

LAW AND PUBLIC SAFETY

DIVISION OF GAMING ENFORCEMENT

Hearings

Conduct of Contested Cases

Notice of Violation

Proposed New Rule: N.J.A.C. 13:69B-2.9

Proposed Amendment: N.J.A.C. 13:69B-2.1

Authorized By: David Rebeck, Director, Division of Gaming Enforcement.

Authority: N.J.S.A. 5:12-69, 70, 80, 86, 89, 90, 91, 92, 94, 95, 102, 107, 108, 109, and 129.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-063.

Submit written comments by July 18, 2014, to:

Robert Moncrief, Deputy Attorney General
Division of Gaming Enforcement
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Currently, pursuant to N.J.A.C. 13:69B-2.1, a contested case may commence against a licensee, registrant, or applicant at the direction of the Division or by the filing of either a letter report for an initial application or resubmission or a written complaint against a licensee, registration, or applicant. However, many instances of regulatory non-compliance do not, in the Division's discretion, rise

to a level that warrants the filing of a letter report or complaint and for which the Division does not seek a monetary penalty. To resolve many of these matters the Division has engaged in the practice of issuing correspondence known as "warning letters," most typically to casino licensees, that afford the non-compliant party an opportunity to address and remedy those matters.

Proposed new N.J.A.C. 13:69B-2.9 sets forth a procedure for a "Notice of Violation" for those matters requiring a response from a licensee, registrant, or applicant, but not deemed appropriate for the filing of a letter report or complaint. The procedure is intended to provide the Division and casino industry licensees, registrants, and applicants with a more efficient and less formal process to resolve incidents of regulatory non-compliance. A Notice of Violation may, or like a warning letter may not, include a proposed civil penalty in an amount not to exceed \$2,000 and/or any other penalty or requirement allowed by N.J.S.A. 5:12-129. See proposed N.J.A.C. 13:69B-2.9(b). Upon receipt of a Notice of Violation that includes a proposed penalty, a licensee, registrant, or applicant has 30 days within which to respond to the Division in writing. The responding party may acknowledge the violation and agree to the proposed penalty or deny the allegation and request that the matter proceed as a contested case. See proposed N.J.A.C. 13:69B-2.9(c). The failure to timely notify the Division shall result in the matter proceeding as a contested case. See proposed N.J.A.C. 13:69B-2.9(d). The parties shall have 30 days from the date of acknowledgement of the Notice of Violation to enter into an agreement to resolve the matter, failing

which the matter shall proceed as a contested case. See N.J.A.C. 13:69B-2.9(e).

Proposed new N.J.A.C. 13:69B-2.1(c) references the procedure for a Notice of Violation as an additional regulatory process by which a matter may be resolved by agreement of the parties or proceed as a contested case.

This notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule and amendment should have no social impact.

Economic Impact

The proposed new rule and amendment should have minimal economic impact, except to the extent that it affords the Division and licensees, registrants, and applicants greater flexibility and efficiency in addressing, remedying, and, if appropriate, penalizing those parties up to \$2,000 for incidents of regulatory non-compliance.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule and amendment are authorized by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to Federal law.

Jobs Impact

The proposed new rule and amendment will not have any impact on the number of jobs in the State of New Jersey.

Agriculture Industry Impact

The proposed new rule and amendment will have no impact on agriculture in New Jersey.

Regulatory Flexibility Analysis

The proposed new rule and amendment will primarily affect the operations of New Jersey casino licensees, none of which qualifies as a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For casino licensees a regulatory flexibility analysis is not required. Any licensee, registrant, or applicant that qualifies as a "small business" and that may be affected will not bear any additional regulatory costs or burdens inasmuch as the new procedure is intended to more efficiently process those instances of non-compliance that have in the past been funneled into a more costly and protracted contested case procedure. Professional services would not be required for compliance, although the licensee, registrant, or applicant may choose to retain counsel. A licensee, registrant, or applicant may affirmatively decline to utilize this revised procedure and affirmatively request to enter the more formal contested case process. If the licensee does not act within 30 days of receiving the Notice of Violation authorized by this rulemaking, it will be presumed that he or she wishes to enter the formal contested case process. The opportunity for a more summary disposition of minor violations is considered by the Division as an asset for those licensees, registrants, and applicants that qualify as a "small business."

Housing Affordability Impact Analysis

The proposed new rule and amendment will have no impact on the affordability of housing in the State of New Jersey because they affect the regulation of casinos in Atlantic City.

Smart Growth Development Impact Analysis

The proposed new rule and amendment will have no impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because they affect the regulation of casinos in Atlantic City.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. CONDUCT OF CONTESTED CASES

13:69B-2.1 Commencement of a contested case

(a) - (b) (No change.)

(c) A contested case shall commence incident to a Notice of Violation pursuant to N.J.A.C. 13:69B-2.9 upon:

1. A request of a licensee, registrant, or applicant after failing to enter into a written agreement with the Division to resolve the violation; or

2. The failure of a licensee, registrant, or applicant to timely respond to the Notice of Violation in accordance with N.J.A.C. 13:69B-2.9(c).

13:69B-2.9 [(Reserved)] **Notice of Violation**

(a) The Division may notify a licensee, registrant, or applicant of a regulatory violation by serving a Notice of Violation, which writing shall state, in ordinary and concise language, the nature of the violation and the acts or omissions supporting such violation.

(b) The Notice of Violation may include a proposed civil monetary penalty authorized pursuant to N.J.S.A. 5:12-129(5), in an amount not to exceed \$2,000, and/or any other penalty or requirement allowed by N.J.S.A. 5:12-129.

(c) Upon receipt of a Notice of Violation that includes a proposed penalty, a licensee, registrant, or applicant shall within 30 days respond to the Division in writing and either:

1. Acknowledge the violation and agree to the proposed penalty;
or

2. Deny the allegation and request that the matter proceed as a contested case.

(d) The failure of a licensee, registrant, or applicant to notify the Division as required in (c) above, shall cause the matter to proceed as a contested case under N.J.A.C. 13:69B-2.4.

(e) If the licensee, registrant, or applicant acknowledges the violation and agrees to the proposed penalty, the parties shall, within 30 days of the date of acknowledgement referenced in (c)1 above, enter into an agreement, which shall include remedial action to be undertaken by the licensee, registrant, or applicant. Failure to enter into an agreement within the required time shall cause the matter to proceed as a contested case under N.J.A.C. 13:69B-2.4.