

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

General Provisions

The Fish and Boat Commission (Commission) amends Chapter 51 (relating to administrative provisions). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2008.

B. *Contact Person*

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

C. *Statutory Authority*

The amendment to § 51.71 (relating to scientific collectors' permits) is published under the statutory authority of section 2905 of the code (relating to permits for scientific and educational fish collecting activities).

D. *Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's regulations regarding scientific collectors' permits. The specific purpose of the amendments is described in more detail under the summary of changes.

E. *Summary of Changes*

Under section 2905 of the code, the Executive Director with the Commission's approval may issue permits to catch fish in waters within or bordering on this Commonwealth at any season of the year and with any kind of devices without regard to size or possession limits to a person who possesses a valid Pennsylvania fishing license and is engaged in scientific or educational research or other collecting activities approved by the Commission. This section also authorizes the Commission to promulgate regulations and to establish fees.

In 1985, the Commission adopted § 51.71, which requires a valid and current scientific collector's permit issued by the Commission to collect, take or maintain for scientific or educational purposes any species of Pennsylvania fishes, amphibians, reptiles or aquatic organisms during seasons not permitted by regulations governing holders of a valid Pennsylvania fishing license or other license or permit issued by the Commission (for example, venomous snake permit, organized reptile and amphibian hunt permit). Although this regulation was not promulgated until 1985, the Scientific Collector's Permit Program (SCP Program) was initiated by the Commission in January 1966 and was revised several times over the years. In July 1978, the Commission established various fees for different permit types within the SCP Program through a statement of policy. Three types of permits with associated fees were established, and those fees are the same today: Type 1 permits (Research) are \$10, assistants and permit amendments have no fee; Type 2 permits

(Government) are free, assistants and permit amendments are free; Type 3 permits (Consulting) are \$50, \$10 for each assistant and permit amendments are \$10.

The Natural Diversity Section within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the SCP Program. The SCP Program has significant staff demands. Administering the program requires staff to review permit applications and process end-of-year permit reports. Reviewing the applications requires a technical review and substantial staff interaction with potential collectors, often resulting in changes to proposed collections. Permit collection reports are filed by staff, and relevant collection information (that is, rare, threatened and endangered species data) is extracted from the reports and submitted to Pennsylvania Natural Heritage Program to be included in the Statewide database for rare species (Pennsylvania Natural Diversity Inventory).

In the past, the Commission issued, on average, approximately 120 scientific collectors' permits annually. However, in the past 5 years, the number of permits reviewed, amended and issued by Commission staff has increased substantially. In 2005, 397 permits were issued; in 2006, 520 permits and amendments were issued. To address increasing SCP Program demands, the Commission has streamlined the permit application process and improved and standardized permit reporting by developing an interactive, Internet-based computer application that will be accessible to the public.

Although the fee structure is included in the statement of policy, it is not currently set forth in § 51.71. The Commission therefore adopted an amendment that includes the fee structure in § 51.71. In addition, the fee structure had not changed in 29 years. Thus, the Commission adopted an amendment that increases the permit fees to help offset inflation and increasing SCP Program costs. The Commission further formalized the long-standing statement of policy that defines and describes the three different permit types that this program offers by including its terms in § 51.71. The Commission also adopted housekeeping changes to reflect the current names of some of the permits referenced in the regulation. On final-form rulemaking, the Commission adopted the proposed amendments as set forth in the notice of proposed rulemaking.

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements. The Commission currently offers the three permit types described in this final-form rulemaking, and the interactive, Internet-based computer application is intended to streamline the permitting process and to reduce the paperwork demands of the SCP Program.

G. *Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The increased fees will help offset the Commission's continuing expenses to administer the SCP Program and the costs of the interactive, Internet-based application.

The amendment will increase fees for permit applicants. The fee for a Type I permit for Nonprofit Research and Education will increase from \$10 to \$30, assistants on Type I permits will remain free, and the fee for a Type I permit amendment will increase from no fee to \$15. The

fee for a Type II permit for Government remains free, and assistants and permit amendment also remain free. The fee for a Type III permit for Consulting will increase from \$50 to \$150, the fee for assistants on Type III permits will increase from \$10 to \$30, and the fee for a Type III permit amendment will increase from \$10 to \$75.

With regard to all permit types, the Commission will utilize the fees to offset the costs associated with permit issuance and processing and data compilation. It is expected that the Commission will recover its costs for the permits for which fees are charged and that the Commission will absorb the costs associated with the free permits.

H. Public Involvement

A notice of proposed rulemaking was published at 37 Pa.B. 4431 (August 11, 2007). The Commission received a total of two public comments. One comment questioned the need to raise permit fees; the other comment supported the increase in permit fees and suggested that the Commission adjust its permit system to make it easier for larger companies to comply with the regulations. Specifically, the comment requested that the Commission consider requiring each office location to hold one permit but with a greater number of assistants listed on the permit. Because this is an issue that can be addressed by staff when issuing permits, it was not addressed as part of the rulemaking process. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendment adopted by this order has been 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided, and the comments that were received were considered.
- (3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

- (a) The regulations of the Commission, 58 Pa. Code Chapter 51, are amended by amending § 51.71 to read as set forth in 37 Pa.B. 4431 (August 11, 2007).
- (b) The Executive Director will submit this order and 37 Pa.B. 4431 to the Office of Attorney General for approval as to legality as required by law.
- (c) The Executive Director shall certify this order and 37 Pa.B. 4431 and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on January 1, 2008.

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

Fiscal Note: Fiscal Note 48A-195 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 07-2145. Filed for public inspection November 30, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 429, 429a, 433, 433a, 435, 435a, 437, 437a, 441 AND 441a]

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

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), (12), (13)—(20) and (23), 1205, 1209, 1301—1316, 1317.1, 1318, 1321, 1325—1331 and 1802, adopts Chapters 429a, 433a, 435a, 437a and 441a and rescinds Chapters 429, 433, 435, 437 and 441 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 433 and 435 at 35 Pa.B. 4045 (July 16, 2005); Chapter 437 at 35 Pa.B. 6411 (November 19, 2005); Chapter 441 at 35 Pa.B. 4543 (August 6, 2005); and Chapter 429 at 37 Pa.B. 1862 (April 21, 2007). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 429a, 433a, 435a, 437a and 441a, amending Chapter 401a and rescinding Chapters 429, 433, 435, 437, and 441 to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 429a, 433a, 435a, 437a and 441a

Chapter 429a (relating to manufacturer designees) addresses the licensure of manufacturer designees. It specifies: who must obtain a manufacturer designee license; what a manufacturer designee may do; what restrictions are placed on a manufacturer designee; and lays out the application process for an initial manufacturer designee license and for additional manufacturer designee licenses. This chapter also sets forth the term of the manufacturer designee license, the process for license renewals and the responsibilities of a manufacturer designee. It also provides that a manufacturer designee will be deemed to be an agent of the manufacturer; that the manufacturer and the manufacturer designee will be held jointly and severally liable for violations of the regulations and the act committed by the manufacturer designee, and requires all agreements and amendments thereto to be submitted to the Board for Board approval.

Chapter 433a (relating to principal licenses) specifies who is required to be licensed as a principal, who may be exempted from licensure, and who may be eligible to receive a waiver. It contains the process for filing an application for a principal license, the responsibilities of applicants, the term of the principal license and the process for renewal of a principal license.

Chapter 435a (relating to employees) contains a number of general provisions that apply to individuals who are applicants for or holders of a key employee license, occupation permit or nongaming employee registration. This chapter also contains a process for filing a waiver from key employee licensure and the information that must be included. It also contains the process for renewal of a key employee license or gaming employee occupational permit.

Chapter 435a also contains the requirements related to Board credentials including who must obtain a credential, how an emergency credential can be obtained, and when

temporary credentials for principals, key employees and nongaming employees may be issued. Additionally, this chapter requires that any lost credential be reported to the slot machine licensee's security department and that the slot machine licensee's security department must provide written notice to the Board of the lost credential. Lastly, this chapter allows employees to request a duplicate Board credential by submitting a Request for Duplicate PGCB Credential form to the Bureau of Licensing.

Chapter 437a (relating to vendor certification and registration) contains the criteria that will be used to determine if a vendor is required to obtain a vendor registration or vendor certification, has the procedures for filing an application for a vendor certification or registration, contains a list of providers who are exempt from the registration and certification requirements and allows vendors to seek a waiver of the registration and certification process by filing a Vendor Certification Waiver Application.

This chapter also requires certain individuals to be certified, allows certain subcontractors to file an Onsite Vendor Notification Form, and establishes the term of vendor certifications and registrations and the process for renewal of a certification or registration. It specifies the general responsibilities of certified and registered vendors and lists the employees of a certified vendor that are required to obtain an occupation permit or nongaming employee registration.

Additionally, Chapter 437a provides that the Board will maintain lists of approved and prohibited vendors, contains a list of the factors the Board will consider when it is determining whether or not to place a vendor on the prohibited vendor list, and specifies the petition process to be used by vendors who are seeking removal from the prohibited vendor list.

Finally, this chapter establishes the conditions under which a slot machine applicant or licensee may request that the Board allow a vendor to provide goods or services prior to completing the application process and that allow a slot machine applicant or licensee to use a vendor that is not registered or certified to respond to an emergency involving a threat to public health, welfare or safety or conditions beyond the control of the slot machine applicant or licensee.

Section 441a.1 (relating to definitions) contains definitions and provisions related to the application process for a slot machine license. It addresses what materials must be filed, outlines the bond or letter of credit requirements, mandates that the Board hold at least one public hearing on a slot machine license application, and specifies the procedures that will be used for slot machine licensing hearings and the criteria the Board will use to determine whether or not to grant a license.

Chapter 441a.1 (relating to slot machine licenses) also addresses a number of related items including: divestiture of interests held by an individual who is not eligible or suitable for licensure; notification of any changes in principals, key employees or financial sources; review of all written and oral agreements; the filing and content of the monthly Master Purchasing and Disbursement Reports; posting of the \$1 million bond that slot machine licensees must obtain to comply with 4 Pa.C.S. § 1316 (relating to bond for issuance of slot machine license); the term of and the process for renewal of a slot machine license; and provisions pertaining to changes in ownership and restrictions on ownership of multiple slot machine licensees.

Chapter 441a also requires slot machine licensees to submit monthly employee status reports and requires slot machine licensees to report the termination of any employee if the circumstances surrounding the termination could be cause for suspension or revocation of the employee's license, permit or registration. It mandates that agreements that provide any form of payment related to earnings, profits or receipts from a slot machine licensee must be approved by the Board and provides that a slot machine licensee will be held jointly and severally liable for violations of 4 Pa.C.S. Part II (relating to the Pennsylvania Race Horse Development and Gaming Act) or the Board's regulations committed by its management company.

Additionally, Chapter 441a contains general provisions that apply just to Category 1 and Category 3 slot machine licensees. For Category 1 slot machine licensees, these include requirements for payments of funds required by 4 Pa.C.S. §§ 1404—1406 (relating to distributions from licensee's revenue receipts; Pennsylvania Race Horse Development Fund; and distributions from Pennsylvania Race Horse Development Fund). For Category 3 slot machine licensees there are provisions related to what is considered to be a well-established resort hotel, a requirement to submit a plan to control access to the gaming floor to ensure that unauthorized individuals are not permitted to enter the gaming floor and provisions which permit holders of memberships for amenities or patrons of amenities to be allowed access to the gaming floor.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 2695 (June 16, 2007).

The Board received comments from Down's Racing, LP (Down's), Greenwood Gaming and Entertainment, Inc. (Greenwood), HSP Gaming, LP (HSP) and International Game Technology (IGT) during the public comment period. On August 15, 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.

Both IRRC and IGT suggested that a definition of the term "manufacturer designee" be added to the regulations.

Subsequent to the publication of this proposed rulemaking, the final-form version of Chapter 401a (relating to preliminary provisions) was published. This chapter contains definitions of the terms "manufacturer designee," "manufacturer designee license" and "manufacturer designee licensee." Therefore, adding a definition of "manufacturer designee" to this chapter is not necessary.

IRRC also recommended that the Board add details on how soon the Board will act on an applicant and what recourse an applicant has if its application is denied.

The Board has not added a fixed time period within which an application will be acted on because it can vary significantly. While the Board will promptly begin its review of an application, the time required to complete its review will vary depending on the organizational structure of the applicant, how quickly the applicant provides any additional information requested by the Bureau of Licensing and the number of other applications that are under review.

The Board has also not added any provisions related to appeals. An appeal of the denial of a manufacturer designee application would be filed in Commonwealth Court and would have to be filed in accordance with the requirements established by the court.

In § 429a.6 (relating to manufacturer designee as agent), IRRC asked what the statutory authority was for the joint and several liability provision in subsection (b).

This provision is being adopted under the Board's general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers). This provision is necessary because the manufacturer designee acts as the manufacturer's agent. Without this provision a manufacturer could use a manufacturer designee to shield themselves from enforcement actions. However, 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 manufacturer should be liable for the actions of the manufacturer designee.

In § 433a.1 (relating to definitions), HSP suggested that the definition of the term "applicant" be amended by adding "which is pending before the Board or the denial of which is subject to a pending appeal, or for which the period of time to appeal has not expired." to clarify when an applicant ceases to be an applicant. IRRC asked why the definition of "applicant" in this chapter differs from the definition in the act and in § 401a.3 (relating to definitions) and suggested that one consistent definition be used.

The Board has not adopted either suggestion. The Board considers that an applicant ceases to be an applicant when the Board disapproves the application. HSP's suggested change would extend the time that an applicant is still considered to be an applicant until any appeals are resolved or the time period to file an appeal has ended. In response to IRRC's comment, the Board has made the definition in this chapter narrower than the general definition because not all principals of applicants are required to be licensed. This definition encompasses only those entities whose principals must obtain a license.

IRRC also asked what the basis is for the 20% that is used in the definition of "holding company" and suggested that the Board add a definition of the term "principal" to this chapter.

Using 20% to replace the phrase "significant part" was done to give the regulated public a clear understanding of what the Board considers to be significant. Twenty percent was selected because it is within the range of percentages typically used to determine what a controlling interest is. It is also the percentage that is used in 4 Pa.C.S. § 1328(c) (relating to change in ownership or control of slot machine licensee) to determine what constitutes a change in control of a slot machine licensee. However, this definition has been deleted because it repeats the definition of "holding company" that was included in the final-form version of § 401a.3.

A definition of "principal" has not been added to this chapter because principal is defined in § 401a.3. Repeating the definition there is unnecessary.

In § 433a.3 (relating to individual ownership), HSP suggested that the Board delete subsection (c) and revise subsection (d) to exempt direct as well as indirect ownership interests of less than 1%.

The Board disagrees with this suggestion. Any owner of or direct beneficiary of any intermediary or holding company of a slot machine licensee should be required to obtain a principal license.

In subsection (f), HSP suggested that grantors who no longer have any obligations or rights; or who established the trust at least 1 year prior to the trust becoming an

applicant; or the financial contribution by the grantor to the trust is under \$1,000 not be required to obtain a principal license.

Section 1325(d)(1) of 4 Pa.C.S. (relating to license or permit issuance) requires all grantors to be licensed as principals. Accordingly, the Board lacks the statutory authority necessary to make the suggested changes.

In § 433a.3(g), IRRC asked why this provision (and similar provisions in §§ 433a.4(h) and 433a.6(d)) (relating to entity ownership; and lenders and underwriters) is needed.

The individuals in subsections (a)—(f) are required to be licensed. Individuals who fall under subsection (g) will be required to obtain a license only if the Board determines it is appropriate given the specific ownership structure of the applicant. This gives the Board some discretion and is consistent with the language of the act which defines a "principal" as "... or other person or employee of an applicant, ... deemed to be a principal" by the Board.

In § 433a.7 (relating to trusts), IRRC suggested that the Board add a definition of the term "similar business entity."

This term, which is used in the act, is being used as a general catch-all to pick up any trust-like entities. Attempting to add an all-inclusive definition of this term would be difficult given the myriad of organizational structures that exist and would defeat the purpose of its use.

Also in § 433a.7, HSP suggested that subsection (b) be revised to exempt direct as well as indirect ownership interests of less than 1% and that the phrase "as required under this chapter" be added to subsection (d) to reflect the less than 1% exemptions suggested for inclusion in §§ 433a.3 and 433a.7.

The Board has not adopted either of these suggestions. The Board believes that any trust that holds a direct ownership interest in an applicant or licensee should be required to obtain a principal license. Additionally, since the Board has not adopted the recommended changes to § 433a.3(c) and (d) or § 433a.7(b), there is no need to add the suggested revision to subsection (d).

In § 433a.9 (relating to principal license term and renewal), HSP suggested that the Board change the renewal date for principal licenses to coincide with the renewal date of the licensee that the principal is associated with.

Because 4 Pa.C.S. § 1326 (relating to license renewal) establishes that all licenses and permits are subject to annual renewal, the Board can not, by regulation, change the renewal date of a principal license to correspond to the renewal date of the entity that it is associated with. However, because licenses remain in effect after expiration if a renewal application and fee have been received, the Bureau of Licensing will try to coordinate the submission of renewal applications of entities and their principals to the Board.

In Chapter 435a, IRRC suggested that the Board add provisions on the time period within which applications will be acted on, how applicants will be notified of the Board's decision and how an applicant can appeal a denial to §§ 435a.2, 435a.3 and 435a.5 (relating to key employee license; occupation permit; and key employee license and occupation permit term and renewal).

The Board has not added any time period within which an application will be acted on because it can vary significantly depending on the answers given by the applicant, how quickly the applicant provides any additional information requested by the Bureau of Licensing and the number of other applications that are under review.

The Board has also declined to add provisions related to how it provides notice of its decisions. All applications are acted on by the Board. If an application is approved, the applicant will receive an approval order or a credential, or both, from the Board. If an application is disapproved, the applicant will receive an order denying the applicant application. Since these are Board procedures that do not require actions by the applicants there is no reason to put these processes in the regulations.

The Board has also not added any provisions related to appeals. An appeal of the denial of an application would be filed in Commonwealth Court and would have to be filed in accordance with the requirements established by the court.

In § 435a.1(k) (relating to general provisions), IRRC asked what the Board's statutory authority is to require that applicants demonstrate that they are current on any financial obligations owed to the Commonwealth or any political subdivisions thereof, including court-ordered child support. Additionally, IRRC suggested that the regulation specify what documentation must be submitted to demonstrate compliance.

The authority for this requirement is contained in the Board's general authority in 4 Pa.C.S. § 1202(b)(30) and in the specific licensing requirements under 4 Pa.C.S. §§ 1311, 1311.1, 1311.2, 1318, 1321 and 1325. This is one of the factors that the Board will consider when determining whether or not an individual is suitable to receive a license or permit.

The Board does not believe additional provisions for demonstrating compliance are necessary. Applicants will demonstrate compliance through answers to questions on the various application forms and by completing a tax clearance form which authorizes the Board to do a tax check with the Departments of Revenue and Labor and Industry. The Board will verify this information through the tax clearance checks and credit checks that are done as part of the background investigation conducted by the Board.

In § 435a.6 (relating to Board credentials), IRRC suggested that the Board add the process for obtaining a Board credential.

Individuals who are required to obtain a credential are automatically issued a credential when their application for a license, permit or registration is approved. Because applicants don't have to do anything to obtain their credential, there are no procedures to add to this section.

In § 437a.1 (relating to general vendor requirements), HSP suggested that the Board add "performing gaming related duties on the gaming floor" to subsection (b)(3) so that vendors whose employees perform nongaming related duties on the gaming floor can be registered instead of certified.

The Board has not adopted this suggestion. To protect the integrity of gaming, any vendor whose employees will be working on the gaming floor should be certified.

Also in § 437a.1, IRRC suggested that the Board add the criteria the Board will use when requiring a vendor to

be certified "based on an analysis of the vendor's services" and change "associates" to "associations" in subsection (c)(4).

The Board agrees with both of these suggestions and has added the phrase "to ensure the integrity of gaming" to subsection (b)(4) and replaced "associates" with "associations" in subsection (c)(4).

In § 437a.2 (relating to vendor registration applications), IRRC noted a misspelling in subsection (a) and questioned the Board's authority to limit the recovery of expenses related to investigations of registered vendors to \$2,000 in subsection (c).

Placing the \$2,000 cap on reimbursement of application review costs in the regulations was done to encourage small businesses to apply to become registered vendors. This was based on the fact that the Board does not envision that the investigation costs will ever exceed \$2,000. However, as IRRC noted, 4 Pa.C.S. § 1208(1)(iii) (relating to collection of fees and fines) requires the Board to collect "The reasonable and necessary costs and expenses incurred in any background investigation or other investigation or proceeding concerning any applicant, licensee, permittee or registrant . . ." from the applicant. Accordingly, the Board has deleted the phrase "up to a maximum amount of \$2,000" in the final-form regulation. Additionally, the Board has corrected the misspelling in subsection (a).

In § 437a.4 (relating to individual certifications and investigations), HSP suggested that exemptions or waivers of principal certification be allowed for: persons who hold a beneficial interest or ownership of less than 5% of a certified vendor; officers and directors of publicly traded certified vendors; and officers of certified vendors that are not regularly and actively involved in the certified vendors business with a slot machine licensee.

To address the concerns expressed by HSP and to streamline the application process, the Board has deleted § 437a.4 and § 437a.5 (relating to construction subcontractors). In their place, the Board has inserted a new § 437a.4. Under this section a more limited number of persons will be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form or be required to sign a Release Authorization. These new requirements will substantially reduce the costs for vendor applicants while still providing the information the Board needs to evaluate the suitability of an applicant.

In § 437a.11 (relating to slot machine applicants' and licensees' duty to investigate), IRRC questioned the reasonableness of and need for subsection (a) if a vendor is registered or certified by the Board. If this provision is retained, IRRC suggested that criteria that the slot machine applicant or licensee should use should be added to the regulation.

The Board agrees that there is no need for further review of approved vendors and has deleted the second sentence in subsection (a). That sentence had been intended to have slot machine applicants or licensees exercise ongoing oversight of vendors performing work for them. To clarify this, a new subsection (d) has been added which requires slot machine applicants or licensees to notify the Board of any actions by vendors which a slot machine applicant or licensee believes would constitute a violation of the act or the Board's regulations.

In § 441a.1, IRRC noted that the definition of "applicant" in this chapter differs from the definition in the Act and in § 401a.3 and suggested that a consistent definition be used. Additionally, IRRC asked if time-shares

equal common ownership and how is the inclusion of time share units in the definition of "guest rooms under common ownership" consistent with the statutory definition of "well-established resort hotel."

The definition of "applicant" in this chapter is narrower than the general definition because in this chapter the term is only intended to include those entities that are applying for a slot machine license. Therefore no change has been made.

Concerning the inclusion of time share units, the Board notes that time share units may be owned by a resort hotel or by individuals. Only those units owned by the resort hotel would be included in the definition of "guest rooms under common ownership." Many resort hotels offer time-share units in the hotel itself or as stand alone units at the resort, or both. At the public hearing conducted by the Board in March of this year, a number of commentators, including House and Senate staff, suggested that time-share units that meet the common ownership requirement could be included in the room count of the resort. The Board agrees that a time-share unit that is owned by the resort hotel and is available to the public for rental is no different from a room in the hotel.

In § 441a.5 (relating to license fee payment bond or letter of credit requirements), HSP suggested that the Board add the phrase "and no appeal of such denial by the applicant is pending" to subsection (f)(2)(i). This would require that anyone filing an appeal must still maintain his bond or letter of credit.

As previously stated, the Board considers that an applicant ceases to be an applicant when the Board disapproves its application. Accordingly, this suggested change has not been adopted.

In § 441a.7 (relating to licensing hearings for slot machine licenses), IRRC noted that subsection (b) refers to prehearing conferences, but the regulation does not provide any details about when or how they would be conducted. IRRC suggested that prehearing conference procedures be added or cross-referenced in this section. IRRC also asked how soon after the conclusion of the licensing hearings will the Board issue its final order.

The Board agrees with IRRC's suggestion relating to prehearing conferences and has added a new subsection (b) which states that prehearing conferences may be scheduled to address issues related to the licensing hearings and provides a cross-reference to § 491a.9 (relating to prehearing and other conferences).

Concerning the issuance of the Board's final order, the Board has not added a fixed time period to the regulation because the exact amount of time needed will vary depending on the number and complexity of the applications.

Also in § 441a.7, HSP suggested that subsection (h)(3) and (4) be revised so that applicants would not be required to file documents that have already been submitted to the Board or that contain confidential information.

The Board agrees, in part, with this suggestion and has added a new paragraph (5) to allow applicants to reference items already in the public record. No change was made for confidential information because the treatment of confidential information was addressed in proposed subsections (k) and (m).

In § 441a.16 (relating to slot machine license term and renewal) both Down's and Greenwood strongly recommended 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 renewal) of the act 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."

It is the Board's intent that slot machine licensees will use renewal application forms which are essentially the same as the initial application forms. Slot machine licensees 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 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.

Down's and Greenwood also 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 slot machine licensees would create an unnecessary administrative burden on the Board which slot machine licensees would end up having to pay for. However, because the date a slot machine 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 slot machine license is due to expire. To remove this uncertainty, the Board will be adding the license expiration date to the listing of slot machine licensees which is available on the Board's website. This will allow slot machine 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 slot machine licensees in this regulation. The interests of slot machine licensees are protected because filing the required renewal materials "extends" the term of their current license, so there is no need for a deemed approval provision.

Finally, Down's stated that renewal requirements should only apply to licenses and permits because those are all that is mentioned in 4 Pa.C.S. § 1326.

Because this section applies to slot machine license renewals, this comment does not apply to this section. However, the Board notes that the regulations for certified and registered entities were promulgated under the Board's general authority which is also the statutory basis for renewal requirements for those entities.

Also in § 441a.16, IRRC suggested that the Board add additional detail on the renewal process.

In response to IRRC's suggestion, the Board has added the name of the renewal form.

In § 441a.20 (relating to slot machine license agreements), IRRC suggested that the process for the approval of these agreements, including time lines for review, be added to the regulation.

The Board agrees with this suggestion and has added a new subsection (b) which requires submission of agreements at least 60 days prior to the proposed effective date of the agreement. This should provide enough time for the Board to review an agreement. However, no agreement will be allowed to take effect until the Board has approved it.

In § 441.21 (relating to management contracts), IRRC asked what the Board's statutory authority for this section is.

The legal basis for this provision is the Board's general authority in 4 Pa.C.S. §§ 1202(b)(30), 1321 and 1325.

Also in this section, Down's suggested that the Board delete this section entirely or limit the liability of the management company to actions that fall within the scope of the management contract.

This section addresses the joint and several liability of slot machine licensees, not management companies. Liability of management companies for actions of slot machine licensees is addressed in § 440a.4(b) (relating to required provisions in management contract) of the Board's regulations. 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 a slot machine licensee should be liable for the actions of the management company.

In § 441a.23 (relating to Category 3 slot machine licensees), IRRC asked under subsection (a) if satellite amenities owned by the resort hotel qualify as being on the premises and suggested that this point be clarified in the regulations.

The definition of amenities in the act and the regulation uses the phrase "at a resort hotel." Accordingly, amenities at satellite locations would not qualify. To provide greater clarity, the phrase "on its premises" is being replaced with "at the resort hotel."

IRRC also asked what the Board's authority is for subsection (d) which specifies when a patron of one of the resort hotel's amenities may be allowed on the gaming floor.

The authority for this provision is the Board's general authority in 4 Pa.C.S. § 1202(b)(30). The act, in 4 Pa.C.S. § 1305 (relating to category 3 slot machine licenses), limits access to the gaming floor to guests of the resort hotel and patrons of one or more amenities. However, the act is silent as to when or for how long the use of an amenity will entitle an individual to have access to the gaming floor. The Board does not believe that the General Assembly intended the one-time use of an amenity to entitle an individual to have unlimited access to the gaming floor. For this reason, subsection (d) limits the access to the gaming floor to a single, limited period of time, close to the time that the individual used the amenity.

Additional Revisions

In addition to the revisions previously discussed in this preamble, the Board has made a number of additional revisions.

In § 401a.3, the definition of "regular or continuing basis" has been deleted. This term had previously been used to define certified vendors but is no longer needed because the criteria defining a certified vendor are in § 437a.1.

In § 433a.1, the phrase "member of an audit committee" has been added to the definition of "director" to clarify that the requirements of this chapter that are applicable to directors will also apply to members of audit committees.

In § 433a.2 (relating to directors or officers), the Board has made two changes. First, a new subsection (d) has been added which requires senior surveillance or internal audit executives of a holding or intermediate company which has authority to direct the operations of a slot machine licensee to be licensed as a principal if the most senior executive in the reporting line reports directly to the independent audit committee of the board of directors of the holding or intermediary company. Second, in subsection (f) the Board has replaced the phrase "may not" with "will not be required to" to clarify that certain outside directors will not be required to be licensed as a principal unless the Board determines that licensure is necessary to protect the integrity of gaming in this Commonwealth.

In § 433a.6(b), the words "manufacturer or supplier" have been inserted after "slot machine." This corrects a drafting error and exempts banks and other traditional lending institutions that provide financing to manufacturers or suppliers from having to be licensed as a principal. In § 433a.6(d), a number of changes were made to improve clarity. These include adding "an applicant or" to expand the scope of this subsection to include applicants as well as licensees; deleting the phrase "to produce any information, documentation and assurances concerning the lender or underwriter;" and replacing "probable cause" with "reason."

In § 435a.1, new language was added as a new subsection (j) to bar registrants employed by certified vendors or employees of a certified vendor who have direct contact with the employees of a licensed facility from gaming at a licensed facility where the vendor currently provides services. This is consistent with the restriction placed on registrants and employees of a slot machine licensee in subsection (i). Additionally, a new subsection (m) has been added which requires applicants for an occupation permit or nongaming employee registration to be at least 18 years of age.

In § 435a.2, two revisions were made. First, the phrase "by clear and convincing evidence" in subsection (e) was deleted. It is unnecessary because it repeats the general requirement that applies to all applicants under § 421a.1(h). Second, in subsection (f), the Board has deleted "nontransferable" and added "valid for employment with any licensed entity" to clarify that a key employee license is valid for employment with any licensed entity, not just the licensed entity for which it was originally obtained.

In § 435a.3(f), the Board has deleted "nontransferable" and added "valid for employment with any licensed entity or certified vendor" to clarify that an occupation permit is valid for employment with any licensed entity or certified vendor, not just the licensed entity or certified vendor for which it was originally obtained.

In § 435a.5, the Board has added a new subsection (e) which clarifies that an occupation permit is valid for employment with any licensed entity or certified vendor, not just the licensed entity or certified vendor for which it was originally obtained.

Two additional revisions were made to § 435a.6. First, in subsection (b)(1) the Board has deleted “address” from the list of items that are on a Board credential. The Board has determined that there is no need to have this information on the credential. Second, subsection (c) has been revised to require individuals who are required to obtain a Board credential, who are not state employees or employees of the slot machine licensee, to display, rather than just carry, their Board credential.

Section 435a.7 (relating to emergency credentials has been rewritten to shift the responsibility for issuance of emergency credentials from the slot machine licensee’s security department to the onsite BIE agents. This will give the Board direct control over this process and reduce the administrative and recordkeeping burden on slot machine licensees.

In § 437a.1, the Board has made minor wording changes to improve clarity and subsections (e) and (f) relating to waivers have been relocated to § 437a.3 (relating to vendor certification applications).

In § 437a.3, revisions were made to subsection (a) to exempt intermediary and holding companies of publicly traded companies from the requirement of filing a vendor certification form and to conform with the changes made to § 437a.4. Additionally, new subsections (d)—(g) were added which allow for the filing of a Single Transaction Waiver Form or a Vendor Certification Waiver Form in limited circumstances. These changes will help to simplify the application process.

Proposed §§ 437a.4 and 437a.5 regarding to principal and key employee certifications have been deleted and replaced by a new § 437a.4 entitled “Individual certifications and investigations.” Under this scheme, a more limited number of individuals will be required to file either a Pennsylvania Personal History Disclosure Form or sign a Release Authorization which will allow the Board to conduct background checks. These changes will also simplify the application process and reduce costs for vendors and the Board.

A new § 437a.5, regarding construction subcontractors, has been added which establishes an abbreviated filing process for certain subcontractors who would otherwise be required to be certified or registered. It permits subcontractors who do not have an agreement with a slot machine applicant or licensee or the general contractor of a slot machine applicant or licensee to file an Onsite Subordinate Vendor Notification Form.

In § 437a.7(c), the Board has added “The employee is the onsite supervisor of other employees who are involved in the construction of a licensed facility” to the list of certified vendor employees that are required to obtain a nongaming employee registration.

In § 437a.9 (relating to permission to conduct business prior to certification or registration), the requirement in subsection (a)(3) that the slot machine applicant or licensee demonstrate good cause for allowing a vendor applicant to provide services prior to certification or registration has been deleted. The Board sees no need to impose this requirement on the slot machine applicants or licensees.

In § 441a.5(b), the Board has replaced the word “required” with “permitted.”

In § 441a.7, a new subsection (s) has been added which establishes procedures for applicants to file objections during the slot machine licensing hearings. If objections are not filed, the applicant will be deemed to have waived its right to file objections. This provision is being added to respond to the Supreme Court’s concern raised in the Pocono Manor appeal.

In § 441a.16, the term of licensure has been changed from “1 year from the date of Board approval” to “1 year from the date of the issuance of the license by the Board.” This will stagger the renewal dates for the slot machine licenses.

In § 441a.17 (relating to change in ownership or control of slot machine license and multiple slot machine license prohibition), the Board added the phrase “by filing a Slot Machine Licensee’s Notification of Proposed Transfer of Interest Form” in subsection (a) so that licenses will know how to notify the Board of any proposed or contemplated change in ownership.

In § 441a.22 (relating to category 1 slot machine licenses), a new subsection (d) was added which requires Category 1 slot machine licensees to annually submit a report of planned future improvements to the backside area that will occur over the next 3 years. Existing subsection (d) which allows the Board to request interim reports is now subsection (e) and will apply to the reporting requirements in existing subsection (c) and the new subsection (d). This will allow the Board to more closely monitor improvements to the backside areas by the Category 1 slot machine licensees.

Additionally, minor wording changes have been made throughout these chapters to improve clarity.

Affected Parties

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

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to processing initial applications and renewals, conducting hearings and investigations and issuing licenses, permits, certifications and registrations. Where 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, certifications and registrations will incur costs to complete the applicable applications and pay the applicable application fees and additional costs associated with investigations.

General Public

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

Paperwork requirements

Applicants for and holders of slot machine licenses, manufacturer designee licenses, principal and key employee licenses, vendor certifications or registrations, and

employees required to obtain an occupation permit or nongaming employee registration will be required to complete the applicable initial application and renewal forms. Category 1 slot machine licensees will now be required to annually submit a report of planned future improvements to the backside area of the racetrack that will occur over the next 3 years.

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 June 1, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 2695 (June 16, 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, 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 October 17, 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, IRRC met on October 18, 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 (relating to gaming).

Order

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

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 429.1—429.7, 433.101—433.109, 435.1, 435.3—435.6, 435.8—435.10, 437.1—437.3, 437.4a—437.4d, 437.5, 437.7, 437.10, 437.13, 441.1—441.3, 441.4a, 441.5a, 441.6a, 441.7a, 441.8, 441.9a—441.19a, 441.20 and 441.21a—441.23a, by adding final regulations in §§ 429a.1—429a.7, 433a.1—433a.9, 435a.1—435a.10, 437a.1—437a.11 and 441a.1—441a.23 and amending § 401a.3 to read as set forth in Annex A, with ellipses referring to existing text of the regulations.

(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 COLLINS,
Chairperson

Fiscal Note: Fiscal Note 125-64 remains valid for the final adoption of the subject regulations.

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 5951 (November 3, 2007).)

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Registered vendor—A vendor that is registered with the Board.

Restricted area—An area where access is limited and is specifically designated by the Board as restricted, including:

- (i) The cashiers' cage.
- (ii) The soft count room.
- (iii) The surveillance monitoring room.
- (iv) The slot machine storage and repair rooms.
- (v) The progressive controller room.
- (vi) The central control computer room.
- (vii) The information technology department.
- (viii) Any additional area that the slot machine licensee designates as restricted in its Board-approved internal controls.

* * * * *

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 429. [Reserved]

§§ 429.1—429.7. [Reserved]

CHAPTER 429a. MANUFACTURER DESIGNEES

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

§ 429a.1. Manufacturer designee general requirements.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Through defined benefit pension plans.

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

(iv) In blind trusts over which the holder may not exercise 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 of 1986 (26 U.S.C.A. § 529).

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

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

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

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

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

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

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

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

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

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

(3) The integrity of all financial backers.

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

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

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

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

§ 429a.3. Additional manufacturer designee licenses.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Provide a copy of all SEC filings listed in § 427a.2(a)(5) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted no later than 30 days after the date of filing with the SEC.

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

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

§ 429a.6. Manufacturer designee as agent.

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

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

§ 429a.7. Manufacturer designee agreements.

(a) Agreements between a licensed manufacturer and a licensed manufacturer designee shall be submitted to the Bureau of Licensing for approval. An agreement between a licensed manufacturer and a licensed manufacturer designee will not become effective and a manufacturer

designee license will not be issued until the Bureau of Licensing has reviewed and approved the terms and conditions of the agreement.

(b) Amendments to agreements between a licensed manufacturer and a licensed manufacturer designee shall be submitted to the Bureau of Licensing for approval at least 30 days prior to the effective date of the proposed amendment. The amendment may not become effective until the Bureau of Licensing has reviewed and approved the terms and conditions of the amendment.

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

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

CHAPTER 433. [Reserved]**§§ 433.101—433.109. [Reserved].****CHAPTER 433a. PRINCIPAL LICENSES**

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

§ 433a.1. Definitions.

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

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

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

Entity—A person, other than an individual.

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

Individual—A natural person.

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

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

Officer—A president, chief executive officer, chief operating officer, secretary, treasurer, principal legal officer, principal compliance officer, principal financial officer, comptroller, principal accounting officer, chief engineer or

technical officer of a manufacturer, or principal slot operations officer of a slot machine licensee and any person routinely performing corresponding functions with respect to an entity whether incorporated or unincorporated.

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

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

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

Registered investment adviser—An investment adviser that has registered with the SEC under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

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

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

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

§ 433a.2. Directors or officers.

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

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

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

(d) The senior surveillance or internal audit executives of a holding or intermediate company which has authority to direct the operations of a slot machine licensee shall be licensed as a principal if the most senior executive in the reporting line reports directly to the independent audit committee of the board of directors of the holding or intermediary company

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

(f) Notwithstanding subsection (c), an outside director of a publicly traded intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed

management company who is not a member of the audit committee or chairperson of the board of directors of the intermediary or holding company will not be required to be licensed as a principal unless the Board determines that the licensure of the individual is necessary to protect the integrity of gaming in this Commonwealth.

(g) Notwithstanding subsection (c), an officer of a publicly traded intermediary or holding company of a licensed supplier, licensed manufacturer, licensed manufacturer designee, licensed junket enterprise or licensed management company may request that the Board waive the requirement to be licensed as a principal if the officer is not actively involved in the affairs of the applicant or licensee. The waiver request shall be submitted on a Principal/Key Employee Waiver Form and require that the officer certify that he is not actively involved in the affairs of the applicant or licensee.

§ 433a.3. Individual ownership.

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

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

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

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

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

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

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

§ 433a.4. Entity ownership.

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

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

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

(d) An entity that has a direct ownership interest in, or has a right to any profit, distribution or benefit directly

from, an intermediary, subsidiary or holding company of a slot machine applicant or licensee, shall be licensed as a principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 433a.5. Institutional investors.

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

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

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

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

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

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

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

§ 433a.6. Lenders and underwriters.

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

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

(c) An underwriter or lender of an intermediary, subsidiary or holding company of a slot machine applicant or licensee shall be required to be licensed as a principal if the Board determines that the suitability of the underwriter or lender is at issue and is necessary to consider a pending application for a slot machine license.

(d) Notwithstanding any provision to the contrary in this section, the Board may require the licensure of any lender or underwriter of an applicant or licensee or any holding or intermediary company or subsidiary of an applicant or licensee if the Board has reason to believe that the lender or underwriter would not satisfy the character requirements of section 1310(a) of the act (relating to slot machine license application character requirements).

§ 433a.7. Trusts.

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

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

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

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

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

§ 433a.8. Principal applications.

(a) An individual required to be licensed as a principal shall file a completed Multi Jurisdictional Personal History Disclosure Form and the Pennsylvania Supplement to the Multi Jurisdictional Personal History Disclosure Form and submit the applicable application fee posted on the Board's website (www.pgcb.state.pa.us).

(b) A principal entity required to be licensed as a principal shall file a completed Principal Entity Form and submit the applicable application fee posted on the Board's website (www.pgcb.state.pa.us).

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

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

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

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

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

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

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

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

CHAPTER 435. [Reserved]

§ 435.1. [Reserved].

§§ 435.3—435.6. [Reserved].

§§ 435.8—435.10. [Reserved].

CHAPTER 435a. EMPLOYEES

Sec.	
435a.1.	General provisions.
435a.2.	Key employee license.
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435a.7.	Emergency credentials.
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435a.9.	Temporary credentials for nongaming employees.
435a.10.	Loss or destruction of credentials.

§ 435a.1. General provisions.

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

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

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

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

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

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

(e) An individual may not be employed in this Commonwealth by an applicant for or holder of a license, certification or registration under this part in any capacity unless the individual is a citizen of the United States or can demonstrate that he holds a current and valid

work authorization and is not restricted from working in the capacity for which employment is sought or held. Authorization to work in the United States may be demonstrated by submitting one of the following:

- (1) A permanent resident alien card.
- (2) A temporary employment authorization card.
- (3) A document which the Board deems to be sufficient evidence or authorization.

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

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

- (1) The nature and duties of the applicant's position with the licensed entity.
- (2) The nature and seriousness of the offense or conduct.
- (3) The circumstances under which the offense or conduct occurred.
- (4) The age of the applicant when the offense or conduct was committed.
- (5) Whether the offense or conduct was an isolated or a repeated incident.

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

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

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

(j) A registrant who is an employee of a certified vendor or an employee of a certified vendor who has direct contact with the employees of a licensed facility may not wager at the licensed facility where the vendor is currently providing services.

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

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

(m) An applicant for an occupation permit or nongaming employee registration shall be at least 18 years of age.

§ 435a.2. Key employee license.

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

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

(2) 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 key employee license shall:

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

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

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

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

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

(f) A license issued under this section will be valid for employment with any licensed entity.

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

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

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

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

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

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

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

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

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

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

§ 435a.3. Occupation permit.

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

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

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

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

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

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

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

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

(d) After review of the information submitted under subsections (a) and (b), including a background investigation, the Board may issue a permit if the individual has proven that the individual is a person of good character, honesty and integrity and is eligible and suitable to hold an occupation permit.

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

(f) A permit issued under this section shall be valid for employment with any licensed entity or certified vendor.

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

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

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

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

§ 435a.5. Nongaming employee registration.

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

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

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

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

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

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

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

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

(e) A registration issued under this section is valid for employment with any licensed entity or certified vendor.

§ 435a.6. Board credentials.

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

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

(2) Key employees.

(3) Gaming employees.

(4) Nongaming employee registrants.

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

(b) The credential will contain the following information:

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

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

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

(4) The seal of the Commonwealth.

(5) A license, permit or registration number.

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

(7) An expiration date.

(8) The signature of the employee.

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

(c) A State employee or employee of a slot machine licensee required to obtain a Board credential shall carry the Board credential on his person at all times while engaged in the performance of his duties on the premises of a licensed facility. An individual who is not a State employee or employee of a slot machine licensee, who is required to obtain a Board credential, shall display the Board credential on his person at all times while engaged in the performance of his duties on the premises of a licensed facility.

(d) Except as provided in § 435a.7 (relating to emergency credentials), slot machine and management company licensees are prohibited from allowing a principal who is required to obtain a credential, key employee, gaming employee or nongaming employee registrant to

perform his duties on the premises of a licensed facility unless the employee has his Board credential.

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

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

§ 435a.7. Emergency credentials.

(a) A principal, key employee, gaming employee or nongaming employee of the slot machine licensee who does not have the credential issued to him on his person, or whose credential has been stolen, lost or destroyed, may obtain an emergency credential from the Board to enable the employee to perform the employee's duties at the licensed facility.

(b) An employee seeking an emergency credential shall present himself to a BIE agent at the Board office at the licensed facility. Prior to issuing the emergency credential, the BIE agent will verify:

(1) The identity of the individual requesting the emergency credential.

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

(3) That fewer than 12 emergency credentials have been issued to the employee in the past 12 months.

(c) The following provisions apply to emergency credentials:

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

(2) They shall be returned to the Board office at the licensed facility.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The security department of the slot machine licensee shall notify the Board in writing within 24 hours of receipt of the notice under subsection (a).

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

CHAPTER 437. [Reserved]

§§ 437.1—437.3. [Reserved].

§§ 437.4a—437.5. [Reserved].

§ 437.7. [Reserved].

§ 437.10. [Reserved].

§ 437.13. [Reserved].

CHAPTER 437a. VENDOR CERTIFICATION AND REGISTRATION

Sec.

437a.1.	General vendor requirements.
437a.2.	Vendor registration applications.
437a.3.	Vendor certification applications.
437a.4.	Individual certifications and investigations.
437a.5.	Construction subcontractors.
437a.6.	Registration and certification term and renewal.
437a.7.	Registered and certified vendor responsibilities.
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437a.9.	Permission to conduct business prior to certification or registration.
437a.10.	Emergency vendor.
437a.11.	Slot machine applicants' and licensees' duty to investigate.

§ 437a.1. General vendor requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) State, Federal and municipal operated agencies.

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

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

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

(9) Telecommunication service providers.

(10) Shipping services.

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

(12) Public institutions of higher education.

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

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

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

§ 437a.2. Vendor registration applications.

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

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

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

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

(c) An applicant for a vendor registration will be required to reimburse the Board for costs incurred by the Board in conducting the review of the application.

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

§ 437a.3. Vendor certification applications.

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

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

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

(3) A Vendor Certification Form—Private Holding Company for each intermediary and holding company of the applicant unless the vendor seeking certification is, directly or indirectly, wholly owned by a publicly traded company.

(4) Applications and Release Authorizations for each individual as required by § 437a.4 (relating to individual certifications and investigations).

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

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

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

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

(d) A person required to be a certified vendor under this chapter may request that the Board waive its obligation to be certified by filing a Single Transactional Waiver Form. To be eligible to receive this waiver from the requirements of certification, the person shall demonstrate that the certified vendor is proposing to engage in a single transaction with a slot machine applicant or licensee and satisfies the following requirements:

(1) The certified vendor's required performance under the contract with the slot machine applicant or licensee does not require that the certified vendor's employees to be on the gaming floor or in a restricted area.

(2) The certified vendor has not filed a Single Transactional Waiver Form with the Board within 2 years of the current waiver request.

(3) The certified vendor will not have a continuing onsite presence at the licensed facility.

(e) A person required to be a certified vendor under this chapter may request that the Board waive its obligation to be certified by filing a Vendor Certification Waiver Form. To be eligible to receive this waiver from the requirements of certification, the person shall demonstrate that the person and the person's involvement or conduct of business with the slot machine applicant or licensee is of such a nature that the certification of the person is not necessary to protect the public interest.

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

(g) A certified vendor who has requested a waiver under this section may not provide goods or services to a slot machine applicant or licensee prior to Board approval of the certified vendor's waiver request.

§ 437a.4. Individual certifications and investigations.

(a) If a certified vendor or vendor seeking certification is a publicly traded company, the officer of the publicly traded company who is responsible for the conduct of business with the slot machine applicant or licensee shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board.

(b) If a certified vendor or vendor seeking certification is a privately held entity, each officer and director of the entity shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board. For the purposes of this subsection, the term "officer" means a chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

(c) If a certified vendor or vendor seeking certification is a privately held entity, each individual who has a direct or indirect ownership or beneficial interest of 5% or more in the privately held entity shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board.

(d) An individual who is a trustee of a trust that is required to file a Vendor Certification Form—Private Holding Company under § 437a.3 (relating to vendor certification applications) shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board.

(e) Each officer and director of a privately held holding company of a certified vendor or vendor seeking certification shall be required to file a Pennsylvania Personal History Disclosure Form if the Board determines that certification of the individual is necessary to protect the public or to enhance the integrity of gaming in this Commonwealth.

(f) Employees of a certified vendor who have entered into an agreement with a slot machine applicant or licensee on behalf of their certified vendor employer, employees of a certified vendor who will solicit from or conduct business with a slot machine applicant or licensee, and employees of a certified vendor who supervise persons performing the duties in this section, shall be required to file a Pennsylvania Personal History Disclosure Form if the Board determines that certification of the individual is necessary to protect the public or to enhance the integrity of gaming in this Commonwealth.

§ 437a.5. Construction subcontractors.

(a) A construction subcontractor who is otherwise required to be certified or registered may elect to file an On-site Subordinate Vendor Notification Form with the Board in lieu of registration or certification if:

(1) The subcontractor is not providing goods or services through an agreement with a slot machine applicant or licensee.

(2) The subcontractor is not providing goods or services to a person who has entered into a contract with a slot machine applicant or licensee for the construction of a licensed facility.

(b) The On-site Subordinate Vendor Notification Form shall be valid for the construction of only one licensed facility, and shall be valid for only 1 year unless the Board, at its sole discretion, renews the On-site Subordinate Vendor Notification Form after a showing by the subcontractor that its obligations pursuant to the subcontract have not been fully performed and good cause exists for the delay in the performance.

(c) A subcontractor who elects to file an On-site Subordinate Vendor Notification Form as outlined in subsection (a) shall be prohibited from:

(1) Employing any person to work on the gaming floor or in a restricted area of a licensed facility.

(2) Providing, directly or indirectly, goods or service to any other slot machine applicant or licensee other than the slot machine applicant or licensee identified in the On-site Subordinate Vendor Notification Form.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The employee is the onsite supervisor of other employees who are involved in the construction of a licensed facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Notwithstanding § 437a.1 (relating to general vendor requirements), the Board may allow an applicant for

a vendor certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the vendor applicant if the following criteria are met:

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

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

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

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

§ 437a.10. Emergency vendor.

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

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

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

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

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

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

(a) An applicant for or holder of a slot machine license shall investigate the background and qualifications of the applicants for vendor registration or certification with whom it intends to have a contractual relationship or enter into an agreement.

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

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

(d) An applicant for or holder of a slot machine license shall have a duty to inform the Bureau of an action by an applicant for or holder of a vendor registration or certifi-

cation which the applicant for or holder of a slot machine license believes would constitute a violation of the act or the Board's regulations.

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441. [Reserved]

§§ 441.1—441.3. [Reserved].

§ 441.4a. [Reserved].

§ 441.5a. [Reserved].

§ 441.6a. [Reserved].

§ 441.7a. [Reserved].

§ 441.8. [Reserved].

§ 441.9a. [Reserved].

§ 441.11a. [Reserved].

§ 441.12a. [Reserved].

§ 441.13a. [Reserved].

§ 441.14a. [Reserved].

§ 441.15a. [Reserved].

§ 441.16a. [Reserved].

§ 441.17a. [Reserved].

§ 441.18a. [Reserved].

§ 441.19a. [Reserved].

§ 441.20. [Reserved].

§ 441.21a. [Reserved].

§ 441.22a. [Reserved].

§ 441.23a. [Reserved].

CHAPTER 441a. SLOT MACHINE LICENSES

Sec.

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§ 441a.1. Definitions.

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

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

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

(v) Restaurant facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 441a.3. Slot machine license application.

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

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

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

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

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

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

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

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

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

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

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

(1) Promptly provide information requested by the Board relating to its application, financial fitness, character, honesty and integrity, or regulation and cooperate

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

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

(d) A copy of the local impact report required as part of the application shall be provided to the political subdivisions in which the licensed facility will be located at the same time as the filing of the application for a slot machine license. The applicant shall file a proof of service with the Board.

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

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

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

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

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

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

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

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

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

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

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

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

(e) Following the issuance of a Category 1 license under this section, the Bureau will initiate a complete review of the information submitted under this subpart. If the applicant does not meet the requirements of the act

or this part, the Board will revoke, suspend or condition the license until the applicant meets the requirements of the act.

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

(a) An application for a slot machine license shall at all times throughout the period in which the application is on file with the Board include original payment bonds or original irrevocable letters of credit, or some combination thereof, that include draw instructions guaranteeing the applicant's payment of the slot machine license fee required by section 1209(c) of the act (relating to slot machine license fee) if the license is approved and issued.

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

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

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

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

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

(c) Unless otherwise required by the Board, a letter of credit must be issued by a bank, trust company, National banking association or corporation which is both subject to regulation by the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) and assigned a credit rating within the three highest rating categories, without regard to numerics or other modifiers, by Moody's or Standard & Poor's, or upon the discontinuance of Moody's or Standard & Poor's, by another Nationally-recognized rating service. Proof that the bank, trust company, National banking association or corporation is subject to regulation by the Federal Reserve System under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) and that the issuer has been assigned the required credit rating must accompany any letter of credit submitted under this section.

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

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

Commonwealth will have the right to request immediate payment under the payment bond or irrevocable letter of credit for payment of the slot machine license fee.

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

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

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

(i) The application has been denied.

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

(iii) The license fee has been paid.

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

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

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

§ 441a.6. Public input.

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

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

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

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

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

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

(b) The Board may schedule prehearing conferences under § 491a.9 (relating to prehearing and other conferences) to address issues related to licensing hearings.

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

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

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

(1) Section 1302, 1303, 1304 or 1305 of the act, as applicable.

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

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

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

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

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

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

(3) Operational viability, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Documents required under paragraphs (3) and (4) that have already been submitted to the Board and made part of the public record may be referenced instead of being included with the memorandum identifying all evidence an applicant intends to use in support of its presentation before the Board.

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

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

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

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

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

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

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

(2) Applicants may update or supplement evidence, including witnesses' testimony, reports or exhibits to

respond to issues raised subsequent to the filing of the memorandum required by subsection (i) at a prehearing conference if the issues could not have been reasonably anticipated by the applicant.

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

(1) Comparisons must be limited to:

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

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

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

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

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

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

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

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

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

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

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

(1) Oral presentation.

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

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

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

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

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

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

(s) An applicant may raise an objection to the conduct of the hearing, procedure, process or rulings of the Board as it relates to its own hearing or to the hearing of a competitive applicant as follows:

(1) An objection may be raised orally by stating the objection during the hearing of an applicant and the objection shall be stenographically recorded upon the record. The Board may request written briefing of the basis of the objection prior to issuing a ruling.

(2) An objection relating to the hearing of an applicant or to a hearing of a competitive applicant may be raised by means of written objection filed with the Clerk no later than 2 business days after the action or event giving rise to the objection. A written objection must clearly and concisely set forth the factual basis for the objection and be accompanied by a legal brief addressing the legal basis supporting the objection.

(3) If an applicant objects to an action or event in the hearing of another applicant, the caption of the objection must include the docket numbers of both proceedings conspicuously displayed and shall be served upon counsel for the other applicant by electronic means.

(4) In the event an objection is filed to the hearing of another applicant, counsel for that applicant may file a responsive brief within 2 business days of electronic service.

(5) An objection not raised as provided in paragraphs (1)—(3) will be deemed waived.

(t) Each Category 1 and Category 3 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications within its category. Each Category 2 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications that meet the same location criteria as the applicant as specified in subsection (n)(1)(i)—(iii). At the prehearing conferences, applicants in any category may waive the opportunity to file briefs.

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

(v) Following submission of the applicants' briefs, all applicants will have an opportunity to make final remarks in the form of oral argument before the Board in a manner and time prescribed by the Board. At the

prehearing conferences, applicants in any category may waive the opportunity for oral argument.

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

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

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

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

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

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

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

(5) The applicant may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. If made, answers shall be filed within 10 days after the date the petition is filed with the Board, unless for cause the Board prescribes a different time. A complete copy of the answer to the petition to intervene shall be served on the Chief Enforcement Counsel and the petitioner who seeks to intervene.

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

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

§ 441a.8. Divestiture.

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

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

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

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

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

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

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

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

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

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

(b) For Category 1 slot machine applications, the State Horse Racing Commission or the State Harness Racing Commission may submit additional information to the Board if it believes the information will assist the Board in making a determination relating to the operational, financial or character fitness of the applicant.

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

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

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

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

Each slot machine applicant or licensee shall notify the Board, in writing, as soon as it becomes aware, of the proposed appointment, appointment, proposed nomina-

tion, nomination, election, hiring, intended resignation, resignation, removal, firing, incapacitation or death of any person required to be licensed as a principal or key employee under Chapter 433a and § 435a.2 (relating to principal licenses; and key employee license). The notice must be addressed to the Bureau of Licensing.

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

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

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

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

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

(2) Records with respect to any oral agreement.

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

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

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

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

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

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

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

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

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

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

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

(4) The financial terms of the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

(i) The vendor certification or registration number or exemption code.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

(v) The grand total of all disbursements made during the reporting period.

(vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

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

(i) The vendor certification or registration number or exemption code.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

(v) The grand total of all disbursements made during the reporting periods.

(vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

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

(i) The vendor certification or registration number or exemption code of the vendor to whom the goods or services were provided.

(ii) The date of each individual transaction.

(iii) The amount of each individual transaction.

(iv) A general description of the type of goods or services provided.

(v) By vendor, subtotals of payments or credits received by the slot machine licensee or applicant or disbursements or credits made by the slot machine licensee or applicant during the reporting period.

(vi) By vendor, totals of payments or credits received or disbursements or credits made by the slot machine licensee or applicant within the applicable 12-month period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A Category 1, Category 2 or Category 3 Slot Machine Renewal Application Form shall be submitted to the Board at least 60 days prior to the expiration of a slot machine license.

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

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

(a) A slot machine licensee shall notify the Board by filing a Slot Machine Licensee's Notification of Proposed Transfer of Interest Form prior to or immediately upon becoming aware of any proposed or contemplated change in ownership of the slot machine licensee by a person or group of persons acting in concert which involves any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) An institutional investor, if:

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

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

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

(f) In accordance with section 1330 of the act (relating to multiple slot machine license prohibition), a slot machine licensee, its affiliates, intermediaries, subsidiaries and holding companies, may not possess an ownership or financial interest in any other slot machine licensee or in

any other person eligible to apply for a Category 1 slot machine license or its affiliates, intermediaries, subsidiaries or holding companies that exceeds 33.3%.

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

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

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

§ 441a.18. Employee status report.

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

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

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

- (i) The name of the employee.
- (ii) The address of record of the employee on file with the slot machine licensee.
- (iii) The employee's license, permit or registration number.
- (iv) The employee's title or position.
- (v) Whether the employee is full-time or part-time.
- (vi) The date of hire of the employee.
- (vii) The access code, if any, assigned to the employee, which designates the restricted areas that the employee is permitted to enter and remain in for the purposes of performing his normal duties.

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

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

- (i) The information listed in paragraph (1)(i)—(vii).
- (ii) The date on which the employee discontinued or terminated employment with the slot machine licensee or management company.

(4) The total number of employees who have discontinued or terminated employment with the slot machine licensee and management company during the preceding month.

(5) The date on which the information provided in the report was compiled.

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

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

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

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

(b) The notice must include the following information:

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

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

- (1) An offense or violation under the act or this part.
- (2) The willful and knowing violation or attempt to violate an order of the Board by an employee.
- (3) An offense or violation of another applicable law which would otherwise disqualify the person from holding a license, permit or registration.
- (4) An offense or violation of a criminal law or ordinance of the United States or the Commonwealth or a comparable offense or violation in other states or foreign jurisdictions.

§ 441a.20. Slot machine license agreements.

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

(b) Agreements shall be submitted to the Bureau of Licensing at least 60 days prior to the proposed effective date of the agreement. The agreement may not take effect until the agreement has been approved by the Board.

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

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

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

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

§ 441a.21. Management contracts.

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

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

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

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

- (1) Section 1404 of the act (relating to distributions from licensee's revenue receipts).
- (2) Section 1405 of the act (relating to Pennsylvania Race Horse Development Fund).

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

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

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

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

- (1) Quarterly Report of Funds Received from the Pennsylvania Racehorse Development Fund.
- (2) Quarterly Report of Funds Distributed for Purses under section 4 Pa.C.S. § 1406(a)(1)(i) of the act.
- (3) Quarterly Report of Funds Distributed for Health and Pension Benefits under section 1406(a)(1)(iii) of the act.
- (4) Quarterly Report of Expenditures for Backside Improvements.

(d) A Category 1 slot machine licensee or management company shall file a report of planned future improvements to the licensed racetrack backside area with the Board no later than the 30 days following the end of each calendar year. The report must include:

- (1) A list of the improvements to be undertaken over the next 3 years.
- (2) The projected start date and completion date of each improvement.
- (3) The estimated cost of each improvement.

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

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

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

- (1) Sports and recreational activities and facilities such as a golf course or golf driving range.
- (2) Tennis courts
- (3) Swimming pools or a water park.
- (4) A health spa.
- (5) Meeting and banquet facilities.
- (6) Entertainment facilities.
- (7) Restaurant facilities.
- (8) Downhill or cross-country skiing facilities.
- (9) Bowling lanes.
- (10) Movie theaters.

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

- (1) Registered overnight guests.
- (2) Patrons of one or more amenities.
- (3) Authorized employees.
- (4) Other persons authorized by the Board.

(c) Individuals holding a valid seasonal or year-round membership, which has been approved by the Board and entitles the individual to use one or more of the amenities

at the well-established resort hotel holding the Category 3 slot machine license, may be allowed on the gaming floor at any time. The Board will base its approval of a membership on the duration of the membership, the amenity or amenities covered by the membership and whether the fee charged for the membership represents the fair market value for the use of the amenity or amenities.

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

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