

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency Pennsylvania Gaming Control Board		RECEIVED MAY - 1 REC'D INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number: <i>2:13pm</i> <i>2695</i>	
(2) I.D. Number (Governor's Office Use) 125 - 86			
(3) Short Title Slot Machine Licensing Hearings			
(4) PA Code Cite 58 PA. Code § 441a.7		(5) Agency Contacts & Telephone Numbers Primary Contact: Richard Sandusky 717-214-8111 / rsandusky@state.pa.us	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. This proposal amends the provisions governing slot machine licensing hearings.			
(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)) provides the Board with the authority to adopt regulations necessary for the administration of the Act. §§ 1205 and 1206 of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §§ 1205 and 1206) provide more specific authority to conduct slot machine licensing hearings and for the proposed regulation.			

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?

The existing slot machine licensing regulations do not address what information will be presented by the Bureau of Investigations and Enforcement at the public licensing hearings or how the Board will approach questions it may have for applicants dealing with confidential information about the applicant.

This rulemaking is intended to provide guidance in both of these areas.

(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.)

Applicants for slot machine licenses and the general public will have a better understanding of how the Board will conduct licensing hearings for slot machine licenses.

There are currently 4 applications for slot machine licenses pending before the Board. These applicants will benefit by having a better understanding of how the slot machine licensing hearings will be conducted.

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 no costs imposed on applicants for a slot machine license as a result of this regulation, so no one will be adversely affected.

(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.)

Depending on when hearings are scheduled and when this regulation becomes final, the 4 existing slot machine license applicants may be required to comply with 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.

There will be no costs or savings for applicants for slot machine licensees as a result of this regulation.

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.

Regulatory Analysis Form

(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	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 Costs	N/A	N/A	N/A	N/A	N/A	N/A
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.

Because these regulations reflect how the Board intends to conduct future slot machine licensing hearings, there will be no new costs or savings associated with this rulemaking.

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.

These regulations will provide applicants with more detail concerning how slot machine licensing hearings will be conducted so that they can better prepare for these hearings.

These regulations will also ensure that the licensing hearings will be conducted in an open manner with all information permitted by law being made part of the public record.

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

The Board considered addressing these issues as part of the prehearing conference, but this would not give applicants for slot machine licenses or the general public advanced notice as to how these issues will be addressed.

(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 amend § 441a.7 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.

There are no changes in paperwork or reporting requirements associated with this rulemaking.

(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 or fourth 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)

RECEIVED

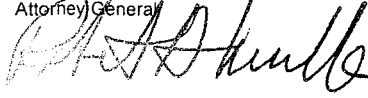
MAY - 1 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

2:13 pm

DO NOT WRITE IN THIS SPACE

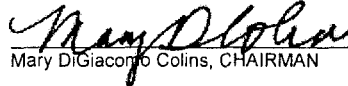
Copy below is hereby approved as to form and legality.
Attorney General


By: _____
(Deputy Attorney General)
APR 30 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- 86
DATE OF ADOPTION: 4-10-08
BY: 
Mary DiGiacomo Colins, CHAIRMAN

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

BY: 
Frank Donaghue, Chief Counsel
4-10-08
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.7

PROPOSED RULEMAKING

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) and the specific authority in 4 Pa.C.S. §§ 1205 and 1206 (relating to license or permit application hearing process; public input hearings; and Board minutes and records) proposes to amend Chapter 441a (relating to slot machine licensing) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking amends the provisions related to licensing hearings for applicants for slot machine licenses.

Explanation of Amendments to Chapter 441a

Section 441a.7 (relating to licensing hearings for slot machine licensees) lays out the procedures for the conduct of slot machine licensing hearings. Through this proposed rulemaking, the Board is expanding these provisions.

Specifically, the Board will require the Bureau of Investigations and Enforcement to report any information concerning an applicant that was obtained from sources in the public domain at the licensing hearing.

Additionally, the Board may request, on the record, that an applicant respond to questions that relate to confidential information at the licensing hearing. The applicant will have the option of waiving the right to confidentiality and answering the questions at the public hearing or requesting that the matter be heard in executive session. If the applicant provides sufficient reason to justify the invocation of confidentiality, the Board will hear the responses to the Board's questions in executive session.

The proposed rulemaking also makes it clear that under no circumstances will an applicant be required to waive the right to confidentiality as a condition to receiving a slot machine license.

Adoption of these new provisions will provide additional guidance to applicants for slot machine licenses on the conduct of the licensing hearings and ensure that all information permitted by law will be contained in the public record.

Affected Parties

Applicants for slot machine licenses will 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 proposed rulemaking.

Political Subdivisions

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

Private Sector

Applicants for slot machine licenses will not experience any increased costs or savings as a result of this proposed rulemaking.

General Public

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

Paperwork requirements

There are no new paperwork or reporting requirements associated with this proposed rulemaking.

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 #125-86.

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 May 1, 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.7. Licensing hearings for slot machine licensees.

* * * * *

(r) Any information obtained by BIE during an applicant's background investigation based upon public record or upon information otherwise in the public domain will be heard by the Board during the licensing hearing. Information submitted by an applicant pursuant to 4 Pa.C.S. § 1310(a) (relating to slot machine license application character requirements) or obtained by the Board or BIE as part of a background investigation from any source not in the public domain is considered confidential. The Board may not require an applicant to waive any confidentiality provided for in 4 Pa.C.S. § 1310(a) as a condition for the approval of a slot machine license or any other action of the Board. The Board may request that an applicant respond to inquiries related to confidential information during a licensing hearing to promote transparency in the regulation of gaming in the Commonwealth. An applicant who does not waive the right to confidentiality must:

(1) Request, at the licensing hearing, that the matter be heard in executive session.

(2) Provide sufficient reason on the record to justify the invocation of the confidentiality.

(s) At its discretion, the Board may terminate, recess, reconvene and continue the licensing hearing.

[(s)] (t) An applicant may raise an objection to the conduct of the hearing, procedure, process or rulings of the Board as it relates to its own hearing or to the hearing of a competitive applicant as follows:

(1) An objection may be raised orally by stating the objection during the hearing of an applicant and the objection shall be stenographically recorded upon the record. The Board may request written briefing of the basis of the objection prior to issuing a ruling.

(2) An objection relating to the hearing of an applicant or to a hearing of a competitive applicant may be raised by means of written objection filed with the Clerk no later than 2 business days after the action or event giving rise to the objection. A written objection must clearly and concisely set forth the factual basis for the objection and be accompanied by a legal brief addressing the legal basis supporting the objection.

(3) If an applicant objects to an action or event in the hearing of another applicant, the caption of the objection must include the docket numbers of both proceedings conspicuously displayed and shall be served upon counsel for the other applicant by electronic means.

(4) In the event an objection is filed to the hearing of another applicant, counsel for that applicant may file a responsive brief within 2 business days of electronic service.

(5) An objection not raised as provided in paragraphs (1)--(3) will be deemed waived.

[(t)] (u) Each Category 1 and Category 3 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications within its category. Each Category 2 applicant may file a brief up to 25 pages in length within 10 days of the completion of the hearing with respect to all applications that meet the same location criteria as the applicant as specified in subsection (n)(1)(i)--(iii). At the prehearing conferences, applicants in any category may waive the opportunity to file briefs.

[(u)] (v) At the conclusion of the presentation of all testimony and evidence, the Board will cause the record to be transcribed. The transcript and evidence shall become part of the evidentiary record for the Board's consideration. For good cause shown, the Board may seal portions of the record.

[(v)] (w) Following submission of the applicants' briefs, all applicants will have an opportunity to make final remarks in the form of oral argument before the Board in a manner and time prescribed by the Board. At the prehearing conferences, applicants in any category may waive the opportunity for oral argument.

[(w)] (x) Upon the conclusion of the licensing hearings and upon review of the evidentiary record in its entirety, the Board will consider, approve, condition or deny the slot machine license applications. A final order, accompanied by the Board's written decision, will be served on the applicants for slot machine licenses.

[(x)] (y) An applicant may appeal the denial of a slot machine license to the Pennsylvania Supreme Court as provided in the act.

[(y)] (z) This subsection pertains exclusively to intervention in a licensing hearing for a slot machine license under this section and is not applicable to other hearings before the Board. The right to intervene in a hearing under this section is within the sole discretion of the Board.

(1) A person wishing to intervene in a licensing hearing for a slot machine license shall file a petition in accordance with this subsection.

(2) A person may file a petition to intervene under this subsection if the person has an interest in the proceeding which is substantial, direct and immediate and if the interest is not adequately represented in a licensing hearing.

(3) Petitions to intervene in a licensing hearing may be filed no later than 45 days prior to the commencement of the first scheduled licensing hearing, in the category of license for which the applicant, in whose hearing the petitioner seeks to intervene, has filed an application unless, in extraordinary circumstances for good cause shown, the Board authorizes a late filing. At the same time the petitioner files its petition with the Board, a complete copy of the petition to intervene shall be served on the Chief Enforcement Counsel and the applicant in whose licensing hearing the petitioner seeks to intervene.

(4) Petitions to intervene must set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, the position of the petitioner in the proceeding and a copy of the written statement to be offered under paragraph (6). The petitioner shall fully and completely advise the applicant and the Board of the specific issues of fact or law to be raised or controverted and cite provisions or other authority relied on.

(5) The applicant may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. If made, answers shall be filed within 10 days after the date the petition is filed with the Board, unless for cause the Board prescribes a different time. A complete copy of the answer to the petition to intervene shall be served on the Chief Enforcement Counsel and the petitioner who seeks to intervene.

(6) Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a licensing hearing will be limited to the presentation of evidence through the submission of written statements attested to under oath. The written statements shall be part of the evidentiary record.

[(z)] (aa) This section supersedes any conflicting provisions of Subpart H (relating to practice and procedure) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

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

I.D. NUMBER: 125-86

DATE: 5-1-08

SUBJECT: Subparts C, Section 441a.7

AGENCY: Pennsylvania Gaming Control Board

TYPE OF REGULATION RECEIVED

- | | | |
|----------|---|--|
| <u>X</u> | Proposed Regulation | MAY - 1 REC'D |
| _____ | Final-Form Regulation | INDEPENDENT REGULATORY
REVIEW COMMISSION <i>2:13 pm</i> |
| _____ | 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>5/1/08</u>	<u><i>Latacha C. Wells</i></u> (Rep. James)	House Gaming Oversight Committee
2. <u>5/1/08</u>	<u><i>Eileen Kuehl</i></u> (Rep. Clymer)	
3. <u>5/1/08</u>	<u><i>LaValle</i></u> (Senator LaValle)	Senate Community, Economic & Recreational Committee
4. <u>5-1-08</u>	<u><i>Earll</i></u> (Senator Earll)	
5. <u>5/1/08</u>	<u><i>Kathy Cooper</i></u>	Independent Regulatory Review Commission
6. <u>5/1/08</u>	<u><i>Maya Garcia</i></u>	Legislative Reference Bureau