

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

#### [ 58 PA. CODE CH. 51 ]

#### Administrative; Royalty Rates

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

##### A. *Effective Date*

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

##### B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, 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 amendment to § 51.92 (relating to royalty rates) is published under the statutory authority of section 503(c) of the Conservation and Natural Resources Act (CNRA) (71 P. S. § 1340.503(c)).

##### D. *Purpose and Background*

There are five companies that currently dredge material from the navigable waters of this Commonwealth and pay royalties to the Commission. Royalties from sand and gravel extracted from Commonwealth waters are paid to the Fish Fund, which is administered under Chapter 5 of the code (relating to fiscal affairs).

Under section 503(c) of the CNRA, the Commission, with the concurrence of the Department of Environmental Protection (Department), is authorized to adjust the amount of royalty payments per ton or cubic yard of usable or merchantable, or both, sand or gravel, or both, extracted from Commonwealth waters. The current royalty rate schedule in § 51.92, which was adopted in 1997, expired on December 31, 2010. However, the Commission's Executive Director, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), took immediate action to amend § 51.92 to impose new royalty rates, effective January 1, 2011. See 40 Pa.B. 7446 (December 25, 2010). The temporary modification will remain in effect until publication of this final-form rulemaking.

With an eye towards establishing a new rate schedule, the Commission's Executive Director previously established a workgroup consisting of Commission and Department staff and five representatives from the sand and gravel dredging industry and asked them to collaboratively work together and develop a fair and equitable process for setting royalty rates for the 10-year period from January 1, 2011, through December 31, 2020. The workgroup formally met in April and May 2010 to discuss issues pertaining to setting royalty rates, including the need to simplify the annual rate calculation process and employ a market based approach. With input from the Department and industry representatives, the

Commission published § 51.92 as set forth in the proposed rulemaking at 40 Pa.B. 6151 (October 23, 2010).

##### E. *Summary of Changes*

The Commission adopts the following schedule for imposition of the updated sand and gravel royalty rates:

(1) From January 1 through December 31, 2011, the greater of \$1,000 or \$0.48 per dry ton.

(2) From January 1, 2012, through December 31, 2015, the greater of \$1,000 or 6.75% of the immediately preceding year's published price, average value, dollars per metric ton (converted to United States ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.

(3) From January 1, 2016, through December 31, 2020, the greater of \$1,000 or 7.0% of the immediately preceding year's published price, average value, dollars per metric ton (converted to United States ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.

##### 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 impose increased costs on the private sector, namely those businesses engaged in dredging in this Commonwealth. In 2009, those businesses paid the Commission a royalty rate of \$0.4371 per dry ton. They reported that in 2009 they sold 1,537,131 dry tons of merchantable sand and gravel. They, therefore, paid royalties totaling \$671,880 in 2009. If the companies continue to dredge material in similar quantities in the future and pay the minimum rate of \$0.48 per dry ton, the increased costs will total, at a minimum, approximately \$65,943 per year for all business engaged in dredging. The final-form rulemaking may have a nominal fiscal impact on customers of sand and gravel, including the Commonwealth, its political subdivisions and the general public, if the businesses currently engaged in dredging pass their increased costs on to their customers.

##### H. *Public Comments*

The proposed rulemaking was published at 40 Pa.B. 6151. The Commission did not receive public comments regarding the proposed rulemaking.

##### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the 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 no public comments were received.

(3) The adoption of the 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 Chapter 51, are amended by amending § 51.92 to read as set forth at 40 Pa.B. 6151.

(b) The Executive Director will submit this order and 40 Pa.B. 6151 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 40 Pa.B. 6151 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect May 14, 2011.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-220 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-796. Filed for public inspection May 13, 2011, 9:00 a.m.]

**FISH AND BOAT COMMISSION**  
**[ 58 PA. CODE CHS. 53, 95, AND 111 ]**  
**General Provisions and Boating**

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapters 53, 95 and 111 (relating to Commission property; manufacturer installed equipment; and special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments modify and update the Commission's boating regulations.

*A. Effective Date*

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

*B. Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, 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 amendment to § 53.16 (relating to special use) is published under the statutory authority of section 741 of the code (relating to control of property). The amendment to § 95.3 (relating to lights for boats) is published under the statutory authority of section 5123(a) of the code (relating to general boating regulations). The addition of § 111.16 (relating to Clarion County) and the amendment to § 111.20 (relating to Crawford County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

*D. Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's administrative and boating regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes. On June 15, 2010, the Commission's Boating Advisory Board considered each of the proposals and recommended that the Commission approve the publication of a proposed rulemaking.

*E. Summary of Changes*

(1) Section 53.16 restricts the number of watercraft that may be launched or retrieved by livery operators at Commission accesses to eight watercraft or less in any 1-hour period except with the advance written approval of the Commission's Executive Director. Livery operators typically introduce new boaters to recreational boating and routinely provide new and existing boaters with safety instruction. The Commission therefore amended the regulation to allow less restrictive use of its accesses by livery operators and their customers. The Commission does not anticipate that user conflicts will result from this change. The Commission amended § 53.16 to read as set forth in the proposed rulemaking published at 40 Pa.B. 7239 (December 16, 2010).

(2) Section 95.3 provides boaters with detailed information on the requirements for types, configurations and locations of navigation lights on boats. Section 95.3(a) states, in part, that "A boat from sunset to sunrise and during periods of restricted visibility shall carry and exhibit the lights prescribed by the Inland Navigation Rules. . . ." Inland Navigation Rule 20, Part C—Lights and Shapes, states that "The rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out."

Many boaters assume that docking lights may be used while a vessel is underway (when lights are required). Since docking lights can easily be mistaken for stern lights or all-round white lights, docking lights may not be displayed while a vessel is underway. However, it is clear that there is a need for boaters to use docking lights to safely approach a dock, a mooring buoy or even the shoreline. The Commission therefore amended the regulation to clarify when it is illegal to use docking lights. The Commission amended § 95.3 to read as set forth in the proposed rulemaking.

(3) The Commission created a slow, no-wake zone for just over 2 miles at the very uppermost limit to power boating and skiing activities created by the Piney Dam on the Clarion River. The Commission received input from anglers that boats have been traveling at high speeds through the indicated section of the Clarion River causing problems with angling on this narrow section of the Clarion River. Parts of the river in this stretch are less than 200 feet across and, therefore, in essence, are already slow, no-wake. The Commission's Northwest Region Manager reported that the new slow, no-wake zone is upstream of the very uppermost limit to where unlimited horse power boating is appropriate. Section 111.16 makes it clear to the boating public that this section is in fact slow, no-wake and makes enforcement of the restriction feasible by Commission law enforcement personnel. The Commission adds § 111.16 to read as set forth in the proposed rulemaking.

(4) Section 111.20 prohibits the anchoring of boats in the area along the western shoreline of Conneaut Lake commonly referred to as the "sand bar" and further provides that the no anchor zone will extend along the shoreline to a line of buoys approximately 75 feet out from the end of the steel cribs at either end of the zone. Over the years, there have been changes to the shoreline on Conneaut Lake. Waterways Conservation Officers are concerned about enforcing the regulation because the contours of the shoreline vary in the designated area and the end parameters (steel cribs) referred to in the regula-

tion are no longer visible or present. The Commission therefore amended § 111.20 to read as set forth in the proposed rulemaking.

*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 not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

*H. Public Comments*

The proposed rulemaking was published at 40 Pa.B. 7239. During the formal public comment period, the Commission received one comment opposing the amendment to § 53.16 and received six public comments generally expressing support for the amendment to § 95.3 provided it does not interfere with the sport of bowfishing or other nighttime fishing activity involving the use of permanently mounted lights. Copies of all public comments were provided to the Commissioners.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the 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 all public comments received were considered.

(3) The adoption of the 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 53, 95 and 111, are amended by amending §§ 53.16, 95.3 and 111.20 and by adding § 111.16 to read as set forth at 40 Pa.B. 7239.

(b) The Executive Director shall submit this order and 40 Pa.B. 7239 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 40 Pa.B. 7239 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect May 14, 2011.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-222 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 11-797. Filed for public inspection May 13, 2011, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD  
[ 58 PA. CODE CH. 401a ]**

**Corrective Amendment to 58 Pa. Code § 401a.3**

The Pennsylvania Gaming Control Board has discovered discrepancies between the agency text of 58 Pa. Code § 401a.3 (relating to definitions), as deposited with the Legislative Reference Bureau, and published at 40 Pa.B. 6083, 6084 (October 23, 2010) and the official text published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 434, January 2011). Amendments to 58 Pa. Code § 401a.3 published at 40 Pa.B. 6083 were incorrectly codified. With this corrective amendment, the terms “vendor,” “vendor certification” and “vendor registration” will be deleted from 58 Pa. Code § 401a.3.

Therefore, under 45 Pa.C.S. § 901: The Pennsylvania Gaming Control Board has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 401a.3. The corrective amendment to 58 Pa. Code § 401a.3 is effective as of January 1, 2011, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code § 401a.3 appears in Annex A, with ellipses referring to the existing text.

**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:

\* \* \* \* \*

*Trade secret*—A private formula, pattern, device, cost study or compilation of information which is used in a business and which, if disclosed could negate an advantage over competitors who do not know or use it.

*Underwriter*—As defined in the Pennsylvania Securities Act of 1972.

*(Editor’s Note:* See 41 Pa.B. 2439 (May 14, 2011) for a final-form rulemaking affected by this corrective amendment.)

[Pa.B. Doc. No. 11-798. Filed for public inspection May 13, 2011, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD  
[ 58 PA. CODE CHS. 401a, 421a, 439a, 440a,  
441a, 451a, 465a, 481a, 501a AND 503a ]**

**Gaming Junket Amendments**

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. Chapter 16 (relating to junkets), amends Chapters 401a, 421a, 439a, 440a, 441a, 451a, 465a, 481a, 501a and 503a.

*Purpose of the Final-Form Rulemaking*

This final-form rulemaking amends and updates these chapters to improve clarity, eliminate or reduce the registration or application requirements for some entities and individuals and to bring the Board’s regulations into

conformity with revisions to 4 Pa.C.S. Part II (relating to Pennsylvania Race Horse Development and Gaming Act) (act) enacted by the act of January 7, 2010 (P. L. 1, No. 1) (Act 1).

*Explanation of Amendments*

Throughout these chapters, the word “gaming” was added before “junket,” “junket enterprise” and “junket representative” to conform to amendments to the act enacted by Act 1.

In § 439a.1 (relating to definitions) the definitions of “junket,” “junket enterprise” and “junket representative” have been amended to mirror the definitions in Act 1.

In § 439a.2(a) (relating to gaming junket enterprise general requirements; participation in a gaming junket), the name of the application form the gaming junket enterprise shall complete to apply for a license has been amended. Additionally, applications for a gaming junket enterprise license shall now be submitted by the gaming junket enterprise, not by the slot machine licensee.

Subsection (b) has been amended to clarify existing language.

Subsection (d) and (e) have been amended to change “person” to “individual.” “Person” is a statutorily defined term that includes both individuals and entities. Subsections (d) and (e), however, do not apply to entities, they apply only to individuals.

Section 439a.3(a) (relating to gaming junket enterprise license applications) has been amended to include the number of copies an applicant for a gaming junket enterprise license shall file. Language requiring verification has been deleted from subsection (a) because that verification shall be provided by the slot machine licensee, not by the gaming junket enterprise. The verification requirement was moved to subsection (d).

Subsection (b)(2) previously required that application forms be completed for affiliates, intermediaries, subsidiaries and holding companies of the junket enterprise. Affiliates and subsidiaries are no longer required to complete applications. This reflects the policy decision of the Board that the licensing of all affiliates, intermediaries, subsidiaries and holding companies of the gaming junket enterprise is overly burdensome and not necessary to protect the integrity of gaming. A limited number of intermediaries and holding companies are now required to complete applications in accordance with the requirements in § 439a.4a (relating to individual and entity applications). The requirement that applicants promptly provide information to the Board is existing language moved from subsection (c)(1).

Subsection (b)(3) previously required that each natural person who was a principal or key employee complete a registration. Key employees are no longer required to complete applications or registrations. The requirements for principal applications have been moved to § 439a.4a. The language requiring compliance with general application requirements is existing language moved from subsection (c)(2).

Subsection (d) has been renumbered as subsection (c).

Subsection (d) has been added and requires the slot machine licensee to submit a verification and due diligence form prior to engaging the services of a gaming junket enterprise. This verification requirement was taken, in part, from subsection (a).

Section 439a.4 has been reserved and the provisions moved to § 439a.6a (relating to gaming junket enterprise license and occupation permit term and renewal).

New § 439a.4a was drafted to more closely parallel the gaming service provider requirements in Chapter 437a (relating to gaming service provider certification and registration) and to account for the occupation permit requirements enacted by Act 1.

Subsection (a) establishes that officers and directors as well as individuals with a 10% interest in the gaming junket enterprise must complete a Pennsylvania Personal History Disclosure Information Form—Gaming Junket Enterprise and be found qualified by the Board. This is similar to the application requirement for officers, directors and owners of a gaming service provider that provides services to the licensed facility. Previously, key employees, officers, directors, persons who directly held a beneficial interest or ownership interest and persons who held a controlling interest in a gaming junket were required to complete a Junket Enterprise Representative Registration Form. Key employees of the gaming junket enterprise are no longer required to complete an application or registration.

Subsection (b) requires that only those entities that have a direct interest of 20% or more shall complete a Gaming Junket Enterprise Form—Private Holding Company and be found qualified by the Board. This amendment requires far fewer applications from the gaming junket enterprise in that the former § 439a.3 required that a principal entity, as well as any affiliate, intermediary, subsidiary and holding company complete an application. Affiliates and subsidiaries are therefore no longer required, nor are many intermediaries or holding companies unless their interest is greater than 20%.

Subsection (c) requires that gaming junket representatives have an occupation permit instead of registering as a junket representative. This amendment was statutorily required under Act 1. Gaming junket representatives will now complete occupation permit applications utilizing the Board’s SLOTS Link electronic application system instead of submitting paper forms.

Subsection (d) retains the Board’s authority to require additional applications from the intermediaries, holding companies, subsidiaries, affiliates, individuals or trusts if the Board determines that the application is necessary to protect the public interest or enhance the integrity of gaming.

Subsection (e) requires individuals who are required to be found qualified or obtain an occupation permit to submit fingerprints, which will be used for their background investigation. Subsection (f) notifies these individuals that they will be liable for any investigation costs in excess of their application fees.

Section 439a.5 (relating to gaming junket representative general requirements) has been amended to improve its clarity and to accommodate the fact that Act 1 now requires that gaming junket representatives obtain an occupation permit. See 4 Pa.C.S. § 1318 (relating to occupation permit application) and 58 Pa. Code §§ 435a.1 and 435a.3 (relating to general provisions; and occupation permit).

Section 439a.6 has been rescinded because gaming junket representatives are now required under Act 1 to obtain an occupation permit.

New § 439a.6a contains the term and renewal process for gaming junket enterprise licenses and gaming junket representative occupation permits. With the passage of Act 1, occupation permits and gaming junket enterprise licenses, which were originally valid for only 1 year, are now valid for 3 years; subsection (a) reflects this change.

Subsections (b) and (c) were moved from § 439a.4 with no substantive changes. Subsection (d), regarding the nontransferability of the license, was added in compliance with 4 Pa.C.S. §§ 1602(f) and 1604(d) (relating to gaming junket enterprise license; and gaming junket representatives).

Minor changes for clarity were made to §§ 439a.7, 439a.8, 439a.9, 439a.10 and 439a.11.

Section 439a.12(b) (relating to gaming junket enterprise and representative prohibitions) has been amended to conform to the language in 4 Pa.C.S. § 1611 (relating to prohibitions).

*Additional Revisions*

In § 439a.3(d), language was added requiring that any agreement entered into between a slot machine licensee and a gaming junket enterprise must contain a provision requiring licensure of the gaming junket enterprise prior to organizing a junket to the licensed facility. Licensure of the enterprise prior to organizing a gaming junket is required under 4 Pa.C.S. § 1601 (relating to gaming junkets authorized).

In § 439a.8(c)(2) (relating to gaming junket arrival reports), “filed” has been replaced with “prepared” to avoid confusion as these reports are not filed with the Bureau of Gaming Operations but are instead maintained by the licensed facility.

In § 439a.12(a), the added language in the proposed rulemaking, which prohibited gaming junket representatives (permittees) from wagering at a licensed facility in this Commonwealth, has been replaced in the final-form rulemaking. Subsection (a) now requires gaming junket representatives (permittees) as well as qualifiers of the gaming junket enterprise to comply with the wagering restrictions applicable to all qualifiers and permittees in § 435a.1.

*Comment and Response Summary*

Notice of proposed rulemaking was published at 40 Pa.B. 5468 (September 25, 2010).

The Board did not receive comments from the public, the House Gaming Oversight Committee, the Senate Community, Economic and Recreational Development Committee or the Independent Regulatory Review Committee (IRRC).

*Affected Parties*

This final-form rulemaking will affect officers, directors, representatives as well as the individuals and entities that own the gaming junket enterprise. It will provide greater clarity regarding who shall be qualified or found suitable to hold a permit and eliminates the need for key employees, affiliates and subsidiaries of the gaming junket enterprise to complete applications or registrations.

*Fiscal Impact*

*Commonwealth.* There will not be significant increase or decrease in the regulatory cost for the Board or other State agencies as a result of this final-form rulemaking. This is because the Board recovers the costs associated with licensing and permitting activities from the applicants for licenses and permits.

*Political subdivisions.* This final-form rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

*Private sector.* Overall, this final-form rulemaking will result in a decrease in the number of applications from the affected groups listed in this preamble. The costs

associated with the application have also been reduced. Previously, all officers, directors, owners, key employees and representatives were required to be registered at a cost of \$1,000. Officers, directors and owners with a greater than 10% interest are now required to be qualified with the gaming junket enterprise at a lower cost per application. Additionally, gaming junket representatives who obtain a permit now pay only \$350 instead of the \$1,000 required previously.

*General public.* This final-form rulemaking will not have fiscal impact on the general public.

*Paperwork Requirements*

This final-form rulemaking increases the number of applications that are filed for officers, owners and directors but eliminates applications or registrations for affiliates, subsidiaries and key employees. Only one original and one paper copy will now be required for individuals and entities that are required to be qualified. Additionally, all individuals filing for a gaming junket entity representative occupation permit will not have to submit a paper application because the application process can be done electronically through the Board’s SLOTS Link system.

*Effective Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 14, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5468, to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 16, 2011, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 17, 2011, 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 the act.

*Order*

The Board, acting under the act, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 421a, 439a, 440a, 441a, 451a, 465a, 481a, 501a and 503a are amended by amending §§ 421a.6, 439a.1, 439a.5, 439a.7, 439a.10, 439a.11, 440a.5, 441a.20, 451a.1, 465a.1, 481a.2, 501a.5 and 503a.4, by deleting §§ 439a.4

and 439a.6 and by adding §§ 439a.4a and 439a.6a to read as set forth at 40 Pa.B. 5468; and by amending §§ 401a.3, 439a.2, 439a.3, 439a.8, 439a.9 and 439a.12 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, 40 Pa.B. 5468 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect May 14, 2011.

GREGORY C. FAJT,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 1849 (April 2, 2011).)*

**Fiscal Note:** Fiscal Note 125-129 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 401a. PRELIMINARY PROVISIONS**

*(Editor's Note: See 41 Pa.B. 2439 (May 14, 2011) for a corrective amendment affecting § 401a.3.)*

**§ 401a.3. Definitions.**

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

\* \* \* \* \*

*Gaming service provider—*

(i) A person that provides goods or services to a slot machine licensee or applicant, but is not required to be licensed as a manufacturer, manufacturer designee, supplier, management company or gaming junket enterprise.

\* \* \* \* \*

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

**CHAPTER 439a. GAMING JUNKET ENTERPRISES**

**§ 439a.2. Gaming junket enterprise general requirements; participation in a gaming junket.**

(a) A gaming junket enterprise seeking to conduct business with a slot machine licensee shall file a Gaming Junket Enterprise License Application and Disclosure Information Form with the Board.

(b) Prior to organizing a gaming junket to a licensed facility or receiving compensation from any person as a result of the conduct of a gaming junket, the gaming junket enterprise shall be licensed by the Board. A slot machine licensee may not engage the services of any gaming junket enterprise that has not been licensed. An agreement between a slot machine licensee and a gaming junket enterprise must contain a provision stating that the gaming junket enterprise shall obtain a Gaming Junket Enterprise License prior to organizing a gaming junket to a licensed facility or receiving compensation from any person as a result of the conduct of a gaming junket.

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

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

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

(i) Establish a customer deposit with a slot machine licensee.

(ii) Demonstrate to a slot machine licensee the availability of a specified amount of cash or cash equivalent.

(iii) Gamble to a predetermined level at the licensed facility.

(iv) Comply with any similar obligation.

(2) The individual's propensity to gamble, which shall be deemed to occur when an individual has been selected or approved on the basis of one or more of the following:

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

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

(A) An inquiry concerning the individual's tendency to gamble.

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

(e) A rebuttable presumption that an individual has been selected or approved for participation in a gaming junket based on the individual's propensity to gamble shall be created when the individual is provided, as part of the arrangement, one or more of the following:

(1) Complimentary accommodations.

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

**§ 439a.3. Gaming junket enterprise license applications.**

(a) An applicant for a gaming junket enterprise license shall submit to the Bureau of Licensing an original, one paper copy and one compact disc containing the Gaming Junket Enterprise License Application and Disclosure Information Form and additional applications as required under § 439a.4a (relating to individual and entity applications).

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

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

(2) Promptly provide information requested by the Board and cooperate with the Board in investigations, hearings, enforcement and disciplinary actions.

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

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

(d) Prior to engaging the services of a gaming junket enterprise, the slot machine licensee shall submit to the

Bureau of Licensing a Verification and Due Diligence Form certifying that the slot machine licensee has entered into an agreement or contract with, and has investigated the background and qualifications of, the gaming junket enterprise. The agreement or contract must contain a provision stating that the gaming junket enterprise shall obtain a license prior to organizing a gaming junket to a licensed facility or receiving compensation from any person as a result of the conduct of a gaming junket.

**§ 439a.8. Gaming junket arrival reports.**

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

(b) Gaming junket arrival reports must:

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

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

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

(c) A slot machine licensee shall prepare gaming junket arrival reports in compliance with the following:

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

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

(3) Gaming junket arrival reports shall be maintained on the premises of the licensed facility for a minimum of 5 years and shall be made available to the Board upon request.

**§ 439a.9. Gaming junket final reports.**

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

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

(c) A gaming junket final report shall be:

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

(2) Maintained on the premises of the licensed facility for a minimum of 5 years and shall be made available to the Board upon request.

**§ 439a.12. Gaming junket enterprise and representative prohibitions.**

(a) Gaming junket representatives and qualifiers of a gaming junket enterprise shall comply with the wagering restrictions in § 435a.1 (relating to general provisions).

(b) A gaming junket enterprise or gaming junket representative may not:

(1) Engage in efforts to collect on any check provided by a gaming junket participant that has been returned by a financial institution.

(2) Exercise approval authority over the authorization or issuance of credit under section 13A27 of the act (relating to other financial transactions).

(3) Receive or retain a fee from an individual for the privilege of participating in a gaming junket.

(4) Pay for any service, including transportation, or other thing of value provided to a participant participating in a gaming junket except as authorized by this part.

[Pa.B. Doc. No. 11-799. Filed for public inspection May 13, 2011, 9:00 a.m.]