

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 439a AND 465a]

Key Employees and Complimentary Services or Items

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1103, 1207(3) and (5) and 1322 (relating to definitions; regulatory authority of board; and slot machine accounting controls and audits), proposes to amend Chapters 401a, 439a and 465a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The proposed rulemaking amends the definitions of “complimentary service” and “key employee” in § 401a.31 (relating to definitions) and makes revisions to § 465a.7 (relating to complimentary services or items).

Explanation of Amendments to Chapters 401a, 439a and 465a

In § 401a.3 (relating to definitions), the definition of “complimentary service” has been amended to clarify that it does not include points awarded to patrons who are members of a slot machine licensee’s player rewards program or credits for free slots play. In many gaming jurisdictions, complementaries and credits for free slots play are treated the same when calculating taxes due to the gaming jurisdiction. In this Commonwealth, credits for free slots play (which may be given directly to an individual or received by an individual in exchange for points earned in a player rewards program) may be deducted from the total of cash or cash equivalent wagers when calculating gross terminal revenue. However, the value of complementaries may not. The amended definition is being proposed to reflect this distinction.

Also in § 401a.3, the definition of “key employee” has been amended to improve its clarity and to add a number of new positions to the positions currently required to obtain a key employee license. More specifically, based on the experience gained from reviewing the operations of the seven operating licensed facilities, the Board has expanded the list of department heads in subparagraph (ii) to include additional titles of individuals whose job descriptions give them the authority to make discretionary decisions regarding slot machine operations. While the Board had initially required the Director of Food and Beverage and the Director of Facility Operations to also be licensed as key employees, the Board now believes that these positions do not have a significant role in the regulation of slot operations and do not require licensure as a key employee. Accordingly, those titles are not included in the list in subparagraph (ii).

In subparagraph (iii), the Board is also requiring that shift managers for the five most critical departments related to the regulation of slot operations be licensed as key employees. Because licensed facilities operate 24 hours a day and 7 days per week, shift managers must fulfill the responsibilities of the department head when the department head is not at the facility. Therefore it is appropriate that these individuals also be licensed as key employees.

Finally, a new subparagraph (vi) has been added which will require individuals, who are authorized to issue credits for free slots play which exceeds \$50 or player reward points worth more than \$50 to any individual patron within any consecutive 5-day period, to be licensed as key employees. This additional oversight is necessary because the issuance of significant amounts of credits for free slots play directly affects gross terminal revenue.

In § 439a.8 (relating to junket arrival reports), subsection (c)(2) is proposed to be amended to replace “complimentary” with “complimentary.”

In § 465a.7 (relating to complimentary services or items), subsection (a) has been amended to require the internal controls related to authorization and issuance of complimentary services or items to be approved by the Board. Board reviews of the internal controls developed by slot machine licensees to date have found that these internal controls are not adequate. Therefore, slot machine licensees will be required to submit their internal controls related to complementaries to the Board for review in the same manner that other internal controls are.

Additionally, the general language in subsection (a) concerning the specific employees to whom these internal controls will apply has been deleted and replaced with a new, more detailed provision in subsection (b)(3) that requires the slot machine licensee to develop a matrix which shows what employees (by job title) are authorized to issue complementaries and exactly what complementaries they may issue. Similarly, the general audit requirement in subsection (b)(4) has been revised to specifically require the slot machine licensee’s internal audit department to audit the issuance of complimentary services and items. These changes will make it clear which employees are authorized to issue complementaries and strengthen the effectiveness of the oversight of the issuance of complementaries. Finally, subsection (e) has been amended to require the report required under subsection (e) to be submitted to the Bureau of Licensing rather than the Bureau of Investigations and Enforcement.

Affected Parties

Slot machine licensees will experience some increased costs associated with additional employees required to be licensed as key employees as opposed to being permitted as gaming employees. Slot machine licensees will also experience some costs related to revisions to their internal controls for complimentary services and items.

Fiscal Impact

Commonwealth

There will be some costs to the Board related to review of additional key employee applications and the review of the internal controls for complementaries. The costs related to the review of the applications will be recovered from the applicants and the review of the internal controls for complementaries will be conducted by existing staff. Therefore, the Board will not experience any significant cost increases as a result of this rulemaking.

Political Subdivisions

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

Private Sector

Slot machine licensees are expected to experience increased costs associated with additional employees required to be licensed as key employees. It is estimated that the total number of employees affected at each facility will range between 7 to 10 employees which will result in an annual cost of approximately \$17,500 to \$40,000 per year per licensed facility. Slot machine licensees will also experience some costs related to revisions to their internal controls for complimentary services and items but these are not anticipated to be significant.

General Public

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

Paperwork Requirements

This proposed rulemaking will require 7 to 10 employees per licensed facility to fill out the more detailed key employee license applications.

Effective Date

The proposed rulemaking will become effective 30 days after final-form publication of the amendments in the *Pennsylvania Bulletin*. The delay in the effective date is being done to give affected employees adequate time to file key employee applications and receive a temporary key employee credential if needed.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-102.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 15, 2009, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site at www.pgcb.state.pa.us.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-102. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

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Complimentary service—

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(iii) **The term does not include points that are awarded to patrons of a licensed facility that are members of the licensed facility's player rewards program or credits for free slot play.**

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Key employee—An individual who is:

(i) **The general manager and assistant manager of the licensed facility and any employee who supervises the operations of the department or division heads listed in subparagraph (ii) or to whom these department or division heads report.**

(ii) **Employed in a [director or] department or division head capacity and who is empowered to make discretionary decisions that regulate slot machine operations in this Commonwealth[, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who supervises the operations of these departments or to whom these]. This includes the following department [directors] or [department] division heads [report.]:**

- (A) Slot Operations.
- (B) Cage Operations.
- (C) Count Room Operations.
- (D) Surveillance.
- (E) Security.
- (F) Management Information Systems.
- (G) Marketing.
- (H) Human Resources.
- (I) Purchasing.
- (J) Controller.
- (K) Finance.
- (L) Revenue Manager.

(M) Internal Audit.

(N) Compliance.

(O) Legal Affairs.

(iii) Employed as a shift manager or other individual who is authorized to act on behalf of the department or division head and who is empowered to make discretionary decisions that regulate slot machine operations in one of the following departments or divisions:

(A) Slot Operations.

(B) Cage Operations.

(C) Count Room Operations.

(D) Surveillance.

(E) Security.

[(ii)](iv) Employed by a slot machine licensee, manufacturer licensee, or supplier licensee, whose duties affect or require contact with slot machines, slot monitoring systems, casino management systems, player tracking systems and wide-area progressive systems for use or play in this Commonwealth, whether or not the individual is assigned to gaming operations in this Commonwealth.

[(iii)](v) A sales representative seeking to sell slot machines and associated equipment for use in this Commonwealth on behalf of a licensed manufacturer, manufacturer designee or supplier.

(vi) Employed by a slot machine licensee and is authorized to issue or approve credits for free slots play exceeding \$50 to an individual patron during any consecutive 5-day period or player reward points which have a value of more than \$50 to an individual patron during any consecutive 5-day period.

[(iv)](vii) Employed in other positions which the Board will determine based on detailed analyses of the employee's duties or the job descriptions.

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Subpart B. LICENSING, PERMITTING CERTIFICATION AND REGISTRATION

CHAPTER 439a. JUNKET ENTERPRISES

§ 439a.8. Junket arrival reports.

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

* * * * *

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

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Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS

§ 465a.7. Complimentary services or items.

(a) A slot machine licensee shall develop, maintain and apply adequate internal controls over the authorization

and issuance of complimentary services or items as defined in § 401a.3 (relating to definitions). The slot machine licensee shall [maintain a written record of the internal controls under this section and the specific employees to whom they apply. Slot machine licensees are not required to obtain Board approval of the internal controls under this section] submit internal controls for complimentary services and items to the Board for approval under § 465a.2 (relating to internal control systems and audit protocols).

(b) The internal controls must include the following:

* * * * *

(3) A matrix of job titles authorized to issue complimentary services or items and what complimentary services and items each job title is authorized to issue.

(4) The [provisions employed to insure the auditing] procedures to be followed by the slot machine licensee's internal audit department to audit the issuance of complimentary services or items.

(c) Complimentary services or items shall be recorded as follows:

(1) A complimentary service or item provided directly to a patron in the normal course of a slot machine licensee's business shall be recorded at an amount based upon the full retail price normally charged for the service or item by the slot machine licensee.

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(3) A complimentary service or item provided directly or indirectly to a patron on behalf of a slot machine licensee by a third party not affiliated with the slot machine licensee shall be recorded at an amount based upon the actual cost to the slot machine licensee of having the third party provide the service or item.

(4) A complimentary service or item provided directly or indirectly to a patron on behalf of a slot machine licensee by a third party who is affiliated with the slot machine licensee shall be recorded by the slot machine licensee in accordance with this section as if the affiliated third party were the slot machine licensee.

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(e) A slot machine licensee shall submit to [BIE] the Bureau of Licensing a report listing each person who, under subsection (d), received \$10,000 or more in complimentary cash and noncash gifts within a consecutive 5-day period ending during the preceding month. The report shall be filed by the last day of the month following the month in which the complimentary cash and noncash gifts were issued and include the total amount of complimentary cash or noncash gifts provided to each person broken down into categories for food and beverage, hotel accommodations, travel and other services.

[Pa.B. Doc. No. 09-734. Filed for public inspection April 24, 2009, 9:00 a.m.]