

RULES AND REGULATIONS

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 501, 501a, 503 AND 503a]

Compulsive and Problem Gambling; Self-Exclusion

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. §§ 1509 and 1516 (relating to compulsive and problem gambling program; and list of persons self excluded from gaming activities), rescinds Chapters 501 and 503 and adopts Chapters 501a and 503a (relating to compulsive and problem gambling requirements; and self-exclusion) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under the authority granted to the Board under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted Chapter 501 at 35 Pa.B. 4543 (August 6, 2005) and Chapter 503 at 36 Pa.B. 2902 (June 10, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 501a and 503a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 501a and 503a

Chapter 501a requires slot machine licensees to file a comprehensive compulsive and problem gaming plan with the Board for Board approval. The regulations list: the specific items that must be included in a plan; the elements that must be included in employee training programs; slot machine licensee reporting requirements; signage requirements; and provisions governing check cashing.

Chapter 503a addresses self-exclusion requirements. It specifies: definitions used in this chapter; how a person may request self-exclusion; maintenance and distribution of the self-exclusion list by the Board; duties and responsibilities of the slot machine licensees and their employees; how a person may request removal from the self-exclusion list; and limited exceptions for individuals on the self-exclusion list whose jobs require them to be on the gaming floor.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 416 (January 27, 2007).

The Board did not receive any public comments during the public comment period. After the close of the public comment period, the Board received comments from the Pennsylvania Chapter of the National Association of Social Workers (NASW-PA) and the Independent Regulatory Review Commission (IRRC) forwarded a copy of a comment it received from Samuel Knapp. On March 22, 2007, Representative Paul Clymer, Republican Chairperson of the House Gaming Oversight Committee, submitted comments on the proposed rulemaking and on March 28, 2007, comments on the proposed rulemaking were received from IRRC.

The Board adopted a final-form version of this rulemaking on June 5, 2007. Subsequent to that adoption,

additional comments were received from IRRC and Representatives Harold James and Paul Clymer, the Chairperson of the House Gaming Oversight Committee. On July 16, 2007, the Board withdrew the June 5 final-form regulations to consider these additional comments.

The comments noted previously were reviewed by the Board and are discussed in detail as follows.

In § 501a.1 (relating to definitions), Representative Clymer, IRRC, NASW-PA and Samuel Knapp all commented that the definition of "qualified treatment professional" was too broad and that more specific requirements should be added.

The Board has deleted the definition of "qualified treatment professional" because the term is no longer used in this chapter. The Board has eliminated the referral provisions that were in § 501a.2(d)(3)(v) (relating to compulsive and program gambling plan) where this term was used.

IRRC also noted a number of sections where similar phrases are used and suggested that the phrase "qualified treatment professional" be used in those sections.

The Board has deleted this term from § 501a.2(d)(3)(v). In the other sections cited by IRRC, the Board intended to use the different terms.

IRRC also suggested that the Board add definitions for the terms "compulsive gambling" and "problem gambling."

The Board has elected not to add definitions of these terms. These terms are used as part of the phrase "compulsive and problem gambling" which is used in the act and is a well understood term in the gaming industry. Adding separate definitions for these terms may create more confusion as to the meaning of "compulsive and problem gambling."

In § 501a.2, IRRC recommended that more detail be included in subsection (a) relating to approval and amendment of compulsive and problem gaming plans.

The review of a compulsive and problem gaming plan has two phases. The initial review phase occurs during the application process during which the Board will review the plan as one component of an application for a slot machine license.

The second phase occurs when a slot machine applicant's application is approved. At that point, the Director of Office of Compulsive and Program Gambling (OCPG) will conduct an in-depth review of the plan and will notify the slot machine applicant of any deficiencies in the plan and work with the applicant to resolve the deficiencies.

Subsection (a) has been split into two subsections to better reflect the actual review process. No specific time frames have been included in the new subsection (b) because the process is an iterative, on-going dialogue between the slot machine applicant and the Director of OCPG and the applicant may not commence operations until its plan has been approved.

IRRC had a number of questions and concerns relating to subsection (d). First, it questioned what would be required to be included in a plan under subsection (d)(3)(iii) to address the "responsibility of patrons with respect to responsible gaming."

The Board has placed a number of duties on slot machine licensees to protect the welfare of their patrons. However, patrons also bear some responsibility for their

own behavior. This provision requires the slot machine licensees to have a statement of policy as to what they view as the responsibilities of patrons.

In subsection (d)(3)(vi), IRRC questioned how the public is protected if a slot machine licensee does not have a duty to refer suspected or known compulsive and problem gamblers to qualified treatment professionals.

The Board has revised the language in subsection (d)(3)(v) and (vi) to limit the responsibility of slot machine licensees to just providing information. In the proposed regulations, the Board had placed a responsibility on slot machine licensees to make referrals and had provided limited liability protection from civil suits that might occur as a result of making or not making referrals. Because those liability provisions have been deleted in the final-form regulation, the Board believes it is unreasonable to require slot machine licensees to be required to make referrals. Instead, slot machine licensees will only be required to provide general information regarding treatment options.

In subsection (d)(12), IRRC asked for clarification of the intent of "outreach programs."

Outreach programs are programs offered to employees and groups other than the slot machine licensee's employees. Examples would include providing speakers to community groups or providing financial support to agencies that deal with compulsive and problem gamblers. This section has been rewritten to more clearly reflect this meaning.

In subsection (d)(13), IRRC asked what process and criteria would be used to approve signs containing gambling treatment referral information.

The phrase "Board-approved" has been deleted from this section and additional language relating to the approval process has been added to § 501a.5 (relating to signage requirements) which is cross-referenced in this paragraph.

In subsection (e), IRRC asked what "other policies and procedures" must be included in the plan and suggested some clarifying language.

The intent of this requirement was to have slot machine licensees submit any additional policies or procedures they intend to use beyond what is included in the minimum requirements in subsection (d). Therefore, the language in this subsection has been split off into a new subsection (e) which also incorporates the clarifying language suggested by IRRC.

In subsection (g), IRRC suggested that the time frames for the review of amendments to the plan be added to the regulation.

In response to IRRC's suggestion, the Board has revised subsection (g) and added new subsections (h) and (i) which lay out the time frames and process for reviewing amendments in greater detail.

In § 501a.3 (relating to employee training program), IRRC had a number of concerns. In subsection (a)(10), IRRC asked what the basis was for the 90-day time period and why this subsection was not cross-referenced in § 503a.4 (relating to duties of slot machine licensees).

The 90-day period was initially selected to allow ample time for a slot machine licensee to modify marketing programs which the slot machine licensee may have contracted out to a third party. However, based on the Board's experience to date, such a long lead time is not necessary. Therefore, the time period for compliance has

been reduced to 5 days and has been tied to the mailing of any advertisement since the slot machine licensee can not control when it is actually received. The Board has also added a cross-reference to this subsection in § 503a.4 as suggested by IRRC.

In subsection (b), IRRC recommended that the timetables for completion of training be included in the regulation.

The Board agrees and has replaced the "timetables" requirement with the requirement that employees receive this training as part of their employee orientation.

In subsection (d), IRRC suggested that a specific time period be established for reinforcement training and that the manner of recording this training be added to the section.

The Board concurs with these suggestions and has added language which requires reinforcement training every year starting with the year following an employee's hiring. The date of completion of this training must be recorded in the employee's personnel file so that compliance can be monitored by the Board.

In subsection (g), IRRC asked how Internet-based training would be reviewed and why in-house programs were not also included in the review process.

Training programs, whether in-house or Internet-based, are reviewed under § 501a.2(d)(5) as part of the plan approval process. The intent of this subsection was to simply allow the use of Internet-based programs as part of a slot machine licensee's training program. Therefore, the last sentence in subsection (g) has been deleted.

In § 501a.5 (relating to liability), IRRC asked what the Board's statutory authority is for this provision and how it is consistent with the legislative intent of 4 Pa.C.S. § 1102(10) (relating to legislative intent). Representatives James and Clymer expressed similar concerns.

The Board proposed these provisions under its general rulemaking authority under 4 Pa.C.S. §§ 1202(b)(30) and 1516. These provisions were intended to encourage slot machine licensees to be more proactive while discouraging frivolous lawsuits against both the Board and slot machine licensees. However, the Board recognizes that the act does not contain language specifically authorizing all of these provisions. For this reason, the Board has deleted § 501a.5 entirely.

In proposed § 501a.6 (relating to signage requirements), IRRC suggested that more detail be added to the regulation regarding the approval of signs that must be posted in a licensed facility and the language that must be included in marketing materials.

The actual text may vary by slot machine licensee; some licensees have proprietary phrases that they have previously developed for use in other jurisdictions. To allow some flexibility, the Board will not require all slot machine licensees to use the same language. To review a slot machine licensee's materials, the approval process for signs and marketing materials will be the same as the process for approval of amendments to the plan. Accordingly a cross-reference to that process has been added to both subsections (a) and (b).

Representative Clymer suggested the Board reduce the 50 foot distance applicable to the location of signs and require a minimum number of signs.

The Board has not adopted either of these suggestions. The suggestion to reduce the 50 foot requirement was not adopted because the 50 foot distance is established by 4

Pa.C.S. § 1509(c). A minimum number of signs was not added as a requirement because licensed facilities will vary significantly in size and design. Therefore, what may be an appropriate number of signs in some facilities may be insufficient for other facilities. Instead, the plan for posting signs will be reviewed under § 501a.2(d)(13) for each individual facility.

In proposed § 501a.7 (relating to check cashing), IRRC questioned how a slot machine licensee would be able to determine if a check was being cashed "to enable the individual to take part in gaming" and suggested that this phrase be deleted or replaced with the phrase "for a patron."

The Board has adopted IRRC's suggested revised language.

In § 503a.2(a) (relating to request for self-exclusion), Representative Clymer and IRRC suggested that applications for self-exclusion be taken at all Board offices and licensed facilities.

Currently, the Board has been accepting walk-in applications at Board offices and licensed facilities whenever a trained Board employee is present. To facilitate this process, the regulation has been amended to allow applicants to schedule an appointment at any Board office or licensed facility. Walk-in applications will continue to be accepted if a trained employee is present, but if a trained employee is not present, the applicant will be able to request that an appointment be set up.

In §§ 503a.2(a) and 503a.4(i) and § 503a.5(b) (relating to removal from self-exclusion list), IRRC suggested that the phrases "form and manner prescribed by the Board" and "form prescribed by the Board" be deleted or additional details be added.

The phrases noted previously have been deleted and more detailed information has been added. For example, in § 503a.4(i) notice of the discovery of a self-excluded person on the gaming floor must be provided to the Director of OCPG within 24 hours.

In subsection (c), IRRC asked how an individual on the self-exclusion list would report changes in their information to the Board.

To provide guidance, this section has been amended by adding the form name, where the form can be obtained and the address to which changes are to be sent.

In subsection (e)(3), IRRC asked why the phrase "problem gambler" is used instead of "compulsive and problem gambler."

The phrase "problem gambler" is used in this provision because that is the term used in 4 Pa.C.S. § 1516(a). Also, the intent of this provision is for the individual to acknowledge that they are a problem gambler irrespective of whether or not they meet the clinical definition of a compulsive gambler.

In subsection (e)(6), IRRC questioned the Board's statutory authority for subparagraphs (iii) and (iv) and how these subparagraphs protect citizens from the negative effects of gambling and encourage them to participate in the self-exclusion program. Representatives James and Clymer expressed similar concerns.

The Board proposed these subparagraphs under the Board's general rulemaking authority under 4 Pa.C.S. § 1202(b)(30). These provisions were intended to encourage slot machine licensees to be more proactive in disseminating information to prevent self-excluded individuals from gambling and to protect the Board and slot

machine licensees from frivolous lawsuits. However, upon further consideration, the Board agrees that the proposed language is too broad. Accordingly, subparagraphs (iii) and (iv) have been deleted.

In § 503a.3 (relating to self-exclusion list), IRRC asked how soon the Board would notify slot machine licensees of additions to or removals from the self-exclusion list and recommended that the notice be made within 24 hours.

The Board has added a provision stating that the notice will be provided to slot machine licensees within 5 days of the verification of the information in the request. While in most cases the Board expects to make the notification very quickly, the 5-day period gives the Board some flexibility.

In subsection (g) (and in § 503a.4(i)), IRRC asked what is meant by "gaming activity" and suggested that this term be defined.

The term "gaming activity" is a well understood term within the gaming industry involving any activities involving or related to the play of slot machines. However, since this chapter is targeted at individuals, as well as slot machine licensees, the Board agrees with IRRC and has added a definition of this term.

In § 503a.4(a)(1)(ii), IRRC asked who the "designated representatives of the Board" would be and how and when they would be notified.

Revisions were made in this subsection to require immediate notice to the BIE agents at the licensed facility. The method of this notice has not been prescribed because the quickest way to provide notice will depend on the circumstances. The Board wants slot machine licensees to use the quickest means available.

In subsection (b), IRRC asked what the process is and the time frames are for approval of the training procedures and materials.

To address these concerns, the Board extensively revised subsections (b) and (c) and added new subsections (d) and (e) to lay out the process for review and approval of procedures and materials and any amendments thereto.

Finally, IRRC asked what the approval process would be or minimum requirements would be for the signs required by subsection (f).

To clarify this process, language was added to subsection (f) to set forth that the process for review of signs would be the same as the process for reviewing procedures and training materials under subsection (b).

In § 503a.6 (relating to exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list), Representative Clymer suggested that the words "all of" be inserted before the words "the following apply." The Board agrees that this language will add clarity to this section and has amended this section as suggested.

Additional Revisions

In addition to the revisions discussed previously, the Board has made several additional revisions.

In § 501a.1, a definition of "OCPG" (Office of Compulsive and Problem Gambling) was added.

In §§ 501a.2(d)(3)(ii) and 501a.3(c), (d) and (e), the phrase "Key employees and gaming employees" has been replaced with "Employees" to pull in nongaming and

noncredentialed employees who will be required to receive the training required under this section.

In § 501a.3(e), the last sentence regarding immunity from liability has been deleted.

In § 503a.1, the phrase “or slot system operator” has been added to the definitions of the terms “fully executed gaming transaction” and “winnings” to reflect the fact that the slot system operator, rather than the slot machine licensee, may be responsible for the payout of a wide area progressive jackpot.

In § 503a.2, subsection (a) was deleted because it repeats portions of subsection (b).

In § 503a.3(f), the phrase “operated by affiliated licensed gaming entities” in the last sentence was deleted to clarify that the “limited purpose” language applies to disclosures to affiliated and nonaffiliated entities.

In § 503a.3(h), the phrase “and deposited in the Compulsive and Problem Gambling Treatment Fund” has been replaced with “to support compulsive and problem gambling programs of the Board.” This change will allow the Board to retain these funds to support the Board’s in-house compulsive and problem gambling programs.

In § 503a.4(a)(2), “Immediately” was added to clarify when notice must be provided to the Pennsylvania State Police when a self-excluded individual is found on the gaming floor.

In § 503a.5, details were added relating to where and how requests for removal from the self-exclusion list will be processed.

Affected Parties

This final-form rulemaking imposes requirements on slot machine licensees and persons who are seeking to be added to or removed from the self-exclusion list.

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to the review of slot machine licensees’ compulsive and problem gaming plans and administration of the self-exclusion program.

Political Subdivisions

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

Private Sector

Slot machine licensees will experience costs related to developing compulsive and problem gaming programs, training of employees, posting signs and compliance with the requirements of the self-exclusion program.

General Public

Individuals seeking to be added to or removed from the self-exclusion list will experience some minor costs associated with the application process.

Paperwork requirements

This final-form rulemaking requires slot machine licensees to file a comprehensive compulsive and problem gaming plan with the Board for its approval and to submit amendments to the plan to the Board. A slot machine licensee is also required to submit its procedures for implementing the self-exclusion program.

Individuals seeking to be added to or removed from the self-exclusion list will have to complete the appropriate forms.

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 sections 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.5(a) and (f)), on January 17, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 416 (January 27, 2007), and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). On February 12, 2007, the Board submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 received from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 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 the act.

Order

The Board, acting under the act orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 501.1—501.8 and 503.1—503.6 and by adding §§ 501a.1—501a.6 and 503a.1—503a.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*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-54 remains valid for the final adoption of the subject regulations.

Annex A
TITLE 58. RECREATION
PART VII. GAMING CONTROL BOARD
Subpart I. COMPULSIVE AND PROBLEM
GAMBLING
CHAPTER 501. (Reserved)

§§ 501.1—501.8. (Reserved).

CHAPTER 501a. COMPULSIVE AND PROBLEM
GAMBLING REQUIREMENTS

Sec.

- 501a.1. Definitions.
- 501a.2. Compulsive and problem gambling plan.
- 501a.3. Employee training program.
- 501a.4. Reports.
- 501a.5. Signage requirements.
- 501a.6. Check cashing.

§ 501a.1. Definitions.

The following term, when used in this chapter, has the following meaning, unless the context clearly indicates otherwise:

OCPG—The Office of Compulsive and Problem Gambling.

§ 501a.2. Compulsive and problem gambling plan.

(a) An applicant for a slot machine license shall submit a compulsive and problem gambling plan to the Board for review at the time of submission of the application. The plan must, at a minimum, contain the elements listed in subsection (d).

(b) The compulsive and problem gambling plan of an applicant for a slot machine license who has been approved to receive a slot machine license must be approved by the Director of OCPG. An applicant for a slot machine license who has been approved to receive a slot machine license will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. A slot machine licensee may not commence operations until the Director of OCPG approves the plan.

(c) Compliance with the plan approved under this chapter will be a condition of license renewal.

(d) A compulsive and problem gambling plan must include the following:

(1) The goals of the plan and procedures and timetables to implement the plan.

(2) The identification of the individual who will be responsible for the implementation and maintenance of the plan.

(3) Policies and procedures including the following:

(i) The commitment of the licensee to train appropriate employees.

(ii) The duties and responsibilities of the employees designated to implement or participate in the plan.

(iii) The responsibility of patrons with respect to responsible gambling.

(iv) Procedures to identify patrons and employees with suspected or known compulsive and problem gambling behavior.

(v) Procedures for providing information to individuals regarding community, public and private treatment services, gamblers anonymous programs and similar treat-

ment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members.

(vi) Procedures for responding to patron requests for information regarding community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members. The provisions of this subsection do not create a duty for a slot machine licensee or its employees to refer compulsive and problem gamblers to qualified treatment professionals.

(4) The provision of printed material to educate patrons about compulsive and problem gambling and to inform them about treatment services available to compulsive and problem gamblers and their families. The slot machine licensee shall provide examples of the materials to be used as part of its plan, including signs required under § 501a.5 (relating to signage requirements), brochures and other printed material and a description of how the material will be disseminated.

(5) An employee training program as required under § 501a.3 (relating to employee training program), including training materials to be utilized and a plan for periodic reinforcement training.

(6) A certification process established by the slot machine licensee to verify that each employee has completed the training required by the plan.

(7) An estimation of the cost of development, implementation and administration of the plan.

(8) A list of community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members.

(9) Procedures to prevent underage gambling as required under § 513a.3(b) (relating to responsibilities of licensees, permittees, registrants and certification holders).

(10) Procedures to prevent excluded persons from gambling.

(11) Procedures to prevent intoxicated patrons from gambling.

(12) Details of outreach programs which the slot machine licensee intends to offer to employees and individuals who are not employees of the slot machine licensee.

(13) The plan for posting signs required under § 501a.5 within the licensed facility, containing gambling treatment information.

(e) A slot machine licensee shall also submit other policies and procedures the slot machine licensee intends to use beyond what is required under subsection (d) to prevent and raise awareness of compulsive and problem gambling.

(f) The Board may provide the plan submitted by the slot machine licensee to the Department of Health for evaluation. The Department of Health may provide comments and recommendations to the Board relating to the plan.

(g) A slot machine licensee shall submit amendments to the compulsive and problem gambling plan to the Director of OCPG for review and approval at least 30 days prior to the intended implementation date of the amendments. The slot machine licensee may implement the amendments on the 30th calendar day following the

filing the amendments unless the slot machine licensee receives a notice under subsection (h) objecting to the amendments.

(h) If during the 30-day review period the Director of OCPG determines that the amendments may not promote the prevention of compulsive and problem gambling or assist in the proper administration of responsible gaming programs, the Director of OCPG may, by written notice to the slot machine licensee, object to the amendments. The objection will:

(1) Specify the nature of the objection and, when possible, an acceptable alternative.

(2) Direct that the amendments not be implemented until approved by the Director of OCPG.

(i) When amendments have been objected to under subsection (h), the slot machine licensee may submit revised amendments within 30 days of receipt of the written notice from the Director of OCPG. The slot machine licensee may implement the revised amendments on the 30th calendar day following the filing of the revision unless it receives written notice under subsection (h) objecting to the amendments.

§ 501a.3. Employee training program.

(a) The employee training program required under § 501a.2(d)(5) (relating to compulsive and problem gambling plan) must include instruction in the following:

(1) Characteristics and symptoms of compulsive behavior, including compulsive and problem gambling.

(2) The relationship of compulsive and problem gambling to other addictive behavior.

(3) The social and economic consequences of compulsive and problem gambling, including debt, treatment costs, suicide, criminal behavior, unemployment and family counseling.

(4) Techniques to be used when compulsive and problem gambling is suspected or identified.

(5) Techniques to be used to discuss compulsive and problem gambling with patrons and advise patrons regarding community, public and private treatment services.

(6) Procedures designed to prevent serving alcohol to visibly intoxicated gaming patrons.

(7) Procedures designed to prevent persons from gaming after having been determined to be visibly intoxicated.

(8) Procedures for the dissemination of written materials to patrons explaining the self-exclusion program.

(9) Procedures for removing an excluded person, an underage individual or a person on the self-exclusion list from a licensed facility including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel.

(10) Procedures for preventing an excluded person or a person on the self-exclusion list from being mailed any advertisement, promotion or other target mailing no later than 5 business days after receiving notice from the Board that the person has been placed on the excluded person or self-exclusion list.

(11) Procedures for preventing an individual under 21 years of age from receiving any advertisement, promotion or other target mailing.

(12) Procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from having access to or from receiving complimentary services, or other like benefits.

(13) Procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from cashing checks.

(b) Training for employees shall be conducted by a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs as part of the employee's orientation.

(c) Employees who have received training shall be certified by the slot machine licensee under § 501a.2(d)(6) upon completion of the training.

(d) Employees are required to receive periodic reinforcement training at least once every calendar year starting with the year following the year in which the employee was hired. The date of the reinforcement training shall be recorded in the employee's personnel file.

(e) Employees shall report suspected or identified compulsive or problem gamblers to a designated key employee or other supervisory employee.

(f) The identity of an individual suspected of known compulsive or problem gambling shall be confidential except as provided under § 503a.3(f) (relating to self-exclusion list) and section 1516(d) of the act (relating to list of persons self-excluded from gaming activities).

(g) Slot machine licensees may collaborate with a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs to develop an in-house or Internet-based employee training program to provide the training and reinforcement training required by this chapter.

§ 501a.4. Reports.

A slot machine licensee shall submit an annual summary of its compulsive and problem gambling program with its application for renewal of the slot machine license.

§ 501a.5. Signage requirements.

(a) Under section 1509(c) of the act (relating to compulsive and problem gambling program), each slot machine licensee shall post signs that include 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 sign shall be submitted for approval to the Director of OCPG utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan). The signs shall be prominently posted at the following locations:

(1) Within 50 feet of each entrance and exit of the facility.

(2) Within 50 feet of each ATM, cash dispensing or change machine in each facility.

(b) Each slot machine and junket licensee shall print a statement related to obtaining compulsive or problem gambling on all marketing or advertising materials that are offered to the general public by a slot machine or junket licensee, including signs, billboards, print, radio or television advertisements. The text and font size of the statement shall be submitted for approval to the Director of OCPG utilizing the process contained in § 501a.2(g).

§ 501a.6. Check cashing.

(a) Except as permitted in subsection (b), holders of a license, certification or registration from the Board or

persons acting on behalf of a holder of a license, certification or registration from the Board, may not cash a check payable to an individual, including Social Security, unemployment insurance, disability payment, public assistance payment or payroll check for a patron.

(b) A holder of a license, certification or registration from the Board or any employee authorized by a holder of a license, certification or registration from the Board may accept a personal check, wire transfer or cash equivalent, such as a recognized traveler's check, cashier's check or money order.

CHAPTER 503. (Reserved)

§§ 503.1—503.6. (Reserved).

CHAPTER 503a. SELF-EXCLUSION

Sec.

503a.1.	Definitions
503a.2.	Request for self-exclusion
503a.3.	Self-exclusion list
503a.4.	Duties of slot machine licensees
503a.5.	Removal from self-exclusion list
503a.6.	Exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list.

§ 503a.1. Definitions.

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

Fully executed gaming transaction—An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee or slot system operator.

Gaming activity—An activity involving or related to the play of slot machines including player club memberships or promotional activities.

OCPG—Office of Compulsive and Program Gambling.

Self-excluded person—A person whose name and identifying information is included, at the person's own request, on the self-exclusion list maintained by the Board.

Self-exclusion list—A list of names and identifying information of persons who, under this chapter, have voluntarily agreed to be excluded from the gaming floor and all gaming activities at a licensed facility and to be prohibited from collecting any winnings, recovering any losses or accepting complimentary gifts or services or any other thing of value at a licensed facility.

Winnings—Any money or thing of value received from, or owed by a slot machine licensee or slot system operator as a result of a fully executed gaming transaction.

§ 503a.2. Request for self-exclusion.

(a) A person requesting placement on the self-exclusion list shall submit, in person, a completed Request for Voluntary Self-exclusion from Gaming Activities Form to the Board. The submission may be made by scheduling an appointment at the Board's Harrisburg office, one of the Board's other offices or at a licensed facility. To make an appointment, a person may contact the OCPG at (717) 346-8300.

(b) A request for self-exclusion must include the following identifying information:

- (1) Name, including any aliases or nicknames.
- (2) Date of birth.
- (3) Address of current residence.

(4) Telephone number.

(5) Social Security number, when voluntarily provided in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. § 552a).

(6) Physical description of the person, including height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(c) The information provided in subsection (c) shall be updated by the self-excluded person within 30 days of a change. Updated information shall be submitted on a Change of Information Form to the following address. A copy of the form can be obtained by calling the OCPG at (717) 346-8300 or by writing to:

PENNSYLVANIA GAMING CONTROL BOARD

OFFICE OF COMPULSIVE AND PROBLEM

GAMBLING

P. O. BOX 69060

HARRISBURG, PA 17106-9060

(d) The length of self-exclusion requested by a person must be one of the following:

- (1) One year (12 months).
- (2) Five years.
- (3) Lifetime.

(e) A request for self-exclusion must include a signed release which:

(1) Acknowledges that the request for self-exclusion has been made voluntarily.

(2) Certifies that the information provided in the request for self-exclusion is true and accurate.

(3) Acknowledges that the individual requesting self-exclusion is a problem gambler.

(4) Acknowledges that a person requesting a lifetime exclusion is prohibited from requesting removal from the self-exclusion list and that a person requesting a 1-year or 5-year exclusion will remain on the self-exclusion list until a request for removal under § 503a.5 (relating to removal from self-exclusion list) is approved.

(5) Acknowledges that if the individual is discovered on the gaming floor or engaging in gaming activities at any licensed facility, that the individual will be subject to removal and will be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass).

(6) Releases, indemnifies, holds harmless and forever discharges the Commonwealth, the Board, and all slot machine licensees from any claims, damages, losses, expenses or liability arising out of, by reason of or relating to the self-excluded person or to any other party for any harm, monetary or otherwise, which may arise as a result of one or more of the following:

(i) The failure of a slot machine licensee to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

(ii) Otherwise permitting or not permitting a self-excluded person to engage in gaming activity in a licensed facility while on the list of self-excluded persons.

(f) Self-exclusions for 1 or 5 years remain in effect until the self-excluded person requests removal from the Board's self-exclusion list under § 503a.5.

(g) A person submitting a self-exclusion request shall be required to present a government-issued photo identifi-

cation containing the person's signature and photograph when the person submits the request.

(h) A person requesting self-exclusion under this chapter shall be required to have a photograph taken by the Board, or agent thereof, upon the Board's acceptance of the request to be on the list.

§ 503a.3. Self-exclusion list.

(a) The Board will maintain the official self-exclusion list and notify each slot machine licensee of additions to or deletions from the list within 5 business days of the verification of the information received under § 503a.2 (relating to request for self-exclusion) by first class mail or by transmitting the self-exclusion list electronically directly to each slot machine licensee.

(b) The notice provided to slot machine licensees by the Board will include the following information concerning a person who has been added to the self-exclusion list:

- (1) Name, including any aliases or nicknames.
- (2) Date of birth.
- (3) Address of current residence.
- (4) Telephone number.

(5) Social Security number, when voluntarily provided by the person requesting self-exclusion under section 7 of the Privacy Act of 1974 (5 U.S.C. § 552a).

(6) Physical description of the person, including height, weight, gender, hair color, eye color and other physical characteristic, that may assist in the identification of the person.

(7) A copy of the photograph taken by the Board under § 503a.2(i).

(c) The notice provided to slot machine licensees by the Board concerning a person whose name has been removed from the self-exclusion list will include the name and date of birth of the person.

(d) A slot machine licensee shall maintain a copy of the self-exclusion list and establish procedures to ensure that the copy of the self-exclusion list is updated and that all appropriate employees and agents of the slot machine licensee are notified of any addition to or deletion from the list within 5 business days after the day notice is mailed to each slot machine licensee or transmitted electronically under subsection (a).

(e) Information furnished to or obtained by the Board under this chapter will be deemed confidential and will not be disclosed except in accordance with this chapter.

(f) Slot machine licensees, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the slot machine licensee whose duties and functions require access to the information. Notwithstanding the foregoing, a slot machine licensee may disclose the identity of a self-excluded person to appropriate employees of other slot machine licensees in this Commonwealth or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs.

(g) A self-excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's self-exclusion list.

(h) Winnings incurred by a self-excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(i) For the purposes of this section, winnings issued to, found on or about, or redeemed by a self-excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 503a.4. Duties of slot machine licensees.

(a) A slot machine licensee shall train its employees and establish procedures that are designed to:

(1) Identify a self-excluded person when present in a licensed facility and, upon identification, immediately notify the following persons:

(i) Employees of the slot machine licensee whose duties include the identification and removal of self-excluded persons.

(ii) BIE agents at the licensed facility.

(2) Immediately notify the Pennsylvania State Police when a self-excluded person is discovered on the gaming floor or engaging in gaming activities.

(3) Refuse wagers from and deny gaming privileges to a self-excluded person.

(4) Deny check cashing privileges, player club membership, complimentary goods and services, junket participation and other similar privileges and benefits to a self-excluded person.

(5) Ensure that self-excluded persons do not receive, either from the slot machine licensee or any agent thereof, junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility as required under § 501a.3(a)(10) (relating to employee training program).

(6) Comply with § 503a.3(d) (relating to self-exclusion list).

(7) Disseminate written materials to patrons explaining the self-exclusion program.

(b) A slot machine licensee shall submit a copy of its procedures and training materials established under subsection (a) to the Director of OCPG for review and approval at least 30 days prior to initiation of gaming activities at the licensed facility. The slot machine licensee will be notified in writing of any deficiencies in the procedures and training materials and may submit revisions to the procedures and training materials to the Director of OCPG. A slot machine licensee may not commence operations until the Director of OCPG approves the procedures and training.

(c) A slot machine licensee shall submit amendments to the procedures and training materials required under subsection (b) to the Director of OCPG for review and approval at least 30 days prior to the intended implementation date of the amendments. The slot machine licensee may implement the amendments on the 30th calendar day following the filing of the amendments unless the slot machine licensee receives a notice under subsection (d) objecting to the amendments.

(d) If during the 30-day review period the Director of OCPG determines that the amendments to the procedures and training materials may not promote the prevention of gaming by self-excluded individuals or assist in the proper administration of the self-exclusion program, the

Director of OCPG may, by written notice to the slot machine licensee, object to the amendments. The objection will:

(1) Specify the nature of the objection and, when possible, an acceptable alternative.

(2) Direct that the amendments not be implemented until approved by the Director of OCPG.

(e) When the amendments to the procedures and training materials have been objected to under subsection (d), the slot machine licensee may submit revised amendments within 30 days of receipt of the written notice from the Director of OCPG. The slot machine licensee may implement the amendments on the 30th calendar day following the filing of the revisions unless it receives written notice under subsection (d) objecting to the amendments.

(f) A slot machine licensee shall post signs at all entrances to a licensed facility indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing under 18 Pa.C.S. § 3503 (relating to criminal trespass) if the person is on the gaming floor or engaging in gaming activities. The text and font size of the signs shall be submitted for approval to the Director of OCPG under the procedures specified in subsection (b).

(g) The list of self-excluded persons is confidential, and any distribution of the list to an unauthorized source constitutes a violation of the act.

(h) Under section 1516 of the act (relating to list of persons self excluded from gaming activities), slot machine licensees and employees thereof may not be liable for damages in any civil action, which is based on the following:

(1) Failure to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

(2) Permitting or not permitting a self-excluded person to gamble.

(3) Good faith disclosure of the identity of a self-excluded person to someone, other than those authorized by this chapter, for the purpose of complying with this chapter.

(i) A slot machine licensee shall report the discovery of a self-excluded person on the gaming floor or engaging in gaming activities to the Director of OCPG within 24 hours.

§ 503a.5. Removal from self-exclusion list.

(a) A self-excluded person may, upon the expiration of the period of self-exclusion, request removal of the person's name from the self-exclusion list by submitting a completed request for removal as required by subsections (b) and (c). The submission may be made by scheduling an appointment at the Board's Harrisburg office or one of the Board's other offices. To make an appointment, a person may contact the OCPG at (717) 346-8300.

(b) A request for removal from the self-exclusion list must include:

(i) The identifying information specified in § 503a.2(b)(1)—(6) (relating to request for self-exclusion).

(ii) The signature of the person requesting removal from the self-exclusion list indicating acknowledgment of the following statement:

"I certify that the information that I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previ-

ous request for self-exclusion, and I authorize the Board to permit all slot machine licensees of the Commonwealth of Pennsylvania to reinstate my gaming privileges at licensed facilities."

(c) A person submitting a request for removal from the self-exclusion list shall be required to present a valid government-issued photo identification containing the person's signature when the request is submitted. No sooner than 5 business days after the request is submitted, the person submitting the request shall:

(1) Return to the Board office where the request was filed.

(2) Present a valid government-issued photo identification containing the person's signature.

(3) Sign the request a second time.

(d) Within 5 business days after the request is signed for a second time, the Board will delete the name of the person requesting removal from the self-exclusion list and notify each slot machine licensee of the removal.

§ 503a.6. Exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list.

The prohibition against allowing self-excluded persons to be on the gaming floor does not apply to an individual who is on the self-exclusion list if all of the following apply:

(1) The individual is carrying out the duties of employment or incidental activities related to employment.

(2) The slot machine licensee's security department and the Board's office located at the licensed facility have received prior notice.

(3) Access to the gaming floor is limited to the time necessary to complete the individual's assigned duties.

(4) The individual does not otherwise engage in any gaming activities.

[Pa.B. Doc. No. 07-1980. Filed for public inspection October 26, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

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

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

The Pennsylvania Gaming Control Board (Board), under 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. §§ 1202(b)(9), (13)—(20) and (23), 1202.1(b) and (e), 1205, 1311.1, 1311.2, 1317, 1317.1, 1319, 1321(a)(1) and (2), 1325, 1326, 1331 and 1406, rescinds Chapters 421, 423, 425, 427, 431, 436, 438, 439 and 440 and adds Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a 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 421, 423, 427 and 431 at 35 Pa.B. 4045 (July 16, 2005), Chapter 425 at 37 Pa.B. 21 (January 5, 2007), Chapter 436 at 36 Pa.B. 3409 (July 1, 2006), Chapter 438 at 36 Pa.B. 3951 (July 22, 2006), Chapter 439 at 35 Pa.B. 6619 (December 3, 2005) and Chapter 440 at 36 Pa.B. 679 (February 4, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a.

Chapter 421a (relating to general provisions) contains general requirements that apply to all applicants. It also contains criteria the Board may use to deny an initial or renewal application or suspend or revoke a license, permit, certification or registration; provides that the Board may make inquiries or conduct investigations of applicants for or holders of a license, permit, certification or registration; outlines the procedures for conducting presuitability determinations of potential purchasers of an applicant for or holder of a license; and articulates how the Board will implement 4 Pa.C.S. § 1102(5) (relating to legislative intent) to prevent undue concentration of economic opportunities and control in gaming.

Chapter 423a (relating to applications) contains general provisions that apply to applications generally; outlines the process for preliminary review of applications and the general process that will apply to the review of applications after they have been accepted for filing. It also addresses how deficient applications will be handled; specifies how withdrawals of applications will be processed; provides that the Board may require a Statement of Conditions; imposes restrictions on reapplications by an applicant whose application was denied or by the holder of a license, permit, certification or registration if their license, permit, certification or registration was revoked.

Chapter 425a (relating to licensed entity representatives) requires licensed entity representatives to file a Licensed Entity Representative Registration Form and update their information on an ongoing basis. It also provides that the Board will maintain a list of licensed entity representatives which will be available at its offices and on the Board's website.

Chapter 427a (relating to manufacturers) provides general requirements pertaining to manufacturers; specifies what is required from an applicant for a manufacturer's license; specifies the term of a manufacturer's license and the renewal process; lays out the process for an alternative review of a manufacturer's license application based on the applicant's licensure in another jurisdiction; and sets forth the responsibilities of licensed manufacturers.

Chapter 431a (relating to supplier licenses) provides general requirements pertaining to suppliers; lists what is required from an applicant for a supplier's license; specifies the term of a supplier's license and the renewal process; contains supplier responsibilities; and requires suppliers to maintain a log book to register all individuals who enter the supplier's principal place of business and any facility where slot machines are stored.

Chapter 436a (relating to horsemen's organizations) contains definitions of terms that are only used in this

chapter; requires each horsemen's organization to file a Horsemen's Organization Registration Statement; requires each officer, director or representative to file a Horsemen's Permit Application Form; outlines the responsibilities of horsemen's organizations and officers, directors or representatives; specifies fiduciaries' responsibilities; and requires that all health and benefit plan contracts must be submitted to and approved by the Board.

Chapter 438a (relating to labor organizations) contains definitions of terms that are only used in this chapter; requires each labor organization to file a Labor Organization Form; and requires every labor organization officer, agent, and management employee to file a Labor Organization Permit Application Form.

Chapter 439a (relating to junket enterprises) contains definitions of terms that are only used in this chapter; contains general provisions applicable to junket enterprises and application requirements; specifies the term of a junket enterprise license and the renewal process; requires junket representatives to be registered and delineates application requirements; requires junket schedules and changes thereto to be submitted to the Bureau of Corporate Compliance and Internal Controls; requires the preparation of junket arrival reports; requires preparation of junket final reports; requires the preparation of monthly junket reports; requires the preparation of a report pertaining to the purchase of patron lists; and lists activities that junket enterprises and representatives may not participate in.

Chapter 440a (relating to management companies) contains general requirements pertaining to management companies; lists what is required from an applicant for a management company license; specifies the term of a management company license and the renewal process; states that a management company will be deemed to be an agent of the slot machine licensee for any violations and that the management company will be jointly and severally liable for violations of the slot machine licensee; and specifies that all management contracts and amendments must be submitted to and approved by the Board before they can go into effect.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 2197 (May 12, 2007).

The Board received comments from Downs Racing, LP (Downs), Greenwood Gaming and Entertainment, Inc. (Greenwood) and Keystone Gaming Technologies, Inc. (KGT) during the public comment period. On July 11, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC). On July 12, 2007, comments on the proposed rulemaking were received from Representative Paul Clymer, Republican Chairperson of the House Gaming Oversight Committee. These comments were reviewed by the Board and are discussed in detail as follows.

Both Greenwood and Downs filed general comments pertaining to the renewal process. Both slot machine licensees strongly recommend that they only be required to file material updates of information contained in their initial application. They argue that this would be consistent with the language of 4 Pa.C.S. § 1326 (relating to license renewals) which states "The application renewal shall include an update of the information contained in the initial and any prior renewal applications . . .". They also suggest that the Board define the term "material" as "updates which could have an effect on a continuing finding of suitability."

The renewal of slot machine licenses is addressed in Chapter 441a (relating to slot machine licenses) published at 37 Pa.B. 2695 (June 16, 2007). However, the concerns raised are valid for all renewals. It is the Board's intent for all licensees and permittees to use renewal application forms which are essentially the same as the initial application forms. But the Board agrees there is no need to resubmit information that has not changed. Licensees and permittees will only be required to provide information that has changed; everything else can be marked "No Update." This will substantially reduce the amount of time required to complete the renewal forms.

The Board is also considering requiring a full submission periodically, perhaps every 5 years. This would be done to insure that no significant information has inadvertently not been provided to the Board. Comments from licensees and permittees on this type of requirement and an appropriate frequency for these complete submissions are invited.

The Board has not added a definition of "material" because the Board wants all of the information that has changed. It is the responsibility of the Board to review anything that has changed and determine whether or not it could have an effect on a continuing finding of suitability.

Greenwood and Downs both suggest that Chapters 421a and 423a should contain more specific details on renewals and that renewals should only be required for licenses and permits.

The Board does not concur with either of these suggestions. Chapters 421a and 423a are general requirements that apply to all applicants for and holders of licenses, permits, certifications and registrations. They are not intended to provide the specific requirements for a particular entity. Specific requirements are addressed in the specific chapters for each type of applicant for and holder of a license, permit, certification and registration.

Greenwood and Downs are correct that 4 Pa.C.S. § 1326 only applies to licensees and permittees, but 4 Pa.C.S. § 1326 is silent on and therefore does not apply to other entities regulated by the Board. It is under its general authority and 4 Pa.C.S. § 1321 (relating to additional licenses and permits and approval of agreements) that the Board has adopted regulations to regulate other entities. For example, the Board established certification and registration requirements for vendors. These certifications and registrations are good for 4 years before they must be renewed. The argument that 4 Pa.C.S. § 1326 somehow bars the Board from establishing renewal requirements for other entities that the Board regulates is not persuasive.

Greenwood and Downs final two general comments suggested that the Board send a notice to all licensees 120 days prior to the expiration of their license and that renewal applications be deemed approved unless expressly denied by the Board.

The Board has not adopted either of these suggestions. Sending a notice to all licensees would create a significant administrative burden on the Board which licensees would end up having to pay for. However, because the date a license is approved and the date it is issued can differ, the Board understands and agrees that there can be some uncertainty concerning when a license is due to expire. To remove this uncertainty, the Board will be adding the license expiration date to the listing of licensees which is available on the Board's website. This

will allow licensees to easily verify the expiration date of their license so they will know when their renewal applications are due.

The Board is not adopting the suggestion that applications be deemed approved because it conflicts with the statute and is unnecessary. Section 1326 of 4 Pa.C.S. states "A permit or license for which a completed renewal application and fee, if required, has been received by the board will continue in effect unless and until the board sends written notification to the holder of the permit or license that the board has denied the renewal of such permit or license." This is the language that the Board has carried over into the renewal requirements for various entities in this regulation. The interests of licensees or permittees are protected because filing the required renewal materials "extends" the term of their current license or permit, so there is no need for a deemed approval provision.

IRRC offered two general comments. First, IRRC suggested that the Board add a reference to the Board's website wherever the regulations require payment of a fee.

The Board has adopted this suggestion and has added a reference to the Board's website where payment of a fee is required in Chapters 427a, 431a, 436a, 438a, 439a and 440a.

Second, IRRC noted that the term "entity" is used throughout the regulations but is not defined in the act or regulations.

The term "entity" refers to anything other than a natural person. This is consistent with its common usage and its usage has not been a source of confusion. Therefore, the Board has not added a definition for this term.

In § 421a.1 (relating to general requirements), IRRC had two comments. In subsection (a), IRRC stated that the last sentence, which reads "No person holding a license, permit, certification or registration, renewal or other approval is deemed to have any property rights." is overly broad.

The Board intended that this provision only apply to the "license, permit, certification or registration, renewal or other approval." Language has been added to this subsection to clarify its scope.

In subsection (c), IRRC asked the Board to explain the statutory authority for and need for applicants to agree to the extensive waiver.

The authority for this provision is contained in the Board's general rulemaking authority in 4 Pa.C.S. § 1202(30) and 4 Pa.C.S. § 1308 (relating to applications for a license or permit) and is consistent with the doctrine of sovereign immunity. These provisions were added to eliminate frivolous lawsuits from applicants relating to the disclosure of information obtained during investigations that is not willfully unlawful.

In § 421a.1(c)(2), Representative Clymer asked if this provision was in conflict with 4 Pa.C.S. § 1206(f) (relating to Board minutes and records).

The Board does not believe that there is a conflict. Section 1206(f) of 4 Pa.C.S. bars the Board from requiring an applicant to waive confidentiality related to personal information supplied to determine the applicant's character. Subsection (c)(2) addresses the liability of the Board, the Pennsylvania State Police and other Commonwealth agencies if any of that information is disclosed. Therefore,

these provisions deal with different aspects of the confidentiality of this information.

In § 421a.1(f), Representative Clymer suggested that applicants should be required to notify the Board of any changes in information.

The obligation imposed in this provision has two components. The first requires notification of any changes in information supplied and the second requires notice of changes in circumstances which would not have been included in information previously supplied. To clarify these duties, this sentence has been split into two sentences.

In § 421a.1(i), Representative Clymer asked if this subsection referred to monetary or administrative liability and how fines would be assessed and collected.

It could be either or both. Whether a violation would result in a fine or a suspension or revocation will depend on the nature of the violation. How fines might be assessed will also depend on the facts surrounding the violation.

In § 421a.2 (relating to disqualification criteria), IRRC suggested that in subsection (a)(5) the Board replace the phrase "applicable Federal and state laws or regulations" with references to the specific applicable laws and regulations or delete this provision.

This reference was intended to be broad, not limited to specific statutes or regulations. To clarify the Board's intent the word "applicable" has been deleted.

In § 421a.3 (relating to investigations; supplementary information), IRRC asked if the "phrase" or at anytime "thereafter" meant that the Board would conduct investigations after an application has been approved. If so, IRRC suggested that this language should be placed in another section of the Board's regulations.

This provision does apply after an application has been approved. The Board has a continuing obligation to insure the integrity of gaming and may conduct investigations that could result in fines, suspension or revocation of a successful applicant's license, permit, certification or registration. Investigations are addressed in Chapter 405a (relating to Bureau of Investigations and Enforcement), but having this provision in this chapter as well makes it clear to applicants that they will have a continuing obligation, both as applicants for and holders of a license, permit, certification or registration, to cooperate in investigations.

In § 421a.4(b) (relating to presuitability determination), Representative Clymer noted that the phrase "upon request of the Board" could imply that reimbursement for the cost of an investigation is discretionary and suggested that this phrase be deleted.

The Board agrees with this suggestion and has deleted "upon request of the Board."

In § 421a.5(c)(11) (relating to undue concentration of economic opportunities and control), IRRC noted that the phrase "Other evidence deemed relevant by the Board" is vague and suggested that the Board amend this provision to indicate what the evidence should pertain to.

The Board agrees with this suggestion and has revised the language to be more specific.

In § 423a.1 (relating to general requirements), IRRC suggested that the phrase "in a form prescribed by the Board" in subsection (e) should be replaced with the name of the form and information on how to obtain the form should be added.

Because of the variation that exists in applications, the Board does not believe it is reasonable to try to use one form to submit changes in information. Accordingly, the Board has deleted this phrase to allow applicants to supply the information in the form that is the most convenient for them.

In § 423a.1(h), Representative Clymer opined that a summary would be unacceptable because it may not contain all of the pertinent information.

The Board disagrees. For some documents a summary may be all that is needed. Since the Board has the discretion to require a full translation or a summary, no revisions were made to the substance of this subsection. However, the second sentence was moved to the end of the section to clarify that the translator's verification of accuracy applies to both full translations and summaries.

In §§ 423a.2 and 423a.3 (relating to preliminary submission review; and application processing), IRRC recommended that specific time frames be added for the preliminary submission review and the review of applications.

The Board has not adopted this recommendation because this chapter covers applications for licenses that can be hundreds of pages as well as one page registrations. For example, a simple registration may take only a day to process while an application for a slot machine license will take several months. For this reason, establishing fixed time frames for these reviews is not feasible.

In § 423a.2(a)(2), IRRC asked what "additional information and accompanying documentation required by the act or the Board's regulations . . ." is to be included with an application.

The additional information will vary depending on what type of license, permit, certification or registration is being sought. For example, the act and the Board's regulations require much more information from an applicant for a slot machine license than is required from an applicant for a gaming permit. Specific information relating to what is required is contained in the instructions for each application.

In § 423a.2(c), IRRC asked how would the Board set "the time period set by the Board" and how an applicant would be notified of the time period.

The time period will vary depending on what the deficiency is. When a deficiency is noted, the Board will send a letter to the applicant that will give the applicant a reasonable period of time to cure the deficiency. For something like a missing signature it could be a few days; if a major item is missing, the time period to supply the item could be weeks.

In § 423a.4 (relating to deficient applications), Representative Clymer suggested that there should be an upper limit on the time allowed to cure deficiencies under subsection (a) to avoid indefinite suspension of the process. Also on this section, IRRC had two concerns. In subsection (a), IRRC asked how the Board would set "the time period set by the Board" and how the applicant would be notified of the time period.

The Board has not set a time period or established a maximum time limit because the time allowed to cure a deficiency will vary depending on what the deficiency is. When a deficiency is noted, the Board will send a letter to the applicant that will give the applicant a reasonable period of time to cure the deficiency. For something like a missing signature it could be a few days; if a major item is missing, the time period allotted to supply the item could be weeks.

In subsection (b), IRRC suggested that if the Board intended a failure to cure deficiencies to result in a denial of the application, the language in this subsection should be similar to the language used in subsection (a).

The Board agrees with this suggestion and amended the language in subsection (b) to be similar to what appears in subsection (a).

On § 423a.5 (relating to application withdrawal), IRRC raised four questions. First IRRC asked why a petition is necessary as opposed to allowing the applicant to just withdraw the application by sending the Board a letter.

There are several reasons why the Board has elected to use the more formal petition process as opposed to allowing the applicant to just send a letter. First, the review of an application is a time intensive activity that should not be taken lightly by an applicant. Second, applicants have an obligation to pay investigative costs. These costs must be paid before a withdrawal will be considered. Additionally, a withdrawal may be with or without prejudice which can affect when the applicant may file another application.

Next, IRRC asked when, under subsection (d), would a request for withdrawal be denied.

There may be instances when an applicant, based on what the Board has uncovered in its investigation, anticipates that the Board will deny its application. In this case, an applicant may attempt to withdraw the application to avoid the 5-year restriction on reapplication. Depending on the specific fact situation, the Board may want to deny the application as opposed to approving the withdrawal with prejudice.

IRRC also asked what criteria the Board will use to determine whether or not to impose restrictions on an applicant whose petition for withdrawal has been granted without prejudice.

The decision as to whether or not to impose restrictions will be based upon the results of the review of the application and the results of any investigations that have been completed at the time of the petition for withdrawal. If there are problems, the Board may impose a restriction on reapplication that would be sufficient to allow the applicant to rectify the problem.

Finally, IRRC asked why the Board had not established a time frame for the review of withdrawal petitions.

Again, because this chapter covers applications that can vary substantially both in length and complexity, establishing a fixed time frame for the review of petitions for withdrawal is not feasible.

In § 423a.5(e), Representative Clymer suggested that the Board add "at the request of the applicant."

This provision was not intended to be triggered by a request from an applicant. An applicant may file a petition for withdrawal for any reason under subsection (a). The intent of this provision is to allow the Board to treat a deficient application as an application that has been withdrawn rather than disapproving the application. This would allow an applicant to avoid being subject to the 5-year bar on reapplication that comes with a disapproval. The language has been revised to clarify this intent.

In § 423a.7 (relating to restriction on application after denial or revocation), IRRC asked what the bases are for the 5 and 2-year provisions. Additionally, IRRC asked if

two different time periods and the petition process are necessary. If they aren't, IRRC suggested that the Board just use 2 years.

The application process can be extremely time intensive and costly for both the Board and applicants. The 5-year ban is designed to provide a strong incentive for unqualified applicants to not apply and for successful applicants to comply with the Board's regulations to avoid a revocation. In many cases the reason for a denial or revocation would be serious enough that it is unlikely that a 2-year restriction would provide enough time for the applicant to satisfactorily address the reason for the denial or revocation. Additionally, a 5-year ban is also what is commonly used in other gaming jurisdictions.

Allowing an applicant to file a petition after 2 years provides an opportunity for a person whose application was denied or license, permit, certification or registration was revoked, to seek permission to reapply before 5 years expire if they can demonstrate that they have addressed the reason for the denial or revocation. This gives the Board some latitude to tailor the length of the reapplication bar to the seriousness of the circumstances that caused the denial or revocation and the subsequent corrective actions of the applicant. This provision is also used in some other gaming jurisdictions.

In § 423a.7, Representative Clymer asked why subsection (c) doesn't also apply to applicants' whose applications were withdrawn with prejudice.

An application may be denied for a variety of reasons, some much more serious than others. By contrast, a withdrawal with prejudice is rarely used and is only used when the problems with an application are extremely serious. In these cases, the Board believes that the full 5-year restriction on filing a new application should apply.

In § 427a.2 (relating to manufacturer license applications and standards), Representative Clymer noted that it was unclear as to whether the phrase "as determined by the Board" in subsection (a)(4) referred to who must submit an application or to what information must be supplied.

This phrase is intended to mean other persons the Board determines should be licensed as key employees or principals. To clarify this point, the phrase "and other persons" has been inserted before "as determined by the Board."

Also in § 427a.2, Representative Clymer asked what would happen under subsection (a)(7)(vii) if the divorce action is withdrawn or if the applicant receives a prohibited interest as part of the property settlement.

In either case, the applicant would have to notify the Board of this change under § 421a.1(f) and the individual would no longer be eligible to apply for a manufacturer license.

In § 427a.2, KGT recommended deletion of subsection (b)(3) which requires an applicant to demonstrate it "has the ability to manufacture, build, rebuild, repair, . . . or otherwise make modifications" to slot machines or associated equipment. IRRC also questioned the need for this provision.

This provision paraphrases the statutory definition of a "manufacturer" which is a person who "manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications . . ." Additionally, 4 Pa.C.S. § 1317.1(b)(5) (relating to manufacturer licenses) requires that applications include the "types of slot machines or associated equipment to be

manufactured or repaired.” Therefore this provision is consistent with the mandates of the act.

The Board does not agree that this requirement poses an undue burden on new companies that want to become manufacturers. The act makes it clear that there can be no limitation on the number of manufacturer licenses issued by the Board. Furthermore, the Board has approved every application for a manufacturer license that it has received from applicants that meet the standards set forth in the act. For these reasons, subsection (b)(3) remains in the final-form regulation.

In § 427a.5(a)(2), Representative Clymer suggested that a manufacturer licensee should be required to report any changes in circumstances and allow the Board to determine how each change might affect the license.

The Board disagrees with this suggestion. This would impose an excessive reporting requirement on licensees that is not needed given the other reporting requirements and the fact that detailed renewal applications must be filed annually.

In § 427a.5(c), Greenwood suggested that the Board delete the requirement that a slot machine licensee must have a written agreement with a manufacturer before the slot machine licensee can service or repair slot machines or associated equipment purchased from that manufacturer. IRRC also questioned the need for this provision.

Given the amendments to the act contained in Act 135 of 2006, the Board agrees that there is no need for this requirement and has deleted the language requiring a written agreement in this subsection and in § 431a.4(f). The phrase “a slot machine licensee or” in § 427a.1(d) has also been deleted to conform to this change.

In § 427a.5(d), IRRC asked what the need was for this provision and why it is in this section.

This provision was put in this chapter to make it clear to manufacturers (as well as slot machine licensees) that manufacturers do not have the sole authority to perform these functions.

Also in § 427a.5(d), Representative Clymer suggested adding semicolons to provide greater clarity in the list.

The Board agrees with this suggestion and has inserted semicolons where appropriate.

In § 431a.2 (relating to supplier license applications and standards), Representative Clymer noted that it was unclear as to whether the phrase “as determined by the Board” in subsection (a)(4) referred to who must submit an application or to what information must be supplied.

This phrase is intended to mean other persons the Board determines should be licensed as key employees or principals. To clarify this point, the phrase “and other persons” has been inserted before “as determined by the Board.”

Also in § 431a.2, Representative Clymer asked what would happen under subsection (a)(7)(vii) if the divorce action is withdrawn or if the applicant receives a prohibited interest as part of the property settlement.

In either case, the applicant would have to notify the Board of this change under § 421a.1(f) and the individual would no longer be eligible to apply for a supplier license.

In § 431.4(d)(2) (relating to supplier license term and renewal), Representative Clymer suggested that a supplier licensee should be required to report any changes in circumstances and allow the Board to determine how each change might affect the license.

The Board disagrees with this suggestion. This would impose an excessive reporting requirement on licensees that is not needed given the other reporting requirements and the fact that detailed renewal applications must be filed annually.

In § 431a.4 (relating to responsibilities of a supplier), IRRC questioned the need for subsections (g) and (h) and why are they in this section.

These subsections are in this section to make it clear to suppliers (as well as to slot machine and manufacturer licensees) that suppliers do not have the sole authority to perform these functions.

Also in § 431a.4(g), Representative Clymer suggested adding semicolons to provide greater clarity in the list.

The Board agrees with this suggestion and has inserted semicolons where appropriate.

In § 431a.5 (relating to supplier log books), IRRC had two questions. The first question was why log books are needed and why the log books must be made available to the Department of Revenue and the Pennsylvania State Police.

Generally, no one without a gaming permit is allowed to have any contact with slot machines. Because suppliers would have slot machines on their premises there is a need to control access to make sure no one without a license or permit has access to the slot machines. The log book provides a method for monitoring compliance.

Because of the Department of Revenue's responsibilities for the central computer system and the possibility of criminal behavior that would be investigated by the Pennsylvania State Police, the Board believes both of these agencies should have access to the log books.

In Chapter 436a (relating to horsemen's organizations), IRRC questioned the need for horsemen's organizations to register and for officers, directors and representatives to obtain permits. IRRC also asked what the statutory authority was for these requirements.

The Board's authority for these regulations is derived from the Board's general authority under 4 Pa.C.S. § 1202(30) and from 4 Pa.C.S. § 1406. Section 1406(a)(1)(iii) of 4 Pa.C.S. requires that 4% of the distributions from the Pennsylvania Race Horse Development Fund be used for benefits for members of horsemen's organizations. The registration requirement is needed to identify the horsemen's organizations at each of the Category 1 licensed facilities that will be administering these funds. Requiring permits for the individuals who will be responsible for the disbursement of these funds allows the Board to review the backgrounds of these individuals to minimize the potential for misuse of these funds and to insure compliance with 4 Pa.C.S. § 1406.

In § 436a.1 (relating to definitions), IRRC asked why the definition of “horsemen” in this chapter is different from the definition of “Horsemen of this Commonwealth” in the act.

The term “Horsemen of this Commonwealth” in the act is a general term which includes horsemen and trainers and employees of trainers. The definition of “horsemen” in this chapter is intended to be more narrow, including just the horsemen and trainers. This also reflects how the term is commonly used in the industry.

In Chapter 438a (relating to labor organizations), IRRC questioned the need for labor organizations to file a Labor Organization Notification Form and for officers, agents

and management employees to obtain permits. IIRC also asked what the statutory authority was for these requirements.

The Board's authority for these regulations is derived from the Board's general authority under 4 Pa.C.S. § 1202(30). Labor organizations can have a substantial impact on the operations of a licensed facility. For this reason, the Board needs to know what labor organizations represent employees at each of the licensed facilities and which groups of employees they represent. The Labor Organization Notification Form provides this information. The requirement for permits applies to those individuals in the labor organization who are directly involved with the licensed facilities. Because of this direct relationship and the potential impact it can have on the operations of a licensed facility, background checks on these individuals are need to insure the integrity of gaming operations.

In § 439a.1 (relating to definitions), IIRC noted that there were substantive provisions in the definition of "junket" related to the selection or approval of a person to participate in a junket. IIRC recommended that these provisions be deleted from the definition and moved to another section in this chapter.

The Board agrees with this suggestion and has moved the substantive provisions from the definition of "junket" to § 439a.2 (relating to junket enterprise general requirements).

In § 440a.4(b) (relating to management company responsibilities), Downs suggested that the Board limit the scope of the joint and several liability to acts that are within the purview of the contract or direct operation of the casino. IIRC also questioned the reasonableness of this requirement and the legal basis for it.

The Board agrees that it would be unreasonable to impose an absolute liability standard on a management company for acts over which it clearly has no ability to control. However, the relationship between a management company and a slot machine licensee is one where each entity must be vigilant concerning the actions of the other party to the contract. Accordingly, the Board has replaced the word "shall" with "may." This will allow the Board to determine, based on the specific facts of a given situation, if the management company should be liable for actions of the slot machine licensee. The legal basis for this provision is the Board's general authority in 4 Pa.C.S. §§ 1202(30), 1321 and 1325.

Additional Revisions

In addition to the revisions discussed previously, the Board has made several additional revisions.

In § 423a.5(a), the Board replaced the phrase "at any time prior to issuance by the Board of its determination with respect to the application" with "at any time prior to the Board taking action on the application" to clarify when a request to withdraw an application may be filed.

In § 423a.5(d)(2), the Board clarified the language indicating that it may impose restrictions on new applications from an applicant whose petition to withdraw has been granted without prejudice.

In § 427a.2(a), the Board added a new paragraph (5) requiring the filing of a Gaming Employee Application and Disclosure Information Form for each of the manufacturer's known gaming employees to mirror the current requirement in the Manufacturer Application and Disclosure Information Form.

Section 427a.2(a)(7) has been revised to better conform with the requirements in the act.

To improve clarity in § 427a.3(b) (relating to manufacturer license term and renewal), the Board has inserted the name of the renewal form manufacturers are required to use which is the Manufacturer License Renewal Application Form.

In § 427a.4(a) (relating to alternative manufacturer licensing standards), the Board replaced the phrase "written request" with the name of the form to be used by a manufacturer seeking to use alternate licensing standards which is the Manufacturer Application and Disclosure Information Form Addendum 1.

To improve clarity in § 431a.2(a), the Board added a new paragraph (5) requiring the filing of a Gaming Employee Application and Disclosure Information Form for each of the supplier's known gaming employees to mirror the current requirement in the Supplier Application and Disclosure Information Form.

In § 431a.3(b) (relating to supplier license term and renewal), the Board has inserted the name of the renewal form suppliers are required to use which is the Supplier License Renewal Application Form.

In § 431a.4, the Board replaced an incorrect citation to § 427a.2(a)(5).

The material in §§ 436a.2(d) and 436a.3(d) (relating to horsemen's organization registration; and permitting of officers, directors, representatives and fiduciaries) relating to terms and renewals of registrations and permits have both been split into three separate subsections to improve clarity.

In § 438a.1 (relating to definitions), the definition of "labor organization" has been amended by inserting "who are required to obtain a license, permit or registration from the Board" after "employees" to clarify which labor organizations must comply with this chapter. Additionally, the definition of "labor organization officer" has been revised to clarify who must obtain a permit under § 438a.3.

In § 438a.2 (relating to labor organization officers, agents and management employees), clarifying language has been added requiring the initial and any revisions to the Labor Organization Notification Form to be filed with the Bureau of Licensing.

In § 438a.3(d), the material relating to terms and renewals of permits has been split into three separate subsections to improve clarity.

Additionally, minor wording changes have been made throughout the chapter to improve clarity.

Finally, the Board is renumbering the statement of policy at Chapter 436a (relating to use of funds allocated to horsemen's organizations—statement of policy). The current numbering will be changed to Chapter 436b (relating to use of funds allocated to horsemen's organizations).

Affected Parties

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

Fiscal Impact

Commonwealth

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

Political Subdivisions

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

Private Sector

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

General Public

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

Paperwork requirements

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

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 April 26, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 2197 (May 12, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 received 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 September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 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 the Pennsylvania Race Horse Development and Gaming Act.

Order

The Board, acting under the 4 Pa.C.S. §§ 1101—1904, orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 421.1—421.5, 423.1—423.8, 425.1, 427.1—427.5, 431.1—431.5, 436.1—436.7, 438.1—438.4, 439.1—439.11 and 440.1—440.4 and by adding final regulations in §§ 421a.1—421a.5, 423a.1—423a.7, 425a.1, 427a.1—427a.5, 431a.1—431a.5, 436a.1—436a.6, 438a.1—438a.3, 439a.1—439a.12 and 440a.1—440a.5 to read as set forth in Annex A.

(b) The statement of policy in §§ 436a.1—436a.6 is renumbered as §§ 436b.1—436b.6.

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

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

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-61 remains valid for the final adoption of the subject regulations.

Annex A

TITLE. 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421. (Reserved)

§§ 421.1—421.5. (Reserved).

CHAPTER 421a. GENERAL PROVISIONS

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

§ 421a.1. General requirements.

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

(b) By filing an application with the Board, an applicant consents to an investigation of the applicant's general suitability, financial suitability, character, integrity and ability to engage in, or be associated with, gaming activity in this Commonwealth to the extent deemed

appropriate by the Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant and other persons as determined by the Board.

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

(1) Abide by the provisions of the act and this part.

(2) Waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during an investigation of the applicant.

(3) Execute all releases requested by the Board.

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

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

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

(g) An applicant for a license, permit, certification or registration shall have a continuing duty to promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

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

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

(j) The Board will maintain lists of applicants for licenses, permits, certifications or registrations under this part as well as a record of the actions taken with respect

to each applicant. The lists will be posted on the Board's website (www.pgcb.state.pa.us).

§ 421a.2. Disqualification criteria.

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

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

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

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

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

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

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

§ 421a.3. Investigations; supplementary information.

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

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

§ 421a.4. Presuitability determination.

(a) Upon request from an eligible applicant for or holder of a license and upon receipt of an application and appropriate fees, the Board will make an inquiry or investigation of a potential purchaser of an applicant for or holder of a license, certification or registration as if the purchaser were an eligible applicant. The eligible applicant for or holder of a license may petition the Board, on behalf of the purchaser, for a Statement of Investigation under § 493a.4 (relating to petitions generally).

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

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

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

(a) In accordance with section 1102(5) of the act (relating to legislative intent), a slot machine license, manage-

ment company license or other license may not be issued to or held by a person if the Board determines that the issuance or holding will result in the undue concentration of economic opportunities and control of the licensed gaming facilities in this Commonwealth by that person.

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

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

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

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

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

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

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

(ii) Total gaming floor square footage.

(iii) Number of slot machines.

(iv) Gross terminal revenue.

(v) Net terminal revenue.

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

(vii) Number of persons employed by the licensee.

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

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

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

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

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

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

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

(9) Whether the issuance or holding of the license by the person will adversely impact consumer interests, or whether the issuance or holding is likely to result in enhancing the quality and customer appeal of products

and services offered by slot machine licensees to maintain or increase their respective market shares.

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

(11) Other evidence related to concentration of economic opportunities and control of the licensed gaming facilities in this Commonwealth.

CHAPTER 423. (Reserved)

§§ 423.1—423.8. (Reserved).

CHAPTER 423a. APPLICATIONS

Sec.

423a.1. General requirements.

423a.2. Preliminary submission review.

423a.3. Application processing.

423a.4. Deficient applications.

423a.5. Application withdrawal.

423a.6. License, permit, registration and certification issuance and statement of conditions.

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

§ 423a.1. General requirements.

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

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

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

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

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

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

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

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

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

§ 423a.2. Preliminary submission review.

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

- (1) The applicable application fee.
- (2) The applicable application forms and additional information and accompanying documentation required by the act or the Board's regulations governing the specific type of application.
- (3) Completed authorization forms for release of information from Federal and state agencies required for the specific type of application.
- (4) For slot machine license applications only, a bond or letter of credit as required by section 1313(c) of the act (relating to slot machine license application financial fitness requirements).

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

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

§ 423a.3. Application processing.

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

- (1) Accept the application for filing.
- (2) Notify the applicant or the applicant's attorney, if any, in writing of the fact that the application has been accepted for filing and the date of the acceptance for filing. The Board will also notify the applicant that the acceptance for filing of the application will not constitute evidence that any requirement of the act has been satisfied.
- (3) Obtain and evaluate information as may be necessary to determine the qualifications of the applicant and any matter relating to the application.
- (4) Request the Bureau to promptly conduct an investigation and provide the information necessary to determine the qualifications of the applicant and any matter relating to the application.
- (5) Request the Pennsylvania State Police to provide a criminal history background investigation report, determine employee eligibility consistent with § 435.1 (relating to general provisions), conduct fingerprinting, photograph applicants and perform other related duties in accordance with the act.
- (6) Request the Department to promptly conduct a tax clearance review.
- (7) Request the Department of Labor and Industry to perform an Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review.

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

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

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

§ 423a.4. Deficient applications.

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

(b) Refusal to provide the information necessary to cure the deficiencies required under subsection (a) may result in the immediate denial of the application.

§ 423a.5. Application withdrawal.

(a) A request for withdrawal of an application for a license, permit, certification or registration may be made by petition to the Board filed at any time prior to the Board taking action on the application.

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

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

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

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

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

(e) The Board may convert an application with deficiencies that an applicant fails to cure under § 423a.4(a) (relating to deficient applications) to a petition for withdrawal.

(f) Unless the Board otherwise directs, fees or other payments relating to the application will not be refundable by reason of the withdrawal. Additionally, fees and costs owed to the Board related to the application shall be paid prior to granting a petition to withdraw.

§ 423a.6. License, permit, registration and certification issuance and statement of conditions.

(a) *Issuance criteria.*

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

- (i) The applicant has paid all applicable fees.

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

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

(b) *Statement of conditions.*

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

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

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

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

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

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

(a) A person whose application has been denied or whose license, permit, registration or certification has

been revoked, may not apply for a license, permit, certification or registration for 5 years from the date that the application was denied or the license, permit, certification or registration was revoked.

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

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

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

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

(d) A petition filed under subsection (c) shall be filed in accordance with § 493a.4 (relating to petitions generally).

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

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

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

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

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

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

(iii) The date of the offense or conduct.

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

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

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

(vii) Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

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

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

CHAPTER 425. (Reserved)**§ 425.1. (Reserved).****CHAPTER 425a. LICENSED ENTITY REPRESENTATIVES**

Sec.
425a.1. Registration

§ 425a.1. Registration.

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

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

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

CHAPTER 427. (Reserved)**§§ 427.1—427.5. (Reserved).****CHAPTER 427a. MANUFACTURERS**

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

§ 427a.1. Manufacturer general requirements.

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

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

(c) A licensed manufacturer or a licensed manufacturer designee may supply or repair any slot machine or associated equipment manufactured by the licensee.

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

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

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

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

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

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

(4) An application from every key employee under § 435.3 (relating to key employee license) and principal under Chapter 433 (relating to principal licenses) as

specified by the Manufacturer Application and Disclosure Information Form and other persons as determined by the Board.

(5) A Gaming Employee Application and Disclosure Information Form for each of the manufacturer's known gaming employees.

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

(7) An affirmation that neither the applicant nor any of its affiliates, intermediaries, subsidiaries or holding companies is a slot machine licensee; and that the applicant has neither applied for nor holds a supplier license. In applying this provision to an applicant for a manufacturer license, the Board will not include interests that are held by individuals in any of the following manners:

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

(ii) Through defined benefit pension plans.

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

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

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

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

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

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

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

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

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

(3) Demonstrate that the applicant has the ability to manufacture, build, rebuild, repair, fabricate, assemble, produce, program, design or otherwise make modifications to slot machines or associated equipment which meet one or more of the following criteria:

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

(ii) Are needed to conduct an authorized game.

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

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

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

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

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

(2) If all principals of the applicant individually qualify under the standards of section 1317.1 of the act (relating to manufacturer license).

(3) The integrity of all financial backers.

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

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

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

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

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

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

(b) A Manufacturer License Renewal Application Form and renewal fee shall be filed at least 6 months prior to the expiration of the current license.

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

§ 427a.4. Alternative manufacturer licensing standards.

(a) If an applicant for a manufacturer license holds a similar license in another jurisdiction in the United States, the applicant may submit a Manufacturer Application and Disclosure Information Form Addendum 1 with its application required under § 427a.2(a) (relating to manufacturer license applications and standards) for the Board to adopt an abbreviated licensing process under section 1319 of the act (relating to alternative manufacturer licensing standards) to review a manufacturer license application.

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

(1) The Board determines, after investigation, that the licensing standards in the jurisdiction in which the applicant is licensed are similarly comprehensive, thorough and provide equal, if not greater, safeguards as provided in the act and that granting the request is in the public interest.

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

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

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

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

§ 427a.5. Responsibilities of a manufacturer.

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

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

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

(3) Provide a copy of all SEC filings listed in § 427a.2(a)(6) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted no later than 30 days after the date of filing with the SEC.

(b) An employee of a licensed manufacturer whose duties of employment or incidental activities related to employment require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupational permit under § 435.4 (relating to occupation permit).

(c) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility.

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

CHAPTER 431. (Reserved)

§§ 431.1—431.5. (Reserved).

CHAPTER 431a. SUPPLIER LICENSES

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

§ 431a.1. Supplier general requirements.

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

(b) In accordance with sections 1317 and 1317.1 of the act (relating to supplier licenses; and manufacturer licenses), an applicant for or the holder of a supplier license or any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, may not apply for or hold a slot machine license or a manufacturer license.

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

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

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

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

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

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

(5) A Gaming Employee Application and Disclosure Information Form for each of the supplier's known gaming employees.

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

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

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

(ii) Through defined benefit pension plans.

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

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

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

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

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

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

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

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

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

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

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

(d) In determining whether an applicant is suitable to be licensed as a supplier under this section, the Board will consider the following:

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

(2) If all principals of the applicant individually qualify under the standards of section 1317 of the act (relating to supplier licenses).

(3) The integrity of financial backers.

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

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

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

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

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

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

(b) A Supplier License Renewal Application Form and renewal fee shall be filed at least 2 months prior to the expiration of the current license.

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

§ 431a.4. Responsibilities of a supplier.

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

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

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

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

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

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

(3) Provide a copy of the SEC filings listed in § 431a.2(a)(6) (relating to supplier license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted within 30 days after the date of filing with the SEC.

(e) An employee of a licensed supplier whose duties of employment or incidental activities related to employment allow the employee access to slot machines or associated equipment or require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupation permit under § 435.3 (relating to occupation permit).

(f) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility.

(g) A slot machine licensee may perform routine maintenance directly related to the availability of slot machines for play, customer service or a clean and gracious playing environment. The routine maintenance includes installation or replacement of the following: batteries; hardware, including hinges, screws, bolts and custom handles; light bulbs; locks on slot machines and slot cash storage boxes, including the rekeying of the locks; printers, exclusive of printer software; and paper stock. Routine maintenance also includes external cleaning and the

clearing of paper, bill and coin jams which do not require removal or dismantling of the mechanisms.

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

§ 431a.5. Supplier log books.

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

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

(1) The date, entrance time and departure time of each individual.

(2) The name of each individual entering the place of business or physical facility and who they represent.

(3) The signature of each individual.

(4) The purpose for the visit.

(5) If applicable, the individual's Board license, permit, certification or registration number.

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

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

CHAPTER 436. (Reserved)

§§ 436.1—436.7. (Reserved).

CHAPTER 436a. HORSEMEN'S ORGANIZATIONS

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

§ 436a.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

(b) Each horsemen's organization shall file a completed Horsemen's Organization Registration Statement with the registration fee posted on the Board's website (pgcb.state.pa.us).

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

(d) Horsemen's organization registrations will be valid for 4 years from the date on which the registration is approved by the Board.

(e) Renewals will be valid for 4 years and shall be filed no later than 120 days prior to the expiration of the current registration period.

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

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

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

(b) Every officer, director or representative of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or any individual authorized to act in a fiduciary

capacity on behalf of horsemen shall file a completed Horsemen's Permit Application Form with the permit fee posted on the Board's website (pgcb.state.pa.us).

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

(d) Permits issued under this section will be valid for 1 year from the date on which the permit is approved by the Board.

(e) Renewals will be valid for 1 year and shall be filed at least 60 days prior to the expiration of the current permit.

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

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

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

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

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

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

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

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

§ 436a.5. Fiduciaries.

Fiduciaries shall:

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 436a. (Reserved)

§§ 436a.1—436a.6. (Reserved).

CHAPTER 436b. USE OF FUNDS ALLOCATED TO HORSEMEN'S ORGANIZATIONS—STATEMENT OF POLICY

Sec.	
436b.1.	Scope.
436b.2.	Definitions.
436b.3.	Responsibilities of horsemen's organizations.
436b.4.	Audits of horsemen's organizations.
436b.5.	Reports.
436b.6.	Responsibilities of Category 1 licensees.

§ 436b.1. Scope.

The act requires the Board to:

(1) Establish guidelines that ensure that funds distributed from the Fund and which are allocated to horsemen's organizations, as defined by the act, are used to finance programs that benefit the horsemen of this Commonwealth. (See 4 Pa.C.S. § 1406(b) (relating to distributions from Pennsylvania Race Horse Development Fund).)

(2) Ensure that funds allocated to the horsemen's organizations are used to finance programs which benefit the horsemen of this Commonwealth. (See 4 Pa.C.S. § 1406(c).)

(3) Ensure that no more than 15% of funds available annually for benevolent programs, including pension, health and insurance plans, are used to administer the programs.

(4) Ensure that the horsemen's organizations that receive funds from the Fund file an annual audit prepared by a certified public accountant. (See 4 Pa.C.S. § 1406(e).)

(5) Approve the health and pension benefit contracts entered into by the horsemen's organizations. (See 4 Pa.C.S. § 1406(f).)

§ 436b.2. Definitions.

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

Fund—The Pennsylvania Race Horse Development Fund.

Registered horsemen's organization—A horsemen's organization that receives funds from the Fund and which shall register with the Board under § 436a.2 (relating to horsemen's organization registration).

§ 436b.3. Responsibilities of horsemen's organizations.

(a) A horsemen's organization shall register with the Board under § 436a.2 (relating to horsemen's organization registration).

(b) Registered horsemen's organizations shall ensure that funds received from the Fund are used to benefit all horsemen and are kept apart from funds acquired from other sources. Funds that are allocated to horsemen's organizations for benevolent programs are not to be used for the personal benefit of any officer, director, representative or fiduciary of the horsemen's organization.

(c) Registered horsemen's organizations shall ensure that administrative costs are reasonable as required by 4 Pa.C.S. § 1406(d) (relating to distributions from Pennsylvania Race Horse Development Fund). Costs that do not exceed 15% of the annual total statutory allocation are deemed reasonable.

(d) Registered horsemen's organizations shall ensure that health and pension benefits contracts entered into by the horsemen's organizations are approved by the Board.

(e) The officers, directors, fiduciaries and representatives of a registered horsemen's organization shall file an application for a permit with the Board under § 436a.3 (relating to permitting of officers, directors, representatives and fiduciaries).

(f) The officers, directors, fiduciaries and representatives of a registered horsemen's organization shall comply with §§ 436a.4 and 436a.5 (relating to responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries; and fiduciaries) relative to the responsibilities of the horsemen's organizations and their officers, directors, representatives and fiduciaries.

§ 436b.4. Audits of horsemen's organizations.

(a) Registered horsemen's organizations that receive funds from the Fund shall file annually, with the appropriate racing commission and the Board, an audit prepared by a certified public accountant of the funds received under 4 Pa.C.S. § 1406(e) (relating to distributions from Pennsylvania Race Horse Development Fund). Audits shall be available for public review.

(b) Audits submitted to the Board must reflect all funds received from the Fund which are used or intended to be used for purse supplements under 4 Pa.C.S. § 1406(a)(1)(i) and health and pension benefits under 4 Pa.C.S. § 1406(a)(1)(iii).

(c) Audits shall be mailed to the Pennsylvania Gaming Control Board, Attn: Director, Racetrack Gaming, P. O. Box 69060, Harrisburg, Pennsylvania 17106-9060 in sufficient time to be received no later than March 30th of each calendar year.

§ 436b.5. Reports.

(a) Registered horsemen's organizations shall file with the Board no later than the 20th day of the month following the end of each calendar quarter the following reports:

(1) Quarterly report of funds received from the Fund through the Category 1 licensee conducting live racing into the account established by and for the benefit of the horsemen under 4 Pa.C.S. § 1406(1)(a)(i) (relating to distributions from Pennsylvania Race Horse Development Fund).

(2) Quarterly report of funds distributed for purse supplements from the account established by and for the benefit of the horsemen under 4 Pa.C.S. § 1406(1)(a)(i).

(3) Quarterly report of funds received for health and pension benefits health and pension benefits under 4 Pa.C.S. § 1406(1)(a)(iii).

(b) Horsemen's organizations shall ensure that funds allocated for thoroughbred jockeys and standardbred drivers are paid as required by 4 Pa.C.S. § 1406(a)(1)(iii) and that the distribution of these proceeds is reflected in the annual audit required by 4 Pa.C.S. § 1406(e).

§ 436b.6. Responsibilities of Category 1 licensees.

Category 1 licensees conducting live racing and who receive distributions from the Fund for distribution to purses shall file with the Board no later than the 20th day of the month following the end of each calendar quarter the following reports:

(1) Quarterly report of funds received from the Fund.

(2) Quarterly report of funds deposited into a separate, interest-bearing purse account established by and for the benefit of the horsemen under 4 Pa.C.S. § 1406(a)(1)(i) (relating to distributions from Pennsylvania Race Horse Development Fund) and § 441.9(b)(3)(reserved) (relating to responsibilities of licensed organizations).

(3) Quarterly report of funds distributed to the horsemen's organization representing the owners and trainers at the racetrack at which the licensed racing entity operates for health and pension benefits under 4 Pa.C.S. § 1406(a)(1)(iii) and § 441.9(b)(3)(ii).

(4) Quarterly report of expenditures for backside improvements in conformity with 4 Pa.C.S. § 1404 (relating to distributions from licensee's revenue receipts).

CHAPTER 438. (Reserved)**§§ 438.1—438.4. (Reserved).****CHAPTER 438a. LABOR ORGANIZATIONS**

Sec.

- 438a.1. Definitions.
438a.2. Labor organization notification.
438a.3. Permitting of labor organization officers, agents and management employees.

§ 438a.1. Definitions.

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

Labor organization—An organization, union, agency, employee representation committee, group, association or plan in which employees who are required to obtain a license, permit or registration from the Board participate which exists for the purpose, in whole or in part, of dealing with a slot machine licensee or licensed management company concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of

employment, including any conference, general committee, joint or systems board or international labor organization.

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

Labor organization officer—An officer or person authorized to perform the functions of an officer who exercises authority, discretion or influence with regard to matters relating to employees who are employed at a licensed facility.

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

§ 438a.2. Labor organization notification.

(a) Each labor organization shall file a completed Labor Organization Notification Form with the Bureau of Licensing.

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

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

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

(b) Every labor organization officer, agent and management employee shall file a completed Labor Organization Permit Application Form with the permit fee posted on the Board's website (pgcb.state.pa.us).

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

(d) Permits issued under this section will be valid for 1 year from the date on which the permit is approved by the Board.

(e) Renewals will be valid for 1 year and shall be filed no later than 60 days prior to the expiration of the current permit.

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

CHAPTER 439. (Reserved)**§§ 439.1—439.11. (Reserved).****CHAPTER 439a. JUNKET ENTERPRISES**

Sec.

- 439a.1. Definitions.
439a.2. Junket enterprise general requirements.
439a.3. Junket enterprise license applications.
439a.4. Junket enterprise license term and renewal.
439a.5. Junket representative general requirements.
439a.6. Junket representative registration.

- 439a.7. Junket schedules.
- 439a.8. Junket arrival reports.
- 439a.9. Junket final reports.
- 439a.10. Monthly junket reports.
- 439a.11. Purchase of patron lists.
- 439a.12. Junket enterprise and representative prohibitions.

§ 439a.1. Definitions.

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

Junket—An arrangement made between a slot machine licensee and a junket enterprise or a junket representative, the purpose of which is to induce a person, selected or approved, to come to a licensed facility for the purpose of gambling and pursuant to which, and as consideration for which, some or all of the cost of transportation, food, lodging and entertainment for that person is directly or indirectly paid by a slot machine licensee.

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

Junket representative—

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

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

§ 439a.2. Junket enterprise general requirements.

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

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

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

(d) A person may be selected or approved to participate in a junket on the basis of one or more of the following:

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

- (i) Establish a customer deposit with a slot machine licensee.
- (ii) Demonstrate to a slot machine licensee the availability of a specified amount of cash or cash equivalent.
- (iii) Gamble to a predetermined level at the licensed facility.
- (iv) Comply with any similar obligation.

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

(i) The previous satisfaction of a financial qualification obligation in accordance with the provisions of paragraph (1).

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

(A) An inquiry concerning the person’s tendency to gamble.

(B) Use of other means of determining that the person has a tendency to participate in gambling activities.

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

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

§ 439a.3. Junket enterprise license applications.

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

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

(1) The nonrefundable application fee posted on the Board’s website (pgcb.state.pa.us).

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

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

(c) In addition to the materials required under subsections (a) and (b), an applicant for a junket enterprise license shall:

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

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

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

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

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

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

(c) A junket enterprise license for which a completed renewal application and fee has been received by the

Board will continue in effect until the Board sends written notification to the holder of the junket enterprise license that the Board has approved or denied the junket enterprise license.

§ 439a.5. Junket representative general requirements.

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

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

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

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

§ 439a.6. Junket representative registration.

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

(1) A Junket Representative Registration Form.

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

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

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

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

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

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

§ 439a.7. Junket schedules.

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

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

Internal Controls by the slot machine licensee by the close of the next business day.

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

(1) The origin of the junket.

(2) The number of participants in the junket.

(3) The arrival time and date of the junket.

(4) The departure time and date of the junket.

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

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

§ 439a.8. Junket arrival reports.

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

(b) Junket arrival reports must:

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

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

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

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

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

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

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

§ 439a.9. Junket final reports.

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

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

(c) A junket final report shall be:

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

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

§ 439a.10. Monthly junket reports.

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

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

§ 439a.11. Purchase of patron lists.

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

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

- (1) The name and address of the person or enterprise selling the list.
- (2) The purchase price paid for the list or any other terms of compensation related to the transaction.
- (3) The date of purchase of the list.
- (c) The report required by subsection (a) shall be filed with the Bureau of Corporate Compliance and Internal Controls, no later than 7 days after the receipt of the list by the purchaser.

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

A junket enterprise or junket representative may not:

- (1) Engage in collection efforts.
- (2) Individually receive or retain a fee from a patron for the privilege of participating in a junket.
- (3) Pay for services, including transportation or other items of value, provided to or for the benefit of any patron participating in a junket, unless otherwise disclosed to and approved by the Board.
- (4) Extend credit to or on behalf of a patron participating in a junket.

CHAPTER 440. (Reserved)

§§ 440.1—440.4. (Reserved).

CHAPTER 440a. MANAGEMENT COMPANIES

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

§ 440a.1. General requirements.

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

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

§ 440a.2. Applications.

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

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

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

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

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

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

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

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

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

§ 440a.4. Management company responsibilities.

(a) Notwithstanding any provision to the contrary in a management contract, a management company will be deemed to be an agent of the slot machine licensee for purposes of imposing liability for any act or omission of the management company in violation of the act or this part.

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

§ 440a.5. Management contracts.

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

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

(c) A management contract or amendment will not be approved by the Board unless the management company proves by clear and convincing evidence that the approval of the contract would not create a monopoly on the

control of licensed gaming facilities in this Commonwealth. A management company that seeks Board approval of a management contract shall disclose its financial interests in the slot machine licensee or applicant and, if applicable, proposed or contemplated changes in ownership or control of a slot machine licensee

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

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

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

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

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

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

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

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

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

(1) Operation of the following departments:

(i) Information technology.

(ii) Internal audit.

(iii) Slot accounting.

(iv) Slot management.

(v) Security.

(vi) Surveillance.

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

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

(4) Payment of the slot machine license fee.

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

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

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

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

(9) Advertising, player incentive or marketing programs.

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

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

(12) Procurement of vendors and junkets.

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

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

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PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 491a, 493, 493a, 494, 494a, 495, 495a, 497, 497a, 499 AND 499a]

General Rules of Practice; Pleadings; Hearing Procedure; Documentary Filings; Time; Representation Before the Board

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1205 (relating to license or permit application hearing process), rescinds Chapters 493, 494, 495, 497 and 499, amends Chapter 491a (relating to general rules of practice) and adds Chapters 493a, 494a, 495a, 497a and 499a 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 493 and 494 at 36 Pa.B. 1578 (April 1, 2006) and in Chapters 495, 497 and 499 at 35 Pa.B. 4045 (July 16, 2005). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 493a, 494a, 495a, 497a and 499a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 491a, 493a, 494a, 495a, 497a and 499a.

Chapter 491a contains general rules of practice and procedure that apply to persons appearing before the Board in a hearing. These regulations provide defined terms, general guidance as to the function of the Office of the Clerk, general requirements for filing pleadings and other documents with the Board, service requirements, procedure for hearings and prehearing conferences and the duties of hearing and presiding officers.

Chapter 493a (relating to pleadings) contains general rules pertaining to the filing of pleadings with the Board. These regulations provide guidance as to the form and

filing of pleadings, including motions, complaints, answers and other pleadings, service, time requirements, the content of the pleadings, discovery and intervention.

Chapter 494a (relating to hearing procedure) contains general rules regarding hearing procedure before the Board. These provisions discuss the scheduling of hearings and the rules for oral and documentary hearings. These regulations also provide guidance as to the procedure for hearings including the report or recommendation of the hearing officer, Board review, the procedure for reopening the record, filing exceptions, rehearing or reconsideration, briefs and oral argument, reports of compliance and the appeal process.

Chapter 495a (relating to documentary filings) lists the form requirements for documentary filings with the Board. This chapter includes rules on incorporation by reference in a documentary filing, execution of documents, and verification and affidavit forms. This chapter also notifies parties of the number of copies that are required to be submitted to the Board.

Chapter 497a (relating to time) provides guidance as to the Board's method of calculation of time for the purpose of filing pleadings and other documents with the Board. This chapter also provides guidance as to the commencement of the appeal period.

Chapter 499a (relating to representation before the Board) contains rules pertaining to representation before the Board. This chapter includes the form and procedure by which an individual may file a notice of appearance with the Board. Also included in this chapter are prohibitions on contemptuous conduct and the Board's ability to deny the privilege of appearance before the Board.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 2298 (May 19, 2007).

The Board did not receive any public comments during the public comment period. On July 18, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC). These comments were reviewed by the Board and are discussed in detail as follows.

In § 495a.3 (relating to documentary filings), IRRC suggested that the Board clarify whether this section supplements or supersedes 1 Pa. Code § 33.3 (relating to single pleading or submittal covering more than one matter).

The Board intended for § 495a.3 to supersede 1 Pa. Code § 33.3. However, due to the large size of the record in many of the Board's proceedings and limitations on filing space, it is not feasible to allow parties to reference documents from all other Board proceedings because they are not readily available. Therefore this section has been deleted in its entirety. Incorporation of documents is addressed in § 495a.1(b) (relating to form of documentary filings generally) and subsection (f) has been amended to include that this section supersedes 1 Pa. Code § 33.3.

Additional Revisions

In addition to the revision discussed previously, the Board has made several additional revisions.

In rulemaking No. 125-53, which was adopted by the Board on June 5, 2007, IRRC suggested that the phrase "unless otherwise provided by the Board, as provided in § 494a.1(a) (relating to generally)" be deleted from

§ 491a.7(b)(1) (relating to presiding officers) because Chapter 494a had not yet been adopted as a final-form regulations.

Now that final-form regulations adopting Chapter 494a are being adopted, this phrase is being added back to § 491a.7(b)(1).

In § 493a.4(a), the Bureau of Investigations and Enforcement has been added to the list of entities that may file petitions with the Board. This was done because there may be instances when it is more appropriate for the Office of Enforcement Counsel to file a petition rather than a complaint.

In § 493a.10 (relating to motions for summary judgment and judgment and on the pleadings), the last sentence in subsection (a) has been deleted. It is not needed because subsection (c) establishes the time period for filing answers to motions.

Section § 493a.11 (relating to discovery), has been expanded to provide greater detail on discovery procedures.

In § 494a.7 (relating to amendments and withdrawal of pleadings), subsection (a) has been amended to allow 15 days to file exceptions instead of 10. This change was made to insure that parties would have sufficient time to receive and review the report or recommendation. Also in § 494a.7, subsection (c) has been deleted entirely. The Board does not believe that there is a need to file a brief with exceptions. The exceptions themselves should fully address any matters that are being objected to and filing briefs would be redundant. Other references to briefs in renumbered subsections (c) and (e) have also been deleted.

In § 494a.11 (relating to discovery), subsection (c) has been deleted. Once an appeal is filed, the Board no longer has jurisdiction over the party filing the appeal.

In § 495a.1 (relating to form of documentary filings generally), the Board has revised the scope of subsection (b) to limit the ability to reference (as opposed to attaching) documents to documents filed in the ongoing proceeding. Due to the large size of many of the Board's proceedings and limitations on filing space, it is not feasible to make all of these documents readily available to parties.

In § 497a.5 (relating to extensions of time and continuance), subsection (a)(3) has been revised to allow requests for a continuance to be made orally as well as in writing. In many application denial proceedings for gaming and nongaming employees, the applicant is representing themselves. Allowing these individuals the opportunity to orally request a continuance will be more convenient for them and may speed up the process. The phrase "to the presiding officer" was also added to this subsection to clarify to whom the request must be made.

Finally, the Board has made a number of minor wording changes to a number of sections of these regulations to improve the clarity of the regulations.

Affected Parties

This final-form rulemaking imposes requirements on individuals and attorneys appearing before the Board in a hearing.

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board for the administration of a uniform filing, docket-

ing, and system of hearings and appeals, including compliance with practice and procedure requirements.

Political Subdivisions

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

Private Sector

Entities appearing before the Board in a hearing will experience some costs to comply with the filing and procedural requirements in these chapters and the filing fees published by the Board.

General Public

Individuals appearing before the Board in a hearing will experience some costs to comply with the procedural requirements in these chapters and the filing fees published by the Board.

Paperwork Requirements

This final-form rulemaking does not impose new reporting or paperwork requirements on the affected parties under the Board's jurisdiction. This final-form rulemaking clarifies the procedural and form requirements for filings that are submitted to the Board by parties.

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 May 9, 2007, the Board submitted a copy of the proposed rulemaking published at 37 Pa.B. 2298 (May 19, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 received 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 September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 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 the act.

Order

The Board, acting under the act, orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 493.1—493.14, 494.1—494.11, 495.1—495.7, 497.1—497.5 and 499.1—499.7; by adding §§ 493a.1—493a.13, 494a.1—494a.11, 495a.1—495a.6, 497a.1—497a.5 and 499a.1—499a.7; and by amending § 491a.7 and 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*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-56 remains valid for the final adoption of the subject regulations.

Annex A

TITLE. 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 491a. GENERAL RULES OF PRACTICE

§ 491a.7. Presiding officers.

(a) When evidence is to be taken in a hearing, the Board or a presiding officer may conduct the hearing.

(b) The Board and presiding officers shall have the power and authority to:

(1) Regulate the course of hearings, including the scheduling thereof, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Board, as provided in § 494a.1(a) (relating to generally).

(2) Administer oaths and affirmations.

(3) Issue subpoenas.

(4) Rule upon offers of proof and receive evidence.

(5) Preside over or cause depositions to be taken.

(6) Hold conferences before or during hearings.

(7) Dispose of procedural matters, but not before a proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings has been submitted to the Board.

(8) Certify any question to the Board for consideration and disposition, within the presiding officer's discretion, or upon direction of the Board.

(9) Submit proposed reports in accordance with this subpart.

(10) Take other action appropriate to the discharge of their duties as may be designated by the Board and authorized by the act.

(c) Except as authorized by law and by this subpart, a presiding officer may not, in a proceeding, consult with a person or party on a fact in issue unless notice and opportunity for parties to participate has been given.

(d) Presiding officers will conduct fair and impartial hearings and maintain order. Disregard by parties or counsel of rulings of the presiding officer on matters of order and procedure will be noted on the record, and if the presiding officer deems necessary, it will be made the subject of a special written report to the Board.

(e) If parties or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Board a report thereon, together with recommendations, and, in the presiding officer's discretion, suspend the hearing.

(f) Rulings of presiding officers may not be appealed during the course of a hearing or conference except in extraordinary circumstances when a prompt decision by the Board is necessary. In this instance, the matter will be immediately referred by the presiding officer to the Board for determination.

(1) An offer of proof made in connection with an objection to a ruling of the presiding officer rejecting or excluding oral testimony must be a statement of the substance of the evidence which counsel contends would be adduced by the testimony. If the rejected or excluded evidence is in documentary or written form, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.

(2) Unless the Board acts upon a question referred by a presiding officer for determination within 30 days, the referral will be deemed to have been denied.

(g) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers).

CHAPTER 493. (Reserved)

§§ 493.1—493.14. (Reserved).

CHAPTER 493a. PLEADINGS

Sec.	
493a.1.	Generally.
493a.2.	Complaints.
493a.3.	Satisfaction of complaints.
493a.4.	Petitions generally.
493a.5.	Answers.
493a.6.	Consolidation.
493a.7.	Amendments and withdrawal of pleadings.
493a.8.	Motions generally.
493a.9.	Preliminary motions.
493a.10.	Motions for summary judgment and judgment on the pleadings.
493a.11.	Discovery.
493a.12.	Intervention.
493a.13.	Consent agreements.

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

- (1) Complaints.
- (2) Petitions.
- (3) Motions.
- (4) Answers to pleadings.
- (5) Exceptions.
- (6) Appeals.
- (7) Formal notices.

(b) Filing fees for pleadings, copies and other administrative requests will be in accordance with a fee schedule published by the Board in the *Pennsylvania Bulletin*, available on the Board's website, and in the Office of the Clerk.

(c) Pleadings shall be filed with the Clerk and contain a docket number. The Clerk will assign a docket number if one has not been assigned.

(d) This section supplements 1 Pa. Code §§ 35.1 and 35.2 and 35.9—35.11 (relating to applications; and formal complaints).

§ 493a.2. Complaints.

(a) The procedures for filing complaints shall be in accordance with 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints) as supplemented by this chapter.

(b) Complaints may be filed by the Bureau and other persons authorized by the Board.

(c) A proceeding against a licensee, permittee, persons registered or certified by the Board or employee of a licensee or persons registered or certified by the Board shall be initiated by written complaint filed by the complainant, which must include a statement setting forth in ordinary and concise language the matter complained of and the facts supporting the complaint.

(d) Complaints will be served in accordance with § 491a.5 (relating to service by the Board).

(e) Within 20 days of service of the complaint filed by the complainant, the respondent may file with the Clerk a notice of defense, in which the respondent may:

- (1) Request a hearing.
- (2) Admit the matter complained of and the alleged facts in whole or in part.
- (3) Present new matter or explanation by way of defense.
- (4) State any legal objection to the complaint.
- (5) Present affirmative defenses.

(f) The respondent may be entitled to a hearing on the merits if the respondent files the required notice of defense within the time allowed by subsection (e). The notice of defense will be deemed a specific denial of all parts of the complaint not expressly admitted.

(g) Failure to timely file the required notice of defense or to appear at the hearing constitutes an admission of all matters and facts contained in the complaint and a waiver of the respondent's rights to a hearing. The Board may conduct a hearing despite a respondent's failure to timely file the required notice of defense or to appear at the hearing.

(h) Affirmative defenses shall be specifically stated, and unless objection is taken as provided in subsection (e)(4), objections to the form of the complaint shall be deemed waived.

(i) The Clerk will deliver or send by mail a notice of the hearing date to all parties at least 10 days prior to a hearing.

(j) Applicants, licensees, permittees, persons registered or certified and other persons authorized by the Board may request a hearing on any matter by filing a written petition for special relief in accordance with § 493a.4 (relating to petitions generally).

(k) The complainant has the burden to demonstrate, by a preponderance of the evidence, that the respondent has failed to comply with the act or this part.

(l) This section supplements 1 Pa. Code §§ 35.9—35.11 and 35.14 (relating to formal complaints; and orders to show cause).

§ 493a.3. Satisfaction of complaints.

(a) If the respondent satisfies a complaint either before or after a hearing, a statement to that effect signed by the complainant shall be filed with the Clerk setting forth

that the complaint has been satisfied and requesting dismissal or withdrawal of the complaint. Except when requested by the parties, the Board will not be required to render a final order upon the satisfaction of a complaint.

(b) This section supersedes 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

§ 493a.4. Petitions generally.

(a) Petitions may be filed by BIE, parties, applicants, licensees, permittees, persons registered or certified by the Board, and other persons authorized by the Board.

(b) Petitions must be in writing, state clearly and concisely the grounds for the petition, the interest of the petitioner in the subject matter, the facts relied upon and the relief sought.

(c) The procedure for petitions shall be in accordance with 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations). Petitions must conform to § 491a.4 (relating to filing generally) and Chapters 495a and 497a (relating to documentary filings; and time), and be served on all persons directly affected.

(d) Copies shall also be served in accordance with the Board's direction.

(e) This section supplements 1 Pa. Code §§ 35.17 and 35.18.

§ 493a.5. Answers.

(a) Answers shall be filed with the Clerk and other parties within 20 days after the date of service of a complaint, petition, motion or other pleading, unless a different time is prescribed by the Board or presiding officer.

(b) The procedures in 1 Pa. Code §§ 35.35—35.40 apply.

(c) This section supplements 1 Pa. Code §§ 35.35—35.40.

§ 493a.6. Consolidation.

(a) The Board or presiding officer, with or without motion, may consolidate proceedings involving a common question of law or fact.

(b) The section supersedes 1 Pa. Code § 35.45 (relating to consolidation).

§ 493a.7. Amendments and withdrawal of pleadings.

Amendments and withdrawal of pleadings shall be in accordance with 1 Pa. Code §§ 35.48—35.51 (relating to amendment and withdrawal of pleadings).

§ 493a.8. Motions generally.

The procedures for motions shall be in accordance with 1 Pa. Code §§ 35.177—35.180 (relating to motions).

§ 493a.9. Preliminary motions.

(a) A preliminary motion may be filed by a party. The preliminary motion must state the specific grounds relied upon, and be limited to the following:

- (1) A motion questioning the jurisdiction of the Board or the presiding officer.
- (2) A motion to strike a pleading that is insufficient as to form.
- (3) A motion for a more specific pleading.

(b) Except when a motion for a more specific pleading is filed, an answer to a preliminary motion may be filed within the time period prescribed for answers to complaints, petitions and motions. All preliminary motions filed by a party shall be raised at the same time.

(c) If a motion for more specific pleading is filed, an answer may not be filed until further directed by the Board or presiding officer.

(d) A preliminary motion will be decided by the Board or presiding officer within 30 days of the filing of the preliminary motion.

(e) If a preliminary motion to strike is granted, the party who submitted the stricken pleading may file an amended pleading within 10 days of service of the order granting the motion to strike.

(f) This section supplements 1 Pa. Code §§ 35.177—35.180 (relating to motions).

§ 493a.10. Motions for summary judgment and judgment on the pleadings.

(a) *Motion for judgment on the pleadings.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings.

(b) *Motion for summary judgment.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.

(c) *Answers to motions.* An answer to a motion for summary judgment or a motion for judgment on the pleadings, including an opposing affidavit to a motion for summary judgment, may be filed within 10 days of the date of service of the motion. An answer to a motion for summary judgment may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

(d) *Decisions on motions.* If a motion is granted in whole or in part by a presiding officer, it will be in the form of a report or recommendation. The Board will make a final ruling on a motion for judgment on the pleadings or a motion for summary judgment.

(e) *Supplementation.* This section supplements 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

§ 493a.11. Discovery.

(a) A party may, upon written motion to the Board or a presiding officer, request a prehearing conference solely for the purpose of discussing discovery procedures as the nature of the matter and facts of the proceedings require.

(1) At the prehearing conference, the presiding officer may grant any requests for discovery which serve to facilitate an efficient and expeditious hearing process, do not unduly prejudice and burden the responding party and as may be required in the interests of justice.

(2) A party may request discovery by one or more of the following methods:

- (i) Written interrogatories.
- (ii) Depositions.
- (iii) Affidavits.
- (iv) Production of documents or things.
- (v) Requests for admissions.

(3) With the approval of the presiding officer, the parties may enter into a binding discovery plan at the prehearing conference.

(b) Upon written request from a party in a proceeding served upon another party in the proceeding, the requesting party shall be entitled to the name and address of any witness who may be called to testify on behalf of the responding party and all documents or other material in the possession or control of the responding party which the responding party reasonably expects will be introduced into evidence. The responding party shall be under a continuing duty to update its response to this request.

(c) The presiding officer may, upon request of a party, permit the testimony of a witness or the introduction of other evidence not disclosed pursuant to a request made under subsection (b), if following proffer by the party seeking to present the evidence, the presiding officer determines that justice so requires.

(d) Confidential information furnished to or obtained by the Board or the Bureau from any source will not be discoverable under this subsection. If a request for discovery involves confidential information, a party may file a motion for a protective order and the presiding officer will make a determination as to what is deemed confidential.

(e) If a party fails to respond to a discovery request or fails to adhere to the time limits set forth in the discovery plan, the opposing party may file a motion to compel discovery. The presiding officer may grant or deny the motion, as the circumstances of the proceeding require.

(f) Depositions will be conducted in accordance with 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

§ 493a.12. Intervention.

(a) The decision to grant a petition to intervene in a proceeding before the Board or a presiding officer is within the sole discretion of the Board.

(b) A person wishing to intervene in a proceeding may file a petition with the Clerk which shall be served on all named parties to the underlying proceeding. When a petition to intervene is filed with the Clerk, it will be referred to the Board which will issue a determination as soon as practicable.

(c) The Board may grant a petition to intervene if it determines:

(1) The person has an interest in the proceeding which is substantial, direct and immediate.

(2) The interest is not adequately represented by a party to the proceeding.

(3) The person may be bound by the action of the Board in the proceeding.

(d) Petitions to intervene may be filed at any time following the filing of an application, petition, complaint or other document seeking Board action, but no later than 30 days prior to the date set for a hearing unless, in extraordinary circumstances for good cause shown, the Board authorizes a later filing.

(e) Petitions to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law

asserted in the petition or complaint initiating the proceeding, and citing by appropriate reference provisions or other authority relied on.

(f) A party may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. Answers shall be filed within 10 days after the date of service of the petition, unless for cause the Board prescribes a different time.

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

(h) Notwithstanding the provisions of this section, petitions to intervene in licensing hearings for slot machine licenses shall be governed by § 441.19(x) (relating to licensing hearing for slot machine licenses).

(i) This section supersedes 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

§ 493a.13. Consent agreements.

(a) Parties may propose consent agreements at any time prior to the entry of a final order.

(b) Consent agreements must be in writing, signed by all parties and accurately reflect the terms of the consent agreement, including the facts agreed to by the parties constituting the grounds for the action proposed in the consent agreement.

(c) If the consent agreement is proposed in a matter that is the subject of a proceeding before a presiding officer, the proposal of the consent agreement will stay the proceeding until the consent agreement is acted upon by the Board.

(d) The consent agreement shall be presented to the Board for its approval or disapproval. If the Board approves the consent agreement, it will become the final order of the Board. If the Board disapproves the consent agreement, the parties will be notified and the consent agreement and any documents solely relating to the consent agreement will not constitute part of the record.

CHAPTER 494. (Reserved)

§§ 494.1—494.11. (Reserved).

CHAPTER 494a. HEARING PROCEDURE

Sec.	
494a.1.	Generally.
494a.2.	Oral hearings.
494a.3.	Documentary hearings.
494a.4.	Report or recommendation of the presiding officer.
494a.5.	Review.
494a.6.	Reopening of record.
494a.7.	Exceptions.
494a.8.	Rehearing or reconsideration.
494a.9.	Briefs and oral arguments.
494a.10.	Reports of compliance.
494a.11.	Appeals.

§ 494a.1. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be heard in Harrisburg, unless a different site is designated by the Board or the presiding officer. The Board or the presiding officer, in its discretion with or without motion,

for cause may at any time with due notice to the parties advance or postpone any proceeding on the hearing calendar.

(b) Hearings will be held before the Board or presiding officer, and all appearances, including staff counsel participating, will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Board participating, including accountants, and other experts, who are assisting in the investigation of the matter. This section supersedes 1 Pa. Code §§ 35.123 and 35.124 (relating to conduct of hearings; and order of procedure).

(c) In oral and documentary hearings, neither the Board nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

(d) Subsection (a) supersedes 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 494a.2. Oral hearings.

Oral hearings will be conducted in accordance with 1 Pa. Code §§ 35.121—35.126 and Subchapter C (relating to evidence and witnesses).

§ 494a.3. Documentary hearings.

(a) Documentary hearings will be held before the Board or a presiding officer.

(b) The parties will be notified at least 15 days prior to the date set for a hearing, and the evidentiary record will be closed 5 days prior to the date set for the hearing.

(c) Parties may introduce documents and other evidence, except that witnesses may not testify. Depositions and interrogatories may be taken at any time prior to the close of the evidentiary record, and may be introduced for consideration by the Board or presiding officer.

§ 494a.4. Report or recommendation of the presiding officer.

(a) A report or recommendation of the presiding officer may be required by the Board, in both oral and documentary hearings, except that recommendations will not be made in proceedings involving the issuance, approval, renewal, revocation, suspension or conditioning of a license.

(b) The presiding officer will file with the Clerk and certify to the Board a verbatim record of any oral hearing, all documents submitted for consideration, and a report or recommendation, when required, as soon as practicable after the conclusion of the hearing and expiration of the time for filing of briefs.

(c) The presiding officer's report or recommendation will include a statement of:

(1) Findings and conclusions, as well as the reasons or basis therefore, for all the material issues of fact, law or discretion presented on the record.

(2) The appropriate statutory provision, regulation, order, sanction, relief, or denial thereof.

(3) Facts officially noticed under 1 Pa. Code § 35.173 (relating to official notice of facts), relied upon in the decision.

(d) The report or recommendation will be in writing, provided to all parties, and will be part of the public record, except for matters and materials designated as confidential by the Board. Service will be in accordance with § 491a.5(d) (relating to service by the Board).

(e) This section supplements 1 Pa. Code §§ 35.201—35.206 (relating to proposed reports generally).

§ 494a.5. Review.

(a) The Clerk will transmit the record of the hearing to the Board and will make it available to all parties.

(b) The Board will review the record of the hearing and the report or recommendation of the presiding officer. The Board may adopt some or all of the recommendations, conduct a full or partial de novo hearing, or remand all or part of the matter to a presiding officer for the taking of additional evidence or clarification of issues, or make an adjudication based on the record.

§ 494a.6. Reopening of record.

(a) After the conclusion of the hearing, a party in a proceeding may file with the presiding officer, prior to the issuance of a report or recommendation, a petition to reopen the proceeding for the purpose of taking additional evidence. The petition must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the hearing was concluded.

(b) After the issuance of a report or recommendation by a presiding officer and before the Board issues its final order, a party in a proceeding may file with the Board, a petition to reopen the proceeding for the purpose of taking additional evidence. The petition must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the issuance of a report or recommendation.

(c) Answers may be filed within 10 days of service of the petition. If no answers are filed, objections to the granting of the petition are waived.

(d) After the filing of the petition and answer, the Board or presiding officer will grant or deny the petition.

(e) Prior to filing a report or recommendation, the presiding officer, after notice to the parties, may reopen the proceedings for the receipt of further evidence on his own motion, if the presiding officer has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the proceedings.

(f) Prior to the issuance of a final order, the Board, after notice to the parties, may reopen the proceeding for the receipt of further evidence, if the Board has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the proceeding.

(g) This section supersedes 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

§ 494a.7. Exceptions.

(a) A party may file exceptions to the report or recommendation of the presiding officer within 15 days of the date of the report or recommendation, unless the time is extended upon good cause shown.

(b) Exceptions must be in writing, filed with the Clerk, and state with particularity the matter objected to, including the portion of the record where the basis of the objection may be found and any supporting legal argument.

(c) Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report or recommendations. Exceptions to any part of the report or recommendations may not thereafter be raised before the Board in oral argument, if an oral argument is permitted, or in an application for rehearing or reconsideration, and shall be deemed to be waived. The Board may refuse to consider exceptions to a ruling admitting or excluding evidence unless there was an objection at the time the ruling was made or within an extension of time prescribed by the presiding officer.

(d) Exceptions will be considered by the Board and will be limited to the record established during the hearing. The Board may permit evidence not already established in the record if compelling reasons are shown for its submission, the party requesting its admission did not previously know of its existence and its existence could not have been discovered with the exercise of reasonable diligence.

(e) The Board will conduct a documentary hearing on the exceptions within 30 days of receipt of the exceptions, unless exigent circumstances require a longer period of time. The Board may grant or deny the exceptions in whole or in part.

(f) The Board will issue its final order in consideration of the presiding officer's report or recommendation and any filed exceptions, and notify all parties by regular mail.

(g) This section supplements 1 Pa. Code §§ 35.211—35.214 (relating to exceptions to proposed reports).

§ 494a.8. Rehearing or reconsideration.

(a) A party to a proceeding may file an application for rehearing or reconsideration by filing a petition within 15 days after the final order of the Board.

(b) The petition must state concisely the alleged errors in the adjudication or other order of the Board. If a final order or other order of the Board is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the petition.

(c) Answers to petitions for rehearing or reconsideration will not be entertained by the Board. If the Board grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(d) If the Board does not act upon the petition for rehearing or reconsideration within 30 days after it is filed, the petition will be deemed to have been denied.

(e) This section does not apply to proceedings resulting in any final order, determination or decision of the Board involving the approval, issuance, denial or conditioning of licensed entity applications which are subject to the appellate requirements of 4 Pa.C.S. § 1204 (relating to licensed gaming entity application appeals from board).

(f) This section supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 494a.9. Briefs and oral argument.

(a) All parties shall be afforded an opportunity to submit briefs prior to a final order of the Board. Briefs shall be filed with the Clerk. If a matter has previously

been assigned to a presiding officer, a copy of the brief shall be submitted to the presiding officer.

(b) Oral argument may be heard at the discretion of the Board or presiding officer.

§ 494a.10. Reports of compliance.

(a) When a person subject to the jurisdiction of the Board is required to do or perform an act by a Board order, permit or license provision, the person shall file, with the Clerk within 30 days following the date when the requirement becomes effective, a notice stating that the requirement has or has not been met or complied with, unless the Board specifies an alternate means to demonstrate compliance or proof of compliance.

(b) This section supersedes 1 Pa. Code § 35.251 (relating to reports of compliance).

§ 494a.11. Appeals.

(a) A party may appeal final orders of the Board in accordance with the act, in the form prescribed in the Pennsylvania Rules of Appellate Procedure (See 210 Pa. Code).

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Board unless a stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure, or the Board grants a stay prior to the filing of the appeal.

CHAPTER 495. (Reserved)

§§ 495.1—495.7. (Reserved).

CHAPTER 495a. DOCUMENTARY FILINGS

Sec.	
495a.1.	Form of documentary filings generally.
495a.2.	Form of documents.
495a.3.	Single pleading covering more than one matter.
495a.4.	Execution of documents.
495a.5.	Verification.
495a.6.	Number of copies.

§ 495a.1. Form of documentary filings generally.

(a) Pleadings or other documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, permits or other writings referred to in pleadings or other documents may be attached as exhibits. Copies of writings or orders already of record with the Board in the proceeding need not be attached.

(c) Pleadings or other documents filed with the Board in a proceeding must clearly show the docket number or similar identifying symbols, if any, and title of the proceeding before the Board. They must also show, in the title of a particular pleading or other document filed, the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Pleadings or other documents must include an address and phone number where papers may be served in connection with the proceedings. Use of a fax number constitutes agreement to accept papers connected with the proceeding by fax.

(e) Notation of counsel's current Supreme Court identification number issued by the Court Administrator of Pennsylvania constitutes proof of the right to practice in this Commonwealth.

(f) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5 and 33.3 (relating to communications and filings generally; and incorporation by reference).

§ 495a.2. Form of documents.

(a) The method of receipt and transmission of information will be under a policy published by the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.2 (relating to form).

§ 495a.3. Single pleading covering more than one matter.

(a) Except as otherwise provided under this chapter (relating to formal proceedings), a single pleading may be accepted for filing with respect to a particular transaction and one or more related transactions and shall be deemed to be a single filing for purposes of the computation of fees under Chapter 471a (relating to schedule of fees payable to the Board).

(b) If, upon review, the Board determines that the transactions are not closely related or otherwise properly joined, the Board will direct that the single pleading be refiled as two or more separate pleadings. Each pleading will be subject to a separate filing fee.

(c) Subsection (a) supersedes 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).

§ 495a.4. Execution of documents.

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original and all copies of a pleading, or other documents shall be signed in ink by the party in interest, or by his attorney, as required by subsection (b), and show the office and post office address of the party or attorney.

(b) *Subscription.*

(1) A pleading or other document filed with the Board shall be subscribed by one of the following:

(i) The persons filing the documents.

(ii) An officer if it is a corporation, trust, association or other organized group.

(iii) An officer or authorized employee thereof if it is another agency, a political subdivision, or other governmental authority, agency or instrumentality.

(iv) An attorney authorized to subscribe on behalf of the client.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.

(c) *Effect.*

(1) The signature of the person subscribing a document filed with the Board constitutes a certificate by the individual that:

(i) The person has read the document being subscribed and filed, and knows the contents thereof.

(ii) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the Board, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under 4 Pa.C.S. § 1518 (relating to prohibited acts; penalties).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 33.11 (relating to execution).

§ 495a.5. Verification.

(a) Pleadings or other documents containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed, written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____

(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of _____ with that corporation,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief).

(Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 20____.

(Signature of official administering oath)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Board shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 495a.6. Number of copies.

(a) An original and three copies of pleadings or documents other than correspondence shall be furnished to the Board at the time of filing, except as may be otherwise ordered or requested by the Board.

(b) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(c) Subsections (a)—(b) supersede 1 Pa. Code § 33.15 (relating to number of copies).

CHAPTER 497. (Reserved)

§§ 497.1—497.5. (Reserved).

CHAPTER 497a. TIME

Sec.	
497a.1.	Date of filing.
497a.2.	Computation of time.
497a.3.	Issuance of Board orders.
497a.4.	Effective dates of Board orders.
497a.5.	Extensions of time and continuances.

§ 497a.1. Date of filing.

(a) Whenever a pleading or other document is required or permitted to be filed under this part or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the Office of the Clerk.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter does not constitute proof of the date of mailing.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) Except as otherwise permitted by the Board, a document transmitted by facsimile or electronically to the Board will not be accepted for filing within the meaning of this section.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

§ 497a.2. Computation of time.

(a) In computing a period of time prescribed or allowed by the act or this part, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) In computing a period of time prescribed or allowed by the act or this part which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action shall run until the next preceding day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.12 (relating to computation of time).

§ 497a.3. Issuance of Board orders.

(a) In computing a period of time involving the date of the issuance of an order by the Board, the day of issuance of an order will be the date the Clerk enters the order. An order will not be made public prior to its entry except when, in the Board's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Board. The Clerk will clearly indicate on each order the date of its adoption by the Board and the date of its entry.

(b) The date of entry of an order which is subject to review by the Supreme Court of Pennsylvania is governed by 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action). The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Board action.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 497a.4. Effective dates of Board orders.

(a) An order of the Board promulgating regulations will be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Board will be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

§ 497a.5. Extensions of time and continuances.

(a) Extensions of time will be governed by the following:

(1) Whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may be extended by the Board, for good cause, upon a motion made before expiration of the period originally prescribed or as previously extended. Upon a motion made after the expiration of the specified period, the time period within which the act may be permitted to be done may be extended when reasonable grounds are shown for the failure to act.

(2) Requests for an extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the Board or presiding officer, for good cause shown allows a shorter time.

(3) Requests for a continuance of a hearing shall be made orally or in writing to the presiding officer, stating the facts on which the request rests. Requests for continuance will be considered only for good cause shown.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

CHAPTER 499. (Reserved)

§§ 499.1—499.7. (Reserved).

CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

Sec.	
499a.1.	Appearance in person.
499a.2.	Appearance by attorney.
499a.3.	Other representation prohibited at hearings.
499a.4.	Notice of appearance or withdrawal.
499a.5.	Form of notice of appearance.
499a.6.	Contemptuous conduct.
499a.7.	Suspension and disbarment.

§ 499a.1. Appearance in person.

(a) An individual who is a party in a proceeding before the Board may represent himself before the Board.

(b) A party, other than an individual appearing on his own behalf, in an adversary proceeding before the Board shall be represented by an attorney authorized to appear before the Board in accordance with § 499a.2 (relating to appearance by attorney).

(c) This section supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

§ 499a.2. Appearance by attorney.

(a) A party in a proceeding before the Board who elects to be represented by an attorney in the proceeding, or who is required by § 499a.1 (relating to appearance in person) to be represented by an attorney in the proceeding, shall be represented by:

(1) An attorney at law admitted to practice before the Pennsylvania Supreme Court.

(2) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which permits attorneys licensed in this Commonwealth to practice before its courts and agencies.

(3) An attorney authorized in accordance with subsection (b) to appear in connection with the proceeding.

(b) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which does not permit attorneys licensed in this Commonwealth to appear before its courts and agencies may, at the discretion of the Board, be authorized to appear in connection with a particular proceeding. The Board will determine whether to grant the authorization upon the filing of a motion with the Clerk by an attorney admitted to practice law before the Pennsylvania Supreme Court and in good standing therewith, which contains the information required to satisfy the written notice provision of Pa.B.A.R. 301 (relating to admission pro hac vice), and provided that the attorney filing the motion shall be and remain the attorney of record in the proceeding and further provided that both the attorney of record and the attorney admitted under this subsection shall both sign all documents submitted or filed in connection with the proceeding.

(c) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

§ 499a.3. Other representation prohibited at hearings.

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Board except:

(1) As stated in §§ 499a.1 and 499a.2 (relating to appearance in person; and appearance by attorney).

(2) As otherwise permitted by the Board in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

§ 499a.4. Notice of appearance or withdrawal.

(a) An individual appearing without representation before the Board shall file with the Office of the Clerk an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk within 3 business days.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Office of the Clerk shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Office of the Clerk a written notice of the appearance as required under § 499a.5 (relating to form of notice of appearance). The notice shall be served on the other parties in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk within 3 business days.

(c) A person appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his authority to act in that capacity.

(d) Except as provided in subsection (e), an attorney may not withdraw his appearance without leave of the Board or presiding officer. An attorney may request leave to withdraw his appearance through petition to the Board or presiding officer. Copies of the petition shall be served on all parties. The attorney requesting withdrawal shall immediately notify the party previously represented by ordinary mail of an order granting leave to withdraw.

(e) An attorney may withdraw his appearance without leave of the Board or presiding officer if one of the following occurs:

(1) Another attorney has previously entered his appearance on behalf of the party.

(2) Another attorney is simultaneously entering an appearance on behalf of the party, and the change of attorneys does not delay any stage of the litigation.

(f) An attorney who wishes to withdraw an appearance under subsection (d) shall file with the Office of the Clerk. The notice shall be served on the other parties.

(g) Subsections (a) and (d) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

§ 499a.5. Form of notice of appearance.

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA GAMING
CONTROL BOARD

In the Matter of:

[File, Docket or Other Identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above designated matter on behalf of _____.

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

On the basis of this notice, I request a copy of each document hereafter issued by the Board in this matter.

I am already receiving or have access to a copy of each document issued by the Board in this matter and do not on the basis of this notice require an additional copy.

Signature

Attorney Identification Number

Name (Printed)

P. O. address

City, state and zip code

Telephone number (including area code)

Fax Number (including area code)

Email address

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to form of notice of appearance).

§ 499a.6. Contemptuous conduct.

(a) Contemptuous conduct at a hearing before the Board will be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 31.27 (relating to contemptuous conduct).

§ 499a.7. Suspension and disbarment.

(a) The Board may deny, temporarily or permanently, the privilege of appearing or practicing before the Board to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

- (1) Lacked the requisite qualifications to represent others.
- (2) Engaged in unethical, contemptuous or improper conduct before the Board.
- (3) Repeatedly failed to follow Board directives.

(b) For the purpose of subsection (a), practicing before the Board includes the following:

- (1) Transacting business with the Board.
- (2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Board in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.
- (3) Appearances at a hearing before the Board.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to suspension and disbarment).

[Pa.B. Doc. No. 07-1982. Filed for public inspection October 26, 2007, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CHS. 511, 511a, 513 AND 513a]**

Persons Required to be Excluded; Underage Gaming

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(8), 1514, 1515 and 1518, rescinds Chapters 511 and 513 and adds Chapters 511a and 513a (relating to persons required to be excluded; and underage gaming) 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 Chapter 511 at 36 Pa.B. 2905 (June 10, 2006) and Chapter 513 at 36 Pa.B. 3441 (July 1, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expire on July 5, 2007.

The Board is adopting Chapters 511a and 513a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 511a and 513a

Section 511a.1 (relating to definitions) defines the terms used in this chapter.

Section 511a.2 (relating to maintenance and distribution of the exclusion list) states that the Board will maintain a list of excluded persons, specifies that the exclusion list will be available to the public, both at the Board's offices and on the Board's website, and lists the information the Board will provide to slot machine licensees and the public about individuals on the exclusion list.

Sections 511a.3, 511a.4 and 511a.5 (relating to criteria for exclusion; duties of the Bureau; and placement on the exclusion list) list the criteria the Board will use when determining whether or not an individual should be placed on the exclusion list; the duties of the Bureau of Investigations and Enforcement relating to the exclusion process; the process to be used to place a person on the exclusion list; and the consequences of being placed on the exclusion list including remission to the Board of any winnings by excluded persons.

Sections 511a.6 and 511a.7 (relating to demand for hearing on the placement of a person on the exclusion list; and Board review) address a person's right to a hearing if they are placed on the exclusion list; the conduct of the hearings; and the Board's review of placements.

Section 511a.8 (relating to duties of slot machine licensees) requires slot machine licensees to develop procedures to prevent violations of this chapter; to exclude or eject individuals who are on, or meet the criteria to be on, the exclusion list; to notify the Board if an excluded person is found in or attempts to enter a licensed facility; and to notify the Board about any individual the slot machine licensee believes meets the criteria for exclusion

Finally, § 511a.9 (relating to petition to remove name from the exclusion list) outlines the petition process that an individual who is on the exclusion list can use to request removal from the exclusion list.

Section 513a.1 (relating to definitions) defines the terms used in this chapter.

Section 513a.2 (relating to exclusion requirements) specifies who is excluded from the gaming floor or from engaging in gaming activities based on age and that any winnings by underage individuals will be remitted to the Board.

Section 513a.3 (relating to responsibilities of licensees, permittees, registrants and certification holders) addresses the responsibilities of licensees, permittees, registrants and certification holders related to underage gaming.

Section 513a.4 (relating to signage requirements) mandates posting signs that state that individuals under 21 can not engage in gaming activities, will be removed if found gaming, and may be subject to arrest for trespass.

Section 513a.5 (relating to enforcement) specifies the defenses that may not be used in enforcement actions related to underage gaming.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 1490 (April 7, 2007).

The Board did not receive any public comments during the public comment period. On May 22, 2007, Representatives Harold James and Paul Clymer, Chairpersons of the House Gaming Oversight Committee, and Representative James individually, submitted comments on the proposed rulemaking. On June 6, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC).

The Board adopted a final-form version of this rulemaking on June 21, 2007. Subsequent to that adoption, comments were filed on the final-form version of this rulemaking by Down's Racing, LP (Downs) and Greenwood Gaming and Entertainment, Inc. (Greenwood). Additionally, comments were received from IRRC and Representatives Harold James and Paul Clymer, the Chairpersons of the House Gaming Oversight Committee on the final-form version of Chapters 501a and 503a (relating to compulsive and problem gambling requirements; and self-exclusion) which were adopted by the Board on June 5, 2007. Because these regulations contain similar provisions to those that were the subject of IRRC's and the House Chairpersons's concerns with Chapters 501a and 503a, the Board withdrew both of these final-form rulemakings on July 16, 2007, to consider these additional comments.

Comments were reviewed by the Board and are discussed in detail as follows.

In § 511a.1, Representatives James and Clymer suggested that the definition of "excluded person" be expanded to state that it does not include self-excluded persons.

The Board elected not to revise this definition because self-excluded persons are defined in and governed by Chapter 503a. Therefore, additional clarification is not needed.

In § 511a.2, IRRC noted that the preamble indicated that the exclusion list will be available on the Board's website but the regulation does not indicate that the exclusion list will be available on the Board's website. IRRC also asked for an explanation of the need to make the excluded persons list public.

To address IRRC's first concern, the Board has added "posted on the Board's website" to subsection (b). In response to IRRC's second concern, the information concerning who is on the excluded person list is being made public because it may be useful to State and local law enforcement agencies and regulatory agencies in other jurisdictions.

Also in § 511a.2, Representatives James and Clymer suggested that all of the information in subsection (c) not be included on the list of excluded persons made available to the public to avoid the potential for identity theft.

The Board agrees with this suggestion and has added a new subsection (d) which contains the identifying information that will be included on the excluded persons list that will be made available to the public.

In § 511a.3, Representatives James and Clymer expressed concern that subsection (a)(4)(v) could be used to put individuals who engage in legitimate, constitutionally

protected expression, such as union organizers or gaming opponents, on the excluded person list.

The Board never intended that this provision be used to exclude individuals who engage in legal activities. Instead, it is targeted at individuals whose actions could threaten the integrity of gaming operations. To clarify this point, this subsection has been revised to only apply to disruptions which occur "within the facility."

In § 511a.3, Representative James recommended deletion of subsection (a)(4)(vii) because of due process concerns.

The Board has elected to retain this provision. A person who has been charged or is under indictment for a crime related to gaming who is placed on the excluded person list is entitled to a hearing under § 511a.6 and may appeal placement on the excluded person list to Commonwealth Court. Therefore, the Board believes the person's right to due process is protected. Additionally, this is only a factor that "may" result in an individual being placed on the exclusion list; the Board will use its discretion to determine if the offense is serious enough to warrant placement on the exclusion list.

IRRC also had a number of concerns with § 511a.3. First, IRRC asked why the Board used the phrases "inimical to the interest of the Commonwealth or a slot machine licensee, or both" and "inimical to the interest of the Commonwealth or licensed gaming therein" rather than just one phrase throughout. Next, IRRC asked how the Board would use its discretion to include or not include an individual who met one or more of the criteria in § 511a.3 on the excluded person list. IRRC voiced the same concern about § 511a.5(a). IRRC also requested the Board add language to clarify who is an "associate" in subsection (a)(2), what constitutes "moral turpitude" in subsection (a)(3) and if the revocation language in subsection (a)(4)(iii) applies only to permits, licenses and other approvals issued by the Board. IRRC also suggested that the phrase "notorious or unsavory" in subsection (a)(4)(ix) be deleted. Finally, IRRC suggested that subsections (b) and (c), which both address criteria for determining inimicality, be combined.

In response to IRRC's first concern, the Board has revised this section to use the phrase "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" which is the phrase used in 4 Pa.C.S. § 1514(a) (relating to regulation requiring exclusion of certain persons) of the act.

In response to IRRC's second concern, the Board does not intend to automatically add individuals to the excluded persons list if they meet one of the criteria in § 511a.3. Having hundreds of individuals on the list would make it difficult for slot machine licensees to insure that individuals on the list are excluded from their facilities. Each case will be evaluated individually to determine how much of a threat an individual could pose to the integrity of gaming in this Commonwealth. For example, a cheat who lives or who has been known to enter or try to enter gaming facilities in adjacent states would be a likely person to be included on the Commonwealth's list. However, a cheat who only has been identified at gaming facilities in western states might not be put on the Commonwealth's list.

To address IRRC's clarity suggestions, the Board has replaced the phrase "associate of" with the phrase "individual with a known relationship or connection with." To clarify subsection (a)(4)(iii) the word "Board" has been inserted before "permits."

The Board has not added a definition of “moral turpitude” in subsection (a)(3) because it is a well-established term that is used, but not defined, in many statutes and regulations.

The Board has not elected to delete the phrase “notorious or unsavory” in subsection (a)(4)(ix). These characteristics accurately describe the type of reputation that could be used as the basis for adding a person to the exclusion list.

The Board has also chosen not to combine subsections (b) and (c). Both subsections address what may be considered to be inimical, but for somewhat different purposes. Subsection (b) is intended to provide a broad description of criteria the Board will look at when examining a person’s character and background while subsection (c) lists more specific criteria which might be used in a petition for or order of exclusion.

In § 511a.4, Representatives James and Clymer noted that the citation to “section 1515 of the act” included in subsection (b) may be incorrect because “section 1515 of the act” applies to the rights of licensed gaming entities to exclude individuals, not the Board. The same comment also applies to § 511a.6(c).

The Board agrees and has deleted the references to “section 1515 of the act” in §§ 511a.4(b) and 511a.6(c).

In § 511a.5, Representatives James and Clymer and IRRC questioned the Board’s authority for the forfeiture of winnings incurred by an excluded person under subsection (c). The same comment also applies to § 511a.8(f)(1).

While 4 Pa.C.S. § 1514 (relating to regulation requiring exclusion of certain persons) does not include language similar to what appears in 4 Pa.C.S. § 1516(a) (relating to list of persons self excluded from gaming activities) pertaining to the collection of winnings, 4 Pa.C.S. § 1202(b)(30) gives the Board broad authority to adopt regulations that are necessary for the administration and enforcement of the act. Allowing excluded persons to keep any winnings would provide an incentive for cheats or other excluded persons to try to gain access to licensed facilities which is contrary to the purpose and intent of 4 Pa.C.S. § 1514.

In § 511a.5, Representatives James and Clymer and IRRC also questioned, in subsections (d) and (e), how forfeited winnings could be used since they are not a statutorily permitted deduction from gross terminal revenue.

Winnings are cash or cash equivalents that are paid out to a patron and therefore not included in the definition of gross terminal revenue. If the patron is on the excluded person list, the winnings are forfeited by the individual, not the licensed gaming entity. Because these winnings are not part of gross terminal revenue, the allocation of these forfeited funds does not fall under 4 Pa.C.S. Chapter 14 (relating to revenues).

In § 511a.8(d)(2), Downs and Greenwood questioned why written notification to the Director of Office of Compulsive and Problem Gambling (OCPG) is required. They believe it is not necessary because of the notice given to the onsite Bureau of Investigations and Enforcement (BIE) agents and Pennsylvania State Police.

The Director of OCPG, who is not part of BIE, needs this information because they are responsible for evaluating compliance with a licensed facility’s compulsive gaming plan, one component of which is the procedures for detecting and removing excluded persons. Furthermore, most licensed facilities have some form of an incident

report which they would complete for their records; submitting a copy of that report would meet this requirement. Therefore, the Board does not believe that this requirement imposes an unreasonable reporting burden on slot machine licensees.

In § 511a.8, IRRC had two areas of concern. In subsection (d), IRRC recommended that the “procedures set forth by the Board” be spelled out in the regulation. In proposed subsection (e), IRRC questioned the authority for this subsection and how this provision is consistent with the legislative intent of the act.

The Board has deleted the language in subsection (d) pertaining to “procedures set forth by the Board” and added language requiring immediate notice to the BIE agents at the facility and written notice to the Director of the Office of Compulsive and Problem Gambling within 24 hours. The means of notice to the BIE agents at the facility has not been specified to give facilities the flexibility to use the fastest means available, which may be through direct verbal communication or by telephone.

The Board had proposed the provisions in subsection (e) under its general authority under 4 Pa.C.S. § 1202(b)(30). These provisions were intended to discouraging frivolous lawsuits against both the Board and slot machine licensees but in no way relieve a slot machine licensee of its responsibility to comply with the requirements of this chapter. However, the Board recognizes that the act does not contain language specifically authorizing these provisions and for this reason, the Board has deleted proposed § 511a.8(e).

In § 511a.9, Representatives James and Clymer questioned if subsection (g)(2) could create a conflict with a court order or terms of probation.

If a court excludes an individual from licensed facilities as part of a court order or as a condition of parole, being on the Board’s excluded person list would subject the individual to additional sanctions (forfeiture of winnings) but would not conflict with the terms of the court order. Satisfaction of the court order or successful completion of the period of parole would not, however, automatically result in removal from the Board’s excluded person list. It would just be one of the factors the Board would consider when it reviews a petition for early consideration of a petition for removal from the excluded persons list.

In § 513a.2, Representatives James and Clymer and IRRC questioned the Board’s authority for the forfeiture of winnings incurred by an individual under 21 years of age under subsections (d)—(f). The same comment also applies to § 513a.3(a) and (c).

While 4 Pa.C.S. § 1207(8) (relating to regulatory authority of board) does not include language similar to what appears in 4 Pa.C.S. § 1516(a) pertaining to the collection of winnings, 4 Pa.C.S. § 1202(b)(30) gives the Board broad authority to adopt regulations that are necessary for the administration and enforcement of the act. Allowing an individual under 21 years of age to keep any winnings would provide an incentive for underage persons to engage in gaming activities at licensed facilities which is contrary to the purpose and intent of 4 Pa.C.S. § 1207(8).

In § 513a.3, IRRC noted that the language pertaining to the use of winnings remitted to the Board in subsection (c) differs from the language in § 513a.2(e).

In § 513a.3(c), the phrase “and deposited into the Compulsive and Problem Gambling Treatment Fund” has been replaced with “to support compulsive and problem

gambling programs of the Board” to match the language used in §§ 513a.2(e) and 511a.5(d).

In § 513a.4, IRRC asked if different text would be allowed on signs and how facilities would know what text is acceptable.

The Board will give facilities some flexibility on the exact wording to be used on their signs. The review of that language has been addressed by adding language to this section which requires the text that is to be used to be submitted as part of the procedures required under § 513a.3(b).

Additional Revisions

In addition to the revisions discussed previously, the Board has made several additional revisions.

A definition for “OCPG,” has been added to Chapters 511a and 513a.

In § 511.2(c), a new paragraph (8) was added which will list the reason for the person’s placement on the self-exclusion list. This information will help slot machine licensees be aware of the type of threat an individual who is on the excluded person list may pose to a licensed facility.

In §§ 511a.5(d), 513a.2(e) and 513a.3(c), the phrase “of the Board” has been added to the end of these sections to make it clear that any winnings remitted to the Board will be used to support the Board’s compulsive and problem gambling programs.

In § 511a.8, a new subsection (a) has been added which requires slot machine licensees to establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG for approval 30 days prior to initiation of gaming activities at the licensed facility. This insures that adequate procedures will be in place prior to the commencement of gaming at all licensed facilities.

Also in § 511a.8, the words “the appropriate” were inserted before “employees” in subsection (b) to clarify that the exclusion list is only to be distributed to employees who would be responsible identifying or removing excluded persons.

In § 513a.3(b), more detail has been added to describe the process for reviewing the procedures slot machine licensees must submit for approval relating to their procedures to prevent underage gaming.

Finally, minor wording changes have been made throughout the chapter to improve clarity.

Affected Parties

This final-form rulemaking imposes requirements on slot machine licensees, persons who are placed on the excluded persons list and individuals who are not old enough to engage in gaming (under 21 years of age) or are too young to be on the gaming floor (under 18 years of age).

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to placing individuals on the exclusion list, maintenance and distribution of the excluded persons list and enforcement of the provisions related to exclusion and underage gaming.

Political Subdivisions

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

Private Sector

Slot machine licensees will experience costs related to training employees, signage requirements and compliance with the requirements of the exclusion and underage gaming provisions.

General Public

Individuals seeking to dispute placement on or seeking removal from the exclusion list will experience some minor costs associated with the hearing and petition processes.

Paperwork requirements

This final-form rulemaking requires slot machine licensees to maintain, update and disseminate information on excluded persons. A slot machine licensee is also required to submit the names of any individuals it believes meet the criteria for placement on the excluded persons list.

Individuals demanding a hearing will have to file a response to the notice served by the clerk. Individuals seeking to be removed from the exclusion list will have to file a petition specifying the grounds for removal.

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 March 28, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 1490 and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 received 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 September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 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 the act.

Order

The Board, acting under the act, orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 511.1—511.9 and 513.1—513.5 and by adding final regulations in §§ 511a.1—511a.9 and 513a.1—513a.5 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*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-57 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart J. EXCLUSION OF PERSONS

CHAPTER 511. (Reserved)

§§ 511.1—511.9. (Reserved).

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

- Sec.
- 511a.1. Definitions.
- 511a.2. Maintenance and distribution of the exclusion list.
- 511a.3. Criteria for exclusion.
- 511a.4. Duties of the Bureau.
- 511a.5. Placement on the exclusion list.
- 511a.6. Demand for hearing on the placement of a person on the exclusion list.
- 511a.7. Board review.
- 511a.8. Duties of slot machine licensees.
- 511a.9. Petition to remove name from the exclusion list.

§ 511a.1. Definitions.

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

Career or professional offender—A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities contained in 4 Pa.C.S. 1518(a) (relating to prohibited acts; penalties).

Cheat—

(i) To alter, without authorization, the elements of chance, method of selection or criteria which determine:

- (A) The result of a slot machine game.
- (B) The amount or frequency of payment in a slot machine game.
- (C) The value of a wagering instrument.
- (D) The value of a wagering credit.

(ii) The term does not include altering for required maintenance and repair.

(iii) The term includes an act in any jurisdiction that would constitute an offense under 4 Pa.C.S. 1518(a)(6) and (7).

Excluded person—A person who has been placed upon the exclusion list and who is required to be excluded or ejected from a licensed facility.

Exclusion list—A list of names of persons who are required to be excluded or ejected from a licensed facility.

OCPG—The Office of Compulsive and Problem Gambling.

§ 511a.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The exclusion list will be open to public inspection at the Board's central office during normal business hours, posted on the Board's website (www.pgcb.state.pa.us) and will be distributed to every slot machine licensee within this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) The following information will be provided to the slot machine licensees for each excluded person on the exclusion list:

- (1) The full name and all aliases the person is believed to have used.
- (2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and other physical characteristics which may assist in the identification of the person.

(3) The person's date of birth.

(4) The date the person was added to the list.

(5) A recent photograph, if available.

(6) The last known address of record.

(7) Other identifying information available to the Board.

(8) The reason for placement on the excluded persons list.

(d) The following information will be made available to the public for each excluded person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) A recent photograph, if available.

(4) Birth year.

§ 511a.3. Criteria for exclusion.

(a) The exclusion list may include a person who meets one or more of the following criteria:

(1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(2) An individual with a known relationship or connection with a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than 1 year in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a

licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(4) A person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both, including:

- (i) Cheats.
- (ii) Persons whose gaming privileges have been suspended by the Board.
- (iii) Persons whose Board permits, licenses or other approvals have been revoked.
- (iv) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee.
- (v) Persons with a history of conduct involving the disruption of the gaming operations within a licensed facility.
- (vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities.
- (vii) Persons with pending charges or indictments for a gaming or gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.
- (viii) Persons who have been convicted of a gaming or gambling crime or crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.
- (ix) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, being identified with criminal activities in published reports of various Federal and State legislative and executive bodies that have inquired into criminal or organized criminal activities.

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" if known attributes of the person's character and background meet one or more of the following criteria:

(1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a licensed facility.

(2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.

(3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or another jurisdiction, or with a particular slot machine licensee or licensees or an affiliate, intermediary, subsidiary or holding company thereof.

(3) The nature and frequency of contacts or associations of the person with a slot machine licensee or licensees, or with employees or agents thereof.

(4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory

process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 511a.4. Duties of the Bureau.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or a slot machine licensee investigate a person to determine whether the person meets the criteria for exclusion provided in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Bureau will file a petition for exclusion with the Board, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion under section 1514 of the act or this chapter.

(c) When the Bureau files a complaint alleging a violation of 4 Pa.C.S. 1514(e) and § 511a.8(b)(2) (relating to duties of slot machine licensees) against a slot machine licensee, the Bureau will file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion under § 511a.3.

§ 511a.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list:

(1) Upon the filing of a petition for exclusion by the Bureau in accordance with the procedures under § 511a.4 (relating to duties of the Bureau).

(2) Upon receipt of an order from a court of competent jurisdiction within this Commonwealth, excluding the person from licensed facilities.

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from licensed facilities.

(c) An excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(e) For the purposes of this section, any winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 511a.6. Demand for hearing on the placement of a person on the exclusion list.

(a) Upon placement of a person on the exclusion list, the Clerk will serve notice of the placement to the person by personal service or certified mail at the last known address of the person. When the placement is a result of a petition for exclusion filed by the Bureau, a copy of the petition will be included with the notice.

(b) Upon service of the notice by the Clerk, an excluded person shall have 30 days to demand a hearing before the Board. Failure to demand a hearing within 30 days after

service shall be deemed an admission of all matters and facts alleged in the Bureau's petition for exclusion.

(c) If a hearing is demanded by the excluded person, a hearing will be scheduled as provided in § 491a.8 (relating to hearings generally). At the hearing, the Bureau will have the affirmative obligation to demonstrate that the excluded person satisfies the criteria for exclusion in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion of certain persons) or § 511a.3 (relating to criteria for exclusion). Unless the matter is heard directly by the Board, the presiding officer will prepare a recommendation as provided in § 494a.4 (relating to report or recommendation of the presiding officer) for consideration by the Board.

§ 511a.7. Board review.

After a hearing or consideration of a petition for exclusion filed by the Bureau when no hearing was requested, the Board will:

- (1) Issue a final order affirming the placement of the person on the exclusion list.
- (2) Issue a final order removing the person from the exclusion list.
- (3) Refer the matter to the presiding officer for further hearing.

§ 511a.8. Duties of slot machine licensees.

(a) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(b) A slot machine licensee shall have the responsibility to distribute copies of the exclusion list to the appropriate employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

(c) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

- (1) An excluded person.
- (2) A person known to the slot machine licensee to satisfy the criteria for exclusion in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(d) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall:

- (1) Immediately notify the Bureau of Investigations and Enforcement (BIE) agents at the licensed facility.
- (2) Notify the Director of OCPG in writing within 24 hours.

(e) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list or a person who has been excluded or ejected under subsection (c)(2) and the reason for placement on the exclusion list.

§ 511a.9. Petition to remove name from the exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers).

(c) The Board may decide the petition on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition, may grant the petition, or direct that a hearing be held in accordance with § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list). The Board will grant the petition or direct that a hearing be held only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the exclusion list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d) An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. However, an excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

(e) A petition for early consideration must contain the information required by subsection (b). Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5.

(f) The Board may decide the petition for early consideration on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511a.6.

(g) The Board will consider the following criteria when making its decision on a petition for early consideration:

- (1) Whether there are extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the exclusion list.
- (2) If exclusion was ordered under § 511a.5(a)(2) (relating to placement on the exclusion list), whether the excluded person has completed the period of probation or otherwise satisfied the terms of the court-ordered exclusion.

CHAPTER 513. (Reserved)

§§ 513.1—513.5. (Reserved)

CHAPTER 513a. UNDERAGE GAMING

Sec.	
513a.1.	Definitions.
513a.2.	Exclusion requirements.
513a.3.	Responsibilities of licensees, permittees, registrants and certificationholders.
513a.4.	Signage requirements.
513a.5.	Enforcement.

§ 513a.1. Definitions.

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

Fully executed gaming transaction—An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee.

OCPG—The Office of Compulsive and Problem Gambling.

Winnings—Any money or thing of value received from, or owed by a slot machine licensee as a result of a fully executed gaming transaction.

§ 513a.2. Exclusion requirements.

(a) An individual under 18 years of age may not enter or be on the gaming floor of a licensed facility.

(b) An individual under 21 years of age, whether personally or through an agent, may not operate, use, play or place a wager on, a slot machine in a licensed facility.

(c) An individual under 21 years of age may not receive check cashing privileges, be rated as a player, or receive any complimentary service, item or discount as a result of, or in anticipation of, gaming activity.

(d) An individual under 21 years of age may not collect in any manner or in any proceeding, whether personally or through an agent, winnings or recover losses arising as a result of any gaming activity.

(e) Winnings incurred by an individual under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(f) For the purposes of this section, winnings issued to, found on or about or redeemed by an individual under 21 years of age shall be presumed to constitute winnings and be subject to remittance to the Board.

§ 513a.3. Responsibilities of licensees, permittees, registrants and certification holders.

(a) A person holding a license, permit, certification or registration issued by the Board is prohibited from permitting or enabling an individual to engage in conduct that violates § 513a.2(a), (b), (c) or (d) (relating to exclusion requirements).

(b) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(c) A slot machine licensee may be subject to Board imposed administrative sanctions if a person engages in conduct that violates § 513a.2(a), (b), (c) or (d) at its licensed facility. Under § 513a.2(e), winnings obtained by a slot machine licensee from or held on account of a person under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

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

§ 513a.4. Signage requirements.

A slot machine licensee shall post signs that include a statement that is similar to the following: "It is unlawful for any person under 21 years of age to engage in any gaming activities. Individuals violating this prohibition will be removed and may be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass)." The complete text of the sign shall be submitted to and approved by the Director of OCPG as part of the procedures required under § 513a.3(b) (relating to responsibilities of licensees, permittees, registrants and certificateholders). The signs shall be prominently posted within 50 feet of each entrance and exit of the gaming floor.

§ 513a.5. Enforcement.

In a prosecution or other proceeding against a person for a violation of this chapter, it will not be a defense that the person believed an individual to be 21 years of age or older.

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