

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 123]

Qualifications for Vocational Experts

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), amends Chapter 123 (relating to general provisions—Part II) to read as set forth in Annex A. The final-form rulemaking provides guidance regarding the act of December 23, 2003 (P. L. 371, No. 53) (Act 53), which amended the Workers' Compensation Act (act) (77 P. S. §§ 1—1041.4 and 2501—2626), and implements Act 53. Specifically, Act 53 amended section 306(b) of the act (77 P. S. § 512). This final-form rulemaking also rescinds § 123.201a.

Statutory Authority

This final-form rulemaking is adopted under the authority in sections 401.1 and 435 of the act (77 P. S. §§ 710 and 991). Additionally, section 306(b) of the act specifically authorizes the Department to promulgate regulations establishing the minimum qualifications for vocational experts.

Background

On December 23, 2003, Governor Edward G. Rendell signed Act 53 into law. Act 53 amended section 306(b)(2) of the act. Before its amendment, section 306(b)(2) of the act provided a means for insurers to assess an employee's earning power through an interview "by an expert approved by the department and selected by the insurer." Act 53 eliminated the requirement that the Department approve these experts. Instead, insurers may select experts "who meet[] the minimum qualifications established by the department through regulation."

Act 53 further amended section 306(b)(2) of the act by providing that vocational experts "shall comply with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses." Act 53 also added section 306(b)(2.1) of the act, which requires an insurer to disclose to the employee prior to his referral to an earning power assessment interview, any financial interest that the insurer has in the person or entity that will conduct the earning power assessment interview.

Purpose

This final-form rulemaking implements Act 53. It provides guidance to Bureau staff, workers' compensation insurance carriers, self-insured employers, employees, workers' compensation judges, workers' compensation practitioners and other interested parties concerning the qualifications and role of vocational experts in workers' compensation proceedings under section 306(b) of the act and section 449 of the act (77 P. S. § 1000.5). Other than in instances when a workers' compensation judge has determined that a vocational expert or insurer has not met the requirements of § 123.202 or § 123.202a (relating to qualifications for current vocational experts under Act 57 of 1996; and qualifications for vocational experts under Act 53 of 2003), or has failed to comply with §§ 123.204 and 123.205 (relating to conduct of vocational experts; and financial interest disclosure), this final-form

rulemaking is not intended to restrict or limit the authority that workers' compensation judges currently possess.

Stakeholder Meeting

On June 11, 2004, the Department held a stakeholder meeting regarding the Act 53 amendments. Testimony was received from Irwin Aronson and David Wildeman, representing the AFL-CIO; and Terry Leslie, representing the Pennsylvania Association of Rehabilitation Professionals. In addition, the Department received written comments from the Pennsylvania Association of Rehabilitative Professionals Administrative Services; the Pennsylvania Trial Lawyers Association; The Insurance Federation of Pennsylvania Inc. (IFP); CEC Associates, Inc.; and the Honorable Noah Wenger.

Summary of Comments and Responses to Proposed Rulemaking

The Department published the proposed rulemaking at 35 Pa.B. 3820 (July 9, 2005) with a 30-day public comment period. The Department received comments from the Independent Regulatory Review Commission (IRRC) on September 13, 2005, as part of its review of the proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Department also received public comments from IFP, Galfand Berger LLP (GB) and The Pennsylvania Workers' Compensation Judges' Association (PWCJA). The Department amended the proposed rulemaking in response to many of these comments.

On March 16, 2006, the Department delivered a final-form rulemaking to the IRRC and the Senate Labor and Industry Committee and the House Labor Relations Committee. IRRC scheduled a public meeting, scheduled for April 20, 2006, to consider the regulations. In response to the final-form rulemaking submitted to IRRC, the Department received additional comments from the Honorable Joseph B. Scarnati, III, then-Chairperson of the Senate Labor and Industry Committee; the Honorable Mike Turzai, Member, House of Representatives; the Pennsylvania Chamber of Business and Industry; Denise Cordes; and the IFP.

To review and consider these comments, the Department withdrew the previous final-form rulemaking on April 18, 2006. The Department then submitted this final-form regulation, which reflects amendments made in light of comments to the March 16, 2006, final-form rulemaking.

§ 123.201b. Definitions.

IFP commented that the definition of "financial interest" was broad and ambiguous. IFP contends that the definition arguably requires that any relationship between the insurer and vocational expert constitutes a "financial interest." The Department agreed and amended this section to restrict "financial interest" to three specific criteria. The section now provides that a "financial interest" exists for the vocational expert or his employer only when the insurer has a present or former ownership interest, or a present or former employment relationship, with the entity or individual conducting the earning power assessment interview, or when a contractual or referral arrangement exists between the insurer and the vocational expert or his employer.

IRRC and IFP commented that in subparagraph (ii) of the definition of “finance interest” the divergent use of the term “employment relationship” as distinguished from the terms “employs” and “employing” used elsewhere in the section, was confusing and could be interpreted to permit the application of this provision in circumstances other than those pertaining to employment. The Department agreed and amended this section to remove the terms “employs” or “employing” to clarify and promote consistent use of the term “employment relationship” throughout the section.

IFP commented that the inclusion of a “former employer relationship” in subparagraph (ii) of the definition of “finance interest” could not constitute a current financial interest. The Department, however, maintains that the existence of a past employment relationship properly constitutes a financial interest for disclosure purposes. For example, a former employee could receive interests such as pension benefits, 401(k) proceeds or severance benefits.

IFP commented that the reference to “a managerial, fiduciary or controlling interest” in subparagraph (iii) of the definition of “finance interest” is confusing and duplicative of this section’s earlier provisions. Also, IFP remarked that this subparagraph creates confusion regarding the financial interest disclosure requirements of § 123.205. The Department agreed that the reference may be confusing and deleted this amendment.

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

IRRC commented that in subsection (a)(1), the standard for qualification potentially allowed an individual without adequate earning power assessment knowledge and skills to serve in this capacity. Specifically, IRRC pointed out that a license for a professional counselor issued under the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901—1920.2) could include disciplines not relevant to the performance of earning power assessment interviews. Further, Senator Scarnati and IFP expressed concerns that a licensure requirement would unduly limit the number of experts available to conduct earning power assessment interviews, and would not be relevant to the performance of earning power assessment interviews.

The Department agreed with IRRC and IFP that certification by one of the delineated professional organizations sufficiently ensures that vocational experts are competent to conduct earning power assessment interviews under the act. Thus, the Department amended this section to eliminate the requirement that individuals conducting interviews under this section be licensed by the Department of State. However, to better ensure that individuals conducting earning power assessment interviews are competent to do so, the Department included a requirement that approved experts hold at least a bachelor’s degree in rehabilitation counseling or a related counseling field.

IRRC noted that subsection (a)(2) permitted an individual to perform as a vocational expert if that person held a bachelor’s degree and certification by a professional organization or had 1 year of experience. The Department agreed that this provision created an unnecessarily diminished qualification standard and amended this section to require all vocational experts to hold a certification issued by an appropriate Nationally-recognized professional organization.

§ 123.203. Role of workers’ compensation judges.

The PWCJA commented that its members were concerned that subsection (c) was not authorized by statute. This provision prohibits a workers’ compensation judge from considering the results of an earning power assessment interview if the vocational expert has not complied with §§ 123.204 and 123.205. The Department maintains that section 435 of the act, which allows the Department to issue rules and regulations to explain and enforce the provisions of the act, properly authorizes the regulation. Further, section 306(b) of the act dictates that vocational experts “shall comply with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses” and that the insurer referring an employee for an earning power assessment interview “shall disclose [any] financial interest to the employee prior to the referral.”

Further, in response to the PWCJA’s comments, the Department clarified § 123.203 to provide that workers’ compensation judges will resolve disputes regarding vocational experts’ qualifications and retain other authority to make findings and conclusions regarding qualifications, as well as experts’ potential bias or objectivity. Finally, the Department amended this section to clarify that workers’ compensation judges retain the ability to determine whether vocational experts or insurers have failed to comply with § 123.204 or § 123.205.

§ 123.204. Conduct of expert witnesses.

IFP commented that the title of this section should be changed to “conduct of vocational experts.” The Department agreed and amended the final-form rulemaking to reflect this change.

IFP commented that subsection (a) is “broad and vague” and creates confusion regarding the definition of “financial interest” in § 123.201b (relating to definitions). The Department amended this section to remove reference to the insurer. This provision now clearly requires that the vocational expert make appropriate disclosures to the employee.

The PWCJA and IRRC commented that subsection (a), which requires that the vocational expert disclose the “role and limits” of their relationship with the employee, should reference a specific time frame for disclosure to occur. IRRC further requested that disclosure be made in writing. The Department agreed and amended this section to clarify that a vocational expert shall disclose the role and limits of his relationship with the employee, in writing, before the earning power assessment interview.

The PWCJA, IRRC and GB commented that the requirement in subsection (b) that a vocational expert generate written documentation of his involvement in the litigation and results of the earning power assessment interview should be amended to specifically require that a copy of the vocational expert’s report be served on the employee within a prescribed period of time. The Department agreed and amended this section to state that the vocational expert shall serve a copy of the initial report to the employee, and counsel if known, within 30 days of the date of the earning power assessment interview.

IFP and IRRC commented that § 123.204 should include reference to the Code of Professional Ethics for Rehabilitation Counselors (Code) to provide a standard for compliance with the Code in the regulations. The Department agreed and amended this section to add subsection (c), which clarifies that vocational experts who satisfied the requirements of subsections (a) and (b) are in compliance with the Code pertaining to the conduct of

expert witnesses. This substantive amendment establishes requirements for vocational experts' conduct under the regulation. This amendment is not intended to alter workers' compensation judges' obligations to ensure that decisions are based upon competent evidence of record, nor is it intended to permit expert testimony by witnesses who are otherwise not qualified to testify as experts.

Commentators further noted that this section could be read as requiring experts to provide the results of a labor market survey within 30 days of an earning power assessment interview, and urged that the section be clarified. IFP also suggested that the Department "require that a vocational expert send the earning power assessment report to the injured worker at the same time he sends it to the employer." The Department agreed and amended this section to clarify that the initial report need not contain the results or conclusions of surveys or tests, and to require that the vocational expert shall serve copies of additional written reports (including earning power assessments or labor market surveys) to the employee when provided to the insurer.

§ 123.205. Financial interest disclosure.

IFP commented that the "breadth and vagueness" of proposed subparagraphs (iii) and (iv) of the definition of "financial interest" makes disclosure under § 123.205 unclear. The Department agreed and amended § 123.201b to clearly describe what constitutes a "financial interest" for purposes of disclosure under this section.

Affected Persons

The persons affected by this final-form rulemaking are employees, self-insured employers, workers' compensation insurance carriers, workers' compensation judges, workers' compensation practitioners and individuals who wish to serve as vocational experts under the act.

Fiscal Impact

There is no significant fiscal impact associated with this final-form rulemaking.

Reporting, Recordkeeping and Paperwork Requirements

The Department does not anticipate changes in existing reporting, recordkeeping or other paperwork requirements.

Sunset Date

A sunset date is not appropriate for these regulations. However, the Department will continue to monitor the impact and effectiveness of the regulation.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 27, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 3820, to IRRC and the Chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department 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 May 2, 2007, 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 May 3, 2007, and approved the final-form rulemaking.

Contact Person

Persons who require additional information about this final-form rulemaking may submit inquiries to John T. Kupchinsky, Director, Bureau of Workers' Compensation, 1171 South Cameron Street, Harrisburg, PA 17104, (717) 783-5421, jkupchinsk@state.pa.us.

Findings

(1) Public notice of proposed rulemaking 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) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of Act 53 and the act.

Order

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

(a) The regulations of the Department, 34 Pa. Code Chapter 123, are amended by adding §§ 123.201b, 123.202a, 123.204 and 123.205, by amending §§ 123.201, 123.202 and 123.203 and by deleting § 123.201a to read as set forth in Annex A.

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

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the House and Senate Committees as required by law.

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

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

STEPHEN M. SCHMERIN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 2355 (May 19, 2007).)

Fiscal Note: Fiscal Note 12-68 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 34. LABOR AND INDUSTRY
PART VIII. BUREAU OF WORKERS'
COMPENSATION**

**CHAPTER 123. GENERAL PROVISIONS—PART II
Subchapter C. QUALIFICATIONS FOR
VOCATIONAL EXPERTS**

§ 123.201. Purpose.

This subchapter implements and interprets provisions of the act which permit the Department to establish qualifications for vocational experts who will conduct earning power assessment interviews under sections

306(b) and 449 of the act (77 P. S. §§ 512 and 1000.5). This subchapter also implements the act's requirements for compliance with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses and disclosure of financial interest.

§ 123.201a. (Reserved).

§ 123.201b. Definitions.

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

Financial interest—An interest equated with money or its equivalent, and includes any of the following:

- (i) A present or former ownership interest in or with the entity or individual conducting the earning power assessment interview.
- (ii) A present or former employment relationship with the entity or individual conducting the earning power assessment interview.
- (iii) A contractual or referral arrangement that would require or allow the insurer to provide compensation or other consideration based upon the vocational expert's opinion or the outcome of the vocational expert's earning power assessment interview.

Insurer—An insurer is any of the following:

- (i) A workers' compensation insurance carrier.
- (ii) The State Workers' Insurance Fund of the Department.
- (iii) An employer authorized by the Department to self-insure its workers' compensation liability under section 305 of the act (77 P. S. § 501).
- (iv) A group of employers authorized by the Department to act as a self-insurance fund under section 802 of the act (77 P. S. § 1036.2).

§ 123.202. Qualifications for current vocational experts under Act 57 of 1996.

(a) This section applies to individuals who, before June 23, 2007, conducted earning power assessment interviews under section 306(b) of the act (77 P. S. § 512(2)). These individuals continue to meet the minimum qualifications established under section 306(b) if they possess one of the following:

- (1) Both of the following:
 - (i) Certification by one of the following Nationally recognized professional organizations:
 - (A) The American Board of Vocational Experts.
 - (B) The Commission on Rehabilitation Counselor Certification.
 - (C) The Commission on Disability Management Specialists Certification.
 - (D) The National Board of Certified Counselors.
 - (E) Other Nationally recognized professional organizations, published by the Department in the *Pennsylvania Bulletin*.
 - (ii) One year experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include the following:
 - (A) Job seeking skills.
 - (B) Job development.
 - (C) Job analysis.
 - (D) Career exploration.
 - (E) Placement of individuals with disabilities.
 - (F) Vocational testing and assessment.

(2) Certification by a Nationally recognized professional organization specified in paragraph (1)(i) under the direct supervision of an individual possessing the criteria in paragraph (1).

(3) Possession of a Bachelor's degree or a valid license issued by the Department of State's Bureau of Professional and Occupational Affairs, as long as the individual is under the direct supervision of an individual possessing the criteria in paragraph (1).

(4) At least 5 years experience primarily in the workers' compensation field prior to August 23, 1996, as a vocational evaluator, with experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include, but are not limited to, the following:

- (i) Job seeking skills.
- (ii) Job development.
- (iii) Job analysis.
- (iv) Career exploration.
- (v) Placement of individuals with disabilities.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P. S. § 1000.5).

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

(a) This section applies to individuals who, before June 23, 2007, have not conducted earning power assessment interviews under section 306(b) of the act (77 P. S. § 512(2)). These individuals meet the minimum qualifications established under section 306(b) if they possess both:

- (1) Certification by one of the following Nationally recognized professional organizations:
 - (i) The American Board of Vocational Experts.
 - (ii) The Commission on Rehabilitation Counselor Certification.
 - (iii) The Commission on Disability Management Specialists Certification.

(iv) Other Nationally recognized professional organizations, published by the Department in the *Pennsylvania Bulletin*.

(2) A bachelor's or postgraduate degree in rehabilitation counseling or a related counseling field.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P. S. § 1000.5).

§ 123.203. Role of workers' compensation judges.

(a) A workers' compensation judge will resolve disputes regarding whether a vocational expert meets the minimum qualifications established in §§ 123.202 and 123.202a (relating to qualifications for current vocational experts under Act 57 of 1996; and qualifications for vocational experts under Act 53 of 2003).

(b) Except as set forth in subsection (c), this subchapter does not limit a workers' compensation judge's authority to determine a vocational expert's qualifications under §§ 123.202 and 123.202a or a vocational expert's bias or objectivity.

(c) A workers' compensation judge may not consider the results of an earning power assessment interview if the workers compensation judge finds that the vocational expert has not complied with § 123.204 (relating to conduct of vocational experts) or that the insurer has not complied with § 123.205 (relating to financial interest disclosure).

§ 123.204. Conduct of vocational experts.

(a) Before conducting an earning power assessment interview, the vocational expert shall disclose to the employee, in writing, the role and limits of the vocational expert's relationship with the employee.

(b) A vocational expert who conducts an earning power assessment interview shall generate a written initial report detailing the expert's involvement in the litigation and conclusions from the interview. The initial report need not contain the results or conclusions of any surveys or tests. The vocational expert shall serve a copy of the initial report on the employee and counsel, if known, within 30 days of the date of the interview.

(c) A vocational expert who authors additional written reports, including earning power assessments or labor market surveys, shall simultaneously serve copies of these written reports upon the employee and counsel, if known, when the expert provides the written reports to the insurer or its counsel.

(d) A vocational expert who satisfies the requirements of this section complies with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses for purposes of section 306(b)(2) of the act (77 P. S. § 512(2)).

§ 123.205. Financial interest disclosure.

(a) For the purposes of this section, a third-party administrator or another entity that performs services on behalf of an insurer, as specified in section 441(c) of the act (77 P. S. § 997(c)), is an insurer.

(b) Before an insurer refers an employee for an earning power assessment interview, the insurer shall disclose to the employee, in writing, any financial interest the insurer has with the person or entity conducting the earning power assessment interview.

[Pa.B. Doc. No. 07-1081. Filed for public inspection June 22, 2007, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

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

General and Operative Provisions; Board Procedures

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1202(a) and (b)(25) and 4 Pa.C.S. §§ 1201(f) and 1206 (relating to Pennsylvania Gaming

Control Board established; and Board minutes and records), adds Chapters 401a, 403a, 405a and 407a and deletes Chapters 401, 403, 405 and 407 to read as set forth in Annex A.

Purpose of the Final-form 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 at 35 Pa.B. 4045 (July 16, 2005) and temporary regulations in Chapter 405 at 35 Pa.B. 6407 (November 19, 2005). Under 4 Pa.C.S. § 1203(b), the temporary regulations expire on July 5, 2007.

The Board is adopting these chapters to replace the temporary regulations with the permanent regulations.

Explanation of Chapters 401a, 403a, 405a and 407a

This final-form rulemaking replaces the temporary regulations in Chapters 401, 403, 405 and 407.

Chapter 401a (relating to preliminary provisions) contains preliminary provisions which address the purpose of the Board's regulations, construction, definitions of terms and the Board's jurisdiction.

Chapter 403a (relating to Board operations and organization) addresses areas of Board operations including participation in and voting at Board meetings by members. It also addresses when the Board will conduct meetings and requires the preparation of a transcript of Board meetings. This chapter also outlines the procedures that the Board will use to delegate authority to individual Board members or to Board staff and sets forth the process that the Board will use to issue temporary emergency orders.

Chapter 405a (relating to Bureau of Investigations and Enforcement) outlines the general duties and powers of the Bureau of Investigations and Enforcement (Bureau) and the Office of Chief Enforcement Counsel (OEC). It also establishes the responsibilities of applicants and those regulated by the Board to provide information to the Bureau. It includes provisions governing the conduct of attorneys, employees and Board members to avoid ex parte communications, addresses the issuance of subpoenas by the OEC and establishes complaints as the vehicle the OEC will use to pursue enforcement actions.

Chapter 407a (relating to public access to Board files) specifies how the Board's case 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 and prescribes what will be considered confidential information and the circumstances under which confidential information may be released.

Comment and Response Summary

Notice of proposed rulemaking was published at 36 Pa.B. 5690 (September 9, 2006).

The Board received comments on the proposed rulemaking from International Game Technology (IGT) and the Independent Regulatory Review Commission (IRRC). Those comments were reviewed by the Board and are discussed in detail as follows.

IRRC requested that the Board provide additional information pertaining to the need for the rulemaking and the fiscal impact in the preamble and the Regulatory Analysis Form (RAF). Additional information has been included in both the preamble and the RAF.

In § 401a.2(b) (relating to construction), IRRC questioned the Board's authority to waive a requirement of this part. The Board's intent was to apply subsection (b) to Subpart H (relating to practice and procedure) only. Accordingly, it has been deleted from the final-form rulemaking.

In § 401a.3 (relating to definitions), IRRC commented on a number of the definitions in this section. IRRC had three concerns with the definition of "gaming employee." First, IRRC asked that a definition of the term "SLOTS Link" be added. The Board agreed and added the definition.

Next, IRRC questioned the Board's authority to require certain employees of manufacturers to obtain an occupation permit.

In addition to the Board's general authority under 4 Pa.C.S. § 1202(a) and (b)(15) and (30), 4 Pa.C.S. §§ 1318(a) and 1321 (relating to occupation permit application; and additional licenses and permits and approval of agreements) give the Board authority to require permits from additional employees.

Additionally, the act of November 1, 2006 (P. L. 1243, No. 135) (Act 135) allows manufacturers to perform technical and installation functions that were previously exclusively reserved for suppliers. To ensure the integrity of the acquisition and operation of slot machines and associated equipment, the Board determined that permitting of certain employees of a manufacturer is necessary.

Finally, IRRC stated that the phrase "other employees" in subparagraph (iv) lacks specificity and suggested that it be deleted or replaced with a list of who the other employees are.

In response to this comment, the Board revised subparagraph (iv) of the definition of "gaming employee" by adding language that narrows the application of this provision to employees whose work requires permitting to protect the integrity of gaming. Because gaming is a new industry in this Commonwealth, the Board needs to retain some flexibility to require permits for employees that are not include under subparagraphs (i)—(iii).

IRRC had two concerns with the definition of "key employee." First, IRRC questioned the authority for including manufacturers and suppliers in this definition. Second, IRRC asked why the phrase "and/or credit" was not include in the term "director of cage operations."

In addition to the Board's general authority in 4 Pa.C.S. § 1202(b)(30), 4 Pa.C.S. §§ 1202(b)(15) and 1321 give the Board some latitude to impose additional licensing or permitting requirements. Additionally, 4 Pa.C.S. §§ 1317 and 1317.1 (relating to supplier licenses; and manufacturer licenses) require suppliers and manufacturers to list their key employees in the application. Therefore, they were added to the definition of "key employee."

While the phrase "and/or credit" appears in 4 Pa.C.S. Part II (relating to gaming), 4 Pa.C.S. § 1504 (relating to wagering on credit) bars slot machine licensees from extending credit. To avoid possible confusion concerning a slot machine licensee's ability to extend credit, the phrase "and/or credit" was not included in the definition.

IRRC also questioned the basis for including the phrase "other than a natural person" in the definition of "licensed entity."

Throughout the Board's regulations, "entity" is used to refer to everything other than a natural person. For a natural person, the Board uses "individual." The addition of the phrase "other than a natural person" in this definition is intended to make this distinction clear to the regulated public.

IRRC noted that the requirement that "manufacturer's serial numbers will be affixed to the outside of the slot machine cabinet in a location approved by the Board" is a substantive requirement and suggested that it be removed from the definition.

The Board agrees and has deleted this language from the definition.

IRRC commented that 4 Pa.C.S. Part II includes the phrase "at a licensed facility" in the definition of "occupation permit" but this phrase is not in the definition in the regulation. IRRC questioned the Board's authority for this change and if it was the Board's intent to apply this definition to employees working outside of the licensed facilities.

As previously discussed, some employees of manufacturers, manufacturer designees and suppliers who work at a licensed facility will be required to obtain an occupation permit. While 4 Pa.C.S. Part II uses "employed or work as a gaming employee at a licensed facility," the Board did not want this definition to be interpreted as only applying to individuals who are employed by a licensed facility. The Board does not intend to apply the permitting requirement to employees working outside of a licensed facility.

IRRC also suggested that the Board add the monetary criteria to the definitions of "certified vendor" and "registered vendor."

The Board agrees with this comment but is in the process of amending Chapter 437 (relating to vendor registration and certification). Amendments to these definitions will be made when Chapter 437 is amended.

Regarding § 403a.7 (relating to temporary emergency orders), IRRC had five comments. First, IRRC noted that the phrase "other disqualifying offense" in subsection (c)(1) lacks clarity and suggested that it be deleted or clarified.

In response to IRRC's suggestion, the phrase has been amended to read "other offense that would make the person ineligible or unsuitable to hold a license, permit, certification or registration."

IRRC also suggested that the Board delete references to temporary regulations in subsection (g) and elsewhere since those regulations expire on July 5, 2007.

The Board discussed this issue with the Legislative Reference Bureau (LRB) prior to the publication of this proposed rulemaking and this is how the LRB has instructed the Board to reference other chapters. The Board will update these citations as permanent regulations are finalized.

In subsection (j), IRRC asked how long the Executive Director has to render a decision and how will the person be notified of the decision.

In response to this comment, the Board added "within 72 hours" as the time frame for rendering a decision and added a cross-reference to § 491.3 (relating to service by the Board).

Under subsection (m)(1), IRRC suggested that the Board add a cross-reference to Chapter 494 (relating to hearing procedure) to provide guidance on appeals.

The Board adopted this suggestion and added a cross-reference to § 494.11 (relating to appeals).

Finally, IRRC suggested that the phrase “or designee” be added to subsection (h) for consistency.

The Board agreed and added “or a designee” to this subsection.

In § 405a.1(2) (relating to general duties and powers), IRRC questioned the Board’s authority to investigate a person not subject to some form of Board approval.

While some of the paragraphs under 4 Pa.C.S. § 1517(a.1) (relating to investigations and enforcement) are specific to entities regulated by the Board, others are broader in their scope. For example, the Bureau may need to investigate individuals who may be involved in possible criminal violations of 4 Pa.C.S. Part II. Additionally, the Bureau may also investigate patron complaints, entities or individuals who haven’t but should obtain a license, permit, certification or registration, or individuals who may meet the criteria for placement on the excluded persons list.

In § 405a.2 (relating to information), IRRC suggested that the Board change “shall” to “may” to better match language of 4 Pa.C.S. § 1517(f).

The Board agrees and “shall” has been replaced with “may.”

In § 405a.6 (relating to enforcement action), IRRC suggested that the term “enforcement action” be explained in the final-form rulemaking.

The Board has rewritten this section to make it clear that enforcement actions will be done as complaints and how these complaints will be processed.

IGT and IRRC suggested that language be added to § 407a.1 (relating to case files) to provide notice to an applicant or holder of a license, permit, certification or registration before releasing confidential information regarding the applicant or holder of a license, permit, certification or registration.

The Board has not adopted this suggested change. The circumstances under which confidential information would be released are listed in § 407a.3(b)(1)—(3) (relating to confidential information). The Board believes it would be inappropriate to provide notice if the release meets the criteria in subsection (b)(1) because a release would most likely be in the context of an active investigation. For the conditions in subsection (b)(2) and (3), the Board believes notice is unnecessary. In subsection (b)(2), the applicant or holder of a license, permit, certification or registration has already released the information to the public. In subsection (b)(3), the applicant or holder of a license, permit, certification or registration has already given consent for the release of the information.

Additional Amendments

In addition to the changes made in response to the comments received, the Board made a number of changes to improve the clarity of the regulations and to incorporate a number of revisions to 4 Pa.C.S. Part II which were in Act 135.

Amendments were made to the following definitions to improve their clarity or make them consistent with the definitions in Act 135: “affiliate,” “applicant,” “controlling interest,” “gaming employee,” “licensed facility,” “nongaming employee” and “vendor.”

The following definitions in Act 135 have been added: “compensation,” “complementary service,” “conduct of gaming,” “corporation,” “ex parte communication,” “holding company,” “independent contractor,” “intermediary,” “licensed entity representative,” “member,” “principal,” “publicly traded corporation,” “subsidiary” and “underwriter.”

Additionally, “BCCIC” has been added and defined as the Bureau of Corporate Compliance and Internal Controls and “BIE” has been added to the definition of “Bureau” as a short version of Bureau of Investigations and Enforcement.

The definition of “cheat” has been deleted from this section because it is defined in Chapter 511 (relating to persons required to be excluded) and is only used in that chapter. The term “key employee qualifier” has also been deleted; it was replaced with the term “principal.”

Sales representatives were included under the definition of “key employee” and definitions of “manufacturer designee,” “manufacturer designee license” and “manufacturer designee licensee” were added for this new entity created by Act 135.

Finally, definitions of “arrest,” “charges,” “offense,” “pending matter or contested on the record proceeding” and “staff,” which were added to the Board’s temporary regulations after this proposed rulemaking was adopted, have also been added.

A number of amendments have also been made in Chapter 403a as a result of the passage of Act 135. Section 403a.1 (relating to definitions) has been added and includes definitions of “financial interest” and “ownership interest” that were added by Act 135.

In § 403a.2 (relating to participation at meetings and voting), subsection (c) has been added to mirror 4 Pa.C.S. § 1201(h)(6) and the language in subsection (d) has been expanded slightly to track the language in 4 Pa.C.S. § 1201(f).

In § 403a.3 (relating to meetings), subsection (d) has been revised slightly to mirror some of the language in 4 Pa.C.S. § 1206(b).

Additionally, § 403a.8 (relating to licensed entity representative meetings) has been added. This section contains provisions regarding meetings with licensed entity representatives. This section is identical to the language that was added to the Board’s temporary regulations in November 2006.

A few revisions were also made in Chapter 405a. Section 405a.1(5) has been expanded to provide a list of potential audit areas and § 405a.1(7) adds language from 4 Pa.C.S. § 1517(a.1)(9) that allows the Bureau to be considered to be a criminal justice agency under 18 Pa.C.S. Chapter 91 (relating to criminal history record information).

Finally, minor edits were made to § 405a.4 (relating to conduct) to make it more consistent with 4 Pa.C.S. § 1517.2 (relating to conduct of public officials and employees).

Affected Parties

This final-form rulemaking imposes general requirements on the Board. It may also have indirect impacts on applicants for and holders of a license, permit, certification or registration from the Board and the general public.

Fiscal Impact

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

The Board will experience some costs for the preparation of verbatim transcripts of its public meetings

Political subdivisions. This final-form rulemaking will have no significant fiscal impact on political subdivisions of this 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 may 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 final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This final-form 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 Board will maintain formal records and how individuals can request access to these records.

Effective Date

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

Contact Person

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

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 the notice of proposed rulemaking, published at 36 Pa.B. 5690 (September 9, 2006), to IRRC and the Chairpersons of the House Tourism and Recreational Development Committee and the Senate Committee on Rules and Executive Nominations for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department 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 May 16, 2007, 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 May 17, 2007, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these chapters was given under sections 201 and 202 of the act of July

31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code, are amended by deleting §§ 401.1—401.5, 403.1—403.7, 405.1—405.7 and 407.1—407.3 and adding §§ 401a.1—401a.4, 403a.1—403a.7, 405a.1—405a.6 and 407a.1—407a.3 to read as set forth in Annex A.

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

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

THOMAS A. DECKER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 2566 (June 2, 2007).)

Fiscal Note: 125-45 (1) Gaming Fund; (2) Implementing Year 2006-07 is \$20,000; (3) 1st Succeeding Year 2007-08 is \$10,000; 2nd Succeeding Year 2008-09 is \$10,400; 3rd Succeeding Year 2009-10 is \$10,861; 4th Succeeding Year 2010-11 is \$11,249; 5th Succeeding Year 2011-12 is \$11,699; (4) 2005-06 Program—\$26,400,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) Board Budget; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. (Reserved)

§§ 401.1—401.5. (Reserved).

CHAPTER 401a. PRELIMINARY PROVISIONS

Sec.	
401a.1.	Purpose.
401a.2.	Construction.
401a.3.	Definitions.
401a.4.	Jurisdiction.

§ 401a.1. Purpose.

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

§ 401a.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) Subsection (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 401a.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, affiliate of or person affiliated with—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 on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under the act or this part. In cases in which the applicant is a person other than an individual, the Board will determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

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.

Arrest—Detaining, holding, or taking into custody by police or other law enforcement authorities to answer for an alleged commission of an offense.

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.

BCCIC—The Bureau of Corporate Compliance and Internal Controls of the Board.

BIE or Bureau—The Bureau of Investigations and Enforcement of the Board.

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.

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.

Charge—An indictment, complaint, information, summons or other notice of an alleged commission of an offense.

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.

Compensation—A thing of value, money or a financial benefit conferred on or received by a person in return for services rendered, or to be rendered, whether by that person or another.

Complimentary service—

- (i) Any lodging, service or item which is provided directly or indirectly to an individual at no cost or at a reduced cost which is not generally available to the public.
- (ii) The term includes a lodging provided to a person at a reduced price due to the anticipated or actual gaming activities of that person. Group rates, including convention and government rates, shall be deemed generally available to the public.

Conduct of gaming—The licensed placement and operation of games of chance under the act or this part and approved by the Board at a licensed facility.

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

Controlling interest—

(i) For a publicly traded domestic or foreign corporation, a controlling interest is an interest in a legal entity, applicant or licensee if a person's sole voting rights under state law or corporate articles or bylaws entitle the person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial holding of 5% or more of the securities of the publicly traded corporation, partnership, limited liability company or other form of publicly traded legal entity, unless this presumption of control or ability to elect is rebutted by clear and convincing evidence.

(ii) For a privately held domestic or foreign corporation, partnership, limited liability company or other form of privately held legal entity, a controlling interest is the holding of any securities in the legal entity, unless this 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 privately held 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.

*Corporation—*A publicly traded corporation.

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

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

Ex parte communication—

(i) Any off-the-record communications regarding a pending matter before the Board or which may reasonably be expected to come before the board in a contested on-the-record proceeding.

(ii) The term does not include off-the-record communications by and between members, staff and employees of the Board, the Department, the Pennsylvania State Police, the Attorney General or other law enforcement officials necessary for their official duties under this part.

*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, manufacturer or manufacturer designee 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 licensed manufacturer or manufacturer designee whose duties require the employee's presence on the gaming floor or in a restricted area of a licensed facility.

(iv) Other employees that the Board determines, after a review of the work being performed, require a permit for the protection of the integrity of gaming.

*Gross terminal revenue—*The total of cash or cash equivalent 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.

*Holding company—*A person, other than an individual, which, directly or indirectly, owns, has the power or right to control or to vote 20% or more of the outstanding voting securities of a corporation or other form of business organization. A holding company indirectly has, holds or owns any such power, right or security if it does so through an interest in a subsidiary or successive subsidiaries.

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

*Independent contractor—*A person who performs professional, scientific, technical, advisory or consulting services to the Board for a fee, honorarium or similar compensation pursuant to a contract.

*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.

Intermediary—A person, other than an individual, which is:

(i) A holding company with respect to a corporation or other form of business organization, which holds or applies for a license under the act or this part.

(ii) A subsidiary with respect to a holding company.

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

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

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 slot machine licensee, manufacturer licensee, supplier licensee or other person licensed by the Board under this part.

Licensed entity representative—A person acting on behalf of or representing the interest of an applicant, licensee, permittee or registrant, including an attorney, agent or lobbyist regarding any matter which may reasonably be expected to come before the Board.

Licensed facility—The physical land-based location 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—

(i) 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.

(ii) 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 pari-mutuel 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, rebuilds, 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 designee—A person who is designated by a licensed manufacturer pursuant to an agreement to supply or repair the licensed manufacturer's slot machines or associated equipment.

Manufacturer designee license—A license issued by the Board authorizing a manufacturer designee to supply or repair slot machines or associated equipment of a licensed manufacturer for use in this Commonwealth for gaming purposes.

Manufacturer designee licensee—A manufacturer designee that obtains a manufacturer designee license.

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.

Member—An individual appointed to and sworn in as a member of the Board in accordance with section 1201(b) of the act (relating to Pennsylvania Gaming Control Board established).

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 who is not included within the definition of “principal”, “key employee” or “gaming employee,” and:

(i) Whose job duties require the employee to be:

(A) On the gaming floor but do not require the employee to touch or have contact with slot machines or associated equipment other than exterior cleaning.

(B) In a restricted area and the employee:

(I) Is under the constant supervision of an employee of the slot machine licensee who is licensed or permitted and has appropriate access clearance to be in the restricted area.

(II) Is not required to touch or have contact with slot machines or associated equipment other than exterior cleaning.

(ii) Who the Board determines, after a review of the work being performed, requires registration for the protection of the integrity of gaming.

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.

Offense—Felonies, crimes, high misdemeanors, misdemeanors, disorderly persons offenses, petty disorderly offenses, driving while intoxicated/impaired, motor vehicle offenses and violations of probation or any other court order.

Pending matter or contested on the record proceeding—

(i) A matter including the discretionary issuance, approval, renewal, conditioning, revocation, suspension or denial of any license, permit, certification or registration or any petitions or motions that would require Board consideration.

(ii) The term does not include a policy or administrative matter.

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

Principal—Includes the following:

- (i) An officer.
- (ii) Director.
- (iii) Person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee.
- (iv) Person who has a controlling interest in an applicant or licensee, or has the ability to elect a majority of the Board of directors of a licensee or to otherwise control a licensee.

(v) Lender or other licensed financial institution of an applicant or licensee, other than a bank or lending institution which makes a loan or holds a mortgage or lien acquired in the ordinary course of business.

(vi) Underwriter of an applicant or licensee.

(vii) Other persons or employees of an applicant, slot machine licensee, manufacturer licensee or supplier licensee deemed to be a principal by the Board.

Publicly traded corporation—A person other than an individual which:

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

(ii) Is a registered management company under the Investment Company Act of 1940.

(iii) Is subject to the reporting obligations imposed by section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o(d)) 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).

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.

SLOTS Link—An electronic application system developed by the Board.

Staff—An employee or an independent expert, including but not limited to, attorneys, accountants, investment bankers, architects, engineers, scientific and technical consultants and licensed financial brokers retained by the Board.

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.

Subsidiary—A person other than an individual. The term includes:

(i) A corporation, any significant part of whose outstanding equity securities are owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

(ii) A significant interest in a person, other than an individual, which is owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

(iii) A person deemed to be a subsidiary 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.

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

Vendor—

(i) 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, manufacturer designee, supplier, management company or junket enterprise.

(ii) The term includes:

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

(B) Refuse handlers.

(C) Vending machine providers and service personnel.

(D) Linen and uniform suppliers.

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

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

(G) Providers of transportation services.

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

(I) Lessors of real property or goods.

(J) 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.

§ 401a.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. (Reserved)

§§ 403.1—403.7. (Reserved).

CHAPTER 403a. BOARD OPERATIONS AND ORGANIZATION

Sec.	
403a.1.	Definitions.
403a.2.	Participation at meetings and voting.
403a.3.	Meetings.
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403a.7.	Temporary emergency orders.
403a.8	Licensed entity representative meetings.

§ 403a.1. Definitions.

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

Financial interest—

(i) An ownership, property, leasehold or other beneficial interest in an entity.

(ii) The term does not include an interest which is held or deemed to be held in any of the following:

(A) Securities that are held in a pension plan, profit-sharing plan, individual retirement account, tax sheltered annuity, a plan established pursuant to section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457), or any successor provision, deferred compensation plan whether qualified or not qualified under the Internal Revenue Code of 1986, or any successor provision, or other retirement plan that:

(I) Is not self-directed by the individual.

(II) Is advised by an independent investment adviser who has sole authority to make investment decisions with respect to contributions made by the individual to these plans.

(B) A tuition account plan organized and operated under section 529 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 529) that is not self-directed by the individual.

(C) A mutual fund where the interest owned by the mutual fund in a licensed entity does not constitute a controlling interest as defined in this part.

*Ownership interest—*Owning or holding or being deemed to hold, debt or equity securities or other ownership interest or profit interest.

§ 403a.2. 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) *Participation.* A member may not participate in a hearing, proceeding or other matter in which the member, or the immediate family thereof, has a financial interest in the subject matter of the hearing or proceeding or

other interest that could be substantially affected by the outcome of the hearing or proceeding, without first fully disclosing the nature of the interest to the Board and other persons participating in the hearing or proceeding. For purposes of the subsection, the term "immediate family" means spouse, parent, brother, sister or child.

(d) *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 proceeding in which his objectivity, impartiality, integrity or independence of judgment 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.

(e) *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.

§ 403a.3. 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 and will be the property of the Board. The verbatim transcript will be available for inspection at the Board's office during normal business hours.

§ 403a.4. Board office hours.

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

§ 403a.5. Public communication.

Requests for information regarding the Board may be directed to:

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

§ 403a.6. 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 promulgation 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.

§ 403a.7. 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 offense that would make the person ineligible or unsuitable to hold a license, permit, certification or registration.

- (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 any provision 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 will 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 or a designee 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 under 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 within 72 hours. Service of the decision will be made in the manner prescribed by § 491.3. 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. This order may be appealed under § 494.11 (relating to appeals).

(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.

§ 403a.8. Licensed entity representative meetings.

(a) If a Board member conducts a meeting with a licensed entity representative under section 1201.1(c)(7) of the act (relating to code of conduct), the Board member will record the following in the log:

(1) The names of individuals with whom the Board member met.

(2) The date and time of the meeting.

(b) The Board member will include a memorandum of the content of the discussion in the log.

(c) The log will be available for public inspection.

CHAPTER 405. (Reserved)

§§ 405.1—405.7. (Reserved).

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

Sec.	
405a.1.	General duties and powers.
405a.2.	Information.
405a.3.	Office of Enforcement Counsel.
405a.4.	Conduct.
405a.5.	Investigatory subpoena.
405a.6.	Enforcement action.

§ 405a.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 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, but is not limited to, reviews, examinations and inspections of:

(i) Accounting, administrative and financial records and procedures utilized by the licensed entity.

(ii) Internal control procedures and management control procedures.

- (iii) Security and surveillance departments.
- (iv) Corrective action taken by the licensee to resolve reported deficiencies.
- (v) Reports issued by an independent certified public accountant or independently registered public accounting firm pertaining to the adequacy of the licensee's system of internal controls over financial reporting.
- (vi) The licensee's responses, if any, to the reports noted in paragraph (v).
- (vii) Other matters required by the Board or the Bureau.
- (6) The referral of possible criminal violations under the act to the Pennsylvania State Police.
- (7) Be a criminal justice agency under 18 Pa.C.S. Chapter 91 (relating to criminal history record information).

§ 405a.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 may 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.

§ 405a.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 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.

§ 405a.4. Conduct.

- (a) An attorney representing the Bureau or 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, the Chief Counsel or an attorney assigned to the case from the Office of Chief Counsel or a Board member.
- (b) A presiding officer, the Chief Counsel or an attorney assigned to the case from the Office of Chief Counsel or a Board member may not discuss or exercise a supervisory responsibility over any employee with respect to an enforcement hearing with which the employee is involved.
- (c) If it becomes necessary for the Chief Counsel or 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 Chief Counsel or the attorney from the Office of Chief Counsel or the Board member involved shall be prohibited from participating in the adjudication of that matter.

§ 405a.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 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 Commonwealth Court or any court of record of this 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.

§ 405a.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 initiate a complaint in accordance with § 493.2 (relating to complaints), including a proposed order for an enforcement action and serve the complaint in accordance with § 491.3 (relating to service by the Board).

(b) The complaint for an enforcement action will include a statement of the facts, the statute, regulation or statement of conditions that the person is being charged with violating and the remedy sought. 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 complaint for an enforcement action, the person may file a notice of defense in accordance with § 493.2(d) and serve a copy of the request on the Office of Enforcement Counsel. Failure to file a notice of defense for an enforcement action complaint 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 Office of Enforcement Counsel will present the proposed enforcement order to the Board. The Board may, by resolution, adopt the proposed enforcement order.

(e) The Clerk will send a copy of the Board's final order to the person by certified mail.

CHAPTER 407. (Reserved)

§§ 407.1—407.3. (Reserved).

CHAPTER 407a. PUBLIC ACCESS TO BOARD FILES

Sec.

- 407a.1. Case files.
- 407a.2. Minutes of public meeting and annual report.
- 407a.3. Confidential information.

§ 407a.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.

§ 407a.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*.

§ 407a.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 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(d)).

(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 pursu-

ant 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, certification or registration, 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.

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