

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 401, 403, 407, 421, 423, 427, 433, 435,
451, 461, 471, 481, 491, 495, 497, 499]

Pennsylvania Gaming Control Board

INTRODUCTION

The Pennsylvania Gaming Control Board (Board), under authority contained in section 1202 of the Pennsylvania Race Horse Development and Gaming Act of 2004 (act), drafted temporary regulations to facilitate the prompt implementation of the act, enacted July 5, 2004 (H.B. 2330) (Act 71). The Board's temporary regulations will be added to 58 Pa. Code, Recreation, Part VII, and will be titled Gaming Control Board.

Act 71 allows the Board to adopt temporary regulations through an abbreviated rulemaking process. In order to promulgate the temporary regulations in accordance with customary rulemaking procedure, the Board published its draft regulations in the Pennsylvania Bulletin at 35 Pa.B. 2569 (April 23, 2005). A 30-day public comment period was provided.

The Board received public comment from more than 35 interested parties, including industry members, citizens,

and political representatives. The Board thoroughly reviewed and considered all comments submitted. All public comments received by the Board are available for review on the Board's website, www.pgcb.state.pa.us. In order to respond to the comments in the most efficient manner, the Board has selected representative comments and formulated responses to these comments. These comments and responses are published herein.

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Response to Public Comment

General Comments

Comment:

Measures should be taken to prevent losses of machines through theft or changes to them through tampering or by damage. It is therefore respectfully submitted that the Board consider developing minimum standards to address these concerns while the equipment is in transit and while at the suppliers facilities. This could include strict requirements for documentation and inspection, for the type and quality of transportation, for the location and quality of storage facilities, for alarm systems, environmental controls, etc.

Response:

The Board acknowledges the security concerns of both manufacturers and suppliers. The Board agrees to review this recommendation and believes that these issues are

essential to protecting the integrity of the gaming industry in this Commonwealth.

Comment:

Through amendments to the Proposed Regulations or its actual conduct, the Board needs to clarify how and when it will permit - indeed encourage - industry communication with its members and staff. Our view is that gaming operations run more smoothly and efficiently in those jurisdictions that facilitate free and open communication between (i) the gaming regulatory agency and/or its staff and (ii) members of the public including, without limitation, licensees, vendors, manufacturers, facility operators, etc.

Response:

The Board agrees to review this recommendation and will consider the most appropriate and effective means of communication between the Board and the licensees.

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4 Definitions.

Comment:

Amend definition of "associated equipment" to include "other equipment as approved by the Board".

Response:

The Board agrees that additional parts or equipment not presently included in the definition may need to be treated as associated equipment to ensure appropriate regulation or manufacturers and has added similar language.

Comment:

Two different manufacturers of currency or bill validators presented different views on whether they should be licensed as a manufacturer.

Response:

The Board is reviewing the inclusion of bill validators in the manufacturer licensing provisions. The Board believes that if the bill validator is inserted and made part of the slot machine by a slot machine manufacturer, a separate license would not be required. However, a bill validator that is directly installed by the maker of the validator, a manufacturer license would be required. In addition, a manufacturer of associated equipment would have to use a supplier to install and repair the equipment. If the validation system is a free-standing machine, it is deemed "associated equipment" and therefore the manufacturer must be licensed by the Board and the machine must be provided through a licensed supplier.

Comment:

Does a manufacturer of associated equipment located in Pennsylvania need to sell through a supplier?

Response:

The act requires the use of a licensed supplier to sell and distribute any associated equipment. It also gives suppliers the responsibility of repair of all slot machines and associated equipment.

Comment:

The definition of "associated equipment" should be amended to exclude seats, light bulbs and decals.

Response:

The Board does not believe that the definition of "associated equipment" as written includes decals, seats or light bulbs as they are not part of the machine that constitutes "gaming."

Comment:

What happens if the central computer malfunctions?

Response:

The Department of Revenue will require that the vendor for the central computer have adequate back-up systems to

prevent and respond to a malfunction and to have adequate personnel on hand to repair any malfunction. This will be part of the contract between the provider and the Department of Revenue. However, if a malfunction occurs that requires time to repair, play would cease until the central system is once again operational.

Comment:

What is an example of "unwarranted invasion of personal privacy?"

Response:

An example of the type of information that if released would constitute an unwarranted invasion of privacy would be certain medical issues. For example, a background investigation could reveal a child or other family member with a mental illness. While the regulation makes medical records confidential, an investigator would not require medical records to learn of a particular mental health issue.

Comment:

How will confidential and nonconfidential folders be secured?

Response:

The use of separate folders for confidential and nonconfidential information is modeled on PUC administrative procedures. Storage and access issues will be addressed when the physical offices of the Board are fully equipped and operational.

Comment:

Does a company have to release its source code or other proprietary information to the Board?

Response:

The Board does not anticipate collecting information regarding source codes. However, the Board is authorized to do so if necessary to enforce the act. If the need arose to collect source codes, they would be treated as proprietary information.

Comment:

Request to amend the definition of controlling interest to be "a holder of a majority of the securities."

Response:

The definition of "controlling interest" in Act 71 includes a person who holds security in a privately held corporation. This statutory provision cannot be altered in

regulation. However, the definition allows a person to rebut the presumption of control by clear and convincing evidence.

Comment:

Request to amend definition of "controlling interest" to exclude institutional investors of publicly held companies.

Response:

The Board should retain the ability to qualify institutional investors. Section 1313 of Act 71 allows the Board to waive qualification requirements for institutional investors. An applicant or licensee could petition the Board for a waiver. However, the authority to qualify may be needed in certain instances, such as when there is a financial investigation of financial wrongdoing by the SEC. The Board is willing to add additional language to clarify the ability to obtain a waiver.

Comment:

What is an example of personal property?

Response:

Examples of personal property would be a car, appliances, jewelry or other items given to patrons.

Comment:

Clarify the definition of key employee for manufacturers.

Response:

The Board agrees to review the definition of "key employee" as it applies to a manufacturer to determine if it can be modified to include only those individuals who will be present on the gaming floor as part of their employment.

Comment:

Request to narrow the definition of "key employee qualifier", particularly for manufacturers because of the time and expense necessary to perform a background investigation and to license each qualifier.

Response:

The Board agrees to review the definition of "key employee qualifier" to determine if it can be modified to include only those individuals with direct control over gaming operations.

Comment:

Definition of slot machine is too broad and would include skeeball and toy crane machines.

Response:

The definition of "slot machine" comes directly from the statute. The Board believes that the definition does not include the above mentioned games.

Comment:

Add a definition of "cash equivalents."

Response:

The Board will review the need for a definition of "cash equivalents."

Comment:

Consider Michigan rules of construction.

Response:

Pennsylvania has its own Statutory Construction Act and case law which the Board will rely upon.

Comment:

Consider addition of definition of "weapons in a gaming area" as provided in Michigan law

Response:

The Board will review the Michigan provision.

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

§ 403.1 Participation at meetings and voting.

Comment:

A member should have no interest in a license in order to vote on it.

Response:

Section 1202(f)(3) of the statute requires a Board member to disclose the nature of a disqualifying interest, financial or otherwise, and to abstain from voting on the issue relating to the disqualifying interest. The Board will review the provisions of section 403.1(c) relating to member abstention to ensure that it adequately reflects the requirements of section 1202.

§ 403.2 Meetings.

Comment:

Request for inclusion of meeting locations and agenda on the Board's Internet website. A similar request has been made with regard to minutes and annual reports.

Response:

The Board has been posting meeting times and locations on its Internet website and would anticipate continuation

of this practice. The Board will review the potential inclusion of annual reports and minutes on the site.

CHAPTER 407. PUBLIC ACCESS TO BOARD RECORDS

§ 407.1 Case files.

Comment:

Request the prohibition of access to personal information of key employees and key employee qualifiers.

Response:

Personal information is included in the definition of "confidential information." Therefore, release of this information is prohibited by the current regulation. However, the Board will continue to review the provisions relating to confidential information to ensure that it protects personal and proprietary information.

Comment:

Request for clarification of how the Board will determine if information is confidential and how such determinations will be appealed.

Response:

The Board agrees to review further clarification of the issue. The process to appeal determinations relating to confidentiality will be similar to procedures used in

other Commonwealth agencies. An applicant, licensee or other party could petition the Board to reverse a determination relating to the confidentiality of a document.

Comment:

Will the full record be in the confidential file and a redacted form in the non-confidential file?

Response:

It is anticipated that some documents may require redaction. This will be decided on a case by case basis.

CHAPTER 421. GENERAL PROVISIONS

§ 421.2. Licenses and permits (formerly Licensed entities)

Comment:

Consider the issuance of temporary licenses for key employees and key employee qualifiers.

Response:

The Board will consider the issuance of temporary employee licenses.

§ 421.3 Disqualification criteria.

Comment:

Requests that the disqualification of a license only for a material violation of the act.

Response:

The Board declines to accept this recommendation. Section 421.3 includes various enforcement tools available to the Board, including disqualification of an individual and the denial, suspension or revocation of a license. The Board believes it should retain broad discretion to utilize these enforcement measures in a way that fairly addresses the violation in question. For example, the Board may decide to suspend a license for a brief period of time for certain nonmaterial violations if necessary to ensure compliance with the act.

CHAPTER 423. APPLICATIONS

§ 423.1. General requirements

Comment:

Requests the modification of the English translation requirement for documents submitted to the Board to only require the translation of documents specifically requested by the Board.

Response:

The Board will consider the inclusion of a waiver provisions which would allow the applicant or licensee to

request a waiver of the translation requirement from the Board. However, the Board believes the general rule should be the requirement of English translations to ensure the enforcement of the act.

Comment:

Request change in reference from "financial stability" to "financial fitness."

Response:

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

Comment:

Section 423.1(h) appears to provide immunity to Board contractors who provide background investigations.

Response:

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

§ 423.2 Application processing

Comment:

Request to remove the requirement [in section 423.2(b)] of submission of a handwriting exemplar as a condition of the application process.

Response:

The Board declines to accept this suggestion because the Board believes that this tool enhances the existing statutory provision for the investigatory process, furthers the Board's enforcement capabilities and should be applicable to manufacturer applicants as well.

Comment:

Request that "tax clearance review" in section 423.2(a)(5) be amended to "tax lien certificate," consistent with the language of the statute. Commentators expressed concern that a tax clearance requires over one year to complete.

Response:

The Board accepts this recommendation in part, but not for the reason asserted. It has amended the term to be consistent with the statutory language but has chosen to retain the term "clearance." The term "clearance" is more encompassing and would include delinquencies where no lien has been filed. Non-filed tax periods would be an example. Accordingly the proposed term is replaced with "tax clearance and lien review." Further, the Department of Revenue has given its assurances to the Board that the

tax clearance and lien review will be performed in an efficient and timely manner.

Comment:

[Section 423.2(a)] Request the Board to require that all information collected by the Board during the application process, including the information prescribed by section 423.2(a), be placed into the evidentiary record of the application proceeding and served upon the applicant.

Response:

The Board accepts this recommendation and has added language to the regulations that pertains to the evidentiary record of the applicant and that such information shall be served upon the applicant.

§ 423.3 License issuance.

Comment:

[Section 423.3(a)(1)]

(1) The diversity requirements should not apply to manufacturers.

(2) The NJCC Act and regulations promulgated thereunder had requirements for diversity plans and goals. The USDC for the District of New Jersey found that the

regulations of the NJCCC governing diversity goals and plans violated the Equal Protection Clause of the Fourteenth Amendment to the US Constitution and permanently enjoined the NJCCC from enforcing a licensee's Equal Employment and Business Opportunity Plan.

(3) Does this mean that applicants would have to establish a plan to bring in minority or women in an ownership position in our company, and is minority or women ownership mandated as a requirement for licensing?

Response:

The Board declines to accept these interpretations of the statutory provisions regarding diversity compliance. Further, the Board disagrees with the legal conclusions made by the commentators. Pursuant to section 1325(b), the Board is authorized to ensure that "all persons are accorded equality of opportunity in employment and contracting." This language pertains to all entities licensed by the Board, including licensed manufacturers and suppliers. There is no specific exclusion of any entity licensed by the Board. The diversity plan pertains to employment and business transactions. The Board is authorized to ensure diversity by promulgating regulations that require licensees to comply with diversity provisions.

The diversity component in the licensing regulations

requires applicants to establish a diversity plan as a prerequisite to license issuance. This requirement is distinguishable from the New Jersey regulations as it does not make any numerical or quota-like mandates and therefore does not raise similar constitutional concerns.

The diversity requirements are within the general goal and intent of the legislature, which is to encourage diversity throughout every aspect of gaming. The regulations allow the Board to review and monitor each applicant's diversity plan on a case by case basis in order to evaluate the individual needs of each applicant. The Board has amended this provision to allow applicants to submit a diversity plan upon filing an application or certify that a diversity plan will be submitted within 30 days of filing the application.

Comment:

The issue regarding the development and implementation of a Diversity Program should include a requirement that manufacturers be compliant with federal law regarding equal opportunity.

Response:

The Board has not amended the regulations in response to this comment because it believes that the statute and

the Board's regulations in no way interfere with the application of federal law in this area.

§ 423.5 Application withdrawal

Comment:

Requiring Board approval to withdraw an application is not respectful of the individual rights of applicants. Certain applicants may not understand the rigorous nature of the application process and may not want to subject themselves or their families to intense public scrutiny.

Response:

The Board declines to accept this recommendation. It is the standard practice of most state gaming agencies to promulgate regulations pertaining to an application withdrawal procedure. The Board has found from researching other jurisdictions that there are valid enforcement reasons for requiring Board approval of application withdrawals.

CHAPTER 427. MANUFACTURER LICENSES

§ 427.1 Manufacturer license requirements.

Comment:

[Section 427.1(a)] should be amended to include the terms "slot machines" and "associated equipment."

Response:

The Board accepts this recommendation and has amended the language of this section.

§ 427.2 Manufacturer licensing standards and application.

Comment:

The definition of key employee qualifier is too broad and will preclude small businesses in Pennsylvania from participating as manufacturers. The Board should add a waiver provision that allows the Board to waive the key employee qualifier licensing requirements for institutional investors and certain officers and directors, similar to the New Jersey Casino Control Commission regulatory provisions.

Response:

The Board accepts this recommendation and has added waiver language to section 435.3(g) of the regulations, pertaining to the Key Employee Qualifier Licensure. Such language could narrow the potential number of key employee qualifiers that are required to be licensed by the Board.

Comment:

The deposit of is \$5,000 per application for each key employee qualifier is excessive and exceeds similar fees in other states.

Response:

The Board declines to accept this recommendation. In determining the proper amount of the deposit accompanying each key employee qualifier, the Board inquired into other jurisdictions as to the actual costs associated with such background investigations. This amount is based on the recommendation of jurisdictions and a projection of the average costs associated with these types of investigations. The Board may revisit this issue as the Board continues to collect data relevant to this issue on an ongoing basis.

Comment:

The Board is not investigating a crime and therefore the applicant should not have to consent to "search and seizure."

Response:

The Board declines to accept this recommendation. In section 1331(a)(2) of the Act, the licensee is required to consent to "searches and seizures" as a duty associated with licensure. Accordingly an applicant for licensure

must agree to comply with this duty as well. Further this consent is consistent with other states' requirements of licensure and Pennsylvania law governing regulatory agency licensing powers.

Comment:

[In subsection (b)] insert the words "copies of" between the words "of" and "financial" in the second line.

Response:

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

Comment:

The requirement [in subsection (b)] that the manufacturer must provide books, records, documentation to attest to "the integrity of all financial backers, investors, bondholders, etc.," is too difficult and should be limited to those investors holding a controlling interest of greater than 5% interest in the manufacturer, which do not otherwise fall within the definition of an institutional investor.

Response:

The Board declines to accept this recommendation as the Board believes that this requirement is necessary to further the integrity of gaming in this Commonwealth.

Comment:

The regulation should clarify that the tax clearance and unemployment compensation tax review performed by the Department only applies to applicants filing returns with or having employees in the Commonwealth.

Response:

The Board declines to accept this recommendation. The tax lien and clearance review performed by the Department applies to all applicants. If the applicant does not have any employees in the Commonwealth, the review will confirm this fact and demonstrate that the applicant has no outstanding taxes in this Commonwealth.

Comment:

[Subsection (d)] eliminates the right to appeal contained in section 12 of the PA Gaming Act, and therefore, is beyond the powers authorized by the Act and likely unconstitutional.

Response:

The Board disagrees with this legal conclusion. This section is consistent with section 1308(c) of the act. The Board has chosen to remove this section from the regulation as it believes that the statute speaks for itself.

§ 427.3 Alternative manufacturer licensing standards.

Comment:

The Board has to determine that the licensing standard of another jurisdiction is similar for the alternative licensing process. As the Board during the best practices analysis reviewed the licensing requirements of a number of jurisdictions, the Board has likely determined that certain licensing standards are similar. The regulation should state that licenses issued by Nevada, New Jersey, Mississippi and licenses or approvals from the Department of Revenue in connection with services to be provided pursuant to the Act are similar, as well as other licenses as determined by the Board.

Response:

The Board declines to accept this recommendation. While the Board agrees that certain states share similar regulatory requirements for licensees, the Board will not include within this regulation a list of the acceptable jurisdictions. Regulatory requirements of various

jurisdictions are subject to change and alteration year to year and thus the Board must retain the authority to review the licensing standards of various jurisdictions and to deem the licensing standards of a particular jurisdiction acceptable.

Comment:

The Board should limit administrative or enforcement actions to those that are "material" as well.

Response:

The Board has amended the language of this provision to allow the applicant who has a pending administrative action existing in another jurisdiction to adequately disclose and explain the action to the satisfaction of the Board.

CHAPTER 433. LICENSE RENEWAL

§ 433.1 Renewal of manufacturer and supplier license.

Comment:

If the Board has a limited renewal form that only requires the licensee to update changes from the previous application, this requirement is not burdensome. As a recommendation, we ask that this be clarified in the regulation, so an entire new application is not required

each year. Since updated applications can become unmanageable over time, the Board may wish to consider requiring the submission of a new, completed corporate application form every five years (but not key employee qualifiers).

Response:

It is the intent of the Board to have a limited renewal application form that would not be as comprehensive as the entire application form. However, at its discretion, the Board may require periodic filing of a full application by the applicant upon the occurrence of significant events.

Comment:

Would it be possible to issue an initial two-year supplier's license and then have annual renewals thereafter?

Response:

The Board declines to accept this recommendation. Pursuant to section 1326(a) of the act, all permits and licenses are subject to renewal on an annual basis.

CHAPTER 435. EMPLOYEES

§ 435.1 General provisions.

Comment:

Should this section include a statement that section 435.1 pertains to employee licenses and permits?

Response:

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

Comment:

In Subsection (f), is the Board suggesting that manufacturers with offices and employees located and working internationally must all have U.S. work authorizations, notwithstanding such employee may not work in the U.S.? This requirement is too far reaching and should be limited to such employees regularly performing work on behalf of the manufacturer in the U.S. who are required to have work visas.

Response:

The Board accepts this recommendation and has amended the regulations to limit the work authorization requirements to those employees located in this Commonwealth.

Comment:

In subsection (g), the term "in consideration for" is certainly ambiguous. Is it a "reward" to transport a member of the PGCB or an employee thereof to view an applicant's manufacturing facility? Is it intended that, under such cases, the member or employee would have to require that the Board pay for such a trip and the Board would then bill the applicant for the trip?

Response:

The Board has amended this section to read "in consideration or in exchange for obtaining a license. . . ." This section is intended to prohibit the possibility of impropriety or the appearance of impropriety.

§ 435.2 Key employee qualifier license.

Comment:

Please provide detail on the photograph requirement in subsection (b)(14). Must an applicant be physically present at a location in PA in order to meet this requirement?

Response:

The Board acknowledges that applicants need not be photographed in Pennsylvania. The Board has amended the regulations to reflect this change.

Comment:

In subsection (b)(15), can you clarify that fingerprint cards do not need to be administered in the Commonwealth, but must be administered through either a law enforcement agency or person holding the proper certification and credentials to administer fingerprints?

Response:

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

Comment:

Subsection (b) should be clarified to indicate if the information in this section is for a supplemental form or is part of the multi-jurisdictional form.

Response:

The Board declines to accept this recommendation as the language of the regulation sufficiently distinguishes this license application from the multi-jurisdictional personal history information disclosure form.

§ 435.3 Key employee license.

Comment:

Subsection (a) refers to "key employees as defined by the Act." However, generally in the Act, "key employee"

refers to an employee of a slot machine licensee. This section of the draft regulations applies to slot machine licenses, manufacturer licenses and supplier licensees. Please clarify this point.

Response:

Under section 1202 of the act, the Board has broad discretionary power to license individuals or entities associated with gaming. The Board has determined that the key employee license requirement shall apply to slot machine licensees, manufacturer licensees and supplier licensees. The Board believes that this is an appropriate level of investigation for employees in these positions at each of the licensed entities. As way of further response, key employees are referenced in section 1317(b)(2) of the act, which pertains to suppliers and manufacturers. Accordingly the Board's inclusion of key employee licensing for manufacturers and suppliers is consistent with the intent of the act. The Board has amended this section to provide for a waiver of certain employees whose duties are not assigned to this Commonwealth.

Comment:

In subsection (c), a law enforcement letter of reference is not something that is typically issued.

Response:

The requirement of a "letter of reference" from a law enforcement agency is consistent with application requirements for casino licenses in other jurisdictions. As way of further response, this provision is consistent with section 1310(b) of the act which provides for an alternative means of meeting this requirement if no letter is issued from the law enforcement agency.

§ 435.4 Occupation permit.

Comment:

Recommendation to the add the following language to subsection (a): An individual employed by a slot machine licensee, "a manufacturer licensee," a supplier licensee, or a gaming employee as defined under section 1103 of the act and section 401.4 must apply for and receive an occupation permit from the Board.

Response:

The Board declines to accept this recommendation as it is inconsistent with the definition of "gaming employee." However, because the Board has amended the regulations to permit employees of manufacturers who are exempted from the

supplier requirement, the Board has also amended this section to require these employees to be permitted.

CHAPTER 451. LICENSEE RECORDKEEPING REQUIREMENTS

§ 451.1 Recordkeeping generally.

Comment:

This chapter does not address the method of form by which licensees must keep required records. The Board should specify that records may be kept by any available method or means, including paper, magnetic and electronic.

Response:

The Board declines to accept this recommendation as there is nothing in the language of this regulation precluding a licensee from keeping records electronically. The Board's primary concern is that the records are secure from theft, loss or destruction.

Comment:

Add "general accounting records" to the list of required records.

Response:

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

Comment:

In subsection (a) (3), the requirement that all promotional material and advertising be maintained is extremely broad and could be needlessly burdensome.

Response:

The Board declines to accept this recommendation as the Board believes these materials are legally relevant and should be retained.

Comment:

The Board should specify the matters it wishes the employer to retain in a personnel file in subsection (a) (4).

Response:

The Board declines to accept this recommendation. The Board seeks to have the licensees retain a personnel file for each employee for the purpose of monitoring employee licenses and permits. The contents of the file will not be prescribed by the Board.

Comment:

The Board should define "sales representative" in subsection (a) (4).

Response:

The Board has stricken the term sales representative from this subsection as it is captured by the reference to each employee of the licensee in this subsection.

CHAPTER 461. SLOT MACHINE TESTING AND CERTIFICATION

REQUIREMENTS

§ 461.1 Protocol requirements.

Comment:

It would expedite implementation of gaming to perform the necessary protocol testing of a few control monitoring systems with the central control system to ensure the required information is being properly communicated rather than testing the protocol and reporting of each and every machine model with the central control system. Any hardware or software modification to a slot machine model would require testing with the central control computer that could result in slowing entry of new products into the Commonwealth.

Response:

The Department of Revenue is in the process of developing a protocol for the central control computer system. The Board is reviewing the practices of other jurisdictions and feasibility of testing large numbers of

slot machines. The Board will consider these recommendations in its consultations with the Department of Revenue.

Comment:

This section should address a substantive protocol requirement as required in section 1323(a)(2) of the Act.

Response:

At a future point in time, the Board intends to accept public comment from manufacturers regarding protocol regulations, as required in section 1324 of the Act. The Board is aware of the need to promulgate regulations in this area.

Comment:

Would associated equipment also be required to be tested and certified through an independent lab?

Response:

The Board will consider the extent to which associated equipment will require testing and certification.

Comment:

In subsection (c), add "or both" after "either" in order to give the Board greater latitude in game certification.

Response:

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

Comment:

Subsections (a) and (b) should be amended to include "slot machine models, games and associated equipment designed specifically for and integral to gaming operations."

Response:

The Board declines to accept this recommendation. The terms offered to modify the existing language are not defined terms. However, the Board has amended the language in subsection (a) to further clarify the intent of this section.

Comment:

In subsection (c)(1), the Board should indicate that the acceptable jurisdictions include, but not be limited to, Nevada, New Jersey and Mississippi.

Response:

The Board declines to accept this recommendation. The Board will not include a list of states with acceptable testing and certification standards in this regulation. As technology continually improves, the testing and certification capabilities of a particular jurisdiction are subject to change and alteration. Accordingly the Board must retain the authority to review the testing and certification standards of various jurisdictions and to deem the standards of a particular jurisdiction acceptable.

Comment:

The Board should add the following language to subsections (c) (1) and (d) (2): "pursuant to such gaming jurisdictions' current published testing and technical standards."

Response:

The Board declines to accept this recommendation as it feels that this section adequately references the statutory language governing this form of certification. Further, the Board believes the statute speaks for itself.

Comment:

Subsection(c) (2) should be amended to read: "Utilize the services of approved slot machine testing and

certification facilities, which are recognized by major gaming jurisdictions within the United States, to conduct testing. . .”

Response:

The Board declines to accept this recommendation as it is not clear by whom the facilities would be approved. Further, the Board is not bound to utilize testing facilities that are recognized by other gaming jurisdictions. The Board recognizes the need to utilize a testing facility that is reputable and will ensure the integrity of gaming in this Commonwealth.

Comment:

Subsection (c) (2) should be amended to permit the Board to utilize the services of more than one slot machine testing and certification facility before it establishes a permanent facility.

Response:

The Board agrees to review this recommendation.

CHAPTER 471. FILING FEES

§ 471.1 Fees generally.

Comment:

The Board should include language that would tie the fees that the Board could levy and collect to the Board's annual operating budget. Such a requirement would act to constrain the Board's authority in setting fees to that which is reasonable to fund the Board's operations.

Response:

The Board acknowledges the financial concerns of potential applicants with regard to the fees associated with licensing. The Board feels that this recommendation is not consistent with the Board's statutory authority and declines to accept this recommendation. Although the Board is given broad authority to levy and collect fees from the applicants, licensees and permittees pursuant section 1208 of the Act, the Board's authority to raise fees is subject to statutory limitation. In section 1208(2) of the Act, the Board is prohibited from raising the fees until two years after the passage of the Act and may only increase fees by an amount not to exceed an annual cost-of-living adjustment.

§ 471.3 Schedule of fees (formerly *Schedule of fees for manufacturer and supplier licenses*).

Comment:

We request that the Board make it clear in this section that slot machine licensees will not be responsible for the costs associated with the licensing of suppliers and manufacturers.

Response:

The Board declines to accept this recommendation as it believes that it is clear from the statute and the regulations that the fees will be collected directly from the manufacturer and supplier applicants and licensees, and not from any other licensee.

Comment:

Subsection (a) does not address the disposition of surplus amounts should the cost of a manufacturer's or supplier's Key Employee Qualifier background investigations be less than \$5,000 per person. We recommend that any surplus be credited back to the specific manufacturer or supplier applicant.

Response:

The Board declines to accept this recommendation at this time. Section 1208 (1)(iii) requires the Board to collect a nonrefundable fee set by the Board for the cost of a background investigation. This amount is based on the recommendation of jurisdictions and a projection of the

average costs associated with these types of investigations. The Board may revisit this issue as the Board continues to collect data relevant to this issue on an ongoing basis.

Comment:

We would request that the language in subsection (c) allowing the Board the option to increase fees annually be amended so that the Board may only increase fees every 2 to 3 years, and then only when warranted.

Response:

The Board acknowledges the concerns of business owners and potential licensees and will consider the financial needs of the licensees when the Board has the authority to raise fees. The Board declines to accept this recommendation as it is inconsistent with the Board's statutory authority in section 1208(2) of the act. As way of further response, the Board's ability to increase fees commences two years after the passage of the act. At that time, the Board may only increase fees by an amount not to exceed an annual cost-of-living adjustment.

CHAPTER 481. GENERAL PROVISIONS

§ 481.2 Definitions.

Comment:

This section defines participation plan as a plan developed by a licensed entity, including manufacturers and suppliers, that requires the utilization of a minority or women owned business enterprise for a specific minimum percentage of the value of the contract. This may not be constitutionally permissible.

Response:

In order to negate a unconstitutional interpretation of this provision, the Board has amended this definition.

§ 481.3 Diversity participation.

Comment:

How is the list of minority and women's business complied?

Response:

The Bureau of Minority and Women's Business Enterprises of the Department of General Services compiles a list of certified minority and women's businesses through an application and approval process. Minority- and women-owned businesses apply for certification through the Bureau of Minority and Women's Business Enterprises and once they are approved and certified, the companies are added to the list.

§ 481.4 Establishment of diversity plan required.

Comment:

Section (a) should describe the steps that Minority and Women's Business Enterprise can take with the Licensee before filing a formal complaint with the Board.

Response:

The Board agrees to review this recommendation.

Comment:

In sections (a) and (b), construction activities, i.e. construction of the facilities, should be identified as areas for Minority and Women's Business Enterprises participation.

Response:

Prior to an entity submitting an application, the Board does not have jurisdiction to enforce diversity participation. However, the Board agrees to review this recommendation.

CHAPTER 495. DOCUMENTARY FILINGS

§ 495.1 Form of documentary filings generally.

Comment:

Add a new subpart (d) before the existing subpart (d) as follows: "Pleadings shall be endorsed with an address where papers may be served in connection with the pending proceedings as well as a phone number. Endorsement with a fax number shall constitute endorser's agreement to accept papers connected with the proceeding by fax. Notation of counsel's current Supreme Court identification number issued by the Court Administrator of Pennsylvania shall constitute proof of the right to practice in the Commonwealth." This conforms to PA Rules of Civil Procedure Section 205.1 and 4401(d)(1).

Response:

The Board agrees to review this recommendation.

§ 495.5 Execution of documents.

Comment:

The Board should consider permitting all filings to be made by fax or electronic means.

Response:

It is the Board's intent to make electronic filings possible at a future date. The Board continues to review electronic document filing and management systems and those used by other jurisdictions. While the Board seeks to create the most efficient means of filing possible, the

Board likewise must ensure the integrity and security of the filing system in place.

Comment:

In section (b) (2), the reference to supplemental documentation "may be required" seems like an after-the-fact requirement. Is the document deemed filed if the Board requires supplemental information? We suggest that the document should have information evidencing signor's authority rather than request the evidence after-the-fact.

Response:

The Board declines to follow the recommendation that such documents be required to include such supplemental evidence upon their filing. This provision of the Board's regulations is consistent, verbatim, with 1 Pa.Code sec. 33.11(b) (2) (Execution) as well as 52 Pa.Code sec. 1.35(b) (2) (Execution), and is been standard administrative practice in the Commonwealth

§ 497.4 Effective dates of Board orders.

Comment:

All Board orders promulgating regulations should be published on the Internet concurrently with their publication in the Pennsylvania Bulletin.

Response:

The Board agrees with this comment and intends to proceed in this fashion by making its public meeting minutes, orders, and regulations available both on the Internet and in the *Pennsylvania Bulletin*.