

# PROPOSED RULEMAKING

## PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 491a]  
General Rules of Practice

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(14) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1205 (relating to license or permit application hearing process; public input hearings), proposes to add Chapter 491a (relating to general rules of practice) to read as set forth in Annex A.

### *Purpose of the Proposed Rulemaking*

Under the authority granted to the Board under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board adopted temporary regulations in Chapter 491 at 35 Pa.B. 4045 (July 16, 2005) and in Chapter 492 at 36 Pa.B. 1578 (April 1, 2006). Under 4 Pa.C.S. Part II (relating to gaming) (Act 71), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking. In this proposed rulemaking, Chapters 491 and 492 are merged into Chapter 491a.

### *Explanation of Chapter 491a*

This chapter contains general rules of practice and procedure that apply to persons appearing before the Board in a hearing. This proposed rulemaking provides defined terms, general guidance as to the function of the Office of the Clerk, general requirements for filing pleadings and other documents with the Board, service requirements, procedure for hearings and prehearing conferences and the duties of hearing officers.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes that improve the clarity of the language in the temporary regulations. Chapters 491 and 492 have been merged and renumbered to create one chapter on general rules of practice.

The definition of "ex parte communication" in temporary § 491.2 has been deleted. A new definition of this term is included in the recent amendments to Act 71, which the Board will add to § 401.3 (relating to definitions). See the proposed rulemaking published at 36 Pa.B. 5690 (September 9, 2006). Section 491a.5 (relating to service by the Board) has been amended to clarify the methods by which the Board may serve documents on individuals. Provisions regarding the structure of the Office of Hearings and Appeals have been deleted.

### *Affected Parties*

This proposed rulemaking imposes requirements on individuals appearing before the Board in a hearing.

### *Fiscal Impact*

*Commonwealth.* This proposed rulemaking will impose costs on the Board for the administration of a uniform filing, docketing and system of hearings and appeals, including compliance with practice and procedure requirements.

*Political subdivisions.* This proposed rulemaking will have no significant fiscal impact on political subdivisions of the Commonwealth.

*Private sector.* Applicants and holders of a license, permit, registration or certification appearing before the Board in a hearing will experience some costs to comply with the procedural requirements in Chapter 491a and the filing fees published by the Board.

*General public.* Individuals appearing before the Board in a hearing will experience some costs to comply with the procedural requirements in Chapter 491a and the filing fees published by the Board.

### *Paperwork Requirements*

This proposed rulemaking does not impose new reporting or paperwork requirements on the affected parties under the Board's jurisdiction. This proposed rulemaking clarifies the form requirements for filings that are submitted to the Board by parties.

### *Effective Date*

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

### *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-53.

### *Contact Person*

The contact persons for questions about this proposed rulemaking are Richard Sandusky, Director of Regulatory Review, (717) 214-8111 and Michelle Afragola, Deputy Director of Regulatory Review, (610) 943-1338.

### *Regulatory Review*

Under of section 5(a) and (f) of the Regulatory Review Act (71 P. S. § 745.5(a) and (f)), on December 19, 2006, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). A copy of this material is available to the public upon request. In accordance with section 5(a) and (f) of the Regulatory Review Act, the Board will deliver copies of this proposed rulemaking and the Regulatory Analysis Form to the Chairpersons of the Senate Committee on Rules and Executive Nominations and the House Tourism and Recreational Development Committee by the second Monday after the date on which committee designations for the 2007-2008 session of the General Assembly are published in the *Pennsylvania Bulletin*.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days after the close of the public comment period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures that permit the Board, the General Assembly and the Governor to review IRRC's comments, recommendations or objections prior to final adoption of the proposed rulemaking.

THOMAS A. DECKER,  
Chairperson

**Fiscal Note:** 125-53. (1) State Gaming Fund; (2) Implementing Year 2006-07 is \$600,000; (3) 1st Succeeding Year 2007-08 is \$630,000; 2nd Succeeding Year 2008-09 is \$662,000; 3rd Succeeding Year 2009-10 is \$695,000; 4th Succeeding Year 2010-11 is \$730,000; 5th Succeeding Year 2011-12 is \$767,000; (4) 2005-06 Program—\$13,200,000; 2004-05 Program—\$2,900,000; 2003-04 Program—\$0; (7) Board Budget; (8) recommends adoption. Funds from the administrative accounts within the State Gaming Fund will be used to cover the costs of this regulation.

### Annex A

## TITLE 58. RECREATION

### PART VII. GAMING CONTROL BOARD

#### Subpart H. PRACTICE AND PROCEDURE

#### CHAPTER 491a. GENERAL RULES OF PRACTICE

Sec.

- 491a.1. Generally.
- 491a.2. Definitions.
- 491a.3. Office of the Clerk.
- 491a.4. Filing generally.
- 491a.5. Service by the Board.
- 491a.6. Hearing officers.
- 491a.7. Presiding officers.
- 491a.8. Hearings generally.
- 491a.9. Prehearing and other conferences.
- 491a.10. Presentation and effect of stipulations.

#### § 491a.1. Generally.

This subpart governs practice and procedure before the Board, 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:

*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.

*Complainant*—The Bureau or other persons authorized by the Board to file a complaint.

*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.

*Documentary evidence*—Any document or paper which is presented and accepted as evidence in a proceeding.

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

*Exception*—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 matter within the jurisdiction of the Board.

*Intervener*—A person who petitioned to intervene in a proceeding and who was admitted by the Board as a participant to the proceeding.

*OHA—Office of Hearings and Appeals*—A division of the Board charged with administrating and conducting hearings 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 person admitted by the Board to limited participation in a proceeding.

*Party*—A person who is named in or admitted to a proceeding before the Board and 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 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 the definitions).

*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.

(a) The Board's Office of the Clerk (Clerk) will have the following duties:

(1) Provide information as to practice and procedure before the Board, under this subpart.

(2) Receive and docket pleadings and other documents required by the Board to be filed with the Clerk. Receipt and transmission of the information may be by electronic means, only under a policy established by the Board.

(b) Filings and requests for practice and procedure information should be directed to:

Office of the Clerk  
 Pennsylvania Gaming Control Board  
 Post Office Box 69060  
 Harrisburg, Pennsylvania 17106-9060

(c) The Clerk will maintain a docket of proceedings. Each proceeding as initiated will be assigned a docket number. The docket will be available for inspection and copying by the public during the Board's office hours.

#### § 491a.4. Filing generally.

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

(b) Pleadings, including documents filed under this chapter, must also comply with Chapter 495a (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 may decline to accept it for filing and may return it without filing, or the Board may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The Board 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.

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

(1) *Registered or certified mail.* Service may be made by 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:

(i) Directly to the person named in the notice, pleading, or order.

(ii) At the residence of the person named in the notice, pleading or order, to an adult member of the family with whom the person named resides. If no adult member of the family is found, then to an adult person in charge of the residence.

(iii) At the residence of the person named in the notice, pleading or order, to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which the person named resides.

(iv) At any office or usual place of business of the person named in the notice, pleading or order, to his agent or to the person for who the time being is in charge thereof. For purposes of this subsection, the phrase "any office or usual place of business of the person named in the notice, pleading, or order" includes the following locations:

(A) The licensed facility at which the person named is employed, licensed in connection therewith, or routinely performs his duties of employment.

(B) The office of the agent identified by the person named to receive service of process.

(c) *Proof of service.* Proof of service shall be evidenced by a return of service filed with the Office of the Clerk in the manner and form prescribed by the Board.

(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 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).

**§ 491a.6. Hearing officers.**

(a) A hearing officer may be 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 testimony of witnesses.

(3) Presiding over or causing depositions to be taken.

(4) Submitting reports or recommendations to the Board.

(5) Other matters as the Board may direct.

(c) A hearing officer may withdraw when the hearing officer deems himself disqualified or a 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).

**§ 491a.7. Presiding officers.**

(a) When evidence is to be taken in a hearing, the Board or a presiding officer may conduct the hearing.

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

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

(2) Administer oaths and affirmations.

(3) Issue subpoenas.

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

(5) Preside over or cause depositions to be taken.

(6) Hold 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 has been submitted to the Board.

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

(9) Submit proposed reports in accordance with this subpart.

(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 as authorized by law and by this subpart, a presiding officer may not, in a proceeding, consult with a person or party on a fact in issue unless notice and opportunity for parties to participate has been given.

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

(e) If parties 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 the presiding officer's 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 this instance, the matter shall 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) Unless the Board acts upon a question referred by a presiding officer for determination 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, 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, when constitutionally permissible, 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 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 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, with the Board or presiding officer, unless notice and opportunity for all parties to participate has been given.

(e) Hearings will be conducted in Harrisburg, Pennsylvania, unless otherwise directed by the Board.

(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 and will be docketed and referred to the Board or presiding officer for disposition.

(h) Hearings will be scheduled by the OHA, except for hearings under § 441.19 (relating to licensing hearings for slot machine licenses) which will be scheduled as the Board may direct. Hearings for violations of the act or this part will be scheduled within 60 days of the initiation of action by the Bureau.

(i) 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.

(j) Hearing transcripts will be available for public inspection.

(k) This section supplements 1 Pa. Code, Part II, Subchapter B, §§ 35.101—35.251 (relating to hearings and conferences).

**§ 491a.9. 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 a 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:

(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.

(iv) The number of witnesses and any limitation imposed thereon.

(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).

**§ 491a.10. 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 parties 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 received shall be binding on the parties with respect to the matters stipulated.

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

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