

Regulatory Analysis Form

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2008 FEB 20 PM 12: 23

INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Gaming Control Board

(2) I.D. Number (Governor's Office Use)

125 - 82

IRRC Number:

2676

(3) Short Title

Standards for Independent Audit Committees

(4) PA Code Cite

58 PA. Code § 441a.24

(5) Agency Contacts & Telephone Numbers

Primary Contact: Richard Sandusky
717-214-8111 / rsandusky@state.pa.us

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This proposal adds a provision requiring non-publicly traded corporations to establish an independent audit committee and listing the minimum requirements for an independent audit committee.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

§ 1202(b)(30) of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. § 1202(b)(30) provide the Board with the authority to adopt regulations necessary for the administration of the Act.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Adding § 441a.24 will give clear guidance to slot machine licensees concerning who is required to establish an independent audit committee and what minimum standards must be met when establishing an independent audit committee.

Requiring independent audit committees for these slot machine licensees will provide additional protection of the integrity of gaming in the Commonwealth.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks affected by these amendments.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Commonwealth will benefit by having another mechanism (an independent audit committee) available to protect the integrity of gaming.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There will be costs imposed on some slot machine licensees associated with the creation and operation of an independent audit committee.

Currently, only one slot machine licensee is required to have an independent audit committee; two additional slot machine licensees will be required to establish or revise their independent audit committees to meet the requirements contained in this rulemaking.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Any slot machine licensee required to have an independent audit committee will have to comply with the new independent audit committee provisions.

Currently, three slot machine licensees will be required to have an independent audit committee under this regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

No specific public input was solicited prior to the proposal of this amendment.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

A slot machine licensee required to have an independent audit committee will be responsible for the costs associated with the creation and operation of the independent audit committee.

For the one slot machine licensee currently required to have an independent audit committee, the annual costs are estimated to be \$250,000.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Board anticipates that there will be no costs or savings to local governments as a result of this amendment.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There will be no costs or savings to the Board or other agencies in state government as a result of this amendment.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	\$250,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	\$250,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

The costs shown above reflect estimated costs for the independent audit committee of the one slot machine licensee that is currently required to have an independent audit committee and the two additional slot machine licensees that will be required to establish or revise their independent audit committees.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Board Budget	\$2,900,000	\$13,200,000	\$26,400,000	\$29,984,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

While the costs for an independent audit committee may be significant, these costs are expected to be offset by the increased level of oversight that will be provided by the independent audit committee.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Board could have relied on the October 2, 2007 order concerning independent audit committees adopted by the Board but believes these standards are more appropriately placed in regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no corresponding Federal requirements.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Nothing in this amendment will put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will add a new § 441a.24 in 58 PA. Code.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No additional hearings or meetings have been scheduled.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Slot machine licensees that are required to have an independent audit committee will be required to draft a charter for the independent audit committee which must be submitted to the Board for its approval.

Independent audit committee members will be required to file annual certifications with the Board.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are none.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

These regulations will be effective upon publication as a final rule in the *Pennsylvania Bulletin*.

It is anticipated that final regulations will be adopted in the third quarter of 2008.

(31) Provide the schedule for continual review of the regulation.

No formal review schedule has been established. Instead, the Board will be constantly reviewing its regulations and proposing amendments as the need arises.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General



By: _____
(Deputy Attorney General)

FEB 19 2008

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct
copy of a document issued, prescribed or promulgated
by:

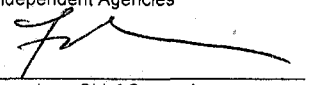
**Pennsylvania Gaming
Control Board**

FISCAL NOTE NO.: 125-82

DATE OF ADOPTION: 1/24/2008

BY: 
Mary DiGiacomo Collins, CHAIRMAN

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY: 
Frank Donaghue, Chief Counsel

1/24/2008
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

**PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA**

**58 PA. CODE, SUBPART C
SECTION 441a.24**

ANNEX A

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CHAPTER 441a]

SLOT MACHINE LICENSING

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) proposes to amend Chapter 441a (relating to slot machine licensing) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposal adds new provisions related to independent audit committees.

Explanation of Amendments to Chapter 441a

Section 465.11(c) requires the supervisors of the surveillance and internal audit departments to report directly to some form of an independent audit committee. While publicly traded corporations have SEC requirements that must be met concerning independent audit committees, non-publicly traded entities do not.

To ensure the financial integrity of gaming in this Commonwealth the Board has developed criteria that must be met for independent audit committees of non-publicly traded slot machine licensees. These criteria are similar to those that must be met by publicly traded slot machine licensees.

Affected Parties

This regulation will affect any slot machine licensee that is not a publicly traded corporation. Currently, three slot machine licensees would be affected by this regulation.

Fiscal Impact

Commonwealth

There will be no new costs or savings to the Board or other Commonwealth agencies as a result of this regulation.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

Slot machine licensees that are not publicly traded corporations will have to establish independent audit committees that meet these standards. The annual cost for the one non-publicly trade slot machine licensee that has established an independent audit committee that meets these criteria is estimated to be approximately \$250,000.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork requirements

The independent audit committee will be responsible for filing certain financial reports and annual certifications with the Board.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P.O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-82.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 20, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,
Chairman

Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

SUBPART C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

* * * * *

§ 441a.24. Independent audit committee.

(a) Slot machine licensees that are not publicly traded corporations or whose holding or intermediary companies are not publicly traded corporations must establish an independent audit committee as required under § 465a.11(c) (relating to slot machine licensee's organization) which meets the following requirements:

(1) Be established with the general purpose and duty to monitor and report to the Board on the operations and financial control of the slot machine licensee.

(2) Be established by a charter which outlines its purpose, objectives and organization. The charter shall, at a minimum:

(i) Set fixed terms for the members.

(ii) Set a minimum number of meetings to be held throughout the year.

(iii) Set the number of members required to be in attendance to conduct business.

(iv) Address situations in which there is a tie vote on a matter before the independent audit committee.

(v) Require the independent audit committee to establish a code of conduct for the independent audit committee.

(vi) Require the independent audit committee to review and approve the code of conduct for the slot machine licensee.

(3) The charter required by paragraph (2), any amendments thereto and the code of conduct required under subparagraph (2)(v) must be approved by the Board.

(4) The independent audit committee shall consist of at least three, but no more than five, members appointed by the slot machine licensee, approved by the Board and licensed as principals.

(5) Members of the independent audit committee shall be independent in character and judgment, and there may be no relationships or circumstances which could affect, or might appear to affect, the member's independent judgment.

(6) No member of the independent audit committee may have any ownership interest in the slot machine licensee or any entity owned by the slot machine licensee.

(7) No member of the independent audit committee may have a material relationship with the slot machine licensee or any of the slot machine licensee's principals beyond membership

on the independent audit committee. A member of the independent audit committee has a material relationship with the slot machine licensee or a principal of the slot machine licensee if:

(i) The member of the independent audit committee receives any compensation from the slot machine licensee or any of the slot machine licensee's principals, other than the compensation received for serving as a member of the independent audit committee.

(ii) The member of the independent audit committee receives any compensation from the slot machine licensee or any of the slot machine licensee's principals, other than the compensation received for serving as a member of the independent audit committee.

(iii) The member of the independent audit committee is, or has been within the last three years, employed by the slot machine licensee or any of the slot machine licensee's principals, or any company affiliated with the slot machine licensee or any of the affiliated company's principals.

(iv) The member of the independent audit committee is, or has within the last three years, served as an executive officer in any firm or business engaged by the slot machine licensee or any of the slot machine licensee's principals to perform any external or internal auditing functions.

(v) The member of the independent audit committee is, or has within the last three years, been employed by any company that has made payments to or received payments from the slot machine licensee or any of the slot machine licensee's principals, or any company affiliated with the slot machine licensee or any of the affiliated company's principals, exceeding \$1 million in any of the last three years.

(8) Members of the independent audit committee must have contracts for the fixed term specified under the charter required by paragraph (2) and may not be terminated, except for "good cause." Any termination of a member of the independent audit committee must be approved by the Board.

(9) At least one member of the independent audit committee must be an "audit committee financial expert," as that term is defined by the Securities and Exchange Commission under the Sarbanes-Oxley Act.

(10) The independent audit committee shall have the resources, as determined by the independent audit committee and provided or funded by the slot machine licensee, necessary to fully execute its powers and duties established in the charter.

(11) The independent audit committee is directly responsible for the appointment, compensation, retention and oversight of the independent certified public accountant required by 58 Pa. Code § 465a.5 (relating to annual audit;

other reports; suspicious activity and current transaction reporting). The independent certified public accountant shall report directly to the independent audit committee. The independent certified public accountant shall have a nationally recognized and respected reputation and have expertise in the gaming industry. Within 30 days of the approval of the charter required under paragraph (2) and approval of the independent audit committee members, the independent audit committee shall:

(i) Notify the Board of its selection of the independent certified public accountant.

(ii) Certify that the independent certified public accountant has sufficient expertise in auditing in the gaming industry.

(iii) Certify that the independent certified public accountant is independent of the slot machine licensee, the slot machine licensee's principals, and any company affiliated with the slot machine licensee or the affiliated company's principals.

(12) The independent audit committee members shall individually review the reports required by 58 Pa. Code § 465a.4 (relating to standard financial and statistical reports) and individually prepare a statement to accompany the annual audit required by 58 Pa. Code § 465a.5 certifying that the member has reviewed the audit and, based on the member's knowledge, the

audited financial statements do not contain any untrue statement of a material fact or omission of a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading, and the financial statements in the audit fairly present in all material respects the financial condition, results of operations and cash flows of the slot machine licensee as of, and for, the periods presented.

(13) The independent audit committee is directly responsible for the appointment or approval of the appointment, compensation, retention and oversight of the department heads of the departments of internal audit and surveillance. These department heads shall report directly to the independent audit committee for matters of policy, purpose, responsibility and authority.

(14) The department heads of the departments of internal audit and surveillance shall report to the slot machine licensee's chief executive officer for matters of daily operation. The reports of these department heads shall include an assessment of any significant risks to the general operations of the slot machine licensee and how these are being managed.

(15) The independent audit committee shall approve the slot machine licensee's program for compliance with 58 Pa. Code Chapter 465a (relating to accounting and internal controls), and

monitor and report directly to the Board on the slot machine licensee's continuing compliance with those regulations.

(16) The independent audit committee shall report or cause to be reported to the Board any violations of the Act, the Board's regulations or other law.

(17) The independent audit committee shall establish adequate procedures for handling complaints regarding corporate and regulatory compliance and internal controls, including a system for handling anonymous complaints.

(18) The independent audit committee shall annually submit an annual report to the Board in which the independent audit committee evaluates its adherence to its purpose and duties, as established by the charter.

(19) Each member of the independent audit committee shall annually sign and submit to the Board a statement certifying that the member:

(i) Meets the independence standards contained in the charter establishing the independent audit committee.

(ii) Is in compliance with the code of conduct required under subparagraph (2)(v).

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 125-82

DATE: 2/20/08

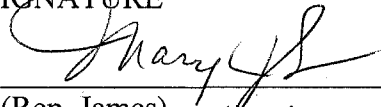
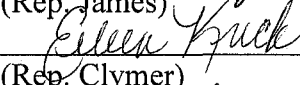
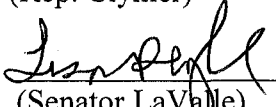
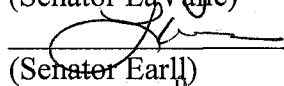
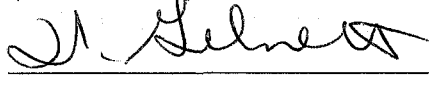

SUBJECT: Subpart C, Section 441a.24

AGENCY: Pennsylvania Gaming Control Board

TYPE OF REGULATION

- Proposed Regulation
 - Final-Form Regulation
 - Final Regulation with Notice of Proposed Rulemaking Omitted
 - 120-day Emergency Certification of the Attorney General
 - 120-day Emergency Certification of the Governor
 - Delivery of Tolled Regulation
- a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1. <u>2/20/08</u>	<u></u> (Rep. James)	House Gaming Oversight Committee
2. <u>2/20/08</u>	<u></u> (Rep. Clymer)	
3. <u>2/20/08</u>	<u></u> (Senator LaValle)	Senate Community, Economic & Recreational Committee
4. <u>2-20-08</u>	<u></u> (Senator Earl)	
5. <u>2-20-08</u>	<u></u>	Independent Regulatory Review Commission
6. <u>2-20-08</u>	<u></u>	Legislative Reference Bureau