

A PRACTICAL
GUIDE FOR THE
APPROVAL OF
**NEW GAMES AND
GAME VARIATIONS
IN NEVADA**



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Overview

In Nevada, a game inventor or “developer” cannot offer a table game for play unless it qualifies as a “game” or “gambling game,” as defined by the Gaming Control Act (the “Act”), or unless the Nevada Gaming Commission (the Commission) has approved it as a new game.

The Act defines a “game” or “gambling game” as any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device, or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game, or any other game or device approved by the Commission. However, the Act explicitly excludes from this definition all games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games operated by charitable or educational organizations that are approved by the Nevada Gaming Control Board (the Board).

A new variation to a previously approved game cannot be offered within the state unless it has been approved by the Chair of the Board (the Chair) or his/her designee. The Commission’s Regulation 14 defines game variation as a change or alteration in a “game” or “gambling game” that affects the manner or mode of play of an approved game, including changes regarding wagering opportunities and theoretical hold percentages. A game variation application is required for the addition of a new side wager to an existing game or a change in the pay table to an existing side wager or table game.

This guide examines Nevada’s application process for new games and variations to previously approved games.

New Games

Unlike the approval process for many aspects of Nevada gaming, the developer of a new game is not required to be found suitable or licensed by the Commission. However, the absence of mandatory licensure does not infer a lax approval process. Developers of new games are still subject to a background investigation and the game is thoroughly reviewed before making it available for play.

In addition, the Board and the Commission have the discretionary authority to require a finding of suitability for any person who has invented, developed or who owns the intellectual property rights to a game for which approval by the Commission is being sought or has been received in accordance with the Commission’s regulations. In other words, the Board and the Commission have the express authority to call forward most any person associated with a new game.

Finally, the new game must be approved by the Commission.

What Must Be Filed?

The application process begins with the new game developer filing an array of documentation with the Board. This documentation is divided between information specific to the developer and information specific to a new game.

Documentation specific to an applicant includes: (I) a personal history questionnaire for each officer (chief executive officer, chief financial officer, chief operating officer and chief technology officer), director, key employee, and/or equity holder of greater than 10 percent of the developing corporation, limited liability company, partnership or other entity (collectively Applicant); (II) an affidavit of full disclosure; (III) a release and indemnity of all claims; and (IV) a request to release information.

The personal history questionnaire gathers information regarding the Applicant's character and fitness. Any misrepresentation or failure to disclose requested information may be deemed sufficient cause for the Applicant to be called forward for a finding of suitability or for denial of the new game application. The disclosures include, among others, any arrests, detentions or litigation, as well as any privileged or professional licenses the Applicant holds or has held, including gaming licenses.

Documentation specific to a new game includes: (I) a letter requesting game approval; (II) the name of the game, which must be different than the name of a game currently approved by the Commission; (III) a copy of the table layout (as it will appear in the casino) and the player betting position (to include game instruction and pay table information if applicable); (IV) the rules of play, with specific examples of game outcome, such as win/lose/tie; (V) the dealing procedures; (VI) a proposed payout schedule; (VII) a copy of the rack card; (VIII) samples of new or modified gaming accessories, such as dice or cards; (IX) a mathematical certification from a Nevada Independent Test Laboratory;

(X) a copy of the filing receipt from the United States Patent and Trademark Office; (XI) a letter from a Non-Restricted Group I licensee agreeing to display and monitor the new game's field trial; and (XII) the contact information for persons able to discuss intricacies of the new game with the Board. Items I-V must be submitted on a CD-ROM in Word or PDF format. In addition, the Applicant must provide a breakdown of the ownership of the new game with reference to the Applicant's company.

It is important to note that, like most jurisdictions, Nevada requires a new game's theoretical percentages to be calculated by a licensed testing laboratory.

The Applicant must also file a notarized document that contains the following statements:

- If a field trial is approved, the casino conducting the field trial will receive 100 percent of the revenue produced by the game during the course of the field trial

- The Applicant will pay for all costs associated with the shipment, inspection and incidental costs documented by the Gaming Control Board in connection with the examination and evaluation of the new game
- There is at least one working model currently available for use or one that can be made available immediately should the game be approved for a field trial
- The Applicant and the developer's intentions as to how a profit is expected to be made from the submitted game if the game is approved

Due to the highly regulatory nature of licensing, game developers commonly retain a gaming attorney to be actively involved in the application preparation process. The attorney's primary responsibility in preparing an application is to guide the Applicant through compiling the required information and reviewing the application for accuracy, completeness and consistency. Any untrue or incomplete statement is grounds for denial and could result in disciplinary action. Therefore, it is important to have an experienced gaming attorney determine if any potential regulatory concerns exist or if the information provided requires further explanation in a supplemental exhibit to an application. Once an application is prepared, the gaming attorney serves as the main contact for the Board's investigation and guides the Applicant through the investigation process.

What Type of Investigation Is Conducted?

Once all the required documentation is filed, the Board's Enforcement Division reviews the application for completeness and conducts a background investigation of the Applicant. The Enforcement Division forwards the independent statistical evaluation of the new game to the Technology Division for analysis and verification. Naturally, the more complex the game, the longer the Applicant can expect for the analysis and verification to be completed. If the Board approves the field trial, both the Applicant and the casino will be notified in writing.

The Applicant's counsel plays two important roles during the investigation. First, counsel serves as the "point man" for facilitating the Board agents' requests for documentation or information. Requests are usually made via letter to the Applicant with copies to his/her counsel or by telephone call to his/her counsel. Counsel then coordinates the production of documents and information and reviews them for responsiveness, clarity, accuracy and completeness. The Applicant's ability to quickly and accurately assemble and transmit the information to his/her counsel for review prior to production to the Board will greatly impact the length of this process.

Second, counsel acts as an "observer." If requests are made without notice to the Applicant's counsel, the Applicant should immediately inform his/her counsel of the request. By analyzing the nature of the information requested and observing the direction of the investigation, counsel can make educated guesses about the agents' concerns or areas of interest. With this knowledge, the Applicant gains the ability to dispel any misconceptions and to prepare any necessary rebuttal in advance of the Board and Commission hearings.

What Happens During the Field Trial?

Prior to submitting a new game application, a developer must arrange for a Nevada Non-Restricted Group I licensee to host the field trial. Historically, the Board has shown a preference for the field trial to be conducted in Las Vegas, Laughlin or Reno; however, the Board may permit a field trial to be conducted in a more remote location such as Pahrump or Mesquite.

The field trial must start within 30 days of receipt of approval from the Board and only one new game is permitted for trial at each location, unless otherwise approved by the Board. Additionally, no changes to the game, including changes in the table layout and rules, may be made during the field trial unless the Board grants written permission to do so.

In conducting the field trial, a number of responsibilities are imposed upon the host licensee, including adaptation of the casino floor to house the new game, educating the staff as to the rules of the game and providing constant video surveillance during the field trial.

Any failure to comply with these requirements, especially the timely submittal of complete and accurate field trial data, may result in termination of the field trial.

Because the host licensee bears the workload during the field trial, the licensee is entitled to receive 100 percent of the revenue generated by the new game. To ensure this occurs, the Applicant is required to submit a notarized statement to the Board attesting to the fact that the Applicant will forego the game's field trial revenue.

Field trials generally span 45 to 180 days. The Board may consider conducting simultaneous trials at multiple locations in order to obtain comparable data in a shorter timeframe. Additionally, the Board will consider game approvals and play statistics from other jurisdictions if contact information is provided and game information meets Nevada standards. A host licensee may also cancel a field trial at any time. The most common reason for canceling a field trial is poor performance of the new game and the host licensee's desire to make greater use of the floor space. In the event that a field trial is canceled, the Applicant must find another licensee to continue the field trial. If the Applicant is unsuccessful in doing so, the new game application will be referred back to the Applicant and a new field trial will take place once the Applicant has located a suitable host licensee.

The Board Hearing

After completion of a field trial, the Enforcement Division prepares a Request for Final Approval report and submits it to the Board and the Commission. The application is then placed on the Board and the Commission's public meeting agendas and the Applicant, along with a representative of the host licensee, will receive a letter requiring their presence at the Board and the Commission meetings. Applicants must attend unless their appearance has been waived.

When possible, Applicant's counsel should work with the Board agents before the submission of the agenda item to assure accuracy. An error in the agenda item may cause the Board to delay

the hearing until the next regularly scheduled meeting to allow for the correction. This delay may be mandated by the Nevada Open Meeting Law, which prohibits the consideration of matters in a public meeting that are not accurately described in the posted agenda.

At the Board hearing, counsel and the Applicant identify themselves for the record and a working model of the game is presented to the Board. The Board has the prerogative to question the Applicant about any aspect of the game or his/her personal or business life that may affect his/her suitability. Although Board Members generally use the Board agents' investigative summary as a guide for their questioning, they are not constrained to the information contained in the summary.

This portion of the counsel's job is challenging because the Applicant and counsel cannot review or examine the Board agents' summary report. The Applicant is unable to investigate or verify either the source or the accuracy of any information contained in the summary report. Moreover, the case presented against the Applicant need not conform to any of the traditional rules of evidence. For example, unlike a typical court case, weight can be given to hearsay (statements by persons who do not have personal knowledge of the stated information but who learned of it from another person).

Counsel's familiarity with the Board and Commission proceedings greatly assists in the preparation of the Applicant for the Board and Commission hearings, as well as in the presentation of the new game to the Board and the Commission.

After the presentation and questioning, the Applicant's counsel is offered an opportunity to give a closing statement. The Board then begins an open deliberation on the application, followed by one of the Board Members making a motion. The most common motions are:

- To continue the matter
- To refer the matter back to the Board staff
- To recommend to the Commission that the application be denied
- To recommend to the Commission that the application be approved with or without conditions or for a limited or unlimited duration

The Commission Hearing

Although the Commission has the final authority to deny or to approve a new game, its hearings are generally shorter in duration than those held by the Board. The Commission members receive a full transcript of the Board's hearing before their meeting and they tend to ask about matters that are not covered in the Board agents' summary report or in the transcript.

The Commission must take action on an application within 120 days of the Board's recommendation. If it fails to do so, the application is deemed approved. However, the Commission routinely requires applicants to waive the 120-day rule if a continuance is necessary.

The Commission hearing is typically scheduled to take place two weeks after the Board hearing, and the hearing process is similar to the Board's process. Items are heard in order as listed on the Commission's agenda but may be taken out of order at the Chairman's discretion.

A working model of the game is presented to the Commission and the Commission may ask questions or seek clarification on any point. Once discussion has been completed, the Applicant may make a closing statement. Thereafter, the Commission will close the hearing to further comments from the Applicants. The Commission members then deliberate between themselves. In determining whether to approve a new game, the Commission considers whether such approval is consistent with public policy, to which an economic evaluation is critical—e.g., whether the game generates more revenues for the state than it costs to regulate.

After their discussion, one of the Commission members will make a motion. The most common motions are:

- To continue the matter
- To refer the matter back to the Board
- To deny the application
- To approve the application with or without conditions or for a limited or unlimited duration
- A combination of the foregoing

The Commission's voting rules are different from those of the Board, where a simple majority determines the action taken. If the Board has given a favorable recommendation on an application or had a tie vote, a simple majority of votes by the Commission will determine the action of the Commission. However, if the Board has recommended denial of an application, then the Commission must have a unanimous vote to approve that application.

If it denies an application, the Commission must prepare and file a written decision setting forth the reasons for its action. No written decision is necessary after approval of an application.

How Long Does the Process Take?

The overall process, from filing to determination by the Commission, typically takes several months. Timing is influenced by many factors, such as completeness of an application, diligence of an Applicant in providing additional information, workload at the Board, complexity of the game and length of a field trial. Moreover, each new game is unique, so the specific length of investigations and field trials will vary for each application. As such, no specific timeframe for the entire application procedure is provided within either the Act or Regulation 14.

How Much Does the Process Cost?

Each application for a new game must be accompanied by a nonrefundable application fee in the amount of \$3,000 in the form of a check or cashier's check and be made payable to the Nevada Gaming Control Board. The Board charges fees for the investigation costs and expenses incurred by the Board during the investigation. The Enforcement Division bills for investigative services at \$155 per hour and the Technology Division bills at \$155 per hour for completing the game evaluation. Additional deposits may be required during the course of the investigation. All outstanding fees must be paid before a game is approved.

What Are the Typical Reasons an Application Might be Referred Back to an Applicant?

The Board works closely with the Applicant's counsel throughout the application process and it is common practice for the Board and counsel to mutually participate in refining the application prior to the appearances before the Board and the Commission. Delays in obtaining approval usually relate to: (I) new game information, such as submitting incorrect theoretical percentages, failing to provide a copy of the rack card or table layout or requiring clarification of a new game's rules; (II) failing to identify a host licensee or having a host licensee cancel the field trial; and (III) incorrectly submitting a new game application as a game variation application. In the majority of instances, these errors will cause a new game application to be referred back to the Applicant. The onus is then on the Applicant to work with the Board to remedy all errors.

In some instances, a new game application may be denied. As stated above, a new game must be consistent with the public policy of the state. In addition, regulators now have the express power to deny a game based on the suitability of the inventor, developer or owner of the intellectual property to a game.

Simply put, regulators will not permit the Applicant to participate in the gaming industry if the Applicant's involvement in the industry is likely to result in regulatory violations or, due to his/her poor reputation or background, create poor public perception. A person may be found unsuitable because of character issues (including dishonesty in completing the new game application), unsuitable business practices or prior unsuitable conduct in the gaming industry. If a person is found to be unsuitable, he/she will become a "denied applicant" who is unable to do business with another Nevada gaming licensee absent the Commission's approval.

Game Variations

Game variation applications are required for changes and alterations to approved games that affect the manner or mode of play of a game. Changes requiring an application include, but are not limited to, the addition or removal of wagering opportunities or a change in the theoretical hold percentage of a game. Thus, as noted above, a game variation application is required for a new side wager to an existing game or for a change in the pay table to an existing side wager or table game.

The application process for game variations is a simplified version of the new game process. The Applicant is not required to complete a Personal History Disclosure Form nor arrange for a field trial of the game variation. Instead, the Applicant must provide: (I) a letter requesting approval of the game variation; (II) a signed and notarized Request to Release Information Form and Release and Indemnity of All Claims Form; (III) a depiction of the difference between the standard game and the proposed variation; (IV) a mathematical certificate from a Nevada Independent Test Laboratory; (V) one copy each of the table layout and the player betting position, including game instruction and pay table information if applicable; (VI) the rules of play, with specific examples of game outcome, such as, win/lose/tie (upon request, rules of play for the standard game are required); (VII) the pay schedules or pay tables for the proposed game variation; and (VIII) the sample(s) of new or modified gaming accessories or apparatuses including cards, dice, shakers, tiles, etc. that are associated with the proposed game variation.

Similar to new games, each application for a game variation must be accompanied by a nonrefundable application fee in the amount of \$1,500 in the form of a check or cashier's check made payable to the Nevada Gaming Control Board. The Board charges fees for the investigation costs and expenses incurred by the Board during the investigation.

The Enforcement Division bills for investigative services at \$155 per hour and the Technology Division bills at \$155 per hour for completing the game evaluation. Additional deposits may be required during the course of an investigation. All outstanding fees must be paid before a game is approved.

Once an application is filed with the Board, the Enforcement Division will review the application for completeness, and the statistical evaluation will be forwarded to the Technology Division for analysis and verification. However, once the review has been completed, a game variation does not have to receive the approval of the Commission. Instead, a game only needs to be approved by the Chair of the Board or his designee.

In this case, the time frame from filing an application to approval is usually three months. Again, the actual length of the process depends on a variety of factors, including the completeness and accuracy of an application. Failure to submit clear and concise rules of play may result in an application being referred back to the Applicant.

Lewis Roca has one of the largest dedicated gaming law practices in the world. The lawyers in our practice group have extensive experience in gaming law that spans several decades and includes experience in casino gaming (commercial and tribal), Internet gaming, sports betting, pari-mutuel racing, sweepstakes, lottery, bingo and compliance.

Our gaming practice group is nationally recognized across the industry and has been at the forefront of all major gaming developments for the past 25 years. We represent casino operators, gaming manufacturers and distributors, management companies, tribes, entrepreneurs, investors and governments in a variety of matters, including licensing, compliance, transactions, restructuring and regulatory adoption.

As legalized gaming continues to proliferate across the United States and throughout the world, the laws governing the gaming industry continue to evolve. Lewis Roca's gaming practice group closely monitors activity in this unique industry to provide our clients with sound and timely advice.