

STATE OF MINNESOTA

MINNESOTA CHARITABLE GAMBLING CONTROL BOARD

In the Matter of the
Proposed Adoption of Rules
of the Minnesota Charitable
Gambling Control Board
Amending Existing Rules.

STATEMENT OF NEED
AND REASONABLENESS

I. GENERAL

In an effort to improve the regulation of charitable gambling in this state, the Minnesota Charitable Gambling Control Board (Board) proposes minor amendments to the rules governing charitable gambling. The proposed amendments more specifically define the responsibilities of organizations conducting lawful gambling, distributors selling lawful gambling equipment, manufacturers producing equipment for lawful gambling and the Board and the Department of Revenue in their role as regulators of the nearly \$800 million per year industry. The Board believes that the proposed amendments are necessary and that they are reasonable. The burdens imposed on the participants of lawful gambling are not undue. The amendments will result in better compliance with the law and more needed resources for the beneficiaries of gambling proceeds.

II. STATUTORY AUTHORITY

The Board is empowered by Minnesota Statutes, Section 349.151, Subdivision 4 (1988): (1) to issue, revoke, suspend licenses to organizations, distributors, and manufacturers under section 349.16, 349.161, and 349.163; (2) to collect and deposit license fees and taxes due under this chapter; (3) to receive reports required by this chapter and inspect the records, books, and other documents of organizations and suppliers to insure compliance with all applicable laws and rules; (4) to make rules, including emergency rules, required by this chapter; (5) to register gambling equipment and issue registration stamps under section 349.162; (6) to provide by rule for the mandatory posting by organizations conducting lawful gambling of rules of play and the odds and/or house percentages on each form of lawful gambling; (7) to report annually to the governor and legislature on its activities and on recommended changes to the laws governing charitable gambling; and (8) impose several penalties of not more than \$500 per violation on organizations, distributors, and manufacturers for failure to comply with any provision of sections 349.12 to 349.23 or any rule of the Board.

On August 19, 1988, the Governor signed Reorganization Order No. 152 transferring certain powers of the Board to the Minnesota Department of Revenue. A copy of the Reorganization Order is attached hereto as Appendix A. Although much of the Board's regulatory authority was transferred to the Department of Revenue, the Board specifically retained the authority to promulgate rules as required by Chapter 349. Accordingly, the Board has retained the authority to promulgate rules governing the conduct of lawful gambling. However, because certain functions related to charitable gambling are performed by the Commissioner of Revenue, the proposed rules consistently refer to the Commissioner of Revenue (Commissioner), as well as the Board.

III. RULE-BY-RULE ANALYSIS

7860.0010 Definitions

Subpart 2. Active Member.

In order to be eligible to conduct lawful gambling in Minnesota, an organization must have been in existence for at least three years and have at least 15 active members. Minn. Stat. § 349.12, subd. 12 (1988). The statute does not provide an adequate definition of "active member", but merely states that an "active member" must be a member who has paid all dues to the organization and has been a member of the organization for at least six months. Minn. Stat. § 349.12, subd. 3 (1988).

The amendment to this subpart is necessary to provide a more comprehensive definition of "active member". In order to insure integrity in the conduct of lawful gambling, it is imperative that the members of an organization have ultimate control over the gambling operation. An organization may not abdicate responsibility for control of the gambling operation to one or two members of the organization. Likewise, an organization consisting of one or two people may not simply acquire the names of 13 additional people, none of whom have rights and/or responsibilities in the organization, simply to qualify to conduct charitable gambling. Therefore, the amendment is necessary to insure that charitable gambling is conducted by a legitimate organization, with 15 or more members who are equal participants in the gambling operation, and who can demonstrate accountability for the conduct of the charitable gambling operation.

The amendment is reasonable because it simply requires membership terms consistent with the membership requirements of any legitimate organization. The amendment will not adversely impact legitimate gambling organizations, but will require illegitimate organizations to either cease gambling or bring their membership into compliance with the law before a license will be issued.

Subpart 4. Bingo Occasion.

The amendment to this subpart is necessary to conform the definition of bingo occasion to the language of Minn. Stat. § 349.17, subd. 1 (1988). Therefore, the amendment is both needed and reasonable.

Subpart 8. Deal.

The amendment to this subpart is necessary to conform the definition of deal to the language of Minn. Stat. § 349.12, subd. 18 (1988). Therefore, the amendment is both needed and reasonable.

Subpart 11. Free Play.

This subpart provides a definition of free play. The definition is necessary because the words "free play" are used in the statute and rules without definition. The proposed rule specifically defines "free play" and makes it clear that a free play is a prize awarded to a player in lawful gambling that has no value other than the opportunity to continue to participate in the gambling activity.

The proposed amendment is reasonable because it incorporates into the rule the commonly understood meaning of "free play". The rule eliminates the opportunity to circumvent the gambling laws by calling something with monetary value a "free play".

Subpart 12. Gambling Equipment.

This amendment is needed to conform the rule to the language of Minn. Stat. § 349.12, subd. 15 (1988). Therefore, the amendment is both needed and reasonable.

Subpart 13. Gambling Manager.

The Board proposes to amend this subpart to require the gambling manager of an organization to complete training as a condition of being employed as a gambling manager. This amendment is necessary because of the significant role the gambling manager plays in the gambling operation of a qualifying organization. It is imperative that the gambling manager understand the laws and rules governing charitable gambling, including reporting requirements, the payment of taxes and fees, and a myriad of other responsibilities necessary to keep the organization in compliance with the law. The best method to insure competence in gambling managers is to require completion of training as a condition of employment as a gambling manager.

The proposed amendment is reasonable because it is not unduly burdensome, and it will help organizations conduct lawful gambling in an efficient and responsible manner.

Subpart 14. Gross Receipts.

This amendment is necessary to conform the language of the rule to Minn. Stat. § 349.19, subd. 1 (1988). Therefore, the amendment is both needed and reasonable.

Subpart 16. Lawful Purpose.

The Board proposes to amend this subpart by making a few grammatical and structural changes to simplify the reporting of lawful purpose expenditures on the gambling reporting forms. Such an amendment is needed and reasonable.

The Board also proposes to amend this subpart by specifically delimiting certain expenses which may or may not qualify as lawful purpose expenditures under the law. Minn. Stat. § 349.12, subd. 11 defines "lawful purpose" expenditures in somewhat broad terms. The proposed amendment is necessary to more specifically set forth those expenditures which an organization may pay from gambling proceeds.

Accordingly, Item D allows the organization to pay taxes from the profits of lawful gambling. The amendment makes it clear that the payment of taxes to the state and federal governments falls within the definition of lawful purpose expenditures.

Likewise, Item E makes it clear that an organization may pay a sum not to exceed \$50 per year for membership in an organization comprised entirely of licensed gambling organizations. This amendment is necessary to clearly state that such expenditures fall within the definition of lawful purpose.

Undoubtedly the area most confusing for gambling organizations is whether gambling profits may be expended for the improvement, expansion, repair, or maintenance of real property owned or leased by an organization conducting gambling. The proposed amendment makes it clear that such expenditures are authorized only if the expenditures are authorized by the Board and the Board finds that the property will be used exclusively for a "lawful purpose".

The proposed amendment also prohibits the expenditure of gambling profits for the purpose of influencing any public official or the outcome of any public decision, thereby precluding a gambling organization from expending gambling proceeds for lobbying purposes. Such expenditures have been the subject of some confusion among gambling organizations. Therefore, the proposed amendment makes it absolutely clear that

no organization may expend gambling funds for lobbying purposes or for contributions to any political candidate.

Finally, the Board further defines "lawful purpose" to exclude the acquisition of personal property for use as a capitol asset of the gambling organization. The proposed amendment is necessary to prohibit non-profit gambling organizations from achieving a competitive advantage over similarly situated for-profit entities. The proposed amendment precludes a fraternal, religious or non-profit organization from using gambling profits to purchase capitol assets which benefit the organization rather than a legitimate charitable purpose. Accordingly, the proposed amendment precludes a non-profit organization from using gambling profits to improve or contribute to its capitol stock.

This amendment is necessary because the intent of the charitable gambling law is to allow qualifying organizations to conduct lawful gambling for the purpose of benefitting disadvantaged persons or charitable entities. The gambling laws were not created to give non-profit organizations a competitive advantage over similarly situated for-profit enterprises. Therefore, it is necessary to specifically preclude non-profit organizations from using gambling profits to benefit themselves rather than legitimate charitable or public causes. The proposed amendment is reasonable because it insures compliance with the intent of the charitable gambling law and prevents the use of gambling profits in a manner that is detrimental to for-profit enterprises.

Subpart 19. Net Receipts.

The Board proposes to amend this subpart by excluding pull-tabs and tipboards from the usual method of calculating the gambling tax. Pursuant to Minn. Stat. § 349.212, each organization must pay a tax of 10% of the gross receipts from lawful gambling, less prizes actually paid out. However, the legislature has determined that pull-tabs and tipboards are subject to a different gambling tax calculation. Accordingly, the rate of tax for tipboards and pull-tabs is 10% of the "ideal net" of the pull-tab and tipboard deal. Therefore, in order to conform this rule to the different tax treatments imposed under Minn. Stat. § 349.212, pull-tabs and tipboards must be excluded from the definition of net receipts.

Subpart 20. Organization.

The Board proposes to amend this subpart by clarifying the definition of "organization" as contained in Minn. Stat. § 349.12, subd. 12 (1988). The proposed amendment makes it absolutely clear that in order to qualify to conduct lawful gambling, an organization must have been in existence for three years, and have at least 15 active members for the most recent

three years. This amendment is necessary to preclude a non-qualifying organization which can demonstrate existence for three years from soliciting the membership of 15 or more members solely to qualify for charitable gambling. The amendment is reasonable to prevent non-qualifying organizations from attempting to conduct lawful gambling.

Subpart 21. Other Non-Profit Organization.

The Board proposes to amend this subpart by more specifically setting forth and narrowing the requirements that must be met before a non-profit organization may qualify for a gambling license. The proposed amendment is necessary to make it clear that the definition of "other non-profit organization" includes the requirements of an organization as defined in subpart 20. The rule is also necessary to eliminate confusion among the public, many of whom believe that other non-profit organizations need not meet the specific requirements of organizations as defined in the rule. The amendment is reasonable because it eliminates confusion and places other non-profit organizations on the same footing as "fraternal, religious or veterans" organizations.

The Board also proposes to amend this subpart by deleting the requirement that an "other non-profit organization" evidence its non-profit status by a certificate of non-profit incorporation. The amendment deletes the non-profit corporate status requirements because of the ease with which a non-profit incorporation certificate can be obtained in this state. Accordingly, the requirement was, as a practical matter, almost meaningless. In exchange, the Board proposes to require an "other non-profit organization" to evidence its non-profit status by presenting a current letter of exemption from the Internal Revenue Service exempting the organization from the payment of income taxes. The rule makes it clear that the organization must have obtained the letter of exemption prior to submitting an application for a license. Therefore, any organization which has not obtained an exemption letter from the IRS is not eligible to obtain a license to conduct lawful gambling. The requirement of a current letter of exemption is reasonable because it allows the Board to rely on the investigation and determination of the Internal Revenue Service with respect to the organization's non-profit status. Accordingly, the organization need not demonstrate non-profit status to the Board through documentation and other evidence. As a result, the licensing process can be handled more expeditiously and efficiently.

The Board also proposes to amend this subpart by grandfathering in any organization that obtained a license without having in its possession a current letter of exemption from the Internal Revenue Service. This is necessary to allow those organizations that could not meet the requirements of the proposed rule to continue to conduct gambling. The proposed

amendment provides, however, that the grandfather provision applies only if, during the period of licensure, the organization has obtained a certificate of non-profit incorporation or has been recognized by the Internal Revenue Service as exempt from the payment of income taxes.

Subpart 26. Profit.

The Board proposes to amend this subpart by deleting certain words. The proposed amendment is necessary to conform the rule to the language of Minn. Stat. § 349.12, subd. 11(e) (1988). Therefore, the amendment is needed and reasonable.

7860.0040 License Application

Subpart 2. Contents of Application.

The Board proposes to amend this subpart by adding information that must be contained on an application for a license to conduct charitable gambling.

Item S.

The proposed amendment to this item reflects the new responsibility of the Commissioner of Revenue for the regulation of lawful gambling. Accordingly, the Board proposes to amend this subpart to include the Commissioner of Revenue or the agents of the Commissioner. The proposed amendment is reasonable because the Commissioner of Revenue, and his agents, also need consent to enter the premises of lawful gambling to carry out regulatory responsibilities under the law.

The Board also proposes to amend this item by deleting language which unnecessarily restricts the regulatory responsibilities of enforcement officers. The item, as proposed, allows law enforcement officials to enter the gambling premises to enforce the law. This amendment is necessary to allow enforcement officials to inspect inventory, observe records and documents, and speak to the persons responsible for conducting the lawful gambling. The amendment is reasonable because it allows enforcement officers to effectively inspect the gambling premises without being unnecessarily restricted to certain limited functions as previously set forth in the rule.

Item T.

The Board proposes to amend this item by requiring the submission of a compensation schedule along with the application for a license to conduct gambling. The compensation schedule is necessary to insure compliance with the provisions of Minn. Rule pt. 7860.0160, subpart 2(e). The amendment is necessary to insure that an organization has prepared a compensation schedule

as required by part 7860.0160, subpart 2(e) and to allow the Board and the Department of Revenue to determine, after licensing, whether the organization is complying with its compensation schedule. The proposed amendment is reasonable because it does not create an undue burden on the organization, but simply requires the organization to prepare a compensation schedule similar to that used by any business or organization.

Item U.

The Board proposes to require an organization to include in its application the date and time of the regular meeting of the organization. This is necessary because virtually all decisions involving the conduct of lawful gambling must be made by the organization at its regular meeting and must be included in the minutes of the regular meeting of the organization. This amendment is needed to insure that the gambling is conducted by and reviewed by the members of the organization, rather than by one or two individuals. The proposed amendment is reasonable because it requires organizations who have not held regular meetings to hold them, and it helps insure that the responsibility for the conduct of lawful gambling is borne by the membership of the organization.

Item V.

The Board proposes to add to this subpart a requirement that the organization disclose on its license application the name, address and account number of all accounts into which gross receipts from gambling are deposited and the name and address of all persons authorized to sign checks and make deposits and withdrawals on those bank accounts. This is necessary to enable the Board and the Department of Revenue to adequately investigate the expenditure of gross receipts from lawful gambling, and to insure that the gambling organization is receiving the gross receipts from lawful gambling.

The proposed amendment is reasonable to insure that all persons authorized to sign checks and make deposits and withdrawals on the account are responsible members of the gambling organization. It is not inconceivable that a gambling manager or a non-member of the organization may obtain access to the banking accounts of the organization. In order to determine whether or not an organization is being taken advantage of by an unscrupulous gambling manager or non-member of the organization, it is imperative that the Board and the Department of Revenue have access to all banking accounts used by the organization for the conduct of gambling. The proposed amendment is also reasonable because it merely requires the disclosure of information that the organization is required to maintain. Each organization is required to maintain a separate gambling account as well as maintain the name of all persons authorized to sign checks and make deposits and withdrawals on that account. The

rule simply requires the disclosure of that information to the Board and Department of Revenue.

Item W.

The Board proposes to amend this subpart by adding a requirement that the organization disclose to the Board and/or the Department of Revenue the membership list of the organization. This requirement is necessary to insure that the organization is comprised of a minimum of 15 active members as required by Minn. Stat. § 349.12, subd. 12 (1988). The proposed amendment is reasonable because it does not require the organization to do anything but document its membership to the Board and Department of Revenue.

Item X.

The Board proposes to amend this subpart by requiring an organization to disclose on its license application the location of the organization's registered storage space for gambling equipment. The proposed amendment is necessary to alert the Board and the Department of Revenue to the location of the storage space so that the organization's inventory may be easily examined to insure compliance with the law. The proposed amendment is reasonable because all organizations are required to have registered storage space for gambling equipment. The amendment merely requires disclosure of the storage space to the Board and Department.

Subpart 3. Required Attachments to Application.

Item B.

The Board proposes to amend this item by making a few insignificant grammatical changes and by requiring each organization to file with the license application a copy of its internal accounting and administrative control procedures on a form provided by the Board. The proposed amendment is necessary and reasonable because it simplifies reporting requirements for licensed organizations, and it creates a more uniform reporting requirement for easier review by the Board and the Department of Revenue.

Item C.

The Board proposes to amend this item by requiring that each licensed organization submit to the Board upon the termination of gambling a plan for the disposal of registered gambling equipment and for the distribution of profit carry-over. The proposed amendment is necessary because an organization can only expend gambling funds for certain allowable expenses and for lawful purposes as defined in the law. Allowable expenses must be paid by an organization on a cash basis. Money dedicated to

lawful purposes may be accumulated and carried over as profit. So long as the organization is licensed to conduct gambling, the Board and the Department of Revenue have control over the expenditure of the profit carry-over. However, once the license is terminated, the regulatory control over the profit carry-over ceases. Therefore, to insure that the profits from lawful gambling are distributed only for lawful purposes, the organization must provide a plan to the Board for the distribution of the profit carry-over. The same is true for the disposal of registered gambling equipment. Submission of the plan provides some assurance to the Board and the Department of Revenue that registered gambling equipment is disposed of properly and that profit carry-over is not spent impermissibly.

The proposed amendment is reasonable because it requires an organization to distribute gambling profits and dispose of gambling equipment in a manner required by law, and inform the Board of the manner in which these matters will be handled.

Subpart 5. Local Approval.

The Board proposes to amend this subpart by deleting "30" and inserting "60" days. This amendment is necessary and reasonable because it conforms the rule to a recent change in Minn. Stat. § 349.213, subd. 2 (1988).

The Board also proposes to amend this subpart by requiring a local governmental unit which chooses to waive its right to disapprove of a license application or renewal to notify the Board in writing of the waiver. The proposed amendment is necessary to insure the prompt and efficient processing of applications so that an organization need not wait 60 days if the local governing body chooses to waive its right to disapprove the license. The proposed amendment is reasonable because it provides for a more efficient licensing mechanism, does not burden local governmental units, and gives the Board the necessary documentation to issue the license.

Subpart 9. Restrictions on Applicant.

The Board proposes to amend this subpart by adding language to restrict an organization from conducting gambling as both a licensed and an exempt organization within the same calendar year. The proposed amendment is necessary because specific requirements and conditions apply to each form of gambling. An organization exempt from licensing must comply with specific statutory requirements. An organization licensed to conduct gambling must comply with different statutory provisions. Because certain restrictions apply to exempt organizations that do not apply to licensed organizations, and vice versa, it is impossible for a single organization to effectively differentiate between licensed status and exempt status. Therefore, the

proposed amendment precludes an organization from holding licensed and exempt status within the same calendar year.

The proposed amendment is reasonable because it does not preclude an organization from engaging in lawful gambling, but merely restricts the conditions under which the organization may conduct the gambling. Moreover, the organization, if eligible, may obtain a different status in a subsequent calendar year, but may not change its status at any time during the same calendar year.

7860.0070 Advertising

Subpart 1a. Not Gambling Expense.

The Board proposes to amend this subpart by prohibiting the payment of advertising expenses from gambling proceeds. This amendment is necessary to prevent the commercialization of charitable gambling as required by Minn. Stat. § 349.11 (1988). Although advertising of gambling events is not prohibited, advertising is, as a practical matter, negligible because it must be paid from monetary sources other than gambling proceeds. To allow advertising to be paid from gambling proceeds would result in a substantial increase in the amount of advertising as well as a substantial increase in the commercialization of charitable gambling. In addition, advertising is expensive and, if used, will limit the amount of gambling proceeds dedicated to lawful purposes.

The proposed amendment is reasonable because organizations are not prohibited from advertising, but are simply precluded from using gambling profits to pay for the expense of the advertising. While such a restriction, as a practical matter, eliminates the ability of many organizations to advertise, all organizations benefit from the lack of commercialization in the industry.

7860.0090 Lease Agreements

Subpart 1. Requirements of a Lease.

The Board proposes to amend this subpart by requiring all leases for lawful gambling premises to be on a form provided by the Board. The proposed amendment is necessary to provide a uniform document for use by all organizations that conduct lawful gambling. The proposed amendment is reasonable because it eliminates the need for organizations to create lease forms and provides the Board with standard documents to review to determine compliance with the law.

Item D.

The Board proposes to amend this item by specifically listing the method by which the monetary consideration in the lease must be expressed. The amendment is necessary to create a uniform reporting requirement and is reasonable because the method of reporting is common in most leases.

Item E.

The Board proposes to amend this item by requiring that a lease contain the specific dimensions of the leased premises as specified in feet, and the total number of square feet leased for the conduct of lawful gambling. This amendment is necessary to provide the Board with specific information regarding the leased premises rather than simply a vague sketch as previously required in the law. The dimensions of the leased premises are important because lawful gambling may only be conducted within the confines of the leased premises. By specifying the dimensions of the leased premises, both the organization and the lessor must be aware of the exact location where gambling may be conducted.

Likewise, regulatory officials are aware of that portion of a building where lawful gambling may be conducted. Including the dimensions of the leased premises in the lease eliminates the potential for an organization to be erroneously accused of conducting gambling off the leased premises simply because the regulatory officials determined the proportions of the leased premises by reviewing a "sketch" or brief description of the general area as previously required in the rule.

Moreover, rent may be based on a cost per square foot. Therefore, in order to confirm the rent payment, the Board must be aware of the square footage of the leased premises.

Item F.

The Board proposes to amend this item by requiring all obligations between the lessee and its employees or agents and the lessor and its employees or agents to be contained in the lease. This is necessary to help eliminate inappropriate or "under the table" agreements between the parties to a lease or their employees or agents. The proposed amendment will help insure that all rent payments comport with the maximum rent levels permitted by law, and will help insure that a lessor has not imposed illegal or impermissible conditions upon the lessee. The proposed amendment is reasonable because it forces licensed organizations to comply with the law.

Item G.

The Board proposes to amend this item to require a lessor of gambling premises to agree to give regulatory officials access to inspect the licensed premises, and to agree that the lessee has access to the licensed premises during all times

reasonable and necessary to conduct lawful gambling. The proposed amendment is necessary to insure that regulatory officials have adequate access to inspect the licensed premises to insure that the gambling is being conducted in accordance with the law. Without the consent, a lessor may attempt to bar access and inspection of the lawful gambling, and thereby preclude detection of unlawful practices.

Likewise, the proposed amendment requires the lessor to give access to the lessee to conduct lawful gambling. This is necessary to preclude the lessor from preventing access to the leased premises for gambling activities based on whim or caprice or from imposing unreasonable requirements on the lessee as a condition of obtaining access to the premises.

Item H.

The Board proposes to amend this item to provide for termination of the lease if illegal activity takes place on the licensed premises. This is necessary to allow a legitimate organization to cease gambling on a premises where illegal activity takes place without suffering retribution from the lessor.

Item I.

The Board proposes to amend this item by tailoring the restriction contained in item F specifically to organizations conducting bingo at a licensed bingo hall. The rationale applied to Item F is equally applicable to this Item. In addition, the proposed amendment is necessary to conform the rule to Minn. Stat. § 349.163, subd. 8 to preclude the organization or the bingo hall lessor from basing rent on the number of participants attending the bingo occasion or on a percentage of gross receipts or profit received by the organization. Accordingly, organizations conducting bingo on leased premises must specifically state the rent for the leased premises and number of dollars per month or number of dollars per bingo occasion, whichever is applicable. No deviations from that practice are permitted.

Subpart 3. Payments.

Items A and B.

In 1988 the legislature directed the Board to impose rent limits on premises leased for the conduct of lawful gambling. See Minn. Stat. § 349.18, subd. 1. The rent limits imposed by Items A and B are necessary to insure that the lessor receives adequate compensation for the lease of a portion of the premises for the conduct of lawful gambling, while at the same time, eliminating the opportunity for a windfall to the lessor as a result of the lawful gambling. Charitable gambling is intended

to provide financial resources to support charitable purposes. Charitable gambling is not designed to create a lucrative financial business for private landlords and bar owners. In setting the rent limits, the Board was required to balance the needs of the lessor against the needs of the organization whose purpose is to benefit charitable causes. Accordingly, the limits imposed by the proposed amendment are necessary to reach that balance, and reasonable for the very purpose that the limits create such a balance.

Item C.

The Board proposes to amend this item by adding language to allow an organization conducting gambling to store its gambling equipment on the leased premises. The amendment is necessary and reasonable because it makes clear what was previously a necessary, but questionable, practice.

Item D.

Minn. Stat. § 349.13, subd. 1 provides that "an organization may conduct lawful gambling only on premises it owns or leases". This item makes it very clear that the "conduct of lawful gambling" includes, the sale of and redemption of prizes resulting from the sale of bingo sheets and cards, pull-tabs, tipboards, and paddlewheel tickets. Therefore, it is unquestionably clear that the conduct of lawful gambling, including those activities specifically enumerated in this amendment, must occur exclusively on the premises leased for the conduct of gambling. The proposed amendment is reasonable because it simply makes specific a requirement of the law.

Item E.

This item is necessary to insure that only registered gambling equipment is located on the leased premises and that the dimensions of the leased premises are available to the players, the public, and regulatory and law enforcement officials. The proposed amendment is also necessary to insure that no overlap exists between the leased premises and the other portions of the lessor's property. The proposed amendment helps to eliminate comingling of functions between the organization conducting gambling and the lessor conducting business. As a result, the proposed amendment is necessary and reasonable.

Item F.

This amendment is necessary to insure that the organization conducting lawful gambling is solely responsible for the conduct of the lawful gambling on the leased premises. The rule prohibits the lessor from engaging in business activities on the leased premises as well as precludes the lessor from

co-mingling the lessor's business activities with those of the licensed organization.

Subpart 4. Severed Leases.

The Board proposes to amend this subpart by adding a provision for notice to the Board of the premature severance of lease. It is important to the integrity of lawful gambling that the Board be advised whether a lease is severed because of a faulty agreement, improper demands made by one of the parties, improper or illegal involvement of third parties, or inappropriate disagreements between the parties to a lease. In addition, once the lease is severed, it is important for the Board to know of the severance so that all efforts may be made to insure that gambling does not continue to be conducted on the premises by the organization, or by the lessor under the guise of the organization.

Subpart 5. Restrictions.

The Board proposes to amend this subpart by prohibiting the direct or indirect placing of restrictions on the lessee as a condition of obtaining a lease to conduct gambling on the premises of the lessor. Unfortunately, incidents have occurred where lessors have imposed on lessees as a condition of obtaining the lease, a requirement to purchase gambling equipment and services from a particular distributor of gambling equipment. It is crucial to the integrity of lawful gambling that the lessee not be required to purchase gambling supplies from a particular place or source, often at an inflated price, and that lessors have no voice in the conduct of lawful gambling on the leased premises. Likewise, it is crucial to the integrity of lawful gambling that the lessor be precluded from designating particular recipients of gambling proceeds. The lucrative nature of the gambling business, as well as the potential for abuse, requires such specific restrictions on the activities of the lessor of gambling premises.

7860.0100 LESSOR OF GAMBLING SITE RESTRICTIONS

Subpart 1. Participation in Gambling Activity Prohibited

The Board proposes to amend this subpart by eliminating Board approval for the conduct of more than four bingo occasions on leased premises. The amendment is needed and reasonable because it conforms the rule to a recent statutory change in Minn. Stat. § 349.17, subd. 1 (1988).

The Board also proposes to amend this subpart by prohibiting a lessor and certain employees, from participating in lawful gambling at the leased premises. The proposed amendment is necessary to insure the integrity of the game, both in reality

and in perception, and to eliminate any ability for the lessor to gain any unfair advantage during the playing of the game.

The Board also proposes to amend this subpart by prohibiting the granting of a license to any organization that proposes to conduct lawful gambling on premises where illegal gambling has occurred within the most recent 12 month period. The proposed amendment is necessary to insure the integrity of the gambling operation conducted on the leased premises, and to insure that the lessor has not engaged in recent illegal activity which negatively reflects on the integrity of the licensed organization. The rule is reasonable because it does not prohibit an organization from obtaining a license to conduct gambling. It merely prohibits the organization from conducting gambling on premises which have been the site of illegal gambling. The organization may obtain a license to conduct gambling at another site, so long as that other site has not also been the site of illegal gambling.

The law also has the effect of deterring lessors, primarily bar owners, from engaging in or allowing illegal gambling to take place on the premises. Financial benefits can be derived from having licensed charitable gambling on the premises. Precluding lawful gambling on premises where illegal gambling has occurred has the effect of discouraging illegal gambling on the same premises.

7860.0105 Bingo Hall Licenses

Subpart 1. License Required.

This subpart requires any person who leases a facility to more than one licensed organization to conduct bingo to obtain a bingo hall license. The proposed amendment is needed and reasonable because it conforms the rule a recent change in Minn. Stat. § 349.164 (1988).

Subpart 2. Application Required.

This subpart sets forth the information that must be contained in an application for a bingo hall license. The application must be on a form provided by the Board, as required by Minn. Stat. § 349.164 (1988).

In addition, this subpart lists several pieces of information which the applicant must provide to the Board before a bingo hall licensed application may be considered. The information required by this subpart is necessary to allow the Board to adequately identify the applicant and the owner of the bingo hall, if the owner is not the same as the applicant. The information required by this subpart is reasonable because it provides necessary identification to the Board, and insures that only qualified persons or entities are able to obtain a bingo hall license.

This subpart also requires the bingo hall license application to contain a statement regarding whether any officer, director, or other person in a supervisory, or managerial position has been convicted of a felony or has been convicted in a state or federal court of a gambling related offense within 10 years of the date of the license application. Both provisions are needed and reasonable to conform the rule to the specific qualification requirements contained in Minn. Stat. § 349.164, subd. 3 (1988).

This subpart also contains a requirement that the bingo hall license applicant provide a list of the owners, partners, officers, directors, and people in supervisory and managerial positions, and requires that a bingo hall personnel form be completed for each of these individuals. This information is necessary to insure that all persons employed by and affiliated with the bingo hall license applicant are not affiliated with criminal activity nor engaged in conduct which would adversely affect the integrity of charitable gambling.

Subpart 3. Bingo Hall Personnel Form.

This subpart lists the information that must be provided on a bingo hall personnel form as required in Subpart 2, Item J. As mentioned above, this information is needed to insure that all persons affiliated with the bingo hall license applicant have not been engaged in illegal gambling activity, nor involved in any activity which would adversely impact the integrity of lawful gambling. This information is also necessary to enable the Board to provide adequate information to the Bureau of Criminal Apprehension in the event a background investigation is warranted.

Subpart 4. Prohibitions on Bingo Hall Lessor/Owner Interest.

Item A.

This item is necessary and reasonable because it conforms the rule to the prohibitions contained in Minn. Stat. § 349.164, subd. 7 (1988).

Item B.

This subpart prohibits a person who is an officer, director, shareholder, or proprietor of an alcoholic beverage distributorship from being an officer, director, shareholder, partner, proprietor or employee of a bingo hall lessor/owner. This rule is needed and reasonable because the Board rules have consistently excluded from licensing distributors and manufacturers with ties to the wholesale alcoholic beverage industry. This maintains that consistency.

Subpart 5. Changes in Application Information.

This subpart requires the bingo hall applicant, or licensee, to submit to the Board within 10 days any change in the information submitted in the original application. This rule is necessary to allow the Board to be fully apprised of the operations of the bingo hall and any changes that occur at the hall or in the management of the hall. The rule is reasonable because it does not provide an undue hardship on the bingo hall applicant, or licensee, but merely requires the accurate reporting of all information required to be submitted to the Board.

Subpart 6. Restrictions on Services Provided.

This subpart merely restates the restrictions contained in Minn. Stat. § 349.164, subd. 7 (1988) with respect to the activities of the bingo hall lessor/owner. Items A through E of the proposed amendment are therefore reasonable and necessary.

This subpart, as well as Minn. Stat. § 349.164, subd. 7, refer to the affiliate of a bingo hall lessor/owner. Accordingly, the proposed amendment contains a definition of "affiliate" for purposes of the restrictions contained in the rule. The definition of affiliate is necessary to more adequately describe the prohibited conduct of the lessor/owner. The definition is reasonable because it is the definition used in other statutes in this state.

Subpart 5. License Fee.

This subpart establishes the annual license fee for a bingo hall license as \$250. The proposed amendment is necessary because Minn. Stat. § 349.164, subd. 4 sets the license fee at \$250.00. The rule merely restates the requirements of the statute. The rule is reasonable because it includes the license fee with other provisions governing bingo hall licenses, and therefore, lessens confusion among bingo hall license applicants.

7860.0110 Premises Leased to Two or More Organizations

Subpart 1. Limit on Number of Occasions Per Week

This subpart is necessary and reasonable because it conforms the language of the rule to that contained in Minn. Stat. § 349.17, subd. 2 (1988).

7860.0120 General Accounting Records

Subpart 1. General Records.

The Board proposes to delete a portion of this subpart because the language is superfluous and contained in other provisions of this chapter.

Subpart 2. Monthly Records.

The Board proposes to amend this subpart by requiring each organization licensed to conduct gambling to report certain information to the organization's members at the regular meeting of the organization. The proposed amendment is necessary to insure that the membership of the organization is adequately informed about the gambling activities of the organization. Such a requirement prevents one or two members of the organization from taking complete control over the gambling operation and running it to the detriment of the organization as a whole. The proposed amendment is reasonable because it ultimately protects the organization by making it knowledgeable with respect to the gambling activities conducted.

7860.0130 Method of Accounting

Subpart 3. Unpaid Liabilities.

Pursuant to this subpart, the Board proposes to require each organization to report its unpaid liabilities for allowable gambling expenses on the monthly gambling tax return. This is necessary to allow the Commissioner of Revenue to accurately review the gambling tax return to determine if the organization is in compliance with the percentage requirements of Minn. Stat. § 349.15 (1985).

7860.0140 General Gambling Bank Account

The Board proposes to amend this part by authorizing the Commissioner of Revenue and agents of the Commissioner of Revenue to inspect the bank records of the organization. This amendment is necessary to comport with the Governor's Reorganization Order of August 19, 1988 transferring many of the powers of the Gambling Board to the Department of Revenue. Accordingly, authorization for the Board to inspect the bank records has been deleted in accordance with the Reorganization Order.

The Board also proposes to amend this part by specifically referring to "net receipts from lawful gambling" rather than receipts from lawful gambling because net receipts is a term of art and specifically defined in part 7860.0010, subpart 19.

The Board also proposes to amend this part by deleting "gambling" because elsewhere in the rules all expenses for the conduct of lawful gambling are simply referred to "allowable expenses".

The Board also has inserted a provision that all lawful purpose expenditures must be paid from this account. This is necessary to insure that the gambling profits are not co-mingled with any other money of the organization, and that appropriate

records are kept to insure that gambling profits are expended solely for lawful purposes.

Finally, the Board also proposes to amend this part by requiring notification of the amount in the gambling banking checking account upon termination of the organization's license to conduct gambling. This provision is necessary and corresponds with the termination plan contained in 7860.0040, subpart 3, item C.

7860.0150 Internal Control

Subpart 1. System of Internal Accounting and Administrative Controls Required.

The Board proposes to amend this subpart by specifically requiring certain information that must be included in the internal controls established by an organization licensed to conduct gambling. The rule as previously written, only required the establishment of internal controls and the ability of the Board to review those internal controls if the internal controls did not meet the objectives of the Board. The previous rule did not sufficiently provide information to licensed organizations to alert them to the specific internal controls required by the Board. Accordingly, this subpart sets forth three items which must be included in any internal control plan submitted by an organization to the Board. The proposed amendment is necessary because of the lack of sufficient internal controls used by many gambling organizations. The requirements imposed by the Board in this proposed amendment are similar to general accounting practices employed by successful gambling organizations. The requirements are not burdensome, but will insure a more comprehensive method for handling gambling proceeds.

Subpart 7. Fund Loss By Questionable Means.

This subpart provides a mechanism to allow an organization to make accounting adjustments to its gambling account when gambling proceeds are lost through no fault of the organization. The method established in this subpart allows an organization to adjust its gambling account if the shortage of funds is due to theft or other criminal conduct. The proposed subpart is necessary to eliminate the need for the organization to reimburse its gambling account for the lost funds. The proposed subpart is reasonable because it requires sufficient proof of theft or other criminal conduct, or proof that the loss was due to reasons beyond the control of the organization, before the Board will allow any accounting adjustment to the gambling account of the organization.

The proposed subpart also requires the organization to establish new internal controls if necessary to prevent a loss from recurring in the future, and requires a change in staffing to prevent the recurrence of the loss if necessary. Finally, the subpart requires the repayment to the gambling account of any money recovered as a result of an investigation or as a result of an insurance payment. This provision is necessary to insure that the organization does not obtain a windfall due to the recovery of the lost proceeds, and that the gambling bank account is accurate.

7860.0160 Expenses

Subpart 1. Expenses Allowed.

The Board proposes a few grammatical and structural changes to this subpart, all of which are necessary and reasonable for purposes of clarity. The Board also proposes to amend item E of this subpart to require that the compensation paid to members for conducting gambling must be paid on a compensation schedule devised by the organization and reported to the Board. This is necessary to comport with the provisions of Minn. Stat. § 349.21 which allows the Board to establish a compensation schedule for the compensation of persons participating in lawful gambling. In lieu of establishing a compensation schedule, the Board has required each organization to establish a compensation schedule for Board review and approval. Such a procedure is obviously less onerous, and allows the organization to tailor its compensation to fit the needs of the organization.

The Board proposes to delete the payment of taxes from item F of this subpart. This is necessary to keep the rule consistent with an amendment added to part 7870.0010, subpart 16, item D.

The Board proposes to amend item L by allowing a portion of the liability insurance premium to be deducted as an allowable expense. The proposed amendment is both necessary and reasonable because it conforms the rule to the specific requirement of Minn. Stat. § 349.15 (1988).

Subpart 2. Definitions.

Item C.

The Board proposes to delete the word "reasonable" from this item. The deletion is necessary and reasonable because part 7860.0090 specifically imposes rent limits for organizations conducting lawful gambling.

Item E.

The Board proposes to amend this subpart by adding language to restrict the method for determining the compensation that may be paid to employees engaged in lawful gambling. The proposed amendment precludes an employee from being paid based on a percentage of the gambling proceeds or receipts. This is necessary because a gambling employee's role is that of a member of the organization which is conducting the gambling. The employee is merely providing assistance to that organization. The employee must not be involved in the gambling activity as a profession or as a major source of income. Accordingly, the compensation paid to employees for the conduct of lawful gambling must be set pursuant to a compensation schedule rather than based on a relationship to the percentage of profits realized during the gambling occasion. Paying employees on a percentage basis promotes commercialization of the gambling activity.

Item F.

The Board proposes to delete item F to conform to the deletion in part 7860.0160, subpart 1, item F.

Item M.

The Board proposes to delete all references to advertising to conform this rule to the provisions of part 7860.0070.

Item L.

This item is necessary to conform the rule to the provisions of Minn. Stat. § 349.15 (1988) regarding the use of gambling funds to pay the annual premium on a policy of liability insurance.

Subpart 3. Percent Expended for Allowable Expenses.

The Board proposes to make one minor grammatical change to this subpart by changing annualize to annual. This is both necessary and reasonable because it makes the rule more grammatically correct.

The Board also proposes to amend this subpart by requiring that the allowable expenses of an organization be paid within sufficient time to insure that all the reports to the Board are accurate and complete. This is necessary to allow the Board and the Department of Revenue to determine, on a monthly basis, whether or not the organization has complied with the percentage requirements specified in Minn. Stat. § 349.15. Pursuant to that statute, no more than 55% of profits from bingo and no more than 45% of profits for other forms of lawful gambling may be expended for allowable expenses. In order for the Board to accurately determine whether or not an organization has complied with the percentage limits, the organization must pay those expenses before filing its reports with the Board.

Subpart 4. Unallowable Expenses.

Item D.

The Board proposes to amend this subpart by eliminating advertising costs as an allowable expense from gambling proceeds. This is necessary to conform this rule to the advertising prohibitions contained in part 7860.0160, subpart 2(m) and 7860.0070, subpart 1(a).

7860.0170 Expenditures For Lawful Purposes

Subpart 4. Percent of Profit to be Used for Allowable Expenses.

The first portion of this subpart parrots the language of Minn. Stat. § 349.15. Accordingly, it is necessary and reasonable. The second portion of this subpart establishes a procedure for the Board to handle organizations which do not meet the percentage requirements of Minn. Stat. § 349.15 at the time of license renewal. The procedure allows the organization 120 days to bring its accounts into compliance with the law. The 120 day period is both necessary and reasonable because it provides a sufficient amount of time to get the accounts in order, but is not so long as to have a substantial adverse impact on the gambling operation.

7860.0180 Gambling Tax Returns

Subpart 4. Three Signatures Required on Tax Returns.

The Board proposes to amend this subpart by requiring three signatures, rather than two, on all gambling tax returns. This is necessary to require the person who completed the tax return to sign the tax return and therefore, to hold that person to some accountability for the information supplied on the tax return. This provision is necessary and reasonable because it comports with all other provisions of the tax law which require the tax preparer to sign the tax returns.

The proposed amendment also requires the organization to inform the Board in writing of the identity of any designees authorized to sign the gambling tax return. This is necessary to adequately inform the Board of those authorized to sign the tax return and to allow the Board to examine tax returns to determine if the appropriate and authorized persons have signed.

7860.0200 Distributors

Subpart 2. Application Required.

Item H.

The Board proposes to amend this item by requiring all employees of distributors and those who receive anything of value from the distributor to be identified on the application form for a distributor's license. The amendment also requires that a distributor personnel form be completed for each of those individuals. The proposed amendment is necessary because any person who participates in the business of a distributor, who deals with potential or current customers on behalf of the distributor, and who offers services to organizations as a representative of the distributor, has a critical role in maintaining the integrity of the distributor and the gambling industry. Because of the vast number of organizations engaged in lawful gambling, as well as the number of people involved in the sale of gambling equipment, the potential for collusion is great. Identification of all employees of a distributor helps to prevent

the opportunity for collusion and illegal conduct on the part of the distributor and its employees.

Subpart 4. Restrictions on Distributorship Interest.

Item D.

The information contained in this item is necessary to help prevent collusion between distributors, employees of distributors, and gambling organizations. A distributor may not obtain a monopoly on a particular organization's gambling equipment, particularly when some type of collusive agreement may result in the organization paying higher prices for that equipment because of the inappropriate arrangement. The intermingling of roles is detrimental to the integrity of the gambling industry.

Item E.

This item prohibits a distributor or any person employed by a distributor from providing services related to the conduct of lawful gambling that are required to be performed by a licensed organization. Responsibility for the conduct of lawful gambling rests solely on the licensed organization. The licensed organization cannot abdicate even one of its responsibilities to a distributor of gambling equipment. The proposed amendment draws a line of demarcation between the role of distributor and the role of the licensed organization. The integrity of the gambling industry cannot be maintained if that line is crossed.

Item F.

This provision provides a mechanism for a distributor to obtain assistance from the Board in collecting delinquent tax payments from a licensed organization. The distributor is responsible for the collection of taxes on the sale of pull-tabs to a licensed organization. Failure to pay the tax leaves the distributor liable for the payment of those taxes to the Department of Revenue. Accordingly, Item F provides a mechanism for the Board to assist the distributor in obtaining payment of delinquent taxes so that the distributor is not unfairly penalized for the tax liability of the licensed organization. The method established by the amendment provides sufficient incentive for a licensed organization to become current on any delinquent tax obligation. Therefore, the proposed amendment will encourage tax collection, insure that a distributor is not unfairly punished for failure to pay taxes, and will place the responsibility for the payment of the taxes where it belongs, on the organization.

Subpart 8. Books and Records to be kept.

Item A (3).

The Board proposes to amend this item by requiring that all sales invoices issued by a distributor contain the expiration date of the license of the organization purchasing the gambling equipment. This will help protect the distributor from selling gambling equipment to an unlicensed organization, which has continued to conduct gambling although its license has expired. The requirement will also deter licensed organizations from continuing to conduct gambling after the expiration of a license by forcing the organizations to disclose the license expiration date to a distributor.

Subpart 21. Picture Identification Card.

The Board proposes to amend this subpart by making some grammatical changes which greatly enhance the clarity and understandability of the rule. The proposed amendment simply sets forth the requirements that must be contained in the picture identification card issued by the Board to distributors and persons who conduct sales on behalf of distributors. The proposed amendment is necessary because there previously existed no format for the picture identification card in the rule.

7860.0210 Special Restrictions: Pull-Tabs and Tipboards

Subpart 2. Purchases.

The Board proposes to delete the effective date of this subpart from the rule. The change is both needed and reasonable.

7860.0220 Registration of Equipment

Subpart 1. Registration Required.

Item E.

This subpart is necessary to allow a licensed organization to dispose of registered gambling equipment after the termination of the license or during a period of suspension or revocation of the license. This provision is consistent with the provisions of part 7860.0040, subpart 3, item C and part 7860.0140. It is therefore necessary and reasonable.

7860.0230 Bingo

Subpart 8. General Bingo Records.

Item F.

This item requires an organization to maintain records of the inventory of disposable bingo cards purchased by that organization. The requirement is necessary to allow the organization to arrive at the amount of gambling tax due by the

organization. Therefore the requirement is necessary and reasonable.

Item G.

This item requires a licensed organization to obtain certain information from winners of bingo games with prizes of \$100 or more. The information is consistent with that required of winners of pull-tab and tipboard games with prizes of \$100 or more. The information helps the organization to determine who has won a prize. This amendment is necessary because in the event a prize was fraudently obtained, the organization has some recourse to determine who may have fraudently obtained the prize. In addition, the requirement serves as a deterrent for those who may attempt to obtain a prize by fraudulent means. Therefore, the requirement is both necessary and reasonable.

Subpart 12. Cards That Are Not Pre-Printed But Are Completed By The Player.

This subpart sets forth the format of bingo cards in use throughout the State of Minnesota. A substantial number of questions have arisen regarding the use of bingo cards which are not pre-printed but are filled in by the player at the bingo occasion. The proposed amendment is consistent with the definition of a bingo card as contained in Minn. Stat. § 349.12, subd. 4 (1988). That statute requires a bingo card to contain 25 spaces with the center space in the middle row having the word "free" printed on it. In any bingo game, the particular arrangement of numbers on the bingo card must be clearly described and announced to the players immediately before each game is begun. In the absence of the announcement, any combination of five spaces in a row, vertically, horizontally, or diagonally, could be used to win the bingo game. If the spaces on the bingo card are not uniform in color and size, then the card would not be an acceptable bingo card, and would not confirm to the rules of the game. This rule is needed and reasonable to eliminate a substantial amount of confusion with respect to the format of bingo cards.

7860.0240 Pull Tabs

Subpart 1. General.

Item F.

This item is necessary to provide the participant in lawful gambling with the rules governing the conduct of the gambling and the sale of pull-tabs on the gambling premises. It is reasonable to post the rules of any game requiring that a person pay a fee to participate. The posting of the rules also insures that the organization follows those rules, and alerts any player to a deviation from the rules.

Item G.

This item is necessary to insure that a licensed organization does not change a deal of pull-tabs depending on the number of winners awarded from that deal and the number of tickets left to be sold in that deal. This is necessary to give the pull-tab player the opportunity to know his or her odds or potential to win a prize in a particular pull-tab deal.

Items H and I.

These items, although separate, are inter-related. Both are necessary to enable the organization to determine what is called the "ideal gross" and "ideal net" for the pull-tab deal. The ideal gross and ideal net are part of the calculation used to determine the amount of tax due on the pull-tab sale. Unless all pull-tabs are sold at the same price, the calculation of the ideal gross and ideal net is not accurate. Accordingly, the amount of tax due on the pull-tab sale is also unaccurate. The sale of pull-tabs in "bulk" skews the tax calculation, as well as provides an unfair advantage of winning to the buyer of multiple pull-tabs that the buyer of a single pull-tab may not have.

Item J.

This item is necessary to provide the Board and the Commissioner of Revenue with adequate documentation to inspect the conduct of lawful gambling. The information is necessary to allow the Board or Commissioner to determine whether or not the pull-tabs in play were illegally purchased or whether or not the pull-tabs were legally in play at the particular premises. Because of the importance of maintaining the integrity of lawful gambling, the method of regulation imposed by this Item is clearly necessary and reasonable.

7860.0250 Tipboards

Subpart 1. General.

Item E.

This item is necessary to insure that the persons participating in tipboard deal know the number of tipboards placed out for sale, and therefore know the odds of winning that particular game. The odds for any game are based on the chances of choosing a ticket out of the entire tipboard deal. Therefore, failure to place the entire tipboard deal out for play skews the odds and places the player in an unfair position.

Item F.

This item is necessary to insure that the players of any tipboard game have access to the rules governing the tipboard game before buying a tipboard. As a result, the players are adequately informed of the rules of the game, and the organization is held to the rules of the game as posted.

Item G.

This item is necessary to allow the Board or the Commissioner of Revenue, or their agents, to adequately inspect the licensed premises to determine if the tipboards were legally purchased by the organization and if the organization is complying with all rules related to charitable gambling. The rule is also necessary to monitor the internal controls of the organization to determine whether or not the inventory is maintained appropriately, and the organization has adequate control over the tipboards stored on the premises.

Subpart 3. Cost Per Ticket And Prize Limitations.

Item B.

The Board proposes to amend this item by requiring that the major prize awarded by removing the seal on the tipboard must be equal to or greater than the value of any other prize awarded in that tipboard deal. The amendment is necessary to insure that tipboard winners are not penalized simply because the method of winning in any particular tipboard deal differs from player to player. A tipboard game awards prizes in basically two ways. The first is by placing a player's name on a consolation list. The other is by revealing on the tipboard the winning number or seal. Regardless of the manner in which the winner is selected, the prizes must be the same. This is necessary to eliminate the incentive for a player or an organization to choose one method of winning a prize over another.

7860.0160 Paddlewheels

Subpart 2. Registration Stamps.

Item D.

Minn. Rule part 7860.0010, subpart 23 defines "paddle ticket card" as a card to which is attached paddle tickets bearing all the numbers or symbols on a paddlewheel. Accordingly, this item is necessary to make it unequivocally clear that an organization may not use paddle tickets that are not attached to a paddle ticket card. Therefore, the item is necessary and reasonable.

7860.0300 Standards for Pull Tabs and Tipboard Tickets

Subpart 1. Tipboard Ticket Standards.

The Board proposes to amend this subpart by deleting all references to pull-tabs and the standards for pull-tabs sold in this state. This amendment is necessary to make it clear that tipboards and pull-tabs are separate types of gambling equipment and that different standards apply.

The Board proposes to delete item A of this subpart because the language of Item A is the same as that contained in Item B. Therefore, the deletion is both needed and reasonable.

The Board proposes minor amendments to Item B, which are necessary to fully incorporate the deleted portions of Item A into this Item. In addition, the date of September 1, 1985 was changed to April 1, 1989 to make the applicability of the rule current.

The Board proposes to delete all references to pull-tabs in Item C, and to renumber Item C as Item B. This is necessary and reasonable to separate the standards for tipboards and pull-tabs. The standards for pull-tabs are contained in subpart 2 of this part.

Subpart 2. Pull-Tab Ticket Standards.

The Board proposes to add this subpart to clearly set forth the standards for pull-tabs sold in the State of Minnesota. This is necessary to distinguish pull tabs from tipboards, and to clearly set forth the separate standards which must be applied to pull-tabs in this state. The standards are necessary to establish minimum quality standards for the manufacturer of pull-tab tickets sold in Minnesota. The purpose of the standards is to insure that the games are uniform, and that the pull-tabs are secure against alteration by most practical methods. The standards proposed in this subpart are consistent with the standards used in other parts of the country, and are not so unique as to detrimentally impact of manufacturers who sell pull-tabs in Minnesota. Therefore, these standards are both needed and reasonable.

7860.0320 Gambling Managers

Subpart 1. Instruction Course.

This subpart is necessary to require all gambling managers to complete a course of instruction on the duties and responsibilities of a gambling manager. The gambling manager plays a significant role in the conduct of lawful gambling within an organization. The gambling manager must be versed in the laws and rules governing charitable gambling, must be capable of performing basic accounting, must be capable of paying employees, and must bear, to a large extent, the responsibility of insuring that the gambling is conducted in accordance with the law. It has been the Board's experience that far too often, gambling

managers do not have the requisite skills and abilities to effectively perform their role. As a result, a basic instruction course is necessary to adequately train gambling managers. The course is reasonable because it is beneficial to the organizations conducting gambling, and it helps to insure that gambling will be conducted in a manner consistent with the law.

Subpart 2. Restriction.

This subpart is necessary to insure that no gambling manager may be a lessor or employee of a lessor of a premises leased for lawful gambling. This subpart is necessary to make it absolutely clear that the duties and responsibilities of the lessor of gambling premises are wholly separate from the responsibilities of the licensed organization. This subpart is consistent with several other provisions contained in these rules.

7860.0400 Manufacturers

Subpart 5. Marking and Identification of Equipment
for Gambling.

Item C.

This item is necessary to prevent the use of unregistered gambling equipment in the state of Minnesota. The rule operates as a deterrent against manufacturers selling unregistered equipment to licensed or unlicensed organizations. Moreover, it deters organizations or persons from selling unregistered gambling equipment without having first obtained the necessary license from the Charitable Gambling Control Board. The rule provides for the identification of the manufacturer, as well as the identification of the buyer of gambling equipment sold for use in Minnesota. Accordingly, if a violation of the law occurs with respect to the sale or manufacture of the gambling equipment, the Board has some recourse available to identify those who may have been responsible for the violation. Therefore, the rule is both necessary and reasonable.

Subpart 12. Pull-Tab Seals.

This rule is necessary to insure that all pull-tabs sold in the state of Minnesota meet the standards set forth in part 7860.0300, subpart 2. The rule provides some recourse to the Board if a manufacturer sells pull-tabs within the state which do not meet the quality standards set forth in these rules. Therefore, the rule is both necessary and reasonable.

Subpart 13. Notice of Delinquency.

This subpart is necessary to provide manufacturers of gambling equipment with some recourse against licensed distributors who are more than 60 days delinquent in payments to

the manufacturer for the cost of gambling equipment. The provisions contained within this subpart are similar to those contained in part 7860.0200, subpart 4, item F as applied to distributors of gambling equipment. Therefore, the proposed amendment is both necessary and reasonable.

7860.0500 Compliance Review Group

Subpart 1. Compliance Review Group Established.

This subpart is necessary to establish by rule the compliance review group. The compliance review group shall consist of three members of the Board, and shall conduct informal inquiries into alleged violations of the laws or rules governing the conduct of lawful gambling. The proposed amendment is necessary because the compliance review group has been used in the past and has proven to be an effective mechanism for dealing with alleged violations of the law. However, the rules of the Charitable Gambling Control Board have never contained a specific provision governing the existence or the duties of the compliance review group. Therefore, this proposed amendment is both necessary and reasonable.

Subpart 2.

This subpart sets forth the duties of the Compliance Review Group. The function of the Compliance Review Group as set forth in this subpart is to investigate and inquire into alleged violations of the laws or rules governing charitable gambling. In addition, the compliance review group may hold hearings on alleged violations and recommend disciplinary actions to the Board. The Compliance Review Group may also negotiate and enter into settlement agreements with a licensee for the purpose of resolving an alleged violation of law. This rule is necessary because the Compliance Review Group has proven to be a very effective mechanism for dealing with violations of the charitable gambling laws, and the duties of the Compliance Review Group have never been formally adopted as rules. In addition, the Compliance Review Group provides a forum for licensees to dispute the position of the Board with respect to a violation of law or rule. The meetings of the Compliance Review Group are held in private and provide the licensee an opportunity to be heard and negotiate a settlement without subjecting its conduct to the scrutiny of the public.

7860.0600 Suspensions and Revocations

Subpart 1. Grounds.

This subpart sets forth the criteria that must be considered by the Board in any enforcement action against a licensee. The criteria are comparable to criteria used by other licensing boards in the state of Minnesota, and are necessary to provide

the Board and the public with some standards by which to judge the conduct of those engaged in charitable gambling. The criteria are reasonable because they notify those subject to regulation by the Board what conduct which will not be tolerated by the Board, and insure that a licensee will not be subject to disciplinary action without sufficient grounds.

Subpart 2. Additional Grounds.

This subpart is necessary to allow the Board to take disciplinary action against a licensee or manufacturer if during the course of licensure, the licensee or manufacturer fails to remain qualified to hold the license. Accordingly, any person or organization that does not remain qualified to hold a license during the period of licensure may be subject to disciplinary action.

7860.0700 Fines

Subpart 1. Imposition.

This subpart is necessary to set-forth the Board's authority to impose civil fines, which authority is clearly set-forth in Minn. Stat. § 349.151, subd. 2(8). This subpart also sets-forth the factors to be considered by the Board in the imposition of a civil fine. The factors are necessary to adequately inform those subject to the regulation of the Board the amount of a fine may be imposed for any particular course of conduct. The factors are also necessary to insure uniform application of the law and to provide the Board with guidance in determining the amount of a fine to be imposed. Because the rule provides uniformity and consistency, the proposed rule is reasonable.

Subpart 2. Citation Form.

This subpart sets forths the form of a citation that may be issued by the Board or the Commissioner of Revenue. The citation is a document, which sets-forth the alleged violation of law, as well as a proposed fine. The rule is necessary to create a uniform document for use throughout the state to adequately inform those subject to regulation by the Board what type of citation form will be used.

Subpart 3. Appeals.

This subpart sets forth the procedure that must be used to effectuate an appeal of a citation and proposed fine. This subpart is necessary because the rules currently do not provide an appeal process for citations and fines. The amendment is reasonable because it provides an opportunity for a hearing, clearly sets forth the requirments that must be met to perfect the appeal, and indicates the responsibility of the Compliance Review Group in handling the appeal: The proposed appeal

procedure comports with due process as well as other administrative appeal procedures used throughout the State.

Subpart 4. Payment from Gross receipts prohibited.

This subpart is necessary to clearly prohibit the payment of fines from gambling proceeds. The prohibition is necessary to insure that the organization is actually punished for violating the law. A fine paid from gambling proceeds would have little or no effect on the organization and would not deter the organization from violating the law in the future. Therefore, an organization must pay the fine from other monetary sources.

Subpart 5. Consequences of failure to Correct.

This subpart is necessary to insure that an organization correct any violation for which a fine was imposed. Without this subpart an organization may find it more advantageous to pay the fine and continue the prohibited conduct. This subpart insures that appropriate disciplinary action may be taken to guard against such practices.

IV. OTHER STATUTORY REQUIREMENTS

Minn. Stat. § 14.115 (1988) requires agencies, when proposing a new rule or amending an existing rule which may effect small businesses, to consider certain methods for reducing the impact of the rule on small businesses.

The proposed amendments to the gambling rule may impact certain small businesses. However, the rule does not effect small businesses disproportionately nor does the rule prevent small businesses from participating in the gambling industry. The Board has fully considered the impact of the amendments on small businesses and has determined that because of the importance on maintaining integrity in the industry, the Board cannot be less rigorous in its regulation of one type of business over another.

Minn. Stat. § 14.11, subd. 2 is inapplicable because the proposed amendments will not have any direct and substantial adverse impact on agricultural land. Sections 115.43, subd. 1, 116.07, subd. 6, and 144A.29, subd. 4 are not applicable. Likewise, a fiscal note is not required pursuant to section 3.892 as the rule will not force any local agency or school district to incur costs.

Minn. Stat. § 16A.128 requires that any rule setting fees receive the approval of the Commissioner of Finance prior to the promulgation of the rule. Minn. Stat. § 349.164, subd. 4 specifically prescribes a license fee of \$250.00 for a Bingo Hall license. Proposed rule part 7860.0150, subp. 7 reiterates the license fee. However, because the fee was established by

statute, the notice and approval provisions of section 16A.128 do not apply.

CONCLUSION

Based on the foregoing, the Board's proposed amendments are both necessary and reasonable.

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