Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 10—Licensee's Responsibilities

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission (MGC) under section 313.805, RSMo Supp. 2014, the commission amends a rule as follows:

11 CSR 45-10.040 Prohibition and Reporting of Certain Transactions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2014 (39 MoReg 1569). Changes have been made to the text of the proposed amendment, so it is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on November 5, 2014. Rayna Stover, Director of Regulatory Compliance for River City Casino, attended the public hearing, but offered no comments. The Missouri Gaming Commission received written comments on the proposed amendment from Penn National Gaming, Inc. (Penn National), Gaming & Leisure Properties, Inc. (GLPI), Pinnacle Entertainment (Pinnacle), and Isle of Capri Casinos, Inc. (Isle of Capri).

Due to the similarity of the following four (4) comments, they are addressed with one (1) response.
COMMENT #1: Penn National stated its concern that the proposed language in paragraph (8)(A)2. was overbroad and would have the "potential to be an impediment to sales, transfers and leases of property that are immaterial to gaming operations . . . ., as well as de minimus transactions" and transactions involving the rental of interior space in the non-gaming portion of the floor.
COMMENT #2: GLPI was also concerned that the proposed language in paragraph (8)(A)2. was overbroad and would have unintended effects on its non-gaming "tenants and their ability to operate the properties effectively and efficiently."
COMMENT #3: Pinnacle proposed adding language to paragraph (8)(A)2. to make it clear that this regulation would not apply to "leases in the normal course of business related to restaurants, bars, entertainment venues or other retail space."
COMMENT #4: Isle of Capri expressed concern that the proposed language in paragraph (8)(A)2. was "overly broad and has the potential to create unnecessary delays and burdens for both the licensee and the Commission," in that, as written, it is unclear whether "non-gaming operations" would be included in the breadth of this regulation.
RESPONSE AND EXPLANATION OF CHANGE: The staff concurs with the sentiments expressed and has made changes to paragraph (8)(A)2. so that the regulation only applies to those leases that affect the gaming floor. Paragraph (8)(A)2. will be changed.

Due to the similarity of the following three (3) comments, they are addressed with one (1) response.
COMMENT #5: Penn National commented that subsection (12)(C)'s language as proposed "appears so broad that it could be nearly impossible to satisfy in any significant transaction." It proposed modifying the language of that subsection to require the petitioner to prove that the transaction would "not result in undue economic concentration in the ownership or control of riverboat gaming licenses in any region of the state."
COMMENT #6: GLPI stated that the language proposed for subsection (12)(C) "is an incredibly high standard that would almost certainly be impossible to achieve."
COMMENT #7: Pinnacle suggested adding the term "material" to modify the "negative competitive impact" of subsection (12)(C).
RESPONSE AND EXPLANATION OF CHANGE: The staff believes that the language in subsection (12)(C) is a reasonable and appropriate standard for the commission to evaluate in response to a petition to approve a material change in ownership or control. As such the changes proposed by Penn National will not be made. However, the term "material" has been added to subsection (12)(C) to describe the negative competitive impact that would be considered by the commission in evaluating a petition to approve a material change in ownership or control.

Due to the similarity of the following two (2) comments, they are addressed with one (1) response.
COMMENT #8: Penn National commented that subsection (12)(E) "is vague since the term 'significant changes' is not defined." It proposed modifying the language of that subsection such that the commission would make a determination as to whether the transaction "would call into doubt the financial ability of the licensee to successfully operate the riverboat gaming facility."
COMMENT #9: GLPI again commented that the language proposed for subsection (12)(E) "is an incredibly high standard that would almost certainly be impossible to achieve." It also suggested "that the Commission should be in a position to reject a change in control transaction if the adverse impact of that transaction calls into question the financial stability of the licensee after giving effect to the transaction."
RESPONSE AND EXPLANATION OF CHANGE: The substantially similar language proposed by Penn National and GLPI is too narrow and restrictive as to the determination of financial impact on the licensee. However, the terms "potentially" and "negative" have been added to subsection (12)(E) to modify the significant changes that the commission would consider.

COMMENT #10: Isle of Capri requested the commission to give consideration "to a provision that allows for prior 'notice' as opposed to a petition for approval if the transaction is between a Class A or B licensee and an affiliate."
RESPONSE: The staff believes the approval of the commission should be received prior to the consummation of any transaction described in this rule. Therefore, no such change will be made.

11 CSR 45-10.040 Prohibition and Reporting of Certain Transactions

(8) The following definitions apply to the terms used in 11 CSR 45-10.040:

(A) Material change in ownership or control:

1. Any transfer or issuance of ownership interest in a gaming licensee or holding company or other contract or arrangement resulting in a person or group of persons acting in concert, directly or indirectly:

A. Owning, controlling or having power to vote twenty-five percent (25%) or more of the voting ownership interest in the gaming licensee or holding company, if the acquiring person or group of persons did not previously hold twenty-five percent (25%) or more of the voting ownership interest of the gaming licensee or the holding company prior to the change in control; or

B. Controlling in any manner the election of a majority of the directors or managers of a gaming licensee or holding company, if the controlling person or group of persons did not previously exercise such control;

2. Any sale, transfer or lease by a licensee of all or any portion of the real estate upon which a riverboat gaming operation is conducted or located; provided, however, that this section shall not apply to leases in the normal course of business related to restaurants, bars, entertainment venues or other retail space, as long as it does not include any portion of the gaming floor.

(12) Upon any voluntary material change in ownership or control, the license held by the gaming licensee that is the subject of the material change in ownership or control or that is a direct or indirect subsidiary of the holding company that is the subject of the material change in ownership or control, shall automatically become null and void and of no legal effect, unless the commission has approved such material change in ownership or control by vote of the commissioners prior to its consummation. The commission may grant a petition to approve a material change in ownership or control if the petitioner proves by clear and convincing evidence that—

(C) It would have no material negative competitive impact;

(E) It would not potentially result in any significant negative changes in the financial condition of the licensee.