

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-156 (IRRC #2914)

Practice and Procedure; Server Supported Slot Systems; Compulsive and Problem Gambling

December 7, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the October 8, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Section 403a.7. Temporary emergency orders. – Clarity.

Subsection (h)

This subsection states an informational hearing will be held at “a location determined by the Executive Director or a designee.” How will the notice of the location be conveyed to the person affected? Is this notice required to be in writing?

Existing Subsection (l)

Existing Subsection (l) discusses required procedures relating to the disposition of a temporary emergency order, and included in Paragraphs (2) and (3) is the role of the Office of Enforcement Counsel. In the Preamble, the Board explains it is proposing to delete Subsection (l) because it is duplicative of hearing procedures in Chapter 494a. We did not find any direct reference to the Office of Enforcement Counsel in Chapter 494a. The Board should explain how the role of the Office of Enforcement Counsel is adequately addressed in Chapter 494a.

Existing Subsection (o)

This existing subsection states that “any resolution adopted is a final order of the Board for purposes of appeal.” In the Preamble, the Board states this provision is being deleted since the forms of service are addressed in Section 491a.5. While Section 491a.5 addresses service, it does not appear to contain an equivalent provision stating “any resolution adopted is a final order of the Board for purposes of appeal.” The Board should review the deletion of existing Subsection (o) and further explain why this provision is not needed.

2. Section 437a.2. Gaming service provider registration applications. – Clarity.

Subsection (e) requires reimbursement for “additional” costs. It is not clear what costs are involved and what specific “additional” costs must be reimbursed. The same concern applies to Subsection 437a.3(c). The Board should clarify these provisions.

3. Section 461a.1. Definitions. – Clarity.

Section 1.7(e) of the *Pennsylvania Code and Bulletin Style Manual* states, “The term being defined may not be included as part of the definition.” The definitions of “server supported slot machine,” “server supported slot system” and “slot machine server” use the terms being defined. We recognize that these definitions are being moved from existing Subsection 461a.20(a) and are similar to the existing definitions. However, for clarity, we ask the Board to review these definitions and amend them to conform to the *Pennsylvania Code and Bulletin Style Manual*.

4. Section 461a.20. Server supported slot systems. – Clarity and Ambiguity.

Clarity of approvals

Throughout this proposed section, licensed facilities that hold table game operation certificates (certificate holders) are required to obtain certain approvals from the Board or the Bureau of Gaming Laboratory Operations. For example, Section 461a.20(g) states, in part, the following: “. . . terminals in secure, restricted locations within the licensed facility as approved by the Bureau of Gaming Laboratory Operations.” We are concerned that the proposed rulemaking does not include the procedures for obtaining the necessary approvals. To assist the regulated community in understanding how to submit the requests for certain approvals, we suggest that the final-form regulation include the procedures or appropriate cross-references to where the procedures can be found. We have identified the following sections that contain references to approvals:

- § 461a.20(b)(1)
- § 461a.20(e)
- § 461a.20(f)
- § 461a.20(g)
- § 461a.20(k)(1)
- § 461a.20(m)
- § 461a.20(n)

General requirements in this chapter

Subsection (a) states a licensee may use a server supported slot system that complies with Section 461a.7 “and the general requirements of this chapter.” The phrase “and the general requirements of this chapter” is vague. The Board should either delete this phrase or replace it with specific cross-references to the provisions a server supported slot system must meet.

As directed by the Board

Paragraph (a)(2) requires a server supported slot system to automatically verify the authenticity of copies every 24 hours “and as directed by the Board.” It is not clear what the phrase “and as directed by the Board” means. As written, this phrase could supersede the requirements of the regulation. We recommend deleting this phrase.

5. Section 491a.2. Definitions – Clarity.

The Board should review the definition of “consent agreement.” It is not clear what is intended by the phrase “a voluntary agreement or proposal to an act . . .”

6. Section 493a.9. Preliminary motions. – Need; Clarity.

Existing Subsection (f) states it “supplements” 1 Pa. Code §§ 35.177 – 35.180. The Board is amending Subsection (f) to state it now “supersedes” 1 Pa. Code §§ 35.177 – 35.180. Similar amendments are shown in Subsections 493a.10(e) and 494a.4(e). We did not see an explanation of these amendments in the Preamble. Why is the Board making these amendments?

7. Section 494a.7. Exceptions – Reasonableness.

We question whether this section allows enough time for the presiding officer to issue a supplemental report and recommendation. A response can be filed under Subsection (d) on day 15 after the date of service of the exceptions. Under Subsection (f), the presiding officer must issue a supplemental report and recommendation “within 20 days of receipt of exceptions unless exigent circumstances require a longer period of time.” Under these timeframes, the presiding officer may only have five days after receiving a response to exceptions to issue a supplemental report and recommendation. We are concerned that in practice it may be more common to extend the 20-day time period than to meet it. We recommend that the Board review the timeframes in Section 494a.7 and explain why they are reasonable.

8. Section 495a.2. Form of documents. – Reasonableness.

Subsection (a), as amended, states the Board may establish requirements for pleadings filed with the Clerk and Subsection (b) states that Subsection (a) supersedes 1 Pa. Code § 33.2. As amended, Section 495a.2 would allow the Board to amend the requirements without notice and no longer state how a person can find the most current requirements. We recommend that the Board either not amend Section 495a.2 or, alternatively, amend it so that persons can readily receive notice of the Board’s requirements and comply with it.

9. Section 495a.6. Number of copies. – Clarity.

Subsection (b) provides for electronic filings, but does not specify what types of electronic filings the Board will accept, such as email. We recommend that this section specify or cross-reference what electronic filings will be accepted.

10. Section 501a.4. Reports. – Clarity.

Subparagraph (b)(4)(v) is vague by requiring “other information as requested by the Director of OCPG.” The Board should delete this subparagraph or amend it to require specific information related to the annual summary.

11. Section 511a.3. Criteria for exclusion. – Clarity.

Subparagraph (a)(4)(iv) uses the vague phrase “in close proximity” to the licensed facility. It is not clear what would constitute a violation of this provision. The Board should replace the phrase “in close proximity” with a clear standard so that the regulated community can comply and the Board can enforce this standard.