

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Delaware River and River Estuary and the Conowingo Reservoir

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). 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 on January 1, 2008.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendments to §§ 61.2 and 61.4 (relating to Delaware River and River Estuary; and Conowingo Reservoir) are published under the statutory authority of section 2102(b) 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 proposals.

E. *Summary of Proposals*

(1) *Section 61.2.* Three jurisdictions, New York, New Jersey and the Commonwealth, work in cooperative fashion in setting regulations for the Delaware River and the West Branch Delaware River because both are border waters. Differences in the rulemaking processes, license years and fisheries within different reaches may result in regulations being out of synchrony for a year or more. Jurisdictions attempt to provide consistency for anglers by minimizing regulatory differences among states. The Commission proposes the following changes to reconcile the differences between the jurisdictions.

Black bass regulations were adopted in 2006 on the Delaware River downstream of I-84 in New Jersey and this Commonwealth that include a 12-inch minimum length limit, five bass per day creel limit and a no-harvest, catch-and-immediate-release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. on the first Saturday after June 11. These regulations provide an opportunity for competitive anglers to conduct "paper" or catch-measure-immediate release tournaments during the catch-and-release season. In 2006, New York adopted similar regulations on the section of the Delaware River upstream of I-84. The Commission currently manages this Commonwealth's section of the Delaware as a year-round season. Thus, New York and the Commonwealth have different black bass regulations in the upper part of the Delaware. If the

Commission adopts the more conservative regulations upstream of I-84, as proposed, consistent harvest rules for black bass will apply throughout the entire Delaware River and West Branch Delaware River in this Commonwealth and all border jurisdictions.

In 2006, the Commission adopted new Statewide regulations for muskellunge and tiger muskellunge. These regulations, which went into effect on January 1, 2007, provide for a year-round season, a 40-inch minimum size limit and a one-fish creel limit on Commonwealth inland waters. Currently, the regulations on the Delaware River consist of a year-round season, a 30-inch minimum size limit and a two-fish creel limit. On December 28, 2006, the Commission's Division of Fisheries Management staff discussed amending the regulations to provide for a 40-inch minimum size limit and a one-fish creel limit with staff from the New Jersey Division of Fish, Game and Wildlife and the New York Department of Environmental Conservation. Staff from both agencies stated their support for the changes in muskellunge and muskellunge hybrid regulations for the Delaware River. In both New Jersey and New York, the earliest the regulation changes would take effect is October 2008. Those agencies will initiate the process to make their regulations consistent upon action by the Commission to amend the minimum size limit to 40 inches and the daily limit to one.

Currently, there are a number of species that are not identified in § 61.2. For example, no panfish are listed in this section. The regulations in New Jersey and New York are inconsistent with each other and also are inconsistent with the Commonwealth's inland regulations. The Commission does not believe that it would be feasible to attempt to reconcile New York and New Jersey regulations with the Commission's regulations in the near future for those species not already listed under this section. Therefore, the Commission proposes that § 61.2 be amended to clarify that for all species not listed, the Commonwealth's inland regulations apply.

Finally, the Commission proposes that the introductory paragraph to § 61.2(d) be amended to make it clear that the regulations apply to the West Branch Delaware River as well as the main stem and other tributaries. The Commission proposes to amend § 61.2 to read as set forth in Annex A.

(2) *Section 61.4.* The Commission currently manages two reservoirs that it shares as boundary waters with Maryland: Youghiogheny Reservoir and Conowingo Reservoir. By agreement with Maryland, the Commission's regulations are applied to both states' portions of the Youghiogheny Reservoir and Maryland's regulations are applied to both states' portions of Conowingo Reservoir. Portions of the regulations currently in place for certain species on Conowingo Reservoir under § 61.4 are not consistent with the current Maryland regulations. Specifically, the harvest limit for trout is two per day in Maryland, as opposed to five per day as listed in § 61.4. There is a baitfish daily limit of 35 in Maryland, as opposed to no limit in § 61.4. The harvest of mussels and clams is prohibited in Maryland and § 61.4 is silent. In Maryland, river herring (alewife and blueback herring) have an open season and no size or daily creel limits while § 61.4 disallows fishing for these species. Maryland's regulations provide that there are no seasons, size or creel limits for those species not specifically listed in

the regulations for Conowingo Reservoir. The Commission's regulations do not currently address this matter. Accordingly, the Commission proposes to amend § 61.4 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

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/reg comments. 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 any other manner will not be accepted.

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

Fiscal Note: 48A-193. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.2. Delaware River and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River, **West Branch Delaware River** and to Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * * * *			
BASS Largemouth and Smallmouth	[North of I-84: Open year-round]	[12 inches]	[5 (combined species)]
	[South of I-84:] January 1 to midnight the day before the first Saturday after April 11 and [October 1] 12:01 a.m. the first Saturday after June 11 to midnight December 31	12 inches	5 (combined species)
	12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only	
	[12:01 a.m. the first Saturday after June 11 to midnight September 30]	[12 inches]	[5 (combined species)]
MUSKELLUNGE AND MUSKELLUNGE HYBRIDS	Open year-round	[30] 40 inches	[2 (combined species)] 1
* * * * *			
OTHER SPECIES	Inland seasons, size and creel limits apply except for waters under special regulations (See Chapter 65). See § 61.1 (relating to Commonwealth inland waters).		

§ 61.4. Conowingo Reservoir.

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(d) The following seasons, sizes and creel limits apply to the Conowingo Reservoir, which includes the Susquehanna River from the Maryland State Line upstream to Holtwood Dam:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
All Species of Trout and Salmon	Open year-round	No minimum	[5] 2 (combined species)
* * * * *			

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN and HICKORY SHAD [and ALEWIFE and BLUEBACK HERRING (collectively known as river herring)]	Closed (no open season)	Closed	0
ALEWIFE and BLUEBACK HERRING (collectively known as river herring)	January 1 through June 15	No minimum	No daily limit
[HERRING	Open year-round	No minimum	No daily limit]
* * * * *			
BAIT FISH FISH BAIT[, except MADTOMS]	Open year-round	No minimum	[No daily limit] 35
[MADTOMS		No minimum	35]
ALL OTHER FISH SPECIES	Open year-round	No minimum	No daily limit
BIVALVES/SHELLFISH (Mussels/Clams)	Closed (no open season)	Closed	0

[Pa.B. Doc. No. 07-1041. Filed for public inspection June 15, 2007, 9:00 a.m.]

**[58 PA. CODE CH. 63]
Fishing; Tautog**

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 Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment adding § 63.50 (relating to importation of tautog) is published under the statutory authority of section 2102(c) 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

It has been brought to the attention of the Commission that tautog (*Tautoga onitis*), a marine fish common on hard bottom from Cape Cod to Delaware, are being harvested illegally on the Atlantic coast and being sold in the live fish markets in Philadelphia. The Commission encountered a similar situation in 1993 regarding the sale of sublegal size weakfish in this Commonwealth's

fish markets that was subsequently addressed with a minimum size limit on weakfish being imported into this Commonwealth.

The New Jersey Division of Fish and Wildlife Marine Conservation Officers asked the Commission to implement a 14-inch minimum size limit on tautog that are imported into this Commonwealth. This restriction will minimize this Commonwealth's black market for sublegal size tautog. Accordingly, the Commission proposes to add § 63.50 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

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 any other manner will not be accepted.

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

Fiscal Note: 48A-194. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.50. Importation of tautog.

It is unlawful for a person to import into this Commonwealth, sell, offer for sale or purchase tautog (*Tautoga onitis*) measuring less than 14 inches in length.

[Pa.B. Doc. No. 07-1042. Filed for public inspection June 15, 2007, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Deer Control

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 18, 2007, meeting, proposed to amend § 147.553 (relating to permit).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the April 18, 2007, meeting of the Commission. Comments can be sent, until June 22, 2007, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

Agricultural deer control permits (red tags) are generally valid from February 1 through September 28 of each year. However, the permits are invalidated for a brief period of time during the peak of the fawning season. More specifically, the permits are invalidated from May 16 through July 31 for general crop farmers and from May 16 through June 30 for vegetable farmers. Upon further review of the closure dates, the Commission has determined that standardizing the closure period between the two classes to May 16 through June 30 would provide additional deer control opportunities for general crop farmers without putting an unjustified additional demand on deer during the fawning season. Therefore, the Commission is proposing to amend § 147.553 to standardize the agricultural deer control permit closure period to May 16 through June 30 for both vegetable and general crop farmers.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." The amendments to § 147.553 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 147.553 to standardize the agricultural deer control permit closure period to May 16 through June 30 for both vegetable and general crop farmers.

3. Persons Affected

Persons wishing to exercise the privileges of an agricultural deer control permit may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

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

6. Contact Person

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-252. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL

AGRICULTURE

§ 147.553. Permit.

The deer control permit authorizes the permittee to enlist the aid of a limited number of subpermits. The maximum number of subpermits issued will be no more than one for every 5 acres of land that is under cultivation unless the wildlife conservation officer recommends an increase in the number due to warranted circumstances.

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(2) *Exceptions.* The permit is not valid from May 16 to **[July 31, inclusive, for general crop farming and from May 16 to June 30 for vegetable farming] June 30 during peak fawning season.**

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[Pa.B. Doc. No. 07-1043. Filed for public inspection June 15, 2007, 9:00 a.m.]

**PENNSYLVANIA GAMING
CONTROL BOARD**

[58 PA. CODE CHS. 429a, 433a, 435a, 437a AND 441a]

Manufacturer Designees; Principal Licenses; Employees; Vendor Certification and Registration; Slot Machine Licenses

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), (12), (13)—(20) and

(23), 1205, 1209, 1301—1316, 1317.1, 1318, 1321, 1325—1331 and 1802, proposes to add Chapters 429a, 433a, 435a, 437a and 441a 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 433 and 435 at 35 Pa.B. 4045 (July 16, 2005), Chapter 437 at 35 Pa.B. 6411 (November 19, 2005), Chapters 441 and 443 at 35 Pa.B. 4543 (August 6, 2005) and Chapter 429 at 37 Pa.B. 1862 (April 21, 2007). 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 429a, 433a, 435a, 437a and 441a

Chapter 429a (relating to manufacturer designees) deals with the licensing of manufacturer designees, which is a new category of licensure created by the act of November 1, 2006 (P. L. 1243, No. 135). Section 429a.1 (relating to manufacturer designee general requirements) addresses who must obtain a manufacturer designee license, what a manufacturer designee may do and what restrictions are placed on a manufacturer designee.

Sections 429a.2 and 429a.3 (relating to manufacturer designee license applications and standards; and additional manufacturer designee licenses) lay out the application process for an initial manufacturer designee license and for additional manufacturer designee licenses. The process for additional manufacturer designee licenses is an abbreviated application process because much of the investigative review will already have been completed.

Section 429a.4 (relating to manufacturer designee license term and renewal) sets forth the term of the manufacturer designee license, which is 1 year, and the process for license renewals.

Section 429a.5 (relating to responsibilities of a manufacturer designee) specifies the responsibilities of a manufacturer designee. These include various reporting requirements and the requirement that employees of a manufacturer designee whose duties require them to be on the gaming floor or in a restricted area obtain an occupation permit.

Section 429a.6 (relating to manufacturer designee as agent) states that a manufacturer designee will be deemed to be an agent of the manufacturer and that the manufacturer and the manufacturer designee will be held jointly and severally liable for violations of the regulations and the act committed by the manufacturer designee.

Section 429a.7 (relating to manufacturer designee agreements) requires agreements and amendments thereto to be submitted to the Board for approval. The agreements must specify the responsibilities of the manufacturer and the manufacturer designee and set forth any terms related to compensation of the manufacturer or the manufacturer designee.

Chapter 433a (relating to principal licenses) replaces temporary Chapter 433 (relating to license renewal).

Section 433a.1 (relating to definitions) provides definitions of terms used in this chapter.

Sections 433a.2 and 433a.3 (relating to directors or officers; and individual ownership) specify that officers and directors and individuals who have a direct ownership or have a right to any profit from an applicant for or

holder of a license or an intermediary, holding company of the applicant or licensee must be licensed as principals. Additionally, a grantor, trustee or beneficiary of a trust that is required to be licensed as a principal must also be licensed as a principal. Individuals who own less than 5% of the voting securities of an applicant or licensee or an intermediary, holding company of the applicant or licensee that is a publicly traded company are exempted from this licensing requirement.

Section 433a.4 (relating to entity ownership) specifies which entities are required to be licensed as principals. This includes an intermediary or holding company of the applicant or licensee, an entity that directly or indirectly has the power to control the applicant or licensee and an entity which holds an indirect interest in the applicant or licensee of 5% or greater. This section also contains a limited exemption from licensure for private investment funds that meet certain conditions.

Section 433a.5 (relating to institutional investors) specifies limited circumstances under which institutional investors will not be required to be licensed as principals and which institutional investors will be eligible to receive a waiver.

Section 433a.6 (relating to lenders and underwriters) specifies which lending institutions and underwriters must be licensed as principals and set forth exemption criteria.

Section 433a.7 (relating to trusts) sets forth licensing requirements for trusts. Trusts that hold a direct ownership in an applicant or licensee, a 1% or greater indirect ownership or receive a payment, share of revenue or profits must be licensed as principals. Trusts that own less than 5% of the voting securities of an applicant or licensee that is a publicly traded company are exempted from this licensing requirement.

Section 433a.8 (relating to principal applications) specifies the process for filing an application for a principal license and the responsibilities of applicants.

Section 433a.9 (relating to principal license term and renewal) sets forth the term of the principal license, which is 1 year, and the process for renewal of a principal license.

Chapter 435a (relating to employees) replaces temporary Chapter 435 (relating to employees) with one exception. The requirements in temporary § 435.2 (relating to key employee qualifier license) are now included in Chapter 433a.

Section 435a.1 (relating to general provisions) contains a number of general provisions that apply to individuals who are applicants for or holders of a key employee license, occupation permit or nongaming employee registration. These include requirements to provide information and photographs, comply with the general requirements in Chapters 421a and 423a (relating to general provisions; and applications) and be a United States citizen or hold a current work authorization. It also contains criteria the Board will use when reviewing applications from individuals who have been convicted of a felony or gaming offense and restrictions on gaming at licensed facilities in this Commonwealth that apply to various employees.

Section 435a.2 (relating to key employee license) contains the licensing process that is used for key employees. It requires that applicants prove by clear and convincing evidence that they are eligible and suitable to be licensed as key employees. This section also contains a waiver

process that includes the process for filing a waiver and the information that must be included.

Section 435a.3 (relating to occupation permit) specifies the process for filing an application for an occupation permit and the responsibilities of applicants. As is the case for key employees, applicants for an occupation permit must prove by clear and convincing evidence that they are eligible and suitable to be permitted. This section also allows employers to file applications for an occupation permit on behalf of applicants.

Section 435a.4 (relating to key employee license and occupation permit term and renewal) sets forth the term of the occupation permit, which is 1 year, and the process for renewal of a permit.

Section 435a.5 (relating to nongaming employee registration) establishes the process for filing an application for a nongaming employee registration and the responsibilities of applicants. Like applicants for occupation permits, applicants for a nongaming employee registration must prove by clear and convincing evidence that they are eligible and suitable to be registered and employers are allowed to file applications for nongaming employee registrations on behalf of applicants.

Section 435a.6 (relating to Board credentials) specifies who must obtain a credential and the information that will be on the credential. These credentials are required to be carried at all times while an individual is performing their duties and must be returned to the Board if an individual's license, permit or registration is suspended or revoked.

Section 435a.7 (relating to emergency credentials) deals with emergency credentials, which are credentials issued by the security department of a licensed facility to individuals who have forgotten or lost their Board credential. This section contains the verification requirements that must be met before an emergency credential can be issued and the information that must be recorded in the emergency credential log. It also establishes that these credentials can only be used for a maximum of 72 hours.

Sections 435a.8 and 435a.9 (relating to temporary credentials for principals and key employees; and temporary credentials for nongaming employees) govern the issuance of temporary credentials for principals, key employees and nongaming employees. These temporary credentials allow these individuals to work at the licensed facility while their applications are being reviewed. Temporary credentials for principals and key employees are valid for 120 days and may be extended; temporary credentials for nongaming employees are valid for 30 days.

Section 435a.10 (relating to loss or destruction of credentials) requires that any lost credential be reported to the slot machine license's security department within 24 hours. The slot machine license's security department, in turn, shall provide written notice to the Board of the lost credential within 24 hours. This section also allows employees to request a duplicate Board credential by submitting a Request for Duplicate PGCB Credential form to the Bureau of Licensing.

Chapter 437a (relating to vendor certification and registration) replaces temporary Chapter 437 (relating to vendor registration and certification). Section 437a.1 (relating to general vendor requirements) contains the criteria that will be used to determine if a vendor is required to obtain a vendor registration or vendor certification. It also contains a list of providers who are exempt from the registration and certification process and allows vendors

to seek a waiver of the registration and certification process by filing a Vendor Certification Waiver Application.

Sections 437a.2 and 437a.3 (relating to vendor registration applications; and vendor certification applications) contain the procedures for filing an application for a vendor certification or registration. These sections also require applicants to provide additional information requested and to comply with Chapters 421a and 423a.

Sections 437a.4 and 437a.5 (relating to principal certification; and key employee certification) require principals and key employees of certified vendors to also be certified.

Section 437a.6 (relating to registration and certification term and renewal) sets forth the term of vendor certifications and registrations, which is 4 years, and the process for renewal of a certification or registration.

Section 437a.7 (relating to registered and certified vendor responsibilities) specifies the general responsibilities of certified and registered vendors and which employees of a certified vendor are required to obtain an occupation permit or nongaming employee registration.

Section 437a.8 (relating to approved vendors list; prohibited vendors) provides that the Board will maintain lists of approved and prohibited vendors and bars slot machine applicants and licensees from using a vendor that is on the prohibited list. This section also contains a list of the factors the Board will consider when it is determining whether or not to place a vendor on the prohibited vendor list and specifies the petition process to be used by vendors who are seeking removal from the prohibited vendor list.

Section 437a.9 (relating to permission to conduct business prior to certification or registration) establishes the conditions under which a vendor may request that the Board allow the vendor to provide goods or services prior to completing the application process. The vendor must have filed its application and the slot machine applicant or licensee must have performed a due diligence review and demonstrate good cause as to why the request should be granted. Permission to conduct business will be good for 6 months and may be extended for an additional 6 months.

Section 437a.10 (relating to emergency vendor) contains provisions that allow a slot machine applicant or licensee to use a vendor that is not registered or certified to respond to an emergency involving a threat to public health, welfare or safety or conditions beyond the control of the slot machine applicant or licensee. If a slot machine applicant or licensee uses a vendor that is not registered or certified, they must file a Vendor Notification Form with the Board within 72 hours, provide a written explanation to the Board and file a Vendor Registration Form or Vendor Certification Form for the vendor within 20 business days.

Section 437a.11 (relating to slot machine applicants' and licensees' duty to investigate) set forth the responsibilities of slot machine applicants or licensees to investigate the background and qualifications of vendors they use or intend to use. It also requires contracts between a slot machine applicant or licensee and a vendor to have a cancellation clause that can be invoked if the Board or the slot machine applicant or licensee finds that the vendor is unsuitable.

Chapter 441a (relating to slot machine licenses) replaces the Board's temporary Chapters 441 and 443 (relating to slot machine licenses; and categories of licensure).

Section 441a.1 (relating to definitions) includes the definitions in temporary § 441.1 (relating to definitions), the definition of "licensing hearing" in temporary § 441.19 (relating to licensing hearings for slot machine licenses), revised definitions of "amenities," "non-de minimis consideration," "patron of amenities" and "well-established resort hotel" in temporary Chapter 443 and a new definition of "guest rooms under common ownership."

Section 441a.2 (relating to slot machine application restrictions and deadlines) contains provisions that reflect the ownership restrictions in 4 Pa.C.S. § 1304 (relating to Category 2 slot machine license), how the Board will initiate the application process and establish the completion date for applications.

Section 441a.3 (relating to slot machine license application) specifies what materials must be filed in addition to the Conditional/Category 1, Category 2 or Category 3 Application and Disclosure Information Forms. It also includes provisions requiring applicants to provide additional information requested, to comply with Chapters 421a and 423a and to provide a copy of the local impact report to the political subdivisions where the proposed licensed facility is to be located.

Section 441a.4 (relating to Alternative Category 1 licensing standards) contains the provisions that provide alternate licensing standards which can be used for applicants who hold a similar license in another jurisdiction if that jurisdiction's standards are as comprehensive as the Commonwealth's.

Section 441a.5 (relating to license fee payment bond or letter of credit requirements) requires an applicant for a slot machine license to post a bond or letter of credit guaranteeing the payment of the slot machine license fee required by 4 Pa.C.S. § 1209(c) (relating to slot machine license fee). It sets forth the requirements that must be met by the issuing surety company or bank, specifies the amount of the bond and conditions regarding expiration and replacement of the bond.

Section 441a.6 (relating to public input) mandates that the Board hold at least one public hearing on a slot machine license application and that the hearing be held in the municipality where the licensed facility would be located. It also requires the Board to develop and post the procedures for the conduct of public hearings and to publish a list of witnesses who are scheduled to testify.

Section 441a.7 (relating to licensing hearings for slot machine licenses) specifies the procedures that will be used for slot machine licensing hearings. It establishes the time frames for various filings, areas that are to be addressed by applicants, how comparisons to competing applicants can be made and how to file petitions to intervene.

Section 441a.8 (relating to divestiture) establishes the process an applicant can use to allow a principal or other person who holds a direct or indirect interest in the applicant to divest themselves of that interest if the Board finds that the individual is not eligible or suitable for licensure. The terms of the divestiture shall be submitted to and approved by the Board.

Section 441a.9 (relating to approval of a slot machine license) sets forth the general criteria that the Board will use to determine whether or not to grant a license including financial and character criteria that must be met.

Sections 441a.10 and 441a.11 (relating to notification of anticipated or actual changes in principals or key employ-

ees; and notification of new financial sources) require slot machine applicants and licensees to notify the Board of changes in principals, key employees or financial sources as soon as it becomes aware of a potential change.

Section 441a.12 (relating to maintaining agreements; filing of agreements) requires slot machine applicants and licensees to maintain copies of written and oral agreements and amendments thereto and to submit copies of these agreements to the Board if the agreement involves a licensed manufacturer, manufacturer designee, supplier and certified vendor or if it involves land or real estate.

Section 441a.13 (relating to Board review of agreements and records of agreements) provides that the Board may review an agreement covered by § 441a.12 and, if certain conditions are met, order the slot machine applicant or licensee to terminate the agreement. This section also contains a provision that deems agreements to contain a provision that termination of agreements in response to a Board order will be without liability to the slot machine applicant or licensee.

Section 441a.14 (relating to master purchasing and disbursement report) sets forth the requirements for the filing and content of the monthly Master Purchasing and Disbursement Report which each slot machine applicant or licensee must submit to the Board.

Section 441a.15 (relating to slot machine license issuance bond requirement) contains provisions governing the posting of the \$1 million bond that slot machine licensees must obtain to comply with 4 Pa.C.S. § 1316 (relating to bond for issuance of slot machine license). It specifies the standards for the surety company that issues the bond, that the bond must be payable to the Commonwealth of Pennsylvania and that the slot machine licensee's license will be suspended or revoked if the slot machine licensee fails to keep the bond in effect.

Section 441a.16 (relating to slot machine license term and renewal) sets forth the term of a slot machine license, which is 1 year, and the process for renewal of a slot machine license.

Section 441a.17 (relating to change in ownership or control of slot machine licensee and multiple slot machine license prohibition) contains provisions that implement 4 Pa.C.S. §§ 1328 and 1330 (relating to change in ownership or control of slot machine licensee; and multiple slot machine license prohibition). It requires advance notice and Board approval of changes in ownership that meet the specified criteria. Additionally, slot machine licensees are prohibited from owning more than a 33.3% interest in another slot machine licensee or persons eligible to apply for a Category 1 slot machine license.

Section 441a.18 (relating to employee status report) requires slot machine licensees to submit monthly employee status reports. It specifies when the reports must be filed, what information should be included in the reports and permits the Board to request interim reports if they are needed.

Section 441a.19 (relating to notice of employee misconduct and offenses) requires slot machine licensees to report the termination of an employee within 5 days of the termination if the circumstances surrounding the termination could be cause for suspension or revocation of the employee's license, permit or registration. This report will include detailed information about the employee and a summary of the misconduct. This section also requires that reports be filed with the Board within 24 hours when a person is charged, arrested, indicted or convicted of certain offenses.

Section 441a.20 (relating to slot machine license agreements) mandates that agreements that provide a form of payment related to earnings, profits or receipts from a slot machine licensee must be approved by the Board unless the agreement meets one of the exemptions in this section.

Section 441a.21 (relating to management contracts) provides that a slot machine licensee will be held jointly and severally liable for violations of 4 Pa.C.S. Part II or the Board's regulations committed by its management company.

Section 441a.22 (relating to Category 1 slot machine licensees) contains general provisions that apply just to Category 1 slot machine licensees. These include requirements for payments of funds as required by 4 Pa.C.S. §§ 1404—1406 (relating to distributions from licensee's revenue receipts; Pennsylvania Race Horse Development Fund; and distributions from Pennsylvania Race Horse Development Fund).

Section 441a.23 (relating to Category 3 slot machine licensees) requires that to be considered a well-established resort hotel, a hotel must offer a complement of the listed amenities. It also requires a Category 3 slot machine applicant to submit a plan with its application and as part of its internal controls to control access to the gaming floor to ensure that unauthorized individuals are not permitted to enter the gaming floor and establishes conditions under which holders of memberships for or patrons of amenities will be allowed access to the gaming floor.

Affected Parties

This proposed rulemaking imposes requirements on applicants for and holders of slot machine licenses, manufacturer designee licenses, principal and key employee licenses, vendor certifications or registrations, and on employees required to obtain an occupation permit or nongaming employee registration.

Fiscal Impact

Commonwealth. This proposed rulemaking will impose costs on the Board related to processing initial applications and renewals, conducting hearings and investigations and issuing licenses, permits, certifications 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 various licenses, permits, certifications 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 slot machine licenses, manufacturer designee licenses, principal and key employee licenses, vendor certifications or registrations, and employees required to obtain an occupation permit or nongaming employee registration 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 #125-64.

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 June 1, 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: 125-64. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 429a. MANUFACTURER DESIGNEES

Sec.	
429a.1.	Manufacturer designee general requirements.
429a.2.	Manufacturer designee license applications and standards.
429a.3.	Additional manufacturer designee licenses.
429a.4.	Manufacturer designee license term and renewal.
429a.5.	Responsibilities of a manufacturer designee.
429a.6.	Manufacturer designee as agent.
429a.7.	Manufacturer designee agreements.

§ 429a.1. Manufacturer designee general requirements.

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

(b) In accordance with section 1317.1 of the act (relating to manufacturer licenses), an applicant for or the holder of a manufacturer designee license or any of the applicant's or holder's affiliates, intermediaries, subsidiar-

ies or holding companies, may not apply for or hold a slot machine license or supplier license.

(c) A licensed manufacturer designee may supply or repair slot machines or associated equipment manufactured by a manufacturer with whom the manufacturer designee has an agreement or has executed a contract authorizing the manufacturer designee to do so.

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

§ 429a.2. Manufacturer designee license applications and standards.

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

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

(2) A nonrefundable application fee.

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

(4) An application from every key employee under § 435a.2 (relating to key employee license) and principal under Chapter 433a (relating to principal licenses) as specified by the Manufacturer Designee Application and Disclosure Information Form.

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

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

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

(ii) Through defined benefit pension plans.

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

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

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

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

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

(7) A sworn or affirmed statement that the applicant has developed and implemented internal safeguards and policies to prevent a violation of section 1513 of the act (relating to political influence) and a copy of the safeguards and policies.

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

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

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

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

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

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

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

(3) The integrity of all financial backers.

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

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

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

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

§ 429a.3. Additional manufacturer designee licenses.

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

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

(2) A nonrefundable application fee.

(b) An applicant for an additional manufacturer designee license shall also comply with § 429a.2(b)(1), (2) and (c) (relating to manufacturer designee license applications and standards).

§ 429a.4. Manufacturer designee license term and renewal.

(a) A manufacturer designee 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 2 months prior to the expiration of the current license.

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

§ 429a.5. Responsibilities of a manufacturer designee.

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

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

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

(3) Provide a copy of 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 no later than 30 days after the date of filing with the SEC.

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

(c) An employee of a licensed manufacturer designee whose duties of employment or incidental activities related to employment require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupation permit under § 435a.3 (relating to occupation permit).

§ 429a.6. Manufacturer designee as agent.

(a) Notwithstanding any provision to the contrary in a contract between a licensed manufacturer and a licensed manufacturer designee, the licensed manufacturer designee shall be deemed to be an agent of the licensed manufacturer for the purposes of imposing liability for any act or omission of the licensed manufacturer designee in violation of the act or this part.

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

§ 429a.7. Manufacturer designee agreements.

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

(b) Amendments to agreements between a licensed manufacturer and a licensed manufacturer designee shall be submitted to the Bureau of Licensing for approval at least 30 days prior to the effective date of the proposed

amendment. The amendment will not become effective until the Bureau of Licensing has reviewed and approved the terms and conditions of the amendment.

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

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

CHAPTER 433a. PRINCIPAL LICENSES

Sec.
 433a.1. Definitions.
 433a.2. Directors or officers.
 433a.3. Individual ownership.
 433a.4. Entity ownership.
 433a.5. Institutional investors.
 433a.6. Lenders and underwriters.
 433a.7. Trusts.
 433a.8. Principal applications.
 433a.9. Principal license term and renewal.

§ 433a.1. Definitions.

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

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

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

Entity—A person, other than an individual.

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

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

Individual—A natural person.

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

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

Officer—A president, chief executive officer, chief operating officer, secretary, treasurer, principal legal officer, principal compliance officer, principal financial officer, comptroller, principal accounting officer, chief engineer or technical officer of a manufacturer, or principal slot operations officer of a slot machine licensee and any

person routinely performing corresponding functions with respect to an entity whether incorporated or unincorporated.

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

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

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

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

Registered investment company—An investment company that has registered with the SEC under the Investment Company Act of 1940.

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

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

§ 433a.2. Directors or officers.

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

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

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

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

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

(f) Notwithstanding subsection (c), an officer of a publicly traded intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer

designee, licensed junket enterprise or licensed management company may request that the Board waive his requirement to be licensed as a principal if he is not actively involved in the affairs of the applicant or licensee. The waiver request shall be submitted on a Principal/Key Employee Waiver Form and require that the officer certify that he is not actively involved in the affairs of the applicant or licensee.

§ 433a.3. Individual ownership.

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

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

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

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

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

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

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

§ 433a.4. Entity ownership.

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

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

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

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

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

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

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

(2) At least 20% of the investors in the private investment fund are "institutional investors" as defined in § 401a.3 (relating to definitions).

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

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

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

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

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

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

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

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

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

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

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

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

§ 433a.5. Institutional investors.

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

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

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

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

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

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

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

§ 433a.6. Lenders and underwriters.

(a) Each lender and underwriter of a slot machine, manufacturer or supplier applicant or licensee shall be licensed as a principal.

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

(c) An underwriter or lender of an intermediary, subsidiary or holding company of a slot machine applicant or licensee shall be required to be licensed as a principal if the Board determines that the suitability of the under-

writer or lender is at issue and is necessary to consider a pending application for a slot machine license.

(d) Notwithstanding any provision to the contrary in this section, the Board may require the licensure of any lender or underwriter of a licensee or any holding or intermediary company or subsidiary of a licensee to produce information, documentation and assurances concerning the lender or underwriter if the Board has probable cause to believe that the lender or underwriter would not satisfy the character requirements of 4 Pa.C.S. § 1310(a) (relating to slot machine license application character requirements).

§ 433a.7. Trusts.

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

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

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

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

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

§ 433a.8. Principal applications.

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

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

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

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

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

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

§ 433a.9. Principal license term and renewal.

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

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

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

CHAPTER 435a. EMPLOYEES

Sec.

435a.1.	General provisions.
435a.2.	Key employee license.
435a.3.	Occupation permit.
435a.4.	Key employee license and occupation permit term and renewal.
435a.5.	Nongaming employee registration.
435a.6.	Board credentials.
435a.7.	Emergency credentials.
435a.8.	Temporary credentials for principals and key employees.
435a.9.	Temporary credentials for nongaming employees.
435a.10.	Loss or destruction of credentials.

§ 435a.1. General provisions.

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

(b) In addition to the materials required under §§ 435a.2, 435a.3 and 435a.5 (relating to key employee license; occupation permit; and nongaming employee registration), an applicant shall:

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

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

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

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

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

(1) A permanent resident alien card.

(2) A temporary employment authorization card.

(3) A document which the Board deems to be sufficient evidence or authorization.

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

(g) When considering an application for a registration from an individual who has been convicted of a felony or gaming offense in any jurisdiction or an application for a

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

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

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

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

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

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

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

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

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

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

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

§ 435a.2. Key employee license.

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

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

(2) A nonrefundable application fee.

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

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

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

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

(d) An applicant for a key employee 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.

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

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

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

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

(2) A nonrefundable waiver application fee.

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

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

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

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

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

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

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

§ 435a.3. Occupation permit.

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

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

(2) A nonrefundable application fee.

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

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

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

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

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

(d) After review of the information submitted under subsections (a) and (b), including a background investigation, the Board may issue a permit if the individual has

proven that the individual is a person of good character, honesty and integrity and is eligible and suitable to hold an occupation permit.

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

(f) A permit issued under this section is nontransferable.

§ 435a.4. Key employee license and occupation permit term and renewal.

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

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

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

§ 435a.5. Nongaming employee registration.

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

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

(2) A nonrefundable application fee.

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

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

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

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

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

§ 435a.6. Board credentials.

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

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

(2) Key employees.

(3) Gaming employees.

(4) Nongaming employee registrants.

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

(b) The credential will contain the following information:

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

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

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

(4) The seal of the Commonwealth.

(5) A license, permit or registration number.

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

(7) An expiration date.

(8) The signature of the employee.

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

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

(d) Except as provided in § 435a.7 (relating to emergency credentials), slot machine and management company licensees are prohibited from allowing a principal who is required to obtain a credential, key employee, gaming employee or nongaming employee registrant to perform his duties on the premises of a licensed facility unless the employee has his Board credential.

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

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

§ 435a.7. Emergency credentials.

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

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

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

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

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

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

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

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

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

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

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

(c) Emergency credentials:

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

(2) Will be sequentially numbered.

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

§ 435a.8. Temporary credentials for principals and key employees.

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

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

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

§ 435a.9. Temporary credentials for nongaming employees.

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

(1) The applicant has submitted the application materials required under § 435a.5 (relating to nongaming employee registration).

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

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

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

§ 435a.10. Loss or destruction of credentials.

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

(b) The security department of the slot machine licensee shall notify the Board in writing within 24 hours and may issue an emergency credential in accordance with § 435a.7 (relating to emergency credentials).

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

CHAPTER 437a. VENDOR CERTIFICATION AND REGISTRATION

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§ 437a.1. General vendor requirements.

(a) A vendor seeking to conduct business with a slot machine applicant or licensee, except as provided in § 437a.10 (relating to emergency vendor), shall apply to the Board for registration if:

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

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

(b) A vendor seeking to conduct business with a slot machine applicant or licensee, except as provided in § 437a.10 shall apply to the Board for certification if:

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

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

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

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

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

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

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

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

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

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

(5) State, Federal and municipal operated agencies.

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

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

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

(9) Telecommunication service providers.

(10) Shipping services.

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

(12) Public institutions of higher education.

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

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

(d) Subsection (c) does not relieve a slot machine applicant or licensee of reporting obligations required by § 441a.12 (relating to maintaining agreements; filing of agreements).

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

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

§ 437a.2. Vendor registration applications.

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

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

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

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

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

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

§ 437a.3. Vendor certification applications.

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

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

(2) A nonrefundable application fee.

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

(4) Applications for each principal and key employee as required by §§ 437a.4 and 437a.5 (relating to principal certification; and key employee certification).

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

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

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

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

§ 437a.4. Principal certification.

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

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

§ 437a.5. Key employee certification.

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

(b) Key employee applicants for certification and certified key employees are subject to the requirements and waiver provisions of § 435a.2 (relating to key employee license).

§ 437a.6. Registration and certification term and renewal.

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

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

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

§ 437a.7. Registered and certified vendor responsibilities.

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

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

(2) Report a change in circumstances that may render the holder of a vendor certification or registration ineli-

gible, unqualified or unsuitable to hold a certification or registration under the standards and requirements of the act and of this part.

(b) An employee of a certified vendor shall be required to obtain an occupational permit under § 435a.3 (relating to occupational permit) if:

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

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

(c) An employee of a certified vendor that is not required to obtain an occupational permit under subsection (b) shall be required to obtain a nongaming employee registration under § 435a.5 (relating to nongaming employee registration) if:

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

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

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

§ 437a.8. Approved vendors list; prohibited vendors.

(a) The Board will maintain a list of approved registered or certified vendors and a list of prohibited vendors.

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

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

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

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

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

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

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

(d) A person or entity seeking to be removed from the list of prohibited vendors shall file a petition for removal in accordance with § 493a.4 (relating to petitions generally). The petition must state the specific grounds believed by the petitioner to constitute good cause for removal from the prohibited vendors list and how the vendor has cured the deficiencies that led to the vendor being placed on the prohibited vendors list.

§ 437a.9. Permission to conduct business prior to certification or registration.

(a) Notwithstanding § 437a.1 (relating to general vendor requirements), the Board may allow an applicant for a vendor certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the vendor applicant if the following criteria are met:

(1) A completed Vendor Registration Form or Vendor Certification Form has been filed by the slot machine applicant or licensee in accordance with § 437a.2 or § 437a.3 (relating to vendor registration applications; and vendor certification applications).

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

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

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

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

§ 437a.10. Emergency vendor.

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

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

(1) File a Vendor Notification Form with the Board within 72 hours of the vendor's commencement of services.

(2) Provide a written explanation to the Board of the basis for the emergency vendor procurement and for the selection of the particular vendor.

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

§ 437a.11. Slot machine applicants' and licensees' duty to investigate.

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

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

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

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

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§ 441a.1. Definitions.

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

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

- (i) Sports and recreational activities and facilities such as a golf course or golf driving range, tennis courts or swimming pools.
- (ii) Health spa.
- (iii) Convention, meeting and banquet facilities.
- (iv) Entertainment facilities.
- (v) Restaurant facilities.

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

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

Guest rooms under common ownership—A room or group of rooms, including timeshare units, that are owned by a well-established resort hotel and that are available for rental.

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

- (i) Evidence concerning its eligibility for a license.
- (ii) Evidence concerning its suitability for a license.
- (iii) Evidence of how its proposed facility and operation addresses the criteria identified in section 1325(c) of the act (relating to license or permit issuance).

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

Non-de minimis consideration—A payment of fair market value of at least \$10 per patron paid to the resort hotel for use of one or more amenities.

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

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

Slot machine license—A Category 1 slot machine license under section 1302 of the act (relating to Category 1 slot machine license), a Conditional Category 1 slot machine license under section 1315 of the act (relating to Conditional Category 1 license), a Category 2 slot machine license under section 1304 of the act (relating to Category 2 slot machine license) and a Category 3 slot machine license under section 1305 of the act (relating to Category 3 slot machine license).

Well-established resort hotel—A resort hotel having at least 275 guest rooms under common ownership at the time of application for a Category 3 slot machine license and having substantial year-round recreational guest amenities.

§ 441a.2. Slot machine application restrictions and deadlines.

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

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

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

§ 441a.3. Slot machine license application.

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

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

(2) A nonrefundable application fee.

(3) A license or waiver application for each principal and key employee under Chapters 433a and 435a (relating to principal licenses; and employees), including an original and three copies of the Multi-jurisdictional Personal History Disclosure Form, the Pennsylvania Supplement and a nonrefundable background investigation deposit to be set by the Board and provided in a fee schedule for each principal and each key employee.

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

(5) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481a (relating to diversity), which shall be signed by the chief executive officer of the applicant.

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

(7) A sworn or affirmed statement that the applicant has developed and implemented internal safeguards and policies to prevent a violation of section 1513 of the act (relating to political influence).

(8) A statement demonstrating compliance with the geographical requirements of section 1302 of the act (relating to Category 1 slot machine license), section 1304 of the act (relating to Category 2 slot machine license) or section 1305 of the act (relating to Category 3 slot machine license).

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

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

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

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

(d) A copy of the local impact report required as part of the application shall be provided to the political subdivi-

sions in which the licensed facility will be located at the same time as the filing of the application for a slot machine license. The applicant shall file a proof of service with the Board.

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

§ 441a.4. Alternative Category 1 licensing standards.

(a) If an applicant for a Category 1 license, or its affiliate, intermediary, subsidiary or holding company holds a similar license in another jurisdiction in the United States or Canada, the applicant may submit a written request with its application required under § 441a.3 (relating to slot machine license application) for the Board to adopt an abbreviated licensing process under section 1314(b) of the act (relating to alternative Category 1 licensing standards).

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

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

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

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

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

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

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

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

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

(e) Following the issuance of a Category 1 license under this section, the Bureau will initiate a complete review of the information submitted under this subpart. If the applicant does not meet the requirements of the act or this part, the Board will revoke, suspend or condition the license until the applicant meets the requirements of the act.

§ 441a.5. License fee payment bond or letter of credit requirements.

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

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

(1) Payment bonds or irrevocable letters of credit shall be submitted and approved by the Board before an application may be accepted for filing. The Board's review will include an assessment of both the proposed terms of the payment bond or irrevocable letter of credit and of the surety or financial institution that will issue the payment bond or irrevocable letter of credit. An application will be deemed incomplete if at any time during the period the application is on file with the Board payment bonds or letters of credit approved by the Board in the amounts required in paragraph (2) are not in full force and effect.

(2) Payment bonds or irrevocable letters of credit must aggregate to the following amounts:

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

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

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

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

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

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

(f) The payment bond or irrevocable letter of credit provided under this section must state that it will expire upon the earlier to occur of the following:

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

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

(i) The application has been denied.

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

(iii) The license fee has been paid.

(iv) The applicant has been permitted by the Board to withdraw its application under § 423a.5 (relating to application withdrawal).

(g) An expiry date applicable to a payment bond or letter of credit provided under this section must be at least 12 months from the date of issuance of the payment bond or letter of credit. A provision automatically renewing or extending a payment bond or letter of credit must do so at intervals of at least 3 months. Notice provisions to the Board in a payment bond or letter of credit applicable to an election by an issuer not to renew or extend a then current expiry date must provide that the Board will receive at least 60 days written notice, by registered mail or overnight courier service, of an election not to renew or extend.

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

§ 441a.6. Public input.

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

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

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

(d) The Board will make public a list of all witnesses scheduled to testify at a public input hearing at least 7 days prior to the hearing. The list of witnesses will be updated at least 3 days prior to the hearing. Additional witnesses will be posted on the Board's website (www.pgcb.state.pa.us) as they are added to the witness list.

§ 441a.7. Licensing hearings for slot machine licenses.

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

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

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

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

(1) Compliance with section 1302, 1303, 1304 or 1305 (relating to Category 1 slot machine license; additional

Category 1 slot machine license requirements; Category 2 slot machine license; and Category 3 slot machine license) of the act, as applicable.

(2) Compliance with the application requirements in § 441a.3 (relating to slot machine license application).

(3) Compliance with the license fee payment bond or letter of credit requirements in § 441a.5 (relating to license fee payment bond or letter of credit requirements).

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

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

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

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

(3) Operational viability, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

exhibits, the memorandum must include a copy of each document to be proffered and the name, address and telephone number of the persons who prepared the document.

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

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

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

(k) If an applicant designates any submitted report or exhibit as confidential under § 401a.3 (relating to definitions) or section 1206(f) of the act (relating to Board minutes and records), the applicant shall:

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

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

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

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

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

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

(1) Comparisons must be limited to:

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

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

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

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

(2) If an applicant desires to present comparative evidence under this subsection, the applicant shall, no later than 20 days prior to the commencement of the first scheduled licensing hearing in the category of license for which the applicant has filed an application, file a separate written notice evidencing the intent with the Board identifying each other applicant about whom the applicant desires to present evidence. A copy of the notice shall also be served on the applicants about whom the evidence will be presented and on the Chief Enforcement Counsel. The notice must include:

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

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

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

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

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

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

(1) Oral presentation.

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

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

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

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

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

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

(r) Each Category 1 and Category 3 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications

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

(s) At the conclusion of the presentation of all testimony and evidence, the Board will cause the record to be transcribed. The transcript and evidence will become part of the evidentiary record for the Board's consideration. For good cause shown, the Board may seal portions of the record.

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

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

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

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

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

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

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

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

(5) The applicant may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. If made, answers shall be filed within 10 days after the date the petition is filed with the Board, unless for cause the

Board prescribes a different time. A complete copy of the answer to the petition to intervene shall be served on the Chief Enforcement Counsel and the petitioner who seeks to intervene.

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

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

§ 441a.8. Divestiture.

(a) If the Board determines that a slot machine license application cannot be approved because the applicant, its principal or other person who holds a direct or indirect interest in the applicant or in an affiliate, intermediary, subsidiary or holding company of the applicant, does not meet a character or other eligibility criteria required by section 1310 of the act (relating to slot machine license application character requirements), or has an ownership or financial interest that is prohibited by section 1330 of the act (relating to multiple slot machine license prohibition), the Board may grant the person up to 120 days following the determination to completely divest his interest in the applicant or its affiliate, intermediary, subsidiary or holding company.

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

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

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

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

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

§ 441a.9. Approval of a slot machine license.

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

(1) The financial stability and integrity of the applicant and its affiliates, intermediaries, subsidiaries and holding companies in accordance with section 1313 of the act (relating to slot machine license application financial fitness requirements).

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

(b) For Category 1 slot machine applications, the State Horse Racing Commission or the State Harness Racing Commission may submit additional information to the Board if it believes the information will assist the Board

in making a determination relating to the operational, financial or character fitness of the applicant.

(c) The Board may issue a slot machine license under this chapter if it determines that the applicant:

(1) Has demonstrated that the applicant will establish and is likely to maintain a financially successful, viable and efficient business operation and will likely be able to maintain a steady level of growth of revenue to the Commonwealth.

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

§ 441a.10. Notification of anticipated or actual changes in principals or key employees.

Each slot machine applicant or licensee shall notify the Board, in writing, as soon as it becomes aware, of the proposed appointment, appointment, proposed nomination, nomination, election, hiring, intended resignation, resignation, removal, firing, incapacitation or death of any person required to be licensed as a principal or key employee under Chapter 433a and § 435a.2 (relating to principal licenses; and key employee license). The notice must be addressed to the Bureau of Licensing.

§ 441a.11. Notification of new financial sources.

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

§ 441a.12. Maintaining agreements; filing of agreements.

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

(1) A fully signed copy of every written agreement.

(2) Records with respect to any oral agreement.

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

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

(1) A fully signed copy of written agreements with manufacturer applicants or licensees, manufacturer designee applicants or licensees, supplier applicants or licensees and with vendors subject to certification under § 437a.1(b) (relating to general vendor requirements).

(2) A precise written description of any oral agreement, in accordance with subsection (f), with manufacturer applicants or licensees, manufacturer designee applicants or licensees, supplier applicants or licensees and vendors subject to certification under § 437a.1(b).

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

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

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

(f) *Oral agreements.* A written description submitted under this section must provide, at a minimum, the following:

(1) The nature of the goods or services to be provided to the slot machine licensee or applicant.

(2) The full name and business address of the non-slot machine licensee or applicant party to the agreement.

(3) The duration of the agreement, or if provided in the agreement, the specific date or dates of performance.

(4) The financial terms of the agreement.

(5) A description of the goods or services provided, including the expected duration and compensation.

§ 441a.13. Board review of agreements and records of agreements.

(a) The Board may review an agreement and record maintained or filed under § 441a.12 (relating to maintaining agreements; filing of agreements) to determine the following:

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

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

(3) Whether any person involved therein or associated therewith is providing or likely to provide goods or services to, or conducting or likely to conduct business with, a slot machine applicant or licensee or its employees which requires a license, permit, certification, registration or notification under act or this part, in which case the Board will direct that the appropriate application be promptly filed by the person.

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

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

(c) Each agreement maintained or filed under § 441a.12 shall be deemed to include a provision for its termination without liability on the part of the slot machine applicant or licensee, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon the agreement, if the Board orders that the agreement be terminated in accordance with subsection (b).

§ 441a.14. Master purchasing and disbursement report.

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

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

- (i) The vendor certification or registration number or exemption code.
- (ii) The amount of the individual disbursement or credit.
- (iii) The date of the individual disbursement or credit.
- (iv) The subtotal of disbursements or credits by payee.
- (v) The grand total of all disbursements made during the reporting period.
- (vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

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

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

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

- (i) The vendor certification or registration number or exemption code of the vendor to whom the goods or services were provided.
- (ii) The date of each individual transaction.
- (iii) The amount of each individual transaction.
- (iv) A general description of the type of goods or services provided.
- (v) By vendor, subtotals of payments or credits received by the slot machine licensee or applicant or disbursements or credits made by the slot machine licensee or applicant during the reporting period.
- (vi) By vendor, totals of payments or credits received or disbursements or credits made by the slot machine licensee or applicant within the applicable 12-month period.

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

§ 441a.15. Slot machine license issuance bond requirement.

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

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

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

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

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

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

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

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

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

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

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

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

§ 441a.16. Slot machine license term and renewal.

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

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

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

§ 441a.17. Change in ownership or control of slot machine licensee and multiple slot machine license prohibition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) An institutional investor, if:

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

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

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

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

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

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

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

§ 441a.18. Employee status report.

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

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

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

(i) The name of the employee.

(ii) The address of record of the employee on file with the slot machine licensee.

(iii) The employee's license, permit or registration number.

(iv) The employee's title or position.

(v) Whether the employee is full-time or part-time.

(vi) The date of hire of the employee.

(vii) The access code, if any, assigned to the employee, which designates the restricted areas that the employee is permitted to enter and remain in for the purposes of performing his normal duties.

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

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

- (i) The information listed in paragraph (1)(i)—(vii).
- (ii) The date on which the employee discontinued or terminated employment with the slot machine licensee or management company.
- (4) The total number of employees who have discontinued or terminated employment with the slot machine licensee and management company during the preceding month.
- (5) The date on which the information provided in the report was compiled.

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

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

§ 441a.19. Notice of employee misconduct and offenses.

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

(b) The notice must include the following information:

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

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

- (1) An offense or violation under the act or this part.
- (2) The willful and knowing violation or attempt to violate an order of the Board by an employee.
- (3) An offense or violation of another applicable law which would otherwise disqualify the person from holding a license, permit or registration.

(4) An offense or violation of a criminal law or ordinance of the United States or the Commonwealth or a comparable offense or violation in other states or foreign jurisdictions.

§ 441a.20. Slot machine license agreements.

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

(b) An agreement will not receive Board approval if it, or if it when viewed in the aggregate as related to any of the persons who receive payment as a result of the agreement, creates a monopolization of economic opportunities or control of the licensed gaming facilities in this Commonwealth under § 421a.5 (relating to monopolization of economic opportunities and control).

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

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

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

§ 441a.21. Management contracts.

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

§ 441a.22. Category 1 slot machine licensees.

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

machine license requirements) applies to each licensed racing entity at the licensed racetrack.

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

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

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

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

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

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

(c) A Category 1 slot machine licensee or management company shall file with the Board no later than the 20th day of the month following the end of each calendar quarter, the following reports:

(1) Quarterly Report of Funds Received from the Pennsylvania Racehorse Development Fund.

(2) Quarterly Report of Funds Distributed for Purses under 4 Pa.C.S. § 1406(a)(1)(i).

(3) Quarterly Report of Funds Distributed for Health and Pension Benefits under 4 Pa.C.S. § 1406(a)(1)(iii).

(4) Quarterly Report of Expenditures for Backside Improvements.

(d) The Board may request interim versions of the reports in subsection (c) from a Category 1 slot machine licensee or management company.

§ 441a.23. Category 3 slot machine licensees.

(a) To qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer on its premises a complement of amenities characteristic of a well-established resort hotel, including, but not limited to, the following:

(1) Sports and recreational activities and facilities such as a golf course or golf driving range.

(2) Tennis courts.

(3) Swimming pools or a water park.

(4) A health spa.

(5) Meeting and banquet facilities.

(6) Entertainment facilities.

(7) Restaurant facilities.

(8) Downhill or cross-country skiing facilities.

(9) Bowling lanes.

(10) Movie theaters.

(b) A Category 3 slot machine applicant shall submit, as part of its application and its internal controls required under Chapter 465 (relating to accounting and internal controls), a plan detailing how the applicant will monitor the gaming area to ensure compliance with Chapters 503, 511 and 513 (relating to self-exclusion; persons required to be excluded; and underage gaming) and that only the following persons are permitted to enter the gaming area:

(1) Registered overnight guests.

(2) Patrons of one or more amenities.

(3) Authorized employees.

(4) Other persons authorized by the Board.

(c) Individuals holding a valid seasonal or year-round membership, which has been approved by the Board and entitles the individual to use one or more of the amenities at the well-established resort hotel holding the Category 3 slot machine license, may be allowed on the gaming floor at any time. The Board will base its approval of a membership on the duration of the membership, the amenity or amenities covered by the membership and whether the fee charged for the membership represents the fair market value for the use of the amenity or amenities.

(d) A patron of an amenity at a well-established resort hotel holding a Category 3 slot machine license may be permitted unlimited access to the gaming floor for one 24-hour period within 72 hours of the use of the amenity.

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