

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-225 (IRRC #3246)

Slot Machine Licenses; Accounting and Internal Controls; Compulsive and Problem Gambling Requirements; Casino Self-Exclusion; Table Game Equipment; Credit

January 29, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the November 30, 2019 *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. Statutory authority; Whether the regulation is in the public interest; Reasonableness of requirements; and Protection of the public health, safety and welfare.

The Board proposes to change the title of the self-exclusion list to “casino self-exclusion list.” It explains that the proposed rulemaking “will revise the body of existing regulations to alter the procedures for a person to self-exclude from gaming activities in the Commonwealth, and specifically delineate that the impacted sections apply only to casino and retail sports wagering self-exclusion.” The Board further explains that given the expansion of gaming in the Commonwealth, separate lists will be kept for the various forms of gaming (interactive gaming and online sports wagers, video gaming and fantasy contests). (RAF #10)

Section 1516 of Title 4 (4 Pa. C.S. §1516 (a) and (b)) requires the Board to provide by regulation for the “establishment of a list of persons self excluded from gaming activities, including interactive gaming, at all licensed facilities” and to include “procedures for placements and removals from the list” (Emphasis added.)

What is the Board’s statutory authority for setting apart a self-exclusion list for casinos and retail sports wagering from an interactive gaming self-exclusion list? How does the Board’s multi-list approach (a list for casinos/retail sports wagers and a list for interactive gaming self-exclusions) conform to the intent of the legislature? What is the Board’s rationale for this approach?

The Board should provide, in the Preamble and RAF to the final-form rulemaking, its statutory authority for establishing multiple self-exclusion lists, its rationale, and explain how its approach conforms to the legislative intent of the act.

A concern we have with the Board's multi-list approach is that it may make the self-exclusion process too cumbersome for patrons, particularly for those who want to ban themselves from all forms of legalized gaming. Under the proposed regulation, individuals selecting to self-exclude from all forms of gaming would have to petition the Board several times. Did the Board consider a blanket exclusion? The Board should explain the reasonableness of its approach and how it protects the public health, safety and welfare.

The Board mentions in its response to RAF # 22b that an online form is being developed to collect biographical and documentary information on individuals that wish to self-exclude. Will the web form eliminate the need for individuals to submit the same information several times if they are requesting to be self-excluded from multiple forms of gaming?

2. Compliance with the RRA or IRRC regulations;

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

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.

In addition to updating the regulations to allow online self-exclusion requests and removals, the Board is proposing two significant amendments. The first pertains to the Board's multi-list approach which is discussed in Comment #1. The second one would allow individuals who select a lifetime ban to request removal from the casino self-exclusion list, under limited circumstances.

Currently, lifetime self-exclusions do not expire. In fact, the person requesting a lifetime exclusion must submit a signed release that acknowledges he/she is prohibited from requesting removal from the self-exclusion list. (§ 503a.2(e)(4)). The Preamble to the proposed regulation does not include a detailed description of the amendment, the need for it, or a rationale for the change.

Without this input from the Board, it is difficult for this Commission to determine whether the regulation is in the public interest. 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.

RAF

There are several examples where the Board's response to RAF questions are either incomplete or are unanswered:

- RAF #10 asks the Board to describe who will benefit from the regulation and to quantify the benefits as completely as possible and approximate the number of people who will benefit. The Board does not discuss the proposed changes to lifetime self-exclusion in its response;
- The Board's response to RAF #12 states that the rulemaking seeks only to make administrative changes to current procedures and therefore should not negatively impact Pennsylvania's ability to compete with other states. The Board's response addresses only the second part of the question. The final-form RAF should compare key aspects of this proposal to that of other states;
- The Board's response to RAF #15 does not identify the number of persons affected by the regulation;
- The Board's response to RAF #18 does not discuss the proposed amendment on lifetime self-exclusion;
- The Board's response to RAF #23 is incomplete. "N/A" is not an acceptable response; and
- RAF #27 is not answered.

When the Board submits the final version of this rulemaking, it should include a revised and completed RAF that addresses the issues identified above.

3. Communication with the regulated community.

RAF #14 asks the Board to describe the communications with the regulated community and list the specific groups involved. The Board responded:

"No other persons or groups were involved in the development and drafting of the regulation."

We believe that public input from those likely to be affected by a regulation is the cornerstone of the regulatory review process. Therefore, we strongly encourage the Board, as it develops the final version of this rulemaking, to actively seek input from partner state agencies/entities also tasked with formulating policy on problem gambling and service providers to gain their feedback on the proposed changes.

SUBPART I. COMPULSIVE AND PROBLEM GAMBLING

CHAPTER 501a. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS

CHAPTER 503a. CASINO SELF-EXCLUSION

4. Section 503a.1. Definitions. – Clarity.

In the definition of “casino self-exclusion list,” Subparagraph (ii) reads “Excluded from engaging in all gaming related activities at a **licensed facility**.” For consistency with other amendments in the proposed regulation, the phrase “or other location approved by the Board to conduct gaming activity” should be inserted after the word “facility.”

This same comment applies to the following sections: § 503a.2(e)(6)(ii); § 503a.4(a)(4); § 503a.4(b); and § 503a.4(f).

5. Section 503a.2. Request for casino self-exclusion. – Clarity; Reasonableness of requirements, implementation procedures and timetable for compliance by the public and private sectors; and Possible conflict with statute.

Subsection (b) Paragraph (5) is being amended to read:

(b) A request for casino self-exclusion must include the following identifying information: ...

(5) Social Security number, when voluntarily provided in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552a). **At a minimum, the last 4 digits of the Social Security number must be provided.**

We have two issues that we would like the Board to clarify regarding this amendment. First, we understand the intent of this provision is that it will apply to all requests, not to just those who voluntarily provide their Social Security number. Section 7 of the Privacy Act of 1974 (5 U.S.C.A. § 552a) (Act) makes it unlawful for any federal, state or local government agency to deny an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose their social security number. The Board should explain how the amendment is consistent with the Act.

Second, the effect of this requirement is that slot machine licensees will have access to information that makes the identification of an individual more verifiable. As such, licensees with stricter self-exclusion policies may, at their discretion, bar self-excluded patrons from other forms of gaming at their venues. Will persons making the request to self-exclude be informed by the Board that placement on the casino self-exclusion list may exclude them from other forms of gaming at multiple venues and/or jurisdictions?

Subsection (c)

Self-excluded individuals are required to notify the Board, within 30 days, of a change to their identifiable information. Under this subsection, a self-excluded patron may request a "Change of Information Form" by calling, writing or emailing the Board. The Board should explain why this type of information exchange is unavailable for electronic submittal.

6. Section 503a.3. Casino self-exclusion list. – Clarity.*Subsection (a)*

Should this subsection include a reference to § 503a.5 (relating to Removal from casino self-exclusion list) since "deletions" to the list are removal requests that have been effectuated?

7. Section 503a.5. Removal from casino self-exclusion list. – Clarity; Reasonableness of requirements, implementation procedures and timetables for compliance by the public; Whether the regulation is in the public interest; and Protects the public health, safety and welfare.

Subsection (e)

We have questions regarding the process to request removal from the casino self-exclusion list and the determination of when an individual is officially considered removed from the list.

Section 503a.2(f) states that casino self-exclusions for 1 year or 5 years remain in effect until the period of casino self-exclusion concludes and the person requests removal from the Board's casino self-exclusion list. Section 503a.2(e)(4) reads that a person requesting a 1-year or 5-year exclusion will remain on the list until a request for removal is approved. Section 503a.5(c) provides that within 5 business days after the request form is accepted by Board staff, OCPG will delete the name of the individual from the casino self-exclusion list.

The Board should make consistent this subsection with §§ 503a.2(f) and 503a.2(e)(4) with regard to the use of the terms "approval" or "acceptance." It should revise the Annex of the final rulemaking to delineate clearly when a person is considered to be officially removed from the casino self-exclusion list.

Patrons that apply for removal from the list are prohibited from entering the gaming floor or engaging in gaming-related activities for 7 business days from the date the Board staff accepts the request form. How will the date of acceptance be determined for those filing electronically? Will date of acceptance be the same as the date it is electronically submitted?

The Board should explain in the Preamble how the date of acceptance will be determined for requests that are submitted electronically and revise the Annex to the final-form regulation accordingly.

New subsection (f)

Paragraph (2)(ii)

This subparagraph provides for an assessment to be made by a state-funded problem gambling treatment provider. The Board should include, in the Preamble to the final-form regulation, its rationale for limiting this assessment to only State-funded providers.

Paragraph (6)(i) and (ii)

Will the removal process from the casino self-exclusion list be different from or the same as provided for under § 503a.5? The Board should include, in the Annex to the final rulemaking, the removal process for lifetime self-excluded individuals whose petition is approved under this section. We also recommend that when the Board denies a petition under this section that a reason for the denial be included in the order.

8. Miscellaneous clarity.

- To be consistent, in Subpart K. (Table Games) §§ 603a.20(q)(7) and 609a.3(c)(5)(iii) should be revised to refer to "casino self-exclusion list";
- Make consistent the use of the word "complete" or "completed" when referring to forms. For instance, existing language in § 503a.2(a) refers to a "completed Request for Voluntary Self-Exclusion from Gaming Activities Form . . ." Sections 503a.5(c) and (e) are amended to refer to "A complete Request for Removal from Voluntary Self-Exclusion Form . . .";
- Section 503a.2(g) gives examples of "some other documentation" and § 503a.5(d) does not. The Board should make consistent the language in these sections; and
- References in § 603a.20 to mailing Match Play Coupons should be updated since they are not mailed.