

# RULES AND REGULATIONS

## Title 37—LAW

### DEPARTMENT OF CORRECTIONS

[ 37 PA. CODE CH. 97 ]

#### State Intermediate Punishment

The Department of Corrections (Department) has rescinded a statement of policy in Chapter 97 (relating to state intermediate punishment) and replaced the statement of policy with regulations to read as set forth in Annex A.

#### *Purpose and Authority*

This final-form rulemaking adopts regulations governing State intermediate punishment. The new regulations will appear in Chapter 97, adjoining other regulations pertaining to the Department. The Department is acting under the authority granted by 42 Pa.C.S. § 9906 (relating to written guidelines and regulations). The provisions of 42 Pa.C.S. Chapter 99 (relating to State intermediate punishment) (act) establish the Commonwealth's first State intermediate punishment program. The State intermediate punishment program is intended to reduce recidivism by providing intense drug and alcohol treatment to certain defendants who have been convicted of drug-related offenses. A drug-related offense is a crime that was motivated by the defendant's consumption of or addiction to alcohol or other drugs.

The act permits certain defendants who have been convicted of drug-related offenses to be committed to the Department for an assessment of their addiction and other treatment needs. Defendants who are subject to a sentence that includes an enhancement for the use of a deadly weapon or who have been convicted of a personal injury crime and certain other sexual crimes cannot be sentenced to State intermediate punishment. If, after assessment, the Department determines that the defendant is likely to benefit from a drug offender treatment program and is appropriate for placement in such a program, the Department will develop an individualized drug offender treatment program for the defendant. The judge may sentence the defendant to participate in a drug offender treatment program with the agreement of the defendant and the attorney for the Commonwealth.

A drug offender treatment program will be 24 months in duration and consist of at least four components. The defendant must serve a minimum of 7 months incarceration in a State correctional institution, during which the defendant must receive a minimum of 4 months treatment in an institutional therapeutic community. The defendant then must receive a minimum of 2 months treatment in a community-based therapeutic community and a minimum of 6 months treatment through an outpatient addiction treatment facility. The balance of the 24 month program consists of supervised reintegration into the community. The act permits the Department to transfer the defendant from less restrictive to more restrictive settings for medical, disciplinary or administrative reasons and to suspend or expel the defendant from the program. The Department intends to expel defendants who are not meaningfully participating in their individualized drug offender treatment program. A defendant who is expelled from the program will be resentenced by the court.

#### *Comments and Response*

Notice of proposed rulemaking was published at 37 Pa.B. 786 (February 17, 2007) with a 30 day comment period. The Department did not receive any public comments during the 30 day comment period. Comments were received from the Independent Regulatory Review Commission (IRRC) during the comment period.

Following is a summary of the comments and the Department's response to those comments:

*Comment:* IRRC recommended that the definitions of "DOTP-Drug Offender Treatment Program" and "eligible offender" fully reflect the statute.

*Response:* The Department adopted both of IRRC's recommendations.

*Comment:* IRRC recommend that the Department remove the following language from § 97.103 (relating to commitment for assessment): "The court is encouraged to order a presentence investigation at or prior to the time the Inmate is committed for evaluation." IRRC noted that the language does not establish a binding norm of general applicability and future effect.

*Response:* The Department removed the language from the regulation.

*Comment:* IRRC commented that § 97.103(b)(6) requires "A notice of current or previously administered medications." IRRC recommended that the word "or" be replaced with the word "and" to ensure a full history of medications. IRRC also asked that the Department clarify the period for which notice is required. IRRC also recommended that the Department clarify whether the term "medications" included over-the-counter medications.

*Response:* The Department replaced the word "or" with "and." The regulation also has been redrafted to clarify that the Department is seeking a full history of medications, including over-the-counter medications, administered during the preceding calendar year.

*Comment:* IRRC commented that there were several vague phrases in § 97.104 (relating to assessment of addiction and other treatment needs). Specifically, IRRC asked, "What 'nationally recognized assessment instrument' does the Department find acceptable?" IRRC also asked, "What procedures will the Department find acceptable to meet the requirement for an instrument to be 'normed and validated on the Department's inmate population?"; "What qualifications does the Department require for a person to be a 'recognized expert in those matters?"; and "What qualifications does the Department accept for 'persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments?'"

*Response:* The Department redrafted the regulation to address the concerns raised in this comment. The regulation reflects that the Department currently uses the Texas Christian University Drug Screen II (TCUDSII) as its assessment instrument. The TCUDSII was developed under a Federal grant and was designed specifically for criminal offenders. The regulations also explain the requirements that any new assessment instrument would have to satisfy to be used and the qualifications for administering the instrument. The regulations also require that an individual have attained a Ph.D. or similar terminal degree and have published peer reviewed studies to be considered a "recognized expert."

The regulation establishes the requirements for a person to be skilled in the treatment of drug and alcohol addiction. Specifically, the regulation requires that an individual have 1 year of experience as a Commonwealth Drug and Alcohol Treatment Specialist 1, or 2 years of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and have earned a bachelor's degree that includes 18 credits in the behavioral sciences, or 1 year of paraprofessional and 1 year of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and be certified by the Pennsylvania Chemical Abuse Certification Board as a "Certified Addictions Counselor" or have 1 year of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and a master's degree with major coursework in addictions, science, psychology or social work or an equivalent combination of experience and training which includes 18 college credits in the behavioral sciences.

The regulation further provides that a person must have completed the Department's internal training program regarding conducting assessments or have equivalent experience and knowledge to be considered trained to conduct assessments.

*Comment:* IRRC suggested that § 97.104(d) include a cross-reference to 42 Pa.C.S. § 9904(f).

*Response:* The Department agrees with this comment and added a cross-reference to the section.

*Comment:* IRRC commented that § 97.113 (relating to treatment sanctions) should clarify the meaning of "other drugs" that will trigger treatment sanctions.

*Response:* The Department added clarifying language to the regulation. The term "other drugs" is intended to encompass both illegal drugs and prescription drugs which have not been prescribed for the offender.

The Department also received informal comments from two judges inquiring whether any administrative remedies were available to a participant who was expelled from an SIP program. The Department has clarified § 97.116 (relating to expulsion from a DOTP) permit an internal review of an expulsion decision.

#### *Final Proposed Rulemaking*

#### *Affected Parties*

These final-form regulations affect courts, prosecutors, criminal defendants and defense counsel.

#### *Fiscal Impact and Paperwork Estimates*

These final-form regulations replace guidelines that implemented a program that is already in effect, for which funding has been appropriated. Therefore, there is no new significant fiscal impact. The final-form regulations will be fiscally neutral with respect to the counties. The Department anticipates a savings of \$3,873,000 through the first 5 years of the program.

The final-form regulations does not affect existing reporting, recordkeeping or other paperwork requirements.

#### *Effective Date*

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

#### *Sunset Date*

No sunset date has been assigned.

#### *Contact Person*

The official responsible for information on the final form regulations is Randall N. Sears, Deputy Chief Counsel, Department of Corrections, 55 Utley Drive, Camp Hill, PA 17011.

#### *Regulatory Review*

On February 1, 2007, copies of the proposed rulemaking were delivered to IRRC and the Majority and Minority Chairpersons of the House and Senate Judiciary Committees (Committees). Notice of the proposed rulemaking was published at 37 Pa.B. 786 with a 30 day public comment period. No public comments were received. Comments were received from IRRC on April 18, 2007. In preparing the final-form rulemaking, the Department considered all comments received from IRRC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)(a)), this final-form rulemaking was deemed approved by the House and Senate Judiciary Committees on September 17, 2008. Under section 5a(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC approved the final-form rulemaking on September 18, 2008.

#### *Findings*

The Department finds that:

(1) Public notice of the intention to adopt these regulations 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 1204) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC and the House and Senate Judiciary Committees.

(3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for administration and enforcement of the authorizing statute.

#### *Order*

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

(a) Title 37 of the *Pennsylvania Code* Chapter 97, is amended by deleting the statement of policy in §§ 97.1—97.17 and by adding regulations in §§ 97.101—97.118 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Department shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, and the House and Senate Judiciary Committees for their review and action as required by law.

(d) The Secretary of Corrections shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

JEFFREY A. BEARD, Ph.D.,  
Secretary

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 5509 (October 4, 2008).)

**Fiscal Note:** 19-9. (1) General Fund; (2) Implementing Year 2007-08 is \$0; (3) 1st Succeeding Year 2008-09 is \$1,308,000; 2nd Succeeding Year 2009-10 is \$0; 3rd Succeeding Year 2010-11 is \$0; 4th Succeeding Year 2011-12 is \$0; 5th Succeeding Year 2012-13 is \$0; (4) 2006-07 Program—\$1,154,473,000; 2005-06 Program—\$1,101,381,000; 2004-05 Program—\$1,086,505,000; (7) State Correctional Institutions; (8) recommends adoption. Implementing year shows no costs because they are included in the current budget. Savings to the Department will begin the second succeeding year.

**Annex A**

**TITLE 37. LAW**

**PART III. AGENCIES AND OFFICES**

**CHAPTER 97. STATE INTERMEDIATE PUNISHMENT DRUG OFFENDER TREATMENT PROGRAM**

- Sec.
- 97.1—97.17. [Reserved].
- 97.101. Authority and purpose.
- 97.102. Definitions.
- 97.103. Commitment for assessment.
- 97.104. Assessment of addiction and other treatment needs.
- 97.105. DOTP Selection Committee.
- 97.106. Participant selection criteria.
- 97.107. Drug offender treatment program.
- 97.108. Confinement in a State correctional institution.
- 97.109. Program advancement and regression.
- 97.110. Community-based therapeutic community.
- 97.111. Outpatient addiction treatment facility.
- 97.112. Supervised reintegration into the community.
- 97.113. Treatment sanctions.
- 97.114. Disciplinary sanctions.
- 97.115. Suspension from a DOTP.
- 97.116. Expulsion from a DOTP.
- 97.117. Consent to disclosure of information.
- 97.118. Applicability.

**§§ 97.1—97.17. (Rescinded).**

**§ 97.101. Authority and purpose.**

(a) This chapter is published under the act and establishes the DOTP administered by the Department. This chapter is intended to inform judges, prosecutors, defense counsel, defendants and the general public about the DOTP.

(b) The DOTP is a form of State intermediate punishment that provides a sentencing alternative for a person who commits a drug-related offense as defined in the act. The DOTP offers a sentencing alternative that punishes a person who commits a drug-related offense, but also provides treatment that offers the opportunity for the person to address the drug or alcohol addiction or abuse issues related to their criminal behavior.

**§ 97.102. Definitions.**

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

*Act*—42 Pa.C.S. Chapter 99 (relating to State intermediate punishment) establishing the DOTP.

*Commission*—The Pennsylvania Commission on Sentencing.

*Community-based therapeutic community*—A long-term residential addiction treatment program licensed by the Department of Health to provide addiction treatment services using a therapeutic community model, determined by the Department to be qualified to provide addiction treatment to eligible offenders and accredited as a therapeutic community for the treatment of drug and alcohol abuse and addiction by the Commission on Ac-

creditation of Rehabilitation Facilities or another Nationally-recognized accreditation organization for community-based therapeutic communities for drug and alcohol treatment.

*Community corrections center*—A residential program that is supervised and operated by the Department for inmates with prerelease status or who are on parole.

*Court*—The trial judge exercising sentencing jurisdiction over an eligible offender under this chapter or the president judge if the original trial judge is no longer serving as a judge of the sentencing court.

*Defendant*—An individual charged with a drug-related offense.

*Department*—The Department of Corrections of the Commonwealth.

*DOTP—Drug Offender Treatment Program*—An individualized treatment program established by the Department consisting primarily of drug and alcohol addiction treatment that satisfies the terms and conditions in section 9905 of the act (relating to drug offender treatment program).

*Drug-related offense*—A criminal offense for which the defendant is convicted and that the court determines was motivated by the defendant's consumption of or addiction to alcohol or a controlled substance, counterfeit, designer drug, drug, immediate precursor or marihuana, as those terms are defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

*Eligible offender*—

(i) Under 42 Pa.C.S. § 9721(a.1) (relating to sentencing generally), a defendant designated by the sentencing court as a person convicted of a drug-related offense who:

(A) Has undergone an assessment performed by the Department which assessment has concluded that the defendant is in need of drug and alcohol addiction treatment and would benefit from commitment to a drug offender treatment program and that placement in a drug offender treatment program would be appropriate.

(B) Does not demonstrate a history of present or past violent behavior.

(C) Would be placed in the custody of the Department if not sentenced to State intermediate punishment.

(D) Provides written consent permitting the release of information pertaining to the defendant's participation in a drug offender treatment program.

(ii) The term does not include a defendant who is subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon, as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing, or a defendant who has been convicted of a personal injury crime as defined in section 103 of the Crime Victims Act (18 P. S. § 11.103), or an attempt or conspiracy to commit such a crime or who has been convicted of violating 18 Pa.C.S. §§ 4302, 5901, 6312, 6318 and 6320 or Chapter 76, Subchapter C (relating to Internet child pornography).

*Expulsion*—The permanent removal of a participant from a drug offender treatment program.

*Group home*—A residential program that is contracted out by the Department to a private service provider for inmates with prerelease status or who are on parole.

*Individualized drug offender treatment plan*—An individualized addiction treatment plan within the framework of the drug offender treatment program.

*Institutional therapeutic community*—A residential drug treatment program in a State correctional institution, accredited as a therapeutic community for treatment of drug and alcohol abuse and addiction by the American Correctional Association or other Nationally-recognized accreditation organization for therapeutic community drug and alcohol addiction treatment.

*Outpatient addiction treatment facility*—An addiction treatment facility licensed by the Department of Health and designated by the Department as qualified to provide addiction treatment to criminal justice offenders.

*Participant*—An eligible offender actually sentenced to State intermediate punishment under 42 Pa.C.S. § 9721(a)(7).

*Transitional residence*—A residence investigated and approved by the Department as appropriate for housing a participant in a DOTP.

**§ 97.103. Commitment for assessment.**

(a) Prior to imposing sentence, the court may, upon motion of the Commonwealth and agreement of the defendant, commit a defendant to the custody of the Department for the purpose of evaluating whether the defendant would benefit from a DOTP and whether placement in a DOTP is appropriate.

(b) The committing county shall deliver a defendant committed to the custody of the Department for purposes of an evaluation to the institution the Department has designated for reception of inmates from that county. The defendant shall be housed in a State correctional institution while undergoing the evaluation. The following documents shall be delivered to the Department simultaneously with the defendant's arrival. The Department may refuse to accept for evaluation a defendant who is delivered to the Department by the county without all the documents listed as follows:

(1) A certified copy of the order committing the defendant to the Department's custody for purposes of an evaluation.

(2) A summary of the offense for which the inmate has been convicted, including the criminal complaint and police report summarizing the facts of the crime, if available, or a copy of the affidavit of probable cause accompanying the arrest warrant.

(3) A record of the defendant's adjustment in the county correctional facility, including, misconducts and escape history.

(4) Any current medical or psychological condition requiring treatment, including, suicide attempts.

(5) Any medical admission testing performed by the county and the results of those tests, including, hepatitis, HIV/AIDS, tuberculosis or other infectious disease testing.

(6) A notice of current and previously administered medications. The notice must include the name and dosage of the medications provided to the inmate while incarcerated in the county as well as over-the-counter medications used by the inmate and known to the county. The notice must list medications provided or used during the preceding calendar year.

(7) A 48 hour supply of current medications.

(c) Within 7 days of delivery of the defendant to the Department for an evaluation, the committing county shall provide the Department with the following:

(1) A summary of the disposition of all arrests noted on the defendant's record of arrest and prosecution (RAP Sheet).

(2) Any available information regarding the defendant's history of drug or alcohol abuse, addiction or treatment, including any evaluation performed using Court Reporting Network instruments or other evaluation techniques deemed appropriate by the court under 75 Pa.C.S. § 3816 (relating to requirements for driving under the influence offenders) or any other provision of law.

(3) A presentence investigation when available or if a presentence investigation cannot be completed, the official version of the crime for which the offender was convicted or a copy of the guilty plea transcript or a copy of the preliminary hearing transcript.

(4) A copy of the guideline sentence form issued by the Commission.

(5) Other information the court deems relevant to assist the Department with its assessment of the defendant.

**§ 97.104. Assessment of addiction and other treatment needs.**

(a) The Department will conduct a risk assessment and assess the addiction and other treatment needs of a defendant committed to its custody for purposes of an evaluation.

(1) The assessment of addiction shall be conducted using a Nationally-recognized assessment instrument or an instrument that has been normed and validated on the Department's inmate population by a recognized expert in these matters.

(2) For purposes of this section the term "recognized expert" means an individual who has earned the Doctor of Philosophy or the similar terminal degree in his field of study and who has published a number of peer reviewed validation studies.

(3) The Department currently uses the Texas Christian University Drug Screen II, an instrument that was developed under a Federal grant specifically for criminal offenders, is consistent with the DSM-IV criteria for substance abuse/dependence and is used by a number of criminal justice agencies. The Department's criteria for selecting an assessment instrument are that:

(i) The instrument must be supported by strong academic research.

(ii) The instrument correspond with the then current DSM criteria for substance abuse or addiction, or both.

(iii) When possible, the instrument produces results that are statistically as reliable as results produced by the Texas Christian University Drug Screen II.

(4) The instrument will be administered by persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments. The assessment will be reviewed and approved by a supervisor with at least 3 years of experience providing drug and alcohol counseling services. An individual will be considered skilled in the treatment of drug and alcohol addiction if they have 1 year of experience as a Commonwealth Drug and Alcohol Treatment Specialist 1, or 2 years of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and have earned a bachelor's degree that includes 18 credits in the behavioral sciences or 1 year of paraprofessional and 1 year of professional experience providing drug and alcohol counseling services directly to clients in a social work setting

and are certified by the Pennsylvania Chemical Abuse Certification Board as a "Certified Addictions Counselor" or 1 year of professional experience providing drug and alcohol counseling services directly to clients in a social work setting and a master's degree with major coursework in addictions science, psychology or social work or an equivalent combination of experience and training which includes 18 college credits in the behavioral sciences. An individual will be considered trained to conduct assessments if the individual has completed the Department's internal training program in performing assessments or has equivalent experience and knowledge.

(b) The Department will provide a report of its assessment to the court, the defendant, the attorney for the Commonwealth and the Sentencing Commission within 60 days of the commitment of the defendant to the Department for purposes of evaluation. If the Department determines that the defendant will benefit from a DOTP and placement in a DOTP is appropriate, the report will include a proposed DOTP detailing the type of treatment proposed for the defendant. If the Department determines that the defendant will not benefit from a DOTP or that placement in a DOTP is inappropriate, the report will set forth the reasons for the Department's determination.

(c) The Department encourages resolution of as many unresolved charges against the defendant as possible prior to commitment for an evaluation. Resolution of unresolved charges, including arrests that appear on a defendant's RAP sheet for which a disposition is not noted, assists the Department in completing an evaluation in a timely fashion. The Department will reconsider its report if the defendant has been deemed inappropriate for a DOTP because of unresolved charges or because the disposition of all arrests on the defendant's RAP sheet is not known and the committing county provides the Department with the resolution of the charges or disposition of the arrests.

(d) The act provides that the court may not modify or alter the terms of the Department's proposed DOTP without the agreement of the Department and attorney for the Commonwealth. See section 9904(f) of the act (relating to referral to State Intermediate Punishment Program). A request for modification of the terms of a proposed DOTP shall be sent to the Deputy Superintendent for the Diagnostic and Classification Center at the State Correctional Institution at Camp Hill for male inmates and the Deputy Superintendent for Centralized Services at the State Correctional Institution at Muncy for female inmates.

(e) The sheriff or an agent shall return to the committing county a defendant whom the Department determines will not benefit from a DOTP or is inappropriate for placement in a DOTP within 60 days of the Department's determination.

**§ 97.105. DOTP Selection Committee.**

(a) The Participant Selection Committee shall consist of the Diagnostic and Classification Center Director or a designee, the Deputy Superintendent responsible for the Diagnostic and Classification Center or a designee, and the Chief of the Department's Central Office Treatment Division or a designee.

(b) The Participant Selection Committee shall apply the participant selection criteria to determine whether a defendant will benefit from a DOTP and whether the participant's placement in a DOTP is appropriate.

**§ 97.106. Participant selection criteria.**

(a) An eligible offender, as that term is defined in the act, may be selected to be a participant in a DOTP. The Participant Selection Committee will consider all information relevant to determining which defendants are most likely to benefit from a DOTP by becoming productive, law-abiding members of society by addressing their abuse of or addiction to alcohol or other drugs. Selection criteria will include, but not necessarily be limited to, the following:

(1) Information furnished to the Department by the sentencing court.

(2) The results of the assessment of addiction and other treatment needs conducted by the Department.

(3) The length of the sentence that would be typically imposed under the standard range of the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing.

(4) The eligible offender's motivation to participate meaningfully in a DOTP.

(5) Whether the eligible offender has provided to the Department written consent permitting the release of information pertaining to the eligible offender's participation in a DOTP.

(6) The eligible offender's criminal history.

(7) The eligible offender's escape or parole absconder history.

(8) The eligible offender's institutional adjustment during current and prior incarcerations.

(9) The availability of the Department's programming resources.

(b) An eligible offender does not have a right to placement in a DOTP. A DOTP is intended to assist defendants to become productive, law-abiding members of society and is not intended to be a means for a defendant simply to serve a shorter sentence. The goal of the Participant Selection Committee will be to select those defendants it believes will most likely benefit from a DOTP by becoming productive, law-abiding members of society while allowing the Department to use its available programming resources efficiently and effectively. The number of participants selected for a DOTP will be the number that the Participant Selection Committee believes will neither under use nor overtax the available programming resources.

**§ 97.107. Drug offender treatment program.**

(a) A DOTP developed for a defendant shall be designed to address the defendant's individually assessed drug and alcohol abuse and addiction needs and other issues essential to the defendant's successful reintegration into the community, including, education and employment issues.

(b) A DOTP developed for a defendant shall be 24 months in duration and include the following:

(1) A period of confinement in a State correctional institution of at least 7 months, including the assessment period prior to the imposition of sentence and a period of at least 4 months during which the defendant shall be placed in an institutional therapeutic community.

(2) A period of treatment in a community-based therapeutic community of at least 2 months.

(3) A period of at least 6 months treatment through an outpatient addiction treatment facility.

(4) A period of supervised reintegration into the community for the balance of the DOTP.

**§ 97.108. Confinement in a State correctional institution.**

(a) The Department will accommodate requests to conduct sentencing proceedings for persons committed to its custody by means of videoconferencing or teleconferencing subject to equipment and staff availability. A defendant who is not sentenced by means of videoconferencing or teleconferencing, but is sentenced to a DOTP following an evaluation and recommendation by the Department, shall be delivered to the institution the Department has designated for reception of inmates from the committing county. The defendant will be considered to be a participant upon receipt by the Department.

(b) The participant will be required to begin his individual DOTP while housed in a State correctional institution and may be required to begin additional programming intended to address other treatment needs identified during the participant's incarceration.

**§ 97.109. Program advancement and regression.**

(a) An individual DOTP contemplates that a participant will advance through treatment provided in progressively less restrictive treatment settings. The Department anticipates that some participants who have progressed to a less restrictive treatment setting will benefit from an additional period of treatment or confinement in a more restrictive setting or location. Consistent with the minimum time requirements set forth in the act, the Department may transfer a participant to a State correctional institution, an institutional therapeutic community, a community-based therapeutic community, an outpatient addiction treatment program or an approved transitional residence. The Department may transfer a participant between less restrictive and more restrictive settings based upon the participant's progress or regression in treatment or for medical, disciplinary or other administrative reasons.

(b) The Chief of the Department's Central Office Treatment Division or a designee will determine whether a participant will be transferred to a different setting or location. The Department's goal will be to take the action that it believes will maximize the use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society while allowing the Department to use its available programming resources efficiently and effectively.

**§ 97.110. Community-based therapeutic community.**

(a) A participant who successfully completes the institutional therapeutic community portion of his DOTP and any required additional programming will be placed in a community-based therapeutic community. Placement in a community-based therapeutic community will not necessarily be made immediately upon successful completion of the institutional therapeutic community and any additional required programming, but will be made in sufficient time to permit the participant to complete the remaining portions of his DOTP.

(b) The participant will be required to continue engaging in his individual DOTP while housed in a community-based therapeutic community and may be required to participate in additional programming intended to address other treatment needs identified during his incarceration.

(c) The treatment staff of the community-based therapeutic community shall provide the Department with an informational report concerning the participant's progress toward completion of the community-based treatment portion of the participant's DOTP at the conclusion of the participant's first 2 months in the community-based therapeutic community. The report must include a recommendation whether the participant has progressed sufficiently to begin the outpatient addiction treatment portion of his DOTP, if the participant should continue in the community-based treatment community, be returned to the institutional therapeutic community or to a State correctional institution or be expelled from the DOTP. The report must include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted. The report shall be transmitted to the Chief of the Department's Central Office Treatment Division or a designee.

(d) The Department will not be limited to approving or disapproving the recommendation of the community-based therapeutic community treatment staff and may select alternatives not recommended by the treatment staff.

(e) The Department may require the treatment staff of the community-based therapeutic community to submit reports in addition to the report required by subsection (c).

**§ 97.111. Outpatient addiction treatment facility.**

(a) A participant who successfully completes the community-based therapeutic community and any additional required programming will be assigned to an outpatient addiction treatment facility. Assignment to an outpatient addiction treatment facility will not necessarily be made immediately upon successful completion of the community-based therapeutic community and any additional required programming, but will be made in sufficient time to permit the participant to complete the remaining portions of the participant's DOTP. A participant may reside in a community corrections center, group home or an approved transitional residence while assigned to an outpatient addiction treatment facility program, but will not be permitted to begin residing in a group home or an approved transitional residence until the Department has completed its investigation, review and approval of the residence.

(b) A participant will be required to continue his individual DOTP while assigned to an outpatient addiction treatment facility program and may be required to participate in additional programming intended to address other treatment needs identified during his incarceration.

(c) The treatment staff of the outpatient addiction treatment facility shall provide the Department with an informational report concerning the participant's progress toward completion of the outpatient addiction treatment portion of his DOTP at the conclusion of the participant's first 6 months of treatment with the outpatient addiction treatment facility. The report must include a recommendation whether the participant has progressed sufficiently to begin his supervised reintegration into the community, if the participant should continue treatment with the outpatient addiction treatment facility, be returned to a community-based treatment community, institutional therapeutic community or to a State correctional institution or be expelled from the DOTP. The report must include specific reasons supporting the recommendation and a suggested plan for addressing any treatment

deficiencies noted. The report shall be transmitted to the Chief of the Department's Central Office Treatment Division or a designee.

(d) The Department will not be limited to approving or disapproving the recommendation of the outpatient addiction treatment facility treatment staff and may select alternatives not recommended by the treatment staff.

(e) The Department may require the treatment staff of the outpatient addiction treatment program to submit reports in addition to the report required by subsection (c).

**§ 97.112. Supervised reintegration into the community.**

(a) A participant who successfully completes treatment through an outpatient addiction treatment facility and any additional required programming will begin supervised reintegration into the community for the remaining portion of his DOTP. The participant may continue or be permitted to begin to reside in a community corrections center, group home or an approved transitional residence during the period of supervised reintegration into the community, but will not be permitted to begin residing in an approved transitional residence until the Department has completed its investigation, review and approval of the residence.

(b) A participant residing in an approved transitional residence will be supervised by the Department during the remainder of his DOTP. The participant will be required to comply with any conditions imposed by the Department while residing in an approved transitional residence including abstaining from the use of alcohol or other drugs, submitting urine, hair or other samples the Department requests to monitor the participant's use of alcohol or other drugs and engaging in additional treatment or programming required by the Department.

(c) A participant will continue to be subject to the treatment and disciplinary sanctions in §§ 97.113 and 97.114 (relating to treatment sanctions; and disciplinary sanctions) while residing in an approved transitional residence.

(d) The Department will notify the sentencing court, the attorney for the Commonwealth and the Commission when the participant successfully completes the DOTP.

**§ 97.113. Treatment sanctions.**

(a) A participant who tests positive for the use of alcohol or other drugs shall receive a hearing according to the procedures in the Department's inmate disciplinary policy. If the hearing examiner or community corrections hearing committee, as applicable, determines that the participant used alcohol or other drugs, the participant shall be subject to the following sanctions:

(1) A participant housed in a State correctional institution or institutional therapeutic community shall be expelled from the DOTP and housed as the Department deems appropriate pending further action by the sentencing court.

(2) A participant receiving treatment through a community-based therapeutic community, outpatient addiction treatment facility or during supervised reintegration to society shall be evaluated by the Department. The participant shall be housed as the Department deems

appropriate pending completion of the evaluation. Following the evaluation, the participant may be placed in the treatment setting deemed appropriate by the Chief of the Department's Central Office Treatment Division or a designee or suspended or expelled from the DOTP.

(b) Subject to the time limitations set forth in the act, a participant who requests assistance because he believes he is in danger of relapsing will be given the opportunity to receive treatment in a more restrictive treatment setting as deemed appropriate by the Chief of the Department's Central Office Treatment Division or a designee.

(c) For purposes of this section, the term "other drugs" means a controlled substance, counterfeit, designer drug, drug, immediate precursor or marijuana as those terms are defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143) or any prescription drug that has not been prescribed for the individual using the prescription drug.

**§ 97.114. Disciplinary sanctions.**

(a) A participant who is alleged to have violated the Department's disciplinary rules, shall receive a hearing according to the procedures in the Department's inmate disciplinary policy.

(b) If the hearing examiner or community corrections hearing committee, as applicable, determines that the participant committed a Class 1 or Class 2 misconduct, the Chief of the Department's Central Office Treatment Division or a designee will determine whether the participant will be suspended or expelled from the DOTP, sanctioned according to the Department's inmate disciplinary policy or be subject to other sanctions deemed appropriate.

**§ 97.115. Suspension from a DOTP.**

(a) A participant who violates the conditions of his DOTP, other than by testing positive for the use of alcohol or other drugs or by committing a violation of the Department's disciplinary rules, may be suspended from participation in a DOTP.

(b) The Department's goal in determining whether to suspend a participant from a DOTP will be to take the action it believes will maximize the efficient and effective use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society if permitted to participate in continued treatment after a period of suspension.

(c) The Chief of the Department's Central Office Treatment Division or a designee will be responsible for determining whether to suspend a participant from a DOTP. The determination whether to suspend a participant from a DOTP may be based upon any information deemed appropriate by the Chief of the Department's Central Office Treatment Division or a designee.

(d) A participant who is suspended from participation in a DOTP will be housed in the setting deemed appropriate by the Chief of the Department's Central Office Treatment Division or a designee and shall comply with the Department's rules and any conditions imposed during the period of suspension. The Chief of the Department's Central Office Treatment Division or a designee will determine the participant's program status upon completion of the suspension.

**§ 97.116. Expulsion from a DOTP.**

(a) In addition to the provisions of §§ 97.113 and 97.114 (relating to treatment sanctions; and disciplinary sanctions), a participant who violates the conditions of his DOTP or who is not constructively participating in his DOTP or who will be unable to complete his DOTP within the period remaining on his 24 months sentence may be expelled from participation in a DOTP.

(b) The Department's goal in determining whether to expel a participant from a DOTP will be to take the action it believes will maximize the efficient and effective use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society if permitted to participate in continued treatment after being subject to sanctions or a period of suspension, or both.

(c) The Chief of the Department's Central Office Treatment Division or a designee will be responsible for determining whether to expel a participant from a DOTP. The determination whether to expel a participant from a DOTP may be based upon any information deemed appropriate by the Chief of the Department's Central Office Treatment Division or a designee.

(d) A participant who has been expelled from a DOTP may file a grievance with the Deputy Secretary for Reentry and Specialized Programs within 10 calendar days of the date of the expulsion.

(1) The grievance must be legible and the statement of facts may not exceed two pages.

(2) A participant is responsible for including all required documentation with the grievance. Failure to provide relevant documentation may result in the grievance being dismissed.

(3) A participant who is indigent as defined in Department policy DC-ADM 803, "Inmate Mail and Incoming Publications," will be afforded copy service and legal postage up to a maximum of \$10 per month and all moneys received in the inmate's account shall be used to pay for the cost of the copies and legal postage. A nonindigent inmate will incur copying charges in accordance with Department policy 3.1.1, "Fiscal Administration."

(4) Documents submitted in support of a grievance will not be returned. The participant should make copies of supporting documents for submission to final review.

(5) The Deputy Secretary for Reentry and Specialized Programs may decide the grievance based upon the documentation presented as well as other information contained within the Department's files and may interview the inmate and any involved staff member or contractor employee by means of videoconferencing if the Deputy Secretary for Reentry and Specialized Programs, in his sole discretion, believes an interview will assist him in understanding and evaluating the grievance.

(6) In reviewing a grievance, the Deputy Secretary for Reentry and Specialized Programs shall determine whether the participant violated the conditions of his DOTP or was meaningfully participating in the DOTP. The Deputy Secretary for Reentry and Specialized Programs may uphold or reverse the expulsion or take any other action that could have been taken by the Chief of the Department's Central Office Treatment Division with respect to the alleged conduct at issue.

(e) The Department will promptly notify the sentencing court, the participant, the attorney for the Commonwealth and the Commission of the expulsion of a participant from a DOTP and of the reason for the expulsion. The inmate will be housed in a State correctional institution or county prison pending action by the court.

**§ 97.117. Consent to disclosure of information.**

The consent to disclosure of information must be in the following form:

**CONSENT**

I, the undersigned, hereby give my consent for the Commonwealth of Pennsylvania Department of Corrections, its officers, employees, volunteers, contractors and agents to release and disclose to any court, attorney for the Commonwealth, the Pennsylvania Commission on Sentencing and to my attorney information pertaining to my evaluation for and participation in a drug offender treatment program. This consent to release and disclosure includes medical and dental information, mental health treatment information, drug and alcohol treatment information, criminal history records information and any other information contained in records maintained by the Department of Corrections, its officers, employees, volunteers, contractors and agents. This consent to release and disclosure extends to records pertaining to any period during which I am or was committed to the custody of the Department of Corrections and shall not expire.

Disclosure of medical/dental information may pertain to all aspects of my treatment and hospitalization, including psychological and psychiatric information and drug and/or alcohol information.

Disclosure of mental health records pertains to treatment, hospitalization, and/or outpatient care provided to me for the period listed above. I understand that my record may contain information regarding all aspects of my mental health treatment and hospitalization, including psychological and psychiatric information, drug and/or alcohol information.

In authorizing this disclosure, I expressly waive any and all rights I may have to the confidential maintenance of these records, including any such rights that exist under local, state, and federal statutory and/or constitutional law, rule or order, including those contained in the Pennsylvania Mental Health Procedures Act of 1976 and the Pennsylvania Drug and Alcohol Abuse Control Act of 1972.

I understand that I have no obligation to authorize disclosure of any information from my record and that I may revoke this consent, except to the extent that action has already been taken, at any time by notifying in writing the Medical Records Technician, Health Care Administrator, or Facility Manager. I also understand that revocation of this consent will result in my being expelled from the drug offender treatment program and that I will be resentenced by the court.

I understand that these records are the property of the Department of Corrections and that my authorization for their release does not require the Department of Corrections to release these records.



Furthermore, I will indemnify and hold harmless the Pennsylvania Department of Corrections, and its officers, employees, volunteers, contractors and agents, for any losses, costs, damages, or expenses incurred because of releasing information in accordance with this authorization.

Signature	Date
Witness Signature	Date

**§ 97.118. Applicability.**

This chapter applies to any defendant sentenced to State intermediate punishment on or after December 13, 2008.

[Pa.B. Doc. No. 08-2229. Filed for public inspection December 12, 2008, 9:00 a.m.]

## Title 58—RECREATION

### FISH AND BOAT COMMISSION [ 58 PA. CODE CH. 63 ]

#### Fishing

The Fish and Boat Commission (Commission) amends Chapter 63 (relating to general fishing regulations). 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, 2009.

*B. Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

*C. Statutory Authority*

The addition of §§ 63.53 and 63.54 (relating to egg collection; and possession or use of eggs as bait) is published under the statutory authority of section 2102(a) of the code (relating to rules and regulations).

*D. Purpose and Background*

The Commission's waterways conservation officers during the past year encountered anglers catching large female brown trout and removing the eggs contained within the fish. The fish were released back into the waters from which they were taken. The anglers indicated that they used these eggs as bait to fish for trout in other water areas. The continued removal of eggs from large female trout may have a detrimental effect on the numbers of young of the year fish in a wild trout population and likely cause undue harm to a fish that is released. In addition, using eggs taken from fish in one watershed as bait in another watershed may spread diseases.

Currently, the regulations require that fish must be released immediately unharmed from most specially regulated trout waters. The Commission's officers successfully charged two individuals for a violation of this regulation and, in doing so, had to prove that the fish were harmed by the removal of the eggs. To clearly prohibit this activity, the Commission proposed a new regulation making it unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. The proposed regulation permitted eggs taken from lawfully harvested fish from the Lake Erie watershed to be possessed and used as bait in the Lake Erie watershed only.

By notice published at 38 Pa.B. 3875 (July 12, 2008), the Executive Director, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. The temporary modification, like the proposed rule, allowed eggs taken from lawfully harvested fish from the Lake Erie watershed to be possessed and used as bait in the Lake Erie watershed only. This temporary modification went into effect immediately and will remain in effect until January 1, 2009, at which time the new regulations adopted by this order will go into effect.

*E. Summary of Changes*

On final-form rulemaking, the Commission adopted more restrictive regulations regarding egg collection and the possession and use of eggs as bait than the proposed regulation contained in the notice of proposed rulemaking. Specifically, the Commission adopted a regulation that makes it unlawful to remove or strip eggs from any fish taken from waters of this Commonwealth, whether dead or alive, except for trout and salmon that are taken from waters in the Lake Erie watershed. The Commission also adopted a regulation that prohibits the possession and use of unpreserved, refrigerated or frozen eggs regardless of their origin in or along the waters of this Commonwealth except in the Lake Erie watershed. In the Lake Erie watershed, unpreserved, refrigerated or frozen eggs from trout and salmon only may be possessed and used as bait. The Commission adopted the new regulations to read as set forth in Annex A.

Because of the more general and restrictive regulation dealing with the possession and use of eggs as bait, a regulation specifically addressing eggs from species of fish that are susceptible to Viral Hemorrhagic Septicemia (VHS), an infectious disease found in a variety of fish species, is not needed. The Commission therefore chose not to adopt proposed § 63.52 regarding to eggs from VHS-susceptible species of fish in another rulemaking package (48A-204) (See 38 Pa.B. December 13, 2008).

*F. Paperwork*

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

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

### H. Public Involvement

A notice of proposed rulemaking was published at 38 Pa.B. 4776 (August 30, 2008). The Commission received two public comments regarding the proposed regulation. One supported the proposal and favored an even more restrictive approach that would prohibit the taking of eggs from fish from any water and would prohibit them from being used anywhere in this Commonwealth as bait. The other expressed concern because the proposed regulation did not address the use of eggs from other jurisdictions. Copies of all public comments were provided to the Commissioners.

### Findings

The Commission finds that:

(1) Public notice of intention to adopt the regulations 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 regulations of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

### Order of the Commission

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended by adding §§ 63.53 and 63.54 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

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

(d) This order shall take effect on January 1, 2009.

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

**Fiscal Note:** Fiscal Note 48A-205 remains valid for the final adoption of the subject regulations.

### Annex A

## TITLE 58. RECREATION

### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

### CHAPTER 63. GENERAL FISHING REGULATIONS

#### § 63.53. Egg collection.

It is unlawful to remove or strip eggs from fish taken from waters of this Commonwealth except for trout and salmon taken from waters in the Lake Erie watershed.

#### § 63.54. Possession or use of eggs as bait.

Except as otherwise provided in this section, it is unlawful to possess or use as bait unpreserved, refrigerated or frozen fish eggs regardless of their origin while in the act of fishing in or along waters of this Commonwealth. Unpreserved, refrigerated or frozen eggs from trout or salmon may be used and possessed as bait while fishing in or along the waters of the Lake Erie watershed.

[Pa.B. Doc. No. 08-2230. Filed for public inspection December 12, 2008, 9:00 a.m.]

## FISH AND BOAT COMMISSION [ 58 PA. CODE CHS. 63, 69, 71 AND 73 ]

### Fishing

The Fish and Boat Commission (Commission) amends Chapters 63, 69, 71 and 73. The Commission is publishing these final-form regulations under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. Effective Date

The final-form regulations will go into effect on January 1, 2009.

#### B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. These final-form regulations are available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. Statutory Authority

The addition of §§ 63.51 and 73.3 (relating to sale of VHS-susceptible species of fish; and transportation and importation of VHS-susceptible species of fish) is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations). The addition of § 71.8 (relating to introduction of VHS-susceptible species of fish) is published under the statutory authority of section 2102(a) of the code. The amendments to § 69.3 (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed) are published under the statutory authority of section 2102(a) and (c) of the code.

#### D. Purpose and Background

Viral hemorrhagic septicemia (VHS) is an infectious disease found in a variety of fish species. To help prevent the spread of the disease, several agencies with jurisdiction, including the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), the Commission and the Department of Agriculture (Department), have taken action.

On October 24, 2006, APHIS issued an emergency order prohibiting the importation of certain live fish species from the Canadian provinces of Ontario and Quebec into the United States. In addition, export of live fish of 37 VHS-susceptible species was prohibited from the eight Great Lake boundary states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. On November 14, 2006, APHIS issued an amended order that allowed restricted movement under requirements for testing and certification that fish are VHS-free. On May 4, 2007, APHIS further amended the order to allow for catch and release fishing activities. APHIS again

amended its order on April 2, 2008 to allow VHS-susceptible species of live nonsalmonid fish from affected Canadian provinces to be imported into the United States for direct slaughter under an APHIS-issued permit. The APHIS order applies to live fish only. It does not address eggs.

Most recently, APHIS issued an interim rule that it published in the *Federal Register* on September 9, 2008. The interim rule, which will go into effect on January 9, 2009, establishes interstate movement and import requirements for VHS-susceptible fish species that originate from the eight Great Lake boundary states and the Canadian provinces of Ontario and Quebec.

Last year, the Commission adopted a new regulation in § 69.3. This new regulation, which went into effect on January 1, 2008, applies to live or dead fish (and their parts but not eggs) and makes it unlawful to transport or cause the transportation of VHS-susceptible fish out of this Commonwealth's portion of the Lake Erie watershed into other watersheds in this Commonwealth except when certain conditions are met. Those conditions are: (1) the fish are being transported to a disease testing facility and the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing; (2) the fish are from a group of fish certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission; (3) the fish are from an artificial propagation facility certified as having tested negative for VHS in accordance with testing protocols; (4) the fish are being transported to a slaughter facility, processing plant or restaurant and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing or consumption; or (5) the fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption.

The regulation further provides that for purposes of the section, species of fish that are susceptible to VHS are those species that the Commission has defined as such by notice published in the *Pennsylvania Bulletin*. On two occasions, the Commission has published notices defining VHS-susceptible species of fish. See 37 Pa.B. 6478 (December 8, 2007) and 38 Pa.B. 2425 (May 24, 2008). Although the Commission's regulation addressed the intrastate movement of VHS-susceptible species of fish, it did not address interstate movement.

The Department, which has broad jurisdiction under 3 Pa.C.S. Chapter 23 (relating to the Domestic Animal Law) and more limited jurisdiction under 3 Pa.C.S. Chapter 42 (relating to the Aquaculture Development Law), issued a quarantine order at 37 Pa.B. 5534 (October 13, 2007). The quarantine order addressed both intrastate and interstate movement of VHS-susceptible species of fish, and its provisions dealing with intrastate movement are consistent with the Commission's regulation in § 69.3. The order, like § 69.3, applied to live or dead fish and their parts, but it did not apply to eggs. The Department later amended its order at 37 Pa.B. 6428 (December 8, 2007) to revise its definition of VHS-susceptible species to track APHIS's thinking on the subject. The Department again amended its order at 38 Pa.B. 4787 (August 30, 2008) to remove dead animals and dead animal parts from the

definition of VHS-susceptible species. Therefore, the Department quarantine order currently applies to live fish only.

Commission staff have met on numerous occasions with the Department staff in an effort to develop a coordinated approach for dealing with VHS, and there has been good cooperation between the agencies. Although the Department order addresses interstate movement of VHS-susceptible species of fish, the Commission's officers cannot enforce it. Therefore, the Commission proposed new regulations, which will be fully enforceable by Commission officers, that will address the sale, introduction and transportation of VHS-susceptible species of fish from VHS-affected or at risk states or regions. The proposed regulations are consistent with the approach taken by the Department and APHIS in their orders. In addition, the regulations are consistent with the recent APHIS interim rule in most material respects.

The Commission also proposed a new regulation to address the possession and use as bait of eggs taken from VHS-susceptible species of fish from VHS-affected or at risk states or regions and the Lake Erie watershed. In addition, the Commission proposed amendments to § 69.3 to further define VHS-susceptible species of fish for purposes of the section, to include provisions regarding their introduction and sale outside the Lake Erie watershed and to address the possession and use as bait of eggs from VHS-susceptible species of fish from the Lake Erie watershed outside the watershed.

By notice published at 38 Pa.B. 3338 (June 14, 2008), the Executive Director, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to sell, introduce, transport or import VHS-susceptible species of fish, dead or alive, and the parts thereof into this Commonwealth from VHS-affected or at risk states, including Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, and VHS-affected or at risk regions, including the Canadian provinces of Ontario and Quebec, unless certain conditions are met. These temporary modifications went into effect immediately and will remain in effect until January 1, 2009, at which time the new regulations adopted by this order will go into effect.

By second notice published at 38 Pa.B. 3876 (July 12, 2008), the Executive Director, acting under the authority of § 65.25, took immediate action to make it unlawful to possess and use as bait unpreserved, refrigerated or frozen eggs taken from VHS-susceptible species of fish from a VHS-affected or VHS-at risk state or region in or along the waters of this Commonwealth except within the Lake Erie watershed. The Executive Director also took immediate action to make it unlawful to possess and use eggs from VHS-susceptible species of fish from the Lake Erie watershed as bait in other watersheds of this Commonwealth. This action represents a change to § 69.3, which previously allowed for the possession and use as bait of eggs from VHS-susceptible species of fish from the Lake Erie watershed in other watersheds of this Commonwealth provided the fish were from a group of fish certified as having tested negative for VHS or were from an artificial propagation facility certified as having tested negative for VHS. These temporary modifications went into effect immediately and will remain in effect until January 1, 2009, at which time the new regulations adopted by this order will go into effect.

### E. Summary of Changes

The Commission adopted new regulations that address the sale, introduction and transportation of VHS-susceptible species of fish from VHS-affected or at risk states or regions in §§ 63.51, 71.8 and 73.3. These regulations permit their sale, introduction and transportation when certain conditions are met. The Commission also adopted amendments to § 69.3 to further define VHS-susceptible species of fish for purposes of the section and to include provisions regarding their introduction and sale outside the Lake Erie watershed. The Commission adopted these new regulations and amendments as set forth in the notice of proposed rulemaking with the following modifications.

On final-form rulemaking, the Commission chose not to adopt proposed § 63.52 (relating to eggs from VHS-susceptible species of fish) in favor of a more restrictive regulation regarding the possession and use of eggs as bait that the Commission adopted as part of another rulemaking package. Because of the more general and restrictive regulation dealing with the possession and use of eggs as bait, a regulation specifically addressing eggs from VHS-susceptible species of fish is not needed. For these same reasons, the Commission also did not adopt the last sentence of § 69.3(c) that addresses the possession and use of eggs from VHS-susceptible species of fish from the Lake Erie watershed as bait in other watersheds of this Commonwealth. Last, on final-form rulemaking, the Commission revised § 73.3 (designated as § 73.4 in the notice of proposed rulemaking) to make its provisions regarding the international movement of fish consistent with the APHIS interim rule that will go into effect on January 9, 2009.

The Commission adopted the new regulations and amendments to read as set forth in Annex A.

### F. Paperwork

These final-form regulations will increase paperwork and will create new paperwork requirements in that persons selling and transporting VHS-susceptible species of fish from VHS-affected or at risk states must have in their possession fish health certification reports. Persons who transport VHS-susceptible species from an affected or at risk state through this Commonwealth must carry documentation stating the point of origin of the fish and the location outside of this Commonwealth to which they are to be delivered. Persons transporting these fish to facilities in this Commonwealth for testing and scientific purposes or to a slaughter facility, processing plant or restaurant in this Commonwealth shall carry documentation stating the point of origin of the fish and the destination to which they are to be delivered. Many of these requirements are already in place under APHIS and the Department orders.

### G. Fiscal Impact

These final-form regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. These final-form regulations will impose no new costs on the general public. These final-form regulations will impose new costs on the private sector in that prior to selling, introducing or transporting into this Commonwealth VHS-susceptible species of fish from VHS-affected or at risk states and regions, the fish or the artificial propagation facility where the fish are raised will have to be tested and certified as negative for VHS in accordance with approved protocols. Many of these requirements are already in place under APHIS and the Department orders.

### H. Public Involvement

A notice of proposed rulemaking was published at 38 Pa.B. 4910 (September 6, 2008). The Commission received one public comment supporting the proposed regulations and amendments. Copies of all public comments have been provided to the commissioners.

#### Findings

The Commission finds that:

(1) Public notice of intention to adopt the regulations and amendments 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 public comments that were received were considered.

(3) The adoption of the regulations and amendments 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 Chapters 63, 69, 71 and 73, are amended by adding §§ 63.51, 71.8 and 73.3 and amending § 69.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

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

(d) This order shall take effect on January 1, 2009.

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

**Fiscal Note:** Fiscal Note 48A-204 remains valid for the final adoption of the subject regulations.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 63. GENERAL FISHING REGULATIONS

#### § 63.51. Sale of VHS-susceptible species of fish.

(a) For purposes of this section, the following terms have the following meanings:

(1) Species of fish that are susceptible to viral hemorrhagic septicemia (VHS) are those species that the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) designates by order or the Commission defines by notice in the *Pennsylvania Bulletin*.

(i) The term "VHS-susceptible species" includes fish that are dead or alive, preserved or unpreserved, and the parts thereof.

(ii) The term "VHS-susceptible species" does not include the eggs of these species.

(2) A VHS-affected or VHS-at risk state includes Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin or other state that APHIS later designates

by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(3) A VHS-affected or VHS-at risk region includes the Canadian provinces of Ontario and Quebec or other region that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(b) It is unlawful to sell VHS-susceptible species of fish from the portion of the Lake Erie watershed in this Commonwealth in other watersheds of this Commonwealth except in accordance with § 69.3(e) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).

(c) It is unlawful to sell in this Commonwealth VHS-susceptible species of fish from a VHS-affected or VHS-at risk state, unless the following conditions are met:

(1) The sale meets the requirements of 30 Pa.C.S. § 2507 (relating to sale of certain fish, reptiles and amphibians prohibited).

(2) The fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Pennsylvania Department of Agriculture and approved by the Commission. Persons selling these fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, either a copy of the fish health certification reports for all VHS-susceptible fish kept at the place of sale or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility certified as having tested negative for VHS.

(d) It is unlawful to sell in this Commonwealth VHS-susceptible species of fish from a VHS-affected or VHS-at risk region, unless the fish meet the requirements of § 73.3(d)(1) (relating to transportation and importation of VHS-susceptible species of fish).

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**§ 69.3. Transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed.**

(a) For purposes of this section, species of fish that are susceptible to viral hemorrhagic septicemia (VHS) are those species that the Animal and Plant Health Inspection Service of the United States Department of Agriculture designates by order or the Commission defines by notice published in the *Pennsylvania Bulletin*.

(1) The term "VHS-susceptible species" includes fish that are dead or alive, preserved or unpreserved, and the parts thereof.

(2) The term "VHS-susceptible species" does not include the eggs of these species.

(b) It is unlawful to transport or cause the transportation of VHS-susceptible species of fish out of the portion of Lake Erie watershed in this Commonwealth except when one of the following conditions is met:

(1) The fish are being transported to a disease testing facility and the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish and the fish are accompanied in transit by

documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing.

(2) The fish are from a group of fish certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department of Agriculture (Department) and approved by the Commission. Persons selling the fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification reports for all VHS-susceptible fish owned or kept at the place of sale.

(3) The fish are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission. Artificial propagation facilities shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification report for the facility.

(4) The fish are being transported to a slaughter facility, processing plant or restaurant and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing or consumption.

(5) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption.

(c) It is unlawful to possess and use VHS-susceptible species of fish from the Lake Erie watershed as bait in other watersheds of this Commonwealth except when the fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission.

(d) It is unlawful to introduce VHS-susceptible species of fish from the Lake Erie watershed into other watersheds of this Commonwealth except when the fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission.

(e) It is unlawful to sell VHS-susceptible species of fish from the Lake Erie watershed in other watersheds of this Commonwealth unless the following conditions are met:

(1) The sale meets the requirements of 30 Pa.C.S. § 2507 (relating to sale of certain fish, reptiles and amphibians prohibited).

(2) The fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission. Persons selling these fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, either a copy of the fish health certification reports for all VHS-susceptible fish kept at the place of sale or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility certified as having tested negative for VHS.

**CHAPTER 71. PROPAGATION AND  
INTRODUCTION OF FISH INTO  
COMMONWEALTH WATERS**

**§ 71.8. Introduction of VHS-susceptible species of fish.**

(a) For purposes of this section, the following terms have the following meanings:

(1) Species of fish that are susceptible to viral hemorrhagic septicemia (VHS) are those species that the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) designates by order or the Commission defines by notice in the *Pennsylvania Bulletin*.

(i) The term "VHS-susceptible species" includes fish that are dead or alive, preserved or unpreserved, and the parts thereof.

(ii) The term "VHS-susceptible species" does not include the eggs of these species.

(2) A VHS-affected or VHS-at risk state includes Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin or other state that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(3) A VHS-affected or VHS-at risk region includes the Canadian provinces of Ontario and Quebec or other region that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(b) It is unlawful to introduce VHS-susceptible species of fish from the portion of the Lake Erie watershed in this Commonwealth into other watersheds of this Commonwealth except in accordance with § 69.3(d) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).

(c) It is unlawful to introduce into the waters of this Commonwealth VHS-susceptible species of fish from an affected or at-risk state unless the fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Pennsylvania Department of Agriculture and approved by the Commission.

(d) It is unlawful to introduce into the waters of this Commonwealth VHS-susceptible species of fish from an affected or at-risk region unless the fish meet the requirements of § 73.3(d)(1) (relating to transportation and importation of VHS-susceptible species of fish).

**CHAPTER 73. TRANSPORTATION OF FISH INTO  
THIS COMMONWEALTH**

**§ 73.3. Transportation and importation of VHS-susceptible species of fish.**

(a) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) Species of fish that are susceptible to viral hemorrhagic septicemia (VHS) are those species that the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) designates by order or the Commission defines by notice in the *Pennsylvania Bulletin*.

(i) The term "VHS-susceptible species" includes fish that are dead or alive, preserved or unpreserved, and the parts thereof.

(ii) The term "VHS-susceptible species" does not include the eggs of these species.

(2) A VHS-affected or VHS-at risk state includes Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin or other state that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(3) A VHS-affected or VHS-at risk region includes the Canadian provinces of Ontario and Quebec or other region that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(b) *Intrastate transportation.* It is unlawful to transport or cause the transportation of VHS-susceptible species of fish out of the portion of the Lake Erie watershed in this Commonwealth into other watersheds of this Commonwealth except in accordance with § 69.3(b) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).

(c) *Interstate transportation.* It is unlawful to transport or cause the transportation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk state, except when one of the following conditions is met:

(1) The fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Pennsylvania Department of Agriculture (Department) and approved by the Commission. Persons transporting these fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification reports for all VHS-susceptible fish being transported or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for VHS.

(2) The fish are being transported through this Commonwealth and the shipping container (tank, trailer, holding vessel or other container) remains biosecure in transit and the fish are accompanied in transit by documentation stating the point of origin of the fish and the location outside of this Commonwealth to which they are to be delivered.

(3) The fish are being transported to facilities located within this Commonwealth for testing and scientific purposes and the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing or scientific purposes.

(4) The fish are being transported to a slaughter facility, processing plant or restaurant within this Commonwealth and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing or consumption.

(5) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption.

(d) *International movement.* It is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region, except as follows:

(1) VHS-susceptible species of live fish may be imported into the United States if the requirements of 9 CFR 93.910—93.916 (relating to general provisions for VHS-regulated fish species) are met.

*(Editor's Note:* The effective date of amendments to these sections is delayed until January 9, 2009.)

(2) VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

[Pa.B. Doc. No. 08-2231. Filed for public inspection December 12, 2008, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD**

**[ 58 PA. CODE CHS. 435a, 441a AND 465a ]**

**Employees; Slot Machine Licenses; and Accounting and Internal Controls**

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. §§ 1308, 1318 and 1331 (relating to applications for license or permit; occupation permit application; and duty of licensees, key employees and gaming employees), amends Chapters 435a, 441a and 465a (relating to employees; slot machine licenses; and accounting and internal controls) to read as set forth in Annex A.

*Purpose of the Final-form Regulations*

This final-form regulations expand the list of offenses holders of a license, permit or registration must report to the Board; establishes time periods for the submission of additional documents required when an application is being submitted under SLOTS Link; shifts the issuance of temporary credentials for nongaming employees from the casino compliance representatives at the licensed facilities to the Bureau of Licensing; and broadens the restriction on hiring off-duty law enforcement officers as security personnel.

*Explanation of Amendments to Chapters 435a, 441a and 465a*

Currently, § 435a.1(c) (relating to general provisions) only requires reporting of offenses under 18 Pa.C.S. (relating to crimes and offenses) or 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance). To better insure continuing oversight of the character and suitability of individuals who hold a license, permit or registration, offenses involving moral turpitude, offenses under 75 Pa.C.S. which are punishable by 1 year or more and offenses under section 13(a) of the Controlled Substances, Drug, Devices and Cosmetic Act (35 P. S. § 780-113(a)) regarding prohibited acts; and penalties have been added to this subsection.

Under § 435a.3 (relating to occupation permit), an applicant may submit an application electronically using SLOTS Link. However, when an application is made using SLOTS Link, there are additional release forms that must be submitted on paper. In a number of cases, licensees have not been submitting this paperwork in a timely manner, which has resulted in delays in the processing of these applications. To reduce these delays,

slot machine licensees will be required to submit this paperwork within 5 days of the filing of an application using SLOTS Link. For all other licensees, a 10-day filing period has been established.

In § 435a.9(b) (relating to temporary credentials for nongaming employees), issuance of temporary credentials for nongaming employees will now be done by the Bureau of Licensing instead of the casino compliance representatives at the licensed facilities. Improvements in administrative procedures within the Bureau of Licensing make it more efficient for the Board and the licensed facilities to have the Bureau of Licensing issue the temporary credentials as well as the permanent credentials for nongaming employees.

Section 441a.14(b) (relating to master purchasing and disbursement report), has been revised to reflect current practice. Slot machine licensees electronically transmit the data required by subsection (a) in a format that the Board has prescribed. Therefore, the language requiring a signature no longer applies.

In § 465a.14 (relating to security department minimum staffing), the restriction on hiring off-duty law enforcement officers to provide security in restricted areas or on the gaming floor has been extended to apply to the entire licensed facility. Because incidents that may require investigation by law enforcement officers could occur anywhere in the licensed facility, this revision will help to avoid any actual or appearance of a conflict of interest. Additionally, this will insure that any of a slot machine licensee's security personnel will be able to respond to any incident anywhere in the licensed facility.

*Comment and Response Summary*

Notice of proposed rulemaking was published at 38 Pa.B. 3505 (June 28, 2008).

The Board received comments from Washington Trotting Association, Inc. (WTA) during the public comment period. On August 27, 2008, the Independent Regulatory Review Commission (IRRC) also filed comments on the proposed rulemaking. All of these comments were reviewed by the Board and are discussed in detail as follows.

In its comments, WTA argued that the prohibition on hiring off-duty law enforcement agents should not be expanded. WTA believes that using off-duty law enforcement agents does not create any conflict of interest or operational problems. IRRC also questioned the need for this expansion.

WTA currently uses off-duty law enforcement agents to provide security in the racing areas of the facility and when the new integrated facility is completed, WTA wishes to continue using these individuals. Additionally, because the existing employees are unionized, compliance with this new requirement could create labor problems.

The Board disagrees with WTA's position. The Board believes that security personnel should be able to respond to incidents anywhere in the licensed facility and that the potential does exist for conflict of interest issues to arise if off-duty law enforcement agents are working in the areas designated as part of the licensed facility.

In response to WTA's concern about continued use of existing employees who are law enforcement agents, the Board notes that WTA will still be able to use these existing employees in other areas such as the pari-mutual areas, parking lots and any other areas that are not part of the actual licensed facility.

IRRC also noted that the term "Slots Link" in the proposed text §§ 435a.3 and 435a.5 should be replaced

with "SLOTS Link" to be consistent with the definition and usage of this term in the existing text.

The Board has made this change so that the term is used consistently throughout the regulations.

#### *Affected Parties*

This final-form regulations will affect: all employers of gaming and nongaming employees who submit applications by means of SLOTS Link; all individuals who hold a license, permit or registration; and law enforcement officers who desire to seek part-time employment with a slot machine licensee's security department.

#### *Fiscal Impact*

##### *Commonwealth*

The final-form regulations will have no fiscal impact on the Board or other agencies of the Commonwealth.

##### *Political Subdivisions*

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

##### *Private Sector*

Law enforcement officers, who desire to seek part-time employment with a slot machine licensee, will have fewer options because of the prohibition against working in the slot machine licensee's security department in the areas that make up the licensed facility.

##### *General Public*

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

##### *Paperwork requirements*

Holders of a license, permit or registration will have to report a broader range of violations. Beyond that, no new reporting or paperwork requirements are created by this rulemaking.

##### *Effective Date*

This 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 at (717) 214-8111.

##### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 12, 2008, the Board submitted a copy of the proposed rulemaking, published at 38 Pa.B. 3505 (June 28, 2008), and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on November 5, 2008. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on November 6, 2008 and approved the final-form rulemaking.

#### *Findings*

The Board finds that:

(1) Public notice of intention to adopt these amendments 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 Chapters 435a, 441a and 465a, are amended by amending §§ 435a.1, 435a.9, 441a.14 and 465a.14 to read as set forth at 38 Pa.B. 3505, and by amending §§ 435a.3 and 435a.5 to read as set forth in Annex A.

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

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

MARY DIGIACOMO COLINS,  
*Chairperson*

**Fiscal Note:** Fiscal Note 125-89 remains valid for the final adoption of the subject regulations.

#### **Annex A**

#### **TITLE 58. RECREATION**

#### **PART VII. GAMING CONTROL BOARD**

#### **Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION**

#### **CHAPTER 435a. EMPLOYEES**

#### **§ 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. When an application for an occupational permit is filed using SLOTS Link, the additional documents required, including releases, shall be submitted to the Board:

(i) Within 5 days of the submission of the SLOTS Link application by an applicant for or holder of a slot machine license.

(ii) Within 10 days of the submission of the SLOTS Link application by an applicant for or holder of a manufacturer, manufacturer designee, or supplier license or an applicant for or holder of a vendor certification.

(2) The nonrefundable application fee posted on the Board's web site ([www.pgcb.state.pa.us](http://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.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. When an application for a nongaming employee registration is filed using SLOTS Link, the additional documents required, including releases, shall be submitted to the Board:

(i) Within 5 days of the submission of the SLOTS Link application by an applicant for or holder of a slot machine license.

(ii) Within 10 days of the submission of the SLOTS Link application by an applicant for or holder of a manufacturer, manufacturer designee, or supplier license or an applicant for or holder of a vendor certification.

(2) The nonrefundable application fee posted on the Board's web site ([www.pgcb.state.pa.us](http://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.

[Pa.B. Doc. No. 08-2232. Filed for public inspection December 12, 2008, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD**  
**[ 58 PA. CODE CHS. 461a, 463a, 465a**  
**AND 467a ]**

**Slot Machine Testing and Control; Possession of Slot Machines; Accounting and Internal Controls; and Commencement of Slot Operations**

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1207 and 1322 (relating to regulatory authority of the Board; and slot machine accounting controls and audits), amends Chapters 461a, 463a, 465a and 467a to read as set forth at 38 Pa.B. 3507 (June 28, 2008) and in Annex A.

*Purpose of the Final-form Rulemaking*

The final-form regulation add new requirements to improve the Board's oversight of slot machine licensees to insure compliance with Pennsylvania Race Horse Development and Gaming Act; clarifies various provisions in Chapters 461a and 465a (relating to slot machine testing and control; and accounting and internal controls); and revises existing requirements to provide slot machine licensees with some additional organizational and operating flexibility.

*Explanation of Amendments to Chapters 461a, 463a, 465a and 467a*

In Chapter 461a, definitions of the terms "RAM" and "RAM clear" have been added to § 461a.1 (relating to definitions). These terms are used in the new § 461a.27 (relating to RAM clear) which codifies the procedures that are currently being used by slot machine licensees when it is necessary to do a RAM clear on a malfunctioning slot machine.

In § 463a.2 (relating to transportation of slot machines into, within and out of this Commonwealth), the Bureau of Investigations and Enforcement (BIE) and the Office of Gaming Operations have been added to the Gaming Lab as recipients of notices concerning the movement of slot machines into, within or out of this Commonwealth. Providing this notice to BIE and the Office of Gaming Operations will assist them in carrying out their responsibilities related to the movement of slot machines.

Two new provisions have been added to § 465a.2 (relating to internal control systems and audit protocols). A new paragraph (7) has been added which requires slot machine licensees to include the procedures that the slot machine licensees will use to conduct promotions in the slot machine licensees' internal controls. This will allow the Board to determine that sufficient patron protections are included in each promotion without requiring slot machine licensees to obtain separate approval for each promotion they desire to run. Additionally, a new paragraph (8) has been added which will require slot machine licensees to include the procedures they will use to maintain compliance with 4 Pa.C.S. § 1513 (relating to political influence) in their internal controls. This will allow the Board to ensure that all slot machine licensees have an effective program to prevent violations of 4 Pa.C.S. § 1513.

In § 465a.4 (relating to standard financial and statistical reports), the Board has added a new reporting requirement. Slot machine licensees will be required to submit quarterly reports reconciling the tax amount invoiced by the Department of Revenue (Department) and the tax accrual determined by the slot machine licensee's

revenue/income audit process. This report will be used by the Board to help evaluate the effectiveness and accuracy of the slot machine licensees' accounting operations.

In § 465a.8 (relating to licensed facility), the Board has made two changes. First, a new paragraph (7) has been added to subsection (d) requiring slot machine licensees to provide an area for the Central Control Computer System which must be equipped with an uninterruptible power supply. This requirement reflects what has been done at existing licensed facilities. Second, a new paragraph (8) has been added to subsection (d) requiring slot machine licensees to provide signs for the Board office, the size, location and design of which must be approved by the Office of Gaming Operations. This will make it easier for patrons at a licensed facility to locate the Board's office.

In § 465a.9 (relating to surveillance system; surveillance department control; surveillance department restrictions), the references to "cashiering location" in subsection (e) have been replaced with "cashiers' cage" to make it clear that this requirement for surveillance only applies to the cashiers' cages and not to cashier locations in the retail or food and beverage areas.

In § 465a.11 (relating to slot machine licensee's organization), language has been added to allow a slot machine licensee to have an assistant chief executive officer who acts as the chief executive officer in the chief executive officer's absence and to whom any of the six required department supervisors may directly report. This will give slot machine licensees some additional organizational flexibility and reflects the organizational structure of one of the existing slot machine licensees.

A new § 465a.33 (relating to access to areas containing Central Control Computer System equipment) has been added which specifies minimum requirements that must be included in a slot machine licensee's internal controls pertaining to access to areas containing central control computer (CCC) equipment. These minimum requirements will insure that access to the CCC equipment is limited to authorized personnel only.

In § 467a.1 (relating to gaming floor plan), the process for approving requests for changes to the gaming floor has been clarified and streamlined. Requests for changes to the square footage of the gaming floor or the number of slot machines on the gaming floor of more than 2% of the existing square footage or number slot machines on the gaming floor will be required to be filed as a petition under § 493a.4 (relating to petitions generally) and approved by the Board. All other change requests can be submitted in writing to the Office of the Clerk and will be approved by the Executive Director. This should result in quicker approval of changes that do not involve significant changes in the square footage of the gaming floor or the number of slot machines on the gaming floor.

#### *Comment and Response Summary*

Notice of proposed rulemaking was published at 38 Pa.B. 3507.

The Board received comments from Greenwood Gaming and Entertainment, Inc. (Greenwood) and Mountainview Thoroughbred Racing Association (Mountainview) during the public comment period. By letter dated August 27, 2008, the Independent Regulatory Review Commission (IRRC) also submitted comments. These comments were reviewed by the Board and are discussed in detail in this Preamble.

Concerning § 461a.27, IRRC suggested that the Board replace the term "Central Control Computer System" with the defined term "central control computer" and that the term "financial meters" be defined.

The Board agrees that the term "Central Control Computer System" should be replaced with the defined term "central control computer" and has made that change to this section and elsewhere throughout the final-form regulations. The Board decided not to add a definition of the term "financial meters" for two reasons. First, the term is well understood by the industry to include any meter that records financial information such as coin in, coin out, and the like. Second, a definition that attempted to list the meters included in the term could become obsolete as technology changes.

Greenwood commented that it believed § 465a.2(a)(7) is vague and suggested that the Board do a revised proposal with additional guidance regarding the safeguards and protections that should be included in their internal controls.

The Board agrees that further guidance would be helpful. To this end, the Board adopted an order on March 27, 2008, which sets forth some basic requirements that promotions must meet. Because the Board's experience with promotions is limited at this point in time, the Board believes that adding detailed provisions on promotions to these regulations may be premature. Additionally, adding detailed requirements to this rulemaking at this point in the process would deprive slot machine licensees of an opportunity to comment. Accordingly, the Board will consider doing a separate rulemaking on promotions after it gains more experience.

IRRC questioned the need for § 465a.2(8) since it repeats portions of the statute and if it is needed, IRRC suggested that more detail be added.

The inclusion of this requirement was not intended to repeat all of the provisions contained in 4 Pa.C.S. § 1513 (relating to political influence). Instead it is intended to require slot machine licensees to develop, and submit to the Board for its approval as part of the slot machine licensee's internal controls, the internal procedures the slot machine licensee will use to insure compliance with 4 Pa.C.S. § 1513. Because of the differing organizational structures of the existing slot machine licensees and to give slot machine licensees flexibility as to how they may do this, the Board has not elected to mandate any particular procedures at this time.

On § 465a.4, Greenwood suggested that the Board include a sample format in the regulation or have Board staff visit each slot machine licensee before the regulation takes effect to outline and review exactly what the Board wishes to see in the quarterly reports.

While the Board does not believe the format should be included in the regulation, the Board does agree with the suggestion that a sample format be provided. To this end, a sample Excel template was sent to all slot machine licensees in June. To further simplify the submission process for this report, the Board has also amended this section to require that the reports be submitted electronically.

On § 465a.8, IRRC suggested that the regulation provide more detail on how a slot machine licensee can obtain Office of Gaming Operation's approval of required signs.

These signs are one of a multitude of items that are discussed with the slot machine licensee by the opening team during the weeks prior to the opening of a licensed facility. Therefore, the Board does not believe that establishing a more formal procedure is necessary.

In § 465a.11, Mountainview noted that the proposed change appeared to contain conflicting language and suggested that this language be clarified.

The Board agrees with Mountainview's observation and has modified the proposed language to eliminate the potentially contradictory language.

In § 465a.33, Mountainview suggested that the Board replace subsection (a)(1)(ii) which requires an audible alarm to surveillance when the door to the area housing the CCC equipment is opened with a more general requirement that the slot machine licensee establish procedures that will insure that the surveillance department is notified whenever the CCC area is being accessed. IRRC concurred with this suggestion and suggested that the Board consider less costly options when developing the final-form regulation.

The Board agrees that there are other procedures that could be adopted to provide notice to the surveillance department for authorized entry to the CCC area. However, none of those alternatives would provide any protection against unauthorized entry. Given that the CCC equipment is used for the calculation of gross terminal revenue, protection of this area is essential. For this reason, the Board has retained this provision as proposed.

In § 465a.33(a)(4), Mountainview asked if the intent of this provision was to limit access to just GTECH personnel and if the slot machine licensee could rely on the list provided by GTECH or does the list have to be "approved" by the Department. IRRC questioned the Board's authority to impose an approval requirement on the Department and if authority does exist, suggested that more detail related to the approval process be added to the regulation.

The Board acknowledges that the proposed version of this provision did not reflect its intent. The intent of this provision was not to impose any requirements on the Department or to require slot machine licensees to submit a list to the Department for its approval. This paragraph has been revised to clarify that the slot machine licensee is only authorized to grant access to the CCC area to individuals who are on the list which the slot machine licensee must obtain from the Department.

Concerning § 465a.33(a)(5), Mountainview asked if this requirement only applied to individuals who are not authorized to enter the area containing the CCC equipment and if the notice to the Department, BIE and the casino compliance representatives must be provided before entry is allowed or as soon as practicable. IRRC questioned the need for notification if it is a true emergency and suggested that the provision be revised or deleted.

As noted previously, because the CCC area contains equipment used to calculate the gross terminal revenue, the Department and the Board need to be notified of any entry to the CCC area. So the Board has not deleted this provision. However, to address Mountainview's first question, the Board has inserted "to individuals who are not authorized to have access to the area containing CCC equipment" in this paragraph to clarify who needs a security escort. In response to their second question, the Board agrees that access in an emergency should not be delayed by requiring that notice be given before entry can

be authorized. To clarify this point, this paragraph has been revised to require that the notice be given "as soon as possible." To further simplify the notification requirement, the Board has eliminated the requirement that BIE be notified. This notification is not needed since notice is provided to the casino compliance representatives at the licensed facility.

Concerning the proposed revisions to § 467a.1(c), both Greenwood and IRRC believed that the proposed regulation is more restrictive than an existing delegation to the Executive Director to approve all relocations. If the Board retains this provision, they suggested that the threshold be increased from 2% to 5% to give slot machine licensees adequate flexibility to respond to customer demands and playing patterns and the Commonwealth's new Clean Indoor Air Act (Act 27 of 2008) (35 P. S. §§ 637.1—637.14).

The Board agrees that slot machine licensees should have the ability to relocate slot machines on their gaming floors with minimal delays. Therefore, the Board has revised this subsection to clarify that only changes involving more than 2% in the number of slot machines on the gaming floor or changes of more than 2% in the square footage of the gaming floor need to be submitted as a petition that will require Board approval. All other changes will be approved by the Executive Director. However, while the Board believes that it may be reasonable to increase the percentage threshold above 2% at some point in the future, the Board has elected to retain the 2% threshold until the Board has gained more experience with the new process.

For ease of administration, the Board has revised this section to require that the requests be filed with the Clerk rather than the Office of Gaming Operations. Additionally, provisions have been added to the regulation which specify what must be included in a petition or request and which will allow a slot machine licensee to file a petition for reconsideration with the Board if the slot machine licensee is dissatisfied with the decision made by the Executive Director.

*Additional Revisions*

In §§ 461a.27 and 465a.33, the term "casino enforcement agent" has been replaced with "casino compliance representative" to reflect the agents' current job title.

In § 465a.2(a)(8), the word "to" has been inserted following "influence)" to improve clarity.

In § 465a.4(a), the Financial Investigation Division has been removed from the list of entities that are to receive the revenue reconciliation report. This was done because routine review of this report is not one of their normal duties and because they will be able to obtain the report from the Office of Gaming Operations on an as needed basis.

In § 465a.11(a)(5), the word "department's" has been replaced by "departments" to reflect the Board's original intent.

In the first sentence of § 467a.1(c), the word "gaming" has been inserted in front of the word "floor" to make the use of the term consistent throughout this subsection.

*Affected Parties*

Slot machine licensees will be required to develop and file new internal controls and comply with the other provisions of these final-form regulations. Additionally, manufacturers, manufacturer designees and suppliers will have to comply with the new notice requirement in § 463a.2.

*Fiscal Impact  
Commonwealth*

Because most of the revisions in this rulemaking reflect current Department and Board practice, there will be no significant costs or savings to the Department, the Board or other State agencies as a result of these revisions.

*Political Subdivisions*

These final-form regulations will have no fiscal impact on political subdivisions of this Commonwealth.

*Private Sector*

Slot machine licensees will experience some costs to draft new internal controls, file the new quarterly reports required under § 465a.4(a) and obtain signs for the Board's offices at the licensed facilities. The Board estimates that these costs should not exceed \$2,000 per slot machine licensee.

*General Public*

These final-form regulations will have no fiscal impact on the general public.

*Paperwork Requirements*

These final-form regulations will require slot machine licensees to draft and submit amendments to their internal controls, prepare and submit quarterly revenue reconciliation reports and provide notice to BIE and the Office of Gaming Operations, in addition to the Gaming Lab, when slot machines are to be moved.

*Effective Date*

These final-form regulations will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person for questions about these final-form regulations is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 12, 2008, the Board submitted a copy of the proposed rulemaking, published at 38 Pa.B. 3507, 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 (Committees).

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)), the final-form regulations were deemed approved by the Committees on November 5, 2008. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 6, 2008, and approved the final-form regulations.

*Findings*

The Board finds that:

(1) Public notice of intention to adopt these amendments 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) These final-form regulations are 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 Chapters 461a, 463a, 465a and 467a are amended by amending §§ 461a.1, 463a.2 and 465a.9, to read as set forth at 38 Pa.B. 3507; and by amending §§ 465a.2, 465a.4, 465a.8, 465a.11 and 467a.1, and by adding §§ 461a.27 and 465a.33 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall certify this order, 38 Pa.B. 3507 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MARY DIGIACOMO COLINS,  
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 29, 2008).)

**Fiscal Note:** Fiscal Note 125-88 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT**

**CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL**

**§ 461a.27. RAM clear.**

(a) When a slot machine licensee becomes aware of a nonresponsive slot machine and communication between the slot machine and the central control computer can not be reestablished, the slot machine licensee shall immediately notify the Department's operator of the central control computer and the casino compliance representatives at the licensed facility. The slot machine licensee may not do a RAM clear on the affected slot machine until a casino compliance representative has recorded the information on the financial meters.

(b) For planned RAM clears, the slot machine licensee shall provide notice to the Department's operator of the central control computer and the casino compliance representatives at the licensed facility at least 48 hours prior to the scheduled RAM clear. A second notice shall be provided to the Department's operator of the central control computer and the casino compliance representatives at the licensed facility immediately prior to actually conducting the RAM clear.

**CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS**

**§ 465.2. Internal control systems and audit protocols.**

(a) An applicant for, or holder of, a slot machine license shall submit to the Board and the Department a written description of its initial system of administrative and accounting procedures, including its internal control sys-

tems and audit protocols (collectively referred to as its "internal controls") at least 90 days before gaming operations are to commence. A written system of internal controls must include:

\* \* \* \* \*

(7) Procedures governing the conduct of all gaming related promotions to be offered by the slot machine licensee.

(8) Procedures to ensure compliance with section 1513 of the act (relating to political influence) to:

- (i) Prevent political contributions.
- (ii) Provide an annual certification that the slot machine licensee has conducted a good faith investigation that has not revealed any violations to the Board and to the Department of State's Bureau of Commissions, Elections and Legislation.

(9) Other items the Board may request in writing to be included in the internal controls.

\* \* \* \* \*

**§ 465a.4. Standard financial and statistical reports.**

(a) Within 30 days of the close of each calendar quarter, slot machine licensees shall file a report which includes a detailed reconciliation of the amount invoiced by the Department to the tax accrual determined by the slot machine licensee's revenue/income audit process. The reconciliation shall be determined by the slot machine licensee on at least a weekly basis and the report must provide the date and the amount of any differences found during the reconciliation process. The report shall be filed electronically with the Board's Office of Gaming Operations and the Department's Bureau of Fiscal Management.

(b) The Board may prescribe standard reporting forms and corresponding filing instructions to be used by a slot machine licensee in filing the report referenced in subsection (a).

(c) The Board may request, in writing, financial, statistical or other reports to determine compliance by the slot machine licensee with the act and the Board's regulations.

**§ 465a.8. Licensed facility.**

(a) A licensed facility must be equipped with a surveillance system configured and approved in accordance with §§ 465a.9 and 465a.10 (relating to the surveillance system; surveillance department control; surveillance department restrictions; and surveillance system recording formats). Except as otherwise provided in subsection (d)(1), the surveillance system shall be under the exclusive control of the surveillance department.

(b) Restricted areas within the licensed facility shall be designated for the repair and storage of slot machines. Areas approved and utilized within the licensed facility for slot machine repair shall be covered by the approved surveillance system.

(c) Emergency exits from the gaming floor must be equipped with an audible alarm system that produces a loud, distinguishable warning sound, discernable in the vicinity of the exit, whenever the emergency door is opened. The alarm system shall be designed to require deactivation and reset by means of a key. The key is to be maintained by the security department.

(d) Slot machine licensees shall, in accordance with section 1207(13) of the act (relating to regulatory authority of board), provide for and maintain onsite facilities for use by the Board, the Department and the Pennsylvania State Police for the purpose of carrying out their respective responsibilities (collectively referred to as the "onsite facilities"). The onsite facilities must be located in the same building as the gaming floor, in locations approved by the Office of Gaming Operations and include suitable office space, equipment, partitions and supplies to meet the continuing needs of the Board, the Department and the Pennsylvania State Police at the facility including the following:

(1) A surveillance system monitoring room, located within the onsite facilities, with full camera control capability for the reception of transmissions generated by each camera approved for use as part of the slot machine licensee's surveillance system. Full camera control capability includes the ability to override the camera control capability of the slot machine licensee's surveillance system.

(2) An area for the detention of individuals detained or taken into custody by the Pennsylvania State Police. The detention area must be located within the onsite facilities and consist of a bench or other apparatus which is permanently affixed to the wall or floor to which the person in custody can be handcuffed with as little discomfort to that person as is possible under the circumstances.

(3) A fingerprinting and photographing facility for use by the Pennsylvania State Police located in conformance with and outfitted in compliance with specifications established by the Pennsylvania State Police.

(4) Adequate computer, telephone and copying capability to meet the Board's, the Department's and the Pennsylvania State Police's continuing data processing and related needs.

(5) Direct telephone connections between the onsite facilities and the slot machine licensee's surveillance monitoring room and its security department.

(6) Computer terminals providing read only access to any computerized slot monitoring system or casino management system, or both, used by the slot machine licensee in its gaming operations.

(7) An area for the operation and storage of the central control computer equipment which must be equipped with an uninterruptible power supply.

(8) Signs indicating the location of the Board's office. The size, location and design of the signs must be approved by the Office of Gaming Operations.

(e) Keys or alternative locking mechanisms securing access to the onsite facilities shall be under the exclusive custody and control of the Board, the Department or the Pennsylvania State Police respectively.

(f) Slot machine licensees shall provide additional accommodations within the licensed facility upon receipt of a written request from the Board, the Department or the Pennsylvania State Police to accommodate periodic audit, compliance or investigative reviews at the licensed facility.

(g) Slot machine licensees shall provide adequate parking spaces adjacent or proximate to the onsite facilities, clearly marked for the Board, the Department or Pennsylvania State Police use only.

(h) Slot machine licensees shall equip licensed facilities with communication systems necessary to insure communication between the licensed facility and the Board, the Department, the Pennsylvania State Police, any applicable local law enforcement agency or emergency first responders.

**§ 465a.11. Slot machine licensee's organization.**

(a) Slot machine licensees' systems of internal controls must, in accordance with section 1322 of the act (relating to slot machine accounting controls and audits) and § 465a.2 (relating to internal control systems and audit protocols), include organization charts depicting segregation of functions and responsibilities and descriptions of the duties and responsibilities for each position shown on each organization chart. Slot machine licensees shall be permitted, except as otherwise provided in this section, to tailor organizational structures to meet the needs or policies of a particular management philosophy. A slot machine licensee's organization charts must provide for:

\* \* \* \* \*

(5) A chief executive officer. For the purposes of this section, a "chief executive officer" means the person located at the licensed facility who is ultimately responsible for the daily conduct of the slot machine licensee's gaming business regardless of the form of business association of the slot machine licensee or applicant or the particular title which that person or any other person holds. A slot machine licensee's organization chart may also include an assistant chief executive officer who is responsible for the daily conduct of the slot machine licensee's gaming business during the chief executive officer's absence. However, the assistant chief executive officer may not be the department head of one of the departments required by subsection (b). Each supervisor of a department required by subsection (b) shall report directly to the chief executive officer or assistant chief executive officer of the slot machine licensee regarding administrative matters and daily operations. The slot machine licensee's organization charts must designate which positions, in the absence of the chief executive officer and the assistant chief executive officer, shall be designated as having responsibility for the daily conduct of the slot machine licensee's gaming business.

\* \* \* \* \*

**§ 465a.33. Access to areas containing central control computer equipment.**

(a) A slot machine licensee shall develop and submit to the Board and the Department, as part of the submission required under § 465a.2 (relating to internal control systems and audit protocols), procedures for safeguarding and limiting access to the central control computer (CCC) equipment housed within the licensed facility. At a minimum, these procedures must include the following requirements:

- (1) The area containing CCC equipment must:
  - (i) Be secured with a manual key lock system.
  - (ii) Have a door, that when opened, audibly signals the surveillance monitoring room.
  - (iii) Have adequate surveillance camera coverage to record all activity in the area.
- (2) All keys which access the area containing CCC equipment shall be maintained by the slot machine licensee's security department. Access to the keys may only be authorized by the director of security or the security shift manager with notification to the surveil-

lance monitoring room and the casino compliance representatives at the licensed facility.

(3) The slot machine licensee shall maintain an access log for the area containing CCC equipment. The log shall be maintained in a book with bound numbered pages that cannot be readily removed and placed in close proximity to the CCC equipment. Casino compliance representatives at the licensed facility may review the log upon request. The log shall be stored and retained in accordance with § 465a.6 (relating to retention, storage and destruction of books, records and documents). The following information shall be recorded in a log:

- (i) The date and time of each entry and exit.
- (ii) The name and Board-issued credential number of each person who initiates, performs or supervises the entry.
- (iii) The purpose of entry.

(4) The slot machine licensee's security department shall maintain a list of employees who are authorized to have access to the area containing CCC equipment. The list shall be obtained from the Department and made available to the casino compliance representatives at the licensed facility.

(5) Emergency access to individuals who are not authorized to have access to the area containing CCC equipment may only be granted with a security escort. When emergency access is granted, the slot machine licensee shall provide notice to the Department and the casino compliance representatives at the licensed facility as soon as possible.

**CHAPTER 467a. COMMENCEMENT OF SLOT OPERATIONS**

**§ 467a.1. Gaming floor plan.**

(a) An applicant for, or holder of a slot machine license, shall submit to the Board a floor plan of its gaming floor and the restricted areas servicing the slot operation. A floor plan must be:

- (1) Drawn to 1/8 inch scale, unless another scale is approved by the Board.
- (2) Certified by an architect licensed to practice in this Commonwealth and depict the following:
  - (i) The gaming floor with notations as to:
    - (A) Proposed total square footage.
    - (B) The perimeter of the gaming floor.
    - (C) A clearly delineated route for underage persons to transverse the gaming floor.
  - (ii) Each slot machine area on the gaming floor and each slot machine location within each slot machine area. Slot machine locations shall be identified by number in accordance with § 463a.3 (relating to slot machine location).
  - (iii) The number of slot machines on the gaming floor in compliance with section 1210 of the act (relating to number of slot machines), in total and by slot area.
  - (iv) Each slot seat on the gaming floor in compliance with § 461a.7(t) (relating to slot machine minimum design standards).

(v) Each surveillance camera installed in compliance with § 465a.9(a) (relating to surveillance system; surveillance department control, surveillance department restrictions), noting its type and camera number.

(vi) The cashiers' cage and any satellite cashiers' cage, inclusive of each cashiers' cage window and window number, ancillary offices and areas.

(vii) Each count room and any trolley storage area.

(viii) Each automated bill breaker, gaming voucher redemption, coupon redemption and jackpot payout machine.

(ix) Each automated teller machine.

(x) Each area designated for the storage or repair of slot machines.

(xi) Vault and armored car bay locations.

(xii) Additional documentation requested by the Board relating to the floor plan for the gaming floor.

(b) A slot machine licensee may not commence slot operations until the floor plan depicting its gaming floor and all restricted areas servicing the slot operation has been approved in writing by the Board. The approval by the Board will expressly authorize the maximum square footage of gaming floor and maximum number of slot machines which may be operated by the slot machine licensee.

(c) Requests for changes to the gaming floor plan approved under subsection (b) which involve a change of more than 2% of the square footage of the gaming floor or which involve a change of more than 2% in the number of slot machines on the gaming floor require Board approval and must be submitted to the Board as a petition under § 493a.4 (relating to petitions generally). Requests for all other changes to the gaming floor must be submitted in writing to the Office of the Clerk as a request for changes to the gaming floor and approved by the Board's Executive Director. The approval of the Board or the Executive Director may include conditions that must be met by the slot machine licensee as part of the changes.

(d) A petition or request for changes to the gaming floor must, at a minimum, include:

(1) A narrative description of the proposed changes.

(2) A revised gaming floor plan.

(3) A timetable for completion of the proposed changes.

(4) An updated slot machine master list as required under § 463a.5 (relating to slot machine master list).

(e) If a slot machine licensee objects to the disapproval of a request for changes to the gaming floor or conditions imposed on the approval of a request for changes to the gaming floor, the slot machine licensee may file a request for reconsideration as a petition under § 493a.4.

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