

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

### Fishing in Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect upon publication in the *Pennsylvania Bulletin*.

#### B. Contact Person

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

#### C. Statutory Authority

The proposed amendment to § 69.21 is published under the statutory authority of section 2903 of the code (relating to boat and net licenses for boundary lakes).

#### D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's regulations regarding the use and number of seine nets for fishing on Lake Erie. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

#### E. Summary of the Proposal

The Commission received a request to increase the authorized number of seine licenses issued under § 69.21 from individuals interested in obtaining a license but finding that none are available due to past licensees holding them. Staff from the Commission's Bureau of Fisheries and Bureau of Law Enforcement reviewed the request and agree that an increase in seine licenses to a total of 15 will support the fishery interests on Lake Erie. They also agree that a maximum of two licenses per individual is appropriate.

The Commission therefore proposes to increase the number of available seine licenses from 10 to 15 and to limit the number of licenses that an individual may hold to 2, provided that the individual who currently possesses three seine licenses be grandfathered in the future. Accordingly, the Commission proposes to amend § 69.21 to read as set forth in Annex A.

#### F. Paperwork

The proposed rulemaking will create no new paperwork requirements because the Commission's current regulations allow for seine licenses. Paperwork may increase slightly because the Commission will issue five additional seine licenses.

#### G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the

private sector or the general public. The current fees for seine licenses in section 2903 of the code will remain unchanged.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

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

**Fiscal Note:** 48A-185. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

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

#### Subchapter C. COMMERCIAL FISHING LICENSES

#### § 69.21. Limitations on number and types of licenses.

(a) The number and types of commercial fishing licenses for fishing in Lake Erie shall be limited as follows:

\* \* \* \* \*

(3) Seines: **[ten ] 15 licenses; no more than 2 licenses per individual. Individuals who hold more than two licenses as of December 31, 2006, shall be limited to the number of licenses that they hold as of that date.**

\* \* \* \* \*

[Pa.B. Doc. No. 06-1752. Filed for public inspection September 8, 2006, 9:00 a.m.]

## PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 481]

### Diversity

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(14) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1212 and 1325(b) and (c) (relating to diversity goals of board; and license or permit issuance), proposes to adopt Chapter 481 (relating to diversity) to read as set forth in Annex A.

*Purpose of the Proposed Rulemaking*

Under the authority granted to the Board under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapter 481 at 35 Pa.B. 4045 (June 16, 2005). Under 4 Pa.C.S. Part II (relating to gaming), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking.

*Explanation of Chapter 481*

This chapter contains diversity participation and reporting provisions that apply to entities that are licensed or certified by the Board. These regulations encompass both contracting with and employment at the entities.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes that improve the clarity of the language in the temporary regulations. In § 481.2 (relating to definitions), registered vendors has been deleted from the list of entities that are subject to the diversity participation and reporting requirements. Temporary § 481.3(a) (relating to diversity participation) has been deleted to eliminate duplication of efforts by the Board and the Department of General Services in posting a list of certified minority and women's business enterprises. In § 481.5 (relating to report of participation), subsection (b) has been added to require slot machine, manufacturer and supplier licensees to produce quarterly reports in addition to annual reports. Subsection (c) has been added to allow management companies to file a consolidated report with the slot machine licensee with whom they have a management contract to prevent a duplication of efforts on behalf of the licensed facility and the management company. Temporary § 481.4(c) (relating to establishment of diversity plan required) has been relocated to § 481.6 (relating to diversity audits).

*Affected Parties*

This proposed rulemaking imposes requirements on entities that are licensed or certified by the Board.

*Fiscal Impact*

Under 4 Pa.C.S. §§ 1401 and 1402 (relating to slot machine licensee deposits; and gross terminal revenue deductions), the costs and expenses of the Board, the Pennsylvania State Police, the Office of Attorney General and the Department of Revenue incurred in carrying out the responsibilities imposed by 4 Pa.C.S. Part II will be recovered from the slot machine licensees. Accordingly, the costs identified will be borne by the slot machine licensees, not the General Fund.

*Commonwealth*

This proposed rulemaking will have no significant fiscal impact on the Commonwealth.

*Political Subdivisions*

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

*Private Sector*

Licensed or certified entities will experience some costs to comply with the diversity participation reporting requirements.

*General Public*

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

*Paperwork Requirements*

This proposed rulemaking does not impose new reporting or paperwork requirements on the affected parties under the Board's jurisdiction. This proposed rulemaking clarifies the type of information that should be contained in the report that is currently required to be submitted to the Board.

*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 Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-47.

*Contact Person*

The contact persons for questions about this proposed rulemaking are Richard Sandusky, Director of Regulatory Review, (717) 214-8111, and Michelle Afragola, Deputy Director of Regulatory Review, (610) 943-1338.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 28, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Tourism and Recreational Development Committee and the Senate Committee on Rules and Executive Nominations. A copy of this material is available to the public upon request.

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.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-47. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 58. RECREATION****PART VII. GAMING CONTROL BOARD****Subpart G. MINORITY AND WOMEN'S BUSINESS ENTERPRISES****CHAPTER 481. DIVERSITY**

Sec.	
481.1.	Statement of purpose, policy and applicability.
481.2.	Definitions.
481.3.	Diversity participation.
481.4.	Establishment of diversity plan required.
481.5.	Report of participation.
481.6.	Diversity audits.

**§ 481.1. Statement of purpose, policy and applicability.**

(a) This chapter establishes the procedures for promoting and ensuring that regulated entities foster participation and diversity in all aspects of their operations in this Commonwealth.

(b) It is the policy of the Board to promote and ensure that regulated entities conduct all aspects of their operations in a manner that assures diversity of opportunity as follows:

(1) In the ownership, participation and operation of regulated entities in this Commonwealth.

(2) Through the ownership, participation and operation of business enterprises associated with or utilized by regulated entities.

(3) Through the provision of goods and services utilized by regulated entities.

(c) It is further the policy of the Board to promote and ensure diversity in employment and contracting by each regulated entity and its contractors, subcontractors, assignees, lessees and agents.

**§ 481.2. Definitions.**

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

*Diversity plan*—A plan that promotes and ensures diversity in ownership, participation and operation of regulated entities; and in employment and contracting by regulated entities.

*Minority*—The ethnic/racial categories identified in employer survey reports that are required by the United States Equal Opportunity Commission and the Office of Federal Contract Compliance Programs of the United States Department of Labor under section 709 of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000(e)-8) or by subsequent amendments to that Federal act.

*Participation plan*—An obligation imposed by a regulated entity as part of its contract with a contractor that requires the contractor to utilize minority or women owned business enterprises.

*Regulated entity*—An applicant for or holder of the following:

- (i) Slot machine license.
- (ii) Manufacturer license.
- (iii) Supplier license.
- (iv) Vendor certification.
- (v) Junket license.
- (vi) Management company license.

**§ 481.3. Diversity participation.**

The list of the minority and women's business enterprises that are certified by the Bureau of Minority and Women's Business Enterprises of the Department of General Services under 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code) may be used by a regulated entity to establish the eligibility of an enterprise as a minority or women's business enterprise for the purpose of promoting and ensuring minority and women's business participation.

**§ 481.4. Establishment of diversity plan required.**

(a) Each regulated entity shall include in its application for licensure or certification a diversity plan that

establishes a separate goal of diversity in the ownership, participation and operation of, and employment at the regulated entity. The Board will determine whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorded equality of opportunity in contracting and employment by the regulated entity and its contractors, subcontractors, assignees, lessees and agents.

(b) A regulated entity may demonstrate achievement of its diversity goals through one or more of the following:

(1) Contracting or transacting directly with minority and women's business enterprises.

(2) Contracting with a nonminority business enterprise under terms and conditions that establish a participation plan.

**§ 481.5. Report of participation.**

(a) As part of an application to renew a license or certification, a regulated entity shall file a report with the Board concerning the performance of its diversity plan. The report must contain the following:

(1) Employment data, including information on the following:

(i) Minority and women representation in the regulated entity's workforce in all job classifications.

(ii) Salary information.

(iii) Recruitment and training information, including executive and managerial level recruitment and training.

(iv) Retention and outreach efforts.

(2) The total number and value of all contracts or transactions awarded by the regulated entity for goods and services.

(3) The total number and value of all contracts or transactions awarded by the regulated entity to minority and women's business enterprises.

(4) A list of each contract or transaction awarded by the regulated entity to a minority or women's business enterprise and the actual value of each contract or transaction.

(5) The total number and value of all contracts awarded that contain a participation plan.

(6) The total number and value of all subcontracts awarded to minority and women's business enterprises under contracts containing a participation plan.

(7) A list of each subcontract awarded to a minority or women's business enterprise under contracts containing a participation plan and the actual value of each subcontract.

(8) A comprehensive description of all efforts made by the regulated entity to monitor and enforce the participation plan.

(9) Information on minority and women investment, equity ownership, and other ownership or management opportunities initiated or promoted by the regulated entity.

(10) Other information requested in writing by the Board to ensure compliance with the act and this part.

(b) In addition to the reports required under subsection (a), slot machine licensees, manufacturer licensees and supplier licensees shall file updated versions of the reports required under subsection (a) quarterly.

(c) A licensed management company may file a consolidated report with the slot machine licensee with whom the management company has a management contract.

(d) The Board will use the reports required under subsections (a), (b) and (c) to monitor compliance with the act and this part. The Board may request the assistance of the Bureau of Minority and Women's Business Enterprises, of the Department of General Services, in the review of regulated entities' compliance with the requirements of the act and this part.

#### § 481.6. Diversity audits.

Onsite audits may be performed on an annual basis or at the discretion of the Board to ensure compliance with this chapter.

[Pa.B. Doc. No. 06-1753. Filed for public inspection September 8, 2006, 9:00 a.m.]

### [58 PA. CODE CHS. 401, 403, 405 AND 407]

#### General and Operative Provisions; Board Procedures

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(14) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1202(a) and 4 Pa.C.S. §§ 1201(f) and (b)(17) and 1206 (relating to Pennsylvania Gaming Control Board established; and board minutes and records), proposes to adopt Chapters 401, 403, 405 and 407 to read as set forth in Annex A.

##### *Purpose of the Proposed Rulemaking*

Under the authority granted to the Board under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 401, 403 and 407 (relating to preliminary provisions; Board operations and organization; and public access to Board files) at 35 Pa.B. 4045 (June 16, 2005) and temporary regulations in Chapter 405 (relating to Bureau of Investigations and Enforcement) at 35 Pa.B. 6407 (September 28, 2005). Under 4 Pa.C.S. Part II (relating to gaming), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking.

##### *Explanation of Chapters 401, 403, 405 and 407*

Chapter 401 contains preliminary provisions which address the purpose of the Board's regulations, the scope of the regulations, construction, definitions of terms and the Board's jurisdiction.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes intended to improve the clarity of the language in the temporary regulations. Temporary § 401.2 has been deleted because it is not necessary. A number of definitions in § 401.3 (relating to definitions) have been amended to improve clarity and remove substantive provisions. Additionally, several definitions have been deleted because the terms are not used in this subpart or they will be moved to the definition section of a specific subpart or chapter.

Chapter 403 addresses areas of Board operations including participation in, voting at and the conduct of Board meetings, the Board's hours of operation and requests for information.

The Board has made a number of amendments to the temporary regulations to more closely reflect the statutory requirements on voting and to more accurately reflect the practices of the Board based on its operating experience.

Chapter 405 outlines the general duties and powers of the Bureau of Investigations and Enforcement (Bureau), responsibilities of applicants and those regulated by the Board to provide information to the Bureau, the powers, duties and role of the Office of Enforcement Counsel and conduct during enforcement proceedings.

Amendments to the temporary regulations in this proposed rulemaking add clarifying language to a number of sections and delete provisions that deal with Board internal procedures.

Chapter 407 specifies how the Board's record files are organized and how requests for access to material in these files will be processed. It also requires that the minutes of Board meetings and annual reports be available for public inspection and copying.

Several editorial changes were made to the temporary regulations, including clarification of how Board files are organized, how the public may review and obtain copies of the Board's minutes and annual reports and how confidential material is treated. Many of the provisions that were included in the definition of "confidential information" have been moved to this chapter.

##### *Affected Parties*

This proposed rulemaking imposes requirements on the Board and to a limited extent applicants for and holders of a license, permit, registration or certification.

##### *Fiscal Impact*

Under 4 Pa.C.S. §§ 1401 and 1402 (relating to slot machine licensee deposits; and gross terminal revenue deductions), the costs and expenses of the Board, the Pennsylvania State Police, the Office of Attorney General and the Department of Revenue incurred in carrying out the responsibilities imposed by 4 Pa.C.S. Part II will be recovered from the slot machine licensees. Accordingly, the costs identified will be borne by the slot machine licensees, not the General Fund.

##### *Commonwealth*

The Pennsylvania State Police, the Office of Attorney General, the Department of Revenue or other executive agencies may experience some cost to comply with requests for information and documents from the Bureau.

They also reflect the Board requirement for preparation of verbatim transcripts of its public meetings and the duties and powers of the Bureau and Office of Enforcement Counsel.

##### *Political Subdivisions*

This proposed rulemaking will have no significant fiscal impact on political subdivisions of the Commonwealth. Local law enforcement agencies may experience some costs to comply with requests for information and documents from the Bureau.

##### *Private Sector*

Applicants for or holders of a license, permit, registration or certification will experience some costs to comply with requests for information and documents from the Bureau.

*General Public*

Other than requiring payment of fees for copying costs, this proposed rulemaking will have no fiscal impact on the general public.

*Paperwork Requirements*

This proposed rulemaking does not impose new reporting or paperwork requirements on the Board or affected parties under the Board's jurisdiction. This proposed rulemaking does clarify how the Board will maintain formal records and how individuals can request access to these records.

*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 Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-45.

*Contact Person*

The contact persons for questions about this proposed rulemaking are Richard Sandusky, Director of Regulatory Review, (717) 214-8111, and Michelle Afragola, Deputy Director of Regulatory Review, (610) 943-1338.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 28, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Tourism and Recreational Development Committee and the Senate Committee on Rules and Executive Nominations. A copy of this material is available to the public upon request.

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.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-45. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 401. PRELIMINARY PROVISIONS**

Sec.	
401.1.	Purpose.
401.2.	Construction.
401.3.	Definitions.
401.4.	Jurisdiction.

**§ 401.1. Purpose.**

The purpose of this part is to facilitate the implementation of the act.

**§ 401.2. Construction.**

(a) This part shall be liberally construed to secure the just, speedy and efficient determination of every action, proceeding or issue presented to which it is applicable. The Board at any stage of an action, proceeding or issue presented may disregard an error or defect of procedure which does not affect the substantive rights of the participants.

(b) The Board at any stage of an action, proceeding or issue presented may permit deviations from a requirement of this part when necessary or appropriate, if the deviation does not adversely affect a substantive right of a participant as determined by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.2 (relating to liberal construction).

**§ 401.3. Definitions.**

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

*Act*—The Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §§ 1101—1904).

*Affiliate or affiliated company*—A person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

*Applicant*—A person who is applying for permission to engage in an act or activity which is regulated under the act or this part.

*Application*—A written request for permission to engage in an act or activity which is regulated under the act or this part.

*Approved, approval or approve*—The date that an application to the Board is granted regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of the Board.

*Associated equipment*—Equipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming, including the following:

- (i) Linking devices which connect to progressive slot machines or slot machines.
- (ii) Replacement parts needed to conduct slot machine gaming.
- (iii) Equipment which affects the proper reporting of gross revenue.
- (iv) Computerized systems for controlling and monitoring slot machines, including, the central control computer and devices for weighing or counting money.

*Background investigation*—A security, criminal, credit and suitability investigation of a person as provided for in the act. The investigation must include the status of taxes owed to the United States and to the Commonwealth and its political subdivisions.

*Backside area*—

(i) Those areas of the racetrack facility that are not generally accessible to the public and which include facilities commonly referred to as barns, track kitchens, recreation halls, backside employee quarters and training tracks, and roadways providing access thereto.

(ii) The term does not include those areas of the racetrack facility which are generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surfaces, paddock enclosures and walking rings.

*Board*—The Pennsylvania Gaming Control Board.

*Bureau*—The Bureau of Investigations and Enforcement of the Board.

*Central control computer*—A central site computer controlled by the Department and accessible by the Board to which all slot machines communicate for the purpose of auditing capacity, real-time information retrieval of the details of a financial event that occurs in the operation of a slot machine, including, coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure, and remote machine activation and disabling of slot machines.

*Certified vendor*—A vendor that holds a vendor certification.

*Cheat*—

(i) To alter without authorization the elements of chance, method of selection or criteria which determine:

- (A) The result of a slot machine game.
- (B) The amount or frequency of payment in a slot machine game.
- (C) The value of a wagering instrument.
- (D) The value of a wagering credit.

(ii) The term does not include altering for required maintenance and repair.

*Clerk*—The Clerk to the Board's Office of Hearings and Appeals.

*Collateral agreement*—Any contract between a management company or its affiliates, intermediaries, subsidiaries or holding companies and a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies that is related either directly or indirectly to a management contract or to any rights, duties, or obligations created between a management company and a slot machine licensee.

*Commission or Commissions*—The State Horse Racing Commission or the State Harness Racing Commission, or both, as the context may require.

*Confidential information*—Materials that are not generally available to the public.

*Controlling interest*—

(i) A person shall be deemed to have the ability to control a publicly traded entity, or to elect one or more of the members of its board of directors, if the holder owns or beneficially holds 5% or more of the securities of the publicly traded domestic or foreign corporation, partnership, limited liability company or other form of legal entity, unless the presumption of control or ability to elect is rebutted by clear and convincing evidence.

(ii) A person who owns or beneficially holds securities of a privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity shall be deemed to possess a controlling interest unless the presumption of control is rebutted by clear and convincing evidence.

(iii) A person who owns or beneficially holds less than 5% of the securities of a privately held domestic or foreign corporation, partnership, limited liability company or

other form of legal entity shall be deemed as having rebutted the presumption of control by clear and convincing evidence.

*Conviction*—

(i) A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held.

(ii) The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or an order of Accelerated Rehabilitative Disposition has been entered.

*Credential*—A form of identification approved and issued by the Board.

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

*Federal tax identification number*—The Social Security number of an individual or the Employer Identification Number of a business entity, fiduciary or other person.

*Final order*—One of the following:

(i) An action by the Board which approves, issues, renews, revokes, suspends, conditions, denies issuance or renewal of a license, permit, certification or registration.

(ii) An action by the Board which affects personal or property rights, privileges, immunities, duties, liabilities or obligations and disposes of all claims by or against parties before the Board.

(iii) An action by the Board which is designated by the Board as final.

*Financial backer*—An investor, mortgagee, bondholder, note holder or other source of equity or capital provided to an applicant or licensed entity.

*Formal record*—The pleadings in a matter or proceeding, a notice or Board order initiating the matter or proceeding, and if a hearing is held: the transcript of a hearing, exhibits received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, determinations made by the Board thereon and certifications to the Board.

*Gaming area or gaming floor*—Any portion of a licensed facility where slot machines have been installed for use or play.

*Gaming employee*—

(i) An employee of a slot machine licensee, including:

- (A) Cashiers.
- (B) Change personnel.
- (C) Counting room personnel.
- (D) Slot attendants.
- (E) Hosts or other persons authorized to extend complimentary services.
- (F) Machine mechanics or computer machine technicians.
- (G) Security personnel.
- (H) Surveillance personnel.
- (I) Supervisors and managers.
- (J) Personnel with SLOTS Link security administrator access and responsibilities.

(ii) Employees of a licensed supplier or manufacturer whose duties are directly involved with the repair, service

or distribution of slot machines and associated equipment sold or provided to a licensed facility within this Commonwealth.

(iii) Employees of a manufacturer licensee whose duties meet one or more of the following criteria:

(A) The employee's duties are directly involved with slot monitoring systems, casino management systems, player tracking systems and wide-area progressive systems approved and installed for use or play in this Commonwealth.

(B) The employee's presence may be required from time to time in restricted areas of a licensed facility.

(iv) Other employees as determined by the Board.

*Gross terminal revenue*—The total of wagers received by a slot machine minus the total of:

(i) Cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine.

(ii) Cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine.

(iii) Any personal property distributed to a patron as the result of playing a slot machine. This does not include travel expenses, food, refreshments, lodging or services.

(iv) The term does not include counterfeit money or tokens, coins or currency of other countries which are received in slot machines (except to the extent that they are readily convertible to United States currency), cash taken in fraudulent acts perpetrated against a slot machine licensee for which the licensee is not reimbursed or cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

*IRS*—The Internal Revenue Service of the United States.

*Institutional investor*—A retirement fund administered by a public agency for the exclusive benefit of Federal, State or local public employees, investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed end investment trust, chartered or licensed life insurance company or property and casualty insurance company, banking and other chartered or licensed lending institution, investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21), and other persons registered in any foreign jurisdiction and regulated pursuant to a statute of any foreign jurisdiction that the Board determines to be substantially similar to either or both of the aforementioned statutes.

*Issued, issuance or issue*—The date when a determination by the Board approving an application becomes final, binding and nonappealable and is not subject to a pending legal challenge.

*Key employee*—An individual who is:

(i) Employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who supervises

the operations of these departments or to whom these department directors or department heads report.

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

(iii) Employed in other positions which the Board will determine based on detailed analyses of the employee's duties or the job descriptions as provided in one of the following clauses:

(A) In the internal controls of the applicant or licensee as approved by the Board under section 1322(c) of the act (relating to slot machine accounting controls and audits).

(B) By the applicant or holder of a license, certification or registration.

*Key employee qualifier*—Officers; directors; persons who directly or indirectly hold any beneficial interest in or ownership of an amount equal to 5% or more of an equity interest of an applicant or licensee; a person who has the ability to control the applicant or licensee, has a controlling interest in the applicant or licensee, elects a majority of the board of directors of the applicant or licensee, or otherwise has the ability to control the applicant or licensee; a lender, other than a bank or regulated lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; an underwriter, other than an underwriter who will hold a security for less than 90 days; a financial backer whose holdings are valued at an amount equal to 5% or more of an equity interest in the applicant or licensee including holders of convertible bonds, the conversion of which would or does result in the owner holding 5% or more of an equity interest in the applicant or licensee; employees of a slot machine applicant or licensee, manufacturer applicant or licensee or supplier applicant or licensee required to be licensed by the Board as a key employee qualifier; and any other person required to be licensed by the Board as a key employee qualifier.

*License fee*—The amount of money required to be paid for the issuance or renewal of any type of license required by the act or as established by the Board.

*Licensed entity*—A person, other than a natural person, licensed by the Board under this part.

*Licensed facility*—The physical land-based location and associated areas at which a licensed gaming entity is authorized to place and operate slot machines.

*Licensed gaming entity*—A person that holds a slot machine license.

*Licensed racetrack or racetrack*—The physical facility and grounds where a person has obtained a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct live thoroughbred or harness race meetings respectively with pari-mutuel wagering. The term "racetrack" or "its racetrack" means the physical land-based location at which live horse racing is conducted even if not owned by the person.

*Licensed racing entity*—A legal entity that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with parimutuel wagering from either the State Horse Racing Commission or the State Harness Racing Commission under the Race Horse Industry Reform Act.

*Management company*—A person or legal entity which, through a Board-approved management contract with a slot machine licensee, is responsible for the management of all or part of the operation of a licensed facility.

*Management contract*—A contract, subcontract or collateral agreement between a management company and a slot machine licensee if the contract provides for the management of all or part of a licensed facility.

*Manufacturer*—A person who manufactures, builds, re-builds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth for gaming purposes.

*Manufacturer license*—A license issued by the Board authorizing a manufacturer to manufacture or produce slot machines or associated equipment for use in this Commonwealth for gaming purposes.

*Manufacturer licensee*—A person that holds a manufacturer license.

*Manufacturer's serial number*—The unique number permanently assigned to a slot machine by a manufacturer for identification and control purposes, which number shall be affixed to the outside of the slot machine cabinet in a location approved by the Board.

*Municipality*—A city, borough, incorporated town or township.

*Net terminal revenue*—The net amount of the gross terminal revenue less the tax and assessments imposed by sections 1402, 1403, 1405 and 1407 of the act.

*Nongaming employee*—An employee of a slot machine licensee or certified vendor whose duties are required to be performed in a gaming area or restricted area but who is not included within the definition of "key employee qualifier," "key employee" or "gaming employee," including the following positions, regardless of job title:

- (i) Bartender.
- (ii) Cocktail server.
- (iii) Persons solely engaged in preparing or serving food or beverages.
- (iv) Clerical or secretarial personnel.
- (v) Janitorial personnel.
- (vi) Stage, sound and light technicians.
- (vii) Other positions which the Board will determine based on detailed analyses by the Board of job descriptions as provided in the internal controls of the slot machine licensees as approved by the Board or provided in the slot machine licensee's verification of the location of vendor services included with the vendor certification application.

*Nonprimary location*—A facility in which pari-mutuel wagering is conducted by a licensed racing entity other than the racetrack where live racing is conducted.

*Occupation permit*—A permit issued by the Board authorizing an individual to be employed or work as a gaming employee.

*Permit fee*—The amount of money required to be paid for issuance or renewal of any type of permit required by the Board.

*Permittee*—A holder of a permit issued under this part.

*Person*—A natural person, corporation, foundation, organization, business trust, estate, limited liability com-

pany, licensed corporation, trust, partnership, limited liability partnership, association or other form of legal business entity.

*Publicly traded*—An entity that meets one or more of the following criteria:

(i) The entity has a class or series of securities registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78nn).

(ii) The entity is a registered management company under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(iii) The entity is subject to the reporting obligations imposed by section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o) by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(iv) The entity has one or more classes of securities traded in any open market in any foreign jurisdiction or regulated pursuant to a statute of any foreign jurisdiction that the Board determines to be substantially similar to either or both of the statutes referred to in subparagraphs (ii) and (iii).

*Race Horse Industry Reform Act*—4 P. S. §§ 325.101—325.402.

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

*Regular or continuing basis*—A vendor will be deemed to conduct business on a regular or continuing basis if:

- (i) The total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than \$200,000 within any consecutive 12 month period.
- (ii) The total dollar amount of transactions with slot machine licensees or applicants is or will be greater than \$500,000 within any consecutive 12 month period.

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

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

*Revenue-or tourism-enhanced location*—A location within this Commonwealth determined by the Board, which will maximize net revenue to the Commonwealth or enhance year-round recreational tourism within this Commonwealth, in comparison to other proposed facilities and is otherwise consistent with the act and its declared public policy purposes.

*SEC*—The Securities and Exchange Commission of the United States.

*Secretary*—Secretary to the Board.

*Securities*—As defined in the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101—1-703).

*Slot machine—*

(i) A mechanical or electrical contrivance, terminal, machine or other device approved by the Board which, upon insertion of a coin, bill, token, gaming voucher, coupon or similar object therein or upon payment of any consideration, including the use of electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance, or both, may deliver or entitle the person playing or operating the contrivance, terminal, machine or other device to receive cash, billets, tokens, gaming vouchers or electronic credits to be exchanged for cash or to receive merchandise or anything of value, whether the payoff is made automatically from the machine or manually. A slot machine:

(A) May utilize spinning reels or video displays, or both.

(B) May or may not dispense coins, vouchers or tokens to winning patrons.

(C) May use an electronic credit system for receiving wagers and making payouts.

(ii) The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.

*Slot machine license—*A license issued by the Board authorizing a person to place and operate slot machines under the act.

*Slot machine licensee—*A person that holds a slot machine license.

*State gaming receipts—*Revenues and receipts required by the act to be paid into the State Gaming Fund, the Pennsylvania Race Horse Development Fund and the Pennsylvania Gaming Economic Development and Tourism Fund, and all rights, existing on July 5, 2004, or coming into existence after July 5, 2004, to receive any of those revenues and receipts.

*State Treasurer—*The State Treasurer of the Commonwealth.

*Statement of Investigation—*An order of the Board in response to a petition for an order regarding inquiry and investigation of a purchase of an eligible applicant or licensee which specifies the particular criterion satisfied by the purchaser, provides for the continuing obligation of the purchaser to provide information to the Board, is applicable only as to the purchase of a specific eligible applicant or licensee, and provides an expiration date not to exceed 6 months from the date of issuance unless otherwise extended by the Board.

*Supplier—*A person that sells, leases, offers or otherwise provides, distributes or services slot machines or associated equipment for use or play of slot machines in this Commonwealth at a licensed gaming facility.

*Supplier license—*A license issued by the Board authorizing a supplier to provide products or services related to slot machines or associated equipment to licensed gaming entities.

*Supplier licensee—*A person that holds a supplier license.

*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.

*Vendor—*A person who provides goods or services to a slot machine licensee or applicant, but who is not required to be licensed as a manufacturer, supplier, management company or junket enterprise. The term includes:

(i) Suppliers of alcoholic beverages (if not otherwise regulated by the Pennsylvania Liquor Control Board), food and nonalcoholic beverages.

(ii) Refuse handlers.

(iii) Vending machine providers and service personnel.

(iv) Linen and uniform suppliers.

(v) Janitorial and maintenance companies, not relating to the repair of slot machines or associated equipment.

(vi) Tenant businesses or franchises located within licensed facilities.

(vii) Providers of transportation services.

(viii) Companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant.

(ix) Lessors of real property or goods.

(x) Other entities which the Board will determine based on detailed analyses by the Board of vendor contracts.

*Vendor certification—*A certification issued by the Board authorizing a vendor to provide goods or services to a slot machine licensee or applicant.

*Vendor registration—*A registration issued by the Board authorizing a vendor to provide goods or services to a slot machine licensee or applicant.

**§ 401.4. Jurisdiction.**

(a) The Board will have exclusive jurisdiction over all matters within the scope of its powers under the act.

(b) Nothing contained in this part shall be construed to limit the powers and duties of the Board as provided in the act.

**CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION**

- Sec.
- 403.1. Participation at meetings and voting.
- 403.2. Meetings.
- 403.3. Board office hours.
- 403.4. Public communication.
- 403.5. Delegation of powers.
- 403.6. Temporary emergency orders.

**§ 403.1. Participation at meetings and voting.**

(a) *Qualified majority vote.* An action by the Board, except as set forth in subsections (b) and (c), including the approval, issuance, denial or conditioning of a license or the making of an order or the ratification of a permissible act done or order made by one or more of the members of the Board will require a qualified majority vote consisting of at least one gubernatorial appointee and the four legislative appointees.

(b) *Majority vote.* An action by the Board to suspend, revoke, not renew, void or require forfeiture of a license, permit, certification or registration previously issued by the Board, to impose an administrative fine or penalty or to issue cease and desist will require a majority vote of all the Board members.

(c) *Disqualifying interest.* If a Board member has a disqualifying interest in a voting matter, the member shall disclose the nature of the disqualifying interest, disqualify himself and abstain from voting in a proceed-

ing in which his impartiality may be reasonably questioned, including instances where he knows that he possesses a substantial financial interest in the subject matter of the proceeding or an interest that could be substantially affected by the outcome of the proceeding. If it is a legislative appointee member that has disqualified himself, the qualified majority will consist of the remaining three legislative appointees and at least two gubernatorial appointees.

(d) *Member abstention.* When a member has disqualified himself, the member's abstention from voting will apply only to the singular voting matter that led to the disqualification and not apply to other matters under consideration by the Board for which the member is otherwise qualified.

#### § 403.2. Meetings.

(a) *Public sessions.* The proceedings of all public sessions will be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act).

(b) *Regularly scheduled meetings.* The Board will meet once a month, and on other dates as the Board determines.

(c) *Participation by means of telephone or video teleconference.* A Board member may participate in a meeting by means of telephone or video teleconference when it is impractical for the Board member to attend the meeting in person.

(d) *Record of proceedings.* The Board will keep a record of all proceedings held at public meetings of the Board. A verbatim transcript of those proceedings will be prepared by the Board and will be available for inspection at the Board's office during normal business hours.

#### § 403.3. Board office hours.

Board offices will be open from 8:30 a.m. to 5:00 p.m. on business days except Saturdays, Sundays, legal holidays, and Commonwealth office closures declared by the Governor, unless otherwise directed by the Board.

#### § 403.4. Public communication.

Requests for information regarding the Board may be directed to:

Office of Communications  
 Pennsylvania Gaming Control Board  
 P. O. Box 69060  
 Harrisburg, Pennsylvania 17106-9060

#### § 403.5. Delegation of powers.

(a) The Board may, consistent with the act and this part, delegate its authority to perform any of its functions to a Board member or member of the Board's staff.

(b) A delegation of Board authority will be effected by promulgation of a regulation or the adoption of a formal resolution at a public meeting of the Board. The regulation or resolution will specify:

- (1) The specific authority delegated.
- (2) The Board member or Board staff members to whom the authority is delegated.
- (3) Limitations or conditions imposed on the authority delegated.

(c) Delegations of authority made under this section will remain in effect indefinitely unless otherwise specified in the implementing regulation or resolution.

(d) A delegation of authority adopted by the Board may be modified or rescinded by the Board through promulga-

tion of a regulation or the adoption of a subsequent formal resolution at a public meeting of the Board.

(e) Notwithstanding any other provision of this section, a matter that has been delegated to the Board staff may alternatively be presented to and determined by the Board on its own motion, at the discretion of the Chairperson or at the request of the Board staff.

#### § 403.6. Temporary emergency orders.

(a) Upon request of the Office of Enforcement Counsel in accordance with subsection (d), a temporary emergency order may be issued by, or on behalf of, the Executive Director of the Board. A temporary emergency order may be issued without a hearing and without advanced notice and will notify the person to whom the temporary emergency order is issued that he may request a hearing to be held by the Executive Director within 72 hours of the request being filed with the Board.

(b) A temporary emergency order may be issued to suspend a license, certification, permit or registration or to direct that a person refrain from engaging in, or cease and desist engaging in, specific conduct.

(c) A temporary emergency order may be issued if there is insufficient time to provide notice and hearing prior to the issuance of the order; the order is necessary to preserve the public health, welfare, or safety or the integrity of gaming in the Commonwealth; and determination of one of the following has occurred:

(1) A person holding a license, certification, permit or registration issued by the Board has been charged with or convicted of a felony, a criminal gaming offense, or crime of dishonesty or false statement or other disqualifying offense.

(2) A licensee has failed to pay required assessments or to satisfy its tax obligations under the act.

(3) The action is necessary to prevent or cure a violation of the act, this part or other Federal or State laws or regulations.

(d) If the Office of Enforcement Counsel determines that circumstances exist which require that immediate action be taken on behalf of the Board, it may submit a request for a temporary emergency order. The request will include:

(1) The circumstances upon which the determination to request the order was made.

(2) The grounds upon which the order is being requested.

(3) The specific relief sought in the order.

(e) A temporary emergency order will be issued in writing and filed, together with the request for a temporary emergency order required by subsection (d), with the Clerk no later than the close of the next business day following its issuance.

(f) A temporary emergency order must specify that the person subject to the temporary emergency order may request an informal hearing before the Executive Director within 72 hours of filing the request with the Clerk.

(g) The Bureau will cause the temporary emergency order and the request for a temporary emergency order required by subsection (d) to be served upon the person named in the temporary emergency order. Service required by this subsection will be made as expeditiously as practicable following the issuance of the order and the request. Service will be made in the manner prescribed by § 491.3 (relating to service by the Board).

(h) Within 72 hours of the filing a request for an informal hearing with the Board, an informal hearing before the Executive Director will be held at the Board headquarters.

(i) The Executive Director or a designee may sign subpoenas to secure the attendance of witnesses and the production of documents.

(j) The procedure for the informal hearing will be as follows:

(1) The Executive Director or a designee will call the hearing to order and present the request for a temporary emergency order filed by the Office of Enforcement Counsel pursuant to subsection (d).

(2) The person named in the temporary emergency order may respond by submitting evidence and witnesses supporting the position that the temporary emergency order should be dissolved or modified.

(3) The Executive Director or a designee may require that witnesses testify under oath. All relevant evidence is admissible. The Executive Director or a designee may question witnesses.

(4) The licensee may make a concluding argument as to why the temporary emergency order should be dissolved or modified.

(5) Upon receiving all evidence presented by the person named in the order and hearing the person's final argument, the Executive Director or a designee will render a decision as to whether or not the temporary emergency order will continue, be modified or dissolved. Unless the Executive Director dissolves the temporary emergency order, the matter will be scheduled for a hearing before the Board as provided in subsection (k).

(k) Once a temporary emergency order has been issued under this section, unless it has been subsequently dissolved by the Executive Director, the temporary emergency order will be presented to the Board at its next meeting or within 10 business days, whichever is longer at which time the Board may do one of the following:

(1) Conduct a hearing to determine the validity of the issuance of the order.

(2) Refer the matter to the Office of Hearings and Appeals under § 492.6 (relating to hearings generally) and direct that a hearing be conducted by a hearing officer and a report submitted to the Board.

(l) In all hearings relating to the disposition of a temporary emergency order, whether the hearing is conducted by the Board or by a hearing officer, the following procedure will occur:

(1) The temporary emergency order, the request for the temporary order and any modifications to the temporary order will be made a part of the evidentiary record of the proceeding.

(2) The Office of Enforcement Counsel will present evidence to the Board or the hearing officer in support of the temporary emergency order.

(3) The person named in the order shall have the burden of rebutting the evidence presented by the Office of Enforcement Counsel.

(m) If the hearing is conducted by the Board, the Board may take one of the following actions upon conclusion of oral arguments and evidentiary presentations:

(1) If the Board finds that the un rebutted facts and circumstances presented are sufficient to support the

issuance of the temporary emergency order, that dissolution of the temporary emergency order would pose an immediate threat to the public health, safety or welfare, or the public's interest in the effective regulation of gaming demands the action, it may adopt a resolution ratifying or modifying the temporary emergency order.

(2) If the Board finds that there is insufficient cause to continue the temporary emergency order, it may adopt a resolution dissolving the emergency order and the privileges of the person named in the order will be reinstated.

(3) If the Board finds that further hearing is necessary, it may refer the matter to the Office of Hearings and Appeals for additional presentation of evidence and testimony of witnesses. If the matter is referred to the Office of Hearings and Appeals, the temporary emergency order will remain in effect, with or without modification as the Board deems appropriate.

(n) If the Board adopts a resolution, the resolution may establish the length of term for the order by establishing an expiration date, dependent on the completion of specified remedial actions or dependent on the filing of, or final resolution of, a complaint alleging the person violated a provision of the act or this part. If the expiration date is dependent upon specific remedial actions, the Board will provide a detailed description of the remedies in the resolution and will establish procedures whereby the person can demonstrate that it has complied with the required remedies.

(o) Any resolution adopted is a final order of the Board for purposes of appeal.

(p) Resolutions ratifying or dissolving temporary emergency orders adopted by the Board under this section will have no effect upon the power and duty of the Office of Enforcement Counsel to initiate, in its sole discretion, proceedings for violations of the act or this part or upon the outcome of any proceeding so initiated.

(q) Copies of the Board's final order will be served on the person named in the order by certified or overnight express mail, postage prepaid; or by personal delivery in accordance with § 491.3.

(r) If the Board refers the matter to the Office of Hearings and Appeals, the hearing will be subject to the following requirements:

(1) The Chairperson will designate a presiding officer to direct the hearing and rule on evidentiary matters.

(2) The hearing before the presiding officer will occur no more than 10 business days after the Board refers the matter to the Office of Hearings and Appeals, unless a delay is requested by the person named in the temporary emergency order.

(3) Within 10 days following the conclusion of hearing, the presiding officer will forward a recommendation for action on the temporary emergency order to the Board. A copy of the recommendation will be served on the person named in the temporary order by certified or overnight express mail or by personal delivery in accordance with § 491.3.

**CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT**

Sec.	
405.1.	General duties and powers.
405.2.	Information.
405.3.	Office of Enforcement Counsel.
405.4.	Conduct.
405.5.	Investigatory subpoena.
405.6.	Enforcement action.

**§ 405.1. General duties and powers.**

The Bureau has the powers and duties set forth in section 1517 of the act (relating to enforcement) including:

- (1) The investigation and review of all applicants seeking a license, permit, certification or registration.
- (2) The investigation of licensees, permittees, registrants, certified vendors and other persons for potential violations of the act, including potential violations referred to the Bureau by the Board or other persons.
- (3) The monitoring of slot machine operations to ensure compliance with the act, this part and the integrity of gaming, including internal controls, exclusion list enforcement, underage gaming and drinking, individual complaints, information systems, integrity and security issues.
- (4) The inspection and examination of all premises where slot machine operations are conducted, gaming devices or equipment are manufactured, sold, distributed or serviced or where records of these activities are prepared or maintained as provided in section 1517(e) of the act. Inspections may include the review and reproduction of any document or record.
- (5) The conduct of audits of slot machine operations as necessary to ensure compliance with the act and this part. An audit may include the review of accounting, administrative and financial records, management control systems, procedures and other records utilized by a licensed facility.
- (6) The referral of possible criminal violations under the act to the Pennsylvania State Police.

**§ 405.2. Information.**

- (a) An applicant for or holder of a license, permit, certification or registration shall provide all information, data and documents requested by the Bureau under section 1517(a) of the act (relating to enforcement).
- (b) The Director of the Bureau, the Chief Enforcement Counsel, and their designees, will have the power and authority to administer oaths and affirmations for the purpose of obtaining voluntary sworn statements with regard to any matter or thing which may properly fall within the jurisdiction of the Board. Any person so designated will have the power and authority to obtain by subpoena the sworn statement of a person deemed to have information relevant to an investigation that the Board is authorized to conduct. Designation pursuant to this section will be made in writing, filed with the Clerk, and remain in effect until revoked.
- (c) A State or local law enforcement agency, including the Pennsylvania State Police and the Office of Attorney General, the Department or other executive agency shall provide information, data and documents requested by the Bureau relating to an applicant for or holder of a license, permit, certification or registration.
- (d) The Bureau may, upon request, provide pertinent information relating to an applicant for or holder of a license, permit, certification or registration to law enforcement agencies, including the Federal Bureau of Investigation or other domestic or foreign agencies or jurisdictions.
- (e) Information under this section may be provided or received by electronic distribution.

(a) A State or local law enforcement agency, including the Pennsylvania State Police and the Office of Attorney General, the Department or other executive agency shall provide information, data and documents requested by the Bureau relating to an applicant for or holder of a license, permit, certification or registration.

(d) The Bureau may, upon request, provide pertinent information relating to an applicant for or holder of a license, permit, certification or registration to law enforcement agencies, including the Federal Bureau of Investigation or other domestic or foreign agencies or jurisdictions.

(e) Information under this section may be provided or received by electronic distribution.

**§ 405.3. Office of Enforcement Counsel.**

(a) The Office of Enforcement Counsel within the Bureau has the following powers and duties:

(1) Advise the Bureau on all matters, including the granting of licenses, permits, certifications or registrations, the conduct of background investigations, audits and inspections and the investigation of potential violations of the act or this part.

(2) Make recommendations and objections relating to the issuance of licenses, permits, certifications and registrations.

(3) Initiate, in its sole discretion, proceedings for violations of the act or this part by filing a complaint or other pleading with the Board seeking civil fines or penalties, the imposition of conditions on a license, permit, certification or registration, or the suspension or revocation of a license, permit, certification or registration.

(4) Act as the prosecutor in all enforcement actions under the act.

(5) Seek a settlement that may include fines, penalties or other actions subject to approval by the Board.

(6) Appear at administrative hearings and other proceedings before the Board.

(b) The Director of the Office of Enforcement Counsel will report to the Executive Director of the Board on administrative and operational matters.

(c) The Director of the Office of Enforcement Counsel may be removed by the Board only for good cause shown.

**§ 405.4. Conduct.**

(a) An attorney representing the Office of Enforcement Counsel, or an employee involved in the hearing process, may not discuss the case *ex parte* with a presiding officer assigned to the case, an attorney assigned to the case from the Office of Chief Counsel or a Board member.

(b) A presiding officer, an attorney assigned to the case from the Office of Chief Counsel or a Board member may not discuss or exercise any supervisory responsibility over any employee with respect to an enforcement hearing with which the employee is involved.

(c) If it becomes necessary for an attorney from the Office of Chief Counsel or a Board member to become involved on behalf of the Board in any enforcement proceeding, the attorney from the Office of Chief Counsel or the Board member involved shall be prohibited from participating in the adjudication of that matter.

**§ 405.5. Investigatory subpoena.**

(a) The Director of the Office of Enforcement Counsel is authorized to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format necessary for all action within the authority of the Bureau under the act or this part.

(b) The Director of the Office of Enforcement Counsel or his representative may issue subpoenas.

(c) In case of disobedience of any subpoena or the contumacy of any witness appearing before the Director of the Office of Enforcement Counsel or a representative, the Director of the Office of Enforcement Counsel or a representative may invoke the aid of the Commonwealth Court or any court of record of the Commonwealth to require the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format relative to the matter in question.

(d) The issuance of a subpoena under this section will not be required to secure the cooperation of a person who is an applicant for, or the holder of, a license, permit, certification or registration issued by the Board, or to secure the voluntary cooperation of any person.

**§ 405.6. Enforcement action.**

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will serve the person with a notice of enforcement action in accordance with § 491.3 (relating to service by the board), including a proposed order for enforcement action.

(b) The proposed order for enforcement action will include a statement of the facts supporting the proposed enforcement action, the statute, regulation or statement of conditions that the person is being charged with violating and the proposed penalty. The proposed order will be accompanied by a certificate of service demonstrating the date of service.

(c) Within 15 days from the date of service of the proposed order for enforcement action, the person may file a request for a hearing with the Clerk and serve a copy of the request on the Office of Enforcement Counsel. Failure to request a hearing within 15 days will be deemed:

- (1) A waiver by the person of any right to an administrative hearing before the Board.
- (2) An admission by the person of all matters and facts alleged in the proposed order for enforcement action.
- (3) Consent by the person to the entry of a final order by the Board disposing of the enforcement matter.
- (d) Upon the person's failure to request a hearing within the prescribed 15 days, the matters and facts deemed admitted by the person and the proposed enforcement order shall be presented to the Board. The Board may, by resolution, adopt the proposed enforcement order.

(e) The Clerk will notify the person of the Board's final order by certified mail.

**CHAPTER 407. PUBLIC ACCESS TO BOARD FILES**

Sec.	
407.1.	Case files.
407.2.	Minutes of public meeting and annual report.
407.3.	Confidential information.

**§ 407.1. Case files.**

(a) *Formal records.* The Board will maintain a nonconfidential file and a confidential file for all formal records.

(b) *Access.* Access to formal records will be governed by the following:

- (1) Nonconfidential files will be available for inspection during normal Board business hours.
- (2) Upon receipt of a request for access to confidential files, the Board or the Bureau will review the request and provide its determination as to whether the material may be released for inspection within 30 days of the request.
- (3) For good cause, the Board may extend the time limits applicable to requests for access to confidential files.

(c) The Board may issue protective orders or establish standards governing the protection of proprietary or confidential documents for a given proceeding or a given

type of proceeding. All parties to a proceeding shall submit, classify and mark documents in accordance with the directives of the Board or its designee. In the absence of any protective order or standard, parties shall clearly mark documents that are deemed to be proprietary or confidential. The documents will be treated as marked by the Board.

(d) Any party or member of the public may dispute the designation of a document as submitted by filing a notice of dispute with the Board. The Board will determine the proper classification of documents subject to a notice of dispute as soon as administratively possible.

**§ 407.2. Minutes of public meeting and annual report.**

Minutes of the public meeting and annual reports will be available for public inspection upon request to the Secretary during normal Board business hours. Copies will be provided upon request and payment of the cost for copying as the Board may establish through a schedule published in the *Pennsylvania Bulletin*.

**§ 407.3. Confidential information.**

(a) Confidential information may include background investigation information, including information provided under section 1310(a) of the act (relating to slot machine license application character requirements), submitted in connection with an application required for the issuance of any license, permit, certification or registration under this part, discovery procedures, or cross-examination or that is provided as a courtesy to a party in a formal proceeding received by the Board or the Department as well as records obtained or developed by the Board or the Department as part of an investigation related to an applicant or holder of a license, permit, certification or registration containing any of the following:

(1) Personal information, including home addresses, telephone numbers, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, credit-worthiness, or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.

(2) Documents and information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies which may include customer-identifying information or customer prospects for services subject to competition.

(3) Security information including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures.

(4) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy as determined by the Board.

(5) Records or information that is designated confidential by statute or the Board.

(6) Records of an applicant or licensee not required to be filed with the SEC by issuers that either have securities registered under section 12 of the Securities and Exchange Act of 1934 (15 U.S.C.A. § 781) or are required to file reports under section 15(d) of that act (15 U.S.C.A. § 78o).

(7) Records considered nonpublic matters or information by the SEC as provided by 17 CFR 200.80 (relating to commission records information).

(b) Confidential information may be released by the Board under the following circumstances:

(1) To State or Federal law enforcement agencies or entities upon approval of the Attorney General or pursuant to a lawful order issued by court of competent jurisdiction.

(2) To the public, in whole or in part, if one of the following occurs:

(i) Upon written request from the applicant or holder of a license, permit, registration or certification, to the extent that the information does not contain otherwise confidential information about another person.

(ii) If the information subsequently becomes a part of the public domain by an action by the applicant or holder of a license, permit, certification or registration.

(3) To a person with the written consent of the applicant or holder of a license, permit, certification or registration.

[Pa.B. Doc. No. 06-1754. Filed for public inspection September 8, 2006, 9:00 a.m.]

## [58 PA. CODE CHS. 451 AND 471] Recordkeeping and Fees

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(14) and the specific authority in 4 Pa.C.S. §§ 1207(3), 1208, 1209(d), 1308 and 1322, proposes to adopt Chapters 451 and 471 (relating to recordkeeping requirements; and filing fees) to read as set forth in Annex A.

### *Purpose of the Proposed Rulemaking*

Under the authority granted to the Board under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 451 and 471 at 35 Pa.B. 4045 (June 16, 2005). Under 4 Pa.C.S. Part II (relating to gaming), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking.

### *Explanation of Chapters 451 and 471*

Chapter 451 contains general provisions that address the recordkeeping requirements for manufacturer, supplier, junket enterprise, management company and slot machine licensees and registered and certified vendors.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes intended to improve the clarity of the language in the temporary regulations. The proposed rulemaking also expands the applicability of the provisions to include other regulated entities that were not originally covered when the temporary regulations were promulgated.

Chapter 471 addresses the applicants' obligation to pay fees required by the Board, the method of payment, the nature of the fees and the publication of a fee schedule by the Board.

Amendments to the temporary regulations in this proposed rulemaking are primarily editorial and are in-

tended to improve the clarity of the regulations. The proposed rulemaking also expands the applicability of the temporary regulations to include other regulated entities that were not covered in the temporary regulations. Some of the language in § 471.3 (relating to adjustment of fees) has been moved to § 471.1 (relating to fees generally) for clarity purposes. Temporary § 471.2 has been deleted as it is duplicative of other provisions.

### *Affected Parties*

This proposed rulemaking imposes requirements on applicants for and holders of a license, permit, registration or certification.

### *Fiscal Impact*

Under 4 Pa.C.S. §§ 1401 and 1402 (relating to slot machine licensee deposits; and gross terminal revenue deductions), the costs and expenses of the Board, the Pennsylvania State Police, the Office of Attorney General and the Department of Revenue incurred in carrying out the responsibilities imposed by 4 Pa.C.S. Part II will be recovered from the slot machine licensees. Accordingly, the costs identified will be borne by the slot machine licensees, not the General Fund.

### *Commonwealth*

This proposed rulemaking will have no significant fiscal impact on the Commonwealth.

### *Political Subdivisions*

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

### *Private Sector*

Applicants for or holders of a license, permit, registration or certification will experience costs associated with the payment of fees for applications and other documents submitted to the Board for which a filing fee is required. These entities and individuals will also experience costs as a result of the cost of the investigations by the Bureau of Investigations and Enforcement. Applicants for or holders of a license, registration or certification may also experience some increased costs to comply with the document retention and storage requirements.

### *General Public*

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

### *Paperwork Requirements*

This proposed rulemaking does not impose new reporting or paperwork requirements on the Board or affected parties under the Board's jurisdiction. This proposed rulemaking clarifies how the applicants and holders of licenses, registrations and certifications must maintain certain records.

### *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 Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-46.

*Contact Person*

The contact persons for questions about this proposed rulemaking are Richard Sandusky, Director of Regulatory Review, (717) 214-8111, and Michelle Afragola, Deputy Director of Regulatory Review, (610) 943-1338.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 28, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Tourism and Recreational Development Committee and the Senate Committee on Rules and Executive Nominations. A copy of this material is available to the public upon request.

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.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-46. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart D. RECORDKEEPING**

**CHAPTER 451. RECORDKEEPING REQUIREMENTS**

Sec.  
451.1. Recordkeeping generally.

**§ 451.1. Recordkeeping generally.**

(a) All manufacturer, supplier, junket enterprise, management company and slot machine licensees and all registered and certified vendors shall maintain adequate records of business operations which shall be made available to the Board upon request. These records shall be kept onsite in this Commonwealth in a place secure from theft, loss or destruction or at another secure location approved by the Board. These records include:

(1) Correspondence with the Board and other local, Commonwealth and Federal governmental agencies.

(2) Correspondence concerning gaming equipment with a manufacturer, supplier, management company or slot machine licensee.

(3) Copies of all promotional material and advertising.

(4) A personnel file on each current and former employee.

(5) Financial records of all transactions concerning slot machines and associated equipment with a manufacturer, supplier, management company or slot machine licensee.

(6) Copies of all tax returns, reports and other tax documents filed with a taxing entity of the Federal government, the Commonwealth or local taxing entity within this Commonwealth for 7 years or a longer period as prescribed by the taxing entity.

(7) Copies of all general accounting records.

(b) Except as provided in subsection (a)(6), regarding tax documents, the records listed in subsection (a) shall be maintained for at least 5 years.

**Subpart F. FEES**

**CHAPTER 471. FILING FEES**

Sec.  
471.1. Fees generally.  
471.2. Schedules of fees.  
471.3. Adjustment of fees.

**§ 471.1. Fees generally.**

(a) A pleading or other document for which a filing fee is required will be received, but will not be deemed filed, until the filing fee, bond, letter of credit or other cost has been paid.

(b) The fees collected by the Board will be deposited into the State Gaming Fund as established in section 1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

(c) Fees shall be paid by money order or check made payable to the "Commonwealth of Pennsylvania." Cash will not be accepted by the Board.

(d) To recover the initial cost of the investigation and processing of applications, each application for a license, permit, registration or certification must be accompanied by a nonrefundable fee.

(e) An applicant may be subject to additional fees based on the actual expenses incurred by the Board in conducting the background investigation.

**§ 471.2. Schedules of fees.**

Fee schedules established by the Board will be published in the *Pennsylvania Bulletin* and will be available on the Board's website.

**§ 471.3. Adjustment of fees.**

On or after July 5, 2006, and annually thereafter, the Board may increase the fees, charges, costs or administrative penalties specified in the act by an amount not to exceed an annual cost-of-living adjustment calculated under section 1208(2) of the act (relating to collection of fees and fines).

[Pa.B. Doc. No. 06-1755. Filed for public inspection September 8, 2006, 9:00 a.m.]