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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

June 8, 2011

Kevin O'Toole, Executive Director  
Pennsylvania Gaming Control Board  
Strawberry Square  
Verizon Tower, 5th Floor  
Harrisburg, PA 17106-9060

Re: Regulation #125-144 (IRRC #2893)  
Pennsylvania Gaming Control Board  
Employee and Horsemen's Organization Revisions

Dear Mr. O'Toole:

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,

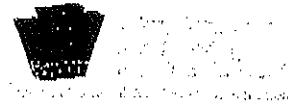
Fiona Wilmarth  
Acting Executive Director

sfh

Enclosure

cc: Honorable Jane M. Earll, Majority Chairman, Senate Community, Economic and  
Recreational Development Committee  
Honorable Wayne D. Fontana, Minority Chairman, Senate Community, Economic and  
Recreational Development Committee  
Honorable Curt Schroder, Majority Chairman, House Gaming Oversight Committee  
Honorable Rosita C. Youngblood, Minority Chairman, House Gaming Oversight Committee  
Robert A. Mulle, Esq., Office of Attorney General  
Andrew Clark, Esq., Office of General Counsel

## Comments of the Independent Regulatory Review Commission



### Pennsylvania Gaming Control Board Regulation #125-144 (IRRC #2893)

#### Employee and Horsemen's Organization Revisions

June 8, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the April 9, 2011 *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 423a. APPLICATIONS

##### 1. Section 423a.4. Deficient and abandoned applications. – Implementation procedures.

This section is being amended to allow the Board's Bureau of Licensing (Bureau) to close and declare abandoned incomplete or deficient applications that are not being recommended for denial. We have two questions related to how this provision will be implemented. First, how long will the Bureau be in possession of an incomplete or deficient application before it is declared abandoned? Second, will the applicant be notified that the application was declared abandoned? We suggest that the final-form regulation be amended to clarify how this provision will be administered.

#### CHAPTER 433a. PRINCIPAL LICENSES

##### 2. Section 433a.1. Definitions. – Statutory authority; Consistency with intent of General Assembly; Clarity and lack of ambiguity.

A definition for the term "publicly traded" is being added to this section of the regulation. In the Preamble, the Board notes the definition is being added because there is an inconsistency between the definition of "controlling interest" found at 58 Pa. Code § 401a.3, which acknowledges both domestic and foreign corporations, and the definition of "publicly traded," which only

addresses securities regulated under the Securities and Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78nn). We note that the term “publicly traded corporation” is defined in both Section 1103 of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A §1103) and at 58 Pa. Code § 401a.3, relating to definitions. In the proposed definition of “publicly traded,” the Board has included only one of the three provisions found in the statutory and regulatory definitions of “publicly traded corporation.” We ask the Board to explain why it excluded two of the three provisions from the new definition of “publicly traded.” Has the Board considered amending the existing regulatory definition of “publicly traded corporation” to include the classes of securities that are listed on a foreign exchange?

### **CHAPTER 435a. EMPLOYEES**

#### **3. Section 435a.1. General provisions. – Reasonableness; Need.**

Commentators have asked the Board to consider lifting the prohibition on wagering imposed on certain individuals by Subsections (k) through (o). We ask the Board to explain the rationale for the prohibitions contained in these subsections. Would the integrity of gaming be jeopardized if the individuals identified in the subsections were allowed to wager at licensed facilities in the Commonwealth?

#### **4. Section 435a.8. Temporary credentials for principals, key employees and gaming employees. – Clarity and lack of ambiguity.**

The Board is adding Subsection (d) to this section of the regulation. The new language states, “Board staff may impose conditions on the holders of temporary credentials.” This language is vague and does not establish a binding norm. We suggest that the Board amend the final-form regulation to include language that sets forth the type of conditions that could be imposed on holders of temporary credentials. We note that the Preamble to the rulemaking states that conditions could relate to restricting the use of a temporary credential for a limited purpose or type of event. We believe it would be appropriate to include similar language in the body of the regulation.

### **CHAPTER 436a. HORSEMEN'S ORGANIZATIONS**

#### **5. Section 436a.2. Horsemen's organization notification. – Clarity and lack of ambiguity.**

The amendments to this section replace the requirement for completing a Horsemen's Organization Registration Statement with a Horsemen's Organization Notification Form. A commentator has asked what type of information will be required in the new form. Since forms can be changed without notice to or input from the regulated community, we recommend that

the Board amend the regulation to specify the type of information that will be included in the new form.

**6. Section 436a.4. Responsibilities of horsemen's organizations, officers, representatives and fiduciaries. – Clarity and lack of ambiguity.**

Subsection (c) requires funds allocated for thoroughbred jockeys and standardbred drivers to be paid "in accordance with the act." We recommend that the final-form regulation be amended to include a specific citation to the act.

**7. Section 436a.6. Health and pension benefit plans. – Reasonableness; Implementation procedures.**

The Board has redrafted Subsection (a) of its existing regulations by moving the content of Paragraphs (1) and (2) to the body of Subsection (a). While there is no substantive difference between the existing regulation and the proposed regulation, commentators are concerned with the language that requires contracts for health and pension benefit plans established for the benefit of members of a horsemen's organization to be submitted to the Board at least 90 days prior to the effective date of the contract. Because of the way these plans are administered by providers, commentators believe the 90 day requirement is not reasonable. They suggest a more appropriate time frame would be 30 days prior to the effective date of the contract. We ask the Board to explain why the 90-day time frame is appropriate and to consider the 30-day recommendation made by the commentators.