

RULES AND REGULATIONS

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 451, 451a, 471 AND 471a]

Recordkeeping and Fees

The Pennsylvania Gaming Control Board (Board), under its 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. §§ 1207(3), 1208, 1209(d), 1308 and 1322, adds Chapters 451a and 471a (relating to recordkeeping requirements; and filing fees) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 451 and 471 at 35 Pa.B. 4045 (July 16, 2005). Under 4 Pa.C.S. § 1203(b), the temporary regulations expire on July 5, 2007.

The Board is adopting these chapters to replace the temporary regulations with permanent regulations.

Explanation of Chapters 451a and 471a

Chapter 451a contains general provisions that address the recordkeeping requirements for manufacturer, supplier, junket enterprise, management company and slot machine licensees and registered and certified vendors.

Amendments to the temporary regulations include a large number of editorial changes intended to improve the clarity of the language in the temporary regulations. The final-form rulemaking also expands the applicability of the provisions to include other regulated entities that were not originally covered when the temporary regulations were promulgated.

Chapter 471a addresses the applicant's obligation to pay fees required by the Board, the method of payment, the nature of the fees and the publication of a fee schedule by the Board.

Amendments to the temporary regulations in this final-form rulemaking are primarily editorial and are intended to improve the clarity of the regulations. The final-form rulemaking also expands the applicability of the temporary regulations to include other regulated entities that were not covered in the temporary regulations. Some of the language in temporary § 471.3 (relating to schedule of fees) has been moved to § 471a.1 (relating to fees generally) for clarity purposes. Temporary § 471.2 has been deleted as it is duplicative of other provisions.

Comment and Response Summary

Notice of proposed rulemaking was published at 36 Pa.B. 5700 (September 9, 2006).

The Board received a comment on Chapter 451a from International Gaming Technology (IGT) that was included in its comments on the proposed rulemaking published at 36 Pa.B. 3690 (September 9, 2006). Comments were not received from the House Tourism and Recreational Development Committee and the Senate Committee on Rules and Executive Nominations. Comments were received from the Independent Regulatory Review Commission (IRRC).

IGT commented that they maintain their records at their offices in Nevada and asked if this would meet the

requirements in § 451a.1(a) (relating to recordkeeping generally) which requires records to be kept onsite in this Commonwealth. Many of the entities that hold licenses have headquarters located outside of this Commonwealth. To require Board personnel to travel to these locations to examine a licensee's records would cost far more than it will cost to maintain the records in this Commonwealth. Therefore, the Board did not revise this requirement and the entities listed in § 451a.1(a) shall maintain records in this Commonwealth.

As a general comment, IRRC requested additional information as to the need for and fiscal impact of this final-form rulemaking. This additional information has been included in the Regulatory Analysis Form for the final-form rulemaking.

In § 471a.1, IRRC suggested the procedures for determining additional fees that may be charged to applicants be added to the final-form rulemaking. The Board bases any additional fees on the amount of staff time required to review each application. Since the final-form rulemaking already specifies that additional fees will be "based on the actual expenses incurred by the Board," the Board has not made any additional changes to this section.

In § 471a.2 (relating to schedules of fees), IRRC suggested the Board add the actual name of the Board's website. The Board added that suggestion. IRRC also suggested that the Board clarify when it will publish the fee schedule. The Board plans to publish the fee schedule upon publication of this final-form rulemaking and whenever it makes a change to the fee schedule. Language has been added to § 471a.2 to reflect that intent.

IRRC's final recommendation was that all fee increases be governed by the mechanism in 4 Pa.C.S. § 1208(2) (relating to collection of fees and fines). The Board has not adopted this suggestion for two reasons. First, 4 Pa.C.S. § 1208(2) only applies to fees that were specifically set by 4 Pa.C.S. Part II (relating to gaming). Second, consistent with 4 Pa.C.S. § 1208(1), the Board believes that fees should be based upon the related costs incurred by the Board.

Affected Parties

This final-form rulemaking imposes requirements on applicants for and holders of a license, permit, registration or certification.

Fiscal Impact

Commonwealth. This final-form rulemaking will have no significant fiscal impact on the Commonwealth.

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

Private sector. Applicants for or holders of a license, permit, registration or certification will experience costs associated with the payment of fees for applications and other documents submitted to the Board for which a filing fee is required. These entities and individuals will also experience costs as result of the cost of the investigations by the Bureau of Investigations and Enforcement. Applicants for or holders of a license, registration or certification may also experience some increased costs to comply with the document retention and storage requirements.

General public. This final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This final-form rulemaking does not impose new reporting or paperwork requirements on the Board or affected parties under the Board's jurisdiction. This final-form rulemaking clarifies how the applicants and holders of licenses, registrations and certifications must maintain certain records.

Effective Date

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

Contact Person

The contact person for questions about this final-form 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 August 28, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 5700, to IRRC and the Chairpersons of the House and Senate Committees for review and comment.

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

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

Findings

The Board finds that:

- (1) Public notice of intention to adopt these chapters was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

- (a) The regulations of the Board, 58 Pa. Code Chapters 451, 451a, 471 and 471a, are amended by deleting §§ 451.1 and 471.1—471.3 adding §§ 451a.1 and 471a.1—471a.3 to read as set forth in Annex A.
- (b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

THOMAS A. DECKER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 1940 (April 21, 2007).)

Fiscal Note: 125-46 (1) Gaming Fund; (2) Implementing Year 2006-07 is \$22,000; (3) 1st Succeeding Year

2007-08 is \$11,000; 2nd Succeeding Year 2008-09 is \$12,000; 3rd Succeeding Year 2009-10 is \$12,000; 4th Succeeding Year 2010-11 is \$13,000; 5th Succeeding Year 2011-12 is \$13,000; (4) 2005-06 Program—\$24,600,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) Board Budget; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart D. RECORDKEEPING

CHAPTER 451. (Reserved)

§ 451.1 (Reserved).

CHAPTER 451a. RECORDKEEPING REQUIREMENTS

Sec.

451a.1. Recordkeeping generally.

§ 451a.1. Recordkeeping generally.

(a) All manufacturer, supplier, junket enterprise, management company and slot machine licensees and all registered and certified vendors shall maintain adequate records of business operations which shall be made available to the Board upon request. These records shall be kept onsite in this Commonwealth in a place secure from theft, loss or destruction or at another secure location approved by the Board. These records include:

- (1) Correspondence with the Board and other local, Commonwealth and Federal governmental agencies.
- (2) Correspondence concerning gaming equipment with a manufacturer, supplier, management company or slot machine licensee.
- (3) Copies of all promotional material and advertising.
- (4) A personnel file on each current and former employee.
- (5) Financial records of all transactions concerning slot machines and associated equipment with a manufacturer, supplier, management company or slot machine licensee.
- (6) Copies of all tax returns, reports and other tax documents filed with a taxing entity of the Federal government, the Commonwealth or local taxing entity within this Commonwealth for 7 years or a longer period as prescribed by the taxing entity.
- (7) Copies of all general accounting records.

(b) Except as provided in subsection (a)(6) regarding tax documents, the records listed in subsection (a) shall be maintained for at least 5 years.

CHAPTER 471. (Reserved)

§§ 471.1—471.3. (Reserved).

Subpart F. FEES

CHAPTER 471a. FILING FEES

Sec.

- 471a.1. Fees generally.
- 471a.2. Schedules of fees.
- 471a.3. Adjustment of fees.

§ 471a.1. Fees generally.

(a) A pleading or other document for which a filing fee is required will be received, but will not be deemed filed, until the filing fee, bond, letter of credit or other cost has been paid.

(b) The fees collected by the Board will be deposited into the State Gaming Fund as established in section

1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

(c) Fees shall be paid by money order or check made payable to the "Commonwealth of Pennsylvania." Cash will not be accepted by the Board.

(d) To recover the initial cost of the investigation and processing of applications, each application for a license, permit, certification or registration must be accompanied by a nonrefundable fee.

(e) An applicant may be subject to additional fees based on the actual expenses incurred by the Board in conducting the background investigation.

§ 471a.2. Schedules of fees.

Fee schedules established by the Board and changes thereto will be published in the *Pennsylvania Bulletin* and will be available on the Board's website (www.pgcb.state.pa.us).

§ 471a.3. Adjustment of fees.

On or after July 5, 2006, and annually thereafter, the Board may increase the fees, charges, costs or administrative penalties specified in the act by an amount not to exceed an annual cost-of-living adjustment calculated under section 1208(2) of the act (relating to collection of fees and fines).

[Pa.B. Doc. No. 07-1039. Filed for public inspection June 15, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 481 AND 481a]

Diversity

The Pennsylvania Gaming Control Board (Board), under its 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. §§ 1212 and 1325(b) and (c) (relating to diversity goals of board; and license or permit issuance), adds Chapter 481a (relating to diversity) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted Chapter 481 at 35 Pa.B. 4045 (July 16, 2005). Under 4 Pa.C.S. § 1203(b), the temporary regulations expire on July 5, 2007.

The Board is adopting this chapter to replace the temporary regulations with permanent regulations.

Explanation of Chapter 481a

This final-form rulemaking replaces the temporary Chapter 481 regulations that were adopted by the Board on June 16, 2005. Permanent regulations are needed because the temporary regulations expire on July 5, 2007. Like the temporary regulations, this final-form rulemaking contains provisions requiring submission of diversity plans by applicants for and holders of a license or certification from the Board and reporting provisions that apply to holders of a license or certification from the Board. It provides definitions of terms used in this chapter and also addresses onsite audits.

A large number of editorial changes were made in the proposed rulemaking to improve the clarity of the language in the temporary regulations. In § 481a.2 (relating to definitions), registered vendors were deleted from list

of entities that are subject to the diversity participation and reporting requirements. Temporary § 481.3(a) (relating to diversity participation) was deleted to eliminate duplication of efforts by the Board and the Department of General Services in posting a list of certified minority and women's business enterprises. Section 481a.5(b) (relating to report of participation) was added to require slot machine, manufacturer and supplier licensees to produce quarterly reports in addition to annual reports. Section 481a.5(c) was added to allow management companies to file a consolidated report with the slot machine licensee with whom they have a management contract to prevent a duplication of efforts on behalf of the slot machine licensee and the management company. Temporary § 481.4(c) (relating to establishment of diversity plan required) was relocated to § 481a.6 (relating to diversity audits).

Comment and Response Summary

The proposed rulemaking was published at 36 Pa.B. 5687 (September 9, 2006). The Board received comments on the proposed rulemaking from Downs Racing, L.P. (Downs) and the Independent Regulatory Review Commission (IRRC). The comments were reviewed by the Board and are discussed as follows.

IRRC requested that the Board provide additional information pertaining to the need for the regulation and the fiscal impact in the preamble and Regulatory Analysis Form. Additional information has been included. However, the Board notes that because gaming is new to this Commonwealth and licenses have just been issued, the fiscal information available is somewhat limited.

In § 481a.1 (relating to statement of purpose, policy and applicability), IRRC noted that under 4 Pa.C.S. § 1212(a), only slot machine licensees are required to meet the "provisions of goods and services" requirement. Accordingly, IRRC questioned the Board's statutory authority for requiring all regulated entities to assure diversity of opportunity "through the provisions of goods and services."

Under 4 Pa.C.S. § 1212(b)(7), the Board has the authority to issue, approve, renew, revoke or suspend additional licenses or permits other than those provided in the 4 Pa.C.S. Part II (relating to gaming). Further, under 4 Pa.C.S. § 1321 (relating to additional licenses and permits and approval of agreements), the Board has the authority to require additional licenses for persons who transact business with slot machine licensees. Based on this authority, the Board has created the additional licensure categories listed in the definition of "regulated entity" in § 481a.2.

Under 4 Pa.C.S. § 1325(b)(1) (relating to license or permit issuance), for an applicant for a license or permit authorization to be eligible for approval by the Board, the applicant shall submit a diversity plan to the Board "to assure that all persons are accorded equality of opportunity in employment and contracting by the applicant, its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers." Unlike the cited language in 4 Pa.C.S. § 1212 which the commentator describes as only applying to slot machine licensees, this provision applies to all applicants.

Finally, 4 Pa.C.S. § 1212(a) must be read in its entirety. In addition to the language cited by IRRC, it states "It is the intent and goal of the General Assembly that the board promote and ensure diversity in all aspects of the gaming activities . . ." and ". . . through the ownership and operation of business enterprises associated with or

utilized by slot machine licensees, through the provision of goods and services utilized by slot machine licensees”

Accordingly, the Board has authority to adopt regulations on diversity that apply to all regulated entities.

In § 481a.3, IRRC questioned if the Board had intended to allow other methods of establishing that a business is a minority or women’s business enterprise (M/WBE) and, if so, suggested that the other methods be included in the regulation.

Not all M/WBEs elect to be certified by the Department of General Services. Section 481a.3 is intended to allow regulated entities to use noncertified M/WBE. As suggested by IRRC, subsection (b) has been added to require the regulated entity to verify that an M/WBE that is not certified is an M/WBE.

In § 481a.4(a), IRRC questioned why the language differs from the language in 4 Pa.C.S. § 1325(b)(1) and suggested that criteria to determine the reasonableness of a diversity plan be added to the regulation.

The “agree to develop and implement” language in 4 Pa.C.S. § 1325 is not used in this section because this section only addresses the development of the diversity plan. While applicants would only need to agree to implement their diversity plans, they must file a plan so that the Board can make a determination if the applicant meets the requirements in 4 Pa.C.S. §§ 1202(a) and 1325(b) and (c).

The Board elected not to adopt IRRC’s suggestion that criteria be added to the regulation which would be used to determine if a diversity plan is reasonable. Based on its review of the diversity plans that have been submitted and the varied demographics of the locations of the applicants’ proposed facilities, the Board wants to provide applicants with the maximum amount of flexibility in developing their plans. Establishment of firm criteria might limit an applicant’s ability to tailor its plan to its particular location. Additionally, the Board has been working closely with applicants to help them develop plans that are reasonable.

In § 481a.4(b), IRRC suggested adding a definition of “diversity goal” and inserting the “or transacting” after “contracting” in § 481a.4(b)(2) to mirror the phrase in § 481a.4(b)(1). IRRC also suggested that the Board establish diversity goals that applicants would be expected to meet.

The Board has not adopted these suggestions. The term “diversity goal” is not a technical term; the Board is using it in its normally understood context. The phrase “or transacting” does not apply to the circumstances in § 481a.4(b)(2) because participation plans will only be established for contracts. Finally, for the reasons discussed earlier, the Board believes that fixed criteria for meeting diversity goals would limit regulated entities’ ability to demonstrate compliance. Instead, the Board will look at all of the information contained in the reports required under § 481a.5 and the regulated entities’ efforts to promote diversity.

In § 481a.5, Downs requested that salary information be treated as confidential information and that slot machine licensees not be responsible for reporting the information required in § 481a.5(a)(6) and (7).

The Board agrees that some of the information required to be submitted may be proprietary. Therefore, a subsection has been added to allow regulated entities to request that certain information be designated as confidential.

The Board does not agree that regulated entities should not be responsible for collecting and submitting the information required by § 481a.5(a)(6) and (7). If the regulated entity does not require its contractors to submit this information, it will not be able to determine if the contractor has complied with the requirements of its participation plan. Likewise, without this information, the Board will not be able to accurately assess whether or not a regulated entity has achieved its diversity goals.

From working with applicants who have filed diversity plans, the Board found that many applicants already collect similar data for facilities they operate in other states and that their standard contracts require contractors to provide the information. Therefore, the Board concluded that requiring regulated entities to collect and provide this information is not unreasonable.

In § 481a.6, IRRC suggested that the Board add provisions to notify regulated entities of an audit.

Because the Board intends to work closely with regulated entities on an ongoing basis, it does not anticipate that it will need to perform many audits. However, the Board agrees with IRRC that regulated entities should receive notice. Accordingly, a subsection has been added which will require the Board to provide written advanced notice of an audit.

Affected Parties

This final-form rulemaking imposes requirements on applicants for and holders of a license or certification from the Board.

Fiscal Impact

Commonwealth. This final-form rulemaking will have no significant fiscal impact on the Commonwealth.

Political subdivisions. This final-form rulemaking will have no significant fiscal impact on political subdivisions of this Commonwealth.

Private sector. Applicants for or holders of a license or certification will experience costs associated with the development of a diversity plan.

Holders of a license or certification will experience costs associated with revisions to their diversity plans and compiling the information required in the report of participation that must be included with their application for renewal of their license or certification.

General public. This final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This final-form rulemaking retains the reporting requirements in the temporary regulations adopted on June 16, 2005. It does not expand the reporting or paperwork requirements on the Board or affected parties, but it does add a requirement that slot machine, manufacturer and supplier licensees submit quarterly updates of their participation reports.

Effective Date

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

Contact Person

The contact person for questions about this final-form 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 August 28, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 5687, to IRRC and the Chairpersons of the House Tourism and Recreational Development Committee and the Senate Committee on Rules and Executive Nominations for review and comment.

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

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

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 481 and 481a, are amended by deleting §§ 481.1—481.5 and by adding §§ 481a.1—481a.6 to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

THOMAS A. DECKER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 1940 (April 21, 2007).)

Fiscal Note: 125-47. (1) Gaming Fund; (2) Implementing Year 2006-07 is \$243,000; (3) 1st Succeeding Year 2007-08 is \$126,000; 2nd Succeeding Year 2008-09 is \$131,000; 3rd Succeeding Year 2009-10 is \$137,000; 4th Succeeding Year 2010-11 is \$142,000; 5th Succeeding Year 2011-12 is \$148,000; (4) 2005-06 Program—\$24,600,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) Board Budget; (8) recommends adoption.

Annex A**TITLE 58. RECREATION****PART VII. GAMING CONTROL BOARD****Subpart G. MINORITY AND WOMEN'S BUSINESS ENTERPRISES****CHAPTER 481. (Reserved)****§§ 481.1—481.5 (Reserved).****CHAPTER 481a. DIVERSITY**

Sec.	
481a.1.	Statement of purpose, policy and applicability.
481a.2.	Definitions.
481a.3.	Diversity participation.
481a.4.	Establishment of diversity plan required.
481a.5.	Report of participation.
481a.6.	Diversity audits.

§ 481a.1. Statement of purpose, policy and applicability.

(a) This chapter establishes the procedures for promoting and ensuring that regulated entities foster participation and diversity in all aspects of their operations in this Commonwealth.

(b) It is the policy of the Board to promote and ensure that regulated entities conduct all aspects of their operations in a manner that assures diversity of opportunity as follows:

(1) In the ownership, participation and operation of regulated entities in this Commonwealth.

(2) Through the ownership, participation and operation of business enterprises associated with or utilized by regulated entities.

(3) Through the provision of goods and services utilized by regulated entities.

(c) It is further the policy of the Board to promote and ensure diversity in employment and contracting by each regulated entity and its contractors, subcontractors, assignees, lessees and agents.

§ 481a.2. Definitions.

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

Diversity plan—A plan that promotes and ensures diversity in ownership, participation and operation of regulated entities; and in employment and contracting by regulated entities.

Minority—The ethnic/racial categories identified in employer survey reports that are required by the United States Equal Opportunity Commission and the Office of Federal Contract Compliance Programs of the United States Department of Labor under section 709 of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000(e)-8) or by subsequent amendments to that Federal act.

Participation plan—An obligation imposed by a regulated entity as part of its contract with a contractor that requires the contractor to utilize minority or women owned business enterprises.

Regulated entity—An applicant for or holder of the following:

- (i) Slot machine license.
- (ii) Manufacturer license.
- (iii) Supplier license.
- (iv) Vendor certification.

- (v) Junket license.
- (vi) Management company license.

§ 481a.3. Diversity participation.

(a) The list of the minority and women's business enterprises that are certified by the Bureau of Minority and Women's Business Enterprises of the Department of General Services under 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code) may be used by a regulated entity to establish the eligibility of an enterprise as a minority or women's business enterprise for the purpose of promoting and ensuring minority and women's business participation.

(b) It shall be the responsibility of the regulated entity to verify that a minority or women's business enterprise that is not certified by the Bureau of Minority and Women's Business Enterprises of the Department of General Services is a minority or women's business enterprise.

§ 481a.4. Establishment of diversity plan required.

(a) Each regulated entity shall include in its application for licensure or certification a diversity plan that establishes a separate goal of diversity in the ownership, participation and operation of, and employment at the regulated entity. The Board will determine whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorded equality of opportunity in contracting and employment by the regulated entity and its contractors, subcontractors, assignees, lessees and agents.

(b) A regulated entity may demonstrate achievement of its diversity goals through one or both of the following:

- (1) Contracting or transacting directly with minority and women's business enterprises.
- (2) Contracting with a nonminority business enterprise under terms and conditions that establish a participation plan.

§ 481a.5. Report of participation.

(a) As part of an application to renew a license or certification, a regulated entity shall file a report with the Board concerning the performance of its diversity plan. The report must contain the following:

- (1) Employment data, including information on the following:
 - (i) Minority and women representation in the regulated entity's workforce in all job classifications.
 - (ii) Salary information.
 - (iii) Recruitment and training information, including executive and managerial level recruitment and training.
 - (iv) Retention and outreach efforts.

(2) The total number and value of all contracts or transactions awarded by the regulated entity for goods and services.

(3) The total number and value of all contracts or transactions awarded by the regulated entity to minority and women's business enterprises.

(4) A list of each contract or transaction awarded by the regulated entity to a minority or women's business enterprise and the actual value of each contract or transaction.

(5) The total number and value of all contracts awarded that contain a participation plan.

(6) The total number and value of all subcontracts awarded to minority and women's business enterprises under contracts containing a participation plan.

(7) A list of each subcontract awarded to a minority or women's business enterprise under contracts containing a participation plan and the actual value of each subcontract.

(8) A comprehensive description of all efforts made by the regulated entity to monitor and enforce the participation plan.

(9) Information on minority and women investment, equity ownership, and other ownership or management opportunities initiated or promoted by the regulated entity.

(10) Other information requested in writing by the Board to ensure compliance with the act and this part.

(b) In addition to the reports required under subsection (a), slot machine licensees, manufacturer licensees and supplier licensees shall file updated versions of the reports required under subsection (a) quarterly.

(c) A licensed management company may file a consolidated report with the slot machine licensee with whom the management company has a management contract.

(d) A regulated entity may request that proprietary information required to be submitted to the Board under this section be treated as confidential information. A regulated entity shall clearly mark information that it requests to be treated as confidential information.

(e) The Board will use the reports required under subsections (a), (b) and (c) to monitor compliance with the act and this part. The Board may request the assistance of the Bureau of Minority and Women's Business Enterprises, of the Department of General Services, in the review of regulated entities' compliance with the requirements of the act and this part.

§ 481a.6. Diversity audits.

(a) Onsite audits may be performed on an annual basis or at the discretion of the Board to ensure compliance with this chapter.

(b) Advanced written notice will be provided to a regulated entity prior to the conduct of an onsite audit by the Board.

[Pa.B. Doc. No. 07-1040. Filed for public inspection June 15, 2007, 9:00 a.m.]