

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 436]

Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING

Response to Public Comment

CHAPTER 436. HORSEMEN'S ORGANIZATIONS

§ 436.1. Definitions.

Comment:

Under definitions, revise the definition of horsemen to read as follows: Horsemen: A thoroughbred owner or trainer, a standardbred owner, trainer, or driver who races a horse at a licensed racing entity in the current or prior calendar year and meets the membership requirements of the horsemen's organization to participate in the receipt of benefits therefrom.

Response:

The suggested revision conflicts with the Pennsylvania Race Horse and Development Act (Act). Accordingly, the Board declines to make this change.

Comment:

In the definition for the term "Health Benefits," second line down, between "maintained by" and "horsemen's organization" delete "the" and replace with "a". There is more than one

horsemen's organization in Pennsylvania and using the indefinite article "a" demonstrates that point.

Response:

The Board accepts this recommendation.

Comment:

The defined term "Horseman" be changed in its entirety as follows: Horsemen - A thoroughbred or standardbred horse owner or trainer who enters and runs a horse at a licensed racing entity in the current or prior year and meets the membership requirements of his or her horsemen's organization operating at such licensed racing entity to participate in the receipt of benefits therefrom. The first change is to be consistent with how the defined term is used throughout Chapter 436. The changes in the third and fourth line down was made to make clear that the horsemen can only receive benefits from the horsemen organization who operates at the licensed racetrack where such horsemen enter and run their horses. The current language could be interpreted to mean that a horse owner or trainer who does not qualify for benefits at his own horsemen's organization could qualify for benefits at another horsemen's organization. The PTHA wishes to avoid the confusion and the proposed change clarifies the issue.

Response:

The Board has adopted the change of "Horseman" to "Horsemen" but declines to make the other suggested revisions.

Comment:

In the definition for the term "Pension Benefits," second line down, between "maintained by" and "horsemen's organization" delete "the" and replace with "a". There is more than one horsemen's organization in Pennsylvania and using the indefinite article "a" demonstrates that point.

Response:

The Board accepts this recommendations.

Comment:

In the definition for the term "Horsemen's organization officer," in connection with the phrase in the fourth line down: "any member of its executive board," it is not clear whether the Board intends "executive board" to mean the executive committee of the board of directors. If the Board does so intend that meaning, then the PTHA proposes that the said phrase be changed to "any member of the executive committee of the board of directors" to clarify the intended meaning. If not, then the Board needs to amend the existing language to clarify its intended meaning.

Response:

The Board has amended the regulation to clarify its intent.

§ 436.3. Licensing of officers, directors, representatives and fiduciaries.

Comment:

The PTHA proposes that subsection (a) of section 436.3 be amended in its entirety as follows:

(a) Every officer, director or representative of a horsemen's organization who is presently elected or appointed and duly authorized to act on behalf of the horsemen's organization, or any individual duly authorized to act in a fiduciary capacity on behalf of horsemen, shall be licensed as a key employee by the Board pursuant to § 435.3 (relating to key employee license).

The reason for the requested change is to make clear that the application for a key employee license by these individuals should only be made until after such individuals are elected or appointed. These are elected or appointed positions and therefore, subject to change. As such, the present language of section 436.3(a) does not address the issue of whether the application for a key employee license should be made before or after the particular individual is elected or appointed to the position requiring the license. For example, the term of office for the directors of the PTHA will expire in December, 2007. Will the members running in an election for the open board of directors positions need to be licensed before they win their

election or will they not be able to assume the position until they obtain the key employee license? Although it may seem obvious to some that they would not be required to obtain the key employee license prior to the election, interpretations will vary and the PTHA is interested in guarding against multiple interpretations and the PTHA believes that the comments described above accomplish this objective.

Response:

The Board accepts this recommendation. Additionally, the term "license" was changed to "permit" to reflect a different level of scrutiny for elected or appointed officers, directors, representatives or fiduciaries of the horsemen's organization.

Comment:

Another scenario that needs to be addressed is when a key employee license application for an officer, director, representative or fiduciary is denied. The issue is whether such individual will be required to resign from that position or be precluded from participating in any gaming activities. The gaming activities is only a part of the total operations of a horsemen's organization and these individuals serve very important functions to serve the varying needs of the horsemen's organization. As such, it would be unfair to require an officer, director, representative or fiduciary who is elected and is doing a good job for the horsemen's organization to

resign, because he or she is denied from being licensed as a key employee. Therefore, the PTHA proposes that this section 436.3(a) be amended to include the following language immediately at the end thereof: "In the event that a present officer, director, representative or fiduciary of a horsemen's organization is denied from being licensed as a key employee as required by this section 436.3(a), such officer, director, representative or fiduciary shall be precluded from engaging in any activity of the horsemen's organization involving gaming funds allocated to, received by or distributed from the horsemen's organization; provided, however, such individuals may continue to serve the horsemen's organization in their elected or appointed position in all other areas of operations of the horsemen's organization."

Response:

The Board accepts this recommendation.

Comment:

PTHA proposes that Subsection (b) of Section 436.3 be amended in its entirety to read as follows:

(b) A person who is a third party provider of health or pension benefit plan to a horsemen's organization or a licensed attorney or accountant representing horsemen's organizations shall be exempt from the requirements of this section.

The reason for specifically exempting attorneys and accountants from the licensing requirements is that attorneys and accountants who represent horsemen's organizations in the negotiation of live racing agreements and related matters could be deemed to be within the meaning of the defined term "horsemen's organization representative" and therefore, would be required to be licensed as a key employee under the proposed section 436.3 of the Horsemen's Regulations. The role of attorneys and accountants in representing horsemen's organizations is tantamount to an independent third party having no vested interest in the business of the horsemen's organization, such as third party providers of health and pension benefit plans. As such, PTHA believes that section 436.3(b) should be amended to include attorneys and accountants who represent horsemen's organizations in the exemption from the licensing requirements of section 436.3(a) of the Horsemen's Regulations. To do otherwise, might disadvantage the horsemen's organizations, because good attorneys and accountants may be deterred from representing horsemen's organizations due to this licensing requirement.

Response:

A change was made to reflect that attorneys and accountants who represent horsemen or the horsemen's organization are not required to be permitted unless they are a duly elected or

appointed officer, director, representative or fiduciary of the horsemen's organization. Only if these individuals are acting in the capacity stated in § 436.3(a) will it be necessary for them to submit to a background check.

§ 436.6. Health and pension benefit plans.

Comment:

Under section 436.6(a)(1)(2) Health and Pension plans. We currently have a health program in place, how would this affect the program?

Response:

Until such time as the funds designated for health benefits are generated and distributed to the horsemen's organization, the Board will not require a submission of the health plan for approval.