



May 25, 2018

Via Email to Rsherman@pa.gov

R. Douglas Sherman, Esquire
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

Via Email to Lburd@pa.gov

Laura R. Burd, Esquire
Pennsylvania PA Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

Dear Mr. Sherman and Ms. Burd:

As an online operator with significant experience in offering online entertainment via a regulated platform, DraftKings Inc. ("DraftKings") submits the following comments for the Pennsylvania Gaming Control Board's ("PGCB") consideration in finalizing its temporary rules for interactive gaming.

Section 809

Section 809.5(b) regarding remote access to equipment does not allow for employees to remotely log in to hardware running the interactive gaming environment without Board approval. DraftKings suggests that there should be an exemption which allows employees to perform emergency maintenance provided that they then provide the Board with notification and a report of the maintenance.

Section 810

Section 810.10(b) provides that "A game shall not be designed to give the player a false expectation of better odds by misrepresenting an occurrence or event." DraftKings requests clarification on this provision. For instance, slot machines will represent 2/3 of the jackpot on the playline frequently but it does not mean that a player is close to winning.

Section 810.12(c)(1) prohibits operators from accepting real money during tournament play. DraftKings suggests adding an exception for rebuys into a tournament or contest where the cost, period of availability, and rules of rebuying are made clear before the start of the tournament. This is a common mechanism in poker and other tournament formats.

Section 811

In Section 811.2 (b)(20), a provision prohibiting cheating devices, DraftKings suggests striking the line, "including the use of software programs that make wagers according to algorithms." A classification of an algorithm as a cheating device is overly broad, and should be limited only to peer-to-peer games. For non-peer-to-peer games, it should be at the operator's discretion whether they're willing to allow users



to make automated bets against the house, as there is no risk to the consumer. Similarly, Section 811.3(b)(3)(v) which prohibits the use of “automated computerized software or other equivalent mechanisms” should be restricted to only peer-to-peer games.

It is best practice for operators to regularly update their terms and conditions to account for changes to the platform and the legal landscape. However, many of those changes are not material and it would be an undue burden on both players and operators to require players to acknowledge every update to an operator’s terms and conditions. DraftKings therefore suggests changing Section 811.3(a) to say require that, “The terms and conditions and any **material** changes thereto must be acknowledged by the player...”

Section 812

The player account registration requirement of Section 812.2 requires a player to provide his or her “interactive gaming account number” when registering for an interactive gaming account. It’s not clear what the “interactive gaming account number is” or where a player would obtain it. To the extent that this provision would require Pennsylvania players to register with the PGCB through a central system prior to establishing an interactive gaming account with an operator, DraftKings opposes such a requirement as unduly burdensome and unnecessary in light of the player identification procedures which operators are required to undertake pursuant to Section 812.2.

Section 812.3(a) provides that a player must log into an account using a username and password. DraftKings suggests that users should be allowed to login in using either their username or email address, which may be easier for users to remember.

Section 812.7 provides that players may fund their account using specified methods or “any other means as approved by the Board.” DraftKings suggests that the Board should allow funding through PayPal and similar methods, which are commonly used in online transactions and a popular choice of consumers. DraftKings submits that the Board should also allow the use of cryptocurrency which is an increasing popular payment method in online transactions.

The proposed regulations require users to re-enter their username and password after 15 minutes of inactivity. DraftKings suggests extending the timeout period in Section 812.3(a)(6) to half an hour to allow for brief breaks from activity without the inconvenience of logging in again. We believe that the still-brief half hour window properly balances account security needs with the ways that users interact with technology.

DraftKings suggests that the prohibition on negative player balances in Section 812.7(c) should contain an exception for chargebacks or other administrative debits which may take an account below a zero balance.

DraftKings suggests that the player data restrictions of Section 812.14(a) should contain an exception for the operator’s vendors and partners for legitimate business needs. For example, operators will need to disclose players’ names and other identifying information to their identity verification providers as a condition of operating in the state. Similarly, operators may need to disclose player names for other legitimate business reasons such as providing experience-based prizes or hosting players for live events.



The player account controls of Section 812.9(b)(2) states that a player who sets an “away from computer” status during the middle of a round of play will automatically forfeit their play for that round, “e.g. for a round of poker, the software shall automatically fold the player’s hand during the next round of betting.” DraftKings suggests that in poker games the “away from computer” status should result in an automatic check if available rather than a fold. This gives a player who is away from the hand an opportunity to continue playing in the event that other players elect to check their hands as well.

Section 813

In the promotions requirements of the proposed regulations, Section 813.3(a) requires operators to submit the terms and conditions of any promotions to the Bureau of Gaming Operations at least five days prior to implementation. DraftKings suggests allowing more flexibility for promotions which are specifically targeted to an individual user or small groups of users (<100). High volume and VIP users may receive promotions which are not offered to players broadly. Given the individualized nature of these offers and the burden it would place on the operator and PGCB to go through the pre-notification process, DraftKings suggests that such tailored promotions only be subject to the retention requirement of Section 813.5(1) and not to a pre-notification process.

Section 814

Section 814.4(a)(2) prohibits the acceptance or payout of any real money during tournament play. DraftKings suggests that there should be an exemption for rebuys. In addition, DraftKings suggests that there should be an exception that allows for cashout tournaments where a player may leave the tournament and take a percentage of the value of their entry.

The Section 814.4(d) requirement that operators must submit a notice of intent to conduct an interactive gaming tournament is onerous, as tournaments may run frequently or continuously. DraftKings suggests that tournament types require approval rather than each individual tournament, and that only new or substantially different types need subsequent approval.

* * * * *

Thank you for your consideration of DraftKings’ comments regarding the proposed regulations.

Sincerely,

DraftKings Inc.