

## **EGS Rule 13.23 Summary**

This proposed rule establishes the requirements for granting a license to independent testing laboratories that certify that Electronic Gates of Skill meet the requirements of Arkansas law. Laboratories must be independent, certified and have five years experience testing gaming devices. Licenses shall be for a period of three years.

## **EGS Rule 13.23 Mark Up**

### **Independent EGS Testing Laboratory License**

All EGS and associated equipment must be tested by a laboratory licensed by the Commission to ensure that the games and equipment comply with Arkansas law and the Rules of the Commission. No franchise holder shall operate or allow wagering on any EGS that has not been tested by a licensed laboratory, and the Commission must approve the test results from the licensed laboratory prior to the franchise holder allowing wagering on the EGS.

### **Independent Status of Laboratory**

To qualify for an EGS testing license, the applicant must:

- (a) Be independent from any manufacturer, distributor, or operator of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, regardless of whether or not such person or entity is licensed, registered, or otherwise does business in Arkansas;

To be considered independent from a manufacturer, distributor, or operator under subsection (a) above, the independent testing laboratory, including its employees, management, directors, owners, compliance committee members and gaming regulatory advisors, with the exception of the independent testing laboratory's external accountants and attorneys:

- (a) Must not have a financial or other interest, direct or otherwise, in a manufacturer, distributor, or operator of any game, gaming device, associated equipment, cashless wagering system, inter-casino linked system, mobile gaming system or interactive gaming system, or any component thereof or modification thereto, regardless of whether or not the person or entity is licensed, registered, or otherwise does business in Arkansas;

### **General Parameters of Granting an EGS Testing Laboratory License**

- (a) An applicant for an EGS Testing Laboratory License shall submit to the Commission the information, documentation and guarantees necessary to establish, through clear and convincing evidence, the following:
  - i. The stability, integrity and economic responsibility of the applicant;
  - ii. The good character (if an individual), honesty and integrity of the applicant;
  - iii. That the owners, administrative and supervisory personnel, principal employees and sales representatives of the applicant comply with the parameters provided in Section 1310 of these Regulations **Qualifying as a Person Related to an EGS Testing Laboratory**;
  - iv. The integrity of all the officers, directors and trustees of applicant.
- (b) Be accredited in accordance with ISO/IEC 17025 by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement, unless the independent testing laboratory is only seeking registration for the inspection and certification of games and game variations;
- (c) Demonstrate it is technically competent in testing the category of game, device, or system in which it is seeking registration, and that the applicant has a minimum of five years of experience in testing gaming devices;
- (d) Demonstrate it is technically competent to test compliance with the applicable Arkansas statutes, regulations, standards and policies.
- (e) Detailed description of the testing facilities;
- (f) Detailed description of available testing staff and staff qualifications, including education, training, experience and skill levels;
- (g) Detailed description of available testing equipment;
- (h) Copies of documented policies, systems, programs, procedures and instructions to assure the quality of test results;
- (i) Copies of all test scripts to be used for testing against the applicable Arkansas statutes, regulations, standards, and policies.

### **Initial Application for an EGS Testing Laboratory License**

- (a) The initial application for an EGS Testing Laboratory License shall consist of an original and a copy of the following documents:
- (b)
  - i. Arkansas Racing Commission Business Entity Disclosure Form for EGS Testing Laboratory Licensee, to be completed by the applicant and by each company, individual or entity holding an interest in applicant;
  - ii. Arkansas Racing Commission Personal History Disclosure and Supplemental form of Persons Related with EGS Testing Laboratories, to be completed by each

natural person who must be qualified for a license by the Commission in accordance with Section \_\_\_\_\_ of these regulations; and

- iii. The fees to be paid to the Commission, as provided in Section \_\_\_\_ of these regulations.
- (c) The Commission shall not evaluate an initial EGS Testing Laboratory License application unless same is accompanied by all the information required in these regulations, including all the documents requested in paragraph (a) above; provided that any incomplete application filed with the Commission shall be deemed to be as if same had not been filed.
- (d) Burden of proof - It shall be the responsibility of the EGS Testing Laboratory applicant and its principals to provide information and or documentation and to demonstrate their qualifications by clear and convincing evidence relative to the character, honesty and integrity of its directors, officers, stockholders and principal employees, to the Commission.
- (e) No person may test electronic games of skill for a manufacturer to be used by a franchise holder for the conduct of Wagering thereon as authorized in this chapter unless the person has demonstrated to the satisfaction of the commission that the person has the capability and qualifications necessary to competently test the equipment to ensure compliance with Arkansas law.

#### **Duration of EGS Testing Laboratory License**

- (a) Every EGS Testing Laboratory License shall be issued by the Commission for a period of 3 years.
- (b) Notwithstanding the provisions of paragraph (a) above, the Commission may, as it may deem necessary:
  - i. issue an EGS Testing Laboratory License for a shorter period;
  - ii. at anytime, void the EGS Testing Laboratory License for reasonable cause.

#### **EGS Testing Laboratory License Renewal Application**

- (a) Every EGS Testing Laboratory License renewal application shall be filed no later than ninety (90) days prior to the expiration date of said license.
- (b) The EGS Testing Laboratory License renewal application shall include:
  - i. A duly completed original and a photocopy of:
    - (1) An Arkansas Racing Commission Business Entity Disclosure form EGS Testing Laboratory Application, which shall contain all the information that has changed from the date of the application for the initial EGS Testing Laboratory License or of the last renewal, to be completed by the applicant and by each holding company of applicant;

- (2) An Arkansas Racing Commission Personal History Disclosure and Supplemental form of Persons Related with EGS Testing Laboratory Licensees to be completed by each natural person who must be licensed in accordance with Section \_\_\_\_\_ of these regulations, and who has not been licensed by the Commission; and Arkansas Racing Commission Personal History Disclosure form and Supplemental Personal History Disclosure form of Persons Related with EGS Testing Laboratory Licensee-Renewal to be completed by any natural person required to be licensed in accordance with Section \_\_\_\_\_ of these Regulations and who has already been licensed by the Commission.

### **EGS Testing Laboratory License Fees**

- (a) The fees to be paid for the initial or renewal application for an EGS Testing Laboratory License shall be determined by the Commission; provided that the application fee shall not be more than \$1,000 a year. This does not include the actual cost of the investigation(s), which is to be billed to and paid by the applicant to the Commission.
- (b) The fees to be paid for the initial application shall cover administrative costs related to the processing of the application.
- (c) The renewal application fee shall not be more than \$1,000, payable to the Commission and submitted with the EGS Testing Laboratory License Renewal Form.
- (d) The license will not be approved until the fees, including the investigative costs, have been paid by the applicant.

### **EGS Testing Laboratory Disqualification Criteria**

- (a) The Commission may deny an EGS Testing Laboratory License to any applicant which, in the opinion of the Commission:
  - i. Has not proved through clear and convincing evidence that the applicant and any of the persons required to be licensed in accordance with these Regulations are in fact duly qualified;
  - ii. Has violated any of the provisions of these regulations;
  - iii. The applicant has failed to provide information or documentation requested in writing by the Commission in a timely manner, which shall not exceed (30) business days from the date of request by the Commission without reasonable justification and an extension granted by the Commission;
  - iv. The Commission shall deny an EGS Testing Laboratory License to any applicant who does not satisfy the standards for entity licensing in these Rules.

### **Qualification Requirements - EGS Testing Laboratory License**

- (a) The Commission shall not issue an EGS Testing Laboratory License to any entity unless the applicant has established the individual qualifications of each one of the following entities or persons if applicable:
  - i. The entity;
  - ii. The holding company(s) of the entity;
  - iii. Every owner of the entity who has, directly or indirectly, any interest in or is the owner of more than five percent (5%) of the entity;
  - iv. Every owner of a holding company of the entity which the Commission deems necessary to promote the purposes of these regulations;
  - v. Any director of the entity, except such director who, in the opinion of the Commission, is not significantly involved in or related with the administration of the entity;
  - vi. Every officer of the entity who is significantly involved in or who has authority over the manner in which the business dealing with the activities of Franchise Holder and any officer who the Commission considers necessary to protect the good character, honesty and integrity of the entity;
  - vii. Any officer of the holding company of the entity who the Commission considers necessary to protect the good character, honesty and integrity of the entity;
  - viii. Any employee who supervises the regional or local office which employs the sales representatives who shall solicit business from or negotiate directly with an EGS manufacturer;
  - ix. Any employee who shall function as a sales representative or who shall be regularly dedicated to soliciting business from any EGS manufacturer in the State of Arkansas;
  - x. Any other person connected to an entity who the Commission considers should be licensed.
  - xi. This part does not apply to an institutional investor (as defined by the Federal Securities and Exchange Act of 1934, as amended) that acquires or will acquire 10% or less of the equity securities of an applicant or licensee that is a publicly traded corporation if those holdings were purchased for investment purposes only and the institutional investor files with the Commission a certified statement that it has no intention of influencing or affecting directly or indirectly, the affairs of the licensee; the investor will be permitted to vote on matters put to the vote of the outstanding security holders.
- (b) In order to establish the individual qualifications, the persons specified in subparagraphs (a)(i) and (a)(ii) of this section shall complete an Arkansas Racing Commission Business Entity Disclosure.

- (c) In order to establish the individual qualifications, the persons specified in subparagraphs (a)(iii) through (a)(x) of this section shall complete an Arkansas Racing Commission Personal History Disclosure form of Persons Related with EGS Testing Laboratory Licensee.

### **Qualifying as a Person Related with an EGS Testing Laboratory License**

- (a) Any natural person who is required to be licensed, because of his/her relationship with an EGS Testing Laboratory License applicant, shall provide to the Commission the information, documentation and assurances necessary to establish through clear and convincing evidence:
  - i. His/her relationship with the entity;
  - ii. That he/she is 21 years of age (this only applies to those employees who service gaming machines or work on the Gaming Floor who have access to the machines);
  - iii. That he/she is of good character and reputation, in addition to being honest and having integrity; and
  - iv. That he/she has not been convicted including “nolo contendere” and “withheld adjudication” by any state or federal court in the Country for:
    - (1) Committing, intending to commit or conspiring to commit a crime of moral turpitude, illegal appropriation of funds or robbery, or any violation of a law related to games of chance or skill, or a crime which is contrary to the declared policy of the Arkansas Racing Commission with respect to the gaming industry; or
    - (2) Committing, intending to commit or conspiring to commit a crime which is a felony in the State of Arkansas or a misdemeanor in another jurisdiction which would be a felony if committed in the State of Arkansas.
- (b) Not satisfying any one of the requirements established in paragraph (a) above shall be sufficient reason for the Commission to deny an EGS Testing Laboratory License.
- (c) The Commission shall deny any person required to qualify in conjunction with an EGS Testing Laboratory License that does not satisfy the standards set forth within these regulations.

### **Investigations; Supplementary Approval of Change**

- (a) The Commission or its representatives may, at its discretion, conduct any investigation with respect to an applicant or any person related with an applicant who it deems pertinent, either at the time of the initial application or at any subsequent time.

- (b) It shall be the continuous duty of any applicant or holder of an EGS Testing Laboratory License to fully cooperate with the Commission or its representatives during any investigation and provide any supplementary information that the Commission or its representatives requests.
- (c) It shall be the duty of any applicant or holder of an EGS Testing Laboratory License to notify the Commission within 10 business days of any proposed changes in the ownership of the applicant or licensee. If the applicant or holder of an EGS Testing Laboratory License is publicly traded company, it does not have to report changes in ownership unless the change represents five percent (5%) or more of the total shares issued and outstanding or ten percent (10%) or more of the total shares issued and outstanding if the change is the result of an institutional investor. In such cases, the licensee shall provide the Commission with copies of the most recent notice filed with the Securities and Exchange Commission. All proposed new owners shall submit to the Commission or its representatives an initial EGS Testing Laboratory License application, which must be approved by the Commission. Any failure to comply with this rule shall be grounds for revocation of an existing license or denial of an application for a license.

#### **Suspension, Denial of Renewal or Revocation of an EGS Testing Laboratory License**

- (a) Any of the following reasons shall be considered sufficient cause for the suspension, denial of renewal or revocation of an EGS Testing Laboratory License:
  - i. Violation of any provision of these regulations;
  - ii. Conduct which would disqualify the applicant or any other person required to be licensed by the Commission;
  - iii. Failure to comply with any applicable law, state or federal or regulation, or county or municipal ordinance;
  - iv. A material misstatement made in the application for the EGS Testing Laboratory License.
- (b) Notwithstanding the provisions of subparagraph (a) above, any other cause that the Commission deems reasonable shall be considered sufficient cause for the suspension, denial of renewal or revocation of an EGS Testing Laboratory License.

#### **Business Entity Disclosure for EGS Testing Laboratory Applicant Forms**

- (a) Arkansas Racing Commission Business Entity Disclosure form shall be completed in the format provided by the Commission.

#### **Personal History Disclosure form**

- (a) The Commission may require an Arkansas Racing Commission Personal History Disclosure form from all those natural persons required under Section 13.9, to fill out the same.

### **Obligation for Payment of Fees; No Refund of Fees Paid**

- (a) Any obligation for payment of fees arising from these regulations shall be paid in full to the Commission, even when the entity withdraws its application for a EGS Testing Laboratory License or the license is denied.
- (b) No amounts paid for EGS Testing Laboratory License fees shall be refundable.
- (c) Any failure to pay fees when due shall result in a late fee penalty established by the Commission, denial or revocation of a license.

### **Subcontractors**

A licensed EGS Testing Laboratory shall not perform any testing services for a franchise holder by using subcontractors and independent contractors. All testing must be performed by employees of the licensed testing labs, unless specifically approved by the Commission.

### **Testing Laboratory Fees**

The manufacturer shall be solely responsible for the payment of any fees imposed by the independent testing laboratory for its services. The fees to be charged shall be determined solely between the manufacturer and the independent testing laboratory.

### **Additional Requirements for Independent Testing Laboratories**

- (a) All documents, data, reports, and correspondence prepared, furnished, or completed by the independent testing laboratory for or on behalf of the Commission shall be retained until its disposal is approved in writing by the Commission.
- (b) The independent testing laboratory shall provide the Commission with step-by-step verification procedures for each tool, device, or mechanism used to assign the unique identification codes or signatures.
- (c) The independent testing laboratory shall provide to the Commission, at no charge, in quantities determined by the Commission, any verification tool, device, or mechanism that is required for Commission agents to verify the code or signature of any approved critical program storage media. The independent testing laboratory may charge the supplier for expenses associated with such verification tools.
- (d) The independent testing laboratory shall develop and maintain a database, acceptable to the Commission, of all gaming equipment certified by the independent testing laboratory for the state of Arkansas.
- (e) The database and report(s) must be current as of the end of the previous business day, and in a Commission-approved format.
- (f) The independent testing laboratory shall provide, free of charge to the Commission, technical and regulatory compliance support. The independent testing laboratory shall provide responses and follow-up as directed by the Commission. In instances where the independent testing laboratory providing the support is also conducting the testing for the device, the time allocated for support will be considered part of the testing process and the independent testing laboratory may bill the manufacturer for



the cost of the technical support. In instances where the independent testing laboratory providing the support is not conducting the testing for the device, the Commission may require the manufacturer of the device to reimburse the independent testing laboratory at the rate the independent testing laboratory charges manufacturers for such support.

- (g) The independent testing laboratory shall provide, free of charge to the Commission, additional consulting services for Commission personnel on an as-needed basis. Such additional services at a minimum shall include, but not be limited to:
  - i. Providing training to Commission employees on gaming equipment testing, new technology, and auditing procedures.