

# **Comments of the Independent Regulatory Review Commission**



## **Pennsylvania Gaming Control Board Regulation #125-226 (IRRC #3248)**

### **Casino Simulcasting; Fantasy Contests**

**February 20, 2020**

We submit for your consideration the following comments on the proposed rulemaking published in the December 21, 2019 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (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. Implementation procedures; Protection of the public health, safety and welfare.**

Act 42 of 2017 amended Title 4 Pa.C.S. relating to Amusements. As it pertains to this rulemaking, Act 42 provides Category 2, 3 and 4 casinos the ability to simulcast horse racing at their facilities. It also legalizes fantasy contests. In order to implement casino simulcasting and fantasy contests, the General Assembly granted the Board authority to promulgate temporary regulations. Casino simulcasting temporary regulations were published in the January 6, 2018 edition of the *Pennsylvania Bulletin*. Fantasy contest temporary regulations were published in the April 28, 2018 edition of the *Pennsylvania Bulletin*. Both temporary regulations expire two years after publication.

This rulemaking begins the process of converting the Board's temporary casino simulcasting and fantasy contest regulations to permanent regulations. In response to Regulatory Analysis Form (RAF) question #29, the Board indicates that the expected date of delivery of the final-form regulation is the third quarter of 2021. This will be more than a year after both temporary regulations have expired. A cornerstone of the Pennsylvania Race Horse Development and Gaming Act (Act) (4 Pa.C.S. §§ 1101 -- 4506) is the protection of the public health, safety and welfare and also the protection of the integrity of gaming. How will Board protect the public and also the integrity of the games it is charged with overseeing without temporary or permanent regulations in place? We urge the Board to return this regulatory package for final review to the Independent Regulatory Review Commission (IRRC) and the designated standing committees of the General Assembly as quickly as possible to ensure that these forms of gaming are properly regulated.

#### **2. Compliance with the RRA or the regulations of IRRC.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs IRRC to determine whether a regulation is in the public interest. When making this determination, IRRC considers criteria such as economic or fiscal impact and reasonableness. To make that determination, IRRC must analyze the text of the proposed regulation and the reasons for the new or amended language. IRRC also considers

the information a promulgating agency is required to provide under Section 5 of the RRA in the RAF (71 P.S. § 745.5(a)).

There are several instances where the Board's responses to RAF questions are incomplete:

- RAF #12 should identify what other states allow casino simulcasting and fantasy contests and how those states administer those contests;
- RAF #15 should categorize the fantasy contest operators that have been granted permission to operate in the Commonwealth as either a small business or another size business; and
- RAF #22 states that applications for licensure are required forms and the Board has submitted those forms with the proposed rulemaking. Subsections 1202a.2(e), 1203a.2(a)(2) and 1209a.2(b) reference other forms that may be required. If they are required, copies of those forms should be submitted with the final-form regulation.

We ask the Board to provide more complete answers to these questions and also the requested forms when the regulation is returned in final-form.

#### **Subpart M. CASINO SIMULCASTING.**

##### **3. Whether the regulation is consistent with the intent of the General Assembly; Possible conflict with or duplication of statutes or existing regulations; Implementation procedures.**

Several sections of the Act, as amended by Act 42, direct the Board and the State Horse Racing Commission (Commission) to consult and cooperate with each other to adopt and promulgate regulations to govern the conduct of casino simulcasting. Examples include 13F06(a) and (b) and 13F08(c). The Preamble submitted with the proposed rulemaking does not explain how the Board and Commission developed this regulatory package. Did the Board consult with the Commission to develop this rulemaking? We ask the Board to explain how this rulemaking was developed in the Preamble submitted with the final-form rulemaking.

In addition, under the authority of the Race Horse Industry Reform Act (3 Pa.C.S. §§ 9301 - 9374), the Commission recently published temporary regulations that supersede and replace existing regulations of the former State Horse Racing Commission and the former State Harness Racing Commission. Those temporary regulations were published in the *Pennsylvania Bulletin*, 42 Pa.B. 6221 (October 19, 2019). It is our understanding that the Commission will be converting the temporary regulations to permanent regulations. We ask the Board to work with the Commission to ensure that the promulgation of this rulemaking does not conflict with or duplicate the regulations of the Commission.

##### **4. Section 1001a.13. Wagering limited to simulcasting facility. – Clarity.**

This section includes a reference to 58 Pa. Code Parts IV and V (relating to Horse Racing Commission and Harness Racing Commission). As noted above, the regulations of the Commission have been superseded by temporary regulations. The final-form regulation should be amended to reflect the proper citations and regulations.

In addition, the last sentence of this section reads as follows, “Simulcast horse races may be shown in other areas of the licensed facility as approved by the Board, in consultation with the Commission.” This provision is arbitrary and vague. What criteria or standards will the Board and Commission use to determine if simulcast horse races may be shown in other areas of the licensed facility? The final-form regulation should provide direction to the regulated community, the Board and the Commission on how the determination will be made.

**5. Section 1001a.19. Casino simulcasting accounting controls and audit protocols. – Clarity.**

Subsection (g) lists examples of “submissions that may contain an insufficiency likely to negatively affect the integrity” of wagering. Regulations have the full force and effect of law and create binding norms that are equally applied to all parties. The language of this section fails to create a binding norm and we suggest it be amended to establish a more exact standard of what is or is not acceptable. We have a similar concern with § 1206a.1(h), relating to fantasy contest accounting and internal controls.

**Subpart O. FANTASY CONTESTS**

**6. Section 1202a.2. Fantasy contest licenses. – Legislative intent; Implementation procedures; clarity.**

Subsection (e) allows a licensed gaming entity to submit an abbreviated application for a fantasy contest license on forms or in an electronic format supplied or approved by the Board. Section 322(d) of the Act addresses an abbreviated application process. It states that the Board may establish such a process and that the abbreviated application may only require information not in possession of the Board that is necessary to fulfill the requirements of this chapter. We believe Subsection (e) lacks clarity and provides less detail on the abbreviated application process than the Act. Requiring the submittal of a form, the content of which is not specified, falls short of the legislative directive to establish a process. We ask the Board to specify the type of information that will be required in an abbreviated application process.

**7. Section 1203a.3. Renewals. – Clarity.**

Subsections (a) and (b) include references to licenses and registrations. Subsection (c) includes references to licenses, registrations and permits. For consistency and to improve the clarity of the regulation, the Board should either add the term “permit” to Subsections (a) and (b) or delete it from Subsection (c).

**8. Section 1203a.4. Licensed entity representative. – Clarity.**

This section requires a “licensed entity representative” to register with the Board. This term is not defined in Section 1201a.2, relating to definitions for Subpart O. Since other terms such as principal, key employee and gaming service provider are defined in Section 302 of the Act and also this rulemaking, we suggest that licensed entity representative also be defined.

## **9. Section 1205a.2. Procedures to govern the conduct of fantasy contests. – Clarity.**

This section states that each fantasy contest license holder shall establish and implement procedures governing the conduct of fantasy contests. Subsection (b) enumerates what those procedures must include. We have two clarity concerns with this subsection. First, under Subsection (b)(5) and (6), if a fantasy contest participant participates in a contest for which they are not eligible, that participant is banned from further contests. In addition to the ban, the final-form regulation should specify that the participant's entry into the contest is voided.

Second, Subsections (b)(5) and (6) include language that is not needed. Under both subsections, if a participant enters a contest for which they are not eligible, procedures must be in place to temporarily suspend the account of the participant for 15 days and also to ban the participant from further participation in fantasy contests of the license holder. Since the participant is banned from further contests, there is no need for the 15-day temporary ban and we recommend it be deleted from both subsections.

## **10. Section 1205a.3. Fantasy contest accounts. – Clarity.**

Subsection (a) states, “A participant in a fantasy contest operated by a licensed operator may only enter a fantasy contest if the participant has established an account with the fantasy contest operator.” We believe the clarity of this subsection would be improved if it included language similar to the language found in Subsection 1205a.2(b)(1). That subsection specifies that a participant must have an account, unless the fantasy contest is offered through a fantasy contest terminal at a licensed facility.

## **11. Section 1206a.1. Fantasy contest accounting and internal controls. – Clarity.**

Subsection (d)(8) requires fantasy contest licensed operators to have accounting and internal controls to prevent “minors” from entering fantasy contests. We recommend that a specific age be included instead of the term “minor.” This would improve the clarity of the provision and also be consistent with other sections of the regulation that identify a specific age for participation in fantasy contests.

## **12. Chapter 1209a. FANTASY CONTEST SELF-EXLCUSION. – Legislative intent; Possible conflict with or duplication of statutes and existing regulations; Implementation procedures; Protection of the public health, safety and welfare; Clarity.**

This chapter establishes procedures for patrons and licensed operators of fantasy contests regarding self-exclusion from fantasy contests. We have six concerns. First, the Board’s existing Chapter 503a, regarding casino self-exclusion, is in the process of being amended through the regulatory review process and is currently between the proposed and final-form rulemaking stage. We note that proposed Section 503a.2, relating to request for casino self-exclusion, requires a person that wants to self-exclude to provide, at a minimum, the last four

digits of their Social Security number. However, this proposal does not require a person wishing to self-exclude from fantasy contests to provide a Social Security number. Instead, it requires that person to provide their driver's license number. Why does the Board require different information for self-exclusion for patrons of casino gaming compared to fantasy contest gaming? Has the Board considered using one standard self-exclusion form for all types of gaming that it regulates? This would prevent any potential conflict within the Board's various chapters of regulations.

Second, if a person self-excludes under Chapter 503a, would that person also be self-excluding from all fantasy contests, fantasy contests offered only at licensed gaming entities that have fantasy contest terminals, or neither? Conversely, if a person self-excludes from fantasy contests, would that action also apply to other types of gaming offered at the facilities of licensed gaming entities and regulated under Chapter 503a?

Third, depending on the Board's answers to our concern above, it would appear that a person with a gambling problem that wants to self-exclude would have to add himself or herself to both the casino self-exclusion list and the fantasy contest self-exclusion list. Does the Act allow the Board to use the information it receives under Chapter 503a and this chapter to develop an all-inclusive self-exclusion list that can be shared and used by all entities that provide gaming opportunities under the Board's jurisdiction? If the Act provides the Board the authority, we suggest that the Board develop a more global approach to self-exclusion that would make it easier for people with gambling problems to self-exclude from all forms of gaming by self-excluding through one process or list.

Fourth, Section 503a.2(c), relating to request for casino self-exclusion, requires persons that have self-excluded to inform the Board of any changes to the information provided to the Board when that person self-excluded. We suggest that this Chapter include a similar provision to ensure that the Board and fantasy contest providers have the most up-to-date information about the person.

Fifth, Section 1208a.2 requires a licensed operator to include a Responsible Gaming page on its website. The page is to include links to compulsive and problem gaming treatment information and provider sites. We recommend that this section also require a link to the Board's self-exclusion program and material.

Sixth, Section 1209a.2(c)(2) requires a person requesting self-exclusion to identify "the period of time in years" for which that person desires to be on the self-exclusion list. The minimum time period for self-exclusion is one year. The Act is silent on the minimum time period for self-exclusion for fantasy contests. We ask the Board to explain the rationale for establishing a one-year minimum for self-exclusion for fantasy contests.

### **13. Miscellaneous clarity.**

- Subsection 1001a.19(f)(2) includes a reference to Subsection (i). Section 1001a.19 does not include a Subsection (i). We ask the Board to correct this citation in the final-form regulation.

- The second sentence of the definition of “applicant” found in Section 1201a.2 contains a substantive provision that should be moved to the body of the regulation.
- Subsection 1204a.1(a), contains a provision that is expressed in the negative. The *Pennsylvania Code and Bulletin Style Manual* suggests that, whenever possible, regulations should be expressed in a positive manner. We recommend that the phrase “the Board will not issue or renew a fantasy contest unless all of the following criteria have been established by the applicant” be changed to the “the Board will issue or renew a fantasy contest if all of the following criteria have been established by the applicant.”
- Under Subsection 1207a.1(a), the word “all” should be changed to “any.”
- Subsection 1209a.4 (b), includes a reference to the list of “video gaming” self-excluded persons. We believe the reference to “video gaming” should be changed to “fantasy contest.”