

Public Comment on Regulation #125-215

Dear Board Members,

Thank you for the opportunity to submit comments on Pennsylvania’s Temporary Regulations on Interactive Gaming, 58 Pa. Code §§ 804, 811, 812, 814, 815, 818, issued pursuant to 4 Pa.C.S. §§ 1202(b)(30) and 13B02. The following comments are submitted on behalf of the iDevelopment and Economic Association (“iDEA”), an unincorporated association seeking to grow jobs and expand online gaming entertainment business in the United States through advocacy and education. iDEA’s members represent all sectors in the growing industry of internet gaming and entertainment, including technology, marketing, payment processing, law, operations, and development. In fact, with minor exception, almost all companies involved in online gaming in New Jersey are iDEA members.

On February 7, 2018, iDEA submitted comments advocating that the Board promulgate regulations that specify how many skins an online gaming operator may offer. iDEA applauds the Board’s decision to adopt a multiple-skins approach, as indicated in 58 Pa. Code § 818.3 and the Board’s subsequent public statements demonstrating a commitment to an innovative and competitive online gaming industry in the Commonwealth.

Now, iDEA submits this public comment to seek further clarity on the intent of the Temporary Regulations related to skins. Specifically, iDEA requests that the Board provide additional guidance on:

- The webpage domain structure for interactive gaming operator licensees required under Section 818(3)(c) and (d). Currently, the regulation appears to require interactive gaming operator licensees to offer their products on webpages that are subdomains of the certificate holder’s webpage. iDEA believes that this regulation will only lead to confusion for players and instead suggests that these disclosures be made on the webpages or downloadable content themselves;
- Whether interactive gaming certificate holders and operator licensees will be permitted to offer their products on mobile platforms; and
- The intent behind Section 812.4 addressing whether customers may set up accounts across multiple skins offered by a single certificate holder. As currently drafted, the regulations appear to limit players to fewer interactive gaming accounts than skins.

As currently drafted, both of these regulations could negatively impact the player experience. Thus, iDEA seeks further clarity from the Board on the intent and aim of the regulations.

Interactive Gaming Websites, Section 818.3(c) & (d), Recommendation

iDEA requests that the Board provide further guidance on the requirement that interactive gaming operator licensees cannot operate webpages separately from the interactive gaming certificate holder’s organizational structure, as provided in Section 818.3(c) and (d). As drafted, this regulation suggests that operators’ websites will run through the certificate holder’s website, using subdomains.

Subsections (c) and (d) both contain the same language that requires operator licensees to offer online interactive gaming only through “the interactive gaming certificate holder’s webpage or the webpage of an entity within the interactive gaming certificate holder’s organizational structure.” The subsections differ in that subsection (c) requires this only after noting that operator licensees may not act independently from a certificate holder, but subsection (d) contemplates the same requirement when operator licensees act on behalf of a certificate holder. The result of this regulation is that certificate holders and operator licensees must use unwieldy, complicated website addresses that players will struggle to remember—and ultimately fail to access.

One of the biggest challenges for online gaming companies is the acquisition and retention of players. Every obstacle between potential players and game play is one that the companies must streamline to ensure the best customer experience possible. Online gaming companies are constantly seeking ways to balance the need to obtain necessary information from customers for regulatory and identification purposes with the need to provide a seamless log-in and deposit process customers demand. Players, if faced with too many difficult registration requirements, often abandon their accounts. Similarly, if potential players are faced with needing to recall cumbersome website addresses or click through several webpages to reach their ultimate destination, operators will struggle to bring in and retain customers, resulting in less revenue for the Commonwealth overall.

Further, Subsection (f) of the same Regulation requires that interactive gaming operator licensees “must, at all times, clearly identify the interactive gaming certificate holder” with which the operator licensee is associated. iDEA recognizes this as a valuable consumer protection requirement and agrees the operator licensees should conspicuously post notifications on their webpages, mobile applications, and downloadable software alerting customers about their relationship with the relevant certificate holder. Based on prior experience, notification to customers directly is easiest for customers to understand. In contrast, hybrid website addresses with both the certificate holder and operator licensee brands listed will only serve to confuse players, causing fewer players to actively engage with online gaming overall.

Thus, iDEA urges the Board to clarify the intent and requirements of this Regulation, specifically, how websites domains must be structured to comply with this Regulation. Gaming industry companies are currently working to prepare for the launch of online gaming in Pennsylvania. These preparations include establishing certificate holder-operator licensee relationships and procurement of domains to provide gaming in Pennsylvania. Further guidance from the Board on the function and intent of this Regulation will provide much needed clarity to the industry and the Commonwealth’s players.

In addition, Subsection 818.3(d) could be strictly interpreted to suggest mobile interactive gaming and interactive gaming through downloadable software is not permitted, a likely oversight. Mobile gaming is a key part of the experience for many players: players frequently establish an interactive online gaming account that they access through a webpage on a standard computer and also through an app on their personal mobile device or through downloadable software on their personal computers. In jurisdictions already managing online and mobile gaming, the webpage, downloadable software, and the mobile app for a single operator are considered the same skin, and the player account functions through each entry points.

To ensure the Pennsylvania online gaming market remains competitive, iDEA recommends that the Board include an additional provision in Section 818.3(d) that reads:

Nothing in this section is intended to prevent interactive gaming certificate holders or interactive gaming operator licensees from offering interactive gaming in this Commonwealth by way of mobile app or downloadable software or any other method approved by the Board.

Such a provision would ensure that certificate holders and operator licensees can continue to offer the new products that players want and support a robust and competitive gaming market.

Player Accounts, Subsection 812.4, Recommendation

The Temporary Regulations promulgated by the Board on April 4, 2018 provide that interactive gaming certificate holders, working in agreement with interactive gaming operator licensees, may offer multiple skins to customers in the state of Pennsylvania. By permitting multiple skins per licensee, these regulations take a progressive approach consistent with a competitive and innovative marketplace. Certificate holders will be permitted to partner with other interactive gaming operators to offer a variety of products, increasing choice and options for customers throughout the Commonwealth.

However, the Regulation addressing the number of player accounts, if interpreted strictly could potentially undercut the intent of the remainder of the regulations that promote the multiple skins approach. Section 812.4 of the Temporary Regulations states that players “shall only have one interactive gaming account for *each* interactive gaming certificate holder *or* interactive gaming operator licensee” (emphasis added). This language is unfortunately ambiguous. It could be read to limit customers to one account per certificate holder, even if that certificate holder offers multiple skins. It could also be read to allow customers to have one account per skin or one account per operator licensee.

The narrow reading of this Regulation, in which customers may only hold one account per certificate holder, would remove the value and benefits of allowing multiple skins per certificate holder. Multiple skins provide for a more competitive online gaming industry. Online gaming is a challenging business with complicated issues of product development, customer satisfaction and safety, and regulatory compliance—even for large, established land-based casinos. Allowing

certificate holders to share in these expenses with operator licensees will create more opportunity for different companies to participate in the industry. Greater, varied participation by gaming companies also means more products and choices for customers in the Commonwealth.

Based on these concerns, iDEA urges the Board to issue a statement, guidance, or revised Regulation clarifying the intent behind and effect of Section 812.4 of the Temporary Regulations. iDEA urges the Board to address this issue by clarifying that players may open accounts on multiple skins operated under the same interactive gaming certificate. This will best serve players, businesses, and taxable revenue in Pennsylvania.

Conclusion

The Board, through its regulations and public comments, has demonstrated a desire to support the online gaming industry’s growth and innovation. A robust and competitive online gaming industry in the state will ultimately benefit the players and the Commonwealth, in addition to gaming industry stakeholders. However, iDEA encourages the Board to review and clarify the Temporary Regulations as discussed above to ensure that efforts to protect consumers do not needlessly complicate the player experience, thus undermining the goals of online gaming expansion.

Respectfully,

A. Jeff Ifrah
Executive Director

