

RECEIVED

DEC 08 2008

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
NANCY SABOL FRANTZ, ESQ.
JOHN F. MIZNER, ESQ.
KAREN A. MILLER
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 3, 2008

Frank Donaghue, Acting Executive Director
Pennsylvania Gaming Control Board
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Regulation #125-93 (IRRC #2723)
Pennsylvania Gaming Control Board
Rules of Practice and Procedures

Dear Mr. Donaghue:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. We will send a copy to the new Standing Committees when they are designated.

If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-93 (IRRC #2723)

Rules of Practice and Procedures

December 3, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the October 4, 2008 *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. Section 403a.7. Temporary emergency orders. – Clarity.

Although this section employs the term “presiding officer,” neither the existing regulation nor the proposed regulation contains an applicable definition. Section 491a.2 defines the term, but that section applies only to subpart H (pertaining to practice and procedure), not subpart A (pertaining to general provisions), where § 403a.7 is located. The final-form regulation should include a definition of “presiding officer” that is applicable to this section.

2. Section 493a.5. Answers to complaints, petitions, motions and other filings requiring a response.

Section 493a.10. Motions for summary judgment and judgment on the pleadings.

Section 493a.12. Intervention.

Section 494a.6. Reopening of record.

- **Reasonableness and feasibility; Protection of public welfare; Implementation procedures.**

Changes to existing provisions shift the trigger date for responsive filings from the date of service to the date of filing. We are concerned that this shift could render responsive parties who are served days after filing vulnerable to serious legal consequences, through no fault of their own. Although this problem

could dissipate with the implementation of electronic filing and service, it is unclear when the introduction of such electronic transactions will occur.

We recommend that the final-form regulation retain existing provisions that require the calculation of deadlines to start at the time of service. However, should the Board decide to proceed with these provisions as currently conceived, the final-form submittal should further explain its rationale and clarify how this regulatory scheme protects responsive parties, particularly since electronic filing and service is unavailable.

3. Section 493a.10a – Motions for summary judgment and judgment on the pleadings. – Clarity, Statutory authority, Fiscal impact.

This new section requires parties seeking to protect confidential information to file a Motion to Protect Confidential Information. We raise the following five concerns:

First, pursuant to 4 Pa.C.S. § 1206 and 58 Pa. Code § 407a.3, confidential documents and confidential information are protected. Subsection (a) refers only to information, subsection (b) refers to information and documents in separate paragraphs, and subsection (c) only refers to documents. The final-form regulation should clarify whether and why the Board distinguishes between confidential *documents* and confidential *information*.

Second, as referenced in subsection (a), the term “pleadings and other papers” is vague. The final form regulation should specifically identify the pertinent documents referred to as “other papers.”

Third, although paragraph (b)(1) requires the moving party to “set forth the specific reasons why the information should be deemed to be confidential information and, therefore, protected,” subsection (c) only allows the Director of Hearings and Appeals (Director) to “issue an interim order to protect the documents from disclosure” until the Board takes action. We are concerned that the Motion to Protect Confidential Information might necessarily contain confidential information itself, but this section does not appear to grant the Director the power to protect these portions of the motion. The Board should consider whether providing for the protection of the motion is necessary, and the final-form regulation should clarify whether the Director may issue an interim order of protection that encompasses information in the motion.

Fourth, the Gaming Act requires the Board to protect the confidentiality of the following two kinds of information: 1) “all information submitted by an applicant pursuant to section 1310(a) (relating to slot machine license application character requirements)”; OR 2) information obtained by the Board or the bureau from any source as part of a background investigation. 4 Pa.C.S.

§ 1206. Existing regulations provide for an even broader description of confidential information. 58 Pa. Code § 407a.3. The Board should clarify whether this proposed section applies to confidential information *other than* the information described in 4 Pa.C.S. § 1206. Additionally, the Board should explain its statutory authority for requiring a party to prevail on a motion to protect information already protected by the statute.

Finally, in the RAF, the Board states this regulation will result in no costs to the regulated community. Members of the regulated community, however, argue that they will incur significant legal costs in complying with this regulation. We recommend that the Board continue to explore cost implications for licensees and other parties. The final-form regulation should explain what steps the Board has taken to investigate and mitigate the potential fiscal impact of this proposal, and whether the public interest is best served by imposing this cost.

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Cheryl Posavec
Richard M. Sandusky (214-8111)
Agency: Pa Gaming Control Board
Phone: 346-8319
Fax: 703-2988
346-8350 (Front Desk)
Date: December 3, 2008
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-93 (IRRC #2723). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Cheryl Posavec Date: 12-3-08