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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2692

Regulatory Analysis Form

(1) Agency

Pennsylvania Gaming Control Board

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

125 - 85

(3) Short Title

Amendment to the definition of "licensed facility"

(4) PA Code Cite

58 PA. Code § 401a.3

(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 amendment expands the definition of the term "licensed facility" to provide greater clarity as to what areas are considered to be part of the licensed facility.

(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?

Questions have arisen concerning what is considered to be part of a licensed facility. For example, § 1305(b) of the Act (relating to Category 3 slot machine license) requires that no Category 3 license shall be located within 15 linear miles of another licensed facility. Questions have been raised as to whether the 15 linear miles should be measured from the property line of the licensed facility or the building that houses the gaming floor.

Expanding the definition of "licensed facility" in the regulations will clarify what the Board considers to be the "licensed facility."

(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 associated with this regulation.

(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 and holders of slot machine licenses will have a clearer understanding of what is and isn't part of a licensed facility.

There are 11 slot machine licensees and 4 applicants for slot machine licenses.

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.)

No one will be adversely affected by this proposed rulemaking.

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

All applicants for or holders of slot machine licenses will have to comply with any requirements that use the term "licensed facility."

There are 11 slot machine licensees and 4 applicants for slot machine licenses.

(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.

The issue of what constitutes a licensed facility has been raised in some slot machine licensing proceedings.

(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 associated with this rulemaking.

A clearer definition of licensed facility may generate some benefits for applicants or potential applicants for slot machine licenses.

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.

Under Section 1403 of 4 Pa.C.S. (relating to establishment of State Gaming Fund and net slot machine revenue distribution) the distribution of funds from the local share assessment is based upon the location of the licensed facility. For slot machine licensees that have facilities in more than one county or municipality this proposed rulemaking could have a fiscal impact on those political subdivisions.

The total amount of funds to be distributed will not be affected; but the distribution of those funds to the various political subdivisions might be.

(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 is the only state agency affected by the amendment. The Board estimates that there will be no significant costs or savings to the Board associated with this amendment.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	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.

There are no measurable costs 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.

The benefit from this regulation will be a better understanding of what is and is not considered to be part of a licensed facility.

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

The Board considered just relying on the existing definition. However, the Board believes that this amendment provides greater clarity to applicants for and holders of slot machine licenses.

(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 rulemaking will amend the existing definition of "licensed facility" in § 401a.3 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.

This amendment does not change any 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 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)

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

[Signature]

By: _____
(Deputy Attorney General)

APR 17 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- **85**

DATE OF ADOPTION: **3/27/08**

BY: *[Signature]*
Mary DiGiacomo Collins, CHAIRMAN

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

[Signature]

BY: _____
Frank Dorraghue, Chief Counsel

3/27/08

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 A

CHAPTER 401a

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CHAPTER 401a]

Preliminary Provisions

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers), proposes to amend Chapter 401a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking is intended to provide additional clarification as to how the Board interprets the term "licensed facility."

Explanation of Amendment to Chapters 401a

Currently, the Board's regulations use the definition of "licensed facility" that is contained in Section 1103 of 4 Pa.C.S. (relating to definitions).

However, a number of questions have arisen as to how the term should be interpreted. For example, Section 1305(b) of 4 Pa.C.S. (relating to Category 3 slot machine license) requires that no Category 3 license shall be located within 15 linear miles of another licensed facility. Questions have been raised as to whether the 15 linear miles should be measured from the property line of the licensed facility or the building that houses the gaming floor.

To provide greater clarity to applicants for and holders of slot machine licenses, the Board, through this proposed rulemaking, is expanding the definition of "licensed facility" to clarify that it includes the gaming floor, all restricted areas servicing the slot operations, all adjacent and proximate amenities, such as food, beverage and retail outlets and other areas directly accessible from the gaming floor or restricted areas. The term will not include areas that are exclusively devoted to pari-mutual activities, hotel activities or other amenities not related to the slot machine gaming operations.

Affected Parties

All holders of and applicants for a slot machine license may be affected by this proposed rulemaking.

There are currently 11 slot machine licensees and 4 applicants for slot machine licenses.

Fiscal Impact

Commonwealth

The Board anticipates that this proposed rulemaking will have no fiscal impact on the Board or other agencies of the Commonwealth.

Political Subdivisions

Under Section 1403 of 4 Pa.C.S. (relating to establishment of State Gaming Fund and net slot machine revenue distribution) the distribution of funds from the local share assessment is based upon the location of the licensed facility. For slot machine licensees that have facilities in more than one county or municipality this proposed rulemaking could have a fiscal impact on those political subdivisions.

Private Sector

To the extent that this proposed rulemaking clarifies the definition of the term "licensed facility" there may be some small potential savings to applicants or potential applicants for a slot machine license.

General Public

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

Paperwork requirements

This proposed rulemaking will create no new paperwork requirements.

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 #125-85.

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 April 21, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (Commission) 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, the Commission 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 A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

* * * * *

§ 401a.3. Definitions.

* * * * *

Licensed facility - The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines including the gaming floor and all restricted areas servicing slot operations together with all adjacent and proximate amenities, including but not limited to food, beverage and retail outlets and other areas directly accessible from the gaming floor or the restricted areas servicing slot operations. The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities and other amenities and activities not related to slot machine gaming operations.

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

I.D. NUMBER: 125-85

DATE: 4/21/08

SUBJECT: Subparts A, Chapter 401a

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 Tolloed Regulation

a. With Revisions

b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1. <u>4/21/2008</u>	<u>Rebecca A. James</u> (Rep. James)	House Gaming Oversight Committee
2. <u>4/21/08</u>	<u>Eileen Clymer</u> (Rep. Clymer)	
3. <u>4/21/08</u>	<u>Jim LaValle</u> (Senator LaValle)	Senate Community, Economic & Recreational Committee
4. <u>4-21-08</u>	<u>Elizabeth Earl</u> (Senator Earl)	
5. <u>4/21/08</u>	<u>Kelly Cooper</u>	Independent Regulatory Review Commission
6. <u>4/21/08</u>	<u>C. Lee Brown</u>	Legislative Reference Bureau