

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Pennsylvania Gaming Control Board

(2) Agency Number:

Identification Number: 125-102

IRRC Number:

2757

(3) Short Title:

Key Employees and Complimentary Services or Items

(4) PA Code Cite:

58 Pa. Code §§ 401a.3, 439a.8 and 465a.7

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Richard Sandusky
Director of Regulatory Review
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17101-8323
Phone: 717-214-8111 / Fax: 717-703-2988
Email: rsandusky@state.pa.us

Secondary Contact: None.

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

See primary contact.

(All Comments will appear on IRRC'S website)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
 - ☐ Certification by the Governor
 - ☐ Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This rulemaking amends the definitions of “complimentary service” and “key employee” and makes revisions to § 465a.7 (relating to complimentary services or items). It also corrects the misspelling of “complimentary” in § 439a.8.

(9) Include a schedule for review of the regulation including:

- | | |
|---|------------------------------|
| A. The date by which the agency must receive public comments: | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | 4 th Quarter 2009 |
| D. The expected effective date of the final-form regulation: | 30 days after publication |
| E. The date by which compliance with the final-form regulation will be required: | 30 days after publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | 30 days after publication |

(10) Provide the schedule for continual review of the regulation.

No formal review schedule has been established. Instead, the Board will be constantly reviewing its regulations and proposing amendments as the need arises.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

§ 1202(b)(30) of the Pennsylvania Race Horse Development and Gaming Act (Act) (4 Pa.C.S. § 1202(b)(30)) provides the Board with general authority to promulgate regulations the Board deems necessary to carry out the policy and purposes of the Act.

§§ 1103, 1207(3) and (5) and 1322 (4 Pa.C.S. §§ 1103, 1207(3) and (5) and 1322) provide additional authority for these amendments.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

There are no other applicable federal or state statutes, regulations or court decisions that mandate adoption of the changes contained in this rulemaking.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

As the Board has gained experience, it has determined that certain other employees, i.e. shift managers and employees authorized to issue significant amounts of credits for free slot play or player reward points (which often times can be redeemed for free slots play), should be required to undergo a more rigorous background investigation to insure the integrity of gaming operations.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

There are no studies or research upon which this regulation is based.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Board anticipates that between 7 to 10 additional employees at each licensed facility will have to be licensed as key employees instead of being permitted as gaming employees.

This will require these employees to fill out a longer application form; pay a higher license application fee (\$2500 as opposed to \$350); and pay any investigative costs that exceed the \$2500.

Additionally, the 9 operating slot machine licensees will have to have their internal controls related to the issuance of complimentary reviewed and approved by the Board.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The Board anticipates that between 7 to 10 additional employees at each licensed facility will have to be licensed as key employees instead of being permitted as gaming employees.

Additionally, slot machine licensees will have to have their internal controls related to the issuance of complimentary reviewed and approved by the Board. There are 9 slot machine licensees who are currently operating.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

It is anticipated that the increased cost of licensing employees, who previously held gaming permits, as key employees will cost between \$180,000 to \$255,500 in the first year and increase to between \$200,000 and \$300,000 in 2013-2014. Annual estimates are in Question #20

These costs are based on the following assumptions:

- Net increase of key employee licensees per facility – 7 to 10
- Average initial application costs - \$4000
- Average renewal application cost - \$2500
- Savings from Reduction in Permit Application Fees - \$350
- 7 facilities operating in 2008 - 2009
- 9 facilities operating in 2009 – 2010
- 11 facilities operating in 2010 - 2011
- 14 facilities operating in 2011 – 2012 and beyond

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will have no direct fiscal impact on local governments in this Commonwealth.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking is not expected to generate any significant savings for or impose any significant new costs on the Board or other state agencies.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	\$178,850 - \$255,500	\$156,450 - \$223,500	\$186,550 - \$266,500	\$242,200 - \$346,000	\$210,700 - \$301,000	\$210,700 \$301,000
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	\$178,850 - \$255,500	\$156,450 - \$223,500	\$186,550 - \$266,500	\$242,200 - \$346,000	\$210,700 - \$301,000	\$210,700 \$301,000
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Board Budget	\$13,200,000	\$26,400,000	\$29,984,000	\$33,300,000

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Because of the sensitive nature of the job responsibilities of the individuals who are now or are going to be required to be licensed as key employees, the Board believes that the more detailed background investigations will better protect the integrity of gaming and outweigh the additional cost of the investigations.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

No direct input was solicited from any advisory groups. This proposed rulemaking is based on the review of various job descriptions contained in the slot machine licensees' internal controls.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Board considered continuing to require the shift managers to be permitted as gaming employees. However, based on the scope of their job responsibilities, the Board decided that licensure as key employees was more appropriate.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no corresponding federal standards for any of the provisions in this rulemaking.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This rulemaking will have no impact on Pennsylvania's ability to compete with other states.

The individuals proposed to be licensed as key employees are licensed at a similar level in most other gaming jurisdictions.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will amend §§ 401a.3, 439a.8 and 465a.7 in 58 Pa. Code.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The employees who will now be required to be licensed as key employees will have to complete a more detailed application form. These forms, the Multi-Jurisdictional Personal History Disclosure Form, the Principal/Key Employee Form – Pennsylvania Supplement to the Multi-Jurisdictional Personal History Disclosure Form and applicable release forms are on the Board's website (pgcb.state.pa.us).

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no special provisions included in this rulemaking for any particular group. However, the effective date of the final-form rulemaking will be deferred for 30 days after final publication to allow the affected employees time to file an application for a key employee license and receive a temporary key employee credential if needed.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION
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Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct
copy of a document issued, prescribed or promulgated
by:

**Pennsylvania Gaming
Control Board**

FISCAL NOTE NO. : 125-102

DATE OF ADOPTION: 8-28-09

By: 
Gregory B. Felt, CHAIRMAN

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

By: 
R. Douglas Sherman, Acting Chief Counsel

8-28-09
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

**FINAL-FORM RULEMAKING
COMMONWEALTH OF PENNSYLVANIA**

**58 PA. CODE, SUBPARTS A, B & E
CHAPTERS 401a, 439a & 465a**

RULES AND REGULATIONS

PENNSYLVANIA GAMING CONTROL BOARD

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

Key Employees and Complimentary Services or Items

The Pennsylvania Gaming Control Board (Board), under 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. §§ 1103, 1207(3) and (5) and 1322 (relating to definitions; regulatory authority of board; and slot machine accounting controls and audits), amends Chapters 401a, 439a and 465a to read as set forth in Annex A.

Purpose of the Final-form Rulemaking

The final-form rulemaking amends the definitions of "complimentary service" and "key employee" and makes revisions to § 465a.7 (relating to complimentary services or items).

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

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

Also in § 403a.1, the definition of "key employee" has been amended to improve its clarity and to add a number of new positions to the positions required to obtain a key employee license. More specifically, based on the experience gained from reviewing the operations of the nine operating licensed facilities, the Board has expanded the list of department heads in subparagraph (ii) to include additional titles of individuals whose job descriptions give them the authority to make

discretionary decisions regarding slot machine operations. While the Board had initially required the Director of Food and Beverage and the Director of Facility Operations to also be licensed as key employees, the Board now believes that these positions do not have a significant role in slot operations and do not require licensure as a key employee. Accordingly, those titles are not included in the list in subparagraph (ii).

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

Finally, a new subparagraph (vi) has been added which will require individuals, who are authorized to issue points to patrons who are members of a slot machine licensee's player rewards program or credits for free slots play which exceeds \$100 to any individual patron within any consecutive 5-day period, to be licensed as key employees. This additional oversight is necessary because the issuance of significant amounts of player reward points or credits for free slots play directly affects gross terminal revenue.

In § 439a.8 (relating to junket arrival reports) subsection (c)(2) has been amended to replace "complementary" with "complimentary."

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

Additionally, the general language in subsection (a) concerning the specific employees to whom these internal controls will apply has been deleted and replaced with a new, more detailed provision in subsection (b)(3) that requires the slot machine licensee to develop a matrix which shows what

employees (by job title) are authorized to issue complementaries and exactly what complementaries or dollar value of complimentaries they may issue. Similarly, the general audit requirement in subsection (b)(4) has been revised to specifically require the slot machine licensee's internal audit department to audit the issuance of complimentary services and items. These changes will make it clear which employees are authorized to issue complementaries and strengthen the effectiveness of the oversight of the issuance of complementaries. Finally, subsection (e) has been amended to require the report required under subsection (e) to be submitted to the Bureau of Licensing rather than the Bureau of Investigations and Enforcement.

Comment and Response Summary

Notice of proposed rulemaking was published at 39 Pa.B. 2113 (April 25, 2009).

During the public comment period, the Board received a letter from International Gaming Technology thanking the Board for the opportunity to comment, but not offering any comments on the substance of the rulemaking. Downs Racing L.P. (Downs), Greenwood Gaming and Entertainment, Inc. (Greenwood) and Mountainview Thoroughbred Racing Association (Mountainview) filed comments on the proposed rulemaking. By letter dated June 25, 2009, the Independent Regulatory Review Commission (IRRC) also submitted comments on the proposed rulemaking.

On § 401a.3, IRRC asked the Board to explain: the problem the amendment addresses; the difference between the application process for a gaming employee permit and a key employee license, including the cost difference; and how the benefits of this amendment will offset the costs.

An applicant for a gaming employee permit must complete a 28-page application form or complete the application electronically and submit a \$350 application fee. If granted a permit, the gaming employee must also pay an annual \$350 fee when they submit their annual renewal application. Key employee applicants must complete 2 application forms totaling 91 pages, and pay a \$2500 application fee and any additional investigative costs, which on average, are around \$1500. They must also pay a \$2500 fee when they submit their annual renewal applications, but there are usually no additional investigative costs. The higher fees and longer application forms for key employees reflect the additional scrutiny these individuals are subjected

to. For each gaming employee who is required to become a key employee, the first year cost increase will be approximately \$4000 and the subsequent year cost increase will be about \$2150.

The definition of "key employee" in the act specifically includes any employee who supervises the operations of the departments listed in the definition and other employees which the Board determines based on detailed analysis of the job descriptions provided in the slot machine licensees' internal controls. The list of positions in subparagraph (ii) of the revised definition represent the department or division heads that the Board had previously determined, based on its review of the corresponding job descriptions, need to be licensed as key employees to protect the integrity of slot machine operations. Individuals employed at the licensed facilities in these job titles are, and have been for some time, licensed as key employees. Additionally, the positions listed in subparagraph (iii) of the revised definition have been required to be licensed as key employees since June of 2007. This decision was based on the fact that licensed facilities operate on a 24/7 basis and that these employees are authorized to act on behalf of the department or division head and have the authority to make discretionary decisions relating to slot machine operations. Currently, individuals who are in these positions are licensed as key employees. Hence the revisions to subparagraphs (ii) and (iii) are needed to bring the language of the definition into conformity with the Board's existing practice.

The addition of subparagraph (vi), which requires individuals who can issue or approve substantial amounts of points to patrons who are members of a slot machine licensee's player rewards program or credit for free slots play, is a new requirement that has been prompted by two concerns. First, free slots play, often times referred to as promotional play, can be deducted from the total amount of play, thereby directly reducing gross terminal revenue which is the basis for the taxes due to the Commonwealth. Second, there have been several instances where the inappropriate issuance of credits for free slots play has occurred. These issuances have resulted in termination of the employees and in some cases arrest of the individuals involved. To provide greater assurance over the integrity of gaming, the Board believes greater scrutiny of the individuals authorized to issue or approve significant amounts of points to patrons who are members of a slot machine licensee's player rewards program or credits for free slots play is warranted. However, to give slot machine licensees some

additional operational flexibility, the threshold for requiring licensure as a key employee has been increased from \$50 to \$100.

The Board recognizes the cost concerns raised by IRRC in its comments, but the Board believes that the additional costs entailed with licensure as a key employee are justified to provide for the increased integrity of gaming and are consistent with the statutory requirement that individuals who have the authority to make discretionary decisions regarding slot machine operations be licensed as key employees.

In its comments on the revisions to § 401a.3, Down's objected to requiring most of the individuals listed in subparagraphs (ii), (iii) and (vi) to be licensed as key employees. Instead, Downs advocates that being licensed as a key employee be limited to just the department heads that are listed in the act's definition of key employee. Furthermore, Down's argues that requiring licensure of these individuals as a key employee is not necessary because there have been no problems with individuals in these positions.

The Board disagrees with the position advocated by Downs. Even as Downs' acknowledges in their comments, the act does not limit the definition of key employee to just the department heads listed in that definition. The definition also includes other individuals who are authorized to make discretionary decisions that relate to slot machine operations. Over the past two years since the initial definition in the Board's regulations was adopted, the Bureau of Licensing has been reviewing the job descriptions contained in the slot machine licensees' internal controls to identify the individuals who have this discretionary authority and has required that these individual be licensed as key employees. The lack of problems related to the positions listed in subparagraphs (ii) and (iii) can be attributed, at least in part, to the fact that the individuals in these positions have undergone the increased scrutiny required to obtain their key employee licenses. For the positions listed in subparagraph (vi), because problems have occurred with personnel who were authorized to issue or approve credits for free slots play, the Board believes that requiring licensure as a key employee will diminish the potential for these abuses to reoccur in the future.

In its comments, Greenwood also objected to requiring personnel who are authorized to issue or approve significant amounts of points to patrons who are members of a slot machine licensee's player rewards program or credits for free slots play

to be licensed as key employees. As noted above, because of the problems that have occurred, the Board believes licensure as a key employee is appropriate. However, as previously discussed, the Board has amended this rulemaking to increase the monetary threshold that will trigger the requirement for licensure as a key employee from \$50 to \$100.

In the comments filed by Mountainview, they did not oppose the changes to the definition of key employee, but they did request clarification on 3 issues. More specifically, Mountainview asked: do complimentaries include service recovery measures provided to a patron in response to a complaint regarding a negative experience at the licensed facility; does subparagraph (ii)(J) refer to the Casino Controller and not the Financial Controller; and does subparagraph (vi) include employees who may activate free slots play credits, but who can not approve or issue credits for free slots play.

Regarding what constitutes a complementary, the regulation provides that any lodging, service or item which is provided to an individual at no cost or a reduced cost which is not generally available to the public is considered to be a complimentary service. The exception to this general rule is that points for player rewards programs or credits for free slots play are not complementaries. Therefore if the slot machine licensee offers free tickets to their buffet, this should be treated as a complimentary service. If the slot machine licensee gives the patron points on their player rewards card or credits for free slots play, it is not a complimentary service.

On Mountainview's second question related to what controller is required to be licensed as a key employee, the requirement for licensure is not driven by a specific job title. Instead, it is the job description that drives the determination as to whether or not an individual needs to be licensed. The Bureau of Licensing works with each applicant to determine who needs to be licensed as a key employee as part of the application process.

As to Mountainview's final concern regarding employees activating credits for free slots play, these individual would not be required to be licensed as key employees as long as they are only activating the credits and they do not have the authority to approve or issue credits for free slots play above the \$100 threshold.

On the revisions to § 465a.7, IRRC asked the Board to provide further justification for the need to approve internal controls for complimentaries and to explain what the cost impact will be on the slot machine licensees. Additionally, IRRC asked for clarification as to what the process would be for the submission and review of the slot machine licensees' internal controls for complimentaries.

To keep the review process of internal controls for complimentaries as simple as possible, slot machine licensees will be required to submit these as amendments to their existing internal controls. This is the process that slot machine licensees are most familiar with and has the shortest timeframes for review.

As to the need for this amendment, when the Board first adopted this section of its regulations, the Board did not anticipate that there would be a significant amount of complimentaries offered. For that reason, the initially adopted regulations just required slot machine licensees to have internal controls for complementaries but did not require that these internal controls be approved by the Board. However, the issuance of complimentaries has been more significant than the Board initially anticipated. Most facilities are using complimentaries for a variety of reasons such as to bring patrons in and provide something positive for a patron as part of a dispute resolution. Furthermore, as more licensed facilities open, we anticipate that issuance of complementaries will increase to deal with the increased competition between licensed facilities. Additionally, section 1322(b) of the act (relating to slot machine accounting and internal controls) requires internal controls to safeguard the assets and revenues of the slot machine licensees. While, as some commentators have noted, complementaries do not directly impact gross terminal revenue, they do impact the revenues and financial condition of the slot machine licensee. Accordingly, review and approval of these internal controls is needed.

Concerning the cost of obtaining Board approval of a slot machine licensee's internal controls for complimentaries, the Board does not agree with some of the claims made by commentators that this requirement is overly burdensome and will be costly to comply with. If a slot machine licensee has developed effective internal controls for complimentaries, as is currently required by § 465a.7, all they will have to do is submit them as an amendment to their existing internal controls and they should receive approval within 30 days. Only if they

have not complied with the existing requirements in § 465a.7, should a slot machine licensee be expected to incur any significant costs as a result of requiring Board approval.

Downs and Mountainview both objected to requiring Board approval of their internal controls for complimentary services. They argue that there is no need for the Board to review and approve these procedures and that the approval process will hinder their operating flexibility and result in the imposition of unnecessary regulatory costs.

The Board does not agree with these arguments. As noted above, the Board has a duty under section 1322(b) of the act to insure that there are safeguards in place to protect a slot machine licensee's revenues. Given the fact that slot machine licensees should have already developed these internal controls, that the use of complimentaries has and is expected to continue to increase, and that the process for submitting amendments is well known to the slot machine licensees, the Board believes the concerns voiced by the commentators are without merit.

In addition to its general objection to the revisions to § 465a.7, Mountainview had two specific concerns. First, Mountainview believes that subsection (b)(3) should allow the matrix to include either specific items or the monetary value of the items. In subsection (b)(4), Mountainview opposes the inclusion of any internal auditing procedures in the internal controls because it may limit the flexibility of the internal auditors to change their audit procedures.

The Board agrees with the suggestion offered by Mountainview concerning subsection (b)(3) and has revised that provision so that the authorization of complimentaries matrix can reflect actual complimentaries or a dollar threshold which would reflect the value of complimentaries a particular job title may issue.

The Board has not adopted Mountainview's recommendation that subsection (b)(4) be deleted. The intent of this provision is to have the slot machine licensees' describe generally how they will audit the issuance of complimentaries. Slot machine licensees do not need to include detailed descriptions of how these audits will be conducted. Therefore, slot machine licensees will have substantial flexibility over how the audits are conducted.

Affected Parties

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

Fiscal Impact

Commonwealth

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

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

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

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork requirements

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

Effective Date

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

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 15, 2009, the Board submitted a copy of this proposed rulemaking, published at 39 Pa.B. 2113 (April 25, 2009) and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), 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 Board has considered all comments received 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)), the final-form rulemaking was deemed approved by the Committees on **INSERT DATE**, 2009. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)) IRRC met on **INSERT DATE**, 2009, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

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

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 439a and 465a are amended by amending § 439a.8 to read as set forth at 39 Pa.B. 2113 and by amending §§ 401a.3 and 465a.7 as set forth in Annex A.

(b) The Chairman of the Board shall certify this order, 39 Pa.B. 2113 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect 30 days following publication in the *Pennsylvania Bulletin*.

Gregory C. Fajt
Chairman

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Complimentary service--

* * * * *

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

* * * * *

Key employee - An individual who is:

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

(ii) Employed in a [director or] department or division head capacity and who is empowered to make discretionary decisions that regulate slot machine operations in this

Commonwealth [, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who supervises the operations of departments or to whom these]. This includes the following department [directors] or [department] division heads [report.]:

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

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

- (A) Slot Operations.
- (B) Cage Operations.
- (C) Count Room Operations.
- (D) Surveillance.
- (E) Security.

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

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

(vi) Employed by a slot machine licensee and is authorized to issue or approve credits for free slots play exceeding \$50 \$100 to an individual patron during any consecutive 5-day period

or player reward points which have a value of more than \$50 \$100 to an individual patron during any consecutive 5-day period.

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

* * * * *

Subpart B. LICENSING, PERMITTING CERTIFICATION AND REGISTRATION

CHAPTER 439a. JUNKET ENTERPRISES

§ 439a.8. Junket arrival reports.

* * * * *

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

* * * * *

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

* * * * *

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS

§ 465a.7. Complimentary services or items.

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

(b) The internal controls must include the following:

(1) The procedures by which the slot machine licensee delegates to its employees the authority to approve the issuance of complimentary services or items.

(2) The procedures by which the slot machine licensee establishes or modifies any conditions or limits, to delegated authority, including limits based on relationships between the authorizer and recipient.

(3) A matrix of job titles authorized to issue complimentary services or items and what complimentary services and items OR THE MAXIMUM DOLLAR VALUE OF COMPLEMENTARY SERVICES OR ITEMS each job title is authorized to issue.

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

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

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

* * * * *

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

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

* * * * *

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

**COMMENTATORS WHO REQUESTED NOTICE
OF THE FINAL-FORM REGULATION**

FISCAL NOTE: 125-102

While § 5.1(a) of the Regulatory Review Act only requires the Board to provide a list of the commentators who have requested additional information and a copy of the final-form regulation, the PGCB sends a copy of the preamble, Regulatory Analysis Form and the final-form regulation to all commentators. These copies are sent by mail or emailed to the commentator if they request electronic delivery. For this rulemaking, copies of these materials have been sent to the following:

**Mark S. Stewart, Esquire
Downs Racing, LP
Eckert Seamans
213 Market Street, 8th Floor
Harrisburg, PA 17101**

**John deGrasse
Vice President, Legal & Business Affairs
Mountainview Thoroughbred Racing Association
720 Bow Creek Road
Grantville, PA 17028**

**Keith Larkin
Executive Director – Compliance
International Game Technology (IGT)
9295 Prototype Drive
Reno, NV 89521**

**Bryan P. Schroeder, Esquire
Assistant General Counsel
Philadelphia Park Casino
3331 Street Road, Suite 200
Bensalem, PA 19020**

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 125-102

DATE: 8-31-09

SUBJECT: Subpart A – Chapter 401a; Subpart B – Chapter 439a; Subpart E – Chapter 465a

AGENCY: Pennsylvania Gaming Control Board (PGCB)

TYPE OF REGULATION

- X Proposed Regulation
- Final-Form Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation

a. With Revisions

b. Without Revisions

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
1. <u>8-31-09</u>	<u></u> Senator Jane M. Earl	Senate Community, Economic & Recreational Development
2. <u>8/31/09</u>	<u></u> Senator Wayne D. Fontana	Senate Community, Economic & Recreational Development
3. <u>8/31/09</u>	<u></u> Representative Dante Santoni, Jr.	House Gaming Oversight
4. <u>8.31.09</u>	<u></u> Representative Curt Schroder	House Gaming Oversight
5. <u>8/31/09</u>	<u></u>	Independent Regulatory Review Commission
6. <u> </u>	<u> </u>	Legislative Reference Bureau

INDEPENDENT REGULATORY
REVIEW COMMISSION

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