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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 - 72

IRRC Number: 2646

(3) Short Title

Amendments to Chapters 421a and 423a

(4) PA Code Cite

58 PA. Code
Chapters 421a and 423a

(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.

These amendments add a new section to Chapter 421a relating to advertising and add new provisions for abandoned applications to § 423a.a.

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

§ 1202(b)(30) of the Act (4 Pa.C.S. § 1202(b)(30)) provides the Board with general authority to promulgate regulations the Board deems necessary to carry out the policy and purposes 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?

The amendments to Chapter 421a establish rules to protect the general public from inappropriate advertising by slot machine, manufacturer and junket licensees.

Promulgation of the amendments to Chapter 423a are necessary to establish a new process for dealing with abandoned applications.

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

Without these regulations slot machine, manufacturer and junket licensees will not have clear guidance concerning advertising practices.

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

Slot machine, manufacturer and junket licensees will have a clearer understanding of what are acceptable advertising practices. There are 11 currently approved slot machine licensees; 16 licensed manufacturers and no licensed junkets.

Applicants whose applications are deemed abandoned will be able to apply for a license, permit or registration immediately thereby increasing their ability to be employed in the gaming industry.

The Board anticipates there will be about 100 applications abandoned annually. This number may be higher in any year where a new licensed facility opens because of the increased number of gaming permit and nongaming registration applications.

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.)

Because these regulations add clarity, no one will be adversely affected by these changes.

(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.)

Slot machine, manufacturer and junket licensees will have to comply with these regulations. There are 11 currently approved slot machine licensees; 16 licensed manufacturers and no licensed junkets.

(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 these amendments.

(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.

The Board anticipates that there will be no significant costs or savings to the regulated public as a result of these amendments.

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 significant costs or savings to local governments as a result of these amendments.

(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.

The Board anticipates that there will be no significant costs or savings to state government as a result of these amendments.

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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	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.

The Board anticipates that there will be no significant costs or savings as a result of the adoption of these amendments.

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.

As noted in the previous responses, there are no anticipated costs or savings associated with these amendments.

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

There were no alternatives considered because the current regulations could only be changed by amending the current 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 these amendments 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.

These regulations will amend existing provisions in Chapters 421a and 423a 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.

The proposed amendments do not change or add new reporting, record keeping or paperwork requirements.

(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.

No special provisions have been added.

(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 early in 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)

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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

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.: 125-72

DATE OF ADOPTION: *1/24/2008*

BY: *Mary DiGiacomo*

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.

**FINAL FORM RULEMAKING
COMMONWEALTH OF PENNSYLVANIA**

**58 PA. CODE, SUBPART B
CHAPTER 421a & 423a**

RULES AND REGULATIONS

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CHAPTERS 421a and 423a]

GENERAL PROVISIONS; AND APPLICATIONS

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) amends Chapters 421a and 423a (relating to general provisions; and applications) to read as set forth in Annex A.

Purpose of the Final-form Rulemaking

These amendments add new provisions relating to advertising and abandoned applications.

Explanation of the Amendments to Chapters 421a and 423a

This rulemaking adds a new § 421a.6 to Chapter 421a which: allows the Board to require slot machine, manufacturer and junket licensees to cease using inappropriate advertising; defines what will be considered to be advertising; prohibits the use of false or misleading information; requires the inclusion of a toll-free gambling assistance telephone number in any advertisement which must be approved utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling); and bars slot machine, manufacturer and junket licensees from using individuals to induce patrons to engage in gaming or play a specific slot machine.

This rulemaking also amends § 423a.4 (relating to deficient applications) by adding new provisions governing abandoned applications.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 5804 (October 27, 2007).

The Board received comments from International Gaming Technology (IGT) during the public comment period. On December 26, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC). All of

these comments were reviewed by the Board and are discussed in detail below.

On subsection 421a.6(a), IIRC commented that the phrases "as expeditiously as possible" and "within the spirit of the act" lacked clarity. IIRC suggested that a specific time period be established in lieu of "as expeditiously as possible" and that specific criteria be inserted to define what would be "within the spirit of the act."

The Board agrees that "as expeditiously as possible" does not set a specific time period. However, the wide range of types of advertisements restricts the Board's ability to set a reasonable specific time period that would work for all types of advertisements. For example, television and radio advertisements may be able to be discontinued within days but print advertisements make require much longer time frames. To provide some flexibility for the affected licensees, the Board is retaining the proposed language. The Board will work with licensees on a case by case basis to discontinue inappropriate advertisements as quickly as possible.

Concerning IIRC's second suggestion for this subsection, the Board has replaced the phrase "is not within the spirit of the act" with the phrase "could adversely impact the public or the integrity of gaming." This should provide licensees with a better understanding of what the Board will be looking for in advertisements.

On subsection 421a.6(b) IIRC asked if this regulation would apply to emails to existing or potential customers and if there is a difference between "advertisements" and "promotions."

As IIRC has noted, many advertisers today use email as a direct means of reaching existing and potential customers. Accordingly, email has been added to the list of items that are considered to be advertisements in the final-form regulation.

Advertisements are intended to encourage individuals to come to a licensed facility. Promotions, which generally offer something to individuals as an inducement for the individuals to participate in gaming, are just one type of advertising. Therefore, the use of the term "promotion" in the regulation is somewhat redundant and is not necessary. For this reason, the Board has eliminated the term in the final-form regulation.

On subsection 421a.6(d) IGT had two suggestions. First, IGT suggested that the Board add specific language that would be acceptable to the Board so that individual reviews by the Director of the Office of Compulsive and Problem Gambling would not be necessary. Second, IGT suggested that messages transmitted to a player from a slot machine be exempt from this section. IRRC concurred with IGT's first suggestion and asked if this requirement would also apply to promotions.

To give licensees some flexibility, the Board has elected not to mandate specific language that must be used by all licensees. However, to reduce the need for numerous filings the Board has added the phrase "if it has not been previously approved by the Director of the Office of Compulsive and Problem Gambling" to subsection (d). This will substantially reduce the number of approvals the affected licensees will have to obtain. For example, if a slot machine licensee has received approval under § 501a.5(b) or this section for the text and font size for print advertisements, each time the slot machine licensee does a new print advertisement, the slot machine licensee would not need to have the text and font size approved again unless it wanted to make a change. Additionally, the Board adopted a statement of policy on January 24, 2008, which provides guidelines on acceptable text and font sizes.

Concerning IGT's second suggestion, it was not the Board's intent to apply subsection (d) of this regulation to the messages printed on slot machines at this time. The Board is currently reviewing the messaging capabilities of slot machines and slot monitoring and casino management systems. If the Board finds that there is a need to expand subsection (d) to include these messages, it will do a new proposed rulemaking.

As to IRRC's question concerning promotions, as noted above the Board has deleted the term "promotion" because promotions are a type of advertisement.

In subsection 421a.6(e) IGT and IRRC asked for clarification of the term "virtual facsimile."

The Board's intent in this provision was to ban the use of individuals or video or electronic reproductions of individuals to pressure patrons to engage in gaming or to play a particular machine. However, it was not the Board's intent to prohibit slot machines from using general messages to attract a player's attention. Because technological advances in displays used on slot machines now allow life-like video reproductions, the Board

has eliminated the phrase "virtual facsimile" from this subsection of the regulation. To further clarify the Board's intent, the term "induce" has been replaced with "persuade or convince."

Additional Revisions

In addition to the revisions discussed above, the Board added the phrase "or the statement required under subsection (d)" to § 421a.6(c)(2) to make it clear that the prohibitions in subsection (c) also apply to the statement pertaining to assistance for gambling problems.

Additionally, minor formatting changes were made to §421a.6(c) to improve clarity.

Affected Parties

Under this final-form rulemaking slot machine, manufacturer and junket licensees will be required to cease using inappropriate advertising upon receipt of written notice from the Board and will have to have the language relating to a toll-free gambling assistance telephone number that will be used in any advertisement approved by the Director of the Office of Compulsive and Problem Gambling. There are 11 currently approved slot machine licensees, 16 licensed manufacturers and no licensed junkets.

Applicants whose applications are deemed abandoned, instead of being denied, will be able to file a new application immediately instead of having to wait five years.

Fiscal Impact

Commonwealth

There will be no new costs to the Board or other Commonwealth agencies as a result of this regulation. The Director of the Office of Compulsive and Problem Gambling currently reviews the toll-free gambling assistance telephone number message that is used in advertisements.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

The Board anticipates that there will be no significant new costs or savings to slot machine, manufacturer and junket licensees as a result of these amendments because they reflect existing requirements.

Applicants whose applications are deemed abandoned will be able to apply for a license, permit or registration immediately thereby increasing their ability to be employed in the gaming industry.

General Public

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

Paperwork requirements

These amendments do not change or add new reporting, record keeping or paperwork requirements.

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, 717-214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 15, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 5804 (October 27, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

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

Findings

The Board finds that:

(1) Public notice of intention to adopt these chapters 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 VII (relating to gaming).

Order

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

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by adding final regulations in § 421a.6 and amending the final regulation in § 423a.4 to read as set forth in Annex A, with ellipses referring to existing text of the regulations.

(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 COLLINS,
Chairman

Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

SUBPART B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS.

* * * * *

§ 421a.6. Advertising.

(a) Slot machine, junket and manufacturer licensees will be required to discontinue as expeditiously as possible the use of a particular advertisement ~~or promotion~~ upon receipt of written notice from the Board that the Board has determined that the use of the particular advertisement ~~or promotion~~ in, or with respect to, this Commonwealth ~~is not within the spirit or intent of the act~~ COULD ADVERSELY IMPACT THE PUBLIC OR THE INTEGRITY OF GAMING.

(b) For purposes of this section, the term "advertisement" means marketing materials including signs, billboards, print, radio and television advertisements, EMAILS and any notice or communication by a slot machine, junket or manufacturer licensee or its agent to the public ~~of information concerning the gaming-related business of a slot machine licensee~~ through broadcasting, publication, mailing or other means of dissemination.

(c) Advertisements used by slot machine, junket or manufacturer licensees ~~may not contain false or misleading information.~~ An advertisement may not:

(1) CONTAIN FALSE OR MISLEADING INFORMATION.

~~(1)~~ (2) Use a font, type size, location, lighting, illustration, graphic depiction or color obscuring any material fact OR THE STATEMENT REQUIRED UNDER SUBSECTION (d).

~~(2)~~ (3) Fail to disclose any material conditions or limiting factors associated with the advertisement.

(d) Advertisements must contain a statement that is similar to the following: "If you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the statement and type size to be used for the statement, IF IT HAS NOT BEEN PREVIOUSLY APPROVED BY THE DIRECTOR OF THE OFFICE OF COMPULSIVE AND PROBLEM GAMBLING, shall be submitted to the Director of the Office of Compulsive and Problem Gambling for approval utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan).

(e) A slot machine, junket or manufacturer licensee or an agent thereof may not employ or contract with an individual, ~~or use a virtual facsimile thereof, at a licensed facility to~~ induce PERSUADE OR CONVINCE a person to engage in gaming or play a specific slot machine AT A LICENSED FACILITY.

CHAPTER 423a. Applications.

* * * * *

§ 423a.4. Deficient and abandoned applications.

(a) If an application is found to be deficient, the Board will notify the applicant of the deficiencies in the application and permit the applicant to cure the deficiencies within a time period prescribed by the Board.

(b) [Refusal] Failure to provide the information necessary to cure the deficiencies required under subsection (a) may result in the immediate denial of the application or in the application being declared abandoned.

(c) When an application is denied or declared abandoned under subsection (b), the applicant will be given written notice of this action by the Board. An applicant whose application is denied will be subject to the restrictions on filing a new application in § 423a.7 (relating to restriction on application after denial or revocation). An applicant whose application has been declared abandoned may file a new application at any time.

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

FISCAL NOTE: 125-72

**International Game Technology ("IGT")
IRRC**

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

I.D. NUMBER: 125-72

DATE: 1/24/2008

SUBJECT: Subpart B, Chapters 421a & 423a

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

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REVIEW COMMISSION

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1. <u>1/24/08</u>	<u>Eileen Guich</u>	House Gaming Oversight Committee
2. <u>1/24/08</u>	<u>[Signature]</u>	
3. <u>1/24/08</u>	<u>Jeanette D'Amico</u>	Senate Community, Economic & Recreational Committee
4. <u>1/24/08</u>	<u>Eileen Guich</u>	
5. <u>1/24/08</u>	<u>Kathy Cooper</u>	Independent Regulatory Review Commission
6. _____	_____	Legislative Reference Bureau