

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-159 (IRRC #2919)

Table Game Rules of Play for Spanish 21, Poker, Mississippi Stud and Crazy 4 Poker

January 4, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the November 5, 2011 *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. Adverse effects on prices, productivity or competition.

Section 22 of the Regulatory Analysis Form asks how this regulation compares with those of other states and how it will affect Pennsylvania's ability to compete with other states. The Board's response to these questions is that the regulations are consistent with the standards throughout the gaming industry and should not affect Pennsylvania's ability to compete with other states.

While we have no reason to doubt the Board's response to these questions, we seek more information on the house advantage that these regulations establish for the table games of Spanish 21, Mississippi Stud and Crazy 4 Poker. We ask the Board to provide this information and to compare it to other gaming jurisdictions, including New Jersey. This information will assist this Commission in determining if the regulation is in the public interest.

In addition, we seek information on how other gaming jurisdictions regulate the rake for nonbanking Poker games and what the common practice is in those jurisdictions.

2. Clarity and lack of ambiguity.

Throughout this proposed rulemaking, licensed facilities that hold table game operation certificates (certificate holders) are required to obtain certain approvals from the Board, the Board's Bureau of Gaming Operations, the Bureau of Gaming Laboratory Operations, or the Bureau of Casino Compliance. For example, Section 635a.2(b) states, in part, the following: "The layout for a Spanish 21 table shall be approved by the Bureau of Gaming Operations and contain, at a minimum: . . ." We are concerned that the proposed rulemaking does not include the procedures for obtaining the necessary approvals. To assist the regulated community in

understanding how to submit the requests for certain approvals, we suggest that the final-form regulation include the procedures or appropriate cross-references to where the procedures can be found. We have identified the following sections that contain references to approvals:

- § 635a.2(b)
- § 635a.2(b)(3)(iii)
- § 635a.2(b)(4)
- § 635a.2(c)
- § 635a.2(d)
- § 635a.5(h)
- § 635a.7(a)
- § 637a.2(a)
- § 637a.2(b)
- § 637a.2(c)
- § 637a.2(d)
- § 637a.7(a)
- § 637a.7(e)(4)(ii)
- § 637a.9(a)(6)
- § 637a.15(i)
- § 655a.2(b)
- § 655a.2(d)
- § 655a.5(g)
- § 655a.8(a)
- § 657a.2(b)
- § 657a.2(d)
- § 657a.5(g)
- § 657a.8(a)

3. Adverse effects on prices, productivity and competition.

A commentator has noted that the state of New Jersey's Division of Gaming Enforcement has recently added more Poker games to their body of regulations. In order to remain competitive with New Jersey, the commentator recommends that the Board add additional types of Poker Games. We ask the Board to consider the request of the commentator. If the Board decides to add new types of Poker games, we recommend that those new Poker games be promulgated via a separate and distinct proposed rulemaking and not this regulatory package.

4. Section 637a.3. Cards; number of decks. – Fiscal impact; Protection of the public health, safety and welfare.

Subsection (c) requires decks of cards used in non-banking Poker games to be changed at least every six hours. A commentator notes a deck of cards used in non-banking Poker games costs \$18.50 compared to \$0.91 for banked table games. Assuming that the figures provided by the commentator are accurate, this could impose significant costs to certificate holders. Would the integrity of gaming be compromised if the requirement to change cards was amended from six hours to 24 hours? We ask the Board to quantify this cost and to explain why cards must be changed every six hours.

5. Section 637a.9. Permissible Poker games; announcement of available games and seats. – Reasonableness; Implementation procedures; Clarity.

Subsection (c) permits a certificate holder to announce, in the area where Poker tables are located, the types of Poker games that are available, the table minimum and maximum bets that are being offered and the availability of any vacant seats at particular Poker tables. We note that the Board's temporary regulations found at § 521.7, relating to minimum and maximum wagers and additional wagering requirements, and § 521.8, relating to rules of the games and notice, provide guidance to certificate holders on how patrons will be notified of what minimum and maximum bets are and how and when those limits can be changed by the certificate holder. Similar provisions are also included in §§ 601a.6 and 601a.7 of the Board's proposed regulations that were published in the April 2, 2011 *Pennsylvania Bulletin*. (41 Pa.B. 1773 (April 2, 2011))

Are there any rules or guidelines in place that address the availability of seating at Poker tables and how vacant seats are filled? For example, is it based on the concept of "first come, first served" or would a certificate holder have the ability to seat patrons based on other criteria? Is this type of information included in a certificate holder's Rules of Submission that are required by the Board's temporary and proposed regulations found at §§ 521.2 and 601a.2 respectively? We believe that patrons of Pennsylvania's casinos would benefit, and the integrity of gaming would be enhanced, if certificate holders were required to disclose how patrons are seated at Poker tables and ask the Board to consider adding signage provisions similar to the provisions found in the sections of temporary and proposed regulations noted above.

6. Section 637a.10. Seven-card Stud Poker; procedures for dealing the cards; completion of each round of play. – Clarity.

Subsection (k) allows a player to use the same five-card grouping to make a high hand and a low hand for the games of Seven-card Stud High-low Split Poker and Seven-card Stud High-low Split Eight or Better Poker. Paragraphs (1) and (2) of this subsection provide examples that would qualify as a straight or a flush. As written, it would appear that the examples are applicable to both games. We question if the example provided in Paragraph (1) is applicable to the game of Seven-card Stud High-low Split Eight or Better Poker. We ask the Board to review Paragraphs (1) and (2) to ensure both are accurate.

7. Section 637a.16. High Hand Jackpot payout; posting of rules; contributions; counting and displaying of payout amount; procedures for implementation. – Reasonableness; Need.

What is the need for the provision under Subsection (h) that requires High Hand Jackpot payouts to be paid from the main cage or a satellite cage? Would the integrity of gaming be compromised if the payouts were made in the Poker room?

8. Section 637a.17. Poker revenue. – Adverse effects on prices, productivity or competition; Reasonableness.

This section allows a certificate holder to use one or more of the following procedures to determine and extract the rake for nonbanking Poker games: a percentage rake; an incremental rake; or a rake based on time charges. Has the Board considered adding a provision that would cap the amount of rake for each of the procedures? While we understand that a higher rake equates to more tax revenue for the Commonwealth and local governments, a rake that is higher than other gaming jurisdictions could lead to less play of Poker and less tax revenue. As the Board prepares the final rulemaking, we ask that it consider the possibility of placing a maximum limit on the rake that could be collected that is consistent with other gaming jurisdictions.

9. Section 657a.11. Procedures for completion of each round of play. – Clarity.

Subsections (c)(3)(ii)(B) and (C) conclude with the sentence, "The player's Super Bonus Wager will be returned if the player's winning hand is not a straight or better." We question if the same concluding sentence should be added to Subsection (c)(3)(ii)(A).