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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 15, 2007

Anne LaCour Neeb, Executive Director  
Pennsylvania Gaming Control Board  
Strawberry Square  
Verizon Tower, 5th Floor  
Harrisburg, PA 17106-9060

Re: Regulation #125-64 (IRRC #2614)  
Pennsylvania Gaming Control Board  
Manufacturer Designees; Principal Licenses; Employees; Vendor Certification and  
Registration; Slot Machine Licenses

Dear Ms. Neeb:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director

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Enclosure

cc: Honorable Jane M. Earll, Chairman, Senate Community, Economic and Recreational  
Development Committee  
Honorable Gerald J. LaValle, Minority Chairman, Senate Community, Economic and  
Recreational Development Committee  
Honorable Harold James, Majority Chairman, House Gaming Oversight  
Honorable Paul I. Clymer, Minority Chairman, House Gaming Oversight

# Comments of the Independent Regulatory Review Commission

on

## Pennsylvania Gaming Control Board Regulation #125-64 (IRRC #2614)

### Manufacturer Designees; Principal Licenses; Employees; Vendor Certification and Registration; Slot Machine Licenses

August 15, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the June 16, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

#### Chapter 429a. Manufacturer Designees

##### 1. General. – Reasonableness; Clarity.

The term “manufacturer designee” is the subject of this Chapter, but it is not defined. This term should be defined in the final-form regulation.

Also, the regulation requires manufacturer designees to submit applications to the Board, but provides no guidance on how soon the Board will act on the application or what recourse the applicant has if the application is denied. We recommend that those details be included in the final-form regulation.

##### 2. Section 429a.6. Manufacturer designee as agent. – Statutory authority.

Under Subsection (b), a licensed manufacturer “shall be jointly and severally liable for any act or omission by the licensed manufacturer designee in violation of the act or this part, regardless of actual knowledge by the licensed manufacturer of the act or omission.” What is the Board’s statutory authority for this provision?

#### Chapter 433a. Principal Licenses

##### 3. Section 433a.1. Definitions. – Consistency with statute; Clarity.

###### *Applicant*

This definition differs from the definition found in Section 1103 of the Pennsylvania Race Horse Development and Gaming Act (Act) (4 Pa.C.S. § 1103). It also differs from the definition found in Section 401.4 of the Board’s regulations. A consistent definition should be used. A similar concern is found in Section 441a.1.

### *Holding company*

This definition references at least 20% of the power or right to control or vote outstanding voting securities of a corporation or other entity. The definition in the Act only references “any significant part.” What is the basis for the 20%?

### *Principal*

Since this term is used throughout this chapter, we recommend that it be defined.

#### **4. Section 433a.3. Individual ownership. – Need; Reasonableness.**

Subsection (g) states, “The Board may require any individual who has a financial interest in, or receives an economic benefit from, an applicant or licensee to be licensed as a principal.” Why is it necessary to require these individuals to be licensed as a principal? A similar question applies to Sections 433a.4(h) and 433a.6(d).

#### **5. Section 433a.7. Trusts. – Clarity.**

The term “similar business entity” is used in this section, but it is not defined. We recommend that it be defined in Section 433a.1 (relating to Definitions).

### **Chapter 435a. Employees**

#### **6. General. – Reasonableness; Clarity.**

Sections 435a.2 (relating to Key employee license), 435a.3 (relating to Occupation permit) and 435a.5 (relating to Nongaming employee registration) outline the requirements for obtaining licenses, permits and registrations. These sections and this chapter do not provide detail on how long the Board has to review the applications, how the applicant will be notified of the Board’s decision and how the applicant can appeal the Board’s decision. These details should be included in the final-form regulation.

#### **7. Section 435a.1. General provisions. – Statutory authority; Reasonableness; Clarity.**

Under Subsection (k), what is the Board’s statutory authority for requiring applicants for licenses or permits to demonstrate that they are current on any financial obligation owed to the Commonwealth or any subdivision thereof, including court-ordered child support payments? Additionally, if the Board has the statutory authority, the regulation should specify what documentation must be submitted to the Board to demonstrate compliance with this provision.

#### **8. Section 435a.6. Board credentials. – Reasonableness; Clarity.**

This section requires certain individuals to obtain Board credentials. The final-form regulation should include the process for obtaining Board credentials.

### **Chapter 437a. Vendor Certification and Registration**

#### **9. Section 437a.1. General vendor requirements. – Reasonableness; Clarity.**

Subsection (b) explains when a vendor will be required to apply for certification. Subsection (b)(4) states that vendor certification will be required “based on the Board’s analysis of the vendor’s services.” This criterion is vague. The final-form regulation should include the criteria the Board will use to determine if certification is needed.

**10. Section 437a.2. Vendor registration applications. – Statutory authority.**

Subsection (c) requires an applicant for a vendor registration to reimburse the costs incurred by the Board in conducting the review of the application *up to a maximum amount of \$2,000*. Section 1208(1)(iii) of the Act requires the Board to recoup *all* expenses relating to investigations. What is the Board's statutory authority for imposing the cap of \$2,000? Further, does an applicant for a vendor registration fall within the definition of an "applicant, licensee, permittee or registrant" as referenced in Section 1208(1)(iii) of the Act?

Additionally, the term "vender" in Subsection (a) should be amended to use the proper term "vendor."

**11. Section 437a.11. Slot machine applicants' and licensees' duty to investigate. – Need; Reasonableness; Clarity.**

Subsection (a) requires slot machine licensees and applicants to investigate the background and qualifications of potential vendors. It states that "Certification or registrations by the Board may not be relied upon as the sole criterion for entering into an agreement with a certified or registered vendor." We question the reasonableness of and need for this provision. If the Board finds a vendor to be suitable for registration or certification after its extensive investigation, that should be sufficient to allow a licensee or applicant to conduct business with the vendor. We recommend that this provision be deleted.

If the Board elects to retain this provision, we recommend that the final-form regulation specifically include the other criteria that an applicant or licensee must use when deciding to enter into an agreement with a certified or registered vendor.

**Chapter 441a. Slot Machine Licensing**

**12. Section 441a.1. Definitions. – Consistency with statute and existing regulations.**

Under the definition of "guest rooms under common ownership," do time share units equal common ownership? How is this provision consistent with the Section 1305 of the Act, which requires Category 3 licensed facilities to be in a "well-established resort hotel having no fewer than 275 guest rooms under common ownership?"

**13. Section 441a.7. Licensing hearings for slot machine licenses. – Clarity.**

Subsection (b) references prehearing conferences, but the regulation does not provide any detail on when or how those conferences are conducted. The final-form regulation should include, or provide a cross-reference to, this information.

Subsection (u) states that a final order and written decision will be served on the applicants for slot machine licenses. After the conclusion of the licensing hearings, within what time frame will the Board issue the final order?

**14. Section 441a.16. Slot machine license term and renewal. – Consistency with statute; Fiscal impact; Reasonableness; Clarity.**

Under this section, slot machine licenses will be valid for one year, and renewal applications must be submitted to the Board at least 60 days prior to the expiration of the license. Commentators note that this section does not provide details on the renewal requirements and are

concerned that the lack of specificity could result in an unreasonable, burdensome and expensive renewal process.

We agree that this section is vague and recommend that the final-form regulation include the application requirements for license renewal.

**15. Section 441a.20. Slot machine license agreements. – Reasonableness; Clarity.**

Subsection (a) requires agreements or noncontractual relationships between a person and a slot machine licensee to receive Board approval. The process that the Board will use to approve these agreements and relationships is not included in the regulations. This information, including timelines for review, should be included in the final-form regulation.

**16. Section 441a.21. Management contracts. – Statutory authority.**

Under section, a slot machine licensee “shall be jointly and severally liable for any act or omission by the management company in violation of the act or this part, regardless of actual knowledge by the slot machine licensee of the act or omission.” What is the Board’s statutory authority for this provision?

**17. Section 441a.23. Category 3 slot machine licensees. – Statutory authority; Clarity.**

Under Subsection (a), amenities offered by a resort hotel must be on the premises of that hotel. Would a satellite location or property owned by the hotel qualify as “premises”? This should be clarified in the final-form regulation.

Subsection (d) allows a patron of the amenities at a Category 3 slot machine licensee’s facility unlimited access to the gaming floor for one 24-hour period within 72 hours of use of the amenity. What is the Board’s statutory authority for this provision?

**18. Miscellaneous Clarity.**

Under Section 437a.1.(c)(4), the term “associates” should be changed to “associations.”

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## Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION  
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**To:** Cheryl Posavec  
Richard Sandusky (214-8111)  
**Agency:** Pa Gaming Control Board  
**Phone:** 346-8319  
**Fax:** 703-2988  
**Date:** August 15, 2007  
**Pages:** 6

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-64 (IRRC #2614). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Date:

8/15/07