

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-234 (IRRC #3279)

Sports Wagering

February 24, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the December 26, 2020 *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. Protection of the public health, safety and welfare; Implementation procedures.

Act 42 of 2017 amended Title 4 Pa.C.S., relating to Amusements, to expand gaming opportunities in the Commonwealth. As it pertains to this regulation, Act 42 offers slot machine licensees the opportunity to petition the Board to conduct sports wagering at a slot machine licensee's licensed facility, a temporary facility authorized under section 13C21(b)(relating to authorized locations for operation), an area authorized under section 13C21(c) or through an Internet-based system. 4 Pa. C.S.A.13C21(a)

In order to implement sports wagering, the General Assembly granted the Board authority to promulgate temporary regulations which would expire two years after publication in the *Pennsylvania Bulletin*. The temporary regulations were published in three packages as follows:

- Chapter 1401 was published on June 23, 2018;
- Chapters 1401,1402, 1403,1404,1405 and 1406 were published on July 28, 2018; and
- Chapter 1401,1407,1408,1409,1410, and 1411 were published on September 15, 2018.

The General Assembly, through Act 114 of 2020, extended the effective date of the temporary regulations for sports wagering to three years after the date of publication. The first of the three packages will expire on June 23, 2021; the second on July 28, 2021; and the last on September 15, 2021. This proposed regulation begins the process of converting the Board's temporary sports wagering 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 second quarter of 2021.

While the temporary regulations for sports wagering are effective currently, the proposed rulemaking requires a sports wagering certificate holder or operator acting on behalf of a sports

wagering certificate holder (certificate holder or operator) to also comply with all applicable provisions in Subpart L (relating to interactive gaming).

The temporary regulations for interactive gaming were published in five packages. Chapter 830 of Subpart L is the only regulation that remains in effect until March 9, 2021. All others have expired between January and May 2020. The proposed rulemaking for interactive gaming (Subpart L) was published in the *Pennsylvania Bulletin* on August 22, 2020. At that time, the Board indicated that the expected date of delivery of the final-form regulation would be the third-fourth quarter of 2021.

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 the 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 the regulatory packages 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 interactive gaming and sports wagering are properly regulated.

2. Compliance with RRA and 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. We ask the Board to provide additional information as directed below.

- Identify what other states permit sports wagering and how those states administer sports wagering in response to RAF question #12;
- Categorize those entities mentioned in response to RAF question #15 as either small businesses 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 1408a.3 (relating to internal controls), 1408a.8(c) (relating to Risk Management), 1408a.9(f) (relating to integrity monitoring), and 1408a.12(b) (relating to required reports) reference other forms that may be required. If they are required, copies of those forms should be submitted with the final-form regulation.

Chapter 1401a. General Sports Wagering Provisions

3. Section 1401a.1. Scope. — Protection of the public health, safety and welfare; and Reasonableness of requirements.

Subsection (b) requires any sports wagering certificate holder or sports wagering operator who offers interactive or mobile sports wagering as a form of interactive gaming to also comply with all applicable provisions in Subpart L (relating to interactive gaming) as it pertains to the development, implementation, and use of interactive or mobile sports wagering system operations.

The proposed language in this section is not appropriate because it does not limit the applicability of the Chapter or clarify use of the sections. Section 2.9 of the *Pennsylvania Code and Bulletin Style Manual*. Instead, the phrase “where applicable” is vague and does not create a binding norm or provide certainty for the regulated community. The Board should cross-reference specific Chapters and or sections within the body of the regulation that sports wagering certificate holders and operators must comply with.

This comment applies also to §§ 1407a.1 and 1408a.1(relating to scope).

4. Section 1401a.2. Definitions. — Clarity.

“Sporting event”

This definition should be made consistent with the permitted sports wagering activities identified in Section 1401a.6(b).

“Sports wagering area”

Under this definition, subsection (i) should include “At a Category 4 licensed facility, if the holder of the Category 4 slot machine license also holds a Category 1, 2 or 3 slot machine license and has acquired a sports wagering certificate under that Category 1, 2, or 3 license” since that is permitted under Section 1401a.5(b)(4).

5. Section 1401a.5. Conduct of sports wagering generally. — Clarity.

Subsection (d)

The term “offer” is used in this subsection. What does the term entail? The Board should explain in the Preamble to the final-form regulation what constitutes an “offering” as it pertains to interactive or mobile sports wagering.

For consistency, subsection (d) should include “players located outside of Pennsylvania” or similar language.

Subsection (g)

For purposes of clarity this subsection should include “certified under Section 1405a.1(a)(4).”

Subsection (h)

For purposes of clarity this subsection should include, “certified under Section 1405a.1(a)(4).”

6. Section 1401a.6. Permitted sports wagering activities. — Statutory authority; and Clarity.

Subsection (b)

The Board’s proposed definition and Act 42 define “*Sporting event*” as “a professional or collegiate sports or athletic event or a motor race event.” See 4 Pa.C.S.A. 13C01 (relating to Definitions). Under this subsection, the Board may authorize a sports wagering certificate holder or operator to offer wagering on professional athletic events, collegiate athletic events, professional motor race events, “international team and international individual athletic events, and any other sporting events as approved by the Board.” What is the Board’s statutory authority to expand the types of sporting events that may be wagered?

Subsection (c)

“*In-game wagers*” refers to wagers placed on the outcome of an “*athletic event*.” Should “athletic event” be replaced with “sporting event?” If not, we suggest the Board define “*athletic event*” in the final regulation. We also suggest the Board define the various types of wagers included in the definition of “*Sports wagering*.”

For reader ease, we suggest the Board consider relocating the definitions for “*Exchange wagering*,” “*In-game wagers*,” “*Parlay wagers*,” “*Proposition wagering*,” and “*Straight wagers*” to the Definitions section in § 1401a.2.

In Paragraph (3) pertaining to “*Parlay wagers*,” the Board proposes that a tie constitutes a loss for parlay purposes. Did the Board consider and reject permitting the certificate holder to determine its own rule regarding ties for parlays (i.e. either a loss or its simply eliminated from the parlay with appropriate adjustment for payout odds, etc)? The Board should include in the Preamble to the final rulemaking its rationale for this provision.

Subsection (f)

Must an entity acting as an authorized trader pursuant to a layoff wager agreement, under Paragraph (2) have licensure in Pennsylvania? The Board should clarify the intent of this provision in the final rulemaking.

7. Section 1401a.7. Prohibited and restricted sports wagering activities. — Statutory authority; and Clarity.

Subsection (b)

Paragraph (2) prohibits wagering on amateur sporting events that have not otherwise been specifically approved by the Board.

The Preamble explains that the Board permits sports wagers to be placed on certain amateur events approved by the Board. Amateur events may be wagered upon when the participants involved are not minors and there is satisfactory oversight of the event to ensure the integrity of sports wagers placed on the event. What is the Board's statutory authority to authorize certain amateur events? The Board should provide its statutory authority for this provision in the final-form regulation's RAF and Preamble.

Subsection (c)

A commentator asserts that subsection (c) is written too broadly to determine whether an affiliate of a certificate holder or sports wagering operator that owns an athletic team would be prohibited from a 10 percent or more ownership interest in a certificate holder or operator. The commentator recommends the Board except affiliates of a sports wagering certificate holder or operator from § 1401a.7(c) if the sports wagering certificate holder or operator does not accept wagers involving the team owned by its affiliate. We ask the Board to clarify its intent and to make any necessary revisions in the final-form regulation.

In addition, we ask the Board to explain how it determined that a 10 percent ownership interest or control threshold is the appropriate percentage? How does this percentage compare to other states that allow sports wagering? The Board should provide this information in the Preamble to the final-form regulation.

8. Section 1401a.9. Physical characteristics of sports wagering areas; security and surveillance of sports wagering area; other requirements. — Clarity and lack of ambiguity.

Subsections (b) and (c)

Commentators request the Board revise these sections to provide greater flexibility in the physical characteristics of sports wagering areas to allow for a "seamless application to nonprimary locations." We would encourage the Board, as it formulates the final version of this rulemaking, to continue its dialogue with the regulated community in establishing these requirements.

Commentators also note that “satellite sports wagering areas” is not defined. The Board should define this term in the final version of this rulemaking.

Chapter 1402a. Sports Wagering Operators

9. Section 1402a.2. Sports wagering operator application and standards. — Clarity and lack of ambiguity.

The phrase "unless otherwise directed by the Board" is vague. Under what circumstances would it be appropriate to deviate from the application process? We recommend that the phrase be removed from this section and §§ 1403a.2(a)(1) (relating to Sports wagering manufacturer license application and standards); 1404a.2(a)(1) (relating to Sports wagering supplier license application and standards); 1406a.1(a)(1) (relating to General provisions); and 1408a.6 (c) (relating to Segregation of bank accounts) as it provides no certainty to the regulated community.

Similarly, the phrase “unless otherwise directed by the Bureau of Licensing” should also be deleted from §§ 1405a.2 (relating to Sports wagering gaming service provider certification applications) and 1405a.3 (relating to Sports wagering gaming service provider registration application).

10. Section 1402a.3. Sports wagering operator license term and renewal. — Clarity.

Subsection (c) provides that a sports wagering operator license renewal application and fee that has been received by the Board will continue to be in effect until acted upon by the Board. The Board should clarify in Preamble whether this provision applies only for renewal applications that are timely received by the Board. If this provision applies only for renewal applications received in a timely manner, we ask the Board to revise the language in the Annex to the final-form regulation to be consistent with the Board’s intent.

This comment applies also to renewal applications in §§ 1403a.3(c); 1404a.3(c); 1405a.5(c); 1406a.2(d); 1406a.3(d); 1406a.4(e); and 1406a.5(c).

11. Section 1402a.4. Sports wagering operator change of control. — Clarity.

Subsection (b)

We recommend the Board add “Bureau” to the Definitions section (§1401a.2) to make clear which Bureau must be notified under this section.

Chapter 1403a. Sports Wagering Manufacturer

12. Section 1403.a.2. Sports wagering manufacturer license application and standards. — Clarity.

Subsection (a)

Under Paragraph (1), an applicant for a sports wagering manufacturer license must submit an original and one copy of the Enterprise Entity Application and Disclosure Information Form for the applicant and each of the applicant’s “principal affiliates” unless otherwise directed by the Board. What is a “principal affiliate?” The Board should define “principal affiliate.” It should also include its rationale for the requirement to apply only to the applicant’s principal affiliates. This same comment applies to § 1404a.2(a)(1)(relating to Sports wagering supplier application and standards).

Chapter 1405a. Sports Wagering Game Service Providers

13. Section 1405a.6. Authorized sports wagering gaming service providers list; prohibited sports wagering gaming service providers. — Clarity.

Subsection (a) requires the Board to maintain a list of authorized sports wagering gaming service providers and a list of prohibited gaming service providers. The authorized list must contain the names of “persons and entities” that have been registered or certified or are currently registered to conduct business with sports wagering certificate holders or operators. We ask the Board to review its use of “person” in subsections (c)-(e) and revise, if appropriate, to include “entities.”

14. Section 1405a.7. Permission to conduct business prior to certification or registration. — Clarity; and Implementation.

Subsection (c) requires the Bureau of Licensing to notify the applicant for certification or registration and the sports wagering certificate holder or operator “by regular mail or email, or both,” that permission for the applicant for certification or registration to conduct business under subsection (a) has been rescinded and that the certificate holder or operator must cease conducting business with the applicant by the date specified in the notice. How does the notification by regular mail provide assurance to the Board that the notifications have been received?

15. Section 1405a.9. Duty to investigate. — Clarity and Implementation procedures.

The requirement for a certificate holder or operator to investigate the background and qualifications of the applicants for sports wagering gaming service providers with whom it intends to have a contractual relationship appears to be in addition to the requirements in §§ 1405a.2 and 1405a.3. The Board should explain the need for this provision and how it will ensure that the investigations by a certificate holder or operator are conducted to its satisfaction?

Chapter 1406a. Sports Wagering Principals and Key, Gaming and Nongaming Employees

16. Section 1406a.1. General provisions. — Clarity.

Subsections (f) and (g)(1 through 5) do not appear to apply to nongaming employees. However, the inclusion of the term “registration” and similar word forms creates confusion because nongaming employees are the only ones who are registered under this Chapter. The Board should make the necessary revisions to eliminate any confusion regarding application to nongaming employees.

17. Section 1406a.5. Sports wagering nongaming employees. — Clarity.

Subsection (a) refers to submitting an application for “licensure”. Nongaming employees submit an application for “registration” not licensure. The Board should delete “licensure” and insert “registration.”

Chapter 1407a. Sports Wagering Testing and Controls

18. Section 1407a.2. Definitions. — Clarity.

“Sports wagering account”

Is it the Board’s intent to preclude patrons from utilizing their registered accounts for wagering at self-service kiosks? The Board should clarify its intent in the Preamble to the final-form regulation.

19. Section 1407a.3. Testing and approval generally. — Clarity.

Subsection (c)

What is an “interactive or mobile sportsbook?” This term appears in §§ 1409a.1, 1410a.1(a) and 1411a.1(a). The Board should define “*interactive or mobile sportsbook*” in the final-form regulation.

Subsection (d)

Under this subsection, “Submissions to the Office of Gaming Laboratory Operations of sports wagering devices and software used in conjunction with the operation of an **onsite sportsbook** or an **online or mobile sportsbook should adhere** to the requirements in § 461a.4 (relating to submissions for testing and approval) where applicable. (Emphasis added.)

“Should” is nonregulatory language. The Board should revise this subsection with language that sets a clear standard of compliance. It should also define “onsite sportsbook” in the final-form regulation. We ask the Board to make certain that terms are defined and consistently used throughout the body of the regulation.

20. Section 1407a.4. Wagering device requirements generally. — Clarity; and Reasonableness.

Subsection (g)

A commentator requests clarification from the Board on what is meant by “nonredeemable” under this provision. The commentator also suggests that the Board make clear that holders of voided tickets are entitled to a refund in the amount of their bet. We agree with the commentator’s suggestion and ask the Board to define the term “nonredeemable” in the final-form regulation.

Subsection (h)

A commentator asserts that wagering devices are not designed to automatically prevent the posting of wagers and the voiding or cancellation of wagers after the outcome of the event is known. These types of activities would likely entail human involvement. The Board should clarify the intent of this subsection and make any necessary revisions to the final rulemaking.

Subsection (i)

This subsection requires that “In the event, a patron has a pending sports wager and then is excluded or self-excludes, the wager shall be cancelled and the funds returned to the patron.” A commentator submits that it is not feasible to meet this requirement when sports bets are placed at retail locations. Sports wagers placed at retail locations may be placed anonymously. As such, a sports wagering certificate holder or operator would not know whether a patron that anonymously placed a wager is excluded or self-excluded after placing the anonymous bet.

The timing of the exclusion or self-exclusion and the outcome of the sporting event could make compliance with this provision “unduly burdensome” on sports wagering certificate holders and owners. The commentator requests that the Board eliminate this requirement and mandate that all persons, who self-exclude or the Board excludes, forfeit any pending sports wagers.

The *Explanation* in the Preamble to the proposed regulation does not provide sufficient information as to the need for or the Board’s rationale for this subsection. We ask the Board, when it submits the final rulemaking package, to include a revised Preamble that explains the need for and its rationale for this requirement.

21. Section 1407a.6. Ticket/Voucher requirements. — Clarity.

Subsection (g)

Under Paragraph (2), a sports wagering certificate holder or operator must include in its internal controls the policies and procedures for paying or writing tickets, or both, that are over the set limits, voiding tickets, issuing corrections to tickets and “ticket overrides.” Commentators remark that it is unclear what the Board intends with this provision. The Board should clarify its intent and define “ticket override” in the final version of the rulemaking.

22. Section 1407a.8. Sports wagering interactive system requirements. — Clarity.

Under Subsection (b), sports wagering interactive systems must adhere, where applicable, to the requirements in Chapter 810a (relating to the interactive gaming testing and controls). The phrase “where applicable” is nonregulatory language and should be deleted in the final regulation.

Chapter 1408a. Sports Wagering Accounting and Internal Controls

23. Section 1408a.3. Internal controls. — Clarity.

Subsection (b)

In Paragraph (21) should “athletic event” be “sporting event” so that these provisions apply also to professional motor race events?

In addition, Paragraph (21) Subparagraph (iii) covers more than ownership interests in a team. Therefore, we suggest that the last proviso read: “. . . and, if the ownership interest is in a team, that the owner is not permitted to”

Subsection (j)

A commentator seeks clarification on the procedure for submitting revisions to the Catalog of Events and Wagers. Is it the Board’s intent that a sports wagering certificate holder or owner would have to wait until Board approval to implement any revisions or may they implement revisions 72 hours after submitting them to the Board? The Board should clarify the intent of this subsection and make revisions, if necessary.

Subsection (o)

A commentator asks the Board to clarify what is meant by “cancelled” and suggests that the term be deleted and replaced by the phrase “reflected as claimed.” The Board should clarify this provision in the final rulemaking.

24. Section 1408a.8. Risk management. — Protection of the public interest, safety and welfare; and Implementation.

Under this section, risk management procedures may be provided in-house or by an independent third party. Section 1401a.5 (h) requires a certificate holder or operator to employ the services of a third-party risk manager that is “licensed by the Board or otherwise demonstrate to the Board’s satisfaction that it has established in-house units capable of performing these functions with appropriate segregation of functions and reporting duties.”

This section should be made consistent with the requirements of § 1401a.5(h) as it pertains to the licensing, and segregation of duties and reporting. The Board should explain when it submits the

final-form regulation how it will determine that a certificate holder or operator's in-house unit has the capabilities and the appropriate segregation of functions to protect the public and the integrity of gaming.

Section 1408a.8(b)(10) requires internal controls to include “a description of the policies and procedures to be followed in the event that an error occurs in the offering of an event or wager, including the cancellation of the wagers placed due to error, which shall be **subject to Board approval.**” (Emphasis added.)

A commentator requests that the Board permit sports wagering certificate holders to cancel wagers, at their discretion if pre-approved criteria are met. This suggestion would appear to align with language in § 1408a.9(d) which permits a sports wagering certificate holder or operator receiving a report of unusual or suspicious wagering activity to suspend wagering on events related to the report and to cancel related wagers under procedures previously approved by the Board.

The Board should explain its rationale for requiring approval, in the event of an error, before the certificate holder or operator may cancel wagers rather than requiring policies with pre-approved criteria to be submitted under internal controls.

25. Section 1408a.9. Integrity monitoring. — Clarity; Protection of the public interest, safety and welfare; and Implementation.

Section 1401a.5(g) requires a certificate holder or operator to employ the services of a third-party integrity monitor that is “licensed by the Board or otherwise demonstrate to the Board’s satisfaction that it has established an in-house unit capable of performing these functions with the appropriate segregation of functions and reporting duties.”

We ask the Board to make this section consistent with the requirements of § 1401a.5(g) as it pertains to the licensing, segregation of functions and reporting duties. The Board should explain in the Preamble to the final-form regulation how it will determine that a certificate holder or operator's in-house unit has the capabilities and the appropriate segregation of functions necessary to protect the public and the integrity of gaming. In addition, the Board should revise its response to RAF #12 to provide a comparison of the Board's approach to other states' integrity monitoring procedures.

The Board should also explain how the procedures for information sharing and reporting suspicious or unusual wagering activity contained in this section are consistent with similar requirements in §§ 1408a.3 (relating to internal controls), and 1408a.7 (relating to sports wagering, certificate holder's or sports wagering operator's organization).

In § 1408a.9(b) a certificate holder or operator is required to share information regarding unusual or suspicious sports wagering activity in a “timely manner” with the Board and other sports wagering certificate holders or operators. In "a timely manner" is nonregulatory language that does not provide direction to those that must comply. We suggest the Board replace it with a specific time period.

Section 1408a.9(f) requires a sports wagering certificate holder or operator to file a report of any unusual or suspicious wagering activity with the Office of Sports Wagering. Reports are to be filed no later than 5 calendar days after a certificate holder or operator initially detects or discovers facts that constitute a basis of filing a report. We have the following questions:

- By what means will a sports wagering certificate holder or operator share information with other certificate holders and operators and the Board?
- Is the sharing of information with the Board and other certificate holders and operators considered "a report" under §1408a.9(f)(1)?
- Did the Board consider and reject sharing information regarding unusual or suspicious sports wagering activity with other entities in addition to the Board and other certificate holders and operators?

In § 1408a.9(e), the certificate holder or operator must provide the Board remote access to its "integrity monitoring system." The Board should define "integrity monitoring system" in the final version of this rulemaking.

Chapter 1409a. Sports Wagering Advertisements, Promotions and Tournaments

26. Section 1409a.2. Sports wagering contests, tournaments, pools or other organized events. — Clarity and lack of ambiguity.

Subsection (a)

Paragraph (5) prohibits collecting or paying out real money or any prize having a cash value for any tournament, etc. Section 1409a.2(b) discusses accounting procedures, etc, for cash prizes. Paragraph (5) directly conflicts with §1409a.2(b). The Board should make consistent §§ 1409a.2(a)(5) and 1409a.2(b) in the final-form regulation. It should also define "sports wagering contest, tournament, pool or other organized event."

Subsection (d)

This subsection requires a certificate holder or operator to discontinue, "as expeditiously as possible" a sports wagering contest, tournament, pool or other organized event "upon the receipt of written notice from the Board's executive director that it has been determined that the conduct of a sports wagering contest, tournament, pool or other organized event could adversely impact the public or the integrity of gaming."

The phrase "as expeditiously as possible" lacks clarity and does not provide a sports wagering certificate holder or operator with a definitive standard to follow. We recommend that the phrase "expeditiously as possible" be replaced with a specific time period. In addition, we ask the Board to clarify how the written notice requirement will be implemented? Will the written notice be sent via email or regular mail, or both?

27. Miscellaneous. — Clarity.

- The Board should ensure that it uses terms consistently throughout the final regulation (i.e. “sports wagering certificate holder or sports wagering operator” or “sports wagering certificate holder or sports wagering operator on behalf of a sports wagering certificate holder”);
- In § 1401a. 9(c)(2)(vii) the lower case "(c)" should be deleted and replaced with an upper case (C);
- The Board should delete § 1405a.1(a)(5) since its purpose is unclear;
- In § 1407a.4(i) “patron” should be deleted and replaced with “person” or “individual” to be consistent with other language pertaining to exclusion and self-exclusion;
- In § 1408a.2 the term “Integrity monitoring” utilizes part of the term in the definition (§ 2.11(h) of the *Pennsylvania Code and Bulletin Style Manual*);
- In §§ 1408a.5 and 1408a.12 contain an introductory paragraph that is not designated by a letter;
- There is a typographical error in §§ 1409a.2(g) and 1409a.2(h) regarding the statutory citations for §§ 813a.3 and 811a.9. These sections should read: “§ 813.3(a)” and “§ 811.9(a)”; and
- In §§ 1410a.1(b) and 1411a.1(b) the phrase “and the like” is used. This phrase is not regulatory language and should be deleted.