

Regulatory Analysis Form

~~RECEIVED~~
This space for use by IRRC

(1) Agency

Pennsylvania Gaming Control Board

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

125 - 86

IRRC Number:

2695

(3) Short Title

Slot Machine Licensing

(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)

- 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 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	\$13,200,000	\$26,400,000	\$29,984,000	\$33,300,000

(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.

RECEIVED
COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE BUREAU

**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)

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: 12-2-08

BY: Mary DiGiacomo Colins
Mary DiGiacomo Colins, CHAIRMAN

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

BY: R. Douglas Sherman
R. Douglas Sherman, Acting Chief Counsel

12-2-08
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.

**FINAL-FORM RULEMAKING
COMMONWEALTH OF PENNSYLVANIA**

**58 PA. CODE, SUBPART C
CHAPTER 441a (Section 441a.7)**

RULES AND REGULATIONS

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)) amends Chapter 441a (relating to slot machine licensing) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

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

Explanation of Amendment 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 final-form 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, which was obtained from sources in the public domain, at the licensing hearing.

Additionally, the Board may request that an applicant respond to questions that may 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. The applicant will be required to state, on the record, the reasons why it believes the information is confidential and should be heard in executive session.

The final-form 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.

Comment and Response Summary

Notice of proposed rulemaking was published at 38 Pa.B. 2269 (May 17, 2008).

The Board received comments from Sands Casino Resort Bethlehem (Sands) during the public comment period. On July 16, 2008, the Independent Regulatory Review Commission (IRRC) also filed comments. Both of these comments were considered by the Board and are discussed below.

Sands and IRRC expressed concerns that requiring an applicant to provide a "sufficient reason" as to why information should be treated as confidential could be perceived to be coercive and may conflict with § 1206(f) of the Pennsylvania Race Horse Development and Gaming Act (Act).

The Board believes that this proposal is consistent with the Act. The proposed provision states that information obtained by the Board or BIE from sources, not in the public domain, is considered to be confidential. It also repeats the provision in § 1206(f) that the Board may not require an applicant to waive any confidentiality as a condition for approval of a license. This language was included in the regulation to emphasize an applicant's right to have certain information treated as confidential. All this regulation does is clarify that an applicant has a choice as to how to proceed during a licensing hearing if a question arises that may involve confidential information. The applicant may elect to waive the confidentiality privilege or request that the matter be heard in executive session. However, because not all information provided as part of a licensing application is considered confidential, it is entirely appropriate for the Board to require an applicant to describe how the information requested would fall into one of the categories of protected information listed in § 1310(a) (relating to application).

IRRC asked how the Board would determine what is a "sufficient" reason. IRRC believes the term is vague and should be defined or that criteria for determining what is sufficient should be added to the regulation.

The Board's intention in this provision is simply to have the applicant state the reason, on the record, why the information should be treated as confidential. In essence what the Board expects an applicant to do is to state how the information falls into one of the categories of protected information listed in § 1310(a). To clarify this intent, § 441a.7(r)(2) has been revised and the term "sufficient" has been deleted.

IRRC also asked that with the deletion of § 1206(a) of the Act, what is the Board's authority to hear confidential information in executive session.

The statutory basis for the Board to hear information protected under § 1206(f) in executive session is found in § 708 of the Sunshine Act (65 Pa.C.S.A. § 708), which allows an agency to hold an executive session to "discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law..." Because the confidentiality of this information is protected by law, it can be heard in executive session.

Next, IRRC asked if the Board had intended to cite § 1206(f) in the proposed regulation instead of § 1310(a).

That was the Board's intent and the citation has been corrected in the final-form regulation.

IRRC asked if a transcript would be made of an executive session, and if so, would the transcript be made available for release in accordance with the provisions in § 1206(f). IRRC also asked that if a transcript is not prepared, how would an applicant's meaningful appellate rights be protected.

A transcript will be prepared for any executive session and the transcript will be released under the circumstances outlined in § 1206(f) pertaining to the release of confidential information. In the case of an appeal, the transcripts of executive sessions will be released upon the lawful order of a court of competent jurisdiction.

IRRC also inquired how the Board will publish an order, when the Board renders a decision which is based on confidential information, without revealing the confidential information.

The Board's order does not have to contain the confidential information; it only needs to state that the Board has reviewed

the information and state if any of the information was the basis for the Board's approval or disapproval.

Lastly, IRRC suggested that the Board include detailed administrative procedures for conducting an executive session.

The Board has not adopted this suggestion. Based on past experience with licensing hearings, the Board does not see a need to add detailed procedures for the conduct of executive sessions.

Affected Parties

Applicants for slot machine licenses will be affected by this final-form rulemaking.

Fiscal Impact

Commonwealth

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

Political Subdivisions

This final-form 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 final-form rulemaking.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork requirements

There are no new paperwork or reporting requirements associated with this final-form rulemaking.

Effective Date

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

Contact Person

The contact person for questions about this final-form 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, published at 38 Pa.B. 2269 (May 17, 2008) and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development on **INSERT DATE**, 2008. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)) IRRC met **INSERT DATE**, 2008, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapter 441a, are amended by amending § 441a.7 to read as set forth in Annex A.

(b) The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

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) 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)~~ 1206(f) 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 shall:

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

(2) Provide ~~sufficient~~ THE reason on the record to justify EXPLAINING THE BASIS FOR the invocation of the confidentiality.

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

[(s)] (t) * * *

[(t)] (u) * * *

[(u)] (v) * * *

[(v)] (w) * * *

[(w)] (x) * * *

[(x)] (y) * * *

[(y)] (z) * * *

[(z)] (aa) * * *

**COMMENTATORS WHO REQUESTED NOTICE
OF THE FINAL-FORM REGULATION**

FISCAL NOTE: 125-86

While § 5.1(a) of the Regulatory Review Act only requires the Board to provide a list of the commentators who have requested additional information and a copy of the final-form regulation, the PGCB sends a copy of the preamble, Regulatory Analysis Form and the final-form regulation to all commentators. These copies are sent by mail or emailed to the commentator if they request electronic delivery. For this rulemaking, copies of these materials have been sent to the following:

**J. Scott Kramer, Esquire
Sands Casino Resort Bethlehem
c/o Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103**

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

I.D. NUMBER: 125-86

DATE: 2-11-09

SUBJECT: Subpart C. (Chapter 441a)

AGENCY: Pennsylvania Gaming Control Board (PGCB)

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

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
1. <u>2/11/09</u>	<u></u> Senator Jane M. Earl	Senate Community, Economic & Recreational Development
2. <u>2/11/09</u>	<u></u> Senator Wayne D. Fontana	Senate Community, Economic & Recreational Development
3. <u>2/11/09</u>	<u></u> Representative Dante Santoni, Jr.	House Gaming Oversight
4. <u>2/11/09</u>	<u></u> Representative Curt Schroder	House Gaming Oversight
5. <u>2/11/09</u>	<u></u>	Independent Regulatory Review Commission
6.		Legislative Reference Bureau

H-1
H-1