

# Comments of the Independent Regulatory Review Commission



## Pennsylvania Gaming Control Board Regulation #125-240 (IRRC #3340)

### Private Testing and Certification Facilities

June 15, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the April 16, 2022 *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. Compliance with the 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 2 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 Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

#### *RAF and Preamble*

The explanation in the Preamble and the information contained in the RAF are not sufficient to allow this Commission to determine if the regulation is in the public interest. The “*Explanation*” section of the Preamble provides a broad overview of the proposed changes. It does not, however, provide a concise explanation for each section being amended. The Board should submit a revised Preamble to the final-form regulation that includes a concise explanation for each section of the regulation being amended, including the need and rationale for the changes.

There are instances in the RAF and Preamble where the Board refers to “license” or “licensing process.” Since this regulation requires registration, not licensing, we ask the Board to change any references to these terms to either “registration” or “registration process.” Additionally, the Annex refers to the “Bureau of Gaming Laboratory Operations;” however, there are several responses in the RAF where the “Office of Gaming Laboratory Operations” is used. We ask the Board to be consistent in its use of terms throughout the RAF, Preamble and Annex.

In the “*Fiscal Impact*” section of the Preamble, under “*Private Sector*,” the Board does not include application, registration and renewal costs. These costs are delineated in the Board’s response to RAF question #19 and should be set out in this section.

Lastly, there are several examples where the Board’s responses to RAF questions are incomplete. We ask the Board to provide more complete answers as directed below:

- State how the regulation compares with other states in RAF question #12;
- Categorize those entities mentioned in response to RAF question #15 as either small businesses or another size business;
- Utilize a numerical value or specify the meaning of “N/A” in RAF question #23; and
- Revise the Board’s response to RAF question #27 (c) and (d) to discuss the abbreviated certification process and the ISO/IEC 17025 accreditation, if the Board determines that the entities identified in RAF questions #15 and #16 are small businesses (as defined in Section 3 of the RRA, Act 76 of 2012).

## **2. Section 461a.3. Testing and approval of games and gaming devices, generally. –Clarity.**

The Board is proposing to amend Subsections (c) by adding the following:

(c) The Board will require payment of all costs for the testing and approval of slot machines, **tables games**, table game devices, **interactive games, sports wagering devices, video gaming terminals** and **all** associated equipment submitted by manufacturers or gaming related gaming service providers or installed at a licensed facility **or offered on an approved interactive gaming or interactive sports wagering web site or mobile application** based on the actual direct costs incurred by the Board.

The Board is also adding new subsection (f) to read:

**(f) The Bureau of Gaming Laboratory Operations shall review the report from the registered private testing and certification facility, and prior to installation or use of a slot machine, table game, table game device, interactive game, sports wagering device or video gaming terminal and all associated equipment at a licensed facility, on an authorized interactive gaming or sports wagering web site or mobile application, or at a licensed truck stop establishment, shall report the findings to the Board's Executive Director for abbreviated certification and approval in accordance with § 461a.4 (relating to submission for testing and approval).**

Section 461a.3(c) should be amended to include “or at a licensed truck stop establishment to be consistent with the proposed language in Section 461a.3(f).”

Additionally, we ask the Board to review, for consistency, Sections 461a.4(k) and (m), 469a.4(b)(1) and (2), and 469a.4(r) to determine if where “licensed facility” appears in the text, should the phrase “on an authorized interactive gaming or sports wagering web site or mobile application, or at a licensed truck stop establishment” follow.

**2. Section 461a.4. Submission for testing and approval. –Clarity; Need; and Fiscal or economic impact.**

*Subsection (a)*

A commentator asserts that it is unclear whether or not the proposed language in Section 461a.4(a) would also apply to changes or modifications to interactive gaming, particularly with respect to software, which are currently governed by existing regulations on change management process. The commentator claims that if the Board applied these testing regulations to every software change on a sports or interactive gaming platform whenever there was independent laboratory testing, it would adversely impact their ability to make changes to their platforms, both in Pennsylvania and in other jurisdictions where they operate, if they had to submit everything to the Bureau of Gaming Laboratory Operations and wait 30 days for approval.

The Board should clarify the intent of this subsection in the Preamble to the final-form regulation. If the Board intends to apply the testing regulations to every software change on a sports or interactive gaming platform whenever there is independent laboratory testing, we ask the Board to explain the need for and reasonableness of applying the regulation in that manner and identify the fiscal impact associated with implementation.

**3. Section 469a.2. Registration of private testing and certification facilities. –Clarity.**

This section provides for the registration process for private testing and certification facilities, including application requirements for both the entity and individuals who own or are in a position of authority in these facilities.

Sections 469a.2(b)(4)(i) and (ii) require that certain individuals affiliated with the private testing and certification facility submit fingerprints in a manner prescribed by the Bureau of Gaming Laboratory Operations. The Board should clarify in the final rulemaking that the officers covered under subparagraph (ii) are officers other than those covered under subparagraph (i). We believe the regulated community's understanding of this particular provision would be enhanced by this further clarification.

**4. Section 469a.3. Standards for private testing and certification facilities. –Clarity.**

This section establishes the standards that a private testing and certification facility must meet to be eligible for registration. Under Section 469a.3(b)(1), a private testing and certification facility and its owners, managers, supervisory personnel and employees may not “have a financial or other interest, **direct or otherwise**, in a manufacturer of slot machines, table games, table game devices, interactive games, sports wagering devices, video gaming terminals or all associated

equipment or gaming related gaming service providers licensed by the Board.” (Emphasis added)

The use of the phrase “direct or otherwise” would preclude indirect ownership such as through a mutual fund or an Individual Retirement Account. Is this the intent of the Board? We ask the Board to clarify its intent with this provision. If the intent is to preclude indirect ownership such as through the example provided, the Board should provide its rationale. If it is not the intent, the Annex should be revised to align with the intention of the Board.

**5. Section 469a.4. Responsibilities of a private testing and certification facility. –Clarity; Reasonableness of the requirements; and Economic and fiscal impacts.**

*Subsection (n)*

A commentator states that this section appears to require that private testing facilities maintain all submission and testing-related documents indefinitely. The requirement to maintain an indefinite, ever-growing library of submitted software and associated data, reports and materials, in their view, is fiscally unsustainable. The commentator suggests that this section be amended to require that the documentation under this section be maintained “for as long as the product remains approved or authorized for use in Pennsylvania.”

We ask the Board, when it submits the final rulemaking, to clarify the intent of this provision. If the intent of the Board is to require that private testing facilities maintain all submission and testing related documents indefinitely, the Board should include an estimate of these costs to the regulated community that is associated with compliance in RAF questions #19 and #24. It should also explain the reasonableness of the requirement.

**6. Miscellaneous –Clarity.**

In Section 461a.4(i) the word “and” where it appears the second time should be “or.”