

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 11, 95, 123, 125 AND 128a]

Rescission of Outdated Regulations

The Department of Agriculture (Department) rescinds Chapters 11, Subchapters B and C, 95, 123, 125 and 128a. The chapters are rescinded because the regulations are outdated or unnecessary.

Statutory Authority

The rescission of Chapter 11, Subchapters B and C is authorized under 3 Pa.C.S. Chapter 23 (relating to Domestic Animal Law), which addresses subjects such as animal health and disease detection and eradication. Under 3 Pa.C.S. § 2305 (relating to keeping and handling of domestic animals), the Department is authorized to regulate as necessary to exclude or contain dangerous transmissible diseases of animals. The rescission of Chapter 11 is driven by new testing and procedures that obviate the need for these provisions. In addition, 3 Pa.C.S. Chapter 23 affords the Department adequate authority to quickly impose a quarantine to deal with any problems related to the presence of John's disease in an animal.

The rescission of Chapter 95 is authorized under the act of April 4, 1929 (P. L. 144, No. 148) (Act 148) (3 P. S. §§ 21—33), which addresses standards for farm products. Section 10 of Act 148 (3 P. S. § 30) authorizes the Department to regulate as necessary to carry out the provisions of that statute. Chapter 95 has long been obsolete, as the apple industry has moved on to other quality assurance standards and programs.

The rescission of Chapter 123 is authorized under sections 1 and 2 of the act of July 28, 1953 (P. L. 652, No. 193) (Act 193) (3 P. S. §§ 251 and 252), which addresses barberry bushes and stem rust disease. Section 1 of Act 193 authorizes the Department to regulate a program to reimburse counties for expenses relating to the eradication of rust from barberry bushes and stem rust disease in certain other plant species. The rescission of Chapter 123 is driven by the fact that the fiscal aid that had once been available for stem rust control has long been gone.

The rescission of Chapter 125 is authorized under the Plant Pest Act (3 P. S. §§ 258.1—258.27), which addresses plant diseases. Section 3 of the Plant Pest Act (3 P. S. § 258.3) authorizes the Department to regulate as necessary to carry out the provisions of the Plant Pest Act. The various plant pest quarantines addressed in Chapter 125 are no longer necessary. The Department retains the ability to quickly address the presence of plant pests by use of the quarantine authority provided it under the Plant Pest Act.

Although Chapter 128a was a statement of policy, rather than a regulation, and could be rescinded without going through the formal regulatory promulgation process, the Department included the rescission of this statement of policy in this final-form rulemaking. Chapter 128a was authorized under the Pennsylvania Pesticide Control Act of 1973 (act) (3 P. S. §§ 111.21—111.61), which addresses pesticide use and disposal. Section 7(b) of the act (3 P. S. § 111.27(b)) authorizes the Department to regulate as necessary to carry out the provisions of the

act. The rescission of Chapter 128a is driven by the fact that this chapter has been entirely supplanted by subsequent regulations in Chapter 128b (relating to CHEMSWEEP pesticide disposal program).

Purpose of the Final-Form Rulemaking

The final-form rulemaking rescinds outdated or unneeded regulatory provisions that are currently administered and enforced by the Department.

Comments and Responses

Notice of proposed rulemaking was published at 37 Pa.B. 951 (February 24, 2007), affording the public, the Legislature and the Independent Regulatory Review Commission (IRRC) the opportunity to offer comments. No objections, comments or recommendations were offered.

Fiscal Impact

Commonwealth. The final-form rulemaking imposes no costs and has no fiscal impact on the Commonwealth.

Political subdivisions. The final-form rulemaking imposes no costs and has no fiscal impact upon political subdivisions.

Private sector. The final-form rulemaking imposes no costs and has no fiscal impact on the private sector.

General public. The final-form rulemaking imposes no costs and has no fiscal impact on the general public.

Paperwork Requirements

The final-form rulemaking will not impact upon the paperwork generated by the Department or the regulated communities.

Effective Date

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

Contact Person

Individuals who need information about the final-form rulemaking should contact Angela M. Black, Department of Agriculture, Legal Office, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 13, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 951, to IRRC and the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 18, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective July 18, 2007.

Findings

The Department finds that:

(1) Public notice of intention to adopt this final-form rulemaking has been 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) A public comment period was provided as required by law; and no comments were received were considered.

(3) No amendments were made to this final-form rulemaking, as no comments were offered with respect to the proposed rulemaking published at 37 Pa.B. 951.

(4) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statutes, orders the following:

(a) The regulations of the Department, 7 Pa. Code 11, 95, 123, 125 and 128a, are amended by deleting §§ 11.11—11.18, 11.21, 11.22, 95.1—95.7, 123.1—123.6, 125.1—125.8, 125.11, 125.12, 125.21—125.25, 125.31—125.33, 125.41—125.47, 125.51—125.56, 125.61—125.65, 125.71—125.78 and 125.131—125.137 to read as set forth at 37 Pa.B. 951.

(b) The statement of policy of the Department, 7 Pa. Code Chapter 128a, is amended by deleting §§ 128a.1—128a.18 to read as set forth at 37 Pa.B. 951.

(c) The Secretary of Agriculture shall submit this order and 37 Pa.B. 951 to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(d) The Secretary of Agriculture shall certify and deposit this order and 37 Pa.B. 951 to the Legislative Reference Bureau as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 4411 (August 4, 2007).)

Fiscal Note: Fiscal Note 2-154 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 07-1477. Filed for public inspection August 17, 2007, 9:00 a.m.]

The proposed rulemaking was published at 36 Pa.B. 5981 (September 30, 2006). Publication was followed by a 30-day public comment period. The Board did not receive comments from the public. The House Professional Licensure Committee (HPLC) voted to take no formal action until the final rulemaking was submitted, but did submit one comment on November 16, 2006. The Independent Regulatory Review Commission (IRRC) reported on November 29, 2006, that it had no objections, comments or recommendations. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment on the proposed rulemaking.

Effective Date

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

Statutory Authority

Section 5(b) of the Occupational Therapy Practice Act (act) (63 P. S. § 1505(b)) authorizes the Board to promulgate and adopt rules and regulations it deems necessary for the performance of its duties and the proper administration of the act.

Summary of Comments and Responses to Proposed Rulemaking

The HPLC noted that the proposed rulemaking contained an inconsistency in the use of terminology regarding the individual who orders the services of an occupational therapist. The Board variously referred to the "responsible licensed physician, licensed optometrist or licensed podiatrist," the "practitioner" and the "ordering practitioner." The HPLC recommended that the Board be consistent in its terminology throughout the section. The Board adopted this recommendation and simply refers to the licensed physician, licensed optometrist or licensed podiatrist who issues the order for occupational therapy.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have a fiscal impact on, or create additional paperwork for, the regulated community or the political subdivisions of the Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 20, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 5981, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 27, 2007, the final-form rulemaking was approved by the HPLC. On July 18, 2007, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 19, 2007, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Christine Stuckey, Board Administrator, State Board of

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

Orders

The State Board of Occupational Therapy Education and Licensure (Board) amends § 42.25 (relating to orders) to read as set forth in Annex A.

Occupational Therapy Education and Licensure, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of intention to adopt this final-form rulemaking has been 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and comments were received.

(3) The amendments to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 36 Pa.B. 5981.

(4) This final-form rulemaking is necessary and appropriate for the administration of the act.

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending § 42.25 to read as set forth in Annex A.

(b) The Board shall submit a copy of this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ELLEN L. KOLODNER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 4411 (August 4, 2007).)

Fiscal Note: Fiscal Note 16A-676 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

MINIMUM STANDARDS OF PRACTICE

§ 42.25. Orders.

(a) *Written orders.* An occupational therapist shall accept a referral in the form of a written order from a licensed physician, licensed optometrist or licensed podiatrist.

(b) *Oral orders.*

(1) An occupational therapist may accept a referral in the form of an oral order if it is impractical for the licensed physician, licensed optometrist or licensed podiatrist to provide the order in writing.

(2) An occupational therapist receiving an oral order shall immediately transcribe the order in the patient's medical record, including the date and time the order was received, and sign the medical record.

(3) The occupational therapist in a private office setting who has received an oral order shall obtain the countersignature of the licensed physician, licensed optometrist or licensed podiatrist who issued the order within 5 days of receiving the order.

(4) If the occupational therapist who receives an oral order provides services in a setting that is independent of the prescriber's setting, the occupational therapist may accept the countersignature of the ordering licensed physician, licensed optometrist or licensed podiatrist on a written copy of the order that is mailed or faxed to the occupational therapist.

(5) If an occupational therapist provides services in a facility licensed by the Department of Health, the countersignature of the ordering licensed physician, licensed optometrist or licensed podiatrist shall be obtained in accordance with the applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§ 211.3 and 601.31 (relating to oral and telephone orders; and acceptance of patients, plan of treatment and medical supervision).

[Pa.B. Doc. No. 07-1479. Filed for public inspection August 17, 2007, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 491, 491a AND 492]

General Rules of Practice

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (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), adopts Chapter 491a (relating to general rules of practice) and rescinds Chapters 491 and 492 to read as set forth in Annex A.

Purpose of the Final-form Rulemaking

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

The Board is adopting Chapter 491a to replace the temporary regulations with permanent regulations.

Explanation of Chapter 491a

This final-form rulemaking replaces temporary Chapters 491 and 492.

Chapter 491a contains general rules of practice and procedure that apply to persons appearing before the Board in a hearing. These regulations provide 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 and presiding officers.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 23 (January 6, 2007).

The Board only received comments on the proposed rulemaking from the Independent Regulatory Review Commission (IRRC). Those comments were reviewed by the Board and are discussed as follows.

In § 491a.3(a)(2) (relating to Office of the Clerk), IRRC suggested that the Board's policy on electronic filings be added to the regulation.

This language was put in the regulation to leave the door open to electronic filing of documents at some point in the future. However, at this point in time, the Board is not using electronic filing of documents, so this language has been deleted. If the Board develops a system for electronic filing in the future, new provisions will be added.

In § 491a.5(c) (relating to service by the Board), IRRC suggested that the manner and form of providing proof of service be specified in the regulation.

The Board has not developed a specific form that must be used. For this reason, that phrase has been deleted. If in the future the Board determines that a standard form is needed, it will amend this chapter accordingly.

In § 491a.7(b)(1) (relating to presiding officers), IRRC recommended deleting "unless otherwise provided by the Board, as provided in § 494.1a(a) (relating to generally)" because the section cited has not been adopted as a final-form regulation yet.

The Board agrees and deleted this phrase. It will be added when the final-form version of Chapter 494a (relating to hearing procedure) is adopted.

In § 491a.8 (relating to hearings generally), IRRC suggested that the Board add examples of when documentary hearings would not be constitutionally permissible or add criteria the Board would use to determine when it would not be constitutionally permissible.

Generally, the Board intends to use documentary hearings when there are no material facts in dispute. The phrase "when constitutionally permissible" was included in the regulation because it appears in 4 Pa.C.S. § 1205. However, including the phrase in the regulation is unnecessary, because no agency would conduct hearings in a manner that is constitutionally impermissible. Accordingly, "when constitutionally permissible" has been deleted.

Additional Revisions

In addition to the changes made in response to the comments that were received from IRRC, the Board made two additional revisions to § 491a.8. These changes, in subsections (a) and (h), add revisions that were made to the Board's temporary regulations on December 4, 2006.

Affected Parties

This final-form rulemaking imposes requirements on individuals appearing before the Board in a hearing.

Fiscal Impact

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

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

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under sections 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.5(a) and (f)), the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 23, and a copy of the Regulatory Analysis Form to IRRC on December 19, 2006, and to the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development on February 12, 2007, for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered comments received from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 18, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)) IRRC met on July 19, 2007, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these chapters was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part 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, are amended by deleting §§ 491.1—491.3 and 492.1—492.8 and by adding §§ 491a.1—491a.10 to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

THOMAS A. DECKER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 4411 (August 4, 2007).)

Fiscal Note: Fiscal Note 125-53 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 491. (Reserved)

§§ 491.1—491.3. (Reserved).

CHAPTER 491a. GENERAL RULES OF PRACTICE

Sec.

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§ 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.

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

Office of the Clerk
Pennsylvania Gaming Control Board
P. O. Box 69060
Harrisburg, PA 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 who for 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" will include 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.

(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 the adjournment thereof.

(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 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) 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, all matters, except for hearings under § 441a.19 (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 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 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 § 441a.19 which will be scheduled as 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) 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 (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).

CHAPTER 492. (Reserved)

§§ 492.1—492.8. (Reserved).

[Pa.B. Doc. No. 07-1478. Filed for public inspection August 17, 2007, 9:00 a.m.]