

PROPOSED RULEMAKINGS

PENNSYLVANIA GAMING CONTROL BOARD

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

Practice and Procedure; Server Supported Slot Systems; Compulsive and Problem Gambling

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and specific authority in 4 Pa.C.S. § 1207(2) and (9) (relating to regulatory authority of board), proposes to amend Chapters 401a, 403a, 405a, 407a, 437a, 461a, 471a, 491a, 493a, 494a, 495a, 499a, 501a and 511a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

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

Explanation of Amendments

Throughout this proposed rulemaking, "resolution" is proposed to be deleted as the Board issues orders and adjudications and only in rare instances issues resolutions. Also, several of the references to the Board were changed as the functions described are functions of Board staff.

In Chapter 401a (relating to preliminary provisions), the definition of "nongaming employee" is proposed to be amended to reflect that both registered and certified gaming service providers may have nongaming employees.

In Chapter 403a (relating to Board operations and organization), the 72-hour requirement for an informal hearing in § 403a.7 (relating to temporary emergency orders) is proposed to be amended to 3 business days. A 72-hour requirement is impractical as it does not account for holidays or weekends. Also, the requirement that an informal hearing be held at the Board's Harrisburg office was amended allowing the Executive Director or designee to hold the hearing at other locations.

Section 403a.7(c)(2) is proposed to be deleted. If a licensee fails to pay a required assessment or tax obligation, the Office of Enforcement Counsel files an enforcement action, which would be heard by the Board or hearing officer, not a request for a temporary emergency order.

Section 403a.7(j)(4) previously allowed only licensees to make a concluding argument, which was inconsistent with Board practice which allowed any licensee, permittee, registrant or certificate holder to make a concluding argument. Temporary emergency orders are always presented to the Board at scheduled Board meetings. Therefore, the 10 business day language in subsection (k) is proposed to be deleted.

Section 403a.7(l) is duplicative and is proposed to be deleted as hearing procedures are covered in Chapter 494a (relating to hearing procedure). Language in pro-

posed subsection (o) is proposed to be deleted since the forms of service are addressed in § 491a.5 (relating to service).

Section 403a.7(p)(1) is proposed to be deleted since hearing procedures are covered in Chapter 494a. The time period to have the hearing in proposed subsection (p)(1) was extended from 10 to 15 business days to allow for sufficient notice to the person who is the subject of the temporary order. Lastly, the types of service are proposed to be deleted from proposed paragraph (p)(2) since service is covered in § 491a.5.

Section 405a.6 (relating to enforcement action) is proposed to be amended to allow a person 30 days instead of 20 days to file an answer to an enforcement action. A response to an enforcement action is considered an answer. Answers to petitions are covered in § 493a.7(c) (relating to amendments and withdrawal of pleadings) and may include a notice of defense. Therefore, the reference to notice of defense is proposed to be deleted from subsection (c).

In § 405.6(d) and (e), if a person fails to file an answer, the allegations in the enforcement action are deemed admitted. The Office of Enforcement Counsel then files a Notice of Default Judgment with the Board's Clerk which is served on the person in accordance with the Board's procedures on service in § 491a.5.

Proposed amendments to Chapter 407a (relating to public access to Board files) reflect that the Clerk maintains a single file for formal records which contains both confidential and nonconfidential information within the file. If a person files a request with the Office of Hearings and Appeals (OHA) to access confidential information, the OHA, not the Board or Bureau, reviews the request. If a person disputes the designation of a document as confidential, the person may file a notice of dispute which will be heard by the Board. The procedure for the marking of documents as confidential is addressed in § 493a.10a (relating to motions to protect confidential information) and therefore is proposed to be deleted from subsection (c).

In Chapter 437a (relating to gaming service provider certification and registration), the provisions on reimbursement for the costs of investigation is proposed to be amended in § 437a.2(e) (relating to gaming service provider registration applications) and are proposed to be added to § 437a.3(c) (relating to gaming service provider certification applications) to reflect current practice and for consistency with other sections of the Board's regulations.

Chapter 461a (relating to slot machine testing and control) is proposed to be amended to add information on server supported slot systems, which is a new gaming technology to the Commonwealth. In summary, a server supported slot machine is connected to a computer which can download different games or features directly to the slot machine. The definitions applicable to server supported slot systems are proposed to be added in § 461a.1 (relating to definitions) and are therefore proposed to be deleted from § 461a.20(a) (relating to server supported slot systems). The existing provisions in subsections (b)—(e) are proposed to be deleted and replaced. Proposed subsections (a)—(p) address the requirements for server supported slot systems, administrator access to that system and the requirements for downloading new games or features from the server to the slot machine.

Section 471a.1(a) (relating to fees generally) is proposed to be amended to reflect that the Board previously eliminated fees for the filing of pleadings.

The general rules of practice in Chapter 491a (relating to general rules of practice) are proposed to be amended for clarity and to more accurately reflect Board practice. In § 491a.7(f) (relating to presiding officers), a procedure for appealing a ruling of a presiding officer, while a matter is still pending before the presiding officer, is proposed to be added. If a party appealing a ruling believes that extraordinary circumstances exist to warrant an appeal to the Board, the appealing party may file a written request with the Director of the OHA. If the Director of the OHA determines that extraordinary circumstances exist, the Director, not the presiding officer, will refer the matter to the Board for its determination.

Section 491a.8(d) (relating to hearings generally) is proposed to be amended to reiterate the prohibition on engaging in ex parte communications, consistent with 4 Pa.C.S. Part II (relating to gaming) and amendments made in the Board's final-form rulemaking 125-141 published at 41 Pa.B. 5368 (October 8, 2011).

Throughout Chapter 493a (relating to pleadings), language is proposed to be added requiring a petitioner to include the Board-issued credential number, if applicable, of the person that is the subject of the filing. Section 493a.4(a) (relating to petitions generally) is proposed to be amended to reflect that the Office of Enforcement Counsel, acting as counsel to the Bureau of Investigations and Enforcement, files petitions.

Proposed language in § 493a.8 (relating to motions generally) provides guidelines regarding when and how motions for procedural relief are to be made after the initiation of a proceeding.

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

The provisions on discovery in § 493a.11 (relating to discovery) are proposed to be amended to clarify, streamline and more accurately define expectations regarding discovery consistent with administrative practices throughout this Commonwealth.

Section § 494a.3 (relating to documentary hearings) is proposed to be rescinded as documentary hearings are covered under hearings generally. Section 494a.10 (relating to reports of compliance) is also proposed to be rescinded. Board staff verifies that Board orders are carried out. A licensee, permittee, registrant or certificate holder that does not comply with a Board order will be subject to an enforcement action filed by the Office of Enforcement Counsel. The Board, acting on an enforcement action, may then revoke, suspend or levy fines against any licensee, permittee, registrant or certificate holder.

To conserve resources, § 495a.6(b) (relating to number of copies) is proposed to be added to allow for the electronic filing of pleadings and documents. If filed electronically, a paper submission is not required.

Section 501a.4 (relating to reports) previously required slot machine licensees to submit a summary of its

compulsive and problem gambling program with the licensee's annual renewal application. When 4 Pa.C.S. Part II was amended, however, the renewal period was changed to once every 3 years. The proposed language would require the slot machine licensee to submit a summary of its compulsive and problem gambling program no later than the last business day of July. Proposed subsection (b) details the information that must be in the annual summary.

Chapter 511a (relating to persons required to be excluded) is proposed to be amended for consistency with amendments to 4 Pa.C.S. Part II by the act of January 7, 2010 (P. L. 1, No. 1). Also, in § 511a.3 (relating to criteria for exclusion), a provision is proposed to be added to allow persons to be added to the exclusion list if the person poses a threat to the safety of people who are in close proximity to, but not actually in, the licensed facility, such as persons located in the licensee's parking lot.

Proposed amendments to § 511a.6(a) (relating to demand for hearing on the placement of a person on the exclusion list) reflect that the Office of Enforcement Counsel files a petition to be placed on the exclusion list, which is served on the individual. Proposed subsection (e) allows for an individual who was not served, despite the Bureau's best efforts, to be placed on the excluded persons list if a copy of the petition is provided to Board staff (casino compliance representatives who are in the licensed facility at all times) to perfect service should the individual revisit any licensed facility in this Commonwealth in the future.

Section 511a.7 (relating to Board review) is proposed to be rescinded and § 511a.9(c) and (f) (relating to petition to remove name from the exclusion list) is proposed to be deleted as the conduct of hearings is covered in Chapter 491a.

Affected Parties

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

Fiscal Impact

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

Political subdivisions. This proposed rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth.

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

General public. This proposed rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will eliminate the need for paper submissions of filings with the Board. Filings submitted electronically will be deemed originals. This proposed rulemaking will also require petitioners that submit information of a confidential nature to provide redacted versions of the submission.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the Pennsylvania Bulletin, to Susan Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-156.

Contact Person

The contact person for questions about this proposed rulemaking is Susan Yocum, Assistant Chief Counsel, (717) 346-8300.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 15, 2011, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site at www.pgcb.state.pa.us.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,
Chairperson

Fiscal Note: 125-156. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

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

* * * * *

CHAPTER 403a. BOARD OPERATIONS AND ORGANIZATION

§ 403a.7. Temporary emergency orders.

(a) Upon request of the Office of Enforcement Counsel in accordance with subsection (d), a temporary emergency order may be issued by, or on behalf of, the Executive Director of the Board. A temporary emergency order may be issued without a hearing and without advanced notice and will notify the person to whom the temporary

emergency order is issued that he may request a hearing to be held by the Executive Director or a designee within [72 hours] 3 business days of the request being filed with the [Board] Clerk.

(b) A temporary emergency order may be issued to suspend a license, certification, permit or registration or to direct that a person refrain from engaging in, or cease and desist engaging in, specific conduct.

(c) A temporary emergency order may be issued if there is insufficient time to provide notice and hearing prior to the issuance of the order; the order is necessary to preserve the public health, welfare, or safety or the integrity of gaming in the Commonwealth; and determination of one of the following has occurred:

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

(2) [A licensee has failed to pay required assessments or to satisfy its tax obligations under the act.

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

* * * * *

(f) A temporary emergency order will specify that the person subject to the temporary emergency order may request an informal hearing before the Executive Director or a designee within [72 hours] 3 business days of filing the request with the Clerk.

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

(h) Within [72 hours] 3 business days of the filing a request for an informal hearing with the Board, an informal hearing before the Executive Director or a designee will be held at [the Board headquarters] a location determined by the Executive Director or a designee.

(i) The Executive Director or a designee may sign subpoenas to secure the attendance of witnesses and the production of documents.

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

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

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

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

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

(5) Upon receiving all evidence presented by the person named in the order and hearing the person's final argument, the Executive Director or a designee will render a decision **within 3 business days** as to whether or not the temporary emergency order will continue, be modified or dissolved [**within 72 hours**]. Service of the decision will be made in the manner prescribed by § 491a.5. Unless the Executive Director dissolves the temporary emergency order, the matter will be scheduled for a hearing before the Board as provided in subsection (k).

(k) Once a temporary emergency order has been issued under this section, unless it has been subsequently dissolved by the Executive Director **or a designee**, the temporary emergency order will be presented to the Board at its next meeting [**or within 10 business days, whichever is longer**] at which time the Board may do one of the following:

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

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

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

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

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

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

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

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

(2) If the Board finds that there is insufficient cause to continue the temporary emergency order, it may adopt [**a resolution**] **an order** dissolving the emergency order and the privileges of the person named in the order will be reinstated.

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

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

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

(p) **Resolutions**] (n) **Orders** ratifying or dissolving temporary emergency orders adopted by the Board under this section will have no effect upon the power and duty of the Office of Enforcement Counsel to initiate, in its sole discretion, proceedings for violations of the act or this part or upon the outcome of any proceeding so initiated.

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

[(r)] (p) If the Board refers the matter to the Office of Hearings and Appeals, the hearing will be subject to the following requirements:

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

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

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

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405a.6. Enforcement action.

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 493a.2 (relating to complaints), including a proposed order for an enforcement action and serve the complaint in accordance with § 491a.5 (relating to service [**by the Board**]).

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

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

(1) A waiver by the person of any right to an administrative hearing before the Board.

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

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

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

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

CHAPTER 407a. PUBLIC ACCESS TO BOARD FILES

§ 407a.1. Case files.

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

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

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

(2) Upon receipt of a request for access to confidential [files] information, the [Board or the Bureau] Office of Hearings and Appeals will review the request and provide its determination as to whether the material may be released for inspection within 30 days of the request.

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

(c) The Board or its designee may issue protective orders *sua sponte or by request of a party* or may establish standards governing the protection of proprietary or confidential [documents] information for a given proceeding [or a given type of proceeding]. All parties to a proceeding shall [submit, classify and] mark documents in accordance with the directives of the Board or its designee and § 493a.10a (relating to motions to protect confidential information). [In

the absence of any protective order or standard, parties shall clearly mark documents that are deemed to be proprietary or confidential. The documents will be treated as marked by the Board.]

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

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 437a. GAMING SERVICE PROVIDER CERTIFICATION AND REGISTRATION

§ 437a.2. Gaming service provider registration applications.

* * * * *

(e) An applicant for a gaming service provider registration will be required to reimburse the Board for **additional costs, based on the actual expenses** incurred by the Board, in conducting the [review of the application] background investigation.

* * * * *

§ 437a.3. Gaming service provider certification applications.

* * * * *

(c) **An applicant for a gaming service provider certification shall be required to reimburse the Board for additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.**

(d) A gaming service provider certification will not be issued until all fees have been paid.

[(d)] (e) A person required to be a certified gaming service provider under this chapter may request that the Board waive its obligation to be certified by filing a Single Transactional Waiver Form. To be eligible to receive this waiver from the requirements of certification, the person shall demonstrate that the person is proposing to engage in a single transaction with a slot machine applicant or licensee and satisfies the following requirements:

(1) The person's required performance under the contract with the slot machine applicant or licensee does not require the person's employees to be on the gaming floor or in a restricted area.

(2) The person has not filed a Single Transactional Waiver Form with the Board within 2 years of the current waiver request.

(3) The person will not have a continuing business relationship with the slot machine applicant or licensee or have a continuing onsite presence at the licensed facility.

[(e)] (f) The Board may, in response to misrepresentations or a change in circumstances, revoke a waiver granted under this section and require the recipient of the waiver to comply with the gaming service provider certification requirements of this chapter.

[(f)] (g) A person who has requested a waiver under this section may not provide goods or services to a slot machine applicant or licensee prior to Board approval of the person's waiver request.

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.1. Definitions.

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

* * * * *

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

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

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

* * * * *

§ 461a.20. Server supported slot systems.

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

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

Slot machine server—A computer configured to:

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

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

Server supported slot system—A system comprised of one or more server supported slot machines connected to a slot machine server and its ancillary computer network for the ultimate purpose of downloading Board-approved slot machine games and other approved software to server supported slot machines.

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

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

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

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

(a) A slot machine licensee may utilize a server supported slot system that complies with the minimum design standards in § 461a.7 (relating to slot machine minimum design standards) and the general requirements in this chapter.

(b) A server supported slot system must:

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

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

(3) Provide a visual notification identifying the invalid program if an error is detected.

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

(d) Administrator access to server supported slot systems require the presence and participation of at least two individuals. Dual access may be achieved using split passwords, dual keys or other suitable method approved by the Board. The slot machine licensee shall specify in its internal controls under § 465a.2 the two individuals who have administrator access to the system and the method by which access will be achieved.

(e) A technical field representative shall be present for the instillation and loading of software on an approved slot machine server.

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

(g) Access to slot machine programs or computer files on a server supported slot system may be provided at terminals in secure, restricted locations within the licensed facility as approved by the Bureau of Gaming Laboratory Operations. The slot machine licensee shall provide read-only access to the Bureau of Gaming Laboratory Operations and the Bureau of Casino Compliance.

(h) Prior to implementing a change to a feature or reconfiguring the server supported slot machine, the slot machine must be in idle mode for at least 2 minutes without errors or tilt conditions and with no play or credits on the machine.

(i) During the implementation of a change to a feature or the reconfiguration of the server supported slot machine, the slot machine must be disabled and rendered unplayable for at least 1 minute. During that time, a conspicuous message stating that a game configuration is being changed must be continuously displayed either on the slot machine's video screen or in another manner as approved by the Bureau of Gaming Laboratory Operations.

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

(k) A slot machine server:

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

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

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

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

(1) Time and date of access.

(2) Name and Board-issued credential number of the person logging in.

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

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

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

(m) Prior to adding or removing software from a server supported slot machine, changing any configuration or activating or deactivating a slot machine game on a server supported slot machine, a complete set of meter information for the slot machine shall be accurately communicated to a slot machine server, a slot monitoring system or other Board approved slot accounting system.

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

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

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

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

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

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

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

Subpart F. FEES

CHAPTER 471a. FILING FEES

§ 471a.1. Fees generally.

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

* * * * *

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 491a. GENERAL RULES OF PRACTICE

§ 491a.1. Generally.

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

§ 491a.2. Definitions.

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

* * * * *

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

* * * * *

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

* * * * *

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

§ 491a.4. Filing generally.

(a) Pleadings and other documents [required to be] filed with the [Board] Clerk must clearly designate the docket number [or similar identifying symbols, if any, employed by the Board, and set forth], if one has been assigned, and a short title identifying the pleading or other document. The identity of the individual making the submission, including name, mail-

ing address [**and**], status (for example, party or attorney for a party) and **Board-issued credential number, if applicable**, must appear on the document.

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

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

§ 491a.5. Service [**by the Board**].

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

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

(1) *Registered or certified mail.* Service may be made by both **first class and** registered or certified mail, return receipt requested[, **to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business**].

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

* * * * *

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

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

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

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

§ 491a.7. Presiding officers.

* * * * *

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

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

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

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

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

(2) **If the Director of the OHA determines extraordinary circumstances exist, the matter will be referred to the Board for determination.**

(3) **Referrals not acted upon by the Board within 30 days will be deemed denied.**

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

§ 491a.8. Hearings generally.

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

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

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

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.
- (5) Submission **by the presiding officer** 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,**] engage in an **ex parte communication** with the Board or presiding officer, unless notice and opportunity for all parties to participate has been given.

(e) Hearings will be conducted in Harrisburg, Pennsylvania [**or**], by video conference, [**unless otherwise**] or **by telephone as directed by the Board or presiding officer.**

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

(g) Motions shall be filed with the Clerk 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.7 which will be scheduled as directed by the Board [may direct]. [Hearings for violations of the act or this part will be scheduled within 90 days of the initiation of action by the Bureau.]

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

(j) This section supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

CHAPTER 493a. PLEADINGS

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

* * * * *

(6) Appeals of staff decisions under 1 Pa. Code § 35.20 (relating to appeals from action of the staff). Appeals under § 491a.7(f) (relating to presiding officers) are not included.

(7) [Formal notices] Notices.

(b) [Filing fees for pleadings,] Fees for 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,] web site and in the Office of the Clerk.

(c) Pleadings shall be filed with the Clerk and contain a docket number and Board-issued credential number, if applicable. The Clerk will assign a docket number if one has not been assigned.

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

§ 493a.2. Complaints.

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

(b) Complaints may be filed by the Bureau and other persons authorized by the Board.

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

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

§ 493a.4. Petitions generally.

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

* * * * *

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

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

* * * * *

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

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

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

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

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

§ 493a.8. Motions generally.

[The procedures for motions shall be in accordance with 1 Pa. Code §§ 35.177—35.180 (relating to motions).]

(a) A motion may be made at any time after the initiation of a proceeding for procedural relief including a request for an extension of time, a continuance of a hearing or other scheduled proceeding, or a request for a prehearing conference.

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

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

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

(e) Motions to the Board seeking interlocutory determinations on rulings of a presiding officer are not permitted. A party may file a written request for referral with the Director of the OHA in accordance with § 491a.7(f) (relating to presiding officers).

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

motion shall be made part of the report or report and recommendation to the Board.

(g) This section supersedes 1 Pa. Code §§ 35.177—35.180 (relating to motions).

§ 493a.9. Preliminary motions.

* * * * *

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

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

* * * * *

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

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

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

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

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

(b) A Motion to Protect Confidential Information must:

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

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

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

§ 493a.11. Discovery.

(a) [A party may, upon written motion to the Board or a presiding officer, request a prehearing conference solely for the purpose of discussing discovery procedures as the nature of the matter

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

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

[(2) A party may request discovery by one or more of the following methods:]

(c) At the discretion of the presiding officer, discovery may be granted and limited to the following:

(i) Written interrogatories.

(ii) Depositions.

(iii) [Affidavits.

(iv)] Production of documents or things.

[(v) Requests for admissions.

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

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

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

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

[(e)] (g) If a party fails to respond to a discovery request [or fails to adhere to the time limits set forth in the discovery plan], which was granted by the presiding officer, the opposing party may file a motion to compel discovery with the Clerk. The presiding officer may grant or deny the motion[, as the circumstances of the proceeding require] in accordance with § 493a.8(e) (relating to motions generally).

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

§ 493a.12. Intervention.

* * * * *

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

* * * * *

CHAPTER 494a. HEARING PROCEDURE

§ 494a.1. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be [heard in] conducted from Harrisburg, in person, by means of video conference or by telephone, unless a different site is designated by the Board or the presiding officer. The Board or the presiding officer, in its discretion with or without motion, for cause may at any time with due notice to the parties advance or postpone any proceeding on the hearing calendar.

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

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

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

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

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

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

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

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

* * * * *

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

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

* * * * *

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

§ 494a.6. Reopening of record.

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

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

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

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

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

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

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

§ 494a.7. Exceptions.

(a) A party may file exceptions to the report or report and recommendation of the presiding officer within 15

days of the date of the report or report and recommendation, unless the time is extended upon good cause shown.

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

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

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

(e) Exceptions will be considered by the [Board] presiding officer and will be limited to the record established during the hearing. The Board or presiding officer may reopen the record and permit evidence not already established in the record if compelling reasons are shown for its submission, the party requesting its admission did not previously know of its existence and its existence could not have been discovered with the exercise of reasonable diligence.

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

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

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

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

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

§ 494a.8. Rehearing or reconsideration.

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

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

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

from compliance therewith, the matters relied upon by the petitioner must be set forth in the [petition] motion.

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

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

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

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

§ 494a.9. Briefs and oral argument.

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

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

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

[(a) When a person subject to the jurisdiction of the Board is required to do or perform an act by a Board order, permit or license provision, the person shall file, with the Clerk within 30 days following the date when the requirement becomes effective, a notice stating that the requirement has or has not been met or complied with, unless the Board specifies an alternate means to demonstrate compliance or proof of compliance.

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

CHAPTER 495a. DOCUMENTARY FILINGS

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

* * * * *

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

address, status (for example, party or attorney for a party) and Board-issued credential number, if applicable, must appear on the document.

* * * * *

§ 495a.2. Form of documents.

(a) The [method of receipt and transmission of information will be under a policy published by the] Board may establish the paper, printing and binding requirements for pleadings filed with the Clerk.

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

§ 495a.6. Number of copies.

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

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

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

CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

§ 499a.1. Appearance in person.

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

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

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

§ 499a.2. Appearance by attorney.

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

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

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

* * * * *

Subpart I. COMPULSIVE AND PROBLEM GAMBLING

CHAPTER 501a. COMPULSIVE AND PROBLEM GAMBLING REQUIREMENTS

§ 501a.4. Reports.

(a) A slot machine licensee shall submit to the Director of the OCPG an annual summary of its compulsive

and problem gambling program [with its application for renewal of the slot machine license] by the last business day in July.

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

(1) Employee training, including:

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

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

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

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

(v) The dates of responsible alcohol training.

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

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

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

(i) Compulsive and problem gambling.

(ii) The self-exclusion program.

(iii) Responsible gaming.

(iv) Available treatment services.

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

(i) Employee training.

(ii) Printed materials.

(iii) Outreach including community training and sponsorships.

(4) Additional information including:

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

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

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

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

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

Subpart J. EXCLUSION OF PERSONS

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

§ 511a.1. Definitions.

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

* * * * *

Cheat—

(i) To defraud or steal from any player or slot machine licensee in this Commonwealth while operating or playing a slot machine or table game,

including causing, aiding, abetting or conspiring with another person to do so.

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

- (A) The result of a slot machine game **or table game.**
- (B) The amount or frequency of payment in a slot machine game **or table game.**
- (C) The value of a wagering instrument.
- (D) The value of a wagering credit.

[(ii)] (iii) The term does not include altering for required maintenance and repair.

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

* * * * *

§ 511a.3. Criteria for exclusion.

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

* * * * *

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

- (i) Cheats.
- (ii) Persons whose gaming privileges have been suspended by the Board.
- (iii) Persons whose Board permits, licenses or other approvals have been revoked.
- (iv) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee **or persons in close proximity to the licensed facility.**

* * * * *

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

(a) A person may be placed on the exclusion list for either of the following:

- (1) Upon the filing of a petition for exclusion by the Bureau in accordance with the procedures under § 511a.4 (relating to duties of the Bureau) **when circumstances warrant expeditious placement.**
- (2) Upon receipt of an order from **the Board or a court of competent jurisdiction within this Commonwealth, excluding the person from licensed facilities in this Commonwealth.**

* * * * *

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

(a) Upon **[placement of a person on the exclusion list, the Clerk will serve notice of the placement to] the filing of a petition for exclusion, the Bureau will serve the petition upon the person by personal service or certified mail at the last known address of the person. [When the placement is a result of a petition for exclusion filed by the Bureau, a copy of the petition will be included with the notice.]**

(b) Upon service of the **[notice by the Clerk, an excluded person] petition, the person subject to the petition shall have 30 days to demand a hearing**

before the Board. Failure to demand a hearing within 30 days after service shall be deemed an admission of all matters and facts alleged in the Bureau's petition for exclusion.

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

(d) If a hearing is demanded by the excluded person, a hearing will be scheduled as provided in § 491a.8 (relating to hearings generally). At the hearing, the Bureau will have the affirmative obligation to demonstrate that the excluded person satisfies the criteria for exclusion in 4 Pa.C.S. § 1514 (relating to regulation requiring exclusion or ejection of certain persons) or § 511a.3 (relating to criteria for exclusion). Unless the matter is heard directly by the Board, the presiding officer will prepare a report and recommendation as provided in § 494a.4 (relating to report or report and recommendation of the presiding officer) for consideration by the Board.

(e) If service pursuant to the Board's regulations is not made despite the Bureau's best efforts, a copy of the petition and notice required under subsection (c), if required, shall be provided to the Bureau of Casino Compliance to effectuate personal service should the person who is the subject of the petition appear at a licensed facility in this Commonwealth.

§ 511a.7. [Board review] (Reserved).

[After a hearing or consideration of a petition for exclusion filed by the Bureau when no hearing was requested, the Board will:

- (1) Issue a final order affirming the placement of the person on the exclusion list.**
- (2) Issue a final order removing the person from the exclusion list.**
- (3) Refer the matter to the presiding officer for further hearing.]**

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

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

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response).

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

stances have changed since the placement of the excluded person on the exclusion list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

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

(e) **(d)** A petition for early consideration must contain the information required by subsection (b). Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5.

(f) **The Board may decide the petition for early consideration on the basis of the documents sub-**

mitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511a.6.

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

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

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

[Pa.B. Doc. No. 11-1729. Filed for public inspection October 7, 2011, 9:00 a.m.]