

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Amendments to the *Water Quality Regulations, Water Code* and *Comprehensive Plan* to Revise the Human Health Water Quality Criteria for PCBs in the Delaware Estuary, to Apply the PCB Human Health Water Quality Criterion to Delaware Bay, and to Provide for the Use of Compliance Schedules to Implement Stream Quality Objectives Established by the Commission

Summary

The Delaware River Basin Commission (DRBC or "Commission") will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to revise the human health water quality criteria for polychlorinated biphenyls (PCBs) in the Delaware Estuary (DRBC Water Quality Management Zones 2—5), extend application of the DRBC's PCB human health water quality criterion to Delaware Bay (DRBC Water Quality Zone 6) and provide for the use of compliance schedules where implementation of a stream quality objective established by the Commission requires a reduction of the pollutant concentration or loading of a discharge to Basin waters.

Dates

Two informational meetings will be held in late September 2009 on the proposed revised human health water quality criterion for PCBs and accompanying implementation plan. The exact locations and dates will be posted on the Commission's web site, DRBC.net, on or before August 17, 2009.

The public hearing will be held at 1:30 p.m. on Thursday, October 8, 2009, at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, use the driving directions posted on the Commission's web site. The hearing will continue until all those wishing to testify have had an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at (609) 883-9500, Ext. 224.

Written comments will be accepted and must be received by 5 p.m. on Monday, October 19, 2009. Written comments may be submitted as follows: if by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at (609) 883-9522; if by United States mail, to Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360. In all cases, include the commentator's name, address and affiliation, if any, in the comment document and "PCB Rulemaking" in the subject line.

Supplementary Information

Background. The current DRBC water quality criteria for PCBs in the Delaware Estuary were established in 1996. They predate the collection of site-specific bioaccumulation data for the Delaware Estuary and Bay and

site-specific fish-consumption data for Zones 2 through 4 that are relevant to the development of human health water quality criteria. They are also inconsistent with current United States Environmental Protection Agency (EPA) guidance for the development of such criteria, and they vary by water quality zone. One consequence of the current varied criteria is that to ensure that the current water quality criterion of 7.9 picograms per liter in the downstream portion of Zone 5 can be achieved, the allowable PCB loading to Zones 2 and 3, where the applicable criterion currently is 44.4 picograms per liter, must be even lower than would be required if the proposed uniform criterion were in place. DRBC currently has no PCB water quality criteria for the Delaware Bay, a shared interstate water for which the states of New Jersey and Delaware have established a criterion of 64 picograms per liter.

By Resolution No. 2003-11 on March 19, 2003, the Commission directed its executive director to initiate rulemaking on a proposal to revise the Commission's human health water quality criteria, including those for PCBs, to reflect site-specific data on fish consumption, site-specific bioaccumulation factors, and current EPA guidance on development of human health criteria. Rulemaking was delayed, however, pending the completion of an effort by the Commission's Toxics Advisory Committee (TAC) to revise the criterion for PCBs and a separate effort to develop recommendations for achieving reductions in PCB loadings to the river that could be issued in conjunction with the criterion.

Rigorously applying the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current EPA methodology for the development of human health criteria for toxic pollutants (*see* EPA-822-B-00-004, October 2000), the TAC in July 2005 completed development of a revised human health water quality criterion for PCBs for the Delaware Estuary and Bay of 16 picograms per liter. Accordingly, by Resolution No. 2005-19 on December 7, 2005, the Commission directed the executive director to proceed with rulemaking to establish the new criterion in DRBC Water Quality Zones 2—6.

Elevated levels of PCBs in the tissues of fish caught in the Delaware Estuary and Bay currently prevent the attainment of the designated uses "maintenance and propagation of resident fish and other aquatic life" (Zone 2, Zone 5 below River Mile 70 and Zone 6), "passage of anadromous fish" (Zones 2—6), and "maintenance of resident fish and other aquatic life" (Zones 3—5 above River Mile 70). (*See DRBC Water Quality Regulations* (WQR), Art. 3, sec's 3.30.2 B.2, 3.30.3 B.2, 3.30.4 B.2, 3.30.5 B.2 and 3.30.6 B.2 for Zones 2—6, respectively). These uses are commonly referred to collectively as "fishable" and are deemed to include human consumption of resident fish. Accordingly, these waters are listed by the bordering states as impaired under section 303(d) of the Clean Water Act (CWA), which requires that a total maximum daily load (TMDL) be established for them. A TMDL expresses the maximum amount of a pollutant that a water body can receive and still attain water quality standards. Once the load is calculated, it is allocated to all sources in the watershed—point and nonpoint—which may not discharge loads in excess of the share allocated to them in order to achieve and maintain the water quality standards. The EPA established TMDLs

for PCBs in December of 2003 for the Delaware Estuary and in December of 2006 for the Delaware Bay ("Stage 1 TMDLs"). It is anticipated that EPA will establish revised TMDLs ("Stage 2 TMDLs") for the Delaware Estuary and Bay to attain the revised PCB human health water quality criterion if approved.

When the Commission directed the executive director in 2005 to initiate rulemaking on updated PCB criteria, in accordance with a recommendation of the TAC, it also asked her to work with state regulatory agencies and EPA (collectively, "co-regulators") to develop recommendations for implementing criteria for bioaccumulative toxic pollutants such as PCBs that would be "consistent with the existing Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework while . . . reflecting principles of adaptive management" and to solicit public comment on these recommendations (DRBC Resolution No. 2005-19 par's. 3-4). It is expected that Stage 2 TMDLs issued by EPA will include as an appendix a TMDL implementation plan developed by DRBC and its co-regulators. The implementation plan, which will take the form of a guidance document, will explain how the load allocations assigned by the TMDL to nonpoint sources and the wasteload allocations assigned to point sources can be achieved consistent with the Clean Water Act and principles of adaptive management.

According to the 2003 and 2006 TMDLs, actual loadings of PCBs to the Delaware Estuary and Bay respectively are in some cases orders of magnitude above those needed to allow attainment of the designated use. The EPA's 2003 Delaware Estuary TMDL report projects that "due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades." (EPA 2003, Executive Summary, p. xiii). As required by Section 4.30.9 of the DRBC *Water Quality Regulations*, adopted by DRBC Resolution No. 2005-9 on May 18, 2005, the largest point source dischargers of PCBs to the Delaware Estuary and Bay have already undertaken pollutant minimization plans designed to locate the sources of PCBs entering their wastewater and stormwater systems and contain or remove them. The TMDL implementation plan developed by the co-regulators recognizes that many point source dischargers already have reduced their PCB loadings in an effort to meet their TMDL wasteload allocations assigned by the Stage 1 TMDLs. Some point source dischargers are expected to achieve their required reductions soon; however, others will require an extended period of time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations. The implementation plan developed by the co-regulators will accommodate these dischargers through the use of compliance schedules consistent with The Clean Water Act and applicable regulations. It is understood that those dischargers who cannot achieve their wasteload allocations within a single 5-year permit cycle notwithstanding good faith efforts to do so as soon as possible will be given additional time, even if this requires compliance schedules extending well beyond a single 5-year permit cycle.

Subjects on Which Comment is Expressly Solicited. Public comment is solicited on all aspects of the proposed rule. Without limiting the foregoing, the Commission has identified certain subject matters on which it expressly seeks comment. First, comments are solicited on the assumptions applied in developing the criterion, including the appropriate cancer risk level. (See Resolution No. 2005-19, par. 2). In accordance with current

DRBC regulations, that level is 10-6, or one additional cancer in every one million humans exposed for 70 years. (See DRBC WQR, § 3.10.3 D.4). The assumptions applied in developing the revised PCB criterion of 16 picograms per liter are set forth in a basis and background document that is available on the DRBC web site, DRBC.net. The second area on which the Commission expressly seeks comment is best approaches for implementing water quality criteria for bioaccumulative pollutants consistent with the NPDES framework and principles of adaptive management. (See Resolution No. 2005-19, par. 4). The third is the implementation plan developed by the co-regulators, which is posted on the Commission's web site, DRBC.net.

Further Information. The basis and background document and the co-regulators' implementation plan for the proposed criterion will be available on the DRBC web site, DRBC.net, on or before August 17, 2009. The dates, times and locations for the informational meetings to take place in late September will be posted on the web site by the same date.

Contact Commission Secretary Pamela M. Bush, (609) 883-9500, Ext. 203 with questions about the proposed rule or the rulemaking process.

PAMELA M. BUSH, ESQ.
Commission Secretary

Text of Proposed Amendments

It is proposed to amend the Comprehensive Plan, Articles 3 and 4 of the *Water Quality Regulations* (WQR) and Article 3 of the *Water Code* (WC) as set forth as follows. Editor's instructions are denoted by underscore thus. Deleted text is denoted by brackets [thus] and added text is denoted by boldface **thus**.

Amend Section 3.10.3 D. of Article 3 of the WQR and WC as follows:

3.10.3 Stream Quality Objectives

* * * * *

D. Human Health Objectives for Toxic Pollutants. It is the policy of the Commission to designate numerical stream quality objectives for the protection of human health for the Delaware River Estuary (Zones 2 through 5) which correspond to the designated uses of each zone. **It is also the policy of the Commission to designate a stream quality objective for the protection of human health from carcinogenic effects for PCBs in Delaware Bay (Zone 6).**

Stream quality objectives for protection from both carcinogenic and systemic effects are herein established on a pollutant-specific basis for:

* * * * *

Other toxic substances for which any of the three Estuary states have adopted criteria or standards may also be considered for the development of stream quality objectives.

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6. A rate of ingestion of water of 2.0 liters per day is assumed in calculating objectives for river zones where the designated uses include public water supplies after reasonable treatment. [A] **For toxic pollutants other than PCBs, a rate of ingestion of fish of 6.5 grams per day (equivalent to consuming a 1/2 pound portion every 35 days) is assumed in calculating freshwater stream quality objectives for human health[. A]; and a rate of ingestion of fish of 37 grams per day (equivalent to**

consuming a 1/2 pound portion every 6 days) is assumed in calculating marine stream quality objectives for human health. For PCBs in Zones 2 through 6, a rate of ingestion of fish of 17.5 grams per day (equivalent to consuming a 1/2 pound portion every 13 days) is assumed in calculating both freshwater and marine stream quality objectives.

* * * * *

Amend Table 6 of Section 3.30 of Article 3 of the WQR and WC as follows:

For the parameter "PCBs (Total)", in the column headed "Freshwater Objectives (ug/l): Fish & Water Ingestion," remove the number "0.0000444" and insert "0.000016;" in the column headed "Freshwater Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000448" and insert "0.000016;" and in the column headed "Marine Objectives (ug/l): Fish Ingestion Only," remove the number "0.0000079" and insert "0.000016."

Amend Section 3.30.6 C. of Article 3 of the WQR and WC by the addition of a new subsection 3.30.6 C.11. as follows:

3.30.6 Zone 6

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C. Stream Quality Objectives.

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11. Toxic Pollutants. The applicable marine stream quality objective for PCBs for the protection of human health from carcinogenic effects is 0.000016 ug/l.

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Amend Section 4.20.2 of Article 4 of the WQR as follows:

4.20.2 Additional Specifications. [The Standards have set limits for most of the significant and commonly used indicators which are pertinent to water quality management in the Basin. When a need arises, or upon application to the Commission, additional indicators and limits will be defined.]

Redesignate subsection 4.20.2 A. of Article 4 of the WQR as 4.20.2 B. and insert new language at Section 4.20.2 A. as follows:

A. Schedules of Compliance. Where implementation of a stream quality objective established by the Commission requires a reduction of the pollutant concentration or loading of a discharge to Basin waters, the Commission and/or environmental agency of the signatory party may establish a schedule of compliance ("compliance schedule") subject to the following:

1. Where the U.S. Environmental Protection Agency (EPA) or a state agency authorized by EPA to issue NPDES permits under the Clean Water Act issues a NPDES permit governing the discharge, then the compliance schedule shall be consistent with the Clean Water Act and applicable federal regulations; and

2. in all other instances, the compliance schedule issued by the Commission or the environmental agency of the signatory party shall obligate the discharger to attain as soon as reasonably possible in the judgment of the agency issuing such schedule the concentration or loading required to implement the stream quality objective.

B[A]. Background, Total Dissolved Solids. The following background levels of total dissolved solids shall be utilized for the specified zones of the Delaware River:

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Fiscal Note: 68-53. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART V. DELAWARE RIVER BASIN COMMISSION
CHAPTER 901. GENERAL PROVISIONS

§ 901.2. Comprehensive Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A [(2008)] (2009), and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 [(2008)] (2009) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 09-1459. Filed for public inspection August 14, 2009, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 435a AND 437a]

Vendor Revisions

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. § 1321 (relating to additional licenses and permits and approval of agreements), proposes to amend Chapters 435a and 437a (relating to employees; and vendor certification and registration) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking contains numerous amendments to Chapters 435a and 437a which are designed to improve the clarity of these chapters, reduce unnecessary filing requirements and improve the overall effectiveness of the Board's oversight of vendors based on the Board's experience to date.

Explanation of Amendments to Chapters 435a and 437a

Throughout this proposed rulemaking the Board has made minor language changes to improve the clarity of the regulations. For example, the Board has replaced the term "business" with "goods or services" to more closely track the language in the statute.

In Chapter 435, a new § 435a.9a (relating to temporary credentials for vendors) has been added which allows the Bureau of Licensing (Bureau) to issue temporary credentials for individuals who are part of a vendor registration or certification application if their presence in the licensed facility is needed. This will allow these individuals to work in a licensed facility prior to the approval of the vendor's registration or certification application.

Also in Chapter 435a, a new § 435a.9b (relating to vendor employee temporary access credentials) has been added which codifies the Bureau policy for issuing temporary credentials to employees of construction company vendors to complete work under the original contract,

change orders, punch lists, make periodic repairs or do warranty work. This provides a controlled mechanism for contractors to complete work or make repairs under the supervision of the slot machine licensee's security department instead of having these employees go through the process of obtaining a gaming permit or nongaming registration.

In § 437a.1 (relating to general vendor requirements), the monetary thresholds that trigger the registration or certification requirements have been revised. Under these amendments, vendors who provide less than \$15,000 worth of goods or services in a 12-month period will continue to be exempt from the registration or certification requirements. A new subsection (h) has been added which requires slot machine applicants and licensees to file a one-page Notification of Intent to Conduct Business Form for any vendor that is not required to be registered or certified that will provide goods or services that are valued at \$15,000 or more in a consecutive 12-month period. This will allow the Board to track low dollar value vendor transactions without requiring small vendors to complete an extensive application.

Under subsection (a), if a vendor provides goods or services worth \$100,000 or more up to \$500,000 in a 12-month period to one or more slot machine applicants or licensees, the vendor will be required to be registered. Under subsection (b), if a vendor provides goods or services worth more than \$500,000 in a 12-month period to one or more slot machine applicants or licensees, the vendor will be required to be certified. These changes will significantly reduce the number of vendors who will have to obtain registrations or certifications which will make it easier for small businesses in this Commonwealth to provide services to slot machine applicants and licensees.

Also in subsection (a), vendors whose employees will be working on the gaming floor or in restricted areas will now, in most cases, be required to be registered. Under the current regulation, these vendors are required to be certified. This change will reduce application costs for vendors. Additionally an exemption to the registration requirement has been added when registration will not be required if the following conditions are met: the employees access to the gaming floor is for no more than 24 hours in a 72-hour period once in any 3-month period; the vendor's employees sign-in with the slot machine licensee's security department and the Board's casino compliance representatives; and the vendor has received written approval from the Bureau.

A new subsection (c) has been added that requires registration or certification as a vendor if a person provides goods or services that have a total dollar value that exceeds the respective dollar thresholds to an intermediary, holding company or affiliate of a slot machine licensee, if those goods or services are for the benefit of or use by the slot machine licensee.

It is not uncommon for entities that operate multiple casinos in multiple jurisdictions to consolidate the purchase goods or services for their multiple properties. These provisions will ensure that a vendor that provides goods and services in this manner, that are ultimately to be used by a slot machine licensee in this Commonwealth, shall obtain Pennsylvania certification or registration if the value of the goods or services exceeds the applicable dollar thresholds.

Section 437a.1(d) is being amended to clarify the exemptions in paragraphs (8) and (12) and add two new exemptions. New paragraph (15) exempts persons or

subsidiaries that have a class of equity securities listed on one of the major stock exchanges or an equivalent foreign stock exchange, if their employees' duties do not require the employees to be permitted or registered.

In this situation, the Board does not believe certification or registration is necessary for two reasons. First, to be listed on one of the named stock exchanges, the vendor shall meet certain regulatory requirements similar to those that a certified or registered vendor would have to meet. Therefore, certification or registration by the Board would be redundant. Second, because the vendor's employees' job duties do not require a gaming employee permit or nongaming registration, the potential threat to the integrity of gaming is extremely remote.

Similarly, a new exemption has been added as paragraph (16) which adds an exemption for individuals licensed by a Federal or state agency if that agency's licensing requirements are similar to the Board's. Again, the goal of this provision is to reduce redundant licensing burdens.

A new subsection (e) has been added to § 437a.1 which allows the Board to request information from anyone claiming an exemption under subsection (d) to verify the person's exempt status. This provision is necessary to allow the Board to ensure that the person is eligible for the exemption the person has claimed.

The requirement that currently is contained in subsection (b)(4) that authorizes the Board to require a vendor to be certified if the Board determines certification is necessary to protect the integrity of gaming, has been moved to the new subsection (g) and expanded to allow the Board to require either registration or certification.

In § 437a.2 (relating to vendor registration applications), subsection (b) has been amended to require the submission of a nonrefundable application fee and to require the submission of fingerprints for officers, owners, individuals with the ability to control the vendor and sales persons who will have direct contact with slot machine applicants and licensees. The fee will go toward covering the costs of the investigation conducted on the applicant and the fingerprints will allow the Board to conduct a criminal history check of these individuals. A new subsection (e) has also been added to this section which will require the individuals listed in subsection (b)(4) to be found qualified by the Board. Finally, a new subsection (f) is being added to allow the Bureau to issue a temporary credential to the individuals who are required to submit fingerprints under subsection (b)(4). This will allow these individuals to work in a licensed facility prior to the completion of the application process.

In § 437a.3 (relating to vendor certification applications), subsection (a)(3) has been deleted. The Board does not believe this information is necessary to evaluate an applicant for vendor certification.

In § 437a.3(d)(3) is also being amended to require that a person seeking a waiver from certification based on a single transaction, not have a continuing business relationship with the slot machine applicant or licensee as well as not having a continuing onsite presence at the licensed facility. This new language has been added to clarify the intent of the single transaction waiver provision and to prevent any potential misuse of the single transaction waiver.

Also in § 437a.3, subsection (e) is being deleted. Based on the Board's experience and the increased monetary levels required for certification, the Board does not believe this provision is needed.

Section 437a.4 (relating to qualification of individuals and entities) has been totally rewritten to improve the clarity of these requirements, eliminate unnecessary filings and to replace the term "certification" with "qualification." The new requirement in subsection (a)(1) corresponds to the former requirements in existing subsections (a) and (b). New subsection (a)(2) requires anyone with an ownership or beneficial interest of 10% or more (instead of 5% which is currently required) to file a Pennsylvania Personal History Disclosure Form. Proposed subsection (a)(3) is a new provision which requires a Form from anyone who has the power to control or influence the vendor, regardless of their ownership interest. Proposed subsection (a)(4) is a revision of existing subsection (f) which continues the requirement that salespersons be qualified, but eliminates the requirement for qualification of their supervisors.

The new subsection (b) requires that any entity that owns 20% or more of a certified vendor or applicant for certification to file a Vendor Certification Form—Private Holding Company and be found qualified by the Board.

Subsection (c) exempts individuals and entities who are not otherwise exempt but who do have equity securities listed on one of the major stock exchanges from the requirements in subsections (a) and (b). Because of the regulatory requirements imposed on publicly traded companies, the Board does not believe the information required under subsections (a) and (b) is needed for these companies.

Subsection (d) lists individuals who may be required to file a Personal History Disclosure Form and be found to be qualified if the Board determines that it is necessary to protect the public or to enhance the integrity of gaming.

A new subsection (e) has also been added to this section which will allow the Bureau to issue a temporary credential to the individuals who are required to be qualified under this section. This will allow these individuals to work in a licensed facility prior to the completion of the application process.

The net effect of these revisions will be to reduce the number of individuals who will be required to file the Personal History Disclosure Form and be found qualified by the Board.

In § 437a.6 (relating to registration and certification term and renewal), minor wording changes have been made to improve the clarity of this section.

In § 437a.7 (relating to registered and certified vendor responsibilities), the provisions requiring permitting and registration of certain employees have been revised to include registered vendors as well as certified vendors. Additionally, subsection (c) has been amended to add a new paragraph (4) that requires the offsite supervisor of a registered or certified vendor's employees who work at a licensed facility to obtain a nongaming registration. While this individual will not normally be working in the licensed facility, because he will be responsible for vendor's employees who are working in the licensed facility, having this individual obtain a nongaming permit is appropriate.

The Board is also adding a new subsection (e) which in concert with the proposed new § 435a.11 codifies the Bureau's policy for issuing temporary credentials to employees of construction company vendors to complete work under the original contract, change orders, punch lists, make periodic repairs or do warranty work. As stated previously, this provides a controlled mechanism for con-

tractors to complete work or make repairs under the supervision of the slot machine licensee's security department instead of having these employees go through the process of obtaining a gaming permit or nongaming registration.

In § 437a.8 (relating to authorized vendor list; prohibited vendors), subsection (a) has been amended to clarify that the authorized vendor list will include both persons who have completed the registration or certification process and persons who have been given permission to conduct business with a slot machine licensee or applicant while their application is being reviewed.

Subsection (b) has been amended to explicitly state that a slot machine licensee or applicant may not do \$100,000 or more worth of business with a person within a 12-month period unless the person is on the authorized vendor list. This prohibition would not apply to services provided under § 437a.10 (relating to emergency vendors).

Subsection (c) has been amended to improve the clarity of the subsection and to delete paragraphs (4) and (5) which are redundant.

Subsection (d) has been amended to make the petitioner responsible for all costs related to a petition for removal from the prohibited vendors list. Similarly, a new subsection (e) which allows the Board to impose fines or other sanctions in connection with a petition for removal from the prohibited vendor list has been added. These provisions have been added to address problems that the Board has had with vendors who have been uncooperative and who have tried to provide services without complying with the Board's regulations.

In § 437a.9 (relating to permission to conduct business prior to certification or registration), subsection (a) has been amended by replacing "Board" with "Bureau of Licensing." The Bureau has been responsible for processing these requests. This change will codify this delegation of authority from the Board to the Bureau.

Subsection (a) is also being amended by adding new paragraphs (3) and (4) which expand upon the criteria that must be met for a vendor to provide goods and services before the review of their application has been completed. Paragraph (3) requires an applicant to agree that the Bureau may rescind the authorization with or without prior notice if the applicant's suitability is at issue or the applicant fails to cooperate in the application process. While the Board recognizes that slot machine licensees may need a vendor's services before the application process is complete, the Board's ultimate responsibility is to protect the integrity of gaming. Therefore, if a problem arises during the investigation of the vendor, it is essential that the Bureau be able to immediately rescind the interim authorization it has granted.

The requirements in paragraph (4) will allow the Bureau to determine if the applicant has a criminal record which could negatively impact the suitability of the applicant to provide goods or services prior to the completion of the application process.

Subsections (b) and (c), which limit the permission to conduct business to a period of 6 months unless the permission is extended for an additional 6 months for good cause shown, have been deleted. These provisions imposed unnecessary administrative burdens on vendors, slot machine applicants and licensees and the Board. The Board believes that once the need for the goods or services has been established, no further action is needed

until a final decision is made on the vendor's application for certification or registration.

In § 437a.11 (relating to slot machine applicants' and licensees' duty to investigate), subsection (c), pertaining to contracts or agreements between an applicant for or holder of a slot machine license and an applicant for or holder of a vendor certification or registration, has been deleted. This provision repeats the requirements in § 441a.13(c) (relating to Board review of agreements and records of agreements) and is therefore unnecessary.

Affected Parties

This proposed rulemaking will affect slot machine applicants and licensees and vendors. Slot machine licensees will have clearer requirements concerning vendors from whom they may purchase goods and services. Vendors will also benefit from the improved clarity of these amendments and the reduction or elimination of registration or certification requirements for certain vendors.

Fiscal Impact

Commonwealth

The proposed rulemaking will have no significant fiscal impact on the Board or other agencies of the Commonwealth. This is because the Board recovers its licensing and investigation costs from applicants.

Political Subdivisions

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

Private Sector

A vendor that provides goods or services to a slot machine licensee or applicant through a parent corporation or affiliate will now have to be registered or certified if the value of those goods or services exceeds the applicable monetary thresholds. Other vendors who meet the new exemption criteria will no longer be required to be registered or certified and a number of individuals who were previously required to be certified under § 437a.4, will no longer be required to obtain the individual certification. As a whole, the changes in this rulemaking are anticipated to result in a net decrease in costs to vendors.

General Public

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

Paperwork requirements

Vendors that provide goods or services to a slot machine licensee or applicant through a parent corporation or affiliate will now have to file applications for registration or certification if the value of those goods or services exceeds the applicable monetary thresholds. Other vendors who meet the new exemption criteria will no longer be required to file applications to be registered or certified and a number of individuals who were previously required to be certified under § 437a.4, will no longer be required to file a Form. As a whole, the changes in this rulemaking are anticipated to result in a net decrease in filings required by vendors.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation No. 125-100.

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 July 30, 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.

GERGORY C. FAJT,
Chairperson

(Editor's Note: For a document which relates to § 437a.2(b)—(d), which is proposed to be amended in this rulemaking, see 39 Pa.B. 4891 (August 15, 2009).)

Fiscal Note: 125-100. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.9a. Temporary credentials for vendors.

(a) A temporary credential may be issued by the Bureau of Licensing to an individual who has been qualified under § 437a.2(e) or § 437a.4 (relating to vendor registration applications; and qualification of individuals and entities) if the individual's presence is necessary in a licensed facility.

(b) A temporary credential issued under this section is void 180 days after the date of its issuance.

(c) The Bureau of Licensing may extend the expiration date of a temporary credential issued under this section if the Bureau of Licensing determines additional time is needed to complete the investigation for registration or certification of the vendor.

§ 435a.9b. Vendor employee temporary access credentials.

(a) The Board's casino compliance representatives at a licensed facility may issue a Vendor Employee Temporary Access Credential to an em-

ployee of a registered or certified construction company vendor who is completing work on the gaming floor or in a restricted area under the registered or certified construction company vendor's original contract, change orders or punch lists, or to complete periodic repairs or warranty work if:

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

(2) The employee will be under the supervision of an employee of the slot machine licensee's security department who is authorized to have access to the area where the work is being performed.

(b) To receive a Vendor Employee Temporary Access Credential, the employee of the registered or certified construction company vendor must surrender his driver's license or other photo identification.

(c) A Vendor Employee Temporary Access Credential will not be issued to an employee of a registered or certified construction company vendor for more than 12 days in a 12-month period.

(d) Employees of a manufacturer, manufacturer designee or supplier may not be issued a Vendor Employee Temporary Access Credential.

CHAPTER 437a. VENDOR CERTIFICATION AND REGISTRATION

§ 437a.1. General vendor requirements.

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

(1) The total dollar amount of [business] the goods or services to be provided to a single slot machine applicant or licensee or to multiple slot machine applicants or licensees will be or is anticipated to be equal to or greater than [\$15,000] \$100,000 but [\$200,000 or less with a single slot machine applicant or licensee] less than or equal to \$500,000 within a consecutive 12-month period.

(2) [The total dollar amount of business will be or is anticipated to be greater than \$15,000 but \$500,000 or less with multiple slot machine applicants or licensees within a consecutive 12-month period.] The employees of the vendor or person seeking to conduct business with a slot machine applicant or licensee will be working on the gaming floor or in restricted areas unless the following conditions are met:

(i) The employees will be on the gaming floor for less than 24 hours within a 72-hour period no more than once in any consecutive 3-month period.

(ii) The employees sign-in with the security department at the licensed facility and the Board's casino compliance representatives prior to entering the gaming floor.

(iii) The vendor has received written approval from the Bureau of Licensing for the vendor's employees to be on the gaming floor.

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

(1) The] the total dollar amount of [business] the goods or services to be provided to a single slot machine applicant or licensee or to multiple slot machine applicants or licensees will be or is anticipated to be greater than [\$200,000 with a single slot machine applicant or licensee] \$500,000 within a consecutive 12-month period.

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

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

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

(c) A person that provides goods or services indirectly to a slot machine applicant or licensee through an intermediary, holding company or affiliate of the slot machine applicant or licensee shall be required to be registered or certified in accordance with the monetary thresholds in subsections (a) and (b).

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

* * * * *

(8) Providers of professional services including accountants, attorneys, engineers and architects, when acting in their respective professional capacities.

* * * * *

(12) [Public institutions of higher education] Schools regulated by the Department of Education.

* * * * *

(15) A person, or subsidiary of a person, that has a class of equity securities listed on the New York Stock Exchange, the NASDAQ Stock Market, the American Stock Exchange or a foreign stock exchange determined by the Bureau of Licensing to have similar listing requirements, and whose conduct of business with a slot machine applicant or licensee does not require the employees of the person or a subsidiary of the person, to be permitted or registered under this chapter. To qualify for this exemption, a person shall submit a Publicly Traded Company Exemption Notification Form to the Bureau of Licensing.

(16) A person not otherwise exempt under this subsection that is licensed by a Federal or state agency if the agency's licensing requirements are determined by the Bureau of Licensing to be substantially similar to those of the Board.

(e) The Board may request information or assurances from any person listed in subsection (d) to determine the validity of the person's exempt status.

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

(g) A vendor of a slot machine applicant or licensee whose compensation does not exceed the monetary thresholds contained in this section or who is otherwise exempt from registration or certification under subsection (d) may be required to be registered or certified if the Board determines that registration or certification is necessary to protect the integrity of gaming.

(h) A slot machine applicant or licensee shall complete and submit to the Bureau of Licensing a Notification of Intent to Conduct Business Form for a vendor that is not required to be registered or certified that is providing or is anticipated to provide goods or services if the value of the goods or services will be or is anticipated to be \$15,000 or more within a consecutive 12-month period.

§ 437a.2. Vendor registration applications.

* * * * *

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

(1) **Submit the nonrefundable application fee posted on the Board’s web site (www.pgcb.state.pa.us).**

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

(4) **Submit fingerprints of the following individuals to the Board in a manner prescribed by BIE:**

(i) **Each officer and director of the registered vendor applicant. For purposes of this subparagraph, the term “officer” means a president, chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.**

(ii) **Each individual who has a direct or indirect ownership or beneficial interest of 10% or more in the registered vendor applicant.**

(iii) **Each individual who has the power to control or influence the affairs of the registered vendor applicant.**

(iv) **Each salesperson of a registered vendor applicant who solicits business from, or has regular contact with, representatives of a slot machine applicant or licensee or any employee of a registered vendor applicant who will be engaging in that conduct.**

* * * * *

(e) **Each of the individuals required to submit fingerprints under subsection (b)(4) must be found qualified by the Board.**

(f) **The Bureau of Licensing may issue a temporary credential under § 435a.9a (relating to tempo-**

rary credentials for vendors) to an individual who is required to submit fingerprints under subsection (b)(4).

§ 437a.3. Vendor certification applications.

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

* * * * *

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

(4) Applications and Release Authorizations for each individual [as] required [by] **to be qualified under § 437a.4 (relating to [individual certifications and investigations] individuals and entities).**

* * * * *

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

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

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

(3) The [certified vendor] person will not have a continuing business relationship with the slot machine applicant or licensee or have a continuing onsite presence at the licensed facility.

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

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

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

§ 437a.4. [Individual certifications and investigations] Qualification of individuals and entities.

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

(b) If a certified vendor or vendor seeking certification is not a publicly traded company or a subsidiary of a publicly traded company, each officer and director of the entity shall be required to apply for certification by filing a Pennsylvania Personal History Disclosure Form with the Board. For the purposes of this subsection, the term "officer" means a president, chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

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

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

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

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

(1) Each officer and director of a certified vendor or applicant for vendor certification. For the purposes of this paragraph, the term "officer" means a president, chief executive officer, a chief financial officer and a chief operating officer, and any person

routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

(2) Each individual who has a direct or indirect ownership or beneficial interest of 10% or more in the certified vendor or applicant for vendor certification. A certified vendor or applicant for vendor certification shall provide information or documentation requested by the Board necessary to determine compliance with this paragraph.

(3) Each individual who has the power to control or influence the affairs of the certified vendor or applicant for vendor certification.

(4) Each salesperson of a certified vendor or applicant for vendor certification who solicits business from, or has regular contact with, any representatives of a slot machine applicant or licensee or any employee of a certified vendor or applicant for vendor certification who will be engaging in that conduct.

(b) Each entity that directly owns 20% or more of the voting securities of a certified vendor or person applying for vendor certification shall be required to file a Vendor Certification Form—Private Holding Company with the Board and be found qualified by the Board.

(c) An individual or entity is not required to comply with subsections (a) and (b) if the certified vendor or person applying for vendor certification, that is not otherwise exempt, has a class of equity securities listed on the New York Stock Exchange, the NASDAQ Stock Market, the American Stock Exchange or a foreign stock exchange determined by the Bureau of Licensing to have similar listing requirements or is a subsidiary of an entity that has a class of equity securities listed on the New York Stock Exchange, the NASDAQ Stock Market, the American Stock Exchange or a foreign stock exchange determined by the Bureau of Licensing to have similar listing requirements.

(d) The following persons may be required to submit a Pennsylvania Personal History Disclosure Form and be found qualified by the Board if the Board determines that the qualification of the person is necessary to protect the public interest or to enhance the integrity of gaming in this Commonwealth:

(1) An intermediary or holding company of a certified vendor or applicant for vendor certification.

(2) An officer or director of an intermediary or holding company of a certified vendor or applicant for vendor certification.

(3) An employee of a certified vendor or applicant for vendor certification.

(4) A person who holds direct or indirect ownership or beneficial interest in a certified vendor or applicant for vendor certification, or has the right to any profits or distribution, directly or indirectly, from the certified vendor or applicant.

(5) A trustee of a trust that is required to be found qualified under this section.

(e) The Bureau of Licensing may issue a temporary credential under § 435a.9a (relating to tempo-

rary credentials for vendors) to an individual who has been qualified by the Board pursuant to this section.

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

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

(b) [A] Registered and certified vendors shall submit to the Board a completed renewal application and renewal fee [shall be submitted to the Board] at least 60 days prior to the expiration of a certification or registration.

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

(4) The employee is the offsite supervisor of employees of the registered or certified vendor working at the licensed facility.

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

(e) Workers employed by a registered or certified construction company vendor who are completing work on the gaming floor or in a restricted area under their original contract, change orders, punch lists, periodic repairs or warranty work will not be required to comply with subsection (b) or (c) if the following conditions are met:

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

(2) The employee is under the supervision of an employee of the slot machine licensee's security

department who is authorized to have access to the area where the work is being performed.

(3) The employee has been issued a Vendor Employee Temporary Access Credential by one of the Board's casino compliance representatives at the licensed facility.

§ 437a.8. [Approved] Authorized vendors list; prohibited vendors.

(a) The Board will maintain a list of [approved registered or certified] authorized vendors and a list of prohibited vendors. The authorized list will contain the names of persons who have been registered or certified or who have been permitted to conduct business with a slot machine licensee or applicant under § 437a.9 (relating to permission to conduct business prior to certification or registration).

(b) Except as permitted under § 437a.10 (relating to emergency vendor), a slot machine licensee or applicant may not purchase goods or services from a person, where the dollar value of the goods or services will or is anticipated to equal or exceed \$100,000 within a consecutive 12-month period, unless the person is on the authorized vendor list. A slot machine licensee or applicant may not enter into an agreement or continue to do business with a vendor on the prohibited vendor list.

(c) The Board [will consider the following factors in determining whether a vendor will be listed as a prohibited vendor.] may place a person on the prohibited vendors list if:

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

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

(3) The vendor's application for certification or registration [is suspended, revoked or] has been denied or the vendor has had its vendor certification or registration suspended or revoked.

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

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

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

(e) The Board may impose a monetary penalty or other appropriate sanction in connection with the removal of a person from the list of prohibited vendors, or attach any reasonable condition to the removal of a person from the list of prohibited vendors.

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

(a) Notwithstanding § 437a.1 (relating to general vendor requirements), the [Board] Bureau of Licensing may [allow] authorize an applicant for a vendor certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the vendor applicant if the following criteria are met:

* * * * *

(3) The applicant for vendor registration or certification agrees, in writing, that the grant of permission to conduct business prior to registration or certification does not create a right to continue to conduct business and that the Bureau of Licensing may rescind, at any time, the authorization granted pursuant to this section, with or without prior notice to the applicant, if the Bureau of Licensing determines that the suitability of the applicant is at issue or the applicant fails to cooperate in the application process.

(4) Each qualifier of the applicant for registration or certification has submitted his fingerprints to the BIE, and the Bureau of Licensing has received written notice from the BIE that it does not object to the applicant for registration or certification being authorized to conduct business with a slot machine applicant or licensee under this section.

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

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

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

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

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

(d)] An applicant for or holder of a slot machine license shall have a duty to inform the [Bureau] Board of an action by an applicant for or holder of a vendor registration or certification which the applicant for or holder of a slot machine license believes would constitute a violation of the act or [the Board's regulations] this part.

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