

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 437 AND 501]

Response to Public Comment

CHAPTER 441. SLOT MACHINE LICENSES [*formerly § 437*]

§ 441.1. Definitions [*formerly § 437.1*]

Comment:

Amend the definition of "Organization" to include "a group of legal business entities."

Response:

The Board declines to accept this recommendation, however, for clarification purposes, the Board has amended the language of this definition.

Comment:

Define "political subdivision" and "host political subdivision."

Response:

The Board declines to accept this comment at this time. In light of the Supreme Court's recent decision, *Pennsylvanians Against Gambling Expansion Fund, Inc. et al., v. Commonwealth of Pennsylvania, et al.*, No. 229 MM

2004, 2005 Pa. LEXIS 1318 (Pa. Jun. 22, 2005), the Board has determined to address this topic at a later date and will review all comments submitted on this topic.

§ 441.2. Initial slot machine application deadlines

[formerly § 437.2]

Comment:

In subsection (a), replace the term "filing date" with the term "submission date." In subsection (b), replace the term "filed" with the term "submitted." Make the same replacements in section 437.3.

Response:

The Board declines to accept the suggested terminology, but agrees to amend the language of this section and section 441.3 *[formerly section 437.3]* to clarify the intent of the regulation.

Comment:

The deadline for all applications should be 90 days from the publication of the application and 60 days from the publication of the filing date in the Pennsylvania Bulletin.

Response:

The Board declines to accept this recommendation but has amended the deadlines set forth in the regulations to 45 days in order to provide applicants additional time.

Comment:

Use of the terms "filing date" and "second filing date" are confusing. Change the term "second filing date" to the "deemed complete date" to clarify.

Response:

The Board has amended this section to clarify the intent of the regulation by changing "second filing date" to "completion date."

Comment:

"Due process" should be added to subsection (b) in the event an application is not deemed complete by the requisite filing date.

Response:

The Board declines to accept this recommendation. This provision, setting forth a closing date for applications to be completed, is not an adjudication. Rather this is a statutory criterion for applicants that must be satisfied prior to the Board's consideration of any such license applications.

§ 441.3 Slot machine license requirements [formerly § 437.3]

Comment:

Subsection (a) is repetitive of section 437.2.

Response:

The Board agrees with this comment and has amended this section to reflect this change.

Comment:

The Board should provide further guidance in the regulations as to what would be considered a "material change" for purposes of notification.

Response:

The Board agrees with this comment and has amended this section to provide further guidance. The provision has been amended as follows: Notify the Board within 30 days of a material change in the information, materials, documents or facts relating to the license application, license or renewal application, which is relevant to the licensing requirements set forth in the act.

Comment:

A copy of the application should be provided to each affected political subdivision at the same time as the

application is filed with the Board. Any material changes to the application should be forwarded to the affected political subdivisions. "Affected political subdivisions" should include the following: the county and the municipality where the facility will be located, all political subdivisions within 20 linear miles of any proposed Category 1 licensed facility, all political subdivisions within 10 linear miles of any proposed Category 2 licensed facility located within a Class 1 city, all political subdivisions within 15 miles of all Category 3 licensed facilities.

Response:

The Board declines to accept this comment. Pursuant to section 1202(b)(4) of the act, the Board has the authority to grant slot machine licenses. Based on this delegation of power, the Board believes that slot machine license applications should only be filed with the Board. Further, in order to enforce the confidentiality requirements under section 1206(f) of the act, it is necessary that applications are filed solely with the Board.

Comment:

Define "local impact report" in section 437.3(d).

Response:

The Board has amended the language of section 441.4(a)(21) [*formerly section 437.4(a)(21)*] to clarify this term.

Comment:

The Act does not provide for a local impact report as required by section 437.3(d). To the contrary, the application and appropriate materials are required to be distributed to the local jurisdiction which shall have 60 days to comment.

Response:

The Board disagrees with this interpretation of the act and declines to accept this comment. The Board believes that the local impact report is an important aspect of the licensing process. The submission of the entire application to local jurisdictions raises conflicts with the existing confidentiality requirements present in section 1206(f) of the act and the regulations. In light of the Supreme Court's recent decision, *Pennsylvanians Against Gambling Expansion Fund, Inc. et al., v. Commonwealth of Pennsylvania, et al.*, No. 229 MM 2004, 2005 Pa. LEXIS 1318 (Pa. Jun. 22, 2005), the Board will further evaluate these issues.

§ 441.4. Slot machine license application [formerly § 437.4]

Comment:

The documentation and information required by section 437.4 appears to go well beyond that specified in the Act. The requirements are overly complex and sometimes vague, which may hinder the timely issuance of licenses by inundating the Board and the Bureau of Investigation and Enforcement with volumes of unnecessary information and documentation. The information required from slot machine applicants should be directly relevant to slot machine operations.

Response:

The Board declines to accept this recommendation. The information requested by the Board in the slot machine license application is necessary to protect the integrity of gaming in this Commonwealth. The requirements set forth in the regulations are no more extensive than other jurisdictions that permit gaming. Furthermore, it is the goal of the Board to fully investigate applicants for slot machine licensure to ensure that the most qualified applicants are awarded licenses.

Comment:

Section 437.4(a)(2), requiring identification of key employees may cause serious problems for applicants because not all of these employees will be identified or hired for the early stages of the initial application process. This provision will result in a great deal of duplication in that much of the information required of the slot machine license applicant will be included in the information that the key employees and key employee qualifiers are to submit. Such duplication will result in excess cost and delay.

Response:

The Board declines to accept this recommendation as the Board believes the information required in the application process for both the slot machine license applicants and the key employee and key employee qualifier applicants is relevant and necessary to further protect the integrity of gaming in this Commonwealth. As way of further response, the applicant is permitted to amend its application as such employees are hired.

Comment:

Section 437.4(a)(3) seems extremely broad and should be narrowed.

Response:

This section has been amended to reflect the waiver provisions in section 435.2(g) and section 435.3(f).

Comment:

The local impact report should include the following information: local police and emergency service capabilities, detailed site landscaping plans, existing tourism, including historical and cultural resources and a housing impact analysis.

Response:

The Board agrees that additional items should be included in the local impact report. The Board has amended this section to clarify the information that should be included in a local impact report.

Comment:

The Board should accept "preliminary plans" for the proposed location of slot machines, marketing plans and proposals, and architectural drawings, renderings and other depictions of the facility for application purposes and allow the applicant to file amended plans.

Response:

The Board declines to accept this recommendation. The Board believes that this issue is addressed in the

regulations as the regulations allow for amendments to submitted applications.

Comment:

Would it be sufficient in the slot machine license applications to incorporate by reference the information contained in the individual key employee qualifiers and key employee applications?

Response:

The Board declines to accept this suggestion. Each application for licensure must be completed in its entirety.

Comment:

The \$5,000 fee for a background investigation should be reduced.

Response:

The Board has conducted additional research into fee schedules and costs incurred in other gaming jurisdictions in order to ensure that the fee schedule is realistic. Consequently, the Board has removed the background investigation fee from this section. The fee will be published in the Board's fee schedule. In addition, a revised fee schedule has been published for manufacturers.

Comment:

There should be an exemption from the filing requirement for institutional investors.

Response:

The Board accepts this comment and has added language allowing for the application of a waiver by institutional investors.

Comment:

The definitions of "key employee" and "key employee qualifier" are too broad and the cost of the background investigation for each one could be extremely costly.

Response:

The Board has amended the key employee and key employee qualifier provisions in Chapter 435 of the regulations to include waiver provisions. This language will limit the number of candidates required to obtain licensure.

Comment:

Do the consent forms in the application need to be signed by the individual applicants for key employee qualifiers and key employees? The Board should consider

that such consents need only be filed in connection with the applicants for slot machine licensure.

Response:

The Board declines to accept this recommendation. The executed consent forms must be completed by the applicant for slot machine licensure as well as each key employee and key employee qualifier who is associated with the applicant for slot machine licensure.

Comment:

The Board should revise section 437.4(a)(7) and section 437.12(b)(8)(iii) to call for the "estimated number" of slot machines the applicant requests.

Response:

The Board declines to accept this recommendation as the regulations permit the applicant to amend its request if it determines to request more or fewer slot machines.

Comment:

Section 437.4(a)(9) should be limited to an investigation of the applicant's accounts and records associated with the applicant's gaming operations and those activities substantially thereto related.

Response:

The Board declines to accept this recommendation. The Board believes that this type of financial inquiry is appropriate and is consistent with the Board's investigatory mandate as provided by the act.

Comment:

The authorization to "seize" records seems to be unwarranted for the purposes of an application for a license.

Response:

The Board declines to accept this recommendation. In section 1331 of the act, all licensees have the duty to consent to inspections, searches and seizures. Accordingly an applicant for licensure has an obligation to consent to these requirements as well.

Comment:

Section 437.4(a) (11) should be amended to permit an applicant or its related persons to own, solely for investment purposes, no more than 5% of the outstanding stock of a publicly traded company that is a supplier applicant or licensee or the holding or intermediary company of a supplier applicant or licensee.

Response:

The Board declines to accept this recommendation. Section 427.2(a)(7)(i) of the regulations specifies that only specific types of interests in a supplier licensee or applicant are permitted.

Comment:

The tax clearance reviews performed by the Department of Revenue and the Department of Labor and Industry are unnecessary and may delay the filing of applications.

Response:

The Board declines to accept this recommendation. The reviews performed by the Department of Revenue and the Department of Labor and Industry are statutorily required components of the slot machine license application under section 1309 of the act. As way of further response, the Board has been given assurances by these agencies that the reviews will be conducted in a timely manner.

Comment:

Section 437.4(a)(12) and 437.12(b)(9) should be amended to require tax clearance review from the host subdivisions.

Response:

The Board declines to change the regulations at this time but considers an applicant's fulfillment of its tax obligations an element of financial suitability. If a host municipality notifies the Board of an applicant's tax delinquency, the Board will consider this information relevant.

Comment:

The information requested in section 437.4(a)(16) [i.e. marketing plans and proposals] is highly confidential and sensitive and has limited probative value. The Board should strike this section or exempt Category 1 applicants from this requirement.

Response:

The Board believes that this information is important and is a requirement in other jurisdictions. As way of further response, all confidential information submitted to the Board will be subject to the confidentiality provisions of Act 71 and the regulations.

Comment:

Section 437.4(a)(16) should be expanded to require submission of information on plans of target markets, both geographically and demographically; the extent to which the

applicant plans to contract with bus companies to bring patrons to the facility; planned advertising strategy including the use of billboards and other media; how the proposed facility will be marketed in conjunction with other properties owned or operated by the applicant.

Response:

The Board accepts this comment in part. The Board has amended this provision to include geographic and demographic market information.

Comment:

Section 437.4(a)(18), which requires the applicant to submit architectural drawings, should be expanded to include the types of building materials that will be used in the project.

Response:

The Board declines to accept this recommendation at this time. In light of the Supreme Court's recent decision, *Pennsylvanians Against Gambling Expansion Fund, Inc. et al., v. Commonwealth of Pennsylvania, et al.*, No. 229 MM 2004, 2005 Pa. LEXIS 1318 (Pa. Jun. 22, 2005), the Board has decided to address this topic at a later date.

Comment:

Section 437.4(a) (20) should be revised to eliminate the vendor identification requirement and require only the current or anticipated retail and food venue plans.

Response:

The Board declines to accept this recommendation. The Board has amended the language of this section for clarification purposes to read: "Planned retail and food venue for the facility and the identification of the outside operators of each venue." As way of further response, the applicant is permitted to amend its application should its retail and vendor plans change.

Comment:

We are concerned about some ambiguous language surrounding confidentiality in section 437.4(a) (21). The Board should require that data underlying the local impact analysis and all other relevant analysis be made publicly available so that the local impact report and other applicant assertions can be vetted with maximum transparency and accuracy.

Response:

The Board agrees that the transparency of the application process is extremely important. Likewise the Board acknowledges that certain information provided by the

applicant to the Board is confidential and should not be available for public disclosure. The confidentiality provisions present in section 1206(f) of the act and the regulations require the Board maintain the confidentiality of certain applicant information in order to protect the integrity of the application process.

Comment:

Section 437.4(a)(22) addresses parking requirements but does not establish any regulations regarding size, number, travel lanes and patterns, lighting, landscape requirements, etc.

Response:

The Board declines to accept this recommendation. These requirements may be subject to change depending on many variables at a particular facility. The Board will evaluate such specifications as they are submitted as part of the licensing process. The Board may require and request additional detail of the applicants.

Comment:

If a temporary facility is proposed, section 437.4(a)(25) should require the submission of all information otherwise required for the permanent facility.

Response:

The Board believes that the language of section 441.4(a)(25) [formerly section 437.4(a)(25)] provides for this type of information. As way of further response, under section 1207(17) of the act, all licensed facilities are prohibited from utilizing temporary facilities for a period of more than 24 months.

Comment:

Sections 437.4(a)(28) through (31) refer to "the applicant and its developer." Define "developer."

Response:

The Board accepts this recommendation and has provided a definition for "developer" as follows:

"Developer." A person engaged by an applicant or licensee to construct a proposed licensed facility or to otherwise make land or buildings suitable for use as a licensed facility.

Comment:

Sections 437.4(a)(28), (30), (32) and (33) should be amended to include the applicant "or its affiliates."

Response:

The Board declines to accept this recommendation as the use of the term applicant is appropriate in this circumstance.

Comment:

Section 437.4(a) (29) should address the negative effect on wages, jobs and quality of life.

Response:

The Board declines to accept this recommendation. Section 441.4(a) (31) [formerly 437.4(a) (31)] requires the applicant to provide information regarding the degree to which potential adverse effects related to the proposed facility will be mitigated. Thus the Board believes that the regulations adequately address this issue.

Comment:

Section 437.4(a) (31) is vague as to how a licensee could identify and alleviate potential adverse effects. The Board should permit licensees to address the potential side effects of gambling through the plan they must submit under Chapter 501.

Response:

The Board declines to accept this recommendation as it believes that the language of this section speaks for itself.

Comment:

The following requirements should be added to section 437.4:

1. Site and surrounding neighborhood safety and security plan.
2. A maintenance plan for the physical area around the gaming facility.
3. A proposed building program.
4. Projected timetable for development.
5. Local employment strategies.
6. A local vendor plan.
7. Traffic circulation plan.
8. Neighborhood and community involvement.
9. Capital Expenditures.

Response:

The Board believes that some of the requirements will be addressed in the local impact report. At this time the Board will not amend the application or the regulations to include these requirements; however, the Board will consider these matters on an ongoing basis.

Comment:

The diversity plan should be provided by the applicant with the application rather than allowing for a thirty day delay.

Response:

The Board accepts this recommendation and has amended the regulations to reflect this requirement.

§ 441.5. Financial fitness requirements [formerly § 437.5]

Comment:

The requirement set forth in section 437.5(c)(2) seems potentially overbroad and overburdensome. For a publicly traded entity, the Board should limit the requirement of providing organizational information to the applicant and only those individuals in its holding or parent companies that have a direct involvement with the gaming activities of the proposed Pennsylvania operation and that all other employees including those of its affiliates or subsidiaries be exempted.

Response:

The Board declines to accept this comment as the Board believes that this information is necessary to determine financial suitability. The Board notes that the waiver language present in Chapter 435 applies in this instance.

Comment:

The tax information requirements of section 437.5(c) (5) and (6) should be made available as part of the investigation of key employee qualifiers but not required as part of the application for a slot license.

Response:

The Board accepts this recommendation in part and declines in part. The Board has amended the language of this section to indicate that if a key employee qualifier waiver is granted or pending, the applicant need not provide such information for the key employee qualifier requesting such waiver.

Comment:

The Board should amend 437.5(c) (7) to indicate that duly licensed financial institutions and institutional investors will be presumed suitable unless the Board determines otherwise.

Response:

The Board declines to accept this comment as the requirements of the act do not allow for this type of presumption.

§ 441.6. Character requirements [formerly § 437.6]

Comment:

Section 437.6(c) (1) (v), which requires a history of insurance claims to be submitted, is extremely broad and burdensome. The Board should eliminate this item entirely or significantly reduce its scope.

Response:

The Board accepts this recommendation in part and has amended this provision to include claims in excess of \$50,000 or 7 years.

Comment:

Sections 437.6(c) (3) and (4) should be amended to have the Board or the Bureau request letters directly from law enforcement agencies and gaming authorities.

Response:

The Board declines to accept this recommendation as this regulation is based on section 1310(c) of the act, which requires the applicant to produce such information and provides for an alternative means of meeting this requirement if no letter is issued from the law enforcement agency. As way of further response, the requirement of a "letter of reference" from a law enforcement agency is consistent with application requirements for casino licenses in other jurisdictions.

§ 441.7. Procedure [formerly § 437.7]

Comment:

The process set up in this section allows for the Bureau to file an objection with the Board. There is no procedure for the applicant to be given notice of the objection or any opportunity for the applicant to respond to be heard regarding the objection.

Response:

The Board agrees with this recommendation and has added language to provide notice and an opportunity for applicant response to this section.

Comment:

Clarification on language in § 437.7 stating that the Board may issue a slot machine license as long as the applicant meets stipulated financial fitness and character requirements. We wish to confirm our view that the Board believes that such requirements are necessary, but not sufficient, preconditions for license issuance.

Response:

The Board will review a variety of factors in determining whether to award a license. The applicant's financial fitness and character are only some of the factors pertaining to an applicant's suitability.

§ 443.1. Category 1 slot machine licenses [formerly § 437.9]

Comment:

Sections 437.9(a)(4) and (5), which pertain to a detailed plan for the management and use of the backside improvement area and accounts created from funds allocated under section 1406 of the act, should be stricken as they are premature and better suited to a reporting function to one of the bureaus within the PGCB after licensure.

Response:

The Board recognizes the early stage at which this information is requested. Accordingly the Board has amended the language of these sections. The applicant shall be required to submit an "Initial" plan demonstrating its intention to comply with the provisions of the act. The plans shall be subject to further detail per the request of the Board.

§ 443.2. Alternative Category 1 licensing standards

[formerly § 437.11]

Comment:

In section 437.11(e), it is not clear that an applicant would have the ability to cure any defects

identified by the Board. This section should make it clear that the ability to cure is available.

Response:

The Board has amended these regulations to clarify that it intends to apply administrative agency law to these types of enforcement actions.

Comment:

The Board may wish to expand this alternative licensing process for both the applicant as well as its parent and affiliated companies insofar as they may be treated as key employee qualifiers or key employees.

Response:

Section 443.2(a) [formerly section 437.11(a)] of the regulations permit the use of alternative licensing standards for the affiliate, intermediary, subsidiary or holding company of an applicant for a Category 1 license.

Comment:

The use of alternative licensing is unprecedented for gaming operations and the regulation should be eliminated in its entirety.

Response:

The Board declines to accept this comment as the use of alternative licensing standards is permitted under section 1314(b) of the act.

§ 443.3. Conditional Category 1 licenses [formerly § 437.12]

Comment:

The regulations should clearly state that a Category 1 license will be issued as long as there have been no changes in any material fact or circumstance relevant to the eligibility criteria for a slot machine license. We request that a provision be inserted in the regulations requiring the issuance of a Category 1 license within the 18 month period to holders of conditional licenses provided that they have satisfied all the eligibility requirements and there have been no changes in any material fact.

Response:

The Board declines to accept this comment. The act sets forth the process for the issuance of permanent licenses to conditional license holders.

Comment:

The current draft regulations are inconsistent with the intent of the act in that they seemingly fail to

provide for conditional Category 1 licenses for those licensed facilities that have yet to begin live racing. The Board should make it clear that such applicants are, in fact, eligible for conditional licenses.

Response:

In section (b) (2) and (3) of section 443.3 [*formerly section 437.12*], the applicant is required to submit a verification from the Horse Racing Commission or the Harness Racing Commission stating that the applicant has satisfied the eligibility requirements of sections 1302 and 1303 of the act. Accordingly applicants who have not yet begun live racing are included in conditional licensing as long as the applicants are able to provide proper verification from the Commissions.

Comment:

Section 437.12(b) (12) is inconsistent with the Act and should be stricken. If the Board does not eliminate this requirement, the waiver provision is absolutely vital to ensuring the draft regulation's compliance with the Act and effectuating its policies for the support of the horse racing industry.

Response:

The Board declines to accept this interpretation of the act. The Board believes this regulation is consistent with section 1315 of the act which pertains to the issuance of conditional Category 1 licenses.

Comment:

Clarify section 437.12(d) to emphasize that an applicant's regulatory history with the Horse Racing Commission or Harness Racing Commission will be the "primary factor" in the Board's deliberations.

Response:

The Board declines to accept this recommendation. The applicant's regulatory history with the respective Commissions will be one of the many factors that the Board will consider in issuing a Category 1 license.

Comment:

Subsection (e) (2) would preclude issuance of a conditional license until the licensed racing entity's permanent slot machine license application "has been filed and deemed complete by the Board." It appears that this requirement departs from the statutory language in section 1315 and may be prejudicial to conditional license applicants.

Response:

The Board declines to accept this comment. Section 1315(c) of the act requires the application to be complete before the conditional license can be issued.

Comment:

As drafted, section 437.12(f) departs from the language of Section 1315(d) and, at least arguably, is inconsistent with the clear intent to the statutory provision. Under Section 1315(d), a Conditional Category 1 license does not expire until 18 months from the date that all permanent slot machine applications are "filed and deemed complete" by the Board. As set forth in Section 437.2 of the draft regulations, there is a very important distinction between the date slot machine applications are physically delivered to the Board by applicants and the date these same applications are "filed and deemed complete." The 18 month duration of Conditional Category 1 licenses runs from the latter date, not the former date, and any other result would be violative of the act. Section 437.12(f) should be clarified to assure consistency with the act.

Response:

The Board declines to accept this comment. Section 1315(c) of the act requires the application to be complete before the conditional license can be issued. As way of further response, the language of this section and section 441.2 [formerly section 437.2] of the regulations has been amended to clarify these dates.

§ 441.10. Application bond or letter of credit requirement

[formerly § 437.13]

Comment:

Section 437.13(e) should be changed to permit application withdrawal in order to allow an applicant to mitigate costs should the applicant's likelihood of success diminish.

Response:

Section 423.5 of the regulations provides a process for application withdrawal. As way of further response, the Board has amended this section to include the application withdrawal provision.

Comment:

The proposed regulations favor the deep-pocketed, largest casino operators. A bond will be costly and difficult for other applicants to obtain.

Response:

The Board declines to accept this comment. Section 1313(c) of the act requires applicants to post letter of credit or bond to demonstrate the applicant's financial ability to pay the slot machine license fee.

§ 437.15. Political subdivision comment *[stricken]*

Comment:

A number of comments were submitted pertaining to the political subdivision comment regulation.

Response:

The Board has eliminated section 437.15 as a result of the Supreme Court's recent decision, *Pennsylvanians Against Gambling Expansion Fund, Inc. et al., v. Commonwealth of Pennsylvania, et al.*, No. 229 MM 2004, 2005 Pa. LEXIS 1318 (Pa. Jun. 22, 2005).

§ 441.12. Public input *[formerly § 437.16]*

Comment:

The Board should add the following language to section 437.16:

(a) If the Board determines that there is substantial public interest in a slot machine licensing proceeding, it

shall conduct at least one public hearing in each affected political subdivision, as required by section 437.3(e).

Added section:

(c) Public hearings shall be held in multiple sessions in the evenings, during the day, and on weekends.

Response:

The Board declines to accept this recommendation.

Comment:

At a minimum, the regulations should be revised to require that a public hearing be held to receive comments from the general public. The Board shall not approve a slot machine license application for any county that can show, through a method acceptable to both the county and Board, that a majority of its citizens and/or regular tourists oppose the license application.

Response:

In light of the Supreme Court's recent decision, *Pennsylvanians Against Gambling Expansion Fund, Inc. et al., v. Commonwealth of Pennsylvania, et al.*, No. 229 MM 2004, 2005 Pa. LEXIS 1318 (Pa. Jun. 22, 2005), the Board declines to accept this recommendation.

Comment:

Will the "protocol" to be adopted by the Board under section 437.16(b) for the conduct of such a public hearing allow the applicant to participate?

Response:

A hearing officer will conduct the public hearings and adopt a protocol for such hearings.

Comment:

We urge the Board to allow subdivisions the power to, by request, organize a Board meeting in their jurisdiction during the public comment window. Additionally, we urge the Board to adopt a process through which the Board will require applicants to make themselves available to meet with the leadership of the local subdivisions.

Response:

The Board will review this recommendation and consider this recommendation as the application process proceeds.

CHAPTER 501. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS

General Comments:

Comment:

Given the importance of this program, we strongly recommend that the requirements of section 501 be made mandatory at the time of submission of a gaming license

application, allowing these treatment plans to be subject to competitive and comparative review.

Response:

The Board agrees with this recommendation and has amended the regulations to reflect this change.

Comment:

Language throughout the draft Regulations suggests that the licensee should have the responsibility to identify and intervene with individuals suspected of being compulsive or problem gamblers. This approach is inconsistent with the approach supported by the American Gaming Association (AGA) and generally with both voluntary and mandatory compulsive and problem gambling programs operated in other states where gaming is conducted. We suggest the Board require that each licensee adopt and implement a program similar to the program designed and implemented by the AGA and supported by regulatory authorities in most other states where gaming is currently conducted.

Response:

The Board has reviewed this recommendation and made some amendments to the requirements of this section. The

Board will continue to study this topic on an ongoing basis.

Comment:

The Gaming Control Board shall have the power and its duties shall be to: Require that each licensed gaming entity that offers patrons "Total Rewards Cards" that track the amount of money and time spent gambling in order to determine the value of provisions or complimentary services received by patrons to issue *monthly statements* that list the patron's gaming winnings and losses.

Response:

The Board will consider and review this recommendation as it continues to develop regulations in this area.

§ 501.2. Compulsive and problem gambling plan

Comment:

The Board should allow applicants to use the more current nomenclature "problem gambling" rather than "compulsive and problem gambling plan" in their respective plans and training curricula.

Response:

The Board declines to accept this recommendation as section 1509 of the statute refers to "compulsive and problem gambling."

Comment:

Section 501.2 should be amended to the following: "A slot machine license applicant must submit a compulsive and problem gambling plan to the Board (within 90 days of issuance of a slot machine license) as part of the application for a slot machine operator license.

Response:

The Board accepts this recommendation and has amended this section to reflect these changes.

§ 501.3. Criteria for development

Comment:

To the extent that the Board requires a behaviorally based approach to training on problem gambling, we suggest that it focus on verbal behaviors - statements or comments that individuals might make, or that others might make about them, indicating a gambling-related harm—rather than physical behaviors. To the extent that physical behavior manifests distress or otherwise disrupts the casino floor, we recommend treating such behaviors as security or

customer service issues. If in the course of resolving those issues an individual makes statements concerning the negative effects of gambling, then those statements should trigger a licensee's responsible gaming procedures.

Response:

The Board declines to make changes to the regulations at this time. However, the Board will evaluate this comment further and examine these issues on an ongoing basis.

§ 501.4. Employee training program

Comment:

The Board should amend the regulations to provide for the following:

- Provide procedures designed to prevent serving alcohol to visibly intoxicated gaming patrons.
- Provide procedures for removing self-excluded persons from a licensed facility including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel.
- Provide procedures preventing any person identified on the self-exclusion list from receiving any advertisement, promotion, or other targeted mailing

after 90 days of receiving notice from the Board that the person has been placed on the self-exclusion list.

- Provide procedures for the dissemination of written materials to patrons explaining the self-exclusion program.
- Provide procedures to prevent any person placed on the self-exclusion list from having access to or from receiving complimentary services, or other like benefits.
- Provide procedures designed to prevent persons from gaming after having been determined to be visibly intoxicated.

Response:

The Board agrees with this recommendation and has amended the regulations to reflect these changes.

Comment:

It is important to provide some guidance on when the training must occur and which new employees must be trained. The provision should clarify that only a program for training new, permanent employees is required. Furthermore, the provision should clarify that only new key employees and gaming employees should be subject to the training requirement.

Response:

The language of section 501.4(b) has been amended to clarify that training shall be required for permanent employees.

Comment:

Suggest that licensees be afforded the flexibility to conduct training using their own in-house trainers who have been appropriately certified to provide such training.

Response:

The Board declines to accept this recommendation as the regulations provide sufficient flexibility for applicants.

Comment:

Suggest that subsection (a)(4) be amended to refer to "identification of vulnerable groups" without listing particular subpopulations. Suggest that training underscore the point that pathological gamblers are found across all socioeconomic and demographic strata.

Response:

The Board agrees with this suggestion and has amended the regulations to reflect this change.

Comment:

In Subsection (a)(5) suggest re-casting "intervention" away from psychiatric/psychological terminology and toward a "harm" terminology. As such, this section might read: "Intervention techniques to be used when individuals indicate that gambling is causing significant harm to themselves or to others."

Response:

The Board declines to accept this recommendation. However, the Board will continue to review and consider this issue.

§ 501.6. Liability

Comment:

The current draft of the regulations allow operators a windfall from the consideration they accept without having to satisfy the obligations under the contract. For these limited, but valid reasons, the liability protection provisions should not apply to contract claims.

Response:

The Board declines to accept this recommendation and disagrees with this interpretation of the regulations. As way of further response, section 1516(c) of the act provides a limitation on the liability of licensed gaming

entities with regard to self-excluded persons. This regulation mirrors that provision in the act.

Comment:

The Board should add the following provisions:

§ 501.7. - Signage Requirements

(a) Pursuant to section 1509(c) of the act, each licensed gaming entity shall post signs that include the statement: "If you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the sign shall be determined by the Board. The signs shall be prominently posted at the following locations:

- (i) within 50 feet of each entrance and exit of the facility.
 - (ii) within 50 feet of each ATM, cash dispensing or change machines in each facility.
- (b) Each licensee shall print a statement related to obtaining compulsive or problem gambling assistance, the text of which shall be determined by the Board, on all marketing or advertising materials that are offered to the general public by a licensee, including but not limited to

signs, billboards, print, radio or television advertisements.

§ 501.7. - Prohibition of Check Cashing

- (a) Except as otherwise permitted in this section, no licensed gaming entity or any person acting on behalf of a licensed gaming entity, shall cash any check, including but not limited to, social security, unemployment insurance, disability payment, public assistance payment or payroll check from any person to enable such person to take part in gaming.
- (b) Notwithstanding the foregoing, a licensed gaming Entity may accept a recognized traveler's check, cashier's check, money order, wire transfer check or other cash equivalent.

Response:

The Board agrees with this recommendation and has amended the regulations to reflect this change.