

PENNSYLVANIA GAMING CONTROL BOARD

RESOLUTION 2024-4-OCC

RESOLUTION OUTLINING AND APPROVING THE PROCESS FOR SUBMISSIONS SEEKING REGULATORY WAIVERS RELATING TO GAMES, GAMING SYSTEMS AND GAMING DEVICES

WHEREAS, numerous provisions of the Board's Regulations allow the Board to consider requests to waive its regulatory provisions. See 58 Pa. Code §§461a.24, 465a.30, 466a.2, 601a.4 and 1112a.14; and

WHEREAS, Section 403a.6 of the Board's Regulations provides that the Board may delegate certain of its authority to a member of the Board's staff through adoption of a resolution at a public meeting of the Board, 58 Pa. Code §403a.6; and

WHEREAS, the Board has previously granted the Executive Director the ability to grant or deny regulatory waiver requests relating to games, gaming systems and gaming devices; and

WHEREAS, since the expansion of legalized gaming beyond brick-and-mortar casinos brought on by the passage of Act 42 of 2017 (authorizing interactive gaming, sports wagering, fantasy sports and video gaming terminals in truck stop establishments), the number of manufacturers and operators of games, gaming systems and gaming devices seeking a waiver of the Board's regulations has increased dramatically; and

WHEREAS, the growth of the industry and number of waiver requests has resulted in Board licensees requesting waivers through different channels and different Board staff, necessitating the need for a standardized process by which regulatory waiver are requests are submitted.

WHEREFORE, upon the unanimous affirmative vote at a public meeting held on November 20, 2024, the Board Orders the following:

1. That the policy attached hereto as Exhibit “A,” and incorporated herein by reference, relating solely to requests for a regulatory waiver relating to games, gaming systems and gaming devices, provides the Board’s directives on regulatory waiver requests of that nature.
2. That Exhibit “A” provides the sole means by which regulatory waiver requests of this nature will be considered.
3. That the Board’s Executive Director continues to have delegated authority to consider and approve or deny waiver requests submitted pursuant to Exhibit “A.”
4. That any party aggrieved by the Executive Director’s decision pursuant to Exhibit “A” may appeal that decision to the Board as provided for by the Board’s Regulations at 58 Pa. Code §§491a – 499a and 1 Pa. Code §35.20.
5. That all licensees are required to immediately act in compliance with Exhibit “A,” and that all submissions not made in compliance with Exhibit “A” after December 31, 2024 will not be considered.



Denise J. Smyler, Chair
Pennsylvania Gaming Control Board

EXHIBIT A



Pennsylvania Gaming Control Board



Pursuant to Title 4, Section 1202, the Pennsylvania Gaming Control Board (“PGCB”) has been granted the general and sole regulatory authority over the conduct of gaming and related activities and has been directed to promulgate rules and regulations necessary for the administration and enforcement of regulated gaming in the Commonwealth. PGCB has been empowered to adopt regulations pursuant to the Commonwealth Document Law (the act of July 31, 1968, P.L. 769, No. 240) and the Regulatory Review Act (the act of June 25, 1983, P.L. 633, No. 181) which provide for public comment (proposed rulemaking stage) prior to regulations taking effect under the final rulemaking. Relative to table games rules and procedures, PGCB has been granted authority to promulgate temporary regulations, which take immediate effect upon publication in the Pennsylvania Bulletin.

As contemplated under PGCB regulations (see 58 Pa. Code §§ 461a.24, 465a.30, 466a.2, 601a.4, and 1112a.14), the Board may consider requests to waive regulatory provisions. The Board has granted the Executive Director discretion to grant or deny waiver requests relating to games, gaming systems, or gaming devices. Neither the Executive Director nor the Board possess any authority to waive requirements of Pennsylvania’s statutes, including those in 4 Pa.C.S. §§ 301-342, 1103-4506. PGCB’s waiver consideration is limited to provisions of the Board’s regulations, as codified in 58 Pa. Code §§ 401a. et seq.

In the review of any waiver request, the Executive Director consults with PGCB staff to evaluate the reasonableness of the request and proposed course of action. Waiver requests that represent negative impacts on gaming or gaming integrity in the Commonwealth will not be granted.

Table games waivers will not be issued to circumvent the table games review process, including the adoption of temporary regulations, when necessary. If in the review of the request, PGCB determines that a table games waiver request represents significant departures from established rules and procedures, the requesting licensee will be advised that the waiver will not be granted, but that the licensee may make a normal submission if they wish to continue towards an authorization for use in Pennsylvania. Table games waiver requests which seek authorization to offer lower return to players (“RTP”) than approved in PGCB regulations will typically be denied.

Finally, relative to unique or proprietary naming conventions of table games and their associated wagers, new regulations or waiver requests may not be necessary. If the rules and procedures for the game match established regulatory provisions, licensees shall outline in their PGCB submissions how their proprietary name(s) line up with PGCB regulations. For example, under Blackjack, PGCB regulations authorize the “Three Card Poker” wager (see 58 Pa. Code § 633a.6(e)(9)), however many offer it under the name “21+3.” It is sufficient for licensees to state in their submission materials that they intend to offer the 21+3 wager which operates under the rules and procedures of the Three Card Poker wager as outlined under 58 Pa. Code § 633a.

Requesting a Waiver

A PGCB licensee seeking a waiver shall submit a letter, addressed to the Executive Director, outlining the case for a waiver to be granted. The letter shall, at a minimum, include the following:

1. Identification of each regulatory section, technical standard, or PGCB requirement for which the waiver is sought. Specify all sections sought—a waiver requesting/granting for X to occur in § 633a Blackjack would not allow X to also occur in § 635a. Spanish 21.
2. A statement, in plain language, explaining why the licensee is not able to comply, or otherwise seeks to deviate from, the regulatory section, technical standard, or PGCB requirement.
3. The proposed course of action sought by the PGCB licensee, noting how it is nonconforming to the regulatory section, technical standard, or PGCB requirement.
4. The timeframe for which the waiver is sought, and whether the timeframe is to enable the licensee to become compliant with the regulatory section, technical standard, or PGCB requirement.
5. The net impact of the proposed waiver on gaming in Pennsylvania. For waiver requests relating to table games, a comparison of the PGCB authorized game/paytable compared to the proposed waiver return to player (“RTP”) shall be included.
6. If a table game waiver is being sought, a statement indicating the casino(s) and/or interactive gaming operator(s) which have shown interest in the product. Waivers are unlikely to be granted for games in the development stage.

A copy of the waiver request letter, along with any materials the PGCB licensee wishes to include as part of the consideration, shall be sent to PGCBwaiver@pa.gov. Effective January 1, 2025, all waiver requests not forwarded to this email account will not be processed.

After a waiver request has been submitted, PGCB staff may be in contact with questions or requests for additional information, documentation, or demonstrations. If a waiver request is denied by the Executive Director, a licensee may Petition the Board to supersede that determination. Such a Petition shall be governed by the procedures outlined under 58 Pa. Code §§ 491a.- 499a. (relating to Board Practice and Procedure). The Executive Director will not be involved in any Board deliberations or decisions regarding such Petitions.

Examples of Waiver Determinations

The following examples illustrate requests which have been granted, or those which have been or would be denied.

Granted:

1. Various optional side wagers authorized under §631b Baccarat have been requested to be authorized for play with §627a Minibaccarat and §629a Midibaccarat game offerings. While Baccarat, Minibaccarat, and Midibaccarat game varieties contain distinct procedures, PGCB has determined that side wagers may function consistently across the three Baccarat game variations and has granted waiver consideration upon determinations of consistent functionality and outcomes.
2. An error in the official published regulations was discovered. A waiver was issued that authorized licensees to offer the affected wager, as the wager was intended, while regulatory corrections could be effectuated.
3. PGCB granted waivers to allow minor procedural variations for interactive gaming, including text vs verbal announcement of “no more bets” and the handling of burn cards.
4. Waivers have been granted to allow modifications to older paytables, including the addition of more winning hand combinations, or slightly improved odds. However, if upon review it is determined that the request represents a significant alteration, the licensee will be advised that the waiver will not be granted, but that a normal submission may be made if they wish to continue towards an authorization for use in Pennsylvania.

Denied:

1. A non-conforming payable which represents a lower RTP will not be granted a waiver, absent extraordinary justification.
2. A table game has undergone the usual review and temporary regulations have been adopted. A waiver will not be granted to authorize an additional payable not included in the table games submission to enable the game to go live in Pennsylvania. Manufacturers and Operators should ensure that their intended payable is included in the table games submission, including verifying that the odds are in the correct “to 1” or “for 1” format.
3. A waiver request to offer a table game variation comprised of twice as many winning outcomes compared to what is provided in PGCB regulations was denied. PGCB opined that the proposed variation represented a significant departure from the approved table games rules and procedures. PGCB’s waiver denial did not bar the game from the Pennsylvania market, but rather advised that if the licensee wished to proceed, the game would need to undergo the normal table games submission process before a game approval could be considered.
4. A table games waiver request which cobbles together elements from multiple sections of regulations will be denied.