

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130f]

Odor Management Certification Program

The Department of Agriculture (Department), under the specific authority conferred by section 508 of the act of July 6, 2005 (P. L. 112, No. 38) known as Act 38 of 2005 (act) (3 Pa.C.S. § 508 (relating to nutrient management certification program and odor management certification program)), proposes regulations implementing the odor management certification program required by act. This proposed rulemaking pertains to duties and programs administered by the Department's Bureau of Plant Industry. Section 508(a) of the act, directs the Department to "... establish, in consultation with the commission, ... an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The Department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations."

The Department proposes to establish criteria through regulations which carry out the edict of the act.

Background

The act requires the Department to promulgate regulations establishing certification categories and criteria. In addition, section 508(d) of the act requires a person to satisfy the applicable requirements of the regulations prior to certifying an odor management plan or plan amendment. These regulations are therefore necessary to assure compliance with the edict of the act and to allow concentrated animal operations, concentrated animal feeding operations and volunteers to comply with the odor management plan requirements set forth at section 509 of the act.

The major features and amendments to the proposed rulemaking are summarized as follows:

Summary of Major Features

Section 130f.1 (relating to scope).

This section sets forth the scope of the regulations. This section synthesizes the authority and duty set forth in section 508 of the act.

Section 130f.2. Definitions.

Definitions necessary to understand the provisions in the regulations are defined in this section. The definitions are based on definitions in the act, 7 Pa. Code Chapter 130b and 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

Section 130f.3. Fees.

This section establishes the certification and examination fees for each category of certification, as required by

section 508(a) of the act. The fees are based on the anticipated costs associated with testing and administering each category of certification.

Section 130f.4. Certification authority.

The language of this section delineates the authority associated with each category of certification. It establishes what types of plans a person certified in a particular category can write or review and approve, or both.

Section 130f.11. Determination of competence.

This section sets forth the provisional training, examination and final certification requirements for commercial and public odor management specialists. In addition, it details how the Department will react to and change requirements when future advances in the field of odor management occur. Finally, it establishes the criteria which must be met in order for: (1) a fully certified public odor management specialist to attain a commercial odor management specialist certificate; (2) a fully certified commercial odor management specialist to attain a public odor management specialist certificate; and (3) a fully certified nutrient management specialist to attain a commercial or public odor management specialist certificate.

Section 130f.12. Final certification.

This section details the eligibility criteria and application process for final certification as a commercial or public odor management specialist and sets forth the time period of filing a final certification application. In addition, it establishes the time period for which final certification is valid.

Section 130f.21. Determination of competence.

This section establishes the competency requirements for individual odor management specialists. Individual odor management specialists are exempt from the plan preparation requirements that are mandatory for commercial and some public odor management specialists. However, the requirements for an individual odor management specialist certification include an orientation training course and a competency evaluation consisting of the same criteria as the provisional certification training for a commercial or public odor management specialist. The competency evaluation for an individual odor management specialist will be developed or approved by the Department and administered by the Department or its designee. The evaluation will require knowledge of the same areas covered on the required examination for commercial and public odor management specialists.

Section 130f.22. Final certification.

These provisions delineate the application procedures and time period for filing an application for final certification as an individual odor management specialist with the Department, as well as, the time period for which a certificate is valid.

Section 130f.31. Recertification.

This section sets forth the recertification process for commercial and public odor management specialists and for individual odor management specialists. At 3 year intervals, odor management specialists shall certify to the Department, through written documentation, that they have received the required number of continuing education training credits in the appropriate areas of training. Commercial and public odor management specialists must receive six continuing education training credits and

individual odor management specialists must receive three continuing education training credits to maintain their certification. Credits accrue at the rate of one credit per hour of course work. In addition, this section sets forth the application process and standards for approval of entities that want to sponsor recertification training courses. Finally, this section addresses the procedure for certification if an odor management specialist allows his certification to lapse.

Section 130f.41. Denial, suspension and revocation of certificates.

The provisions in this section set forth the reasons, as delineated in the act, that the Department may deny, suspend or revoke an odor management specialist's certification. In addition, it provides the process (written notice, which must include the reasons for the Department's action) that must be utilized by the Department when denying, suspending or revoking odor management certification and provides for appeal rights.

Fiscal Impact

Commonwealth

The proposed regulations will not impose any appreciable additional fiscal impacts upon the Commonwealth. The proposed regulations will require the Department to administer another certification training and recertification program and monitor and take appropriate State action when members of the regulated community are not complying with the statutory and regulatory mandates. The cost of administering the mandates of the act and these proposed regulations will be covered by general government operating funds annually appropriated to the Department and augmented with the certification and testing fees set forth in the proposed regulations.

Political Subdivisions

The proposed regulations will impose additional work and costs and have a fiscal impact upon county conservation districts that agree to certify public odor management specialists to draft or review, or both, odor management plans. The proposed regulations will impose no additional burden of enforcement on political subdivisions.

Private Sector

The proposed regulations will impose additional costs on persons wishing to write or review and approve, or both, odor management plans, as required by the act. Those additional costs are in the form of the fees for certification, which are established in the proposed regulations.

General Public

The proposed regulations will impose no direct costs and have no fiscal impact on the general public. Farmers required to have or seeking a voluntary odor management plan, will be affected by the mandates of the act, which requires the plans and the fees charged for attaining the required certification to write or review, or both, those odor certification plans will most likely be a small part of the fee charged to the farmer for the development of odor management plans.

Paperwork Requirements

The proposed regulations will not result in a substantial increase in paperwork. The Department will have to develop new application forms, but they will be based on current certification program forms. Review and administrative procedures will also be very similar to existing certification programs overseen by the Department.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. §§ 745.5(a)), the Department submitted a copy of this proposed rulemaking on October 15, 2007, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed regulations, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Johan E. Berger (717) 772-4189.

Effective Date

This proposed regulation is effective upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-155. (1) General Fund; (2) Implementing Year 2007-08 is \$14,250; (3) 1st Succeeding Year 2008-09 is \$21,200; 2nd Succeeding Year 2009-10 is \$22,260; 3rd Succeeding Year 2010-11 is \$23,400; 4th Succeeding Year 2011-12 is \$24,600; 5th Succeeding Year 2012-13 is \$25,800; (3) 2005-06 Program—\$0; 2004-05 Program—\$0; 2003-04 Program—\$0; (7) General Government Operations; (8) recommends adoption. These costs will be augmented with the certification and testing fees set forth in the regulations.

Annex A

**TITLE 7. AGRICULTURE
PART V. BUREAU OF PLANT INDUSTRY
CHAPTER 130f. ODOR MANAGEMENT
CERTIFICATION**

Subch.

- A. GENERAL PROVISIONS**
- B. CERTIFICATION**
- C. RECERTIFICATION**
- D. DENIAL, SUSPENSION, REVOCATION**

Subchapter A. GENERAL PROVISIONS

- Sec.
- 130f.1. Scope.
- 130f.2. Definitions.
- 130f.3. Fees.
- 130f.4. Certification authority.

§ 130f.1. Scope.

This chapter prescribes the procedures and qualifications related to certification of odor management special-

ists. This chapter includes the establishment of fees, delineates the requirements for certification of odor management specialists, including recertification criteria and sets forth the conditions of denial, suspension and revocation of odor management certification.

§ 130f.2. Definitions.

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

Act—Act 38 of 2005 (3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management)).

BMP—Best management practice.

Certificate year—The period from January 1 to December 31.

Certification—The completion of the requirements of an odor management specialist contained in this chapter.

Commission—The State Conservation Commission established by the Conservation District Law (3 P.S. §§ 849—864).

Competency—Demonstrating a high level of technical or scientific knowledge as evidenced by successfully meeting the requirements of § 130f.11 (relating to determination of competence) for commercial and public odor management specialists, or meeting the requirements of § 130f.21 (relating to determination of competence) for individual odor management specialists.

Conservation district—A county conservation district established under the Conservation District Law.

Department—The Department of Agriculture of the Commonwealth.

Designee—A person chosen or appointed by the Secretary of the Department to carry out the Secretary's duties under this chapter.

Impacts—

(i) Conflicts arising from the offsite migration of odors from agricultural facilities.

(ii) The term does not include mental or physical health affects, or changes in property value.

Nutrient management specialist—A person satisfying the certification requirements of section 508 of the act (relating to nutrient management certification program and odor management certification program).

OMP—*Odor management plan*—A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

Odor BMP—*Odor best management practice*—A practice or combination of practices, technologies, standards and strategies to manage the potential for impacts from offsite migration of odors generated from animal housing facilities and manure management facilities that are subject to regulation under the act.

Odor management regulations—The regulations which will be codified in 25 Pa. Code Chapter 83, Subchapter G (relating to facility odor management). (*Editor's Note:* See 37 Pa.B. 4780 (September 1, 2007).)

Odor management specialist—A person satisfying the certification requirements of this chapter.

Individual odor management specialist—A person certified under this chapter to develop odor management plans for his agricultural operation.

Commercial odor management specialist—A private sector person certified under this chapter to develop odor management plans for another person's agricultural operation.

Public odor management specialist—A State, Federal or other public employee certified under this chapter to review odor management plans and make recommendations for approval or denial of odor management plans to a conservation district or the State Conservation Commission, or both.

Odor Site Index—The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, to determine the potential for impacts from the offsite migration of odors from agricultural operations.

Provisional certification—The level of certification obtained by an odor management specialist applicant who has successfully completed the required training and passed the written examination, but has not yet developed or reviewed the required number of odor management plans.

Recertification training—The completion of continuing education and training requirements in § 130f.31 (relating to recertification).

§ 130f.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The Department has established the following certification fees for each level of odor management specialist:

- (1) Individual odor management specialist—\$15.
- (2) Commercial odor management specialist—\$200.
- (3) Public odor management specialist—\$25.

(b) *Examination fees.* Examination fees are nonrefundable. The Department has established the following examination fees for each level of odor management specialist:

- (1) Individual odor management specialist—No charge.
- (2) Commercial odor management specialist—\$30.
- (3) Public odor management specialist—\$30.

§ 130f.4. Certification authority.

(a) *Individual certification authority.* A person certified under this chapter as an individual odor management specialist is authorized to develop odor management plans for his own agricultural operation. An individual odor management specialist has no authority to develop an odor management plan for another person or review and recommend action on an odor management plan.

(b) *Commercial certification authority.* A person certified under this chapter as a commercial odor management specialist is authorized to develop odor management plans for another person's agricultural operation. A commercial odor management specialist has no authority to review or recommend action on an odor management plan.

(c) *Public certification authority.* A person certified under this chapter as a public odor management review

specialist is authorized to review odor management plans and make recommendations for approval or denial of odor management plans.

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

Sec.

- 130f.11. Determination of competence.
130f.12. Final certification.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

- 130f.21. Determination of competence.
130f.22. Final certification.

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

§ 130f.11. Determination of competence.

(a) *Commercial odor management specialist.* Determination of competence for a commercial odor management specialist shall be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a commercial odor management specialist include an orientation training course, an odor management plan writing course and a written examination approved by the Department.

(2) Final certification of a commercial odor management specialist requires the development of two approved odor management plans as set forth in subsection (h)(1). Odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(b) *Public odor management specialist.* Determination of competence for a public odor management specialist will be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a public odor management specialist include an orientation training course, an odor management plan review course, an odor management plan writing course and a written examination approved by the Department. Odor management plan reviews completed and odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(2) Final certification of a public odor management specialist requires the approved review of one odor management plan and the development of one approved odor management plan as set forth in subsection (h)(2).

(c) *Future advancements.* As advancements in science and technology make new odor management techniques and BMPs available and after these techniques and BMPs are approved by the State Conservation Commission, the certification requirements may include other course work related to those techniques and best management requirements, as well as, any new requirements set forth in the odor management regulations, as part of the certification course and training requirements. The new techniques and BMPs will not become part of the certification requirements until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and BMPs.

(d) *Provisional certification training.* The provisional certification training courses must, at a minimum, consist of the following areas of odor management planning:

- (1) Understanding the Odor Site Index.
 - (i) Completion and application of the Odor Site Index.
 - (ii) Mapping principles and requirements.
- (2) Understanding odor generation and transmission principles.
- (3) Understanding environmental and economic impacts associated with odor management.
- (4) Understanding and awareness of land use issues related to odor impact and management.
- (5) Understanding OMP components and content.
- (6) Understanding the technology, application and implementation of Odor BMPs.
- (7) Understanding regulatory requirements of agricultural operations.
 - (i) Types of agricultural operations or activities/technologies that may require OMPs.
 - (ii) How to submit an OMP.
 - (iii) Other applicable laws and regulations related to or conjoined with odor management.
- (8) Recordkeeping requirements.
- (9) Proper odor management plan review procedures (public odor management specialists only).
- (10) Proper odor management plan writing procedures (commercial and public odor management specialists only).
- (11) Other areas and course work related to requirements set forth in the odor management regulations, as determined appropriate by the Department.
 - (e) *Examination.* The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:
 - (1) Application of the Odor Site Index.
 - (2) Odor generation and transmission principles.
 - (3) Environmental and economic impacts associated with odor management.
 - (4) Land use issues related to odor impacts and management.
 - (5) OMP components and content.
 - (6) Technology, application and implementation of Odor BMPs.
 - (7) Odor management regulatory requirements of agricultural operations.
 - (8) Recordkeeping requirements.
 - (9) Other applicable laws and regulations related to or conjoined with odor management.
 - (10) Other areas related to new technology and BMPs that become available and are approved by the State Conservation Commission, as well as, new requirements in the odor management regulations. These other areas will not become part of the final certification requirements until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and BMPs.

(f) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examinations meet the requirements in subsection (e).

(g) *Provisional certification.* Upon the successful completion of the requirements in subsections (d) and (e), the applicant for certification as a commercial or public odor management specialist will be issued the appropriate provisional certification. The holder of a provisional certification is qualified, dependent on the type of provisional certification attained, to develop or review, or both, odor management plans for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 2 years ending on the last day of the month from the date of issuance.

(h) *Final certification requirements.* Once provisional certification has been granted, the provisionally certified specialist shall complete one of the following dependent on the type of provisional certification granted and final certification sought:

(1) *Commercial odor management specialist.* To attain final certification, a provisionally certified commercial odor management specialist shall develop two odor management plans which meet the requirements of section 509 of the act (relating to odor management plans). One of the required odor management plans may be developed based on a scenario developed or approved by the Department. Odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public odor management specialist.* To attain final certification, a provisionally certified public odor management specialist shall successfully review one odor management plan and develop one odor management plan which meets the requirements of section 509 of the act. The developed odor management plan may be based on a scenario developed or approved by the Department. Odor management plan reviews completed and odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(i) *Public odor management specialist to commercial odor management specialist.* A certified public odor management specialist may obtain certification as a commercial odor management specialist. To attain this certification, a certified public odor management review specialist shall develop one additional odor management plan in accordance with section 509 of the act. The certified public odor management specialist seeking this certification shall submit the odor management plan to the Department or its designee for review and approval.

(j) *Commercial odor management specialist to public odor management specialist.* A certified commercial odor management specialist who wishes to obtain certification as a public odor management specialist shall complete an odor management plan review course covering proper odor management plan review procedures and shall successfully review one odor management plan in accordance with section 509 of the act. The applicant seeking to attain this certification shall submit the odor management plan review to the Department or its designee for review and approval.

(k) *Nutrient management specialist to odor management specialist.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management specialist under the Department's nutrient management certification regulations (See Chapter 130b (relating to nutrient management certification))

may obtain certification as a commercial or public odor management specialist upon meeting the requirements of this chapter for the level of certification sought.

§ 130f.12. Final certification.

(a) *Application for final certification.* Upon completion of all the provisional certification requirements of this chapter, a provisionally certified commercial odor management specialist or public odor management specialist may submit an application to the Department for final certification. The appropriate certification fee, as set forth in § 130f.3(a) (relating to fees) must accompany the application for final certification.

(b) *Eligibility for final certification.* A person is eligible to apply for final certification as a commercial or public odor management specialist upon fulfilling the applicable requirements established under § 130f.11 (relating to determination of competence). An application for final certification may be obtained from the Department.

(c) *Time period for filing application.* An application for final certification shall be filed with the Department within 120-calendar days of notification by the Department of meeting the appropriate requirements in § 130f.11. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130f.11.

(d) *Time period final certification is valid.* Final certification is valid for 3 years ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

§ 130f.21. Determination of competence.

(a) Determination of competence for an individual odor management specialist shall be based on the completion of required training which includes an orientation training course and a competency evaluation developed or approved by the Department.

(b) The orientation training course shall at a minimum consist of the same requirements as in § 130f.11 (relating to determination of competence).

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:

- (1) Application of the Odor Site Index.
- (2) Odor generation and transmission principles.
- (3) Environmental and economic impacts associated with odor management.
- (4) Land use issues related to odor impacts and management.
- (5) Odor management plan components and content.
- (6) Technology, application and implementation of Odor BMPs.
- (7) Odor management regulatory requirements of agricultural operations.

- (8) Recordkeeping requirements.
- (9) Other applicable laws and regulations.

(d) The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examination meets the requirements in subsection (c).

(e) Individual odor management specialists are exempt from the odor management plan preparation requirements.

§ 130f.22. Final certification.

(a) A person is eligible to apply for final certification as an individual odor management specialist upon fulfilling the requirements under § 130f.21 (relating to determination of competence). An application for certification may be obtained from the Department. The appropriate fee must accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than 120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130f.21.

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

Subchapter C. RECERTIFICATION

Sec.
130f.31. Recertification.

§ 130f.31. Recertification.

(a) At intervals of 3 years, final certified commercial, public or individual odor management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in odor management planning and odor management plan development. Training must address the specific areas in § 130f.11 (relating to determination of competence) for commercial and public odor management specialists and § 130f.21 (relating to determination of competence) for individual odor management specialists.

(b) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public odor management specialists are required to obtain six credits during the recertification interval. Individual odor management specialists are required to obtain three credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified odor management specialists, in addition to the required training in §§ 130f.11 and 130f.21. The Department will provide written notification to the certified odor management specialists of specifically required training.

(c) Training will be approved for recertification credits at the rate of one credit per hour of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like. Credits will be assigned to each training session based upon the subjects covered and the amount of time expended on each subject. Credits assigned may

be modified if either the content or length of the training substantially differs from the originally approved course.

(d) Sponsors of recertification training shall first submit a written request for course approval to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted to the Department at least 15 working days prior to the training date and include the following information:

- (1) The name and phone number of the contact person who is coordinating the training.
- (2) The specific location of the training.
- (3) The date of the training.
- (4) A list of the speakers, subject matter and time allotted to each subject.
- (5) A statement whether the training is open to the public and if there is a charge to attend.

(e) A recertification training course will be approved if at a minimum it consists of the same requirements as set forth in § 130f.11(d) and (e) and is conducted or sponsored by an educational institution, an association, a business, a governmental agency or other qualified source. Preapproval of recertification courses is vested solely with the Department.

(f) Falsification by a course sponsor of information required under this section may result in the withdrawal of credits or course approval, or both.

(g) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania-certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and include the name of each person attending and their certification number.

(h) If an odor management specialist allows final certification to expire and does not obtain recertification in accordance with this chapter, the final certification will be suspended and the specialist shall refrain from all duties relating to his certification until all delinquent recertification credits are acquired as described in subsection (b).

(i) If an odor management specialist whose final certification has been suspended as set forth in subsection (h) fails to complete delinquent recertification credits within 1 year from the expiration date of the final certification, the final certification will be revoked and that person shall again satisfy the requirements of § 430f.11 and § 130f.12 (relating to final certification) for commercial and public specialists, or § 130f.21 and § 130(f).22 (relating to final certification) for individual specialists, whichever is applicable.

Subchapter D. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

Sec.
130f.41. Denial, suspension and revocation of certificates.

§ 130f.41. Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reason therefore, deny, suspend or revoke a commercial, public or individual odor management specialist certification for any of the following:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required recertification credits.

(3) Inconsistency or demonstration of a lack of knowledge of odor management plan writing and review skills.

(4) Three or more occurrences within a 3-year period of delay or noncommunication with a landowner or review agency during plan development or review.

(5) Falsifying information.

(6) Misrepresentation associated with the act or its attendant regulations.

(7) A violation of program policy established by the Department, its designee or the Commission.

(b) An applicant or odor management specialist may request a hearing, in writing, within 15 days of receipt of a notice of denial, suspension or revocation from the Department. The request shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

[Pa.B. Doc. No. 07-1984. Filed for public inspection October 26, 2007, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Consumer Products

The Environmental Quality Board (Board) amends 37 Pa.B. 5117 (September 15, 2007) and 37 Pa.B. 5379 (October 6, 2007) by announcing revised dates for the public comment period and public hearings for the proposed rulemaking to amend Chapter 130, Subchapter B (relating to consumer products).

The proposed rulemaking will amend the Table of Standards to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and amend the VOC content limits for one category of consumer products currently regulated. The proposed rulemaking also adds definitions for approximately 30 new terms, including those that relate to the new product categories that will be regulated, and amends definitions for approximately 110 existing terms to provide clarity. The proposed rulemaking, if adopted, will be submitted to the Environmental Protection Agency as a revision to the State Implementation Plan.

Public Comments

Written Comments: Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by December 26, 2007. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by December 26, 2007. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments: Comments may be submitted electronically to the Board at RegComments@state.pa.us

and must be received by the Board by December 26, 2007. A subject heading of the proposal and a return name and address must be included in each transmission.

Public Hearings:

The Board will hold three public hearings for the purpose of accepting comments on the proposed rulemaking to amend Chapter 130, Subchapter B. The hearings will be held as follows:

November 26, 2007 1 p.m. Department of Environmental Protection
Rachel Carson State Office Building
Room 105
400 Market Street
Harrisburg, PA 17105

November 26, 2007 1 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A and B Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222

November 26, 2007 1 p.m. Department of Environmental Protection
Southeast Regional Office
Delaware River Conference Room
2 East Main Street
Norristown, PA 19401

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Chairperson

[Pa.B. Doc. No. 07-1985. Filed for public inspection October 26, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 405a AND 461a]

Bureau of Investigations and Enforcement; and Slot Machine Testing and Control

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, 1320 and 1517(a.2) (relating to regulatory authority of board; slot machine testing and certification standards; and investigations and enforcement), proposes to amend Chapters 405a and

461a (relating to Bureau of Investigations and Enforcement; and slot machine testing and control) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The Board initially adopted Chapter 405a at 37 Pa.B. 2808 (June 23, 2007) and Chapter 461a at 37 Pa.B. 3381 (July 21, 2007). These proposed amendments are intended to better conform the language in the regulations to the language of the Pennsylvania Race Horse Development and Gaming Act (act), make provisions consistent with changes in subsequently adopted chapters and remove obsolete provisions.

Explanation of the Proposed Amendments to Chapters 405a and 461a

In § 405a.3(b) (relating to Office of Enforcement Counsel), the Board is deleting the phrase “and operational” so that this section mirrors the language in 4 Pa.C.S. § 1517(a.2)(2) (relating to investigations and enforcement). The title “Director of the Office of Enforcement Counsel” has been changed to “Chief Enforcement Counsel” in this section and in § 405a.5 (relating to investigatory subpoena) to match the Board’s current organizational structure.

In § 405a.6 (relating to enforcement action), the Board is updating citations and extending the time to file a notice of defense and request a hearing in subsections (c) and (d) from 15 days to 20 days to match the time period in the final-form version of § 493a.2(e).

In § 405a.6(e), the Board is changing the requirement concerning the mailing of final orders. Final orders will be sent by first class mail instead of certified mail. Because a respondent’s address is determined at the beginning of the proceeding there is no need to use certified mail for the final order.

In §§ 461a.3 and 461a.4 (relating to testing and approval generally; and submission for testing and approval), the Board is removing the references and provisions relating to abbreviated testing and approval of slot machines and associated equipment. Section 1320 of the 4 Pa.C.S. allowed the Board to use certifications of equipment by other states or approved private testing laboratories until the Board established its testing facility. Now that the Gaming Laboratory is operational, the time period to use these alternate processes has expired.

In § 461a.7 (relating to slot machine minimum design standards), the Board is deleting subsection (d) which contains the “payout requirement of 85% within 10 million plays” standard. Because the length of time that a slot machine is typically used today is shorter and because of the advent of server based games, this standard has become obsolete. The other requirements which reflect the statutory requirement of having a payout of at least 85% remain unchanged.

In § 461a.12 (relating to progressive slot machines), references to § 461a.7 have been updated to reflect the deletion of subsection (d) previously discussed.

Affected Parties

Manufacturers submitting slot machines for testing and certification will be affected by no longer being able to request alternate certification of their slot machines and related equipment. There are 16 currently licensed manufacturers.

Respondents to complaints will also be affected. The Board projects that there will be approximately 2,000 complaints filed over the next 12 months.

Fiscal Impact

Commonwealth

By mailing Board orders by first class mail instead of certified mail, the Board estimates this proposed rulemaking will save up to \$10,000 annually.

Political Subdivisions

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

Private Sector

The Board anticipates that there will be no significant costs or savings to the regulated public as a result of these proposed amendments.

General Public

The proposed amendments will have no fiscal impact on the general public.

Paperwork requirements

The proposed amendments do not change or add new reporting, recordkeeping or paperwork requirements.

Effective Date

The proposed amendments 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 #125-71.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 12, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the 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.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-71. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405a.3. Office of Enforcement Counsel.

* * * * *

(b) The [Director of the Office of] Chief Enforcement Counsel will report to the Executive Director of the Board on administrative [and operational] matters.

(c) The [Director of the Office of] Chief Enforcement Counsel may be removed by the Board only for good cause shown.

§ 405a.5. Investigatory subpoena.

(a) The [Director of the Office of] Chief Enforcement Counsel is authorized to require the attendance and testimony of witnesses and the production of books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format necessary for all action within the authority of the Bureau under the act or this part.

(b) The [Director of the Office of] Chief Enforcement Counsel or [his] a representative may issue subpoenas.

(c) In case of disobedience of any subpoena or the contumacy of any witness appearing before the [Director of the Office of] Chief Enforcement Counsel or a representative, the [Director of the Office of] Chief Enforcement Counsel or a representative may invoke the aid of Commonwealth Court or any court of record of this Commonwealth to require the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format relative to the matter in question.

* * * * *

§ 405a.6. Enforcement action.

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 493a.2 (relating to complaints), including a proposed order for an enforcement action and serve the complaint in accordance with § [491.3] 491a.5 (relating to service by the Board).

* * * * *

(c) Within [15] 20 days from the date of service of complaint for an enforcement action, the person may file a notice of defense in accordance with § 493a.2(e) and serve a copy of the request on the Office of Enforcement Counsel. Failure to file a notice of defense for an enforcement action complaint within [15] 20 days will be deemed:

* * * * *

(d) Upon the person's failure to request a hearing within the prescribed [15] 20 days, the Office of Enforcement Counsel will present the proposed enforcement

order to the Board. The Board may, by resolution, adopt the proposed enforcement order.

(e) The Clerk will send a copy of the Board's final order to the person by [certified] first class mail.

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.3. Testing and approval generally.

(a) In accordance with section 1320 of the act (relating to slot machine testing and certification standards), [the Board will determine the manner and scope in which slot machines and associated equipment are to be tested and approved prior to operation and use in a licensed facility in this Commonwealth.

(b) Slot] slot machines and associated equipment operated in this Commonwealth must be approved by the Board [.

(c) The Board has the authority to require one or more of the following procedures:

(1) An abbreviated testing and approval process in accordance with § 461a.4(g) (relating to submission for testing and approval).

(2) Testing and approval] in accordance with § 461a.4 [(i)] (g).

[(3) Utilize the services of a Board-approved private slot machine testing facility to conduct the testing until a slot machine testing facility is established by the Board.

(d)] (b) The general cost of establishment and operation of the Board's testing facility shall be paid by each manufacturer licensee on a quarterly basis based upon each manufacturer's proportion of the total number of products reviewed.

[(e)] (c) The Board will require payment of all costs for the testing and approval of slot machines and associated equipment submitted by manufacturers or installed at a licensed facility based on the actual direct costs incurred by the Board.

[(f)] (d) The Board will require a manufacturer licensee seeking approval of a slot machine or associated equipment to pay all costs of transportation, inspection and testing.

§ 461a.4. Submission for testing and approval.

* * * * *

(g) [Notwithstanding the terms of subsection (d), the Board may utilize an abbreviated testing and approval process in accordance with section 1320 of the act (relating to slot machine testing and certification standards).

(h) When an applicant for, or holder of, a manufacturer license seeks to utilize, during the applicable period, the abbreviated testing and approval process for a slot machine prototype, associated equipment prototype or any modification thereto, it shall submit to the Slot Lab the following:

(1) A prototype of the equipment, device or software accompanied by a written request for abbreviated testing and approval which identifies the jurisdiction within the United States upon which the

applicant for, or holder of, a manufacturer license proposes the Board rely ("named jurisdiction"). The manufacturer shall transport the equipment device or software at its own expense and deliver it to the offices of the Slot Lab.

(2) A certification executed by the chief engineer of the applicant for, or holder of, a manufacturer license or the engineer in charge of the division of the manufacturer responsible for producing the equipment, device or software submitted ("professional") asserting that:

(i) The specific prototype or modification is identical in all mechanical, electrical, electronic and other respects to one which has been tested and approved by the testing facility operated by the named jurisdiction or a private testing facility on behalf of the named jurisdiction.

(ii) The manufacturer is licensed and in good standing in the named jurisdiction and that the subject product has all regulatory approvals prerequisite to sale or distribution in the named jurisdiction.

(iii) In the professional's opinion, the testing standards of the named jurisdiction are comprehensive and thorough and provide similar adequate safeguards as those required by this subpart.

(iv) In the professional's opinion, the equipment, device or software complies with the act, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website including requirements related to the central control computer.

(3) An executed copy of a current product submission checklist, and any product specific supplemental submission checklists applicable to the submitted equipment, device or software unless a substantially similar checklist was filed with the named jurisdiction and is included in the submission package required by paragraph (4).

(4) Copies of the submission package, and amendments thereto, filed with the named jurisdiction, copies of any correspondence, review letters or approvals issued by the testing facility operated by the named jurisdiction or a private testing facility on behalf of the named jurisdiction and, as applicable, a copy of the final regulatory approval issued by the named jurisdiction.

(5) A disclosure that lists any conditions or limitations placed by the named jurisdiction on the operation or placement of the equipment, device or software at the time of approval or subsequently thereafter.

(6) A complete, comprehensive and technically accurate description of the manner in which the slot machine was tested for compatibility and compliance with the central control computer and protocol specifications approved by the Department including the ability to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval and activation and disabling of slot machines.

(7) Any hardware, software and other equipment, inclusive of technical support and maintenance applicable thereto, required by the Slot Lab to conduct the abbreviated testing and approval pro-

cess contemplated by the act, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

(8) Additional documentation requested by the Board which is necessary to evaluate the slot machine, associated equipment or modification thereto.

(i)] When an applicant for, or holder of, a manufacturer license seeks Board approval of a slot machine prototype, associated equipment prototype, or any modification thereto [for which the abbreviated testing process in subsection (g) is not applicable], it shall submit to the Slot Lab the following:

* * * * *

[(j)] (h) At the conclusion of testing of a prototype or modification by the Slot Lab, but prior to a decision to approve a prototype or modification, the Board may require a trial period of scope and duration as it deems appropriate to assess the operation of the prototype or modification in a live gaming environment. The conduct of the trial period shall be subject to compliance by the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers, and the slot machine licensee with specific terms and conditions as may be required by the Board, which may include development and implementation of product specific accounting and internal controls, periodic data reporting to the Board and compliance with technical standards on trial periods or the prototype or modification adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website. The Board may authorize the receipt of compensation by a licensed manufacturer, licensed manufacturer designee or licensed supplier during the trial period. The Board may order termination of the trial period if it determines that the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers or the slot machine licensee conducting the trial period has not complied with the terms and conditions required by the Board or that the product is not performing as expected.

[(k)] (i) At the conclusion of testing of a prototype or modification, the Slot Lab will report to the Board the results of its testing. Upon receipt of the Slot Lab's report, the Board will:

* * * * *

(2) Require additional testing or a trial period under subsection [(j)] (h).

[(l)] (j) Board approval of a prototype or modification does not constitute a guarantee of the [prototype] prototype's or modification's safety.

[(m)] (k) A slot machine licensee is prohibited from installing in its licensed facility a slot machine or associated equipment, or modification thereto, required to be tested [and approved under subsection (c)] unless the equipment, device or software has been approved by the Board. A slot machine licensee may not modify, alter or tamper with an approved slot machine or associated equipment. A slot machine or associated equipment installed in a licensed facility in contravention of this requirement will be subject to seizure by the Board.

[(n)] (l) Notwithstanding subsection **[(m)] (k)**, the Board may authorize installation of a modification to a slot machine prototype or associated equipment prototype on an emergency basis to prevent cheating or malfunction, upon the written request of a licensed manufacturer. The request must expressly detail the name and employer of any persons to be involved in the installation of the modification and the manner in which it is to be effected. Within 15 days of receipt of any authorization to install an emergency modification, the manufacturer shall submit the modification for full testing and approval in accordance with this subpart.

[(o)] (m) A slot machine licensee shall immediately notify the Board of any known or suspected defect or malfunction in any slot machine or associated equipment installed in its licensed facility. The slot machine licensee shall comply with instructions issued by the Board with regard to the continued operation of the slot machine or associated equipment.

[(p)] (n) Concurrent with the initial receipt of slot machines, an applicant for, or holder of, a slot machine license shall file a slot machine master list as required by § 463a.5 (relating to slot machine master list).

[(q)] (o) The testing of equipment, devices or software under this subpart may require the dismantling of the product and testing that may result in damage to, or destruction of, one or more systems or components. Once submitted for testing, equipment, devices or software will not be returned to the manufacturer.

§ 461a.7. Slot machine minimum design standards.

* * * * *

(d) [In addition to the requirements of subsections (a), (b) and (c), the volatility of a slot machine must verify that the theoretical payout percentage equals or exceeds the minimum payout requirement of 85% within 10 million plays. The criteria used to calculate the volatility must be in accordance with technical standards applicable to volatility under § 461b.1 (relating to slot machine minimum design standards).

(e) The selection from the set of all possible combinations of symbols shall be made applying a pseudo random number generator. At a minimum, a pseudo random number generator must adhere to the following criteria:

* * * * *

[(f)] (e) A slot machine is prohibited from automatically altering any function of the slot machine based on internal computation of the hold percentage.

[(g)] (f) The available winning combinations and applicable rules of play for a slot machine shall be available at all times the slot machine is idle to the patron playing the slot machine. The award schedule of available winning combinations may not include possible aggregate awards achievable from free plays. A slot machine that includes a strategy choice must provide mathematically sufficient information for a patron to use optimal skill. Information regarding a strategy choice need not be made available for any strategy decisions whenever the patron is not required, in addition to the initial wager, to make an additional wager and, when as a result of playing a strategy choice, the patron can not lose any credits earned thus far during that game play.

[(h)] (g) Slot machines approved for use in a licensed facility must be equipped with the following meters that

comply with the technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website:

* * * * *

[(i)] (h) A slot machine that does not meter one or more of the events required to be metered under subsection **[(h)] (g)** may be approved where a slot machine licensee's system of internal controls establishes that the meter is not required to capture all critical transactions occurring on the slot machine.

[(j)] (i) The meters required under subsection **[(h)] (g)** must continuously and automatically increment in units equal to the denomination of the slot machine or, in the case of a slot machine configured for multidenomination play, must display the required information in dollars and cents.

[(k)] (j) A slot machine approved for use in a licensed facility must be equipped with the following noncumulative meters:

* * * * *

[(l)] (k) A slot machine must have a meter which stores the number of games played, in the manner and for a duration specified in this subpart or in technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website, since the following events:

* * * * *

[(m)] (l) A slot machine must be equipped with a device, mechanism or method for retaining the total value of all meters required under subsection **[(h)] (g)** for 72 hours subsequent to a power loss.

[(n)] (m) The required meters on a slot machine must be accessible and legible without access to the interior of the slot machine.

[(o)] (n) A slot machine must be equipped with a tower light capable of effectively communicating the status of the slot machine in accordance with technical standards on tower lights and error conditions under § 461b.2 (relating to slot machine tower lights and error conditions).

[(p)] (o) A slot machine must be equipped with a device, mechanism or method for detecting, displaying and communicating to a slot monitoring system error conditions. The error conditions detected, displayed and communicated by a slot machine, and the method to be utilized to clear the message with regard to the error condition, must be in accordance with technical standards on tower lights and error conditions under § 461b.2.

[(q)] (p) A slot machine must, in accordance with section 1324 of the act (relating to protocol information), comply with the comprehensive protocol specifications necessary to enable the slot machine to communicate with the Department's central control computer as that protocol is amended or supplemented, for the purpose of transmitting auditing program information, real time information retrieval and slot machine activation and disabling.

[(r)] (q) A slot machine must lock up and preclude further play whenever a jackpot occurs that is not able to be paid completely by the slot machine and requires a

hand pay. When the jackpot occurs, the slot machine can offer a predetermined number of double-up wagers before the slot machine locks up.

[(s)] (r) Printers incorporated into a slot machine must be:

* * * * *

[(t)] (s) Seating made available by a slot machine licensee for use during slot play must be fixed and stationary in nature. Slot seating must be installed in a manner that effectively precludes its ready removal by a patron but permits controlled removal, for example for American With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) purposes, by slot operations department personnel.

[(u)] (t) Unless a slot machine licensee's slot monitoring system is configured to automatically record all of the information required by this subsection, the slot machine licensee shall be required to physically house in each slot machine the following entry authorization logs:

* * * * *

[(v)] (u) A slot machine must be equipped with a lock controlling access to the card cage door securing the microprocessor, the key to which must be different from any other key securing access to the slot machine's components including its belly door or main door, bill validator or slot cash storage box. Access to the key securing the microprocessor shall be limited to a supervisor in the slot operations department, and that department shall establish a sign out and sign in procedure with regard to this key.

[(w)] (v) A slot machine must be equipped with a mechanism for detecting and communicating to a slot monitoring system any activity with regard to access to the card cage door securing its microprocessor.

§ 461a.12. Progressive slot machines.

* * * * *

(b) A slot machine that offers a progressive jackpot which may increase in value based upon wager and is adjusted and displayed by a device other than the approved program that controls the operation of the slot machine, referred to herein as a progressive controller, must have the following features:

* * * * *

(2) A slot machine paid progressive payout meter in accordance with § 461a.7 **[(h)] (g)** (relating to slot machine minimum design standards).

(3) A slot attendant paid progressive payout meter in accordance with § 461a.7 **[(h)] (g)**.

* * * * *

[Pa.B. Doc. No. 07-1986. Filed for public inspection October 26, 2007, 9:00 a.m.]

**[58 PA. CODE CHS. 421a AND 423a]
General Provisions; and Applications**

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) proposes to

amend Chapters 421a and 423a (relating to general provisions; and applications) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

These proposed amendments add a new section relating to advertising and new provisions for abandoned applications.

Explanation of Amendments to Chapters 421a and 423a

Currently, the Board has included provisions related to advertising in the statement of conditions that slot machine and manufacturer licensees must execute as part of the licensing process.

This proposed rulemaking will add § 421a.6 (relating to advertising) which: allows the Board to require slot machine, manufacturer and junket licensees to cease using inappropriate advertising; defines what will be considered to be advertising; prohibits the use of false or misleading information; requires the inclusion of a toll-free gambling assistance telephone number in any advertisement which must be approved utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling); and bars slot machine, manufacturer and junket licensees from using individuals or virtual facsimiles thereof to induce patrons to engage in gaming or play a specific slot machine.

This proposed rulemaking will also amend § 423a.4 (relating to deficient and abandoned applications) by adding new provisions governing abandoned applications.

The Board has found that after it sends a notice of a deficiency concerning an application, applicants, particularly gaming permit and nongaming employee registration applicants, often times do not submit the requested materials. This may be because they can't obtain the necessary items or circumstances have changed and they no longer have an interest in pursuing their application. While the Board's regulations allow these applicants to file a petition to withdraw their application, many applicants simply do nothing.

Under the current regulation, the Board can deny these applications. However, if the Board denies these applications, the applicants are subject to the 5-year bar on filing a new application under § 423a.7 (relating to restriction on application after denial or revocation).

To give the Board another option for handling these applications, new provisions have been added to this section which will allow the Board to declare an application abandoned when an applicant fails to follow-up on requests for information. If an application has been deemed to be abandoned, the applicant will be so notified. However, unlike a denial, the applicant will be allowed to file a new application for a license, permit or registration immediately.

Affected Parties

Slot machine, manufacturer and junket licensees will be required to cease using inappropriate advertising upon receipt of written notice from the Board and will have to have the language relating to a toll-free gambling assistance telephone number that will be used in any advertisement approved by the Director of the Office of Compulsive and Problem Gambling. There are 11 currently approved slot machine licensees, 16 licensed manufacturers and no licensed junkets.

Applicants whose applications are deemed abandoned, instead of being denied, will be able to file a new application immediately instead of having to wait 5 years.

Fiscal Impact

Commonwealth

There will be no new costs to the Board or other Commonwealth agencies as a result of this proposed rulemaking. The Director of the Office of Compulsive and Problem Gambling currently reviews the toll-free gambling assistance telephone number message that is used in advertisements.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

The Board anticipates that there will be no significant new costs or savings to slot machine, manufacturer and junket licensees as a result of these amendments because they reflect existing requirements.

Applicants whose applications are deemed abandoned will be able to apply for a license, permit or registration immediately thereby increasing their ability to be employed in the gaming industry.

General Public

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

Paperwork Requirements

The proposed amendments do not change or add new reporting, recordkeeping or paperwork requirements.

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 #125-72.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the 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.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-72. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS.

§ 421a.6. Advertising.

(a) Slot machine, junket and manufacturer licensees will be required to discontinue as expeditiously as possible the use of a particular advertisement or promotion upon receipt of written notice from the Board that the Board has determined that the use of the particular advertisement or promotion in, or with respect to, this Commonwealth is not within the spirit or intent of the act.

(b) For purposes of this section, the term "advertisement" means marketing materials including signs, billboards, print, radio and television advertisements and any notice or communication by a slot machine, junket or manufacturer licensee or its agent to the public of information concerning the gaming-related business of a slot machine licensee through broadcasting, publication, mailing or other means of dissemination.

(c) Advertisements used by slot machine, junket or manufacturer licensees may not contain false or misleading information. An advertisement may not:

(1) Use a font, type size, location, lighting, illustration, graphic depiction or color obscuring any material fact.

(2) Fail to disclose any material conditions or limiting factors associated with the advertisement.

(d) Advertisements must contain a statement that is similar to the following: "If you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the statement and type size to be used for the statement shall be submitted to the Director of the Office of Compulsive and Problem Gambling for approval utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan).

(e) A slot machine, junket or manufacturer licensee or an agent thereof may not employ or contract with an individual, or use a virtual facsimile thereof, at a licensed facility to induce a person to engage in gaming or play a specific slot machine.

CHAPTER 423a. APPLICATIONS

§ 423a.4. Deficient and abandoned applications.

* * * * *

(b) **[Refusal] Failure** to provide the information necessary to cure the deficiencies required under subsection (a) may result in the immediate denial of the application **or in the application being declared abandoned.**

(c) When an application is denied or declared abandoned under subsection (b), the applicant will be given written notice of this action by the Board. An applicant whose application is denied will be subject to the restrictions on filing a new application in § 423a.7 (relating to restriction on application after denial or revocation). An applicant whose application has been declared abandoned may file a new application at any time.

[Pa.B. Doc. No. 07-1987. Filed for public inspection October 26, 2007, 9:00 a.m.]
