

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Gaming Control Board

(2) I.D. Number (Governor's Office Use)

125 - 57

IRRC Number: 2601

(3) Short Title

Subpart J: Exclusion of Persons

(4) PA Code Cite

58 PA. Code
Chapters 511a and 513a

(5) Agency Contacts & Telephone Numbers

Primary Contact: Richard Sandusky
717-214-8111 / rsandusky@state.pa.us

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking
☒ Final Order Adopting Regulation
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Pursuant to the authority granted to the Board under § 1203 of The Pennsylvania Horse Race Development and Gaming Act (Act)(4 Pa.C.S. § 1203), the Board initially adopted Chapters 511 and 513 as temporary regulations on May 19, 2006 (36 Pa.B. 2905) and June 15, 2006 (36 Pa.B. 3441) respectively. Under the Act, these temporary regulations will expire on July 5, 2007.

By this rulemaking, the Board is proposing to replace those temporary regulations with permanent regulations.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

§ 1202(b)(30) of the 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.
§§ 1514 and 1515 (4 Pa.C.S. §§ 1514 and 1515) provide more specific authority for Chapter 511a.
§§ 1207(8) and 1518(a)(13)(4 Pa.C.S. §§ 1207(8) and 1518(a)(13)) provides more specific authority for Chapter 513a.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

§ 1203(a) of The Pennsylvania Horse Race Development and Gaming Act (Act)(4 Pa.C.S. § 1203(a)) provides that temporary regulations adopted by the Board shall expire no later than three years following the effective date of the Act. Accordingly, promulgation of the proposed regulations before that date is necessary.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Promulgation of these regulations is necessary to replace the Board's temporary regulations that will expire and are needed to carry out the policy and purposes of the Act and to enhance the credibility and the integrity of gaming in the Commonwealth.

More specifically, it will provide the basis for barring or removing individuals from licensed facilities who are underage or whose presence would be inimical to the interest of the Commonwealth and gaming.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Failure to replace the existing temporary regulations could create disruptions in gaming in the Commonwealth which could reduce future gaming revenues and reduce employment opportunities in the gaming industry.

Additionally, the lack of permanent regulations would eliminate the procedures that have been established to put individuals on the exclusion list and to removal individuals from licensed facilities both of which are intended to protect and maintain the integrity of gaming in the Commonwealth.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

These regulations, like the existing temporary regulations, are designed to establish requirements for placing individuals on the exclusion list and for excluding individuals who should not be in licensed facilities.

Applicants and holders of slot machine licenses will benefit from having a clear understanding of the standards and requirements that they will be required to meet.

Individuals placed on the exclusion list will have a process to challenge the placement or to request removal. Underage individuals will have a clear understanding of the ramifications of violating the gaming restrictions.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Because these regulations are designed to address or prevent persons who should not be in a licensed facility from being there, there is no adverse impact associated with these regulations.

(15) 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.)

Eventually, 14 slot machine licensees will be impacted by these regulations. Currently there are 11 Category 1 and 2 approved licensees.

Individuals who are added to the exclusion list will also have to comply with the requirements in this rulemaking. The number of individuals who will be placed on the list in Pennsylvania is unknown, but is projected to be in the 100 to 200 person range.

Underage individuals who attempt to engage in gaming will also be impacted by these regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Drafts of the temporary regulations were published in the *Pennsylvania Bulletin* and posted on the Board's website for public comment prior to their adoption.

Additionally, regulators in other states with exclusion programs were contacted to gain information on their experience with these programs.

(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.

Slot machine licensees will experience costs related to developing exclusion programs, training of employees, posting signs, and compliance with the requirements of these chapters.

There are no savings generated as a result of these regulations.

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(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.

There will be no costs imposed upon or savings to local governments associated with these regulations.

(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.

The Board's cost related to these regulations will consist of the cost of investigations and processing exclusion petitions, hearing requests and maintenance and distribution of the exclusion list.

There are no savings to state government as a result of these regulations.

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(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:	\$	\$	\$	\$	\$	\$
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:						
Regulated Community	\$43,000	\$59,000	\$63,000	\$54,000	\$57,000	\$59,000
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	\$50,000	\$44,000	\$45,000	\$47,000	\$49,000	\$51,000
Total Costs	\$93,000	\$103,000	\$108,000	\$101,000	\$106,000	\$110,000
REVENUE LOSSES:						
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) Explain how the cost estimates listed above were derived.

First year costs for slot machine licensees are based on estimated costs for developing procedures to comply with the requirements in these chapters, training of employees, posting signs and reporting to the Board. Subsequent year costs are based on estimated costs for training new employees, removing excluded or underage individuals and reporting to the Board when necessary.

State government costs are based on estimates of the amount of time spent on these programs by the Director of Compulsive and Problem Gaming Enforcement, personnel in the Bureau of Investigations and Enforcement and personnel in Hearings and Appeals.

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

Program	FY -3	FY -2	FY -1	Current FY
Board Budget	\$2,900,000	\$13,200,000	\$26,400,000	\$29,984,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

As noted in the previous responses, the costs of these programs are balanced against the benefit to the slot machine licensees and the integrity of gaming of excluding individuals who should not be present in the licensed facilities.

Slot machine licensees will know the removal procedure for excluded persons in a licensed facility or underage individuals found on the gaming floor or engaged in gaming activities.

Individuals who are excluded will know their rights and available remedies upon exclusion (i.e. may demand a hearing) and will know the proper procedure for petitioning the Board to be removed from the exclusion list.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The only alternative considered was to implement practices based solely on the Act.

Since the Act does not contain enough detail on the exclusion process, regulations are necessary.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

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(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 regulation.

There are no corresponding Federal requirements.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Many of the provisions in these regulations are similar to those in other gaming jurisdictions.

Nothing in these chapters will put Pennsylvania at a competitive disadvantage with other states.

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

These regulations will replace the existing temporary Chapters 511 and 513 in 58 PA. Code.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No additional hearings or meetings beyond the normal public comment period have been scheduled.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The proposed regulations retain the reporting requirements contained in the temporary regulations for slot machine licensees.

These reporting requirements include notifying the Board of the identity any individuals the slot machine licensee believes meets the criteria for exclusion.

Individuals demanding a hearing must file a response to the notice served by the Clerk. Individuals seeking to be removed from the exclusion list must file a petition specifying the grounds for removal.

(29) 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.

These regulations contain no special provisions for affected groups.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

These regulations will be effective upon publication as a final rule in the *Pennsylvania Bulletin*.

It is anticipated that final regulations will be adopted during the summer of 2007.

(31) 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.

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

Fiscal Note 125-57

**House Gaming Oversight Committee
Representative Harold James**

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

(Pursuant to Commonwealth Documents Law)

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#2601

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- 57

DATE OF ADOPTION: 8/8/07

BY: Thomas A. Decker
Thomas Decker, CHAIRMAN

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

BY: Frank Donaghue, Chief Counsel

8/8/07
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, SUBPART J.
CHAPTERS 511a & 513a**

FINAL-FORM PREAMBLE FOR CHAPTERS 511a AND 513a

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CHAPTERS 511, 511a, 513 AND 513a]

PERSONS REQUIRED TO BE EXCLUDED; UNDERAGE GAMING

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. §§ 1207(8), 1514, 1515 and 1518 (relating to regulatory authority of board; regulation requiring exclusion of certain persons; repeat offenders excludable from licensed gaming facility; and prohibited acts; penalties), rescinds Chapters 511 and 513 and adds Chapters 511a and 513a (relating to persons required to be excluded; and underage gaming) to read as set forth in Annex A.

Purpose of the Final-form Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapter 511 at 36 Pa.B. 2905 (June 10, 2006) and Chapter 513 at 36 Pa.B. 3441 (July 1, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expire on July 5, 2007.

The Board is adopting Chapters 511a and 513a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 511a and 513a

Section 511a.1 (relating to definitions) defines the terms used in this chapter.

Section 511a.2 (relating to maintenance and distribution of the exclusion list) states that the Board will maintain a list of excluded persons, specifies that the exclusion list will be available to the public, both at the Board's offices and on the Board's website, and lists the information the Board will provide to slot machine licensees and the public about individuals on the exclusion list.

Sections 511a.3, 511a.4 and 511a.5 (relating to criteria for exclusion; duties of the Bureau; and placement on the exclusion list) list the criteria the Board will use when determining whether or not an individual should be placed on the exclusion list; the duties of the Bureau of Investigations and

Enforcement relating to the exclusion process; the process to be used to place a person on the exclusion list; and the consequences of being placed on the exclusion list including remission to the Board of any winnings by excluded persons.

Sections 511a.6 and 511a.7 (relating to demand for hearing on the placement of a person on the exclusion list; and Board review) address a person's right to a hearing if they are placed on the exclusion list; the conduct of such hearings; and the Board's review of placements.

Section 511a.8 (relating to duties of slot machine licensees) requires slot machine licensees to develop procedures to prevent violations of this chapter; to exclude or eject individuals who are on, or meet the criteria to be on, the exclusion list; to notify the Board if an excluded person is found in or attempts to enter a licensed facility; and to notify the Board about any individual the slot machine licensee believes meets the criteria for exclusion

Finally, § 511a.9 (relating to petition to remove name from the exclusion list) outlines the petition process that an individual who is on the exclusion list can use to request removal from the exclusion list.

Section 513a.1 (relating to definitions) defines the terms used in this chapter.

Section 513a.2 (relating to exclusion requirements) specifies who is excluded from the gaming floor or from engaging in gaming activities based on age and that any winnings by underage individuals will be remitted to the Board.

Section 513a.3 (relating to responsibilities of licensees, permittees, registrants and certification holders) addresses the responsibilities of licensees, permittees, registrants and certification holders related to underage gaming.

Section 513a.4 (relating to signage requirements) mandates posting signs that state that individuals under 21 can not engage in gaming activities, will be removed if found gaming, and may be subject to arrest for trespass.

Section 513a.5 (relating to enforcement) specifies the defenses that may not be used in enforcement actions related to underage gaming.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 1490 (April 7, 2007).

The Board did not receive any public comments during the public comment period. On May 22, 2007, Representatives Harold James and Paul Clymer, Chairmen of the House Gaming Oversight Committee, and Representative James individually, submitted comments on the proposed rulemaking. On June 6, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC).

The Board adopted a final-form version of this rulemaking on June 21, 2007. Subsequent to that adoption, comments were filed on the final-form version of this rulemaking by Down's Racing, L.P. (Downs) and Greenwood Gaming and Entertainment, Inc. (Greenwood). Additionally, comments were received from IRRC and Representatives Harold James and Paul Clymer, the Chairmen of the House Gaming Oversight Committee on the final-form version of Chapters 501a and 503a which were adopted by the Board on June 5, 2007. Because these regulations contain similar provisions to those that were the subject of IRRC's and the House chairmen's concerns with Chapters 501a and 503a, the Board withdrew both of these final-form rulemakings on July 16, 2007, to consider these additional comments.

All of these comments were reviewed by the Board and are discussed in detail below.

In § 511a.1 Representatives James and Clymer suggested that the definition of "excluded person" be expanded to state that it does not include self-excluded persons.

The Board elected not to revise this definition because self-excluded persons are defined in and governed by Chapter 503a. Therefore, additional clarification is not needed.

In § 511a.2 IRRC noted that the preamble indicated that the exclusion list will be available on the Board's website but the regulation does not indicate that the exclusion list will be available on the Board's website. IRRC also asked for an explanation of the need to make the excluded persons list public.

To address IRRC's first concern, the Board has added "posted on the Board's website" to subsection (b). In response

to IRRC's second concern, the information concerning who is on the excluded person list is being made public because it may be useful to state and local law enforcement agencies and regulatory agencies in other jurisdictions.

Also in § 511a.2 Representatives James and Clymer suggested that all of the information in subsection (c) not be included on the list of excluded persons made available to the public to avoid the potential for identity theft.

The Board agrees with this suggestion and has added a new subsection (d) which contains the identifying information that will be included on the excluded persons list that will be made available to the public.

In § 511a.3 Representatives James and Clymer expressed concern that subsection (a) (4) (v) could be used to put individuals who engage in legitimate, constitutionally protected expression, such as union organizers or gaming opponents, on the excluded person list.

The Board never intended that this provision be used to exclude individuals who engage in legal activities. Instead, it is targeted at individuals whose actions could threaten the integrity of gaming operations. To clarify this point, this subsection has been revised to only apply to disruptions which occur "within the facility."

In § 511a.3 Representative James recommended deletion of subsection (a) (4) (vii) because of due process concerns.

The Board has elected to retain this provision. A person who has been charged or is under indictment for a crime related to gaming who is placed on the excluded person list is entitled to a hearing under § 511a.6 and may appeal their placement on the excluded person list to Commonwealth Court. Therefore, the Board believes the person's right to due process is protected. Additionally, this is only a factor that "may" result in an individual being placed on the exclusion list; the Board will use its discretion to determine if the offense is serious enough to warrant placement on the exclusion list.

IRRC also had a number of concerns with § 511a.3. First, IRRC asked why the Board used the phrases "inimical to the interest of the Commonwealth or a slot machine licensee, or both" and "inimical to the interest of the Commonwealth or licensed gaming therein" rather than just one phrase throughout.

Next, IRRRC asked how the Board would use its discretion to include or not include an individual who met one or more of the criteria in § 511a.3 on the excluded person list. IRRRC voiced the same concern about § 511a.5(a). IRRRC also requested the Board add language to clarify who is an "associate" in subsection (a)(2), what constitutes "moral turpitude" in subsection (a)(3) and if the revocation language in subsection (a)(4)(iii) applies only to permits, licenses and other approvals issued by the Board. IRRRC also suggested that the phrase "notorious or unsavory" in subsection (a)(4)(ix) be deleted. Finally, IRRRC suggested that subsections (b) and (c), which both address criteria for determining inimicality, be combined.

In response to IRRRC's first concern the Board has revised this section to use the phrase "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" which is the phrase used in § 1514(a) of the act.

In response to IRRRC's second concern, the Board does not intend to automatically add individuals to the excluded persons list if they meet one of the criteria in § 511a.3. Having hundreds of individuals on the list would make it difficult for slot machine licensees to insure that individuals on the list are excluded from their facilities. Each case will be evaluated individually to determine how much of a threat an individual could pose to the integrity of gaming in Pennsylvania. For example, a cheat who lives or who has been known to enter or try to enter gaming facilities in adjacent states would be a likely person to be included on Pennsylvania's list. However, a cheat who only has been identified at gaming facilities in western states might not be put on Pennsylvania's list.

To address IRRRC's clarity suggestions the Board has replaced the phrase "associate of" with the phrase "individual with a known relationship or connection with." To clarify subparagraph (a)(4)((iii) the word "Board" has been inserted before "permits."

The Board has not added a definition of "moral turpitude" in subsection (a)(3) because it is a well-established term that is used, but not defined, in many statutes and regulations.

The Board has not elected to delete the phrase "notorious or unsavory" in subsection (a)(4)(ix). These characteristics accurately describe the type of reputation that could be used as the basis for adding a person to the exclusion list.

The Board has also chosen not to combine subsections (b) and (c). Both subsections address what may be considered to be inimical, but for somewhat different purposes. Subsection (b) is intended to provide a broad description of criteria the Board will look at when examining a person's character and background while subsection (c) lists more specific criteria which might be used in a petition for or order of exclusion.

In § 511a.4 Representatives James and Clymer noted that the citation to § 1515 of the act included in subsection (b) may be incorrect because § 1515 applies to the rights of licensed gaming entities to exclude individuals, not the Board. The same comment also applies to § 511a.6(c).

The Board agrees and has deleted the references to § 1515 in §§ 511a.4(b) and 511a.6(c).

In § 511a.5 Representatives James and Clymer and IRRC questioned the Board's authority for the forfeiture of winnings incurred by an excluded person under subsection (c). The same comment also applies to § 511a.8(f)(1).

While § 1514 does not include language similar to what appears in § 1516(a) pertaining to the collection of winnings, § 1202(b)(30) of the act gives the Board broad authority to adopt regulations that are necessary for the administration and enforcement of the act. Allowing excluded persons to keep any winnings would provide an incentive for cheats or other excluded persons to try to gain access to licensed facilities which is contrary to the purpose and intent of § 1514.

In § 511a.5 Representatives James and Clymer and IRRC also questioned, in Subsections (d) and (e), how forfeited winnings could be used since they are not a statutorily permitted deduction from gross terminal revenue.

Winnings are cash or cash equivalents that are paid out to a patron and therefore not included in the definition of gross terminal revenue. If the patron is on the excluded person list, the winnings are forfeited by the individual, not the licensed gaming entity. Because these winnings are not part of gross terminal revenue, the allocation of these forfeited funds does not fall under Chapter 14 (relating to revenues) of the act.

In Section 511a.8(d)(2) Downs and Greenwood questioned why written notification to the Director of OCPG is required. They

believe it is not necessary because of the notice given to the on-site BIE agents and Pennsylvania State Police.

The Director of OCPG, who is not part of BIE, needs this information because they are responsible for evaluating compliance with a licensed facility's compulsive gaming plan, one component of which is the procedures for detecting and removing excluded persons. Furthermore, most licensed facilities have some form of an incident report which they would complete for their records; submitting a copy of that report would meet this requirement. Therefore, the Board does not believe that this requirement imposes an unreasonable reporting burden on slot machine licensees.

In § 511a.8 IRRC had two areas of concern. In subsection (d) IRRC recommended that the "procedures set forth by the Board" be spelled out in the regulation. In proposed subsection (e) IRRC questioned the authority for this subsection and how this provision is consistent with the legislative intent of the Act.

The Board has deleted the language in subsection (d) pertaining to "procedures set forth by the Board" and added language requiring immediate notice to the BIE agents at the facility and written notice to the Director of the Office of Compulsive and Problem Gambling within 24 hours. The means of notice to the BIE agents at the facility has not been specified to give facilities the flexibility to use the fastest means available, which may be through direct verbal communication or by telephone.

The Board had proposed the provisions in subsection (e) under its general authority under § 1202(b)(30) of the act. These provisions were intended to discouraging frivolous lawsuits against both the Board and slot machine licensees but in no way relieve a slot machine licensee of its responsibility to comply with the requirements of this chapter. However, the Board recognizes that the act does not contain language specifically authorizing these provisions and for this reason, the Board has deleted proposed § 511a.8(e).

In § 511a.9 Representatives James and Clymer questioned if subsection (g)(2) could create a conflict with a court order or terms of probation.

If a court excludes an individual from licensed facilities as part of a court order or as a condition of parole, being on

the Board's excluded person list would subject the individual to additional sanctions (forfeiture of winnings) but would not conflict with the terms of the court order. Satisfaction of the court order or successful completion of the period of parole would not, however, automatically result in removal from the Board's excluded person list. It would just be one of the factors the Board would consider when it reviews a petition for early consideration of a petition for removal from the excluded persons list.

In § 513a.2 Representatives James and Clymer and IRRC questioned the Board's authority for the forfeiture of winnings incurred by an individual under 21 years of age under subsections (d), (e) and (f). The same comment also applies to §§ 513a.3(a) and (c).

While § 1207(8) does not include language similar to what appears in § 1516(a) pertaining to the collection of winnings, § 1202(b)(30) of the act gives the Board broad authority to adopt regulations that are necessary for the administration and enforcement of the act. Allowing an individual under 21 years of age to keep any winnings would provide an incentive for underage persons to engage in gaming activities at licensed facilities which is contrary to the purpose and intent of § 1207(8).

In § 513a.3 IRRC noted that the language pertaining to the use of winnings remitted to the Board in subsection(c) differs from the language in § 513a.2(e).

In § 513a.3(c) the phrase "and deposited into the Compulsive and Problem Gambling Treatment Fund" has been replaced with "to support compulsive and problem gambling programs of the Board" to match the language used in § 513a.2(e) and in § 511a.5(d).

In § 513a.4 IRRC asked if different text would be allowed on signs and how facilities would know what text is acceptable.

The Board will give facilities some flexibility on the exact wording to be used on their signs. The review of that language has been addressed by adding language to this section which requires the text that is to be used to be submitted as part of the procedures required under § 513a.3(b).

Additional Revisions

In addition to the revisions discussed above, the Board has made several additional revisions.

A definition for "OCPG," the Office of Compulsive and Problem Gambling, has been added to Chapters 511a and 513a.

In § 511.2(c) a new paragraph (8) was added which will list the reason for the person's placement on the self-exclusion list. This information will help slot machine licensees be aware of the type of threat an individual who is on the excluded person list may pose to a licensed facility.

In §§ 511a.5(d), 513a.2(e) and 513a.3(c) the phrase "of the Board" has been added to the end of these sections to make it clear that any winnings remitted to the Board will be used to support the Board's compulsive and problem gambling programs.

In § 511a.8 a new subsection (a) has been added which requires slot machine licensees to establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG for approval 30 days prior to initiation of gaming activities at the licensed facility. This insures that adequate procedures will be in place prior to the commencement of gaming at all licensed facilities.

Also in § 511a.8 the words "the appropriate" were inserted before "employees" in subsection (b) to clarify that the exclusion list is only to be distributed to employees who would be responsible identifying or removing excluded persons.

In § 513a.3(b) more detail has been added to describe the process for reviewing the procedures slot machine licensees must submit for approval relating to their procedures to prevent underage gaming.

Finally, minor wording changes have been made throughout the chapter to improve clarity.

Affected Parties

This final-form rulemaking imposes requirements on slot machine licensees, persons who are placed on the excluded persons list and individuals who are not old enough to engage in gaming (under 21 years of age) or are too young to be on the gaming floor (under 18 years of age).

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to placing individuals on the exclusion list, maintenance and distribution of the excluded persons list and enforcement of the provisions related to exclusion and underage gaming.

Political Subdivisions

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

Private Sector

Slot machine licensees will experience costs related to training employees, signage requirements, and compliance with the requirements of the exclusion and underage gaming provisions.

General Public

Individuals seeking to dispute placement on or seeking removal from the exclusion list will experience some minor costs associated with the hearing and petition processes.

Paperwork requirements

This final-form rulemaking requires slot machine licensees to maintain, update and disseminate information on excluded persons. A slot machine licensee is also required to submit the names of any individuals it believes meet the criteria for placement on the excluded persons list.

Individuals demanding a hearing will have to file a response to the notice served by the Clerk. Individuals seeking to be removed from the exclusion list will have to file a petition specifying the grounds for removal.

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 March 28, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 1490 (April 7, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

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)), on **Month, day, year**, the final-form rulemaking **was deemed approved** by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)) IRRC met on **Month, day, year** 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 the Pennsylvania Race Horse Development and Gaming Act, as amended (4 Pa.C.S. §§ 1101 - 1904).

Order

The Board, acting under the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §§ 1101 - 1904), orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 511.1 - 511.9 and 513.1 - 513.5 and by adding final regulations in §§ 511a.1 - 511a.9 and 513a.1 - 513a.5 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

ANNEX A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

SUBPART J. EXCLUSION OF PERSONS

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

§ 511a.1. Definitions.

§ 511a.2. Maintenance and distribution of the exclusion list.

§ 511a.3. Criteria for exclusion.

§ 511a.4. Duties of the Bureau.

§ 511a.5. Placement on the exclusion list.

§ 511a.6. Demand for hearing on the placement of a person on the exclusion list.

§ 511a.7. Board review.

§ 511a.8. Duties of slot machine licensees.

§ 511a.9. Petition to remove name from the exclusion list.

CHAPTER 513a. UNDERAGE GAMING

§ 513a.1. Definitions.

§ 513a.2. Exclusion requirements.

§ 513a.3. Responsibilities of licensees, permittees, registrants and certification holders.

§ 513a.4. Signage requirements.

§ 513a.5. Enforcement.

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

§ 511a.1. Definitions.

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

Career or professional offender – A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities contained in section 1518(a) of the act (relating to prohibited acts; penalties)

Cheat –

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

(A) The result of a slot machine game.

(B) The amount or frequency of payment in a slot machine game.

(C) The value of a wagering instrument.

(D) The value of a wagering credit.

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

(iii) The term includes an act in any jurisdiction that would constitute an offense under section 1518(a)(6)

and (a)(7) of the act.

Excluded person – A person who has been placed upon the exclusion list and who is required to be excluded or ejected from a licensed facility.

Exclusion list – A list of names of persons who are required to be excluded or ejected from a licensed facility.

OCPG – Office of Compulsive and Problem Gambling.

§ 511a.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The exclusion list will be open to public inspection at the Board's central office during normal business hours, **posted on the Board's website** (www.pgcb.state.pa.us) and will be distributed to every slot machine licensee within this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) The following information will be provided to the slot machine licensees for each excluded person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) The person's date of birth.

(4) The date the person was added to the list.

(5) A recent photograph, if available.

(6) The last known address of record.

(7) Other identifying information available to the Board.

(8) Reason for placement on the excluded persons list.

(d) The following information will be made available to the public for each excluded person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) A recent photograph, if available.

(4) Birth year.

§ 511a.3. Criteria for exclusion.

(a) The exclusion list may include a person who meets one or more of the following criteria:

(1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or [a slot machine licensee] of licensed gaming therein, or both.

(2) An [associate of] individual with a known relationship or connection with a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or [a slot machine licensee] of licensed gaming therein, or both.

(3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than 1 year in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed facility would be inimical to the interest of the Commonwealth or [a slot machine licensee] of licensed gaming therein, or both.

(4) A person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both, including:

(i) Cheats.

(ii) Persons whose gaming privileges have been suspended by the Board.

(iii) Persons whose **Board** permits, licenses or other approvals have been revoked.

(iv) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee.

(v) Persons with a history of conduct involving the disruption of the gaming operations **within a licensed facility** [of slot machine licensees] . -

(vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities.

(vii) Persons with pending charges or indictments for a gaming or gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(viii) Persons who have been convicted of a gaming or gambling crime or crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(ix) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, being identified with criminal activities in

published reports of various Federal and state legislative and executive bodies that have inquired into criminal or organized criminal activities.

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" if known attributes of the person's character and background meet one or more of the following criteria:

(1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a licensed facility.

(2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.

(3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or

another jurisdiction, or with a particular slot machine licensee or licensees or an affiliate, intermediary, subsidiary or holding company thereof.

(3) The nature and frequency of contacts or associations of the person with a slot machine licensee or licensees, or with employees or agents thereof.

(4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 511a.4. Duties of the Bureau.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or a slot machine licensee investigate a person to determine whether the person meets the criteria for exclusion provided in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Bureau will file a petition for

exclusion with the Board, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion set forth under section 1514 [or 1515] of the act [(relating to repeat offenders excludable from licensed gaming facility)] or this chapter.

(c) When the Bureau files a complaint alleging a violation of section 1514(e) of the act and § 511a.8(b)(2) (relating to duties of slot machine licensees) against a slot machine licensee, the Bureau will file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion under § 511a.3.

§ 511a.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list:

(1) Upon the filing of a petition **for exclusion** by the Bureau in accordance with the procedures under § 511a.4 (relating to duties of the Bureau).

(2) Upon receipt of an order from a court of competent jurisdiction within this Commonwealth, excluding the person from licensed facilities.

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from licensed facilities.

(c) An excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(e) For the purposes of this section, any winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 511a.6. Demand for hearing on the placement of a person on the exclusion list.

(a) Upon placement of a person on the exclusion list, the Clerk will serve notice of the placement to the person by personal service or certified mail at the last known address of the person. When the placement is a result of a petition for exclusion filed by the Bureau, a copy of the petition will be included with the notice.

(b) Upon service of the notice by the Clerk, an excluded person shall have 30 days to demand a hearing before the Board. Failure to demand a hearing within 30 days after service shall be deemed an admission of all

matters and facts alleged in the Bureau's petition for exclusion.

(c) If a hearing is demanded by the excluded person, a hearing will be scheduled as provided in § [492a.6] 491a.8 (relating to hearings generally). At the hearing, the Bureau will have the affirmative obligation to demonstrate that the excluded person satisfies the criteria for exclusion in section 1514 [or 1515] of the act (relating to regulation requiring exclusion of certain persons [; and repeat offenders excludable from licensed gaming facility]) or § 511a.3 (relating to criteria for exclusion). Unless the matter is heard directly by the Board, the presiding officer will prepare a recommendation as provided in § 494a.4 (relating to report or recommendation of the presiding officer) for consideration by the Board.

§ 511a.7. Board review.

After a hearing or consideration of a petition for exclusion filed by the Bureau when no hearing was requested, the Board will:

(1) Issue a final order affirming the placement of the person on the exclusion list.

(2) Issue a final order removing the person from the exclusion list.

(3) Refer the matter to the presiding officer for further hearing.

§ 511a.8. Duties of slot machine licensees.

(a) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(b) A slot machine licensee shall have the responsibility to distribute copies of the exclusion list to [its] the appropriate employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

[(b)] (c) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

(1) An excluded person.

(2) A person known to the slot machine licensee to satisfy the criteria for exclusion in section 1514 of the act (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

[(c)] (d) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall:

(1) [i]Immediately notify the [Bureau of the fact in accordance with the procedures set forth by the Board] BIE agents at the licensed facility.

(2) Notify the Director of OCPG in writing within 24 hours.

[(d)] (e) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list or a person who has been excluded or ejected under paragraph (c) (2) and the reason for placement on the exclusion list.

[(e)] A slot machine licensee or employees thereof will not be liable to any person for damages in a civil action, which is based on the following:

(1) Withholding winnings from an excluded person.

(2) Permitting an excluded person to gamble.

(3) Excluding an excluded person from the licensed gaming facility.]

§ 511a.9. Petition to remove name from the exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers).

(c) The Board may decide the petition on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition, may grant the petition, or direct that a hearing be held in accordance with § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list). The Board will grant the petition or direct that a hearing be held only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the exclusion

list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d) An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. However, an excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

(e) A petition for early consideration must contain the information required by subsection (b). Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers).

(f) The Board may decide the petition for early consideration on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511a.6.

(g) The Board will consider the following criteria when making its decision on a petition for early consideration:

(1) Whether there are extraordinary facts and circumstances warranting early consideration of the

excluded person's request for removal from the exclusion list.

(2) If exclusion was ordered under § 511a.5(a)(2) (relating to placement on the exclusion list), whether the excluded person has completed the period of probation or otherwise satisfied the terms of the court-ordered exclusion.

CHAPTER 513a. UNDERAGE GAMING

§ 513a.1. Definitions.

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

Fully executed gaming transaction – An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee.

OCPG – Office of Compulsive and Problem Gambling.

Winnings – Any money or thing of value received from, or owed by a slot machine licensee as a result of a fully executed gaming transaction.

§ 513a.2. Exclusion requirements.

(a) An individual under 18 years of age may not enter or be on the gaming floor of a licensed facility.

(b) An individual under 21 years of age, whether personally or through an agent, may not operate, use, play or place a wager on, a slot machine in a licensed facility.

(c) An individual under 21 years of age may not receive check cashing privileges, be rated as a player, or receive any complimentary service, item or discount as a result of, or in anticipation of, gaming activity.

(d) An individual under 21 years of age may not collect in any manner or in any proceeding, whether personally or through an agent, winnings or recover losses arising as a result of any gaming activity.

(e) Winnings incurred by an individual under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(f) For the purposes of this section, winnings issued to, found on or about or redeemed by an individual under 21 years of age shall be presumed to constitute winnings and be subject to remittance to the Board.

§ 513a.3. Responsibilities of licensees, permittees, registrants and certification holders.

(a) A person holding a license, permit, certification or registration issued by the Board is prohibited from

permitting or enabling an individual to engage in conduct that violates § 513a.2(a), (b), (c) or (d) (relating to exclusion requirements).

(b) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the [Board] Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the [Board] Director of OCPG approves its procedures.

Amendments to these procedures must be submitted to and approved by the [Board] Director of OCPG prior to implementation.

(c) A slot machine licensee may be subject to Board imposed administrative sanctions if a person engages in conduct that violates § 513a.2(a), (b), (c) or (d) at its licensed facility. Under § 513a.2(e), winnings obtained by a slot machine licensee from or held on account of a person under 21 years of age shall be remitted to the Board [and deposited into the Compulsive and Problem Gambling Treatment Fund] to support compulsive and problem gambling programs of the Board.

(d) A person holding a license, permit, registration or certification issued by the Board who violates a provision of this chapter may be held jointly or severally liable for the violation.

§ 513a.4. Signage requirements.

A slot machine licensee shall post signs that include a statement that is similar to the following: "It is unlawful for any person under 21 years of age to engage in any gaming activities. Individuals violating this prohibition will be removed and may be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass)." The complete text of the sign shall be [determined by the Board] submitted to and approved by the Director of OCPG as part of the procedures required under § 513a.3(b). The signs shall be prominently posted within 50 feet of each entrance and exit of the gaming floor.

§ 513a.5. Enforcement.

In a prosecution or other proceeding against a person for a violation of this chapter, it will not be a defense that the person believed an individual to be 21 years of age or older.

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

I.D. NUMBER: 125-57

DATE: 8/8/07

SUBJECT: Subpart J. Chapters 511a & 513a

AGENCY: Pennsylvania Gaming Control Board

2601

TYPE OF REGULATION

- ☐ 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

INDEPENDENT REGULATORY REVIEW COMMISSION

2007 AUG -8 PM 2:44

RECEIVED

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1. <u>8/8/07</u>	<u>[Signature]</u>	House Gaming Oversight Committee
2. <u>8/8/07</u>	<u>[Signature]</u>	
3. <u>8/8/07</u>	<u>K. Kreiser</u>	Senate Community, Economic & Recreational Committee
4. <u>8/8/07</u>	<u>[Signature]</u>	
5. <u>8/8/07</u>	<u>[Signature]</u>	Independent Regulatory Review Commission
6. _____	_____	Legislative Reference Bureau