

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD [58 PA. CODE CHS. 401, 463 and 465]

Temporary Regulations; Possession of Slot Machines

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2005-3 REG, entitled Adoption of Temporary Regulations, dated June 16, 2005, and Resolution No. 2006-2 REG, entitled Adoption of Temporary Regulations for Accounting and Internal Controls Regulations, dated February 2, 2006, the Board has the authority to amend the temporary regulations, adopted on June 16, 2005, and February 2, 2006, as it deems necessary in accordance with the purpose of the act of July 5, 2004 (P. L. 572, No. 71) (Act 71) and to further the intent of Act 71. Therefore, the Board has decided to make editorial changes to the temporary regulations, dated June 16, 2005, and February 2, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 15, 2005) and 36 Pa.B. 910 (February 18, 2006).

Therefore, the Board has deposited with the Bureau amendments to §§ 401.4, 463.1, 463.5, 465.3 and 465.10. The amendments are effective as of March 16, 2006.

The temporary regulations of the Board, Chapters 401, 463 and 465, are amended by amending §§ 401.4, 463.1, 463.5, 465.3 and 465.10 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

Order

The Board, acting under the authorizing statute, orders that:

(a) The Board, acting under the authority of the Act 71, adopts the amendments to the temporary regulations, adopted by resolution at the February 28, 2006, public meeting. The amendments to the temporary regulations pertain to definitions and the bond or letter of credit requirements.

(b) The following temporary regulations of the Board, 58 Pa. Code Chapter 401, 463 and 465, are amended: §§ 401.4, 463.1, 463.5, 465.3 and 465.10 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(c) These amendments are effective on March 16, 2006.

(d) The amendments to the temporary regulations will be posted in their entirety on the Board's website and in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify the preceding order and deposit the regulations with the Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-18. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

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

* * * * *

Credential—A form of identification approved and issued by the Board for all persons to whom the Board has issued a license, permit or registration.

* * * * *

Subpart E. SLOT MACHINE TESTING, CERTIFICATION AND CONTROL

CHAPTER 463. POSSESSION OF SLOT MACHINES

§ 463.1. Possession of slot machines generally.

* * * * *

(b) The following persons and any employee or agent acting on their behalf may, subject to any terms and conditions imposed by the Board, possess slot machines in this Commonwealth for the purposes described herein provided that the slot machines are stored in a secure location as shall be specifically approved in writing by the Board and that any slot machines located outside of a licensed facility not be used for gambling activity:

(1) An applicant for, or holder of a slot machine license, for the purpose of maintaining for use, training or actually using the machines in the operation of a licensed facility.

(2) The holder of:

(i) A manufacturer license for the purpose of manufacturing, exhibiting, demonstrating, training, or preparing for transfer to a supplier licensee.

(ii) A supplier license for the purpose of distributing, repairing, servicing, exhibiting or demonstrating slot machines and any training with regard thereto.

(3) An educational institution, as authorized in writing by the Board, for the purpose of teaching slot machine design, operation, repair or servicing.

(4) A manufacturer or supplier of slot machines not licensed within this Commonwealth, as authorized in writing by the Board, for the limited purpose of temporary exhibition or demonstration of same.

(5) A common carrier, for the purpose of transporting slot machines in accordance with § 463.2 (relating to the transportation of slot machines into, within and out of this Commonwealth).

(6) An employee or agent of the Board, the Pennsylvania State Police or any law enforcement agency of the Commonwealth for the purpose of fulfilling official duties or responsibilities.

(7) Other persons authorized in writing by the Board upon a finding that the possession of slot machines by those persons in this Commonwealth is not contrary to the goals and objectives of the act.

§ 463.5. Slot machine master list.

(a) Prior to the commencement of operations at a licensed facility, each applicant for, or holder of, a slot machine license shall file with the Board's Director of Gaming Laboratory Operations, in writing or in an electronic format approved by the Board, a comprehensive list of slot machines possessed by the applicant or licensee on its gaming floor, in Board-approved restricted areas off the gaming floor but within the licensed facility, and in Board-approved storage locations in this Common-

wealth off the premises of the licensed facility. The list shall be denoted as a Slot Machine Master List and contain the following information which, for those slot machines located on the gaming floor, shall be presented for each slot machine in consecutive order by the slot machine location number under § 463.3 (relating to slot machine location):

- (1) The date the list was prepared.
- (2) A description of each slot machine by:
 - (i) Asset number and model and manufacturer's serial number.
 - (ii) Denomination, if configured for multiple denominations so designate.
 - (iii) Manufacturer and machine type, noting with specificity whether the machine is a high-boy, is a progressive or a wide area progressive slot machine.
 - (iv) An indication as to whether the slot machine is configured to communicate with a cashless funds transfer system.
 - (v) An indication as to whether the slot machine is configured to communicate with a gaming voucher system.

* * * * *

(d) On the first Tuesday of each month following the initial filing of a Slot Machine Master List, each applicant for, or holder of, a slot machine license shall file with the Board's Director of Gaming Laboratory Operations, in writing or in an electronic format as approved by the Board, an updated Slot Machine Master List documenting all slot machines possessed by the applicant or licensee on its gaming floor, in Board-approved restricted areas off the gaming floor but within the licensed facility, and in Board-approved storage locations in this Commonwealth off the premises of the licensed facility. The updated list must be in a form, and contain the information, required in subsection (a).

* * * * *

CHAPTER 465. ACCOUNTING AND INTERNAL CONTROLS

§ 465.3. Internal control systems and audit protocols.

* * * * *

(e) The Board, in consultation with the Department, will review each initial submission made under subsection (a) and determine whether it conforms to the requirements of the act and this part and provides adequate and effective controls for the operation of slot machines at a licensed facility. A slot machine licensee is prohibited from commencing gaming operations until its system of internal controls is approved by the Board.

* * * * *

§ 465.10. Surveillance system; surveillance department control; surveillance department restrictions.

* * * * *

(c) The surveillance system required in this section must include the following:

- (1) Light sensitive cameras with lenses of sufficient magnification to allow the operator to read information on a slot machine reel strip and credit meter and equipped with 360° pan, tilt and zoom capabilities, without camera

stops, to effectively and clandestinely monitor in detail and from various vantage points, the following:

- (i) The gaming conducted at the slot machines in the licensed facility.
- (ii) The operations conducted at and in the cashiers' cage, any satellite cage and any ancillary office adjacent or proximate thereto.
- (iii) The operations conducted at automated bill breaker, gaming voucher redemption, coupon redemption and jackpot payout machines.

* * * * *

(e) In addition to any other requirements imposed by this section, a slot machine licensee's surveillance system must be required to continuously record, during the appropriate times and in the manner indicated in this subsection, transmissions from cameras used to observe the following locations, persons, activities or transactions:

* * * * *

- (2) The main bank, vault, any satellite cage and other areas as shall be required by the Board.
- (3) The collection of slot cash storage boxes.
- (4) Any armored car collection or delivery.
- (5) Automated bill breaker, gaming voucher redemption, coupon redemption and jackpot payout machines whenever the machines are opened for replenishment or other servicing.

(f) Each slot machine licensee shall maintain a surveillance log of all surveillance activities in the monitoring room. The log shall be maintained by monitoring room personnel in a book with bound numbered pages that cannot be readily removed or shall be maintained in an electronic format the Board approves. The log shall be stored and retained in accordance with § 465.7 (relating to retention, storage and destruction of books, records and documents). The following information shall be recorded in a surveillance log:

* * * * *

(4) The time at which each video recording is commenced and terminated, if different than when surveillance commenced or terminated.

* * * * *

[Pa.B. Doc. No. 06-558. Filed for public inspection March 31, 2006, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CHS. 492—494]**

Temporary Regulations; Hearings and Appeals

The Pennsylvania Gaming Control Board (Board), under 4 Pa.C.S. § 1202(b)(14) (relating to general and specific powers), adopts temporary regulations to facilitate implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71). The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). Chapters 492—494 entitled Hearings and Appeals, Pleadings and Hearing Procedure, are added to Subpart H, entitled Practice and Procedure.

Purpose and Background

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board is required to promulgate temporary regulations to facilitate the prompt implementation of Act 71. The regulations are necessary to enhance the credibility of the licensed operation of slot machines and associated equipment within this Commonwealth and to carry out the policy and purposes of the Board. To promulgate the temporary regulations in accordance with customary rulemaking procedure, the Board published draft regulations at 35 Pa.B. 7089 (December 31, 2005). A 30-day public comment period was provided.

Under 4 Pa.C.S. § 1203, the temporary regulations adopted by the Board expire no later than 3 years following the effective date of Act 71 or upon promulgation of regulations as generally provided by the law. These temporary regulations are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208), known as the Commonwealth Documents Law (CDL) or to the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

Financial Impact

Act 71 and the regulations will provide for the implementation and management of gaming within this Commonwealth and the collection of fees and taxes from entities and individuals authorized by the Board to be employed by, provide gaming related services to, or operate gaming facilities.

The appropriations from the Commonwealth for the implementation of Act 71 and costs of administering 4 Pa.C.S. Part II will be reimbursed by the licensed gaming entities as specified within Act 71. Individuals and entities that wish to obtain licenses as gaming entities shall pay to the gaming fund significant licensing fees to obtain the authority to do business within this Commonwealth. Part of these fees shall reimburse the Board and the Pennsylvania State Police for licensing processes and background investigations. The licensing and registration of individuals and other classes of licensees will be reimbursed by the individuals or licensees through fees established by the Board.

It is anticipated that all expenses of the Board and all associated activities shall be reimbursed by the applicants and gaming entities as previously specified. The Board will have no financial impact on the State budget.

Statutory Authority

The Board is authorized under 4 Pa.C.S. § 1203 to adopt and publish temporary regulations to implement the policies and purposes of Act 71.

Regulatory Review

Under 4 Pa.C.S. § 1203, the Board's authority to adopt temporary regulations expires 2 years from the effective date of Act 71.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 1203, the temporary regulations are exempt from the requirements of the Regulatory Review Act and sections 201—205 of the CDL.

(2) A 30-day public comment period was held prior to the adoption of the temporary regulations.

(3) The adoption of the temporary regulations provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Board, acting under the authorizing statute, orders that:

(a) The Board, acting under the authority of the Act 71, adopts as its final-form temporary regulations, the draft regulations as amended adopted by resolution at the December 15, 2005, public meeting. The temporary regulations pertain to hearings and appeals before the Board.

(b) The following temporary regulations of the Board, 58 Pa. Code Chapters 492—494 are added: §§ 492.1—492.8, 493.1—493.12 and 494.1—494.11 to read as set forth in Annex A.

(c) The temporary regulations are effective March 16, 2006.

(d) The temporary regulations will be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The temporary regulations will be subject to amendment as deemed necessary by the Board in accordance with the purpose of Act 71 and to further the intent of Act 71.

(f) The Chairperson of the Board shall certify this order and deposit the regulations with the Legislative Reference Bureau as required by law.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-20. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 492. HEARINGS AND APPEALS

Sec.	
492.1.	Generally.
492.2.	Definitions.
492.3.	Office of Hearings and Appeals.
492.4.	Hearing officers.
492.5.	Presiding officers.
492.6.	Hearings generally.
492.7.	Prehearing and other conferences.
492.8.	Presentation and effect of stipulations.

§ 492.1. Generally.

This subpart governs practice and procedure before the Board, and is intended to supplement 2 Pa.C.S. § 101 (relating to administrative law and procedure), and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

§ 492.2. Definitions.

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

Adjudication—An order, decree, decision, determination or ruling by the Board affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Consent agreement—A voluntary agreement to an act or proposal based on specific terms which are entered into by all parties to a proceeding to resolve a disputed matter as may be approved by the Board.

Director, Office of Hearings and Appeals—An employee of the Board designated to manage and supervise the Office of Hearings and Appeals, who reports to the Executive Director.

Documentary evidence—Any document or paper which is presented and accepted as evidence in a proceeding, as distinguished from oral evidence.

Documentary hearing—A proceeding limited to a review of documentary evidence submitted by the parties, including documents, depositions, affidavits, interrogatories and transcripts.

Ex parte communication—An oral, written or electronic communication of any kind, concerning a matter pending before the Board, by a party or interested person to a Board member or presiding officer outside the presence of, or without the knowledge, or both, of the other party.

Exceptions—A formal objection to a report or recommendation of a presiding officer.

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

Hearing officer—An employee of the Board designated to conduct a hearing relating to a license, permit, registration or certification applied for, approved or issued by the Board; any other authorization or permission granted by the Board, or a violation of the act or of this part, or any other matter within the jurisdiction of the Board.

Interveners—Persons intervening or petitioning to intervene, when admitted by the Board as a participant to a proceeding.

OHA—Office of Hearings and Appeals—A division of the Board charged with administering and conducting hearings relating to licensing, violations of the act, this part or other matters as the Board may direct.

Oral hearing—A proceeding wherein the parties may present sworn testimony, documents or other evidence, and of which a verbatim record is made.

Participant—A party, another person admitted by the Board to limited participation in a proceeding and staff counsel.

Party—A person who appears in a proceeding before the Board who has a direct interest in the subject matter of the proceeding.

Prehearing conference—A proceeding to establish a schedule, discuss offers of settlement and identify other issues as the Board or presiding officer may direct.

Presiding officer—

(i) A member of the Board, or other person designated by the Board to conduct a proceeding.

(ii) This definition supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 492.3. Office of Hearings and Appeals.

(a) The OHA consisting of a director, clerk, hearing officers, support staff and clerical assistants as may be necessary to carry out the duties and responsibilities of the office.

(b) The director is responsible for the administration of all matters assigned to the OHA, including docketing, tracking, assignment of matters to presiding officers, ensuring that reports or recommendations are timely made to the Board, providing administrative support to the Board and presiding officers, and other duties as the

Board may direct, not inconsistent with the duties of the office of hearings and appeals.

§ 492.4. Hearing officers.

(a) A hearing officer is also a presiding officer. Hearing officers shall be attorneys in good standing with the Supreme Court of Pennsylvania and shall be responsible for the timely disposition of assigned matters. Hearing officers are employed by the Board and may be discharged only for misconduct or good cause shown.

(b) Duties of the hearing officers may include:

(1) Conducting full and complete hearings, partial and bifurcated hearings.

(2) Taking depositions or testimony of witnesses.

(3) Submitting reports or recommendations to the Board.

(4) Other matters as the Board may direct.

(c) A hearing officer may withdraw from a proceeding when he deems himself disqualified or the hearing officer may be withdrawn by the Board for good cause found after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the Board or another presiding officer to whom the Board has delegated the matter for investigation and report.

(d) This section supersedes 1 Pa. Code § 35.186 (relating to disqualification of a presiding officer).

§ 492.5. Presiding officers.

(a) When evidence is to be taken in a proceeding, a presiding officer may preside at the hearing.

(b) The Board and presiding officers have the following powers and authority to:

(1) Regulate the course of hearings, including the scheduling thereof, subject to the approval of the Board, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Board, as provided in § 494.1(a) (relating to generally).

(2) Administer oaths and affirmations.

(3) Issue subpoenas.

(4) Rule upon offers of proof and receive evidence.

(5) Take or cause depositions to be taken.

(6) Hold appropriate conferences before or during hearings.

(7) Dispose of procedural matters, but not before a proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings.

(8) Certify any question to the Board for consideration and disposition, within their discretion, or upon direction of the Board.

(9) Submit their proposed reports in accordance with this part.

(10) Take other action appropriate to the discharge of their duties as may be designated by the Board and authorized by the act.

(c) Except to the extent required for the disposition of ex parte matters as authorized by law and by this part, a presiding officer may not, in a proceeding, consult with a person or party on a fact in issue unless upon notice and opportunity for parties to participate.

(d) Presiding officers shall conduct fair and impartial hearings and maintain order. Any disregard by participants or counsel of rulings of the presiding officer on matters of order and procedure shall be noted on the record, and if the presiding officer deems it necessary, shall be made the subject of a special written report to the Board.

(e) If participants or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Board a report thereon, together with recommendations, and, in his discretion, suspend the hearing.

(f) Rulings of presiding officers may not be appealed during the course of a hearing or conference except in extraordinary circumstances when a prompt decision by the Board is necessary. In that instance, the matter shall be referred forthwith 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 testimony. If the 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) Unless the Board acts upon a question referred by a presiding officer for determination within 30 days, the referral shall be deemed to have been denied.

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

§ 492.6. Hearings generally.

(a) Unless the Board hears the matter directly, the Board will refer all matters to the OHA. The Board may, in its discretion, 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 section 1206 of the act (relating to Board minutes and records).

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

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.
- (5) Submission of a report or recommendations to the Board.

(d) Unless required for the disposition of ex parte matters 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, with the Board or presiding officer, except upon notice and opportunity for all parties to participate.

(e) Hearings will be conducted in Harrisburg, Pennsylvania, unless otherwise directed by the Board, and public notice of the hearings shall be published in the *Pennsylvania Bulletin*.

(f) Notice of hearings will be provided to all parties, will be in writing and served in accordance with subsection (g).

(g) Orders, notices and other documents originating with the Board, including forms of Board action, complaints and similar pleadings, and other documents designated by the Board for this purpose, will be served by the clerk by mail.

(h) Parties who wish to contest notice of a violation or objection shall file notice with the OHA by mail within 15 days of the date of the notice of the violation or objection.

(i) Motions shall be filed with the clerk and shall be docketed and referred to the Board or presiding officer for disposition as appropriate.

(j) Hearings will be scheduled by the OHA, except for licensing hearings which will be scheduled as the Board may direct. Hearings for violations of the act will be scheduled within 60 days of the initiation of action by the Bureau.

(k) Participants may waive hearings 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.

(l) Verbatim hearing transcripts will be available to interested persons for a transcription fee prescribed by the Board.

(m) This section supplements 1 Pa. Code Part II, §§ 35.101—35.251 regarding hearings and conferences.

§ 492.7. Prehearing and other conferences.

(a) A prehearing conference may be scheduled by the Board or presiding officer at his discretion. The Board or a presiding officer may also schedule a prehearing conference at the request of one party or by agreement of the parties.

(b) When the Board or presiding officer directs that a prehearing conference be held, all parties shall appear at the time and place designated. Notice of the time and place of the conference will be given to all parties. At the discretion of the Board or presiding officer, the conferences may be conducted telephonically.

(c) The following matters will be considered at prehearing conference:

(1) The possibilities for settlement of the proceeding, subject to the approval of the Board.

(2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates.

(3) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of the public interest, including, but not limited to, the following:

- (i) The simplification of the issues.
- (ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- (iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- (iv) The limitation of the number of witnesses.
- (v) The discovery or production of data.
- (vi) Other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(d) This section supplements 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

§ 492.8. Presentation and effect of stipulations.

(a) Independently of the orders or rulings issued by the Board or presiding officer relating to prehearing and other conferences, the participants may stipulate as to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received will be binding on the participants with respect to the matters stipulated.

(b) This section supersedes 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

CHAPTER. 493 PLEADINGS

Sec.	
493.1.	Generally.
493.2.	Formal complaints.
493.3.	Satisfaction of formal complaints.
493.4.	Petitions generally.
493.5.	Petitions for declaratory orders.
493.6.	Answers.
493.7.	Consolidation.
493.8.	Amendments and withdrawal of pleadings.
493.9.	Motions generally.
493.10.	Preliminary motions.
493.11.	Motions for summary judgment and judgment on the pleadings.
493.12.	Discovery.

§ 493.1. Generally.

(a) Pleadings permitted are as follows:

- (1) Complaints.
- (2) Petitions.
- (3) Motions.
- (4) Answers to pleadings.
- (5) Exceptions.
- (6) Appeals.

(b) Filing 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 (clerk).

(c) Pleadings shall be filed with the clerk. The clerk will issue a file number, or if a file number has already been issued, stamp the pleading accordingly.

(d) This section supplements 1 Pa. Code §§ 35.1, 35.2 and 35.5—35.7 (relating to applications; and informal complaints).

§ 493.2. Formal complaints.

(a) Procedures for complaints shall be in accordance with 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints), and as supplemented by this part.

(b) Complaints may be filed by the Bureau, parties, applicants, eligible applicants, licensees, permittees, persons registered or certified by the Board, and other persons designated by the Board.

(c) A proceeding against a licensee, permittee, persons registered or certified by the Board or employees of a licensee, permittee, or persons registered or certified by the Board shall be brought on by written complaint filed by the Bureau, which must include a statement setting forth in ordinary and concise language the charges and the acts or omissions supporting the charges.

(d) Within 15 days of service of the complaint filed by the Bureau, the respondent may file with the clerk a notice of defense, in which he may perform one of the following:

- (1) Request a hearing.

(2) Admit the accusation in whole or in part.

(3) Present new matters or explanation by way of defense.

(4) State any legal objection to the complaint.

(e) The respondent may be entitled to a hearing on the merits if he files the required notice of defense within the time allowed by subsection (d). The notice will be deemed a specific denial of all parts of the complaint not expressly admitted.

(f) Failure to timely file the required notice of defense or to appear at the hearing constitutes an admission of all matters and facts contained in the complaint and a waiver of the respondent's rights to a hearing, but the Board may order a hearing.

(g) Affirmative defenses shall be specifically stated, and unless objection is taken as provided in subsection (d)(4), objections to the form of the complaint shall be deemed waived.

(h) The Clerk will deliver or send by mail a notice to all parties at least 10 days prior to the hearing.

(i) Applicants may request a hearing on any matter by filing a complaint, or as part of a petition for special relief. When a request for a hearing is initiated by complaint or petition, the party making the request shall state in clear and concise language the reasons for requesting a hearing and the basis for the request. The Board will act on the request in accordance with due process and its duties and obligations under the act.

(j) Applicants who receive notice of deficiencies may file objections to the notice, and request a hearing by filing a complaint. The complaint must state in clear and concise language the basis for the objections, and the relief sought.

(k) Applicants who object to nonadjudicatory actions of the Board may file objections to the action by filing a complaint. The complaint must state in clear and concise language the basis for the objections, and the relief sought.

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

§ 493.3. Satisfaction of formal complaints.

(a) If the respondent satisfies a formal complaint either before or after a hearing, a statement to that effect signed by the complainant shall be filed with the Clerk setting forth that the complaint has been satisfied and requesting dismissal or withdrawal. Except as requested by the parties, the Board will not be required to render a final order upon the satisfaction of a complaint.

(b) In lieu of a hearing, the complainant and respondent may certify to the Board or presiding officer that a consent agreement has been reached satisfying the complaint. The consent agreement shall be presented to the Board and the Board will enter an order, if appropriate, incorporating and adopting the consent agreement.

(c) This section supersedes 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

§ 493.4. Petitions generally.

(a) Petitions may be filed by parties, applicants, eligible applicants, licensees, permittees, persons registered or certified by the Board, and other persons permitted by the Board.

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

(c) The procedure for petitions shall be in accordance with 1 Pa. Code §§ 35.17—35.19 (relating to petitions generally; petitions for issuance, amendment, waiver or deletion of regulations; and petitions for declaratory orders). Petitions must conform to § 491.2 (relating to filing generally) and Chapters 495 and 497 (relating to documentary filings; and time), and be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition, including the Board. The service shall be evidenced with a certificate of service filed with the petition.

(d) Copies shall also be served in accordance with the Board's direction.

(e) This section supplements 1 Pa. Code §§ 35.17—35.19.

§ 493.5. Petitions for declaratory orders.

(a) Petitions for declaratory orders to resolve a disputed matter, or remove uncertainty shall be filed with the Clerk for disposition by the Board at its discretion. Petitions for declaratory orders must:

- (1) Include a statement of fact.
 - (2) Describe the interest of the petitioner.
 - (3) Clearly and concisely state the issue which is the subject of the petition.
 - (4) Cite relevant statutory and regulatory provisions and case law.
- (b) Declaratory orders and rulings shall have the same status as decisions or orders in adjudicated cases.

(c) This section supersedes 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).

§ 493.6. Answers.

(a) Answers to complaints, petitions, motions and other pleadings shall be filed with the Clerk within 20 days after the date of service, unless a different time is prescribed by statute, the Board or presiding officer.

(b) The procedure for answers shall be in accordance with 1 Pa. Code §§ 35.35—35.40 regarding answers.

(c) This section supplements 1 Pa. Code §§ 35.35—35.40.

§ 493.7. Consolidation.

(a) The Board or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Board or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

(b) The section supercedes 1 Pa. Code § 35.45 (relating to consolidation).

§ 493.8. Amendments and withdrawal of pleadings.

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

§ 493.9. Motions generally.

The procedures for motions shall be in accordance with 1 Pa. Code §§ 35.117—35.180 (relating to motions).

§ 493.10. Preliminary motions.

(a) A preliminary motion may be filed by a party, must state specifically the grounds relied upon, and be limited to the following:

- (1) A motion questioning the jurisdiction of the Board or the presiding officer.
- (2) A motion to strike a pleading that is insufficient as to form.
- (3) A motion for a more specific pleading.

(b) Except when a motion for a more specific pleading is filed, an answer to a preliminary motion shall be filed within the time period prescribed for answers to complaints, petitions and motions. All preliminary motions shall be raised at the same time.

(c) If a motion for more specific pleading is filed, an answer may not be filed until further directed by the Board or presiding officer.

(d) A preliminary motion will be decided by the Board or presiding officer within 30 days of the filing of the motion.

(e) If a preliminary motion to strike is granted, the participant who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.

(f) This section supplements 1 Pa. Code §§ 35.177—35.180 (relating to motions).

§ 493.11. 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 participant may move for judgment on the pleadings. An answer to a motion for judgment on the pleadings may be filed within 20 days of the date of service of the motion.

(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.

(1) An answer, including an opposing affidavit to a motion for summary judgment, may be filed within 20 days of the date of service of the motion.

(2) The answer may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

(c) *Decisions on motions.*

(1) The Board or presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to a judgment as a matter of law. If a motion is granted by a presiding officer, it will be in the form of a recommendation which will be subject to exceptions, and will be in writing. As in the case of other recommendations, the procedures regarding exceptions to the Board apply.

(2) The presiding officer may recommend a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled

to a judgment as a matter of law on one or more but not all outstanding issues. The presiding officer will grant or deny the motion in the form of a recommended decision.

(d) This section supplements 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

§ 493.12. Discovery.

Discovery shall be in accordance with 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

CHAPTER 494. HEARING PROCEDURE

Sec.

494.1.	Generally.
494.2.	Oral hearings.
494.3.	Documentary hearings.
494.4.	Report or recommendation of the presiding officer.
494.5.	Review.
494.6.	Reopening of record.
494.7.	Exceptions.
494.8.	Rehearing or reconsideration.
494.9.	Briefs and oral argument.
494.10.	Reports of compliance.
494.11.	Appeals.

§ 494.1. Generally.

(a) A hearing calendar of all proceedings set for hearing will be maintained by the Clerk to the Board. All matters required to be determined upon the record will be placed on the hearing calendar, and will be in their order of assignment as far as practicable. All matters will be heard in Harrisburg, unless a different site was determined by the Board. The Board, in its discretion with or without motion, for cause may at any time with due notice to the participants 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 technical staff of the Board participating, including accountants, and other experts, who are assisting in the investigation of the matter. This subsection 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.

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

§ 494.2. Oral hearings.

Oral hearings will be conducted in accordance with 1 Pa. Code §§ 35.121—35.126 and 35.137—35.173.

§ 494.3. Documentary hearings.

(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 hearing, and the evidentiary record will be closed 5 days prior to the date set for hearing.

(c) Parties may submit 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.

(d) Transcripts of public input hearings, if any, will be included in the evidentiary record for the Board's consideration.

§ 494.4. Report or recommendation of the presiding officer.

(a) A report or 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 and certify with the Board a verbatim record of any oral hearing, all documents submitted for consideration, and a report or 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 recommendation will include a statement of:

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

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

(3) All facts officially noticed, relied upon in the decision.

(d) The report or 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 § 492.6(e) (relating to hearings generally).

(e) This section supplements 1 Pa. Code §§ 35.201—35.20 regarding proposed reports generally.

§ 494.5. Review.

(a) The record of the hearing will be transmitted to the Board and will be made available to all parties.

(b) The Board will review the record of the hearing and the report or recommendation of the presiding officer. The Board may adopt some or all of the recommendations, conduct a full or partial de novo hearing, or remand all or part of the matter to the presiding officer for the taking of additional evidence or clarification of issues, or make an adjudication based on the record.

(c) All parties have the right to file a brief prior to a final order of the Board.

§ 494.6. Reopening of record.

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

(b) Answers shall be filed within 10 days of service of the petition. If no answers are filed, objections to the granting of the petition are waived.

(c) As soon as practicable after the filing of the petition and answer, the Board or presiding officer will grant or deny the petition.

(d) Prior to filing a report or recommendation, the presiding officer, after notice to the participants, may reopen the proceedings for the reception of further evidence on his own motion, if the presiding officer had reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceedings.

(e) Prior to the issuance by the Board of a final order, the Board, after notice to the participants, may without motion reopen the proceeding for the reception of further evidence, if the Board has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

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

§ 494.7. Exceptions.

(a) A party may file exceptions to the report or recommendations of the presiding officer within 10 days of the date of the report or recommendations, 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.

(c) The party filing the exceptions shall attach a brief with the filing. The brief must set forth the party's position in clear and concise terms and be in accordance with 1 Pa. Code § 35.212 (relating to content and form of briefs on exceptions). The length of the brief may be limited by the presiding officer. The brief shall be served on the Board, the presiding officer and other parties of record.

(d) Failure to file a brief on exceptions within the time allowed shall constitute a waiver of all objections of the report or recommendations. 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 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 any deferred time provided by the presiding officer.

(e) Exceptions will be considered by the Board and will be limited to the record established during the administrative hearing. The Board may 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.

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

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

(h) This section supplements 1 Pa. Code §§ 35.211—35.214 (relating to exceptions to proposed reports).

§ 494.8. Rehearing or reconsideration.

(a) A party to a proceeding may file an application for rehearing or reconsideration by petition within 15 days

after the final order of the Board. The petition 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.

(b) No answers to petitions for rehearing or reconsideration will 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.

(c) Unless the Board acts upon the petition for rehearing or reconsideration within 30 days after it is filed, the petition will be deemed to have been denied.

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

§ 494.9. Briefs and oral argument.

(a) All parties shall be afforded an opportunity to submit briefs prior to a final order of the Board. Briefs shall be filed with the Clerk. If a case has previously been assigned to a presiding officer, a copy of the brief shall be submitted to the presiding officer.

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

§ 494.10. Reports of compliance.

(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, there shall be filed 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 provides otherwise for compliance or proof of compliance.

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

§ 494.11. Appeals.

(a) A party may appeal final orders of the Board in accordance with the act, in the form prescribed in the Pennsylvania Rules of Appellate Procedure. Notice of appeal shall be filed with the clerk within 30 days of a final order of the Board.

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Board unless the stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure, or from the Board upon the terms and conditions as it deems proper.

(c) Within 10 days, the party filing the notice of appeal shall file a concise statement of matters complained of with the Office of the Clerk. Matters not raised in the statement will be waived.

[Pa.B. Doc. No. 06-559. Filed for public inspection March 31, 2006, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CH. 465a]
Digital Video Recording Formats

On February 2, 2006, the Pennsylvania Gaming Control Board (Board) adopted a statement of policy in § 465a.1 (relating to digital video recording formats) which provided technical standards for use by slot machine licensees in surveillance of a licensed facility. This statement of policy was published at 36 Pa.B. 919 (February 18, 2006). The Board has decided to make editorial changes to this statement of policy.

Therefore, the Board has deposited with the Legislative Reference Bureau an amendment to § 465a.1. The amendment is effective as of March 16, 2006.

This technical standard in Chapter 465a is amended by amending § 465a.1 to read as set forth in Annex A.

Fiscal Impact

This statement of policy will have no appreciable fiscal impact upon the Commonwealth.

Contact Person

Further information is available by contacting the Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060.

Effective Date

This statement of policy will take effect March 16, 2006.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-19. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

**Subpart E. SLOT MACHINE TESTING,
 CERTIFICATION AND CONTROL**

CHAPTER 465a. TECHNICAL STANDARDS

§ 465a.1 Digital video recording formats.

(a) Any digital video recording system utilized by a slot machine licensee must:

(1) Be capable of recording, and thereafter being viewed, at a minimum of 30 frames or images per second, full screen, in real time.

(2) Have a visual resolution of 640 × 480 pixels or greater unless the Board expressly determines that an alternative visual resolution can achieve the clarity required to meet the purposes of this section.

(3) Be capable of retaining for at least 30 days all images obtained from all approved video cameras.

(4) Have a failure notification system that provides an audible, as well as a visual notification, of any failure in the surveillance system or the digital video recording media storage system.

(5) Have a media storage system that is configured so that a failure of any single component will not result in the loss of any data from the media storage system.

(6) Have no more than eight of the cameras utilized to satisfy the coverage requirements in § 465.10(c)(1) (relating to surveillance system; surveillance department control; surveillance department restrictions), be in the first stage of concentration, unless the slot machine licensee has a fault tolerant or redundant system so there is no loss of data in the event of a failure of a single first stage concentrator.

(b) Remote access to a digital surveillance system from any location outside the surveillance monitoring room may not be permitted without the approval of the Board.

(c) Digital video disks or other storage media produced from the digital video recording system must contain the date and time of recording superimposed thereon, clearly identify the type of media player and software prerequisite to viewing the digital images and identify the video verification encryption code or watermark.

(d) Details with regard to the digital video recording system's video verification encryption code or watermark shall be provided to the Board, at no cost to the Board, prior to the inspection and approval of the system.

(e) The slot machine licensee's contingency plan required under § 465.10(f) must expressly provide that any failure in a digital video recording media storage system must be repaired or replaced within 8 hours of the failure.

(f) The Board may, in its discretion, waive one or more of the requirements or technical standards applicable to a surveillance system upon a determination that the non-conforming surveillance system nonetheless provides for adequate and effective surveillance of activities inside and outside the licensed facility.

[Pa.B. Doc. No. 06-560. Filed for public inspection March 31, 2006, 9:00 a.m.]

