



THE LAW ACCORDING TO NJ

Jeff Ifrah and **Sarah Coffey** of Ifrah Law explain everything you need to know about the New Jersey iGaming regulations



Four months after the passage of New Jersey's internet gaming law in February, the NJ Division of Gaming Enforcement (DGE) released its proposed internet gaming regulations in the *New Jersey Register* on 3 June. The proposed regulations modify existing gaming regulations to make them applicable to online and mobile gaming, and they also introduce a new chapter to the New Jersey Administrative Code, 13:69, which is devoted entirely to internet and mobile gaming.

Many of the proposed regulations come as no surprise because the NJ gaming law explicitly required DGE to create regulations regarding many of these topics, including software, age verification and geo-location requirements. However, there are also some surprises which DGE has authority to propose under its catch-all authority to "[p]romulgate such regulations as may be necessary to fulfil the policies" of the internet gaming act. These include a seven-year expiration on the internet gaming law (absent a legislative determination to renew), rather than the 10-year period proposed by Governor Christie and incorporated into the law, and an automatic forfeiture of accounts on deposit in a dormant account for over a year.

The proposed regulations are fairly extensive and contain many detailed technical requirements regarding the software and its operation and security. DGE held a formal comment period until 2 August, which allowed stakeholders to weigh in on the proposed regulations. DGE is currently reviewing the comments and deciding whether to make any changes before issuing the regulations in final form.

Operator concerns

The most important information to operators in the proposed regulations address fees, taxes, licensing and system requirements.

Permit applications and fees

Casino licensees or their affiliates must obtain an internet gaming permit in order to operate online gaming. The regulations do not provide much detail about the application other than to say that it "shall be in a format proscribed by the Division." The permit application costs \$400,000, including a non-refundable \$100,000 deposit. Applicants will also have to pay a responsible gaming fee of \$250,000, which must also be paid annually thereafter. Internet gaming permits must be renewed on an annual basis at the cost of \$250,000 per year.

Taxes

As established in the law, the regulations impose a 15 per cent tax on internet gaming revenue, which is due and payable on the 10th calendar day of the month. The "internet gaming gross revenue" is the total of all sums received by a casino licensee from internet gaming operations, less the total of all sums actually paid out to winning patrons. The regulations state that for the purposes of internet gaming gross revenue tax, internet gaming affiliates will be considered a casino operator. This means that if a casino partners with an affiliate who manages the internet gaming operation, the affiliate may be responsible for paying the tax.

Since the release of the proposed regulations, the Division has issued periodic statements clarifying the regulations and elaborating on how they will be implemented in final form. One such statement clarified the tax status of Promotional Gaming Credits, which enable a patron to place a wager at a slot machine through a casino licensee's internet gaming system. While the proposed regulations did not include any deduction for Promotional Gaming Credits, the Division has since clarified that all Promotional Gaming Credits will be deducted from gross revenue prior to taxation.

Casino service industry enterprises

The regulations stipulate that companies providing services to casino licensees regarding internet gaming – Casino Service Industry Enterprises (CSIE) – will pay the Division an hourly rate for their investigation and licensure process. CSIEs include any vendors offering goods or services which directly relate to internet gaming activity, including suppliers of internet gaming software or systems and vendors who manage, control or administer the internet games or the bets or wagers associated with the games. The regulations specify that a casino licensee may pay CSIE a percentage of the casino licensee's internet gaming gross revenue if the revenue-sharing agreement is approved by and filed with the Division.

System requirements

The regulations specify required capabilities for the internet gaming systems, including:

- Devices to log transactions;
- Mechanisms for the Division to query and export all gaming system data;
- Patron history logs, including details regarding patron sessions, gaming sessions, wagers made, transfers of funds into and out of patron accounts, and completion of game after an interruption;

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- Adjustments to gaming system data;
- Recordation of promotional offers;
- Log of authentication attempts;
- Mechanism to generate daily reports to calculate taxable revenue.

The proposed regulations require that internet gaming systems employ a geo-location mechanism to detect the physical location of the player when logging into the system, and re-verify the location every hour thereafter. If the system detects that the player is no longer in an authorised area, the system will disable the account and not accept wagers until they return to the authorised area.

The regulations also require a casino licensee to keep a designated internet and mobile games manager on staff who shall be located in New Jersey and is licensed as a casino key employee.

Player concerns

The sections which attracted attention from the public, however, are those directly affecting players: responsible gaming, gambling addiction and player verification requirements.

Responsible gaming

When New Jersey was debating whether to pass an online gaming law, one major point of discussion was the concern that the independent and private nature of internet gambling could lead to irresponsible gambling habits that would go undetected online, whereas in a casino there are trained employees who can cut off a gambler if necessary.

In direct response to this concern, the regulations provide protections to promote responsible gaming by providing limits on how a casino can encourage a player to place wagers. For example, the regulations prohibit internet and mobile gaming systems from “induc[ing] a patron to continue placing wagers” either when play is in session, when the player attempts to end a session, or when a player wins or loses a bet. Similarly, the regulations prohibit communications that intentionally encourage a player to play more, wager continuously, bet their winnings, or attempt to recoup losses. The regulations also allow players to look out for their own interests by setting self-imposed limitations on their gambling. The regulations require casinos to allow their players the capability to set self-imposed daily deposit limits. Since the release of the proposed regulations, the Division has announced its intent to require even more protection for gamblers. In an effort to encourage

responsible gaming, the gaming systems must prominently display a clock or timer which lets a player know how long their session has been open.

The proposed regulations also provide for the overall security of the game by requiring casinos to implement internet and mobile gaming systems that automatically detect and report suspicious behaviour such as cheating and collusion among players. This protects other players from being at an unfair disadvantage in a game by providing a level of oversight that trained casino employees might provide in brick and mortar setting.

Self-exclusion

The proposed regulations expand New Jersey’s gambling self-exclusion list to allow players to voluntarily exclude themselves from online gambling as well. Individual casinos are required to maintain their own self-exclusion lists, which they must keep up to date with the DGE’s lists. Players may add themselves to the self-exclusion lists by using a form on the DGE’s website, and regulations require a player’s online gaming account to provide a link directly to that form. Once on the list, casinos may not allow self-excluded persons to gamble on their websites, nor may they send self-excluded persons promotional materials related to internet gaming.

Player verification

Players may register for online accounts with casinos over the internet. Each player must obtain a separate account with each casino, and a person may not have more than one account at each casino. The account registration process confirms that the person is who he or she claims to be, and that they are not prohibited from participating in online gaming due to age or self-exclusion.

The regulations provide for a multi-source verification of identities to ensure that the applicants are who they claim to be. They will have to provide identifying information such as their name and address, and will have to correctly complete verification tests drawn from third party and governmental databases, such as correctly identifying a car registered in their name. Once their identity is verified, the information is cross checked against the self-exclusion list and checked for age before establishing an account.

Players’ accounts are non-transferable, and players are prohibited from allowing other people to use them. To prevent unauthorised access, accounts are protected by PINs, challenge questions, passwords and other security features.

Since the release of the proposed regulations, the Division has announced additional requirements to ensure account security. The final regulations will add specific account controls, including sending automated electronic notification to players every time a session is initiated using their login information. This will provide for security against fraudulent use of the account by others. After three consecutive failed login attempts, the patron must undergo a “strong authentication”, testing at least two out of three identity verification metrics. Knowledge (answering a question that the true owner would know), possession (such as an identification card) and biometric (such as a thumbprint).

The Division has also required the encryption of personal data stored by the internet gaming system, including social security numbers, credit card information and passwords.

Free play

The proposed regulations originally required that any free or demonstration games offered in the internet gaming systems must only be accessible after login, and have the same payout percentages and odds as paying games. However, the Division has since changed its position on this front by stating that free play may be offered anonymously without logging in, and that casinos may offer non-casino “marketing only” games to those patrons. If a free-play game is offered as a real-money internet casino game, however, the free-play version must be offered with a payout percentage that is equal to or less than the same game offered for real-money play. Players have responded favourably to this proposed change, and are pleased that they may be able to try out games from different casinos prior to registering for player accounts.

Next steps

The Division has not specified a time-frame for finalising the regulations. The fact that the Division has been considering suggestions and issuing changes to the proposed regulations on a rolling basis, however, gives cause to believe that there will be a quick turnaround time. Pursuant to state law, Division director David Rebeck will announce the date on which New Jersey casinos will be permitted to begin accepting wagers over the internet at least 45 days prior to commencement. Therefore, it is possible that online gaming could go live in New Jersey as early as November. ■