin. The Clarion River mainstem from the confluence of the East and West Branches downstream to the mouth is currently designated CWF. The section of the Clarion River from the inlet of Piney Lake to the mouth was evaluated for redesignation based on the petition submitted jointly by the Iron Furnace Chapter of Trout Unlimited, the Alliance for Wetlands and Wildlife, the Commissioners of Clarion County and Reliant Energy Mid-Atlantic Power Holding, LLC. The segment of the Clarion River that is being considered for redesignation flows through or borders Clarion, Highland, Monroe, Paint, Piney, Beaver, Licking, Perry and Richland Townships, Clarion County and is located in close proximity to Clarion and Calensburg Boroughs. Species composition data from the Clarion River in and below the impoundment created by Piney Dam reveals that WWF species are predominant. Data was collected which indicates that this reach of the Clarion River frequently exceeds CWF criteria. The Department recommends that the designated use of the Clarion River from the inlet of Piney Lake downstream to the mouth be changed from CWF to WWF. All tributaries to this reach will retain their current designation.

E. *Benefits, Costs and Compliance*

Benefits—Overall, this Commonwealth, its citizens and natural resources will benefit from this proposed rulemaking because it provides the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

Compliance costs—The proposed rulemaking may impose additional compliance costs on the regulated community. These proposed amendments are necessary to improve total pollution control. The expenditures necessary to meet new compliance requirements may exceed that which is required under existing regulations.

Persons conducting or proposing activities or projects must comply with the regulatory requirements regarding designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating cost for wastewater treatment facilities. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

Compliance assistance plan—The proposed rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980s. The proposed amendments are consistent with and based on existing Department regulations. The proposed amendments extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The proposed amendments will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

Paperwork requirements—The proposed amendments should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. These proposed amendments are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus, an individual permit and its associated paperwork would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ waters, and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ waters.

F. *Pollution Prevention*

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

G. *Sunset Review*

This proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 27, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *Public Comments*

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (ex-

press mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments must be received by the Board by June 26, 2007. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 26, 2007. The one page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final rulemaking will be considered. If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 26, 2007.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-410. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9b. Drainage List B.

Delaware River Basin in Pennsylvania

Lackawaxen River

Stream	Zone	County					Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*		
4—Van Auken Creek	Basin			Wayne			HQ-TSF, MF	None
3—Dyberry Creek	Basin, Source to [Confluence with West Branch Lackawaxen River] Big Brook			Wayne			HQ-CWF, MF	None
4—Big Brook	Basin			Wayne			EV, MF	None
3—Dyberry Creek	Basin, Big Brook to Confluence with West Branch Lackawaxen River			Wayne			HQ-CWF, MF	None
2—Lackawaxen River	Main Stem, Confluence of West Branch Lackawaxen River and Dyberry Creek to Mouth			Wayne			HQ-TSF, MF	None
		*	*	*	*	*		

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania

Schuylkill River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
		* * *		
4—Owl Creek	Basin	Lebanon	WWF	None
4—Mill Creek (Stream Code 01936 at RM 20.30)	Basin	Berks	CWF	None
3—Tulpehocken Creek	Blue Marsh Reservoir	Berks	WWF	None
		* * *		
3—Gulley Run	Basin	Montgomery	WWF	None
3—Wissahickon Creek	Basin	Philadelphia	TSF, MF	None

§ 93.9g. Drainage List G.

Delaware River Basin in Pennsylvania

Delaware River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
		* * *		
5—Unnamed Tributaries to East Branch Brandywine Creek	Basins, in East Brandywine and Uwchlan Townships	Chester	HQ-TSF, MF	None
5—Beaver Creek	Basin[, East Brandywine-Calm Township Border to Mouth]	Chester	[TSF] CWF, MF	None
5—Valley Creek	Basin, Source to Broad Run	Chester	CWF, MF	None
		* * *		

§ 93.9n. Drainage List N.

Susquehanna River Basin in Pennsylvania

Juniata River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
		* * *		
5—Georges Creek	Basin	Bedford	WWF	None
5—Stone Creek	Basin, Source to Confluence with UNT 14908 at RM 0.34	Bedford	WWF	None
6—Unnamed Tributary (UNT) 14908 to Stone Creek	Basin	Bedford	CWF	None
5—Stone Creek	Basin, UNT 14908 to Mouth	Bedford	CWF	None
5—Bobs Creek	Basin, Source to Deep Hollow Run	Bedford	HQ-CWF	None
		* * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
		* * * * *		
4—Middle Creek	Basin, Elders Run to Furnace Run	Lancaster	TSF	None
5—Furnace Run	[Main Stem] Basin, Source to SR 1026	Lancaster	[TSF] HQ-CWF	None
[6]5—[Unnamed Tributaries to] Furnace Run	[Basins] Basin, SR 1026 to Segloch Run	Lancaster	TSF	None
6—Segloch Run	Basin	Lancaster	EV	None
5—Furnace Run	Basin, Segloch Run to Mouth	Lancaster	TSF	None
4—Middle Creek	Basin, Furnace Run to Mouth	Lancaster	WWF	None
		* * * * *		

§ 93.9r. Drainage List R.

Ohio River Basin in Pennsylvania

Clarion River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
		* * * * *		
5—Silver Creek	Basin	Elk	HQ-CWF	None
3—Clarion River	Main Stem, Confluence of East and West Branches to [Mouth] Inlet of Piney Lake at RM 37.4	Clarion	CWF	None
4—Unnamed Tributaries to Clarion River	Basins, Confluence of East and West Branches to [Mouth] Inlet of Piney Lake at RM 37.4	Elk-Forest-Jefferson-Clarion	CWF	None
4—Johnson Run	Basin	Elk	CWF	None
		* * * * *		
4—Blyson Run	Basin	Clarion	EV	None
3—Clarion River	Main Stem, Inlet of Piney Lake at RM 37.4 to Mouth	Clarion	WWF	None
4—Unnamed Tributaries to Clarion River	Basins, Inlet of Piney Lake at RM 37.4 to Mouth	Clarion	CWF	None
4—Mill Creek	Main Stem, Source to Little Mill Creek	Clarion	HQ-CWF	None
		* * * * *		

[Pa.B. Doc. No. 07-839. Filed for public inspection May 11, 2007, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; American Eels

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed addition of § 63.49 (relating to reporting by dealers of American eels) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

At its February 2006 meeting in Arlington, VA, the American Eel Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum I to the Interstate Fishery Management Plan for American Eel with member states implementing either Option 1A or Option 2 of the Addendum. The goal of Addendum I is to provide accurate catch and effort data for use in future stock assessments. Option 1A of the Addendum requires implementation of a license and reporting program for commercial fisheries for American eel. Option 2 requires implementation of a dealer permit with a mandatory purchase reporting requirement. This will provide an important validation of the catch and effort data being reported by harvesters. Because there is not a commercial eel fishery in this Commonwealth, Option 1A does not apply. However, there are approximately 40 American eel dealers who are registered as dealers of live aquatic animals with the Department of Agriculture (Department). Therefore, the Commission proposes to implement Option 2 to address dealer reporting.

The Department regulates aquaculture in this Commonwealth. Under 3 Pa.C.S. § 4222 (relating to registration for dealers of live aquatic animals), the Department requires the registration of dealers of live aquatic animals. Chapter 42 of 3 Pa.C.S. (relating to Aquacultural Development Law) (act) further provides that distribution by registered dealers is limited to species of fish approved by the Department. The Department defers to a list of species of fish that the Commission approved for propagation in open systems. The Commission maintains this list

and updates it annually prior to January 31. The American eel is on this Commission list.

Under the act, registered dealers are subject to certain reporting and recordkeeping requirements. However, the act's reporting and recordkeeping requirements do not extend to the type of reports that the ASMFC is seeking. In addition, the act's provisions do not apply to dealers that are not required to be registered. Therefore, the Commission proposes a regulation requiring dealers of American eels to report the amounts of American eels that they buy and sell.

Reporting will be done on forms developed by the Commission and provided to the dealers by the Commission. Required information will include the date of purchase or sale, harvester, pounds purchased or sold by life stage, purpose of purchase or sale (bait, food, and the like), amount exported and other information the Commission considers necessary. This information will be required on the basis of individual purchases from harvesters or individual sales. Reports will be provided on a quarterly basis and be provided to the Commission by the 10th of the month in the next quarter. Reports will document purchases or sales for the preceding quarter on a monthly basis. The Commission will in turn maintain a database in a format acceptable to the ASMFC and provide the information on a schedule established by the ASMFC. The Commission proposes to add § 63.49 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will increase paperwork and will create new paperwork requirements. Dealers of American eels in this Commonwealth will be required to provide quarterly reports to the Commission on forms developed by the Commission.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth's political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public. The proposed rulemaking, however, will result in a nominal increase in program costs to the Commonwealth. The costs incurred by the Commonwealth include development of the form, creation of a database, entry of data from the forms received each quarter into the database and preparation of an annual report.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in another manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-192. (1) Fish Fund; (2) Implementing Year 2007-08 is \$3,600; (3) 1st Succeeding Year 2008-09 is \$3,000; 2nd Succeeding Year 2009-10 is \$3,100; 3rd

Succeeding Year 2010-11 is \$3,200; 4th Succeeding Year 2011-12 is \$3,300; 5th Succeeding Year 2012-13 is \$3,400; (4) 2006-07 Program—\$N/A; 2005-06 Program—\$N/A; 2004-05 Program—\$N/A; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

(Editor's Note: The following section is new. It has been printed in regular type to enhance readability.)

§ 63.49. Reporting by dealers of American eels.

Dealers of American eels shall report to the Commission the amount of American eels that they buy and sell.

(1) Reports shall be provided on forms prescribed by the Commission on a quarterly basis or as otherwise established by the Commission. Data to be reported includes the following:

- (i) The date of purchase or sale.
- (ii) The origin or destination of eels, pounds or number purchased or sold by life stage (glass eel, elvers, yellow eel, silver eel).
- (iii) The purpose of purchase or sale (bait, food, and the like).
- (iv) The amount exported.
- (v) Other information the Commission requires.

(2) Dealers shall present these reports upon the request of an officer authorized to enforce the code. Dealers shall allow officers authorized to enforce the code unrestricted access to the dealer's place of business during normal business hours to inspect the reports.

[Pa.B. Doc. No. 07-840. Filed for public inspection May 11, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a AND 440a]

General Provisions; Applications; Licensed Entity Representatives; Manufacturer Licenses; Supplier Licenses; Horsemen's Organizations; Labor Organizations; Junket Enterprises; Management Companies

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1202(b)(9), (13)—(20) and (23), 1202.1(b) and (e), 1317, 1317.1, 1321(a)(1) and (2), 1325, 1326, 1331 and 1406, proposes to adopt Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 421, 423, 427 and 431 at 35 Pa.B. 4045 (July

16, 2005), Chapter 425 at 37 Pa.B. 21 (January 6, 2007), Chapter 436 at 36 Pa.B. 3409 (July 1, 2006), Chapter 438 at 36 Pa.B. 3951 (July 22, 2006), Chapter 439 at 35 Pa.B. 6619 (December 3, 2005) and Chapter 440 at 36 Pa.B. 679 (February 4, 2006). Under 4 Pa.C.S. Part II (relating to gaming), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking.

Explanation of Chapters in this Proposed Rulemaking

Chapter 421a (relating to general provisions) is an updated version of temporary Chapter 421. A number of revisions were made to improve clarity, increase parallel construction and remove redundant provisions.

Section 421a.1 (relating to general requirements) contains general requirements that apply to all applicants. It includes items such as a requirement that applicants consent to investigations, agree to abide by provisions of 4 Pa.C.S. Part II and the Board's regulations and waive liability as to the Board and other State agencies pertaining to disclosure of application information. It also requires applicants to report suspected violations of 4 Pa.C.S. Part II, to report changes in information provided in its application and to provide additional information requested by the Board. A provision that appears in § 435.1(l) (relating to general provisions) has been added to this section as subsection (j).

Temporary § 421.2 has been deleted. This section listed the types of licenses, permits certifications and registrations issued by the Board, but contained no regulatory requirements.

Section 421a.2 (relating to disqualification criteria) contains criteria the Board may use to deny an initial or renewal application or suspend or revoke a license, permit, certification or registration. Included in the list are failure to prove that the applicant is qualified; violations of 4 Pa.C.S. Part II or the Board's regulations; misrepresentations of facts in the application; or violations of state or Federal laws.

Section 421a.3 (relating to investigations; supplementary information) provides that the Board may make inquires or conduct investigations of applicants for or holders of a license, permit, certification or registration. It also requires applicants for or holders of a license, permit, certification or registration to cooperate in these investigations.

Section 421a.4 (relating to presuitability determination) outlines the procedures for conducting presuitability determinations of potential purchasers of an applicant for or holder of a license.

Section 421a.5 (relating to undue concentration of economic opportunities and control) restates the provision in 4 Pa.C.S. § 1102(5) (relating to legislative intent) to prevent undue concentration of economic opportunities and control in gaming. It specifies the opportunities for control the Board will evaluate and the criteria the Board will examine to determine the potential for undue concentration.

Chapter 423a (relating to applications) replaces temporary Chapter 423. It contains provisions that pertain to all applications filed with the Board.

Section 423a.1 (relating to general requirements) contains general provisions including: requirements that applications be on Board forms; that applicants file supplemental forms required and additional information

requested by the Board; and that all information be true and complete. It also specifies that some documents shall be sworn to or notarized; English translations or summaries shall be provided for documents in a foreign language; applications will be denied if the applicant fails to cooperate in investigations; and application materials submitted to the Board become the property of the Board.

Section 423a.2 (relating to preliminary submission review) is a new section that outlines the process for preliminary review of applications, allows the applicant an opportunity to provide missing materials and requires the return of an incomplete application to the applicant.

Section 423a.3 (relating to application processing) outlines the general process that will apply to the review of applications after they have been accepted for filing. It also includes provisions requiring the Board to publish a list of applications and actions regarding the applications and that the information provided in applications will be part of the evidentiary record that the Board will use to render its decision.

Section 423a.4 (relating to deficient applications) outlines the process for notification of deficiencies, how an applicant can cure deficiencies and that the application may be immediately denied if the deficiencies are not corrected.

Section 423a.5 (relating to application withdrawal) requires an applicant to file a petition for withdrawal which specifies the reasons for the withdrawal. It also permits the Board to grant a petition for withdrawal with or without prejudice and bars reapplication by applicants whose withdrawal was granted with prejudice for 5 years. Additionally, this section allows the Board to convert an incomplete application to a petition for withdrawal and that fees and costs related to the application shall be paid before a petition for withdrawal will be approved.

Section 423a.6 (relating to license, permit, registration and certification issuance and Statement of Conditions) specifies that an application will not be issued until all fees have been paid and all conditions set by the Board have been fulfilled. It also provides that the Board may require that a Statement of Conditions be signed by an entity's executive officer and that violation of any of the conditions in the Statement of Conditions may result in the imposition of administrative sanctions by the Board.

Section 423a.7 (relating to restriction on application after denial or revocation) imposes a 5-year restriction on reapplication by an applicant whose application was denied or by holders of a license, permit, certification or registration if the license, permit, certification or registration was revoked. It establishes a process to petition for reapplication after 2 years and specifies what must be in the petition. If a petition for early reapplication is denied, the petitioner may not file another request for early reconsideration for at least 1 year.

Chapter 425a (relating to licensed entity representatives) replaces temporary Chapter 425. Like the temporary regulations, this chapter requires licensed entity representatives to file a Licensed Entity Registration Form and update their information on an on-going basis. It also requires the Board to maintain a list of licensed entity representatives that will be available at its offices and on the Board's website.

Chapter 427a (relating to manufacturers) replaces temporary Chapter 427. It has been reorganized to improve the chapter's clarity and to incorporate changes made in the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135).

Section 427a.1 (relating to manufacturer general requirements) specifies who must obtain a manufacturer license; that an applicant for or holder of a manufacturer license cannot apply for or hold a slot machine or supplier license; that a licensed manufacturer or manufacturer designee may supply or repair the manufacturer's equipment; that a licensed manufacturer can contract with a licensed supplier to supply or repair the manufacturer's equipment; and that no limitation will be placed on the number of manufacturer licenses issued or when applications for a manufacturer license may be filed.

Section 427a.2 (relating to manufacturer license applications and standards) lists what is required from an applicant for a manufacturer's license. An applicant must submit: the Manufacturer Application and Disclosure Information Form; the application fee; a diversity plan; applications for key employees and principals; Securities and Exchange Commission (SEC) filings; an affirmation that the applicant and its affiliates, intermediaries, subsidiaries or holding companies does not hold an interest in a slot machine applicant or licensee; and an affirmation that the applicant has developed and implemented safeguards to prevent a violation of 4 Pa.C.S. § 1513 (relating to political influence). Manufacturer applicants are also required to provide additional information requested by the Board, comply with Chapters 421a and 423a, demonstrate the ability to produce, repair or modify slot machines or associated equipment and pay additional cost regarding background investigations of the applicant. Additionally, this chapter lists the criteria the Board will use to evaluate these applications.

Section 427a.3 (relating to manufacturer license term and renewal) is a new section that specifies that a manufacturer's license is good for 1 year, that renewal applications must be submitted 6 months prior to the expiration of the license and that a license for which a renewal application and fee has been received will remain in effect for up to an additional 6 months until the Board acts on the renewal application.

Section 427a.4 (relating to alternative manufacturer licensing standards) lays out the process for an alternative review of a manufacturer's license application based on the applicant's licensure in another jurisdiction. It requires submission of the application materials filed in the other jurisdiction, a copy of the other license or order approving the license and disclosure of any enforcement actions pending in the other jurisdiction.

Section 427a.5 (relating to responsibilities of a manufacturer) sets forth the responsibilities of licensed manufacturers including requirements to provide information requested by the Board; report changes in circumstances that could affect the licensee's eligibility for the license; and provide copies of SEC filings within 30 days of submission of the filings to the SEC. This section also specifies which employees must obtain occupational permits and clarifies what a slot machine license may do in terms of servicing or repairing the manufacturer's slot machines or associated equipment under a contract with the manufacturer. It also permits a slot machine licensee to perform routine maintenance without requiring an agreement between the slot machine licensee and the manufacturer.

Chapter 431a (relating to supplier licenses) replaces temporary Chapter 431. It has been reorganized to improve the clarity of the chapter and to incorporate changes made in Act 135.

Section 431a.1 (relating to supplier general requirements) specify: who must obtain a supplier license; that

an applicant for or holder of a supplier license can't apply for or hold a slot machine or manufacturer license; and that no limitation will be placed on the number of supplier licenses issued or when applications for a supplier license may be filed.

Section 431a.2 (relating to supplier license applications and standards) lists what is required from an applicant for a supplier's license. An applicant must submit: the Supplier Application and Disclosure Information Form; the application fee; a diversity plan; applications for key employees and principals; SEC filings; an affirmation that the applicant and its affiliates, intermediaries, subsidiaries or holding companies does not hold an interest in a manufacturer or slot machine applicant or licensee; and an affirmation that the applicant has developed and implemented safeguards to prevent a violation of 4 Pa.C.S. § 1513. Supplier applicants are also required to provide additional information requested by the Board, comply with Chapters 421a and 423a, demonstrate that the applicant has or will establish a place of business in this Commonwealth; and pay additional cost related to background investigations of the applicant. Additionally, this chapter lists the criteria the Board will use to evaluate these applications.

Section 431a.3 (relating to supplier license term and renewal) is a new section that specifies that a supplier's license is good for 1 year, that renewal applications must be submitted 2 months prior to the expiration of the license and that a license for which a renewal application and fee has been received will remain in effect for up to an additional 6 months until the Board acts on the renewal application.

Section 431a.4 (relating to responsibilities of a supplier) contains supplier responsibilities. These include requirements to: establish a place of business in this Commonwealth within 1 year; secure assets or lines of credit to support the supplier's operations; and submit agreements between the supplier and any manufacturer or slot machine licensee and detailed business plans. This section also requires a supplier to: provide information requested by the Board; report changes in circumstances that could affect the licensee's eligibility for the license; and provide copies of SEC filings within 30 days of submission of the filings to the SEC. It also specifies which employees of the supplier are required to obtain an occupation permit and what activities are permissible for slot machine and manufacturer licensees to perform.

Section 431a.5 (relating to supplier log books) requires suppliers to maintain a log book to register individuals who enter the supplier's principal place of business and a facility where slot machines are stored. It specifies what information must be entered in the log book and that the log book must be readily accessible for inspection by the Board, the Department of Revenue or the Pennsylvania State Police.

Chapter 436a (relating to horsemen's organizations) replaces temporary Chapter 436. The revisions in Chapter 436a were primarily editorial in nature.

Section 436a.1 (relating to definitions) contains definitions of terms that are only used in this chapter.

Section 436a.2 (relating to horsemen's organization registration) requires each horsemen's organization to file a Horsemen's Organization Registration Statement. This section also requires applicants to comply with Chapters 421a and 423a. It specifies that registrations will be valid for 4 years; that renewal applications must be filed at least 120 days prior to expiration; and that if a renewal

application and fee has been received, the current registration shall remain in effect until the Board acts on the renewal application.

Section 436a.3 (relating to permitting of officers, directors, representatives and fiduciaries) requires each officer, director or representative to file a Horsemen's Permit Application Form. This section also requires applicants to comply with Chapters 421a and 423a. It specifies that permits will be valid for 1 year; that renewal applications must be filed at least 60 days prior to expiration; and that if a renewal application and fee has been received, the current permit shall remain in effect until the Board acts on the renewal application. It also precludes any officer, director or representative who has been denied a permit from participating in any activity involving gaming funds allocated to the horsemen's organization. Additionally, third party providers of health and benefit plans and, under certain conditions, attorneys and accountants are not required to obtain a permit.

Section 436a.4 (relating to responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries) outlines the responsibilities of horsemen's organizations and officers, directors or representatives. These include ensuring that all funds are used for the benefit of all horsemen, that adequate records are maintained, that annual independent audits are conducted and that copies of the audits are submitted to the Board. These audits will be available for public inspection at the Board's Harrisburg office. A new provision was added to this section to clarify that these funds can not be used for the personal benefit of any officer, director or representative except to the extent that the benefit is available to all program participants.

Section 436a.5 (relating to fiduciaries) specifies fiduciaries' responsibilities which include: ensuring that funds are used for the benefit of the horsemen; managing health and benefit plans; acting in a prudent manner; complying with any limitations on investments; and funding benefits as required by law or plan rules. This section also requires the filing of quarterly reports with the Board and providing documents requested as part of an investigation.

Section 436a.6 (relating to health and pension benefit plans) requires that health and benefit plan contracts must be submitted to the Board at least 90 days prior to the effective dates and that they cannot go into effect until they have been approved by the Board. It also requires administrative costs to be reasonable and sets a 15% limitation on what the Board will consider to be reasonable.

Chapter 438a (relating to labor organizations) replaces temporary Chapter 438.

Section 438a.1 (relating to definitions) contains definitions of terms that are only used in this chapter.

Section 438a.2 (relating to labor organization notification) requires each labor organization to file a Labor Organization Form and file updates within 30 days of changes.

Section 438a.3 (relating to permitting of labor organization officers, agents and management employees) requires every labor organization officer, agent and management employee to file a Labor Organization Permit Application Form with the permit fee and comply with Chapters 421a and 423a. It also provides that these permits will be valid for 1 year; that renewal applications must be filed at least 60 days prior to expiration; and that if a renewal

application and fee has been received, the current permit shall remain in effect until the Board acts on the renewal application.

Chapter 439a (relating to junket enterprises) replaces temporary Chapter 439.

Section 439a.1 (relating to definitions) contains definitions of terms that are only used in this chapter.

Section 439a.2 (relating to junket enterprise general requirements) specifies who can file a junket enterprise application and that services cannot be provided until a license has been obtained.

Section 439a.3 (relating to junket enterprise license applications) requires an applicant to submit: a Junket Enterprise License Form; the application fee; a Junket Enterprise License Form for each principal entity; and a Junket Enterprise Representative Registration for each principal who is an individual and each key employee. This section also requires applicants to provide additional information requested by the Board, comply with Chapters 421a and 423a and pay additional cost related to background investigations of the applicant.

Section 439a.4 (relating to junket enterprise license term and renewal) is a new section that specifies that a junket enterprise license is good for 1 year, that renewal applications must be submitted 60 days prior to the expiration of the license and that a license for which a renewal application and fee has been received will remain in effect until the Board acts on the renewal application.

Section 439a.5 (relating to junket representative general requirements) requires junket representatives to be registered and employed by a licensed junket enterprise before they can organize junkets and that a junket representative can only be employed by one junket enterprise at a time.

Section 439a.6 (relating to junket representative registration) requires a junket representative applicant to submit a Junket Representative Registration Form and application fee. The applicant is also required to provide additional information requested by the Board and comply with Chapters 421a and 423a. Additionally, it specifies the criteria the Board will use to determine whether or not to grant the application, allows junket enterprises to file an application on behalf of an individual and specifies that registrations do not need to be renewed and are nontransferable.

Section 439a.7 (relating to junket schedules) requires junket schedules and changes thereto to be submitted to the Bureau of Corporate Compliance and Internal Controls. It lists the information to be included in the schedule and the time frames for the submissions.

Section 439a.8 (relating to junket arrival reports) requires the preparation of junket arrival reports, specifies what should be in the reports and when they should be prepared and that the reports must be maintained on premises and made available for inspection.

Section 439a.9 (relating to junket final reports) requires preparation of junket final reports, specifies what should be in the reports and when they should be prepared and that the reports must be maintained on premises and made available for inspection.

Section 439a.10 (relating to monthly junket reports) requires the preparation of monthly junket reports, requires submission of the reports to the Bureau of Corporate Compliance and Internal and requires the reports to be maintained on premises and made available for inspection.

Section 439a.11 (relating to purchase of patron lists) requires the preparation of a report pertaining to the purchase of patron lists, specifies what must be in the report and requires submission of the report to the Bureau of Corporate Compliance and Internal Controls no later than 7 days after the list is received.

Section 439a.12 (relating to junket enterprise and representative prohibitions) contains a list of activities that junket enterprises and representatives may not participate in.

Chapter 440a (relating to management companies) replaces temporary Chapter 440.

Section 440a.1 (relating to general requirements) requires that a management company obtain a license before it provides services and that a management company its affiliates, intermediaries, subsidiaries or holding companies may not apply for or hold a manufacturer or supplier license.

Section 440a.2 (relating to applications) requires a management company to: file the applicable Category 1, 2 or 3 slot machine license application and the applicable fee; promptly provide information requested by the Board; and comply with Chapters 421a and 423a.

Section 440a.3 (relating to management company license and term and renewal) provides that management company licenses will be valid for 1 year; that renewal applications must be filed at least 60 days prior to expiration; and that if a renewal application and fee has been received, the current license shall remain in effect until the Board acts on the renewal application.

Section 440a.4 (relating to management company responsibilities) states that the management company will be deemed to be an agent for violations and that the management company will be jointly and severally liable for violations of the slot machine licensee.

Section 440a.5 (relating to management contracts) specifies that management contracts and amendments must be submitted to and approved by the Board before they can go into effect. This section also requires submission of a business plan, lists a number of provisions that must be in each contract and requires contracts to clearly enumerate specific responsibilities in various areas of operation.

Affected Parties

This proposed rulemaking imposes requirements on applicants for and holders of slot machine licenses, licensed entity representative registrations, manufacturer licenses, supplier licenses, horsemen permits and registrations, labor organization permits and management company licenses.

Fiscal Impact

Commonwealth. This proposed rulemaking will impose costs on the Board regarding processing initial applications and renewals, conducting investigations and issuing licenses, permits and registrations. When applicable, the Pennsylvania State Police will also experience costs associated with investigations of applicants.

Political subdivisions. This proposed rulemaking will have no significant fiscal impact on political subdivisions of the Commonwealth.

Private sector. Applicants for the various licenses, permits and registrations will incur costs to complete the applicable applications and pay the applicable application fees and additional costs associated with investigations.

General public. This proposed rulemaking will have no significant fiscal impact on the general public.

Paperwork Requirements

Applicants for and holders of licensed entity representative registrations, manufacturer licenses, supplier licenses, horsemen permits and registrations, labor organization permits and management company licenses will be required to complete the applicable initial application and renewal forms.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-61.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 26, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-61. (1) State Gaming Fund; (2) Implementing Year 2006-07 is \$10,826,000; (3) 1st Succeeding Year 2007-08 is \$10,083,000; 2nd Succeeding Year 2008-09 is \$10,486,000; 3rd Succeeding Year 2009-10 is \$10,906,000; 4th Succeeding Year 2010-11 is \$11,342,000; 5th Succeeding Year 2011-12 is \$11,796,000; (4) 2005-06 Program—\$26,400,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) State Gaming Board; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS

- Sec.
- 421a.1. General requirements.
- 421a.2. Disqualification criteria.
- 421a.3. Investigations; supplementary information.
- 421a.4. Presuitability determination.
- 421a.5. Undue concentration of economic opportunities and control.

§ 421a.1. General requirements.

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

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

(c) By filing an application for a license, permit, certification or registration issuance, renewal or other approval from the Board, an applicant agrees to:

- (1) Abide by the provisions of the act and this part.
- (2) Waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during an investigation of the applicant.
- (3) Consent to execute releases requested by the Board.

(d) An applicant for or holder of a license, permit, certification or registration may not give or offer to give, compensation or reward or a percentage or share of the money or property played or received through gaming to a public official or public employee in consideration for or in exchange for obtaining a license, permit, certification or registration issued under this part.

(e) An applicant for or holder of a license, permit, certification or registration shall have a duty to inform the Bureau of an action which the applicant for or holder of a license, permit, certification or registration believes would constitute a violation of the act. A person who so informs the Bureau may not be discriminated against by an applicant for or holder of a license, permit, certification or registration for supplying the information.

(f) An applicant for a license, permit, certification or registration shall have a continuing duty to inform the Board of changes in the information supplied to the Board in or in conjunction with the original or renewal application or a change in circumstances that may render the applicant for a license, permit, certification or registration ineligible, unqualified or unsuitable to hold a license, permit, certification or registration under the standards and requirements of the act and of this part.

(g) An applicant for a license, permit, certification or registration shall have a continuing duty to 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.

(h) An application submitted to the Board constitutes the seeking of a privilege. An applicant shall at all times have the burden of proof. It shall be the applicant's affirmative responsibility to establish the facts supporting its suitability under the act and this part by clear and convincing evidence, including why a license, permit, certification or registration should be issued or renewed by the Board.

(i) A person holding a license, permit, certification or registration issued by the Board who violates a provision of the act or this part may be held jointly or severally liable for the violation.

(j) The Board will maintain lists of applicants for licenses, permits, certifications or registrations under this part as well as a record of the actions taken with respect to each applicant. The lists will be posted on the Board's website (www.pgcb.state.pa.us).

§ 421a.2. Disqualification criteria.

(a) An application for issuance or renewal of a license, permit, certification or registration may be denied, or a license, permit, certification or registration may be suspended or revoked if:

(1) The applicant has failed to prove to the satisfaction of the Board that the applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and with this part.

(2) The applicant for or holder of a license, permit, certification or registration has violated the act or this part.

(3) The applicant for or holder of a license, permit, certification or registration is disqualified under the criteria in the act.

(4) The applicant for or holder of a license, permit, certification or registration has materially departed from a representation made in the application for licensure or renewal.

(5) The applicant for or holder of a license, permit, certification or registration has failed to comply with applicable Federal or state laws or regulations.

(b) A denial of an application or nonrenewal, suspension or revocation of a license, permit, certification or registration may be made for a sufficient cause consistent with the act and the public interest.

§ 421a.3. Investigations; supplementary information.

(a) The Board may make an inquiry or investigation concerning an applicant for or holder of a license, permit, certification or registration or any affiliate, intermediary, subsidiary or holding company of the applicant for or holder of a license, permit, certification or registration as it may deem appropriate either at the time of the initial application or at any time thereafter.

(b) It shall be the continuing duty of applicants and a holder of a license, permit, certification or registration to provide full cooperation to the Board in the conduct of an inquiry or investigation and to provide supplementary information requested by the Board.

§ 421a.4. Presuitability determination.

(a) Upon request from an eligible applicant for or holder of a license and upon receipt of an application and appropriate fees, the Board will make an inquiry or investigation of a potential purchaser of an applicant for or holder of a license, certification or registration as if the purchaser were an eligible applicant. The eligible appli-

cant for or holder of a license may petition the Board, on behalf of the purchaser, for a Statement of Investigation under § 493.4 (relating to petitions generally).

(b) The applicant for or holder of a license making the request shall reimburse the costs associated with the inquiry or investigation upon request of the Board.

(c) This inquiry or investigation does not replace the application process required under the act and this part which is a requirement for licensure, certification or registration.

§ 421a.5. Undue concentration of economic opportunities and control.

(a) In accordance with section 1102(5) of the act (relating to legislative intent), a slot machine license, management company license or other license may not be issued to or held by a person if the Board determines that the issuance or holding will result in the undue concentration of economic opportunities and control of the licensed gaming facilities in this Commonwealth by that person.

(b) For purposes this section, "undue concentration of economic opportunities and control of the licensed gaming facilities" means that a person:

(1) Would have actual or potential domination of the gaming market in this Commonwealth contrary to the legislative intent.

(2) Could substantially impede or suppress competition among licensees.

(3) Could adversely impact the economic stability of the gaming industry in this Commonwealth.

(c) In determining whether the issuance or holding of a license by a person will result in undue concentration of economic opportunities and control of the licensed gaming facilities in this Commonwealth, the Board will consider the following criteria:

(1) The percentage share of the market presently controlled by the person in each of the following categories:

(i) Total number of slot machine licenses available under section 1307 of the act (relating to number of slot machine licenses).

(ii) Total gaming floor square footage.

(iii) Number of slot machines.

(iv) Gross terminal revenue.

(v) Net terminal revenue.

(vi) Total amount of money, vouchers and electronic money transfers through the use of a cashless wagering system made to slot machines.

(vii) Number of persons employed by the licensee.

(2) The estimated increase in the market share in the categories in paragraph (1) if the person is issued or permitted to hold the license.

(3) The relative position of other persons who hold licenses, as evidenced by the market share of each person in the categories in paragraph (1).

(4) The current and projected financial condition of the industry.

(5) Current market conditions, including level of competition, consumer demand, market concentration, any consolidation trends in the industry and other relevant characteristics of the market.

(6) Whether the gaming facilities held or to be held by the person have separate organizational structures or other independent obligations.

(7) The potential impact of licensure on the projected future growth and development of the gaming industry in this Commonwealth and the growth and development of the host communities.

(8) The barriers to entry into the gaming industry, including the licensure requirements of the act, and whether the issuance or holding of a license by the person will operate as a barrier to new companies and individuals desiring to enter the market.

(9) Whether the issuance or holding of the license by the person will adversely impact consumer interests, or whether the issuance or holding is likely to result in enhancing the quality and customer appeal of products and services offered by slot machine licensees to maintain or increase their respective market shares.

(10) Whether a restriction on the issuance or holding of an additional license by the person is necessary to encourage and preserve competition and to prevent undue concentration of economic opportunities and control of the licensed gaming facilities.

(11) Other evidence deemed relevant by the Board.

CHAPTER 423a. APPLICATIONS

- Sec.
- 423a.1. General requirements.
- 423a.2. Preliminary submission review.
- 423a.3. Application processing.
- 423a.4. Deficient applications.
- 423a.5. Application withdrawal.
- 423a.6. License, permit, registration and certification issuance and Statement of Conditions.
- 423a.7. Restriction on application after denial or revocation.

§ 423a.1. General requirements.

(a) For the purposes of this section, a reference to an applicant includes the applicant's affiliates, intermediaries, subsidiaries and holding companies.

(b) An application shall be submitted on forms supplied or approved by the Board, shall contain the information and documents required by the Board and include the applicable fees.

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

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

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

(f) The application and amendments thereto and other specific documents designated by the Board shall be sworn to or affirmed by the applicant before a notary public.

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

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

(i) An application that has been accepted for filing and related materials submitted to the Board shall become the property of the Board and will not be returned to the applicant.

§ 423a.2. Preliminary submission review.

(a) Upon receipt of an application submission, the Board will review the submission to insure that it contains:

- (1) The applicable application fee.
- (2) The applicable application forms and additional information and accompanying documentation required by the act or the Board's regulations governing the specific type of application.

(3) Completed authorization forms for release of information from Federal and state agencies required for the specific type of application.

(4) For slot machine license applications only, a bond or letter of credit as required by section 1313(c) of the act (relating to applicant's ability to pay license fee).

(b) If an application submission fails to include one or more of the items in subsection (a), the applicant will be notified that the application has not been accepted for filing and the applicant will be given an opportunity to cure the insufficiency.

(c) If the applicant fails or is unable to cure the insufficiency within the time period set by the Board, the submission and related materials will be returned to the applicant.

§ 423a.3. Application processing.

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

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

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

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

(5) Request the Pennsylvania State Police to provide a criminal history background investigation report, determine employee eligibility consistent with § 435.1 (relat-

ing to general provisions), conduct fingerprinting, photograph applicants and perform duties as directed by the Board.

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

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

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

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

(c) An application submitted under this part and information obtained by the Board relating to the application shall be part of the evidentiary record of the licensing proceeding. The Board's decision to issue or deny a license will be based solely on the evidentiary record before the Board.

§ 423a.4. Deficient applications.

(a) If an application is found to be deficient, the Board will notify the applicant of the deficiencies in the application and permit the applicant to cure the deficiencies within a time period prescribed by the Board.

(b) Refusal to provide information as required in subsection (a) may result in the immediate denial of the application.

§ 423a.5. Application withdrawal.

(a) A request for withdrawal of an application for a license, permit, certification or registration may be made by petition to the Board filed at any time prior to issuance by the Board of its determination with respect to the application.

(b) The petition must set forth the reasons for the withdrawal.

(c) An applicant may petition for the withdrawal of its application or an application submitted by one of its affiliates, intermediaries, subsidiaries or holding companies or persons or entities required to be qualified under section 1311 of the act (relating to slot machine license application business entity requirements), or both.

(d) When rendering a decision on a petition for withdrawal, the Board may set the conditions of withdrawal and may deny or grant the request with or without prejudice.

(1) If a petition for withdrawal is granted with prejudice, the person or entity whose application has been withdrawn will not be eligible to apply for a license, permit, certification or registration with the Board until after expiration of 5 years from the date of the withdrawal.

(2) If a petition for withdrawal is granted without prejudice the Board will determine when the person or entity whose application has been withdrawn may be eligible to apply for a license, permit, certification or registration.

(e) The Board may convert an incomplete application to a petition for withdrawal.

(f) Unless the Board otherwise directs, fees or other payments relating to the application will not be refundable by reason of the withdrawal. Additionally, fees and

costs owed to the Board related to the application shall be paid prior to granting a petition to withdraw.

§ 423a.6. License, permit, registration and certification issuance and Statement of Conditions.

(a) *Issuance criteria.*

(1) In addition to the criteria contained in the act, the Board will not issue or renew a license, permit, certification or registration unless the Board finds that the following criteria have been established by the applicant:

(i) The applicant has paid the applicable fees.

(ii) The applicant has fulfilled each condition set by the Board or contained in the act, including the execution of a Statement of Conditions.

(iii) The applicant is found suitable, consistent with the laws of the Commonwealth and is otherwise qualified to be issued a license, certification, permit, registration or other authorization.

(b) *Statement of Conditions.*

(1) For the purposes of this subsection, the term "executive officer" means the individual holding the highest ranking management position within the entity and who is authorized to contract on behalf of the entity.

(2) If the Board approves an entity's application for a license, certification or registration, or for the renewal of a license, certification or registration, the Board may require the executive officer of the entity whose application has been approved, or other competent individual designated by the entity in accordance with paragraph (3), to execute a Statement of Conditions in the manner and form required by the Board. Execution of the Statement of Conditions shall constitute the acceptance of each provision contained in the Statement of Conditions by both the entity and the executive officer. The executive officer shall ensure that the entity fully complies with each provision contained in the Statement of Conditions.

(3) Prior to the issuance of a license, certification or registration to an entity, the entity shall determine whether the entity will designate its executive officer or another competent individual with a direct reporting relationship to its executive officer to execute the Statement of Conditions on behalf of both the entity and its executive officer. If the entity elects to designate another competent individual with a direct reporting relationship to its executive officer to execute the Statement of Conditions on behalf of the entity and its executive officer, the entity shall adopt a resolution identifying the individual so designated, authorizing that individual to execute the Statement of Conditions on behalf of both the entity and its executive officer, and evidencing the executive officer's concurrence in that individual's designation. A copy of the resolution, certified as true and correct, shall be provided to the Board and attached to the Statement of Conditions.

(4) If the Board approves an individual's application for a license, permit, certification or registration, or for the renewal of a license, permit, certification or registration, the Board may require the individual whose application has been approved to execute a Statement of Conditions in the manner and form required by the Board. The execution of the Statement of Conditions shall constitute the acceptance of each provision contained in the Statement of Conditions by the individual. The individual shall fully comply with each provision contained in the Statement of Conditions.

(5) Failure to fully comply with a provision contained in an executed Statement of Conditions shall constitute a violation of the Statement of Conditions and may result in the imposition of Board-imposed administrative sanctions, up to and including revocation, against the individual to whom the license, permit, certification or registration was issued, and, in the case of an entity, against the entity and its executive officer or other designee under paragraph (3).

§ 423a.7. Restriction on application after denial or revocation.

(a) A person whose application has been denied or whose license, permit, registration or certification has been revoked, may not apply for a license, permit, certification or registration for 5 years from the date that the application was denied or the license, permit, certification or registration was revoked.

(b) The 5-year restriction in subsection (a) will not apply:

(1) To applicants for a slot machine license if the denial was for reasons other than unsuitability.

(2) If the denial or revocation was based on pending charges for a disqualifying offense under section 1213 or section 1518 of the act (relating to license or permit prohibition; and prohibited acts and penalties), 18 Pa.C.S. (relating to crimes and offenses) or the criminal laws of any other jurisdiction and the pending charges do not result in conviction of the disqualifying offense.

(c) Two years from the date that the application was denied or the license, permit, certification or registration was revoked, a person may file a petition for permission to apply for a license, permit, certification or registration before the expiration of the 5-year period.

(d) A petition filed under subsection (c) shall be filed in accordance with § 493.4 (relating to petitions generally).

(e) Petitions filed under subsection (c) must contain:

(1) An explanation of how the conditions that were the basis for denial or revocation have been corrected or no longer exist.

(2) Supporting materials that demonstrate that the person meets the requirements for a license, permit, certification or registration.

(3) If the denial or revocation was the result of a conviction, the petition must include evidence of rehabilitation, such as:

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

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

(iii) The date of the offense or conduct.

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

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

(vi) Social conditions which may have contributed to the offense or conduct.

(vii) Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correc-

tional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

(viii) Evidence that all obligations for restitution, fines and penalties have been met.

(f) If a petition filed under subsection (c) is denied, a person may not file another petition under subsection (c) for 1 year from the date of the denial of the petition.

CHAPTER 425a. LICENSED ENTITY REPRESENTATIVES

Sec.
425a.1. Registration.

§ 425a.1. Registration.

(a) A licensed entity representative shall file a completed Licensed Entity Registration Form with the Bureau of Licensing, which includes the individual's name, employer or firm, address, telephone number and the licensed entity being represented.

(b) A licensed entity representative shall update its registration information on an ongoing basis.

(c) The Board will maintain a list of licensed entity representatives. The registration list will be available for public inspection at the offices of the Board and on the Board's website (www.pgcb.state.pa.us).

CHAPTER 427a. MANUFACTURERS

Sec.
427a.1. Manufacturer general requirements.
427a.2. Manufacturer license applications and standards.
427a.3. Manufacturer license term and renewal.
427a.4. Alternative manufacturer licensing standards.
427a.5. Responsibilities of a manufacturer.

§ 427a.1. Manufacturer general requirements.

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

(b) In accordance with section 1317.1 of the act (relating to manufacturer licenses), an applicant for or the holder of a manufacturer 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 or a licensed manufacturer designee may supply or repair any slot machine or associated equipment manufactured by the licensee.

(d) A licensed manufacturer may contract with a slot machine licensee or a licensed supplier to supply or repair slot machines or associated equipment manufactured by the manufacturer licensee.

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

§ 427a.2. Manufacturer license applications and standards.

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

(1) An original and three copies of the Manufacturer Application and Disclosure Information Form.

(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 diversity).

(4) An application from every key employee under § 435.3 (relating to key employee license) and principal under Chapter 433 (relating to principal license) as specified by the Manufacturer Application and Disclosure Information Form or as determined by the Board.

(5) If applicable, copies of all filings required by the SEC during the 2 immediately preceding fiscal years, including annual reports filed with the SEC, under sections 13 or 15D of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o-6), quarterly reports filed with the SEC, under sections 13 or 15D of the Securities Exchange Act of 1934, current reports filed with the SEC, under sections 13 or 15D 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 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 does not exercise managerial control or receive income during the time period the holder is subject to these provisions.

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

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

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

(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 the safeguards and policies.

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

(1) Promptly provide information requested by the Board relating to the manufacturer's 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 421a and 423a (relating to general provisions; and applications).

(3) Demonstrate that the applicant has the ability to manufacture, build, rebuild, repair, fabricate, assemble, produce, program, design or otherwise make modifications

to slot machines or associated equipment which meet one or more of the following criteria:

(i) Are specifically designed for use in the operation of a slot machine.

(ii) Are needed to conduct an authorized game.

(iii) Have the capacity to affect the outcome of the play of a game.

(iv) Have the capacity to affect the calculation, storage, collection or control of gross terminal revenue.

(c) An applicant for a manufacturer 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 is suitable to be licensed as a manufacturer 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 individually qualify under the standards of section 1317.1 of the act (relating to manufacturer license).

(3) The integrity of all financial backers.

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

(i) The background investigation of the principals and key employees.

(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.

§ 427a.3. Manufacturer license term and renewal.

(a) A manufacturer license or renewal will 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 6 months prior to the expiration of the current license.

(c) A manufacturer 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.

§ 427a.4. Alternative manufacturer licensing standards.

(a) If an applicant for a manufacturer license holds a similar license in another jurisdiction in the United States, the applicant may submit a written request with its application required under § 427a.2(a) (relating to manufacturer license applications and standards) for the Board to adopt an abbreviated licensing process under section 1319 of the act (relating to alternative manufacturer licensing standards) to review a manufacturer license application.

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

(1) The Board determines, after investigation, that the licensing standards in the jurisdiction in which the applicant is licensed are similarly comprehensive, thor-

ough and provide equal, if not greater, safeguards as provided in the act and that granting the request is in the public interest.

(2) The applicant has provided a copy of its most recent application or renewal for the similar license in the other jurisdiction and a copy of the license or the order issued by the other jurisdiction granting the license.

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

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

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

§ 427a.5. Responsibilities of a manufacturer.

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

(1) Provide information requested by the Board relating to the manufacturer's 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 the holder of a manufacturer 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 all SEC filings listed in § 427a.2(a)(5) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted within 30 days after the date of filing with the SEC.

(b) An employee of a licensed manufacturer 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 occupational permit under § 435.4 (relating to occupational permit).

(c) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility pursuant to a written agreement between the slot machine licensee and the manufacturer licensee that provided the slot machines or associated equipment at the licensed facility.

(d) A slot machine licensee may perform routine maintenance directly related to the availability of slot machines for play, customer service or a clean and gracious playing environment. The routine maintenance includes installation or replacement of the following: batteries, hardware, including hinges, screws, bolts and custom handles, light bulbs, locks on slot machines and slot cash storage boxes, including the rekeying of the locks, printers, exclusive of printer software and paper stock. Routine maintenance also includes external cleaning and the clearing of paper, bill and coin jams which do not require removal or dismantling of the mechanisms.

CHAPTER 431a. SUPPLIER LICENSES

Sec.

- 431a.1. Supplier general requirements.
- 431a.2. Supplier license applications and standards.
- 431a.3. Supplier license term and renewal.
- 431a.4. Responsibilities of a supplier.
- 431a.5. Supplier log books.

§ 431a.1. Supplier general requirements.

(a) A supplier seeking to sell, lease, offer or otherwise provide, distribute or service slot machines or associated equipment to a slot machine licensee within this Commonwealth through a contract with a licensed manufacturer shall apply to the Board for a supplier license.

(b) In accordance with sections 1317 and 1317.1 of the act (relating to supplier licenses; and manufacturer licenses), an applicant for or the holder of a supplier 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 a manufacturer license.

(c) Limitations will not be placed on the number of supplier licenses issued or when an application for a supplier license may be filed.

§ 431a.2. Supplier license applications and standards.

(a) An applicant for a supplier license shall submit:

(1) An original and three copies of the Supplier Application and Disclosure Information Form for the applicant and each of the applicant's affiliated entities.

(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 diversity).

(4) An application from every key employee under § 435.3 (relating to key employee license) and principal under Chapter 433 (relating to principal license) as specified by the Supplier Application and Disclosure Information Form or as determined by the Board

(5) If applicable, copies of all filings required by the SEC during the 2 immediately preceding fiscal years, including annual reports filed under section 13 or section 15D of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a and 78o-6), quarterly reports filed under section 13 or section 15D of the Securities Exchange Act of 1934, current reports filed under section 13 or section 15D 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, subsidiaries, intermediaries and holding companies holds any direct or indirect ownership interest in an applicant for or holder of a manufacturer license or slot machine licensee, or employs, directly or indirectly, any person who satisfies the definition of a principal or key employee of a manufacturer or slot machine applicant or licensee. In applying this provision to an applicant for a supplier 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 manufacturer or slot machine 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 does not exercise managerial control or receive income during the time period the holder is subject to these provisions.

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

(vi) Through plans described in section 401(k) of the Internal Revenue Code (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 the safeguards and policies.

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

(1) Promptly provide information requested by the Board relating to the supplier's 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 421a and 423a (relating to general provisions; and applications).

(3) Demonstrate that the applicant has or will establish a principal place of business in this Commonwealth.

(c) An applicant for a supplier license shall 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 is suitable to be licensed as a supplier 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 individually qualify under the standards of section 1317 of the act (relating to supplier license).

(3) The integrity of financial backers.

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

(i) A background investigation of the principals and key employees.

(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.

§ 431a.3. Supplier license term and renewal.

(a) A supplier 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 supplier 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.

§ 431a.4. Responsibilities of a supplier.

(a) Within 1 year of the Board's issuance of a supplier license, the supplier shall establish and maintain a principal place of business in this Commonwealth.

(b) At the time of licensure, a supplier shall have assets or available lines of credit to support the sale, financing, servicing or repair of all slot machines to be placed in service or repaired by the supplier. The assets and available lines of credit shall be from a source independent of slot machine manufacturers and licensed gaming entities. Notwithstanding the forgoing, a licensed manufacturer may extend financing or payment terms to a licensed supplier, at prevailing market rates and terms, for the acquisition or leasing of slot machines, to be secured by the slot machines sold, leased or transferred.

(c) A supplier shall submit to the Board for review any agreements with a licensed manufacturer or with a slot machine licensee and detailed business plans. The Board's review may include, but not be limited to, financing arrangements, inventory requirements, warehouse requirements, warehouse space, technical competency, compensative agreements and other terms or conditions to ensure the financial independence of the licensed supplier from any licensed manufacturer or licensed gaming entity.

(d) A holder of a supplier 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 the holder of a supplier 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 all SEC filings listed in § 427a.2(a)(5) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted within 30 days after the date of filing with the SEC.

(e) An employee of a licensed supplier whose duties of employment or incidental activities related to employment allow the employee access to slot machines or associated equipment or require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupational permit under § 435.4 (relating to occupational permit).

(f) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility pursuant to a written agreement between the licensed gaming entity and the supplier licensee that provided the slot machines or associated equipment for use or play at the licensed facility.

(g) A slot machine licensee may perform routine maintenance directly related to the availability of slot machines for play, customer service or a clean and gracious playing environment. The routine maintenance includes installation or replacement of the following: batteries, hardware, including hinges, screws, bolts and custom

handles, light bulbs, locks on slot machines and slot cash storage boxes, including the rekeying of the locks, printers, exclusive of printer software and paper stock. Routine maintenance also includes external cleaning and the clearing of paper, bill and coin jams which do not require removal or dismantling of the mechanisms.

(h) A licensed manufacturer or a manufacturer's designee may supply, install, service or repair slot machines or associated equipment manufactured by the licensed manufacturer.

§ 431a.5. Supplier log books.

(a) A supplier licensee shall maintain a log book to register the individuals who enter the licensee's principal place of business and each physical facility utilized by the licensee to house inventory, replacement parts, supplies, transportation or delivery equipment.

(b) The supplier licensee shall record or cause to be recorded in the log book the following:

- (1) The date, entrance time and departure time of each individual.
- (2) The name of each individual entering the place of business or physical facility and who they represent.
- (3) The signature of each individual.
- (4) The purpose for the visit.
- (5) If applicable, the individual's Board license, permit, certification or registration number.

(c) Licensed, permitted or registered employees of a supplier are not required to register in the log book.

(d) Each log book required by this section shall be maintained at the entrance of the location to which it pertains and shall be made readily accessible for examination and inspection upon the demand of any agent, employee or representative of the Board, the Department of Revenue or the Pennsylvania State Police.

CHAPTER 436a. HORSEMEN'S ORGANIZATIONS

Sec.	
436a.1.	Definitions.
436a.2.	Horsemen's organization registration.
436a.3.	Permitting of officers, directors, representatives and fiduciaries.
436a.4.	Responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries.
436a.5.	Fiduciaries.
436a.6.	Health and pension benefit plans.

§ 436a.1. Definitions.

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

Fiduciary—A person who is entrusted by a horsemen's organization or its members to hold or manage any funds received for horsemen under section 1406 of the act (relating to distributions from Pennsylvania Race Horse Development Fund) or who exercises control or discretionary authority over selection or management of a health or pension benefit plan, disposition of its assets or distribution of its funds.

Health benefits—A plan, fund or program which is maintained by a horsemen's organization and that provides healthcare benefits to horsemen at licensed racetracks, their families and employees, and others designated by the rules and eligibility requirements of the organization consistent with the act.

Horsemen—A thoroughbred or standardbred horse owner or trainer who enters and runs a horse at a licensed racing entity in the current or prior calendar

year and meets the membership requirements of a horsemen's organization to participate in the receipt of benefits there from.

Horsemen's organization—A trade association which represents the majority of horsemen at a licensed racetrack and which exists for the purpose, in whole or in part, of negotiating a horsemen's contract and resolving grievances, disputes or other matters with management of a licensed racing entity, as defined by section 1103 of the act (relating to definitions).

Horsemen's organization officer—An officer or person authorized to perform the functions of president, vice president, secretary/treasurer or other executive function of a horsemen's organization, and any member of its board of directors or similar governing body.

Horsemen's organization representative—A person, compensated or not, who is authorized to represent a horsemen's organization or members thereof in matters relating to horsemen's agreements with a licensed racing entity, or who undertakes on behalf of a horsemen's organization or members thereof to promote, facilitate or otherwise influence the relations between a horsemen's organization and a licensed racing entity.

Pension benefits—A plan, fund or program which is maintained by a horsemen's organization and that funds a program which provides retirement income to horsemen at licensed racetracks, their families and employees, and any others so designated by the rules and eligibility requirements of the organization consistent with the act.

§ 436a.2. Horsemen's organization registration.

(a) Each horsemen's organization or affiliate representing horsemen shall register with the Board in accordance with this section.

(b) Each horsemen's organization shall file a completed Horsemen's Organization Registration Statement with the registration fee established by the Board.

(c) Horsemen's organization applicants and registrants shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) Horsemen's organization registrations will be valid for 4 years from the date on which the registration is approved by the Board. Renewals will be valid for 4 years and shall be filed no later than 120 days prior to the expiration of the current registration period. A 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 horsemen's organization that the Board has approved or denied the renewal of the registration.

§ 436a.3. Permitting of officers, directors, representatives and fiduciaries.

(a) Every officer, director or representative of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or an individual authorized to act in a fiduciary capacity on behalf of horsemen shall be permitted in accordance with this section.

(b) Every officer, director or representative of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or an individual authorized to act in a fiduciary capacity on behalf of horsemen shall file a completed Horsemen's Permit Application Form with the permit fee established by the Board.

(c) Applicants and permittees under this section shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) Permits issued under this section will be valid for 1 year from the date on which the permit is approved by the Board. Renewals will be valid for 1 year and shall be filed at least 60 days prior to the expiration of the current permit. A 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 permittee that the Board has approved or denied the renewal of the permit.

(e) If a current officer, director or representative of a horsemen's organization is denied a permit required by this section, that officer, director or representative shall be precluded from engaging in any activity of the horsemen's organization involving gaming funds allocated to, received by, or distributed from the horsemen's organization.

(f) A person who is a third-party provider of a health or pension benefit plan to a horsemen's organization shall be exempt from the requirements of this section. A licensed attorney or accountant representing a horsemen's organization who does not meet the conditions in subsection (a) shall also be exempt this section.

§ 436a.4. Responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries.

(a) Horsemen's organizations, officers, directors, representatives and fiduciaries shall ensure that the funds allocated to the horsemen and horsemen's organizations are used for the benefit of all horsemen of this Commonwealth.

(b) Funds allocated to horsemen's organizations for benevolent programs are not to be used for the personal benefit of any officer, director, representative or fiduciary of a horsemen's organization except to the extent that the officer, director, representative or fiduciary of the horsemen's organization is a participant in the benevolent programs on the same basis as other eligible program participants.

(c) Horsemen's organizations shall maintain adequate records of receipts and distributions of the funds allocated to them under the act.

(d) By March 30 of each calendar year, each horsemen's organization shall file with the Board two copies of its audited financial statements together with any management letters or reports written thereon as prepared by its independent auditor. These filings will be available for public inspection during the normal operating hours of the Board at its Harrisburg office.

§ 436a.5. Fiduciaries.

Fiduciaries shall:

(1) Ensure that the funds received for the benefit of the horsemen are distributed pursuant to the act.

(2) Manage health and pension benefit plans for the exclusive benefit of participants and beneficiaries.

(3) Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions.

(4) Comply with limitations on certain plans' investments in particular securities and properties.

(5) Fund benefits in accordance with applicable law and plan rules.

(6) File quarterly reports with the Board within 20 days of the end of each calendar quarter. The reports must detail the expenditure of funds designated by the act for the benefit of horsemen and be in a format and manner designated by the Board.

(7) Provide documents to the Board as may be requested in the conduct of investigations or to ensure compliance with the act and this chapter.

§ 436a.6. Health and pension benefit plans.

(a) Contracts for health and pension benefit plans established for the benefit of members of a horsemen's organization must:

(1) Be submitted to the Board for review at least 90 days prior to the proposed effective date of the contract.

(2) Not be effective until approved by the Board.

(b) Administrative and overhead costs incurred by the horsemen's organization for the administration of health and pension benefit plans must be reasonable. Administrative costs that do not exceed 15% of the statutory allocation are considered reasonable.

CHAPTER 438a. LABOR ORGANIZATIONS

Sec.

438a.1. Definitions.

438a.2. Labor organization notification.

438a.3. Permitting of labor organization officers, agents and management employees.

§ 438a.1. Definitions.

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

Labor organization—An organization, union, agency, employee representation committee, group, association or plan in which employees participate which exists for the purpose, in whole or in part, of dealing with a slot machine licensee or licensed management company concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, including any conference, general committee, joint or systems board or international labor organization.

Labor organization agent—A person, compensated or not, who is authorized to represent a labor organization in an employment matter relating to employees who are employed by a slot machine licensee or licensed management company, or who undertakes on behalf of the labor organization to promote, facilitate or otherwise influence the relations between the labor organization and a slot machine licensee or licensed management company.

Labor organization officer—An officer or person authorized to perform the functions of president, vice president, secretary/treasurer or other executive function of a labor organization, and a member of its executive board or similar governing body who exercises authority, discretion or influence with regard to matters relating to employees who are employed at a licensed facility.

Labor organization management employee—An employee of a labor organization who serves in a management, supervisory or policy making position, who exercises authority, discretion or influence with regard to matters relating to employees who are employed at a licensed facility.

§ 438a.2. Labor organization notification.

(a) Each labor organization shall file a completed Labor Organization Notification Form in a format prescribed by the Board.

(b) Labor organizations shall file an updated version of the Labor Organization Notification Form within 30 days of a change in the information contained on the form.

§ 438a.3. Permitting of labor organization officers, agents and management employees.

(a) Every labor organization officer, agent and management employee shall be permitted in accordance with this section.

(b) Every labor organization officer, agent and management employee shall file a completed Labor Organization Permit Application Form with the permit fee established by the Board.

(c) Applicants and permittees under this section shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) Permits issued under this section will be valid for 1 year from the date on which the permit is approved by the Board. Renewals will be valid for 1 year and shall be filed no later than 60 days prior to the expiration of the current permit. A 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 permittee that the Board has approved or denied the renewal of the permit.

CHAPTER 439a. JUNKET ENTERPRISES

Sec.
 439a.1. Definitions.
 439a.2. Junket enterprise general requirements.
 439a.3. Junket enterprise license applications.
 439a.4. Junket enterprise license term and renewal.
 439a.5. Junket representative general requirements.
 439a.6. Junket representative registration.
 439a.7. Junket schedules.
 439a.8. Junket arrival reports.
 439a.9. Junket final reports.
 439a.10. Monthly junket reports.
 439a.11. Purchase of patron lists.
 439a.12. Junket enterprise and representative prohibitions.

§ 439a.1. Definitions.

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

Junket—

(i) An arrangement made between a slot machine licensee and a junket enterprise or a junket representative, the purpose of which is to induce a person, selected or approved, to come to a licensed facility for the purpose of gambling and pursuant to which, and as consideration for which, some or all of the cost of transportation, food, lodging and entertainment for that person is directly or indirectly paid by a slot machine licensee. The person shall be selected or approved on the basis of one or more of the following:

(A) The ability to satisfy a financial qualification obligation related to the person's ability or willingness to gamble, which shall be deemed to occur whenever a person, as an element of the arrangement is required to perform one or more of the following:

- (I) Establish a customer deposit with a slot machine licensee.
- (II) Demonstrate to a slot machine licensee the availability of a specified amount of cash or cash equivalent.
- (III) Gamble to a predetermined level at the licensed facility.
- (IV) Comply with similar obligations.

(B) The propensity to gamble, which shall be deemed to occur whenever a person has been selected or approved on the basis of one or more of the following:

(I) The previous satisfaction of a financial qualification obligation in accordance with the provisions of clause (A).

(II) An evaluation that the person has a tendency to participate in gambling activities as the result of:

(-a-) An inquiry concerning the person's tendency to gamble.

(-b-) The use of other means of determining that the person has a tendency to participate in gambling activities.

(ii) A rebuttable presumption that a person has been selected or approved for participation in an arrangement on a basis related to the person's propensity to gamble shall be created whenever the person is provided, as part of the arrangement, with one or more of the following:

- (A) Complimentary accommodations.
- (B) Complimentary food, entertainment or transportation which has a value of \$200 or more.

Junket enterprise—A person, other than a slot machine licensee, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed facility, regardless of whether or not the activities occur within this Commonwealth.

Junket representative—

(i) A natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in a junket to a licensed facility, regardless of whether or not those activities occur within this Commonwealth.

(ii) A gaming employee of a slot machine licensee who performs the duties and functions listed in subparagraph (i) for the licensed facility is not a junket representative.

§ 439a.2. Junket enterprise general requirements.

(a) A slot machine licensee seeking to conduct business with a junket enterprise or a junket enterprise seeking to conduct business with a slot machine licensee shall file a Junket Enterprise License Form with the Board.

(b) A junket enterprise shall be licensed as a junket enterprise prior to a slot machine licensee permitting a junket involving that junket enterprise to arrive at its licensed facility. A junket enterprise shall be considered "involved" in a junket to a licensed facility if it receives any compensation whatsoever from any person as a result of the conduct of the junket. A slot machine licensee may not engage the services of any junket enterprise which has not been licensed.

(c) A junket enterprise may not employ or otherwise engage the services of a junket representative except in accordance with § 439a.5 (relating to junket representative general requirements).

§ 439a.3. Junket enterprise license applications.

(a) A Junket Enterprise License Form shall be submitted by a slot machine licensee or junket enterprise applicant with a verification provided by the slot machine licensee that the junket enterprise's services will be utilized at the licensed facility.

(b) In addition to the Junket Enterprise License Form, an applicant for a junket enterprise license shall submit:

- (1) A nonrefundable application fee.

(2) A Junket Enterprise License Form for any principal that is an entity, and for each affiliate, intermediary, subsidiary and holding company of the applicant.

(3) A Junket Enterprise Representative Registration for each principal who is a natural person and for each key employee.

(c) In addition to the materials required under subsections (a) and (b), an applicant for a junket enterprise 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 421a and 423a (relating to general provisions; and applications).

(d) An applicant for a junket enterprise 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.

§ 439a.4. Junket enterprise license term and renewal.

(a) A junket enterprise 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 junket enterprise license.

(c) A junket enterprise 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 junket enterprise license that the Board has approved or denied the junket enterprise license.

§ 439a.5. Junket representative general requirements.

(a) A person may not act as a junket representative in connection with a junket to a licensed facility unless the person has been registered as a junket representative and is employed by a junket enterprise that has been licensed by the Board.

(b) A junket representative may only be employed by one junket enterprise at a time. For the purposes of this section, to qualify as an employee of a junket enterprise, a junket representative shall:

(1) Receive all compensation for his services as a junket representative within this Commonwealth through the payroll account of the junket enterprise.

(2) Exhibit other appropriate indicia of genuine employment, including Federal and State taxation withholdings.

§ 439a.6. Junket representative registration.

(a) A natural person applying for a junket representative registration shall submit:

- (1) A Junket Representative Registration Form.
- (2) A nonrefundable application fee.

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

(1) Promptly provide information requested by the Board relating to its application or regulation and cooper-

ate with the Board in investigations, hearings and enforcement and disciplinary actions.

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

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

(d) An individual who wishes to receive a junket representative registration under this chapter may provide the junket enterprise with written authorization to file an application on the individual's behalf.

(e) A junket representative registration issued under this section does not require renewal and is nontransferable.

§ 439a.7. Junket schedules.

(a) A junket schedule shall be prepared by a slot machine licensee for each junket that is arranged through a junket enterprise or its junket representative.

(b) A junket schedule shall be filed with the Bureau of Corporate Compliance and Internal Controls by a slot machine licensee by the 15th day of the month preceding the month in which the junket is scheduled. If a junket is arranged after the 15th day of the month preceding the arrival of the junket, an amended junket schedule shall be filed with the Bureau of Corporate Compliance and Internal Controls by the slot machine licensee by the close of the next business day.

(c) Junket schedules shall be certified by an employee of the slot machine licensee and include the following:

- (1) The origin of the junket.
- (2) The number of participants in the junket.
- (3) The arrival time and date of the junket.
- (4) The departure time and date of the junket.

(5) The name and registration number of all junket representatives and the name and license number of all junket enterprises involved in the junket.

(d) Changes in the information which occur after the filing of a junket schedule or amended junket schedule with the Bureau of Corporate Compliance and Internal Controls shall be reported in writing to the Bureau of Corporate Compliance and Internal Controls by the slot machine licensee by the close of the next business day. These changes, plus other material changes in the information provided in a junket schedule, shall also be noted on the arrival report.

§ 439a.8. Junket arrival reports.

(a) A junket arrival report shall be prepared by a slot machine licensee for each junket arranged through a junket enterprise or its junket representative with whom the slot machine licensee does business.

(b) Junket arrival reports shall:

(1) Include a junket guest manifest listing the names and addresses of the junket participants.

(2) Include information required under § 439a.7 (relating to junket schedules) that has not been previously provided to the Bureau of Corporate Compliance and Internal Controls in a junket schedule pertaining to the particular junket, or an amendment thereto.

(3) Be certified by an employee of the slot machine licensee.

(c) Junket arrival reports shall be prepared by a slot machine licensee in compliance with the following:

(1) A junket arrival report involving complimentary accommodations shall be prepared within 12 hours of the arrival of the junket participant.

(2) A junket arrival report involving complementary services that does not involve complementary accommodations shall be filed by 5 p.m. of the next business day following arrival. A junket arrival which occurs after 12 a.m. but before the end of the gaming day shall be deemed to have occurred on the preceding calendar day.

(3) Junket arrival reports shall be maintained on the premises of the licensed facility and made available to the Board for inspection during normal business hours.

§ 439a.9. Junket final reports.

(a) A junket final report shall be prepared by a slot machine licensee for each junket for which the slot machine licensee was required to prepare either a junket schedule or a junket arrival report.

(b) A junket final report must include the actual amount of complimentary services provided to each junket participant.

(c) A junket final report shall be:

(1) Prepared within 7 days of the completion of the junket.

(2) Maintained on the premises of its licensed facility and made available to the Board for inspection during normal business hours.

§ 439a.10. Monthly junket reports.

(a) Each slot machine licensee shall, on or before the 15th day of the month, prepare and file with the Bureau of Corporate Compliance and Internal Controls a monthly junket report listing the name and registration number of each person who performed the services of a junket representative during the preceding month.

(b) Copies of the monthly junket reports shall be maintained by the slot machine licensee on the premises of its licensed facility and made available to the Board for inspection during normal business hours.

§ 439a.11. Purchase of patron lists.

(a) Each slot machine licensee, junket representative and junket enterprise shall prepare and maintain a report with respect to each list of names of junket patrons or potential junket patrons purchased from or for which compensation was provided to any source whatsoever.

(b) The report required by subsection (a) must include:

(1) The name and address of the person or enterprise selling the list.

(2) The purchase price paid for the list or any other terms of compensation related to the transaction.

(3) The date of purchase of the list.

(c) The report required by subsection (a) shall be filed with the Bureau of Corporate Compliance and Internal Controls, no later than 7 days after the receipt of the list by the purchaser.

§ 439a.12. Junket enterprise and representative prohibitions.

A junket enterprise or junket representative may not:

(1) Engage in collection efforts.

(2) Individually receive or retain a fee from a patron for the privilege of participating in a junket.

(3) Pay for services, including transportation or other items of value, provided to or for the benefit of a patron participating in a junket, unless otherwise disclosed to and approved by the Board.

(4) Extend credit to or on behalf of a patron participating in a junket.

CHAPTER 440a. MANAGEMENT COMPANIES

Sec.

- 440a.1. General requirements.
- 440a.2. Applications.
- 440a.3. Management company license and term and renewal.
- 440a.4. Management company responsibilities.
- 440a.5. Management contracts.

§ 440a.1. General requirements.

(a) A management company shall be required to obtain a management company license from the Board prior to providing any service to a slot machine applicant or licensee under this chapter.

(b) An applicant for or holder of a management company license or any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, may not apply for or hold a manufacturer or supplier license.

§ 440a.2. Applications.

(a) An applicant for a management company license shall file:

(1) A completed applicable Category 1, Category 2 or Category 3 slot machine license application and disclosure information forms with the applicable appendices as if the management company license applicant were an affiliated entity of the slot machine applicant or licensee.

(2) A nonrefundable application fee.

(b) In addition to the materials required under subsection (a), an applicant for a management company 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 421a and 423a (relating to general provisions; and applications).

§ 440a.3. Management company license and term and renewal.

(a) A management company 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 management company license.

(c) A management company 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 management company license that the Board has approved or denied the management company license.

§ 440a.4. Management company responsibilities.

(a) Notwithstanding any provision to the contrary in a management contract, a management company will be deemed to be an agent of the slot machine licensee for

purposes of imposing liability for any act or omission of the management company in violation of the act or this part.

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

§ 440a.5. Management contracts.

(a) A management contract between a slot machine applicant or licensee and management company licensee may not become effective until the Board has reviewed and approved the terms and conditions of the management contract.

(b) A management company licensee shall submit any amendment to a management contract 30 days prior to the effective date of the proposed amendment. The amendment may not become effective until the Board has reviewed and approved the terms and conditions of the amendment.

(c) A management contract or amendment will not be approved by the Board unless the management company proves by clear and convincing evidence that the approval of the contract would not create a monopoly on the control of licensed gaming facilities in this Commonwealth. A management company that seeks Board approval of a management contract shall disclose its financial interests in the slot machine licensee or applicant and, if applicable, proposed or contemplated changes in ownership or control of a slot machine licensee.

(d) Requests for approval of a management contract must include a business plan which sets forth the parties' goals and objectives for the term of the management contract.

(e) A management contract, submitted to the Board for approval, must contain the following:

(1) A provision that provides the grounds and mechanisms for modifying or terminating the contract.

(2) A provision that states that the contract will not be effective unless it is approved by the Board.

(3) A provision that describes with particularity the method of compensating and reimbursing the management company.

(4) Provisions that contain a mechanism to resolve patron disputes and disputes between the slot machine licensee and the management company.

(5) A provision that indicates whether and to what extent contract assignments and subcontracting are permissible.

(6) A provision that specifies the duration of the management contract. A management contract may not contain a provision that provides for the automatic renewal of the management contract.

(f) A management contract submitted for Board review and approval must enumerate with specificity the responsibilities of the slot machine applicant or licensee and management company under the terms and conditions of the management contract. At a minimum, the terms should address whether, and to what extent, the management company is involved in the following:

(1) Operation of the following departments:

(i) Information technology.

(ii) Internal audit.

(iii) Slot accounting.

(iv) Slot management.

(v) Security.

(vi) Surveillance.

(2) Design, construction, improvement or maintenance, or both, of the licensed facility.

(3) Provision of operating capital and finance for the development of the licensed facility.

(4) Payment of the slot machine license fee.

(5) Purchase or lease of slot machines or associated equipment.

(6) Design, implementation or amendment, or both, of the system of internal controls required under section 1322 of the act (relating to slot machine accounting controls and audits) and this part including the financial reporting requirements.

(7) Hiring, terminating, training and promoting of employees and the employment practices attendant thereto.

(8) The payment of local, State and Federal taxes and slot machine license deposit required under the act and this part and any penalties imposed by the Board for violations thereof.

(9) Advertising, player incentive or marketing programs.

(10) Compliance with section 1325(b)(1) of the act (relating to license or permit issuance).

(11) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage.

(12) Procurement of vendors and junkets.

(13) Selection of the licensed facility's independent auditor.

(g) Notwithstanding subsections (a)—(f), a slot machine licensee and licensed management company may not contract for the delegation of any benefits, duties or obligations specifically granted to or imposed upon the slot machine licensee by the act.

[Pa.B. Doc. No. 07-841. Filed for public inspection May 11, 2007, 9:00 a.m.]