

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Gaming Control Board

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

125 - 92

IRRC Number:

2731

(3) Short Title

Smoking in Licensed Facilities

(4) PA Code Cite

58 PA. Code §§ 441a.25 & 467a.1

(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 new § 441a.25 (relating to smoking in licensed facilities) and amends § 467a.1 (relating to gaming floor plan) to implement the provisions of the Clean Indoor Air Act.

(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.

§§ 3 and 4 of Clean Indoor Air Act (Act 27 of 2008)(relating to prohibition; and signage) provide most of the authority for the specific provisions of this rulemaking.

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.

Clean Indoor Air Act (Act 27 of 2008) sets specific limitations on smoking in licensed facilities.

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

This rulemaking will give clear guidance to slot machine licensees concerning where smoking is permitted, how changes to the designated smoking areas may be made and what signage is required.

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

Implementation of these regulations and Act 27 will reduce health risks associated with smoking and second-hand smoke.

(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 11 currently licensed slot machine licensees who will be affected will benefit from having a clearer understand of what they must do to comply with Act 27.

The general public at licensed facilities will benefit from reduced exposure to smoke.

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(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 approval process for changes to the designated smoking areas on the gaming floor, installation of required signage and training of their employees.

These will apply to the 7 currently operating licensed facilities and 5 casinos yet to be opened. It will not apply to the 2 licensed facilities in Philadelphia because Philadelphia's smoking ban will apply to those 2 casinos.

(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 that elects to allow smoking in their licensed facility will have to comply with this regulation.

Currently, all licensed facilities (except the 2 in Philadelphia) are anticipated to have designated smoking areas.

(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.

A letter was sent to all slot machine licensees on July 24, 2008, requesting that they submit updated floor plans identifying areas where smoking would be permitted and a procedure for calculating future increases in the areas where smoking would be allowed. This rulemaking reflects some of the comments that the Board received in response to that letter.

(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 will bear the costs associated with filing changes to their gaming floor plan whenever they desire to change the designated smoking areas and for training their employees.

Because this is a new statute, the costs are not yet known. The Board is estimating that the cost associated with requesting a change to a slot machine licensee's gaming floor plan should not exceed \$2500. Because the training of employees on their responsibilities under Act 27 can be incorporated into existing training programs, the Board does not anticipate that the training requirement will impose any significant costs on the slot machine licensees.

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 rulemaking.

(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.

Because requests for changes to a slot machine licensee's gaming floor plan will be handled by existing staff, the Board anticipates that there will be no costs or savings to the Board or other agencies in state government as a result of this rulemaking.

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	\$35,000	\$87,500	\$45,000	\$12,500	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	\$35,000	\$87,500	\$45,000	\$12,500	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.

The costs shown above reflect an average of 3 requests for gaming floor revisions annually from each operating casino. Because Act 27 caps the amount of the game floor that can be designated for smoking, the Board anticipates that the casinos will reach that cap within 2 years.

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.

This regulation will allow slot machine licensees to increase the portions of the gaming floor designated as smoking areas when the average revenue from slot machines in the designated smoking areas exceeds the average revenue per slot machine in the designated nonsmoking areas up to the 50% maximum contained in Act 27.

(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 Act 27 alone. However this could have created uncertainty as to how to calculate and request increases to the designated smoking areas on the gaming floor.

(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.25 and amend § 467a.1 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.

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(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 will have to submit a request and revised floor plan any time they want to make a change to their designated smoking areas.

(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 first quarter of 2009.

(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)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

Angela M. Elliott

By: _____

(Deputy Attorney General)

OCT 24 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- 92

DATE OF ADOPTION: 9-30-08

BY: *Mary DiGiacomo*
Mary DiGiacomo Collins, 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

9-30-08

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, SUBPARTS C & E
§§ 441a.25 & 467a.1

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CHAPTERS 441a AND 467a]

SMOKING IN LICENSED FACILITIES

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 specific authority contained in §§ 3 and 4 of the Clean Indoor Air Act (Act 27 of 2008) (relating to prohibition; and signage) proposes to amend Chapters 441a and 467a (relating to slot machine licenses; and commencement of slot operations) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking adds a new § 441a.25 (relating to smoking in licensed facilities) and amends § 467a.1 (relating to gaming floor plan) to implement the provisions of the Clean Indoor Air Act.

Explanation of Amendments to Chapters 441a and 467a

The new § 441a.25 sets forth the procedures and requirements that slot machine licensees must comply with as a result of the passage of the Clean Indoor Air Act (Act 27).

Subsection (a) mirrors the provisions of Act 27 which restrict smoking to no more than 25% of the gaming floor on September 11, 2008, the effective date of Act 27, and limit the maximum amount of the gaming floor that may eventually be designated as smoking to 50% of the gaming floor.

Subsection (b) reflects the requirement of Act 27 that slot machine licensees request a gross terminal report from the Department of Revenue on December 10, 2008, and subsection (c) reflects the slot machine licensees' right to request subsequent reports on a quarterly basis.

Subsection (d) parallels the language of Act 27 that permits proportionate increases in the amount of the gaming floor designated for smoking areas when there is a difference in the average gross terminal revenue for slot machines in the smoking areas as opposed to the slot machines in the nonsmoking areas.

Subsection (e) sets forth the process slot machine licensees will be required to use whenever they want to make a change to the designated smoking areas. Changes to designated smoking areas will be submitted to the Board's Executive Director, who will verify that the changes are consistent with the provisions of Act 27 and the Board's regulations. Once this is done, the slot machine licensee will be notified and may proceed with the changes.

Subsection (f) reflects the provision of Act 27 that allows a slot machine licensee who is operating a temporary licensed facility to use the same percentage of square footage designated for smoking areas in the temporary licensed facility in the permanent licensed facility. For example, if a slot machine licensee is authorized to designate 35% of the gaming floor in the temporary licensed facility as smoking, the slot machine licensee will be able to designate 35% of the gaming floor in the permanent facility as smoking.

Subsection (g) requires signage that clearly delineates where smoking may or may not be permitted on the gaming floor and requires that signs be posted at all public entrances which indicate that smoking is permitted in designated areas. While Act 27 only requires "smoking permitted" signs at entrances, such signs at a licensed facility could give patrons the misimpression that they can smoke anywhere in the licensed facility. Because licensed facilities are only partially exempt from the smoking ban, language reflecting that fact is needed at the entrances to licensed facilities.

The Board is also seeking comments on whether or not smoking or nonsmoking labels should be required on each individual slot machine. In particular the Board is requesting input on the effectiveness of individual labels and the costs and possible logistical problems that would be associated with placing labels on each slot machine.

Subsection (h) requires slot machine licensees to provide training to their employees on where smoking is and is not permitted and on what the employees should do if they see an individual smoking in a nonsmoking area.

Lastly § 467a.1 has been amended to add designated smoking areas as one of the items that must be depicted on gaming floor plans.

Affected Parties

This proposed rulemaking will affect any slot machine licensee that permits smoking in designated areas in a licensed facility.

Fiscal Impact

Commonwealth

Under this proposed rulemaking the Board's Executive Director will be required to review requests filed by slot machine licensees desiring to change the size or location of the designated smoking areas in their licensed facilities. These requests will be handled by existing staff so the Board does not foresee that there will be any 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 direct fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Affected slot machine licensees will experience costs related to submitting changes to their gaming floor plans to designate areas where smoking is permitted; for posting signs indicating where smoking may or may not occur; and training their employees.

The actual costs will vary by licensed facility depending on how frequently a slot machine licensee elects to make changes to their gaming floor. Costs per change are anticipated not to exceed \$2500.

Violations of these regulations could subject the slot machine licensee to fines between \$250 to \$1000 under Act 27 and other disciplinary action by the Board.

General Public

This proposed rulemaking will have no fiscal impact on the general public. However, under Act 27, individuals who smoke in areas designated as nonsmoking will be subject to fines of \$250 to \$1000.

Paperwork requirements

Slot machine licensees will have to submit a request and revised floor plan any time they want to make a change to their designated smoking areas.

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 Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P.O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-92.

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 October 28, 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 and is available on the Board's website (www.pgcb.state.pa.us).

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.25. Smoking in licensed facilities.

(a) Beginning on September 11, 2008, a slot machine licensee, except a slot machine licensee whose licensed facility is located in a city of the first class that has prohibited smoking in public places, may permit smoking on up to 25% of the square footage of the gaming floor. A slot machine licensee may increase the area of the gaming floor where smoking is permitted to a maximum of 50% of the square footage of gaming floor in accordance with the procedures in subsections (b) - (e) of this section.

(b) On December 10, 2008, or 90 days after commencement of slot operations at the licensed facility, whichever occurs later, a slot machine licensee shall request a report from the Department that analyzes the gross terminal revenue per slot machine unit in operation at the licensed facility within the 90-day period preceding the request.

(c) After receipt of the initial report under subsection (b), a slot machine licensee may request additional reports from

the Department that analyze the gross terminal revenue per slot machine unit in operation at the licensed facility within the 90-day period preceding the request on a quarterly basis.

(d) When a report from the Department indicates that the average gross terminal revenue per slot machine unit in the designated smoking areas exceeds the average gross terminal revenue per slot machine unit in the designated nonsmoking areas, the slot machine licensee may, after verification by the Board's Executive Director, increase the square footage of the gaming floor designated for smoking in proportion to the percentage difference in revenue. The designated smoking areas may at no time exceed 50% of the square footage of the gaming floor.

(e) A notice of intent to increase, decrease or reconfigure the square footage of the gaming floor designated for smoking shall be submitted to the Board's Executive Director in writing and include a revised gaming floor plan. The Executive Director will review the revised gaming floor plan to verify compliance with the Clean Indoor Air Act (Act 27 of 2008) and this part. A slot machine licensee may not implement the increase, decrease or reconfiguration until compliance is verified.

(f) If a slot machine licensee moves from a temporary licensed facility to a permanent licensed facility, the slot machine licensee may utilize the current percentage of the

square footage of the temporary licensed facility that is designated for smoking areas to determine the percentage of the square footage in the permanent facility that may be designated smoking areas. The designated smoking areas in the permanent facility shall be indicated on the gaming floor plan for the permanent facility submitted to the Board under § 467a.1.

(g) Slot machine licensees that permit smoking in designated areas of the licensed facility must post signs, which at a minimum, contain the words "Smoking" or "No Smoking" or the international "No Smoking" symbol, to clearly delineate smoking and nonsmoking areas. Slot machine licensees that permit smoking in designated areas of a licensed facility must also post signs that contain the phrase "Smoking Permitted in Designated Areas" at every public entrance to the licensed facility.

(h) Slot machine licensees that permit smoking in designated areas of the licensed facility shall provide training to their employees on:

(1) Where smoking is and is not permitted.

(2) The procedures employees should follow if an employee sees an individual smoking in an area that is not designated for smoking.

* * * * *

SUBPART E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

* * * * *

CHAPTER 467a. COMMENCEMENT OF SLOT OPERATIONS

§ 467a.1. Gaming floor plan.

(a) An applicant for, or holder of a slot machine license, shall submit to the Board a floor plan of its gaming floor and the restricted areas servicing the slot operation. A floor plan must be:

* * * * *

(2) Certified by an architect licensed to practice in this Commonwealth and depict the following:

* * * * *

(xii) Designated smoking areas.

(xiii) Additional documentation requested by the Board relating to the floor plan for the gaming floor.

* * * * *

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

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I.D. NUMBER: 125-92

DATE: 10-28-08

INDEPENDENT REGULATORY
REVIEW COMMISSION

SUBJECT: Subparts C & E – Sections 441a.25 & 467a.1

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>10-28-08</u>	<u>[Signature]</u> (Rep. James)	House Gaming Oversight Committee
2. <u>10/28/08</u>	<u>[Signature]</u> (Rep. Clymer)	
3. <u>10-28-08</u>	<u>[Signature]</u> (Senator LaValle)	Senate Community, Economic & Recreational Committee
4. <u>10-28-08</u>	<u>[Signature]</u> (Senator Earll)	
5. <u>10/28/08</u>	<u>[Signature]</u>	Independent Regulatory Review Commission
6. <u>10/28/08</u>	<u>[Signature]</u>	Legislative Reference Bureau