

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-223 (IRRC #3239)

Over/Under, DJ Wild Stud Poker, Face Up Pai Gow Poker

September 11, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the July 13, 2019 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (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. **Conforms to the intention of the General Assembly.**

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)).

In the Preamble and RAF submitted with the final-form regulation, we ask the Board to provide more detailed information related to the proposed games as required under § 745.5(a) of the RRA. Specifically, we note that several of the Board's responses to the RAF include references to requirements that must be met prior to offering the games. Historically, the Board has offered games as temporary regulations issued under Statements of Policy. Are the proposed games currently in use by licensees? If so, when were the temporary regulations approved? We ask the Board to attach a copy of the order that the Board issued in adopting the temporary regulations with submission of the final regulation.

2. **Section 686a.2. Over/Under table; physical characteristics; inspections. – Clarity.**

Subparagraph (b)(4)(i) states that "all bets pay even money except for **Bonus Bets**." [Emphasis added.] We ask the Board to replace "Bonus Bets" with the defined term "Bonus Wager" in the final regulation.

3. Section 686a.5. Shuffle and cut of the cards. – Clarity.

Subsection (g) states in part that if there is **no gaming activity** at an Over/Under table, the cards shall be spread out on the table “face down unless a **player** requests that the cards be spread face up on the table.” [Emphasis added.] Since this Subsection presupposes that there is no gaming activity at the table, that would mean that there are no players at the table to make a request. We ask the Board to delete this phrase.

This comment also applies to Sections 687a.5(f) (relating to shuffle and cut of the cards) and 688a.5(g) (relating to shuffle and cut of the cards; procedures for determining the starting position for dealing cards).

4. Section 687a.8. Procedure for dealing the cards from a manual dealing shoe. – Clarity.

Subsection (i) references 52 cards; however, Section 687a.3 (relating to cards; number of decks) states that the game shall be played with 53 cards. We ask the Board to correct this in the final regulation.

5. Section 688a.1. Definitions. – Clarity; Reasonableness.

The Board defines and references throughout the Section an Ace High Pai Gow; however, the term Pai Gow is not defined. We ask the Board to define “Pai Gow” in the final regulation.

Additionally, the Board defines “qualifying wager” as a wager “of at least \$5.” Did the Board consider permitting licensees to set the minimum wager? We ask the Board to amend the final regulation to permit licensees to set the minimum wager or to explain why it is reasonable for the Board to set the minimum.

6. Section 688a.13. Irregularities; invalid roll of dice. – Clarity.

Subsection (d) addresses what can happen in a situation where a dealer exposes any of the cards dealt to a player. In such a situation, the player **may** void the hand. Subsection (i) addresses a situation where the dealer exposes **any cards**. In this situation, all wagers shall be returned to the players and the cards reshuffled. Since Subsection (d) provides flexibility as to whether play continues but Subsection (i) requires the end of play, these two sections seem to be inconsistent. We ask the Board to clarify the final regulation related to this type of irregularity.

7. Miscellaneous clarity.

The Board did not respond to Question #27 on the RAF related to regulatory flexibility for small businesses. We ask the Board to provide a response to Question #27 on the RAF of the final regulation.