

FINAL-FORM RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CH. 401a., 403a., 405a., 407a., 437a., 461a., 471a., 491a., 493a., 494a., 495a., 497a., 499a., 501a. and 511a.]

**PRACTICE AND PROCEDURE; SERVER SUPPORTED SLOT SYSTEMS;
COMPULSIVE AND PROBLEM GAMBLING**

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 4 Pa.C.S. §§ 1207(2) and (9) proposes to amend Chapters 401a, 403a, 405a, 407a, 437a, 461a, 471a, 491a, 493a, 494a, 495a, 497a, 499a, 501a, 511a to read as set forth in Annex A.

Purpose of the Rulemaking

This rulemaking revises the agency's practices and procedures to improve the clarity and effectiveness of the Board's regulations. This rulemaking also updates the requirements for server supported slot systems, a new gaming technology to the Commonwealth.

Explanation of Amendments and Additional Revisions to Chapters 401a, 403a, 405a, 407a, 437a, 461a, 471a, 491a, 493a, 494a, 495a, 497a, 499a, 501a, 511a.

Throughout this rulemaking, the term "resolution" was changed as the Board issues Orders and Adjudications and issues Resolutions only in limited and specific instances. Also, several of the references to the Board were changed as the functions described are functions of agency staff.

In chapter 401a (relating to preliminary provisions), the definition of nongaming employee was updated to reflect that both registered and certified gaming service providers may have nongaming employees. Additionally, the Board's website, which was recently changed, was added to the definitions that are applicable to all regulations relating to Part VII.

In chapter 403a. (relating to Board operations and organization), section a.7(a) was amended allowing the Executive Director and the Executive Director's designee (typically a

hearing examiner), to issue a temporary emergency order. The remainder of subsection (a) was deleted as redundant with subsection (f).

In subsection (b), language was added which would now allow the issuance of an emergency order to temporarily exclude a person from a licensed facility pending Board action on an underlying petition for exclusion. This provision was added as individuals have been discovered cheating at other facilities while awaiting Board action on a petition for exclusion. This provision will not be utilized except in those instances in which an individual meets the criteria established in subsection (c) and in § 511a.4(c) (relating to duties of the Bureau and the Office of Enforcement Counsel).

Subsection (c) was amended for clarity and to specify the criteria necessary for emergency suspension or exclusion. Subsection (c)(2) relating to tax obligations was deleted. If a licensee fails to pay a required assessment or tax obligation, the Office of Enforcement Counsel files an enforcement action, which would be heard by the Board or hearing officer, not a request for a temporary emergency order. The cross-reference to the exclusion or ejection criteria was added in its place.

Subsection (d) was updated to specify what type of action the agency is referring to in this section and more accurately reflect the information that the OEC is required to include in the request.

Subsections (e) and (g) were reworded for clarity. In subsection (f), the 72 hour requirement for an informal hearing found was changed to three business days. A 72 hour requirement is impractical as it does not account for holidays or weekends.

In subsection (h), the cross-reference to hearing locations was added.

Language was added in subsection (i) specifying what action the Executive Director or designee will take at the conclusion of the informal hearing. After reevaluating the informal nature of an emergency hearing, the language regarding subpoenas in subsection (i) and the procedure specified in subsection (j) were deleted in the final-form rulemaking. These provisions are applicable to formal hearings held before the Board or presiding officer, but not applicable to an informal hearing before the Executive Director.

Subsections (j) and (k) were rewritten providing that unless the Executive Director dissolves an emergency order, the matter will be referred to the Board for a formal hearing or, in most instances, directly to the office of hearings and appeals (OHA) to prepare a report and recommendation for the Board's consideration. Amending subsections (j) and (k) will delete an

unnecessary step in the process. Currently, all temporary emergency orders are first directed to the Board then, in most instances, are referred to OHA to have a hearing, then referred back to the Board for a final determination. Taking it first to the Board for subsequent referral can take several additional weeks, depending on when the next Board meeting is scheduled to take place. This additional time could be detrimental to those individuals employed by a licensee who are not otherwise able to work while their license, permit or registration is temporarily suspended. Shortening the process by deleting an unnecessary step could potentially result in individuals returning to work more quickly when suspension is ultimately deemed unnecessary.

The new subsection (k) provides that the Executive Director will retain jurisdiction to modify or dissolve a temporary emergency order until OHA issues a report and recommendation or the Board takes action on the suspension.

Subsection (m) was amended for clarity. Subsection (n) was deleted as redundant as the provisions in the subsection are covered by the general language under subsection (m)(1) which specifies that the Board may ratify or modify an order of suspension.

It is unnecessary to include that final orders of the Board are appealable as previously stated in subsection (o). Appeal rights are governed by the Pennsylvania Rules of Appellate Procedure which dictate that an appeal may be taken, as of right, from any final order of an administrative agency.

Language specifying forms of service in the new subsection (o) (old subsection (q)) was also deleted as redundant since the forms of service are already addressed in § 491a.5 (relating to service).

In subsection (p) (previously (r)), part (1) was deleted since hearing procedures are already covered in § 494a. The time period to have the hearing in the new part(1) was extended from 10 to 15 business days to allow for sufficient notice to the person who is the subject of the temporary order. Lastly, the types of service were deleted from new (2) since service is covered in § 491a.5. Since the process for temporary emergency orders was amended, subsection (3) was added in the final-form rulemaking.

Section 405a.6 (relating to Enforcement action) was amended allowing a person 30 days instead of 20 days to file an answer to an enforcement action. A response to an enforcement action is considered an answer. Answers to petitions are covered in § 493a.7(c) (relating to answers to complaints, petitions, motions and other filings requiring a response) and may include a notice

of defense. The reference to notice of defense was therefore deleted in subsection (c). In (c)(1), the OHA was added as both the Board and the OHA may conduct an administrative hearing.

In subsection (d) and (e), if a person fails to file an answer, the allegations in the enforcement action are deemed admitted. The Office of Enforcement Counsel then files a Notice of Default Judgment with the Board's Clerk which is served on the person in accordance with Board's procedures on service found in § 491a.5.

Chapter 407a. (relating to public access to Board files) was updated to reflect that the Clerk maintains a single file for all formal records which contains both confidential and non-confidential information within that file. Non-confidential information will still be available for inspection during normal business hours in accordance with subsection (b)(1).

The provisions regarding written requests for records, which were addressed in (b)(2) and (3), were deleted as inconsistent with the current interpretation of the right-to-know law. Pursuant to a recent Commonwealth Court decision¹, any request for information is a right-to-know law request, even if the request did not mention the right-to-know law, it was not addressed to a right-to-know officer or submitted on an agency designated form. To avoid a situation in which the PGCB is subject to right-to-know law remedies, including the possible ordered disclosure of confidential information, for failing to respond within 5 business days to a request the agency didn't believe was a right-to-know law request in the first instance, the agency has to now handle any request in accordance with the right-to-know law. The procedure in subsection (d) was therefore deleted because once a request for information is filed, the right-to-know law dictates the procedure for completing the request and the appeal rights if the request is denied as not a public record based on confidentiality.

The procedure for the marking of documents as confidential is addressed in § 493a.10a. (relating to motions to protect confidential information) and was therefore deleted from subsection (c).

Chapter 461a. (relating to slot machine testing and control) was amended to add information on server supported slot systems, which is a new gaming technology to the Commonwealth. In summary, a server supported slot machine is connected to a computer which can download different games or features directly

¹ See *Pennsylvania Gaming Control Bd. v. Office of Open Records*, 48 A.3d 503 (Pa.Cmwltth, 2012).

to the slot machine. The definitions applicable to server supported slot systems were added in § 461a.1 (relating to definitions) and were therefore deleted from § 461a.20(a) (relating to server supported slot systems). The existing provisions found in (b) - (e) were deleted and replaced. The new provisions (a) - (p) address the requirements for server supported slot systems, administrator access to that system and the requirements for downloading new games or features from the server to the slot machine.

In subsection (d), the requirements for administrator access were modified slightly to allow two different departments to have access instead of two individuals who may not always be onsite.

The cross reference to the procedure for notifying technical field representatives prior to installing software was added in subsection (e). Lastly, not all systems are configured to allow individuals to input their Board issued credential numbers when logging into the system. Subsection (1)(2) was therefore expanded to allow for inputting an employee specific username instead of the board issued credential number.

In chapter 471a. (relating to fees), § 471a.1(a) was updated to reflect that the Board previously eliminated fees for the filing of pleadings.

The general rules of practice found in chapter 491a. have been amended for clarity and to more accurately reflect Board practice. The Board address was updated in § 491a.3(b) to reflect that the Office of Hearings and Appeals relocated to Strawberry Square.

In § 491a.7(f) (relating to presiding officers), a procedure for appealing a ruling of a presiding officer, while a matter is still pending before the presiding officer (interlocutory appeals), has been eliminated. The agency does not believe that interlocutory appeals are necessary as an individual who objects to a ruling of a presiding officer can file an exception to a report or report and recommendation of the presiding officer in accordance with §494a.7 which will be considered by the Board. If the Board believes that the ruling of the hearing officer was incorrect, the Board can address the matter directly or may refer it back to hearings and appeals.

In § 491a.8 (relating to hearings generally), subsection (d) was updated to reiterate the prohibition on engaging in ex parte communications and is consistent with the Gaming Act and

amendments made in the Board's rulemaking 125-141. An additional revision was made in the final-form rulemaking which eliminates the notice and an opportunity to participate. If notice and an opportunity to participate is given, by definition, the communication is not an ex parte communication.

Throughout chapter 493a. (relating to pleadings), language was added requiring a petitioner to include the Board issued credential number, if applicable, of the person that is the subject of the filing. In § 493a.2 (relating to complaints), language was added specifying that the Office of Enforcement Counsel alone, acting as the prosecutor in all noncriminal enforcement actions initiated by the Bureau (BIE), has standing to file formal complaints. In § 493a.4 (relating to petitions generally), subsection (a) was updated to reflect that the Office of Enforcement Counsel, acting as counsel to BIE, files petitions.

Language was added in § 493a.8 (relating to motions generally) which provides guidelines regarding when and how motions for procedural relief are to be made after the initiation of a proceeding. Interlocutory appeals were eliminated as described in § 491a.7 (relating to presiding officer).

In § 493a.10 (relating to motions for summary judgment and judgment on the pleadings), subsection (c) was amended to reflect that affidavits and admissions were removed from the provisions regarding discovery in §493a.11(c) (relating to discovery).

In § 493a.10a. (relating to motions to protect confidential information), petitioners that submit a filing that contains confidential information will be required to submit a motion to protect the confidential information, which contains the specific legal grounds to justify why the information should be deemed confidential, as well as a redacted version of the filing which will be available for immediate public release. This will ensure that confidential information is not inadvertently disclosed and will provide transparency in all filings with the agency.

The provisions on discovery contained in § 493a.11 (relating to discovery) were amended to clarify, streamline and more accurately define expectations regarding discovery

consistent with administrative practices throughout the Commonwealth.

In chapter 494a. (relating to hearing procedure), § 494a.3 (relating to documentary hearings) was deleted as documentary hearings are covered under hearings generally. In §494a.7 (relating to exceptions), the process was amended. Exceptions (or objections) to a hearing officer's report or report and recommendation that are filed by a party will not be addressed again by the hearing officer. Instead, the record, including the report or report and recommendation and any exceptions thereto, will be forwarded to the Board for its consideration.

Section 494a.10 (relating to reports of compliance) was also deleted. Agency staff verifies that Board orders are carried out. A licensee, permittee, registrant or certificate holder that does not comply with a Board order will be subject to an enforcement action filed by the Office of Enforcement Counsel. The Board, acting on an enforcement action, may then revoke, suspend or levy fines against any licensee, permittee, registrant or certificate holder.

In chapter 495a (relating to documentary filings), to conserve resources, a new subsection (b) was added in § 495a.6 (relating to number of copies) which allows for the electronic filing of pleadings and documents. If filed electronically, a paper submission is not required.

In chapter 501a. (relating to compulsive and problem gambling requirements), section 501a.4 (relating to reports) previously required slot machine licensees to submit a summary of its compulsive and problem gambling program with the licensee's annual renewal application. When the Gaming Act was amended, however, the renewal period was changed to once every three years. The amended language now requires the slot machine licensee to submit a summary of its compulsive and problem gambling program no later than the last business day of July. A new subsection (b) was added detailing the information that must be contained in the annual summary.

Chapter 511a. (relating to persons required to be excluded) was amended for consistency with amendments made to the Gaming Act with the passage of Act 1 in January 2010. Also, in § 511a.3 (relating to criteria for exclusion), a provision was added allowing persons to be added to the exclusion list if the person

poses a threat to the safety of people who are on the property of the licensed facility, such as persons located in the licensee's parking lot.

Language was added to § 511a.4 (relating to duties of the Bureau and the Office of Enforcement Counsel) allowing the Office of Enforcement to file a request for a temporary emergency order to temporarily place someone on the exclusion list until the Board act upon an underlying petition for exclusion. As discussed in § 403a.7(b) above, this provision was added because while awaiting Board action on an underlying petition for exclusion, individuals have been found cheating at other facilities. This provision will not be utilized except in those instances in which there is insufficient time to provide notice and a hearing prior to exclusion, emergency exclusion is necessary to preserve the public health, welfare or safety or the integrity of gaming in the Commonwealth and the individual meets the criteria established in the § 511a.3 (relating to criteria for exclusion or ejection).

In § 511a.5 (relating to placement on the exclusion list), the instances in which a person could be placed on the exclusion list were clarified. A person can be placed on the list upon entry of an order by the Board, receipt of an order form a court or temporarily upon the issuance of a temporary emergency order.

In § 511a.6 (relating to demand for a hearing on the placement of a person on the exclusion list), subsection (a) was updated to reflect that the Office of Enforcement Counsel files a petition to be placed on the exclusion list, which is served on the individual. Proposed subsections (c) and (e) were deleted as individuals are not immediately placed on the exclusion list unless the procedure for the issuance of a temporary emergency order is followed. Service of a request and issued temporary emergency order is addressed in §403a.7(g).

Specificity was added in § 511a.7 (relating to Board review) providing that after a hearing or if a hearing is not requested and the facts alleged in the complaint are deemed admitted, the Board may issue an order approving a petition for exclusion and place the person's name on the excluded list; may remove the person's name from the list; deny placement if no emergency placement was issued; or refer the matter back to OHA to develop the evidentiary record.

Comment and Response Summary

Notice of the proposed rulemaking was published at 41 Pa.B 5373 (October 8, 2011). The Board did not received any comments during the public comment period. On December 11, 2011, the Board received comments from the Independent Regulatory Review Commission regarding the proposed rulemaking.

Section 403a.7(h) of the proposed rulemaking stated that the location for an informal hearing would be determined by the Executive Director or his designee. IRRC asked how the notice of the location would be conveyed. In the final-form rulemaking, the language was amended adding the cross reference to section 491a.8 which addresses hearings and notice thereof.

Existing subsection (l) was deleted in the proposed and final-form rulemaking. In the proposed preamble, the Board explained that subsection (l) was deleted because it was duplicative of the hearing procedures in chapter 494a (relating to hearings generally). IRRC requested that the Board explain how the role of the Office of Enforcement Counsel is adequately addressed in chapter 494a.

Pursuant to § 1517 of the Act, the OEC acts as the prosecutor in all noncriminal enforcement actions. As the prosecutor, the OEC initiates, in its sole discretion, proceedings for violations of the act; files recommendations and objections relating to the issuance of licenses, permits and registrations; may petition the Board for the appointment of a trustee. Because the duties of the OEC are specified by statute, the Board does not believe it is necessary to reiterate those requirements by regulation.

Existing subsection (o) was deleted from the regulation. IRRC asked that the Board explain why the provision regarding the appeal rights was deleted from the rulemaking. This provision was deleted as unnecessary because appeal rights are governed by the Pennsylvania Rules of Appellate Procedure which dictate that an appeal may be taken as of right from any final order of an administrative agency. See Pa.R.A.P. 341. Additionally, since the Board does not issue resolutions related to this section, the provision was inapplicable.

The proposed rulemaking contained a provision in § 437a.2 regarding reimbursing the Board for costs incurred in the investigation of a gaming service provider. The section was removed from consideration in the final-form rulemaking and will

be addressed in a comprehensive amendment package on Subpart B (relating to licensing).

In § 461a.1 (relating to definitions), the Board has reviewed and amend the definitions associated with server supported slot systems.

In several subsections in § 461a.20, IRRC recommended that the Board add the cross reference to the approval process associated with server supported slot systems and associated software. When the regulation references an obligation of the licensee, the Board has added the reference to testing and software installation found in § 461a.26.

In subsection (a), IRRC commented that the requirement in the proposed rulemaking that server supported slot systems must comply with the general requirements of the chapter was too vague. The Board has therefore added more specificity regarding which specific sections are applicable.

In subsection (b)(2), IRRC commented that requiring server supported slot systems to verify authenticity as directed by the Board was not clear and could superseded the requirement listed. This language was intended to supersede 24 verification requirement in instances in which the authenticity of a copy of the component program is at issue. The Board, however, believes there are other mechanisms in place to verify copies of component programs and has therefore deleted the language from subsection (b)(2).

In 491a.2 (relating to definitions), the definition of consent agreement was amended to remove unnecessary language.

In §493a.9(f), 493a.10(e) and § 494a.4(e), the Board amended the language stating that the regulations now supersede instead of supplement provisions of the administrative code. IRRC inquired why the Board was making these amendments. The PGCB regulations should've superseded the administrative code provisions from the time the regulations were initially drafted. If the PGCB regulations merely supplemented the administrative code, the regulations, in some areas would conflict with the administrative code and would lead to confusion. For instance, the administrative code requires that answers or objections to motions be filed within 10 days while our requirement is 30 days. Additionally, our regulations address specific types of motions and the process to address those motions while the administrative code sections address motions generally. It is therefore unclear what part of the administrative code provisions the regulations are meant to supplement. The Board

therefore believed it necessary to amend the provision stating that the regulations will supersede the code provisions listed.

Regarding § 494a.7 (relating to exceptions), IRRC inquired about the timing of a response to an exception filed by an opposing party. In the final-form rulemaking, the Board amended the section on exceptions. New subsection (d) requires responses to exceptions be filed within 15 days of the date of service of the exceptions. Upon the expiration of the 15 days, the office of hearings and appeals will refer the record, including any exceptions and responses thereto, to the Board. The Board, not the hearing officer who completed the report or report and recommendation, will consider the matters addressed in exceptions and responses.

In § 495a.2 (relating to forms of documents), subsection (a) was amended stating that the Board may establish paper, printing and binding requirements for pleadings. IRRC was concerned that the Board would amend the requirements without notice to the regulated community. The agency does not currently have paper, printing or binding requirements for submissions. The agency does not feel the need, based on the Board's experience to date, to be prescriptive by requiring individuals to comply with the provisions specified in 1 Pa.Code § 33.2. During the licensing process in particular, applicants submit proposed floor plans, design schematics and application materials in all types of formats. The Board therefore prefers that parties have the flexibility to submit information in formats other than those defined in the code provision. If the Board determines it is necessary in the future to be prescriptive and establish paper, printing and binding requirements, the requirements will be printed in the *PA Bulletin* and posted on the Board's website.

The Board added a provision in § 495a.6(b) (relating to number of copies) stating that pleadings filed electronically will be considered originals. IRRC commented that more specific was needed regarding the type of electronic filings that would be accepted. The email address of the Board Clerk was therefore added to this subsection and in § 497a.1(a)(4) of the final-form rulemaking.

In § 501a.4 (relating to reports), IRRC commented that the requirement in (b)(4)(v) to include additional information as requested by the Director of OCPG was too vague. The Board removed this provision in the final-form rulemaking.

In § 511a.3(a)(4)(iv), the proposed rulemaking added language stating that a person could be placed on the exclusion list if the person posed a threat to persons in close proximity to the licensed facility. IRRC commented that the added language was too vague. This provision was therefore amended in the final-form rulemaking to include on the exclusion list those persons who pose a threat to persons on the property of the licensee, which would include a licensee's parking lot.

Affected Parties

This rulemaking will affect licensees, permittees and registrants and certificate holders as well as individuals who may be placed on the agency's exclusion list.

Fiscal Impact

Commonwealth

This rulemaking will streamline agency practice and procedure but should not have a fiscal impact on the Board or other Commonwealth agencies.

Political Subdivisions

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

Private Sector

Because this rulemaking deals primarily with internal agency practice and procedure, it is not anticipated that this rulemaking will have a fiscal impact on the private sector. However, those that submit information with the Clerk may now do so electronically, which should provide minor cost savings.

General Public

This proposed rulemaking will have no fiscal impact on the general public except those individuals who may be placed on the agency's exclusion list.

Paperwork requirements

This rulemaking will eliminate the need for paper submissions of filings with the Board. All filings submitted

electronically will be deemed originals. This rulemaking will also require petitioners that submit information of a confidential nature to provide redacted versions of the submission.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on **INSERT DATE**, 2012, the Board submitted a copy of the proposed rulemaking, published at **41 Pa.B. 1018 (February 26, 2011)** and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of comments received during the public comment period, as well as other documents when requested. With regard to this rulemaking, no comments were received from IRRC, the Committees or the public.

Under section 5.1(j.2) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the Committees on **INSERT DATE**. IRRC met on **INSERT DATE** and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act.

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 Chapters 401a, 403a, 405a, 407a, 437a, 461a, 471a, 491a, 493a, 494a, 495a, 497a, 499a, 501a, 511a to read as set forth in Annex A.

(b) The Chairman of the Board shall certify this order, 41 Pa.B. XXXX 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*.

WILLIAM H. RYAN, Jr.,
Chairman

ANNEX A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

The following words and terms, when used in this part, have the following meanings unless the context clearly indicates otherwise:

* * * * *

BOARD WEBSITE - gamingcontrolboard.pa.gov

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Nongaming employee - An employee of a slot machine licensee or a certified or registered gaming service provider who is not included within the definition of "principal," "key employee" or "gaming employee," and:

* * * * *

CHAPTER 403a. BOARD OPERATIONS AND ORGANIZATION

§ 403a.7. Temporary emergency orders.

(a) Upon request of the Office of Enforcement Counsel in accordance with subsection (d), a temporary emergency order may be issued by, ~~or on behalf of,~~ the Executive Director of the Board OR THE EXECUTIVE DIRECTOR'S DESIGNEE. A temporary

emergency order may be issued without a hearing and without advanced notice IN ACCORDANCE WITH THIS SECTION ~~and will notify the person to whom the temporary emergency order is issued that he may request a hearing to be held by the Executive Director or a designee within [72 hours] three business days of the request being filed with the [Board] Clerk.~~

(b) A temporary emergency order may be issued to suspend a license, certification, permit or registration; TO TEMPORARILY EXCLUDE A PERSON FROM A LICENSED FACILITY PENDING BOARD ACTION ON AN UNDERLYING PETITION FOR EXCLUSION; or to direct that a person ~~refrain from engaging in, or~~ cease and desist engaging in ~~in~~ specific conduct.

(c) A temporary emergency order may be issued if there is insufficient time to provide notice and hearing prior to ~~the issuance of the order~~ SUSPENSION OR EXCLUSION; ~~the order~~ EMERGENCY SUSPENSION OR EXCLUSION is necessary to preserve the public health, welfare, or safety or the integrity of gaming in the Commonwealth; and ~~determination of~~ THE EXECUTIVE DIRECTOR HAS DETERMINED THAT one of the following has occurred:

(1) A person holding a license, certification, permit or registration issued by the Board has been charged with or convicted of a felony, a criminal gaming offense, or crime of dishonesty or false statement or other offense that would make

the person ineligible or unsuitable to hold a license, permit, certification or registration.

(2) **[A licensee has failed to pay required assessments or to satisfy its tax obligations under the act.]** A PERSON MEETS ONE OR MORE OF THE CRITERIA FOR EXCLUSION OR EJECTION UNDER § 511a.3 (RELATING TO CRITERIA FOR EXCLUSION OR EJECTION).

(3) The action is necessary to prevent or cure a violation of any provision of the act, this part or other Federal or State laws or regulations.

(d) If the Office of Enforcement Counsel determines that circumstances exist which require that immediate action be taken AGAINST A PERSON'S LICENSE, CERTIFICATION, PERMIT OR REGISTRATION OR TO PLACE A PERSON ON THE EXCLUSION LIST, ~~on behalf of the Board, it~~ THE OFFICE OF ENFORCEMENT COUNSEL may submit a request for a temporary emergency order. The request will include:

(1) The circumstances upon which the ~~determination to~~ request FOR A TEMPORARY EMERGENCY ~~the~~ order was made.

(2) The LEGAL grounds upon which the TEMPORARY EMERGENCY order is being requested.

(3) The specific relief sought ~~in the order~~.

(e) ~~A temporary emergency order will be issued in writing and filed, together with the request for a temporary emergency order required by subsection (d), with the Clerk no later than~~

~~the close of the next business day following its issuance~~ NO LATER THAN THE CLOSE OF THE NEXT BUSINESS DAY FOLLOWING ITS ISSUANCE, A TEMPORARY EMERGENCY ORDER, TOGETHER WITH THE REQUEST REQUIRED UNDER SUBSECTION (d), WILL BE FILED WITH THE CLERK.

(f) A temporary emergency order will specify that the person subject to the temporary emergency order may request an informal hearing before the Executive Director **or a designee** WHICH SHALL OCCUR within **[72 hours] three business days** of filing the request FOR A HEARING with the Clerk.

(g) The Bureau will ~~cause the temporary emergency order and the request for a temporary emergency order required by subsection (d) to be served~~ SERVE THE REQUEST AND THE ISSUED ORDER upon the person named in the temporary emergency order. Service required by this subsection will be made as expeditiously as ~~practicable~~ POSSIBLE following the issuance of the order and the request. Service will be made in the manner prescribed by § 491a.5 (relating to service ~~by the Board~~).

(h) IF A PERSON FILES A REQUEST FOR AN INFORMAL HEARING, THE HEARING WILL BE HELD BEFORE THE EXECUTIVE DIRECTOR OR DESIGNEE WITHIN ~~Within [72 hours] three business days of the filing a request for an informal hearing with the Board, an informal hearing before the Executive Director or a designee will be held at [the Board headquarters]~~ **AT a location**

~~determined by the Executive Director or his designee~~ IN
ACCORDANCE WITH § 491a.8(e) (RELATING TO HEARINGS GENERALLY).

(i) AT THE CONCLUSION OF THE INFORMAL HEARING, THE
EXECUTIVE DIRECTOR OR A DESIGNEE WILL RENDER A DECISION WITHIN
THREE BUSINESS DAYS AS TO WHETHER THE TEMPORARY EMERGENCY ORDER
WILL CONTINUE, BE MODIFIED OR DISSOLVED. SERVICE OF THE DECISION
WILL BE MADE IN ACCORDANCE WITH § 491a.5 ~~The Executive Director~~
~~or a designee may sign subpoenas to secure the attendance of~~
~~witnesses and the production of documents.~~

(j) ~~The procedure for the informal hearing will be as~~
~~follows:~~

~~(1) The Executive Director or a designee will call the~~
~~hearing to order and present the request for a temporary~~
~~emergency order filed by the Office of Enforcement Counsel under~~
~~subsection (d).~~

~~(2) The person named in the temporary emergency order~~
~~may respond by submitting evidence and witnesses supporting the~~
~~position that the temporary emergency order should be dissolved~~
~~or modified.~~

~~(3) The Executive Director or a designee may require~~
~~that witnesses testify under oath. All relevant evidence is~~
~~admissible. The Executive Director or a designee may question~~
~~witnesses.~~

~~(4) The licensee, **permitee, registrant or certificate holder** may make a concluding argument as to why the temporary emergency order should be dissolved or modified.~~

~~(5) Upon receiving all evidence presented by the person named in the order and hearing the person's final argument, the Executive Director or a designee will render a decision **within three business days** as to whether or not the temporary emergency order will continue, be modified or dissolved [**within 72 hours**]. Service of the decision will be made in the manner prescribed by § 491a.5. Unless the Executive Director dissolves the temporary emergency order, the matter will be scheduled for a hearing before the Board as provided in subsection (k).~~

UNLESS THE EXECUTIVE DIRECTOR OR DESIGNEE DISSOLVES THE TEMPORARY EMERGENCY ORDER, THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH THE OFFICE OF CHIEF COUNSEL, WILL REFER THE MATTER FOR A FORMAL HEARING BEFORE EITHER:

(1) THE BOARD TO DETERMINE THE VALIDITY OF THE SUSPENSION IN ACCORDANCE WITH SUBSECTION (m).

(2) THE OFFICE OF HEARINGS AND APPEALS WHICH WILL THEREAFTER PREPARE A REPORT AND RECOMMENDATION FOR THE BOARD'S CONSIDERATION IN ACCORDANCE WITH SUBSECTION (p).

~~(k) Once a temporary emergency order has been issued under this section, unless it has been subsequently dissolved by the~~

~~Executive Director or a designee, the temporary emergency order will be presented to the Board at its next meeting [or within 10 business days, whichever is longer] at which time the Board may do one of the following:~~

~~(1) Conduct a hearing to determine the validity of the issuance of the order.~~

~~(2) Refer the matter to the Office of Hearings and Appeals under § 491a.8 (relating to hearings generally) and direct that a hearing be conducted by a presiding officer and a report **and recommendation be** submitted to the Board.~~

IF THE PERSON NAMED IN THE TEMPORARY EMERGENCY ORDER DOES NOT FILE A REQUEST FOR AN INFORMAL HEARING WITHIN TEN BUSINESS DAYS OF THE ISSUANCE OF THE TEMPORARY EMERGENCY ORDER, THE MATTER WILL BE REFERRED IN ACCORDANCE WITH SUBSECTION (j).

(1) **[In all hearings relating to the disposition of a temporary emergency order, whether the hearing is conducted by the Board or by a presiding officer, the following procedure will occur:**

(1) The temporary emergency order, the request for the temporary order and any modifications to the temporary order will be made a part of the evidentiary record of the proceeding.

(2) The Office of Enforcement Counsel will present evidence to the Board or the presiding officer in support of the temporary emergency order.

(3) The person named in the order shall have the burden of rebutting the evidence presented by the Office of Enforcement Counsel.]

UNTIL SUCH TIME AS THE TEMPORARY EMERGENCY ORDER IS PRESENTED TO THE BOARD FOR CONSIDERATION OR THE OFFICE OF HEARINGS AND APPEALS HAS ISSUED ITS REPORT AND RECOMMENDATION, THE EXECUTIVE DIRECTOR OR DESIGNEE MAY DISSOLVE OR MODIFY A TEMPORARY EMERGENCY ORDER PREVIOUSLY ISSUED.

(m) If the hearing is conducted by the Board, the Board may take one of the following actions upon conclusion of oral arguments and evidentiary presentations:

(1) If the Board finds that the ~~unrebutted~~ facts and circumstances presented are sufficient to support the issuance of the ~~temporary~~ emergency order, AND that dissolution of the ~~temporary~~ emergency order would pose ~~an immediate~~ A threat to the public health, safety or welfare, or the public's interest in the effective regulation of gaming demands the action, it may ~~adopt~~ **[a resolution]** ISSUE **an order** ratifying or modifying the ~~temporary~~ emergency order OF SUSPENSION. This BOARD order may THEREAFTER be appealed under § 494a.11 (relating to appeals).

(2) If the Board finds that there is insufficient cause to continue the ~~temporary~~ emergency order, it may ~~adopt~~ **[a resolution]** ISSUE **an order** dissolving the emergency order and

the privileges of the person named in the order will be reinstated.

(3) If the Board finds that further hearing is necessary, it may SCHEDULE A HEARING OR refer the matter to the Office of Hearings and Appeals for additional presentation of evidence and testimony of witnesses. ~~If the matter is referred to the Office of Hearings and Appeals~~ IN EITHER CASE, the ~~temporary emergency~~ order OF SUSPENSION will remain in effect, with or without modification as the Board deems appropriate.

~~(n) If the Board adopts [a resolution, the resolution] an order, the order may establish the length of term for the order by establishing an expiration date, dependent on the completion of specified remedial actions or dependent on the filing of, or final resolution of, a complaint alleging the person violated a provision of the act or this part. If the expiration date is dependent upon specific remedial actions, the Board will provide a detailed description of the remedies in the [resolution] order and will establish procedures whereby the person can demonstrate that it has complied with the required remedies.~~

[(o) Any resolution adopted is a final order of the Board for purposes of appeal.]

(n) ~~(p)~~ **[Resolutions] Orders** BOARD ORDERS ratifying or dissolving temporary emergency orders ~~adopted by the Board under this section~~ will have no effect upon the power and duty of the

Office of Enforcement Counsel to initiate, in its sole discretion, proceedings for violations of the act or this part or upon the outcome of any proceeding so initiated.

(o) ~~(q)~~ Copies of the Board's final order will be served on the person named in the order **[by certified or overnight express mail, postage prepaid; or by personal delivery]** in accordance with § 491a.5 (relating to service **[by the board]**).

(p) ~~(r)~~ If AT ANY POINT the Board OR EXECUTIVE DIRECTOR refers the matter to the Office of Hearings and Appeals, the FORMAL hearing will be subject to the following requirements:

(1) **[The Chairperson will designate a presiding officer to direct the hearing and rule on evidentiary matters.**

(2)] The hearing before the A presiding officer will occur no more than **[10] 15** business days after the Board OR EXECUTIVE DIRECTOR refers the matter to the Office of Hearings and Appeals, unless a delay is requested by the person named in the temporary emergency order.

[(3)] (2) Within 10 **business** days following the conclusion of THE hearing, the presiding officer will forward a REPORT AND recommendation for action on the temporary emergency order to the Board. A copy of the REPORT AND recommendation will be served on the person named in the temporary EMERGENCY order **[by certified or overnight express mail or by personal delivery]** in accordance with § 491a.5.

(3) UPON RECEIPT OF A REPORT AND RECOMMENDATION FROM THE OFFICE OF HEARINGS AND APPEALS, THE MATTER WILL BE PLACED ON AN UPCOMING BOARD MEETING AGENDA FOR FINAL CONSIDERATION.

* * * * *

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405a.6. Enforcement action.

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 493.2 (relating to complaints), including a proposed order for an enforcement action and serve the complaint in accordance with § 491a.5 (relating to service **[by the Board]**).

(b) The complaint for an enforcement action will include a statement of the facts, the statute, regulation or statement of conditions that the person is being charged with violating and the remedy sought. The proposed order will be accompanied by a certificate of service demonstrating the date of service.

(c) Within **[20] 30** days from the date of service of complaint for an enforcement action, the person may file **[a notice of defense] an answer** in accordance with § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response) and serve a copy of the **[notice of**

defense on] answer to the Office of Enforcement Counsel. Failure to file **[a notice of defense] an answer** ~~for an enforcement action-complaint~~ within **[20] 30** days will be deemed:

(1) A waiver by the person of any right to an administrative hearing before the Board OR THE OFFICE OF HEARINGS AND APPEALS.

(2) An admission by the person of all matters and facts alleged in the proposed order for enforcement action.

(3) Consent by the person to the entry of a final order by the Board disposing of the enforcement matter.

(d) Upon the person's failure to **[request a hearing] file an answer** within the prescribed **[20] 30** days, the Office of Enforcement Counsel will **file with the Clerk a Request for Default Judgment and will then** present the proposed enforcement order to the Board. The Board may, by **[resolution] order**, adopt the proposed enforcement order.

(e) The Clerk will **[send] serve** a copy of the Board's final order ~~to~~ UPON the person **[by first class mail] in accordance with § 491a.5 (relating to service)**.

* * * * *

CHAPTER 407a. PUBLIC ACCESS TO BOARD FILES

§ 407a.1. Case files.

(a) *Formal records.* The **[Board] Clerk** will maintain a **[nonconfidential file and a confidential]** file for all formal records.

(b) *Access.* Access to formal records will be governed by the following:

(1) Nonconfidential **[files] information in formal records** will be available for inspection during normal Board business hours.

~~(2) Upon receipt of a A request for access to confidential **[files] information,** the **[Board or the Bureau] Office of Hearings and Appeals** will review the request and provide its determination as to whether the material may be released for inspection within 30 days of the request WILL BE ADDRESSED IN ACCORDANCE WITH THE RIGHT-TO-KNOW LAW (65 P.S. §§ 67.101 - 67.3104).~~

~~(3) For good cause, the **[Board] Office of Hearings and Appeals** may extend the time limits applicable to requests for access to confidential **[files] information.**~~

(c) The Board **or its designee** may issue protective orders **sua sponte or by request of a party** or **may** establish standards governing the protection of proprietary or confidential **[documents] information** for a given proceeding **[or a given type of proceeding]**. All parties to a proceeding shall **[submit, classify and]** mark documents in accordance with the directives

of the Board or its designee and in accordance with § 493a.10a (relating to motions to protect confidential information). [In the absence of any protective order or standard, parties shall clearly mark documents that are deemed to be proprietary or confidential. The documents will be treated as marked by the Board].

~~(d) Any party or member of the public may dispute the designation of a document as submitted by filing a notice of dispute with the Board. The Board will determine the proper classification of documents subject to a notice of dispute as soon as administratively possible.~~

* * * * *

Subpart C. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.1. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Server supported slot system - ~~a system comprised of one~~ ONE or more ~~server supported~~ slot machines connected to a slot machine server and an associated computer network ~~for the purpose of downloading approved game themes and other related software.~~

~~Server supported slot machine~~ — A slot machine connected to, and administered by, a server supported slot system.

Slot machine server - A computer configured to receive, store, authenticate and download to ~~server supported~~ slot machines, Board-approved slot machine ~~games~~ GAME THEMES and other approved software.

* * * * *

§ 461a.20. Server supported slot systems.

[(a) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Server supported slot machine - A slot machine connected to, and administered by, a server supported slot system.

Slot machine server - A computer configured to:

(i) Receive, store, authenticate and download to server supported slot machines Board-approved slot machine games and other approved software. A slot machine server may also be used to effect changes in a server supported slot machine's configuration.

(ii) Receive, store and authenticate Board-approved slot machine games and other approved software for use on server based slot machines.

Server supported slot system—A system comprised of one or more server supported slot machines connected to a slot machine

server and its ancillary computer network for the ultimate purpose of downloading Board-approved slot machine games and other approved software to server supported slot machines.

(b) A slot machine licensee may utilize a server supported slot system that has been tested and approved by the Board under § 461a.4 (relating to submission for testing and approval).

(c) A server supported slot system must comply with the act, this subpart and technical standards on server supported slot systems adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's web site.

(d) Results from the play or operation of a server supported slot machine connected to a server supported slot system must be determined solely by the individual server supported slot machine and not by the server supported slot machine server or any other ancillary computer network.

(e) Prior to utilizing a server supported slot system, a slot machine licensee shall establish a system of internal controls applicable to the server supported slot system. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols). The internal control procedures submitted by the slot machine licensee must address the integrity, security and control of the server supported slot system.]

(a) A slot machine licensee may utilize a server supported slot system that complies with the minimum design standards AND THE SUBMISSION, TESTING AND APPROVAL REQUIREMENTS of §§ 461a.2 - 461a.7 AND 461a.26 ~~(relating to slot machine minimum design standards)~~ and the general requirements of § 461a. (relating to slot machine testing and control).

(b) A server supported slot system must:

(1) Be capable of verifying that all component programs contained on the slot machine server are authentic copies of Bureau of Gaming Laboratory Operations approved component programs.

(2) Automatically verify the authenticity of the copies every 24 hours ~~and as directed by the Board~~. Any program used to verify the authenticity must reside on the slot machine server and be securely loaded from non-alterable media.

(3) If an error is detected, provide a visual notification identifying the invalid program.

(c) The slot machine licensee shall generate, and make available to ~~the Board~~ BOARD STAFF, a report detailing the outcome of each automated verification including notifications identifying any invalid programs.

(d) Administrator access to server supported slot systems shall require the presence and participation of at least two ~~individuals~~ DEPARTMENTS. Dual access may be achieved using split

passwords, dual keys or any other suitable method ~~approved by the Board~~. The slot machine licensee shall specify in its internal controls under § 465a.2 (relating to internal control systems and audit protocols), the two ~~individuals who~~ DEPARTMENTS THAT will have administrator access to the system and the method by which access will be achieved.

(e) A technical field representative must be ~~present for~~ NOTIFIED OF the ~~instillation~~ INSTALLATION and loading of any software on an approved slot machine server IN ACCORDANCE WITH § 461a.26 (RELATING TO TESTING AND SOFTWARE INSTALLATION ON THE LIVE GAMING FLOOR).

(f) Downloads of slot machine programs or computer files on a server supported slot system, and any activations, deactivations or changes thereto, shall be controlled and implemented using scheduling software approved by the Bureau of Gaming Laboratory Operations. Except as otherwise authorized by the Board, written notice of downloads, schedules and changes shall be provided to the Bureau of Gaming Laboratory Operations, the Bureau of Casino Compliance Representatives and the Department at least 72 hours prior to implementation IN ACCORDANCE WITH § 461a.26.

(g) Access to slot machine programs or computer files on a server supported slot system may be provided at terminals in secure, restricted locations within the licensed facility as

approved by the Bureau of Gaming Laboratory Operations. The slot machine licensee shall provide read-only access to the Bureau of Gaming Laboratory Operations and the Bureau of Casino Compliance.

(h) Prior to implementing any change to a feature or reconfiguring the server supported slot machine, the slot machine will be in idle mode for at least two minutes, with no errors or tilt conditions and with no play or credits on the machine.

(i) During the implementation of any change to a feature or the reconfiguration of the server supported slot machine, the slot machine will be disabled and rendered unplayable for at least one minute. During that time, a conspicuous message stating that a game configuration is being changed shall be continuously displayed either on the slot machine's video screen or in another manner as approved by the Bureau of Gaming Laboratory Operations.

(j) A slot machine server shall, at a minimum, comply with the requirements of § 461a.19 (relating to remote service access) and the technical standards of § 461b.5 (relating to remote computer access - technical standard).

(k) A slot machine server:

(1) Shall be maintained in the slot machine server room in a locked computer rack or other secure area approved by the Bureau of Gaming Laboratory Operations.

(2) Shall be dual key controlled with one key controlled by the slot operations department and the other key controlled by the information technology department.

(3) May not be accessed unless an employee from the slot operations department, the information technology department and a Board representative are present.

(1) All changes made to the slot machine server shall be stored in an unalterable log which shall include, at a minimum:

(1) Time and date of access.

(2) Name and Board issued credential number OR OTHER SECURE USERNAME IDENTIFIER of the person logging in.

(3) Identification numbers of the games added, deleted or changed.

(4) The history of changes to programs on each player terminal.

(5) Changes to the configuration of player terminal settings.

(m) Prior to adding or removing software from a server supported slot machine, changing any configuration or activating or deactivating a slot machine game on a server supported slot machine, a complete set of meter information for the slot

machine shall be accurately communicated to a slot machine server, a slot monitoring system or other Board approved slot accounting system.

(n) All communication between the server, slot machine and any interface elements shall utilize a protocol that includes proper error detection and recovery mechanisms designed to prevent unauthorized access or tampering, employing Data Encryption Standards or equivalent encryption with secure seeds or algorithms as approved by the Bureau of Gaming Laboratory Operations.

(o) With prior Board approval, a slot machine server may be connected to:

(1) Other slot operating systems of the licensee, including a slot monitoring system, accounting system or gaming voucher system, located in a secure location within the licensed facility where the slot machine server is located.

(2) A computer or other equipment operated by the Board or the Department to monitor AND APPROVE activity.

(p) Any approved connection utilized under subsection (o) shall include, at a minimum:

(1) A secure, hard-wired, dedicated, exclusive network ~~that is limited to "read-only" access to the slot machine server.~~

(2) A hardware firewall located between the slot machine server and the slot operating systems utilized by the licensee.

* * * * *

Subpart F. FEES

CHAPTER 471a. FILING FEES

§ 471a.1. Fees generally.

(a) A [pleading or other] document for which a filing fee is required will be received, but will not be deemed filed, until the filing fee, bond, letter of credit or other cost has been paid.

* * * * *

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 491a. GENERAL RULES OF PRACTICE

§ 491a.1. Generally.

This subpart governs practice and procedure before the Board and the Office of Hearings and Appeals (OHA), and is intended to supplement 2 Pa.C.S. (relating to administrative law and procedure) and 1 Pa. Code, Part II (relating to General Rules of Administrative Practice and Procedure).

§ 491a.2. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Consent agreement – A voluntary agreement **or proposal** to an act [**or proposal**] based on specific terms which are entered into by all parties to a proceeding to resolve a disputed matter.

* * * * *

~~[Hearing—~~A proceeding, documentary or oral, initiated by the filing of a complaint, answer, petition, motion, exceptions or by order of the Board.]

* * * * *

Respondent – A person [**subject to the jurisdiction of the Board**] to whom an order or notice is issued by the Board or the Bureau instituting a proceeding or investigation.

* * * * *

§ 491a.3. Office of the Clerk.

(b) Filings and requests for practice and procedure information should be directed to THE OFFICE OF THE CLERK AT ANY OF THE FOLLOWING:

- (1) Office of the Clerk
Pennsylvania Gaming Control Board
~~One Penn Center~~
~~2601 North 3rd Street, Suite 502~~

~~Harrisburg, PA 17110~~

P.O. BOX 69060

HARRISBURG, PA 17106-9060

(2) BOARDCLERK@PA.GOV

(3) IN PERSON FILINGS:

HEARINGS AND APPEALS OFFICE

303 WALNUT STREET

2ND FLOOR, STRAWBERRY SQUARE

HARRISBURG, PA 17101

(OFFICE IS LOCATED AT THE TOP OF THE ESCALATORS
BY THE FOOD COURT)

* * * * *

§ 491a.4. Filing generally.

(a) Pleadings and other documents **[required to be]** filed with the **[Board] Clerk** must clearly designate the docket number **[or similar identifying symbols, if any, employed by the Board], if one has been assigned,** and **[set forth]** a short title **identifying the pleading or other document.** The identity of the individual making the submission, including name, mailing address **[and],** status (for example, party or attorney for a party) **and Board issued credential number, if applicable,** must appear on the document.

(b) Pleadings, including documents filed under this chapter, must also comply with Chapter 495 (relating to documentary filings).

(c) If a pleading tendered for filing does not comply with this subpart, does not sufficiently set forth required material or is otherwise insufficient, the **[Board] Clerk** may decline to accept it for filing and may return it without filing, or the **[Board] Clerk** may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The **[Board] Clerk** may require redundant, immaterial, obscene or otherwise inappropriate comments stricken from documents filed ~~with it~~.

§ 491a.5. Service [by the Board].

(a) *Applicability.* This section applies to service of an order, notice or other document **[originating with the Board and other documents designated by the Board, except when the Board specifically requires a different form of service]** from the OHA or the Office of Enforcement Counsel.

(b) *Service of a document initiating a proceeding.*

(1) *Registered or certified mail.* Service may be made by **both first class and** registered or certified mail, return receipt requested[, **to the person to be served, addressed to the person designated in the initial pleading, submittal or notice**

of appearance at the person's residence, principal office or place of business].

(2) *Personal*. Service may be made personally by [anyone authorized by the Board. Service will be made by personally] delivering a copy:

* * * * *

(c) *Proof of service*. Proof of service shall be evidenced by a return of service filed with the [Office of the] Clerk.

(d) *Subsequent service*. Service of any document made subsequent to the initial filing in a proceeding may be made by first class mail at the last known address of record of the person named in the notice, pleading or order.

(e) *Change of address*. It is the duty of a party to apprise the [Board] Clerk of changes to the party's current address.

(f) [*Supersession*.] Subsections (a)-(c) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

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§ 491a.7. Presiding officers.

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(f) Rulings of presiding officers may not be appealed [during the course of a hearing or conference] to the Board while the matter is pending before the presiding officer ~~except in extraordinary circumstances~~ [when a prompt decision by the Board is necessary].

~~(1) If a party believes extraordinary circumstances exist, a written request for referral shall be made to the Director of OHA and shall include:~~

~~(i) A description of the presiding officer's ruling that the party wishes to be reviewed.~~

~~(ii) A clear, concise statement of the factual and legal reasons why the party believes that the ruling of the presiding officer is incorrect.~~

~~(iii) Any documents that provide the basis for the request for referral to the Board.~~

~~(2) [In this instance,] If the Director of OHA determines extraordinary circumstances exist, the matter will be [immediately] referred [by the presiding officer] to the Board for determination.~~

[(1) An offer of proof made in connection with an objection to a ruling of the presiding officer rejecting or excluding oral testimony must be a statement of the substance of the evidence which counsel contends would be adduced by the testimony. If the rejected or excluded evidence is in documentary or written form, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.]

[(2)] ~~(3)~~ [Unless the Board acts upon a question referred by a presiding officer for determination] ~~All referrals~~

~~not acted upon by the Board within 30 days[, the referral] will be deemed [to have been] denied.~~

(g) This section supersedes 1 Pa. Code §§ 35.185–35.190 (relating to presiding officers).

§ 491a.8. Hearings generally.

(a) Unless the Board hears the matter directly, all matters, except for hearings under § 441a.7 (relating to licensing hearings for slot machine licenses), will be assigned to the OHA. The Board may designate a member of the Board or other qualified person to serve as presiding officer in a particular matter.

(b) Hearings will be public[, **except as provided in] unless a party invokes any protection afforded to the party under section 1206 of the act (relating to Board minutes and records) or section 407a.3(a) (relating to confidential information).**

(c) ~~Hearings will be documentary unless otherwise designated by the Board or presiding officer and~~ may provide for:

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant ORAL OR documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.

(5) Submission by the presiding officer of a report or REPORT AND recommendation to the Board.

(d) Unless required by this part or authorized by law, a party may not **[communicate directly or indirectly, in connection with any issue of law or any matter of fact which is disputed,] engage in an ex parte communication** with the Board or presiding officer, ~~unless notice and opportunity for all parties to participate has been given.~~

(e) UNLESS OTHERWISE SPECIFIED IN THE WRITTEN NOTICE, HEARINGS ~~Hearings~~ will be conducted in Harrisburg, Pennsylvania, **[or] AND MAY BE CONDUCTED** by video conference, **or by telephone as [unless otherwise]** directed by the Board, EXECUTIVE DIRECTOR or presiding officer.

(f) Written notice of hearings will be provided to all parties, and served by **[the Office of] the Clerk [(Clerk)]** by first class mail.

(g) Motions shall be filed with the Clerk, SERVED UPON ALL PARTIES and will be docketed and referred to the Board, EXECUTIVE DIRECTOR or presiding officer for disposition.

(h) Hearings will be scheduled by the OHA, except for hearings under § 441a.7 **(relating to licensing hearings for slot machine licenses)** which will be scheduled as **directed by** the Board **[may direct. Hearings for violations of the act or this**

part will be scheduled within 90 days of the initiation of action by the Bureau].

(i) A party [Parties] may waive the right to a hearing [in which case the Board or presiding officer may dispose of the matter without a hearing on the basis of submittals, consent agreements and proposed orders] before the Board, EXECUTIVE DIRECTOR or presiding officer by filing with the Clerk a Notice of Waiver of Hearing. The matter will then be forwarded to the appropriate bureau for action or to the Board for disposition ~~on the documents~~. This section supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

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CHAPTER 493a. PLEADINGS

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

(1) Complaints.

(2) Petitions.

(3) Motions.

(4) Answers to pleadings.

(5) Exceptions.

(6) Appeals of staff decisions pursuant to 1 Pa.Code § 35.20 (relating to appeals from action from staff) but does not include appeals under § 491a.7(f) (relating to presiding officers).

(7) **[Formal notices] Notices.**

(b) **[Filing fees] Fees** for **[pleadings,]** copies and other administrative requests will be in accordance with a fee schedule published by the Board in the *Pennsylvania Bulletin*, available on the Board's website, and in the Office of the Clerk.

(c) Pleadings shall be filed with the Clerk and contain a docket number **and Board issued credential number** OF THE PERSON SUBJECT TO THE PLEADING, **if applicable**. The Clerk will assign a docket number if one has not been assigned.

(d) This section supplements 1 Pa. Code §§ 35.1 and 35.2 and 35.9–35.11 (relating to applications; and formal complaints).

§ 493a.2. Complaints.

(a) A proceeding against a licensee, permittee, persons registered or certified by the Board or an employee of a licensee or persons registered or certified by the Board shall be initiated by written complaint filed by the complainant, which must include a statement, **in ordinary and concise language**, setting forth **[in ordinary and concise language]** the matter complained of and the facts supporting the complaint.

(b) Complaints may be filed by the ~~Bureau and other persons authorized by the Board~~ OFFICE OF ENFORCEMENT COUNSEL.

(c) Complaints will be served in accordance with § 491a.5 (relating to service **[by the Board]**).

(d) This section supplements 1 Pa. Code §§ 35.9–35.11 and 35.14 (relating to formal complaints; and orders to show cause).

* * * * *

§ 493a.4. Petitions generally.

(a) Petitions may be filed by **[BIE] the Office of Enforcement Counsel**, parties, applicants, licensees, permittees, persons registered or certified by the Board, and other persons authorized by the Board.

(b) Petitions must be in writing, state clearly and concisely the grounds for the petition, the interest of the petitioner in the subject matter, the facts relied upon and the relief sought.

(c) Petitions must conform to § 491a.4 (relating to filing generally) and Chapters 495a and 497a (relating to documentary filings; and time), and be served on all persons directly affected.

(d) This section supplements 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations).

§ 493a.5. Answers to complaints, petitions, motions and other filings requiring a response.

(a) Answers to complaints, petitions, motions, **appeals of staff decisions** and other filings requiring a response shall be filed with the Clerk and served on all other parties within 30 days after the date of service of the complaint, petition, motion or other pleading, unless a different time is prescribed by the Board, **[or] presiding officer or elsewhere in the Board's regulations.**

(b) Failure to file a timely answer to a complaint or petition will constitute an admission of all matters and facts contained in the filing and may result in the waiver of the right to a hearing.

(c) Answers may contain the following:

(1) Admissions of the matter complained of and the alleged facts, in whole or in part.

(2) New matter or explanation by way of defense.

(3) Legal objections.

(4) Affirmative defenses.

(5) A request for a hearing.

(d) Answers shall be in writing and shall specifically and in detail admit or deny each allegation in the pleading.

[(d)] (e) This section [supplements] supersedes 1 Pa. Code §§ 35.35–35.40 (relating to answers).

* * * * *

§ 493a.7. Amendments and withdrawal of pleadings.

(a) Amendments and withdrawal of pleadings shall be in accordance with 1 Pa. Code §§ 35.48–35.51 (relating to amendment and withdrawal of pleadings).

(b) Answers to amended pleadings, if required, shall be filed within 30 days after the date of service of the amended pleadings. This section supersedes 1 Pa.Code § 35.40 (relating to answers).

§ 493a.8. Motions generally.

(a) A motion may be made at any time after the initiation of a proceeding for any procedural relief including, but not limited to, a request for an extension of time, a continuance of a hearing or other scheduled proceeding, or a request for a prehearing conference.

(b) Motions may be made in writing or orally on the record. A presiding officer may require that a motion made orally also be made in writing.

(c) Answers or objections to written motions shall be made within 30 days after the date of service of the motion unless otherwise directed by the Board or presiding officer.

(d) Written motions and answers or objections to written motions shall be served upon all parties in accordance with § 491a.5 (relating to service).

(e) Motions to the Board seeking interlocutory determinations on rulings of a presiding officer are not

~~permitted; however, a party may file a written request for referral with the Director of OHA in accordance with § 491a.7(f) (relating to presiding officers).~~

(f) The presiding officer may rule upon any motion filed prior to the submission of a report or report and recommendation to the Board. If, however, a ruling on a motion would constitute a final determination of the proceedings, the ruling on the motion shall be made part of the report or report and recommendation to the Board.

(g) [The procedures for motions shall be in accordance with] This section supersedes 1 Pa. Code §§ 35.177–35.180 (relating to motions).

§ 493a.9. Preliminary motions.

* * * * *

(f) This section [supplements] supersedes 1 Pa. Code §§ 35.177–35.180 (relating to motions).

§ 493a.10. Motions for summary judgment and judgment on the pleadings.

(a) *Motion for judgment on the pleadings.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings.

(b) *Motion for summary judgment.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for summary judgment based on the pleadings and

depositions, answers to interrogatories, admissions and supporting affidavits.

(c) *Answers to motions.* An answer to a motion for summary judgment or a motion for judgment on the pleadings, including an opposing affidavit to a motion for summary judgment, may be filed with the Clerk and served on all other parties within **[15]** **30** days of the date of service of the motion. An answer to a motion for summary judgment may be supplemented by pleadings ~~and depositions,~~ ~~AND~~ answers to interrogatories ~~or further affidavits and admissions.~~

(d) *Decisions on motions.* If a motion is granted in whole or in part by a presiding officer, it will be in the form of a report or report and recommendation. The Board will make a final ruling on a motion for judgment on the pleadings or a motion for summary judgment.

(e) **[Supplementation.]** This section **[supplements]** **supersedes** 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

§ 493a.10a. Motions to protect confidential information.

(a) A party or individual may designate information as confidential under § 407a.3 (relating to confidential information) in any papers filed with the Clerk by filing a Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information must:

(1) Set forth the specific **[reasons]** legal grounds to **justify** why the information should be deemed **[to be]** confidential **[information]**, and therefore protected.

(2) **[Label as confidential all documents or portions of documents in the filing containing the confidential information that the party or individual is seeking to protect]** Include a redacted version of the entire filing which will be available for immediate release to the public.

(c) Upon the filing of the Motion to Protect Confidential Information, the Director of Hearings and Appeals will review the motion and accompanying filings and, upon determining that a substantial basis exists, shall issue an interim order to protect the information, whether in the motion or the accompanying filings, from disclosure until the Board considers the matter in accordance with 65 Pa.C.S. §§ 701–716 (relating to open meetings). At all times during the pendency of the motion, the information in the motion and the accompanying filings shall be treated as confidential **except the redacted version filed in accordance with subsection (b)(2)**.

§ 493a.11. Discovery.

(a) **[A party may, upon written motion to the Board or a presiding officer, request a prehearing conference solely for the purpose of discussing discovery procedures as the nature of the matter and facts of the proceedings require]** The ability to

obtain discovery in an administrative proceeding before the Board or presiding officer is committed to the discretion of the Board or presiding officer and will generally be limited to the information, documents and list of witnesses that any party will present during a hearing.

[(1) At the prehearing conference, the] (b) The presiding officer may grant [any requests] a request for discovery [which] if the request will serve to facilitate an efficient and expeditious hearing process, [do] will not unduly prejudice and burden the responding party and as may be required in the interests of justice.

[(2) A party may request discovery by one or more of the following methods] (c) At the discretion of the presiding officer, discovery may be granted and limited to the following:

- (i) Written interrogatories.
- (ii) Depositions.
- (iii) [Affidavits.
- (iv)] Production of documents or things.
- [(v) Requests for admissions.

(3) With the approval of the presiding officer, the parties may enter into a binding discovery plan at the prehearing conference.]

[(b)] (d) [Upon written request from a party in a proceeding served upon another party in the proceeding, the

requesting party] Each party to a proceeding shall be entitled to the name and address of any witness who may be called to testify on behalf of the **[responding] opposing** party and all documents or other material in the possession or control of the **[responding] opposing** party which the **[responding] opposing** party reasonably expects will be introduced into evidence. The **[responding] opposing** party shall be under a continuing duty to update its response to this request.

[(c)] (e) The presiding officer may, upon request of a party, permit the testimony of a witness or the introduction of other evidence not disclosed pursuant to a request made under subsection **[(b)] (d)**, if following a proffer by the party seeking to present the evidence, the presiding officer determines that justice so requires.

[(d)] (f) Confidential information furnished to or obtained by the Board or the Bureau from any source will not be discoverable under this subsection. If a request for discovery involves confidential information, a party may file a motion for a protective order and the presiding officer will make a determination as to what is deemed confidential.

[(e)] (g) If a party fails to respond to a discovery request **[or fails to adhere to the time limits set forth in the discovery plan]**, which was granted by the presiding officer, the opposing party may file a motion to compel discovery **with the**

Clerk. The presiding officer may grant or deny the motion **in accordance with § 493a.8(e) (relating to motions generally)[, as the circumstances of the proceeding require].**

[(f)] (h) Depositions will be conducted in accordance with 1 Pa. Code §§ 35.145–35.152 (relating to depositions).

§ 493a.12. Intervention.

* * * * *

(h) Notwithstanding the provisions of this section, petitions to intervene in licensing hearings for slot machine licenses shall be governed by § **[441a.7(y)] 441a.7(z)** (relating to licensing hearings for slot machine licenses).

(i) This section supersedes 1 Pa. Code §§ 35.27–35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

* * * * *

CHAPTER 494a. HEARING PROCEDURE

§ 494a.1. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be **[heard in] conducted from Harrisburg, in person, via video conference or by telephone,** unless a different site is designated by the Board, EXECUTIVE DIRECTOR or the presiding officer. The Board, EXECUTIVE DIRECTOR or the presiding officer, in its discretion

with or without motion, ~~for cause~~ may at any time with due notice to the parties advance or postpone any proceeding on the hearing calendar.

(b) Hearings will be held before the Board or presiding officer, and all appearances, including staff counsel participating, will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Board participating, including accountants, and other experts who are assisting in the investigation of the matter. This section supersedes 1 Pa. Code §§ 35.123 and 35.124 (relating to conduct of hearings; and order of procedure).

(c) In **[oral and documentary]** hearings, neither the Board nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

(d) Subsection (a) supersedes 1 Pa. Code §§ 35.102 (relating to hearing calendar).

§ 494a.2. Oral hearings.

Oral hearings will be conducted in accordance with 1 Pa. Code §§ 35.121– 35.126 and Subchapter C (relating to evidence and witnesses).

§ 494a.3. [Documentary hearings] Reserved.

[(a) Documentary hearings will be held before the Board or a presiding officer.

(b) The parties will be notified at least 15 days prior to the date set for a hearing, and the evidentiary record will be closed 5 days prior to the date set for the hearing.

(c) Parties may introduce documents and other evidence, except that witnesses may not testify. Depositions and interrogatories may be taken at any time prior to the close of the evidentiary record, and may be introduced for consideration by the Board or presiding officer.]

§ 494a.4. Report or report and recommendation of the presiding officer.

(a) FOLLOWING A HEARING, A report or report and recommendation of the presiding officer may be required by the Board, ~~in both oral and documentary hearings,~~ except that recommendations will not be made in proceedings involving the issuance, approval, renewal, revocation, suspension or conditioning of a license.

(b) The presiding officer will, [file with the Clerk and] through the Clerk, certify to the Board a verbatim record of any

oral hearing, all documents submitted for consideration, and a report or report and recommendation, when required, as soon as practicable after the conclusion of the hearing and expiration of the time for filing of briefs.

(c) The presiding officer's report or report and recommendation will include a statement of:

(1) Findings and conclusions, as well as the reasons or basis therefore, for all the material issues of fact, law or discretion presented on the record.

(2) The appropriate statutory provision, regulation, order, sanction, relief, or denial thereof.

(3) Facts officially noticed under 1 Pa. Code § 35.173 (relating to official notice of facts), relied upon in the decision.

(d) The report or report and recommendation will be in writing, provided to all parties, and will be part of the public record, except for matters and materials designated as confidential ~~by the Board~~. Service will be in accordance with § 491a.5(d) (relating to service by the Board).

(e) This section **[supplements] supersedes** 1 Pa. Code §§ 35.201–35.206 (relating to proposed reports generally).

* * * * *

§ 494a.6. Reopening of record.

(a) After the conclusion of the hearing, a party in a proceeding may file with the **[presiding officer] Clerk**, prior to the issuance of **an order of the Board** or a report or report and recommendation, a **[petition] motion** to reopen the **[proceeding] record** for the purpose of taking additional evidence. The **[petition] motion** must set forth clearly the facts claimed to constitute grounds requiring reopening of the **[proceeding] record**, including material changes of fact or law alleged to have occurred since the **[hearing] record** was concluded.

(b) After the issuance of a report or report and recommendation by a presiding officer and before the Board issues its final order, a party in a proceeding may file with the **[Board] Clerk**, a **[petition] motion** to reopen the **[proceeding] record** for the purpose of taking additional evidence. The **[petition] motion** must set forth clearly the facts claimed to constitute grounds requiring reopening of the **[proceeding] record**, including material changes of fact or law alleged to have occurred since the issuance of a report or report and recommendation.

(c) Answers may be filed within 10 days of service of the **[petition] motion**. If no answers are filed, objections to the granting of the **[petition] motion** are waived.

(d) After the filing of the **[petition] motion** and answer, the Board or presiding officer will grant or deny the **[petition] motion**.

(e) Prior to filing a report or report and recommendation, the presiding officer, after notice to the parties, may reopen the **[proceedings] record** for the receipt of further evidence on his own motion, if the presiding officer has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the **[proceedings] record**.

(f) Prior to the issuance of a final order, the Board, after notice to the parties, may reopen the **[proceeding] record** for the receipt of further evidence, if the Board has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the **[proceeding] record**.

(g) This section supersedes 1 Pa. Code §§ 35.231–35.233 (relating to reopening of record).

§ 494a.7. Exceptions.

(a) A party may file exceptions to the report or report and recommendation of the presiding officer within 15 days of the date of the report or report and recommendation, unless the time is extended upon good cause shown.

(b) Exceptions must be in writing, filed with the Clerk, and state with particularity the matter objected to, including the portion of the record where the basis of the objection may be found, and any supporting legal argument.

~~(c) Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report or report and recommendation. Exceptions to any part of the report or recommendations may not thereafter be raised before the Board in oral argument, if an oral argument is permitted, or in an application for rehearing or reconsideration, and shall be deemed to be waived. The Board or presiding officer may refuse to consider exceptions to a ruling admitting or excluding evidence unless there was an objection at the time the ruling was made or within an extension of time prescribed by the presiding officer.~~

~~(d) Any response to exceptions shall be filed within 15 days of the date of service of the exceptions.~~

(d) THE RECORD, INCLUDING ANY EXCEPTIONS AND RESPONSES THERETO, WILL BE FORWARDED TO THE BOARD FOR ITS CONSIDERATION. ~~Exceptions will be considered by the [Board] presiding officer and will be limited to the record established during the hearing. The Board or presiding officer may reopen the record and permit evidence not already established in the record if compelling reasons are shown for its submission, the party~~

~~requesting its admission did not previously know of its existence and its existence could not have been discovered with the exercise of reasonable diligence.~~

[(e) The Board will conduct a documentary hearing on the exceptions within 30 days of receipt of the exceptions, unless exigent circumstances require a longer period of time. The Board may grant or deny the exceptions in whole or in part.

(f) The Board will issue its final order in consideration of the presiding officer's report or report and recommendation and any filed exceptions, and notify all parties by regular mail.]

~~(f) The presiding officer will issue a supplemental report and recommendation for the Board's consideration, addressing the exceptions and any response within 20 days of receipt of exceptions unless exigent circumstances require a longer period of time.~~

~~(g) A party may not file exceptions to a supplemental report and recommendation.~~

~~[(g)]~~ (h) (e) This section [supplements] supersedes 1 Pa. Code §§ 35.211-35.214 (relating to exceptions to proposed reports).

§ 494a.8. Rehearing or reconsideration.

(a) A party to a proceeding may file an application for rehearing or reconsideration by filing a **[petition] motion** within 15 days after the final order of the Board.

(b) Filing a **[petition] motion** for rehearing or reconsideration does not toll or stay the 30-day appeal period.

(c) The **[petition] motion** must state concisely the alleged errors in the adjudication or other order of the Board. If a final order or other order of the Board is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the **[petition] motion**.

(d) Answers to **[petitions] motions** for rehearing or reconsideration will not be entertained by the Board. If the Board grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(e) If the Board does not act upon the **[petition] motion** for rehearing or reconsideration within 30 days after it is filed, the **[petition] motion** will be deemed to have been denied.

(f) This section does not apply to proceedings resulting in any final order, determination or decision of the Board involving the approval, issuance, denial or conditioning of licensed entity applications which are subject to the appellate requirements of 4 Pa.C.S. § 1204 (relating to licensed gaming entity application appeals from board).

(g) This section supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 494a.9. Briefs and oral argument.

(a) All parties shall be afforded an opportunity to submit briefs prior to THE ISSUANCE OF A REPORT OR REPORT AND RECOMMENDATION IN ACCORDANCE WITH A BRIEFING SCHEDULE ESTABLISHED BY THE OHA ~~a final order of the Board~~. Briefs shall be filed with the Clerk AND SERVED ON ALL PARTIES. **[If a matter has previously been assigned to a presiding officer, a copy of the brief shall be submitted to the presiding officer.]**

(b) Oral argument may be heard at the discretion of the Board or presiding officer.

§ 494a.10. [Reports of compliance] Reserved.

[(a) When a person subject to the jurisdiction of the Board is required to do or perform an act by a Board order, permit or license provision, the person shall file, with the Clerk within 30 days following the date when the requirement becomes effective, a notice stating that the requirement has or has not

been met or complied with, unless the Board specifies an alternate means to demonstrate compliance or proof of compliance.

(b) This section supersedes 1 Pa. Code § 35.251 (relating to reports of compliance)].

* * * * *

CHAPTER 495a. DOCUMENTARY FILINGS

§ 495a.1. Form of documentary filings generally.

(a) Pleadings or other documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, permits or other writings referred to in pleadings or other documents may be attached as exhibits. Copies of writings or orders already of record with the Board in the proceeding need not be attached.

(c) Pleadings or other documents filed with the **[Board] Clerk** in a proceeding must clearly **[show] designate** the docket number **[or similar identifying symbols, if any,]** if one has been **assigned**, and a **short** title identifying the pleading or document **[of the proceeding before the Board. They must also show, in the title of a particular pleading or other document filed, the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title].** The identity of the individual making the submission, including name, mailing address, status (for

example, party or attorney for a party) and Board issued credential number OF THE PERSON SUBJECT TO THE PLEADING, if applicable, must appear on the document.

* * * * *

§ 495a.2. Form of documents.

(a) The [method of receipt and transmission of information will be under a policy published by the] Board may establish the paper, printing and binding requirements for pleadings filed with the Clerk. IF THE BOARD ESTABLISHES PAPER, PRINTING AND BINDING REQUIREMENTS, THE REQUIREMENTS WILL BE PRINTED IN THE *PENNSYLVANIA BULLETIN* AND POSTED ON THE BOARD'S WEBSITE.

(b) Subsection (a) supersedes 1 Pa. Code § 33.2 (relating to form).

* * * * *

§ 495a.6. Number of copies.

(a) An original copy of pleadings or documents other than correspondence shall be furnished to the [Board] Clerk at the time of filing, except as may be otherwise ordered or requested by the Board or the presiding officer.

(b) Pleadings and documents filed electronically, in accordance with § 497a.1(a)(4) (relating to date of filing), will be considered the original for purposes of this section. If filed electronically WITH THE CLERK AT BOARDCLERK@PA.GOV, a paper submission will not be required.

[(b)] (c) Subsection (a) supersedes 1 Pa. Code § 33.15
(relating to number of copies).

* * * * *

CHAPTER 497a. TIME

§ 497a.1. Date of filing.

(a) Whenever a pleading or other document is required or permitted to be filed under this part or by statute, it will be deemed to be filed on one of the following dates:

(4) On the date that the pleading or other document is received by electronic transmission, SENT TO BOARDCLERK@PA.GOV, in the Office of the Clerk.

CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

§ 499a.1. Appearance in person.

(a) An individual who is a party in a proceeding before the Board may represent himself before the Board.

(b) A party, other than an individual appearing on his own behalf, in an **[adversary] adversarial** proceeding before the Board shall be represented by an attorney authorized to appear before the Board in accordance with § 499a.2 (relating to appearance by attorney).

(c) This section supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

§ 499a.2. Appearance by attorney.

(a) A party in a proceeding before the Board who elects to be represented by an attorney in the proceeding, or who is required by § 499a.1 (relating to appearance in person) to be represented by an attorney in the proceeding, shall be represented by:

(1) An attorney at law admitted to practice before the Pennsylvania Supreme Court.

(2) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which permits attorneys licensed in this Commonwealth to practice before its courts and agencies **without benefit of licensure in that state.**

(3) An attorney authorized in accordance with subsection (b) to appear in connection with the proceeding.

* * * * *

Subpart I. COMPULSIVE AND PROBLEM GAMBLING

CHAPTER 501a. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS

§ 501a.4. Reports.

(a) A slot machine licensee shall submit **to the Director of OCPG** an annual summary of its compulsive and problem gambling program **[with its application for renewal of the slot machine license]** no later than the last business day of July.

(b) The annual summary shall contain, at a minimum, detailed information regarding:

(1) Employee training, including:

(i) The dates of live new hire and annual reinforcement compulsive gambling training.

(ii) The individual or group who conducted the training.

(iii) The number of employees who completed the new hire compulsive gambling training.

(iv) The number of employees who completed the annual reinforcement compulsive gambling training.

(v) The dates of responsible alcohol training.

(vi) The individual or group who conducted the responsible alcohol training.

(vii) The number of employees who completed the responsible alcohol training.

(2) An estimated amount of printed materials provided to patrons regarding:

(i) Compulsive and problem gambling.

(ii) The self-exclusion program.

(iii) Responsible gaming.

(iv) Available treatment services.

(3) The amount spent on the Compulsive and Problem Gambling Plan for:

(i) Employee training.

(ii) Printed materials.

(iii) Outreach including community training and sponsorships.

(4) Additional information including:

(i) The number of underage individuals who were denied access to the gaming floor.

(ii) The number of self-excluded individuals who were discovered on the gaming floor at the licensed facility.

(iii) The number of signs within the licensed facility that contain the approved problem gambling statement and helpline number.

(iv) A summary of any community outreach conducted by the licensee.

~~(v) Other information as requested by the Director of OCPG.~~

* * * * *

Subpart J. EXCLUSION OF PERSONS

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

§ 511a.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Career or professional offender – A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and

offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities contained in 4 Pa.C.S. 1518(a) (relating to prohibited acts; penalties).

Cheat –

(i) **To defraud or steal from any player or slot machine licensee of the Commonwealth while operating or playing a slot machine or table game, including causing, aiding, abetting or conspiring with another person to do so.**

(ii) **To alter or causing, aiding, abetting or conspiring with another person, without authorization, to alter the elements of chance, method of selection or criteria which determine:**

(A) **The result of a slot machine game or table game.**

(B) **The amount or frequency of payment in a slot machine game or table game.**

(C) **The value of a wagering instrument.**

(D) **The value of a wagering credit.**

~~[(ii)]~~ (iii) **The term does not include altering A SLOT MACHINE, TABLE GAME, TABLE GAME DEVICE OR ASSOCIATED EQUIPMENT for required maintenance and repair.**

~~[(iii)]~~ (iv) **The term includes an act in any jurisdiction that would constitute an offense under 4 Pa.C.S. 1518(a)(6), and (7), (7.1) AND (17).**

* * * * *

§ 511a.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The exclusion list will be open to public inspection at the Board's central office during normal business hours, posted on the Board's website (www.pgeb.state.pa.us) and will be distributed to every slot machine licensee within this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) The following information will be provided to the slot machine licensees for each ~~excluded~~ person on the exclusion list:

* * * * *

§ 511a.3. Criteria for exclusion OR EJECTION.

(a) The exclusion list may include a person who meets one or more of the following criteria:

(1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(2) An individual with a known relationship or connection with a career or professional offender whose presence

in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than 1 year in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(4) A person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both, including:

(i) Cheats.

(ii) Persons whose gaming privileges have been suspended by the Board.

(iii) Persons whose Board permits, licenses, REGISTRATIONS, CERTIFICATIONS or other approvals have been revoked.

(iv) Persons who pose a threat to the safety of the patrons, ~~or~~ employees OR PERSONS ON THE PROPERTY of a slot machine licensee ~~or persons in close proximity to the licensed facility.~~

(v) Persons with a history of conduct involving the disruption of the gaming operations within a licensed facility.

(vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities.

(vii) Persons with pending charges or indictments for a ~~gaming or~~ gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(viii) Persons who have been convicted of a ~~gaming or~~ gambling crime or crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.

(ix) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, being identified with criminal activities in published reports of various Federal and State legislative and executive bodies that have inquired into criminal or organized criminal activities.

* * * * *

§ 511a.4. Duties of the Bureau AND THE OFFICE OF ENFORCEMENT COUNSEL.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or a slot machine licensee investigate a person to determine whether the person meets the criteria for exclusion provided in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion **or ejection** of certain persons) and § 511a.3 (relating to criteria for exclusion **or ejection**).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the ~~Bureau~~ OFFICE OF ENFORCEMENT COUNSEL will file a petition for exclusion with the ~~Board~~ CLERK, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion OR EJECTION under section 1514 of the act or this chapter.

~~(c) When the Bureau files a complaint alleging a violation of 4 Pa.C.S. 1514(e) and § 511a.8(b)(2) (c)(2) AND (e)(relating to duties of slot machine licensees) against a slot machine licensee, the Bureau will file simultaneously a petition to exclude **or eject** the person alleged in the complaint to meet the criteria for exclusion under § 511a.3.~~

IN ADDITION TO FILING THE PETITION FOR EXCLUSION, IF EXIGENT CIRCUMSTANCES EXIST, THE OFFICE OF ENFORCEMENT COUNSEL MAY FILE A REQUEST FOR A TEMPORARY EMERGENCY ORDER IN ACCORDANCE

WITH § 403a.7 (RELATING TO TEMPORARY EMERGENCY ORDERS) PROVIDED THAT:

(1) THE PROCEDURES IN § 403a.7(a) THROUGH (i) SHALL BE APPLICABLE TO REQUESTS FOR TEMPORARY EMERGENCY ORDERS FILED IN CONJUNCTION WITH PETITIONS FOR EXCLUSION.

(2) IF THE REQUEST FOR A TEMPORARY EMERGENCY ORDER IS GRANTED, THE PERSON NAMED IN THE EMERGENCY ORDER WILL BE TEMPORARILY PLACED ON THE EXCLUSION LIST UNTIL THE BOARD ACTS UPON THE UNDERLYING PETITION.

(3) IF THE PERSON NAMED IN THE EMERGENCY ORDER FILES A REQUEST FOR AN INFORMAL HEARING UNDER § 403a.7(h), THE REQUEST FOR AN INFORMAL HEARING DOES NOT TOLL OR STAY THE TIME PERIOD TO REQUEST A FORMAL HEARING IN ACCORDANCE WITH § 511a.6 (RELATING TO DEMAND FOR HEARING ON THE PLACEMENT OF A PERSON ON THE EXCLUSION LIST).

§ 511a.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list:

(1) Upon the ENTRY OF AN ORDER OF THE BOARD ~~filing of a petition for exclusion by the Bureau in accordance with the procedures under § 511a.4 (relating to duties of the Bureau) when circumstances warrant such expeditious placement.~~

(2) ~~Or upon~~ **[Upon]** receipt of an order from ~~the Board~~ **or** a court of competent jurisdiction within this Commonwealth,

excluding OR EJECTING the person from licensed facilities **in the Commonwealth.**

(3) OR UPON THE ISSUANCE OF A TEMPORARY EMERGENCY ORDER BY THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH § 403a.7 (RELATING TO TEMPORARY EMERGENCY ORDERS).

* * * * *

§ 511a.6. Demand for hearing on the placement of a person on the exclusion list.

(a) Upon **[placement of a person on the exclusion list, the Clerk will serve notice of the placement to]** the filing of a **petition for exclusion, the Bureau** OFFICE OF ENFORCEMENT COUNSEL shall serve the petition upon the person by personal service or certified mail at the last known address of the person. **[When the placement is a result of a petition for exclusion filed by the Bureau,]** THE NOTICE SHALL INFORM THE PERSON OF THE RIGHT TO A HEARING UNDER 4 Pa.C.S. § 1514(g) (RELATING TO REGULATION REQUIRING EXCLUSION OR EJECTION OF CERTAIN PERSONS) AND SHALL INCLUDE a copy of the petition ~~will be included with the notice.~~

(b) Upon service of the **[notice by the Clerk, an excluded] petition, the person subject to the petition** shall have 30 days to demand a hearing before the Board OR PRESIDING OFFICER. Failure to demand a hearing within 30 days after service shall be deemed an admission of all matters and facts alleged in the ~~Bureau's~~ OFFICE OF ENFORCEMENT COUNSEL'S petition for exclusion

AND SHALL PRECLUDE THE PERSON FROM HAVING AN ADMINISTRATIVE HEARING.

~~(c) If the person is immediately placed on the exclusion list upon the filing of a petition in accordance with § 511a.5(a)(1) (relating to placement on the exclusion list), the person shall also be served with a notice of the placement on the exclusion list and the ability to nevertheless request a hearing as provided in subsection (b).~~

~~{(c)}~~ (d) If a FORMAL hearing is demanded by the excluded person NAMED IN THE PETITION FOR EXCLUSION, a hearing will be scheduled as provided in § 491a.8 (relating to hearings generally). At the hearing, the Bureau OFFICE OF ENFORCEMENT COUNSEL will have the affirmative obligation to demonstrate that the excluded person NAMED IN THE PETITION FOR EXCLUSION satisfies the criteria for exclusion in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion OR EJECTION of certain persons) or § 511a.3 (relating to criteria for exclusion OR EJECTION). Unless the matter is heard directly by the Board, the presiding officer will prepare a report and recommendation as provided in § 494a.4 (relating to report or report and recommendation of the presiding officer) for consideration by the Board.

~~(e) If service pursuant to the Board's regulations is not made despite the Bureau's best efforts, a copy of the petition~~

~~and notice required under subsection (c), if required, shall be provided to the Bureau of Casino Compliance to effectuate personal service should the person who is the subject of the petition appear at a licensed facility in the Commonwealth.~~

§ 511a.7. {Board review.} Reserved.

After a hearing, or IF ~~consideration of a petition for exclusion filed by the Bureau when no hearing was requested~~ AND THE FACTS IN THE PETITION ARE DEEMED ADMITTED, the Board will MAY:

(1) Issue ~~a final~~ AN order affirming ~~the placement of the person~~ PLACING THE PERSON'S NAME on the exclusion list.

(2) Issue ~~a final~~ AN order removing ~~the person from~~ OR DENYING THE PLACEMENT OF THE PERSON'S NAME ON the exclusion list.

(3) Refer the matter to ~~the~~ A presiding officer for further hearing.

§ 511a.8. Duties of slot machine licensees.

(a) Slot machine licensees shall establish procedures ~~that are designed~~ to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations

until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(b) A slot machine licensee shall ~~have the responsibility to~~ distribute copies of the exclusion list to the appropriate employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

(c) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

(1) An excluded person.

(2) A person known to the slot machine licensee to satisfy the criteria for exclusion in section 1514 of the act (relating to regulation requiring exclusion OR EJECTION of certain persons) and § 511a.3 (relating to criteria for exclusion OR EJECTION).

§ 511a.9. Petition to remove name from the exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds

believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the ~~Bureau~~ OFFICE OF ENFORCEMENT COUNSEL may file an answer in accordance with § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(c) [The Board may decide the petition on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition, may grant the petition, or direct that a hearing be held in accordance with § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list). The Board will grant the petition or direct that a hearing be held only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the exclusion list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d)] An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. However, an excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

[(e)] (d) A petition for early consideration must contain the information required by subsection (b). Upon receipt of the

petition, the ~~Bureau~~ OFFICE OF ENFORCEMENT COUNSEL may file an answer in accordance with § 493a.5.

[(f) The Board may decide the petition for early consideration on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511a.6.

(g)] (e) The Board will consider the following criteria when making its decision on a petition for early consideration:

(1) Whether there are extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the exclusion list.

(2) If exclusion was ordered under § 511a.5(a)(2) (relating to placement on the exclusion list), whether the excluded person has completed the period of probation or otherwise satisfied the terms of the court-ordered exclusion.