

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DAVID M. BARASCH, ESQ.
DAVID J. DEVRIES, ESQ.
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL
LESLIE A. LEWIS JOHNSON, DEPUTY CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

February 1, 2007

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

Re: Regulation #125-49 (IRRC #2581)
Pennsylvania Gaming Control Board
Accounting and Internal Controls; Slot Computer Systems; Commencement of Slot
Operations

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

Given the fairly extensive array of comments, we would welcome the opportunity to meet with you and your staff to discuss them prior to your preparation and submission of the final-form regulation.

Sincerely,

Kim Kaufman
Executive Director

wbg

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 #125-49 (IRRC #2581)

Accounting and Internal Controls; Slot Computer Systems; Commencement of Slot Operations

February 1, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the December 2, 2006 *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. Determining whether the regulation is in the public interest.

The Pennsylvania Horse Race Development Act (Act) (4 Pa.C.S.A. §§ 1101-1904) allows the Board to promulgate temporary regulations until April 15, 2007. The temporary regulations are not subject to two statutes that guide agencies when promulgating regulations: the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201-1208) and the Regulatory Review Act (RRA) (71 P.S. §§ 745.1-745.15). The Act requires all temporary regulations to be promulgated as permanent regulations by July 5, 2007. The conversion of temporary regulations to permanent regulations requires compliance with both the CDL and the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. Therefore, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under §745.5(a) in the regulatory analysis form (RAF).

The Preamble to this rulemaking states that the Board proposes to replace three chapters of its temporary regulations with permanent regulations. The explanation of the regulations in the Preamble and the information contained on the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. While we commend the Board for involving the regulated community in the development of the temporary regulations, we note that a complete explanation of the need for each chapter and section was not provided in that process. Furthermore, the RAF does not contain a detailed fiscal impact and cost benefit analysis. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF submitted with the final-form rulemaking, the Board should provide the detailed information required under §745.5(a) of the RRA.

2. Economic or fiscal impact; Clarity and lack of ambiguity; Reasonableness of the requirements.

Vague phrases

This regulation contains many vague phrases. Examples include: “in the manner the Board requires”; “as approved by the Board”; “in a manner to be prescribed by the Board”; and “as are authorized by the Board.” These phrases are problematic for two reasons.

First, a regulation has the full force and effect of law. It establishes binding norms on the regulated entity and the agency that promulgated the regulation. The vague phrases in question would allow requirements to be imposed at the agency’s discretion without the opportunity for comment or review through the regulatory process. Therefore, without adequate notice as to what requirements the agency is imposing, it would be difficult if not impossible for regulated parties to discern what actions on their part would constitute compliance.

Second, many sections in which the vague phrases are found lack details that would allow the regulated community to comply with the regulation. These sections also fail to provide the criteria that the Board will use to evaluate a particular action or request. This lack of clarity would place the regulated community at a distinct disadvantage because the rules and expectations of the Board could change.

We urge the Board to evaluate all of the vague phrases we have identified in bold text in the Appendix. The Board should either delete the language or add the needed detail that would allow the regulated community to know what they are expected to do and how the Board will evaluate their actions.

Standards adopted by the Board

Several provisions require compliance with a Board action such as technical “standards adopted by the Board” or similar language. Related to our concerns above, these provisions do not give the regulated community the information needed to comply and the documents cannot be used to enforce standards contained in regulation. In addition, this approach would allow an agency or department to bypass the formal regulatory review process and the laws that govern the promulgation of regulations. These phrases are used in several places in the regulation including: Sections 465.10(b), 465.27(c)(1), 465.27(e)(2), 465.28(a)(1), 465.28(a)(2), 466.1(a), 466.1(b), 466.1(c), 467.2(a)(1), 467.2(a)(2), 467.2(a)(3) and 467.2(a)(4). These phrases should be amended to include in the regulation either the standards adopted by the Board or a cross-reference to the known and quantifiable standard adopted by the Board.

3. Section 465.2. Internal control systems and audit protocols. – Implementation procedures; Clarity.

Paragraph (b)(2) requires compliance with “applicable laws and regulations.” The final-form regulation should include specific cross-references to the laws and regulations that pertain to financial reporting. This phrase also appears in § 465.2(c).

Under Subsection (e), slot machine licensees are prohibited from commencing gaming operations until the Board approves a licensee’s system of internal controls. The procedures, time frames and criteria that will be used to review the internal controls are not included in the regulation. Consistent with Comment 2 above, the final-form regulation should include

provisions that would allow a licensee to know how this review will be administered by the Board.

Paragraph (g)(2) allows the review period contained in Subsection (f) to be “tolled.” The final-form regulation should include provisions that explain how tolling works.

4. Section 465.3. Forms, records and documents. – Clarity.

Subsection (c) includes a reference to a “Bureau.” Since this term is not defined in a final regulation, it is not clear whether this term means the Board’s Bureau of Investigation and Enforcement, or another Bureau of the Board.

5. Section 465.6. Retention, storage and destruction of books, records and documents. – Clarity.

Paragraph (b)(1) states that electronic data “should” be stored in a particular format. The use of the word “should” does not establish a requirement. If the Board intends to enforce this provision, we recommend that the word “should” be changed to “must.”

6. Section 465.7. Complimentary services or items. – Clarity.

Subsection (d) states, in part, the following: “If a slot machine licensee provides complimentary cash and noncash gifts recorded at a value of \$10,000 or more to a person or the person’s guests within any 5-day period....” We have three concerns. First, is the \$10,000 limit a sum of gifts given to a person and the person’s guests, or is the \$10,000 a limit for just one person? Second, what specific conditions would have to occur for an individual to be considered a person’s “guest”? Finally, does the 5-day period have to be consecutive? The final-form regulation should clarify this provision.

7. Section 465.9. Surveillance system; surveillance department control; surveillance department restrictions. – Implementation procedures; Clarity.

Subsection (a) prohibits a slot machine licensee from commencing gaming operations until the Board approves the licensee’s surveillance systems. The procedures, time frames and criteria that will be used to review the surveillance system are not included in the regulation. The final-form regulation should include provisions that would allow a licensee to know how this review will be administered by the Board.

8. Section 465.13. Firearms; possession within a licensed facility. – Statutory authority; Need; Implementation procedures; Clarity.

Subsection (a)

This subsection prohibits individuals from possessing “firearms or handguns” within a licensed facility without the express written approval of the Board. The regulation should define or cross-reference what are considered “firearms or handguns.”

Additionally, why did the Board prohibit firearms and handguns, but not other devices such as tasers, knives and mace?

Paragraph (a)(2)

Under this paragraph, local, State and Federal law enforcement agents may not possess a firearm on the gaming floor or restricted areas servicing the slot operations without first notifying the Board and the Pennsylvania State Police Gaming Enforcement Office. Notification is not

required if exigent circumstances exist. What statutory authority does the Board have for regulating law enforcement officers and what is the need for it? If the Board justifies its authority, how would the Board enforce this provision?

Subsection (b)

This subsection prohibits a slot machine licensee from employing an off-duty law enforcement officer to provide security related services. The subject matter of this subsection would be more appropriate under § 465.14, relating to security department minimum staffing, or as its own section.

Subsection (c)

In order for an individual to obtain approval from the Board to possess a firearm or handgun in a licensed facility, that individual must demonstrate that they have: received an adequate course of training in the use of a firearm or handgun; a valid license to possess a firearm or handgun; and a compelling need for the possession of a firearm or handgun in a licensed facility. We have three concerns. First, the procedures for filing a request with the Board are not contained in the regulation. We recommend that provisions be added to guide an individual through the approval process. Second, what is meant by an "adequate course of training"? Must the individual demonstrate that they have completed or passed that training? Third, under what circumstances would the Board grant approval to an individual to possess a firearm or handgun in a licensed facility?

9. Section 465.20. Personal check cashing. – Protection of the public health, safety and welfare; Clarity.

Paragraphs (b)(4) and (b)(5) require the slot machine licensee to "retain adequate documentation evidencing" signature verification or check verification performed in connection with the acceptance of a personal check. The quoted provision is vague. The final-form regulation should specify the type of documentation that must be retained.

Subsection (b)(6) allows a slot machine licensee to cash personal checks of patrons in the amount of \$2,500 per day. In the Preamble to the final-form regulation, the Board should explain how this limit adequately protects the welfare of patrons.

10. Section 465.21. Wire transfers. – Clarity.

As noted in the section above, the Board has imposed a limit on the amount of money that can be obtained by a patron through cashing of a personal check. Why didn't the Board impose a limit on the amount of money a patron can obtain through wire transfers?

11. Section 465.30. Waiver of requirements. – Statutory authority; Implementation procedures.

This section states:

The Board may waive one or more of the requirements of this chapter or technical standards applicable to accounting and internal controls adopted by the Board upon a determination that the nonconforming control or procedure nonetheless meets the operationally integrity requirements of the act, this subpart and technical standards adopted by the Board.

What is the Board's statutory authority for granting a waiver from a substantive requirement of a regulation? Absent specific statutory authority, this section should be deleted in its entirety.

If the Board demonstrates it has statutory authority to grant waivers of substantive requirements, the procedures for requesting and considering a waiver must be included in the final-form regulation. In addition, the final-form regulation must address who can request such a waiver and what criteria the Board will apply to determine if a waiver will be granted.

12. Section 466.1. Slot computer systems generally. – Statutory authority; Implementation procedures.

Subsection (c) allows the Board to waive requirements of this section and technical standards applicable to slot computer systems. Similar to the concern raised above, we question the Board's authority for granting a waiver. We also recommend that the procedures and criteria surrounding the waiver process be included in the final-form regulation.

13. Reference to temporary regulations. – Clarity and lack of ambiguity.

The following sections of the regulation contain references to the Board's temporary regulations. The Board's temporary regulations will cease to exist as of July 5, 2007, unless they are promulgated as permanent regulations by that date. We recommend that the Board delete references to temporary regulations unless the pertinent temporary regulations have been promulgated as permanent regulations prior to the Board's submittal of this final-form regulation.

- § 465.1(c)(4)
- § 465.7(a)
- § 465.11(b)(1)(vi)
- § 465.11(b)(1)(viii)
- § 465.11(b)(5)(x)
- § 465.19
- § 465.20(a)
- § 465.21(a)
- § 465.22(a)
- § 467.1(a)(2)(ii)
- § 467.1(a)(2)(iv)
- § 467.2(a)(7)

14. Undefined terms. – Clarity and lack of ambiguity.

The terms or phrases noted below are found throughout the regulation. Clarity would be improved if these terms were defined.

- player rating
- player rating system
- bill validator
- trolley
- drop team
- cash equivalents
- merchandise jackpot

15. Miscellaneous clarity.

The following terms or phrases appear throughout the regulation and should be deleted because they are vague:

- adequately
- timely
- reasonable
- reasonably
- appropriate
- appropriately
- competent
- qualified
- effective

Appendix

Section	
465.2(a)	An applicant for, or holder of, a slot machine license shall submit to the Board and the Department, in the manner the Board requires , a narrative description...at least 90 days before gaming operations are to commence, unless otherwise directed by the Board . A written system of internal controls must include:
465.2(a)(7)	Other items the Board may request in writing.
465.2(c)	The initial submission must also be accompanied by a report from an independent certified public accountant or, when appropriate , independent registered public accounting firm, licensed to practice in this Commonwealth....
465.2(d)(2)(i)	Transactions or financial events which occur in the operation of a slot machine are executed in accordance with management's general and specific authorization, as approved by the Board .
465.2(d)(2)(v)	Access to assets is permitted only in accordance with management's general and specific authorization, as approved by the Board .
465.2(f)	If a slot machine licensee intends to make a change or amendment to its system of internal controls, it shall submit to the Board and the Department in the manner prescribed , a narrative description....
465.3(d)(1)	Be in a form prescribed or authorized by the Board .
465.4(a)	A slot machine licensee shall, upon the request of the Board , file monthly, quarterly and annual reports....
465.4(c)	In the event of a license termination, change in business entity or material change in ownership, the Board may require the filing of financial and statistical reports as it deems necessary , as of the date of occurrence of the event. The slot machine licensee will be notified in writing by the Board.
465.5(a)	A slot machine licensee shall, at its own expense, cause its annual financial statements to be audited in accordance with generally accepted auditing standards (when applicable , the Standards of the Public Company Accounting Oversight Board (United States))....
465.5(d)	Two copies of the audited financial statements, together with any management letter or report prepared thereon by the slot machine licensee's independent certified public accountant or, when appropriate , independent registered public accounting firm....
465.5(e)	The slot machine licensee shall require the independent certified public accountant or, when appropriate , independent registered public accounting firm auditing its financial statements....
465.5(k)	...Each SARC shall be filed with the Board concurrently with the Federal filing in a manner to be prescribed by the Board .
465.5(l)	...Each CTTC shall be filed with the Board concurrently with the federal filing in a manner to be prescribed by the Board .
465.5(m)	Prior to commencing gaming operations, a slot machine licensee shall file with the Board, in a manner to be prescribed by the

	Board , a copy of its compliance program....
465.8(b)	Restricted areas within the licensed facility shall be designated and approved by the Board for the repair and storage of slot machines....
465.8(c)	Emergency exits from the gaming floor must be equipped with an audible alarm system, approved by the Board that produces a loud, distinguishable warning sound....
465.8(f)	Slot machine licensees shall provide additional accommodations within the licensed facility as shall be requested by the Board, the Department or the Pennsylvania State Police to accommodate periodic audit, compliance or investigative reviews at the licensed facility.
465.9(c)(1)(vii)	Other areas designated by the Board.
465.9(c)(5)	...and elsewhere in the licensed facility as required by the Board. Each monitoring room must be equipped with or serviced by:
465.9(c)(5)(iii)	...A robbery, fire or emergency alarm must be perceptually distinguishable from nonemergency alarms in a manner approved by the Board.
465.9(e)(2)	The main bank, vault, satellite cages and other areas as required by the Board.
465.9(f)	...or shall be maintained in an electronic format the Board approves....
465.9(h)	The Bureau shall be notified immediately, in a manner the Board, of any incident of equipment failure....
465.9(i)	The Bureau shall be notified, in a manner approved by the Board, in advance of the following:
465.9(p)(2)	Maintained in a book with bound numbered pages that cannot be readily removed or maintained in an electronic format as the Board approves.
465.11(a)	...The proposed organizational structure of each slot machine licensee shall be approved by the Board in the absence of a conflict....
465.11(a)(3)	The performance of all functions, duties and responsibilities in accordance with sound financial practices by competent, qualified personnel.
465.11(e)	Notwithstanding other provisions to the contrary, a slot machine licensee may, with the prior approval of the Board, designate and assign more than one person....
465.13(a)	Individuals, including security department personnel, are prohibited from possessing any firearm or handgun within a licensed facility without the express written approval of the Board, in accordance with authorization procedures as the Board determines....
465.14	...slot machine licensees shall be required to submit, for Board approval, a minimum staffing submission with regard to its security department. The minimum staffing submission must consider the size and layout of the licensed facility as well as the number and

	configuration of slot machines on the gaming floor and must at all times provide for adequate and effective security of the gaming floor and any restricted areas servicing the gaming operation....
465.17(a)	...and other instruments as are authorized by the Board...
465.17(c)	...All currency, gaming vouchers, coupons and Board-approved instruments inserted into the bill validator....
465.17(e)(4)	...may not affect the security of the slot cash storage box, its contents or the bill validator, and shall be approved by the Board.
465.18(a)	Slot machine licensees shall place on file with the Board, in the manner prescribed by the Board, a schedule....
465.18(b)	...Any deviation from the schedule setting forth the specific times at which slot cash storage boxes will be brought to or removed from the bill validators, change in the areas to be dropped or the transportation route to the count room shall be noticed to the Board in advance in a manner prescribed by the Board.
465.18(c)	...located immediately adjacent thereto, configured and secured in a manner approved by the Board, by a minimum of three employees....
465.25(a)	A slot machine licensee shall file with the Board, in the manner prescribed by the Board, a schedule setting forth the specific times during which the contents of slot cash storage boxes are to be counted and recorded. Any deviation from the schedule shall be noticed to the Board in advance in a manner prescribed by the Board.
465.25(b)(2)	...The information is used by the counting equipment to either calculate the value internally or obtain the value directly from the gaming voucher system or coupon system in a secure manner as approved by the Board...
465.25(i)	A coupon which has not already been canceled upon acceptance or during the count shall be canceled prior to the conclusion of the count, in a manner approved by the Board.
465.25(j)	...shall be filed in the manner prescribed by the Board.
465.27(c)(2)	The Board has approved the specific offer of the annuity jackpot.
465.31(b)	...A slot machine licensee may not commence gaming operations until its hours of operation are approved by the Board.
467.1(a)	An applicant for, or holder of a slot machine license, shall submit to the Board, in a manner the Board requires, a floor plan....
467.1(a)(2)(xii)	Additional documentation requested by the Board.
467.2(a)(9)	The slot machine licensee has successfully completed a test period in accordance with the terms and conditions required by the Board.

Facsimile Cover Sheet



Phone: (717) 783-5419
Fax: (717) 783-2664
irrc@irc.state.pa.us

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

To: Cheryl Posavec
Richard M. Sandusky (214 8111)
Agency: Pa Gaming Control Board
Phone: 346-8319
Fax: 703-2988
Date: February 1, 2007
Pages: 11

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-49 (IRRC #2581). 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: Cheryl Posavec Date: Feb 1, 2007