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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 25, 2009

Frank Donaghue, Acting Executive Director
Pennsylvania Gaming Control Board
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Regulation #125-96 (IRRC #2739)
Pennsylvania Gaming Control Board
Revised Procedures

Dear Mr. Donaghue:

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. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Jane M. Earll, Majority Chairwoman, Senate Community, Economic and Recreational Development Committee
Honorable Wayne D. Fontana, Minority Chairman, Senate Community, Economic and Recreational Development Committee
Honorable Dante Santoni, Jr., Majority Chairman, House Gaming Oversight
Honorable Curt Schroder, Minority Chairman, House Gaming Oversight

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-96 (IRRC #2739)

Revised Procedures

March 25, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the January 24, 2009 *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.

1. General - Statutory Authority.

Paragraph 11 of the Regulatory Analysis Form requires promulgating agencies to state the statutory authority for the regulation. In this case, the Board has cited seven sections of the Pennsylvania Race Horse Development and Gaming Act (Act), only one of which specifically addresses the regulatory authority of the Board. In the final-form regulation, the Board must explicitly explain how these provisions relate to its exercise of rulemaking authority.

2. Section 403a.6. - Delegation of powers. - Need.

The proposed rulemaking adds “orders” to subsections (b), (c) and (d) as one of the Board’s methods to delegate its authority. The Preamble indicates that the Board has used orders “in a few cases.” However, the regulation does not explain why this addition is necessary, when the regulation already includes “regulations” and “resolutions” as existing forms of delegation. The final-form regulation should clarify what circumstances would prompt this use.

3. Section 465a.2. - Internal control systems and audit protocols. - Statutory authority; Need; Implementation procedures; Clarity.

This section explains various procedures for internal control systems and audit protocols. We have three concerns related to proposed revisions to subsection (f).

First, does the Act provide the Executive Director with the authority to approve and disapprove changes to internal control systems and audit protocols? The final-form regulation should explain the Board's statutory authority for requiring such duties be imposed on this position. The same concern applies to the proposed changes to subsection (i), which would grant the Executive Director the authority to approve tolled changes or amendments to systems and protocols.

Second, the proposed subsection deletes the requirement that requests for changes or amendments also be submitted to the Department of Revenue (Revenue). Why is the Board removing Revenue from this process?

Finally, what is the difference between an Amendment and Waiver Request Form, as the existing regulation states, versus the change in the proposed regulation to what is now called the Internal Controls Amendment Request Form? The Preamble to the final-form regulation should explain this revision.

4. Section 465a.6. - Retention, storage and destruction of books, records and documents. - Economic impact; Implementation procedures; Clarity.

Subsections (b)(2) and (d)(1)-(2) have been revised to require that the location of documents must be secured and that the location must contain a fire suppression system. A commentator is concerned about the economic impact of these provisions since the commentator has both a temporary facility and a permanent facility currently under construction. Would the proposed regulation require installation of such systems in both facilities? Has the Board considered the economic impact such installations will have on compliance costs? Would the Board permit the waiver of such requirements in any circumstances?

5. Section 465a.12. - Access badges. - Economic impact; Reasonableness; Need; Implementation procedures; Clarity.

This section discusses the use of access badges by the employees of a licensed facility. We raise three issues.

First, two public commentators expressed concern about Subsections (b), (c), and (d). These subsections grant certain duties and responsibilities specifically to the licensee's human resources and security departments. These commentators suggest that the licensee should be permitted to decide what department within their organizations should assume these responsibilities. What is the Board's intent behind making these particular departments solely responsible? Also, why does subsection (b) grant authority to the human resources **department**, while subsections (c) and (d) grant authority to the **director** of security or a **designee**? (Emphasis added.) Why is authority granted to a department in one case and an individual person in another? To

maximize flexibility to licensees, the final-form regulation could be revised to grant the appropriate authority to the director or other individual designated in the slot machine licensee's internal controls.

Second, in subsection (c), what would be the "functional equivalent" for an "electronic database system"?

Finally, subsection (e) requires licensees to have "read-only access" on their electronic database systems. A commentator is concerned about costs, since this requirement will necessitate installing such a tool in their temporary facility's system. Has the Board considered these types of compliance costs?

6. Section 465a.28. - Merchandise jackpots. - Statutory authority.

In subsection (a)(2), are there provisions in the Act that provide the Executive Director with the authority to approve the specific offer of the merchandise jackpot? The final-form regulation should explain the Board's statutory authority for requiring such duties be imposed on this position.

7. Section 465a.30 - Waiver of requirements. - Fiscal impact; Reasonableness; Need.

The proposed regulation revises this section and Section 465a.2 to eliminate the Amendment and Waiver Request Form. Under the proposed regulation, all regulatory waivers require a formal petition be filed with the Board. According to a commentator, this formal petition would: "[c]ause an unjustified negative fiscal impact by increasing (i) the licensees' costs associated with filing internal control revisions and (ii) the Board's internal costs associated with administering and reviewing various regulatory waiver petitions." What is the Board's reason for eliminating the Amendment and Waiver Request Form, and in so doing, has the Board considered these types of concerns? Has the Board considered providing a list of examples where the Board would agree to a waiver?

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2009 MAR 25 AM 9:02 **Facsimile Cover Sheet**

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REVIEW COMMISSION



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To: Cheryl Posavec
Richard M. Sandusky (214-8111)
Agency: Pa Gaming Control Board
Phone: 346-8319
Fax: 703-2988
346-8350 (Front Desk)
Date: March 25, 2009
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-96 (IRRC #2739). 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: Richard Sandusky **Date:** 3/25/09