

RULES AND REGULATIONS

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

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

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

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1207(2) and (9) (relating to regulatory authority of board), amends Chapters 401a, 403a, 405a, 407a, 461a, 471a, 491a, 493a, 494a, 495a, 497a, 499a, 501a and 511a to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

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

Explanation of Amendments and Additional Revisions

Throughout this final-form rulemaking, "resolution" was changed as the Board issues orders and adjudications and issues resolutions only in limited and specific instances. Also, several of the references to the Board were changed as the functions described are functions of Board staff.

In § 401a.3 (relating to definitions), the definition of "nongaming employee" was updated to reflect that both registered and certified gaming service providers may have nongaming employees. Additionally, the Board's web site, which was recently changed, was added to the definitions that are applicable to all regulations in Part VII (relating to Gaming Control Board).

Section 403a.7(a) (relating to temporary emergency orders) was amended to allow the Executive Director and the Executive Director's designee (typically a hearing examiner) to issue a temporary emergency order. The remainder of subsection (a) was deleted as redundant with subsection (f).

In subsection (b), language was added to allow the issuance of an emergency order to temporarily exclude a person from a licensed facility pending Board action on an underlying petition for exclusion. This provision was added as individuals have been discovered cheating at other facilities while awaiting Board action on a petition for exclusion. This provision will not be utilized except in instances when an individual meets the criteria established in § 403a.7(c) and § 511a.4(c) (relating to duties of the Bureau and the Office of Enforcement Counsel).

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

emergency order. A cross reference to the exclusion or ejection criteria was added in its place.

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

Subsections (e) and (g) were reworded for clarity. In subsection (f), the 72-hour requirement for an informal hearing found was changed to 3 business days. A 72-hour requirement is impractical as it does not account for holidays or weekends.

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

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

Subsections (j) and (k) were rewritten providing that unless the Executive Director dissolves an emergency order, the matter will be referred to the Board for a formal hearing or, in most instances, directly to the Office of Hearings and Appeals to prepare a report and recommendation for the Board's consideration. Amending subsections (j) and (k) deletes an unnecessary step in the process. Temporary emergency orders were first directed to the Board then, in most instances, is referred to the Office of Hearings and Appeals to have a hearing, then referred back to the Board for a final determination. Taking it first to the Board for subsequent referral can take several additional weeks, depending on when the next Board meeting is scheduled to take place. This additional time could be detrimental to an individual employed by a licensee who is not otherwise able to work while his license, permit or registration is temporarily suspended. Shortening the process by deleting an unnecessary step could potentially result in an individual returning to work more quickly when suspension is ultimately deemed unnecessary.

New subsection (k) provides that the Executive Director will retain jurisdiction to modify or dissolve a temporary emergency order until the Office of Hearings and Appeals issues a report and recommendation or the Board takes action on the suspension.

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

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

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

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

Section 405a.6 (relating to enforcement action) was amended allowing a person 30 days instead of 20 days to file an answer to an enforcement action. A response to an enforcement action is considered an answer. Answers to petitions are covered in § 493a.5(c) (relating to answers to complaints, petitions, motions and other filings requiring a response) and may include a notice of defense. The reference to notice of defense was deleted in subsection (c). In subsection (c)(1), the Office of Hearings and Appeals was added as both the Board and the Office of Hearings and Appeals may conduct an administrative hearing.

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

Section 407a.1 (relating to case files) was amended to reflect that the Clerk maintains a single file for formal records which contains both confidential and nonconfidential information within that file. Nonconfidential information will still be available for inspection during normal business hours in accordance with subsection (b)(1).

The provisions regarding written requests for records, which were addressed in subsection (b)(2) and (3), were deleted as inconsistent with the current interpretation of the Right-to-Know Law (65 P.S. §§ 67.101—67.3104). Under a recent Commonwealth Court decision, a request for information is a Right-to-Know Law request even if the request did not mention the Right-to-Know Law, it was not addressed to a Right-to-Know officer or submitted on an agency designated form. See *Pennsylvania Gaming Control Bd. v. Office of Open Records*, 48 A.3d 503 (Pa.Cmwlt, 2012). To avoid a situation in which the Board is subject to Right-to-Know Law remedies, including the possible ordered disclosure of confidential information, for failing to respond within 5 business days to a request the Board did not believe was a Right-to-Know Law request in the first instance, the Board has to now handle a request in accordance with the Right-to-Know Law. The procedure in subsection (d) was deleted because once a request for information is filed, the Right-to-Know Law dictates the procedure for completing the request and the appeal rights if the request is denied as not a public record based on confidentiality.

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

Chapter 461a (relating to slot machine and table game device testing and control) was amended to add information on server supported slot systems, which is a gaming technology new to this 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 were added in § 461a.1 (relating to definitions) and were deleted from § 461a.20(a) (relating to server supported slot systems). The provisions in § 461a.20(b)—(e) were deleted and replaced. The new provisions in § 461a.20(a)—(p) address the requirements for server supported slot systems, administrator access to that system and the requirements for downloading new games or features from the server to the slot machine.

In § 461a.20(d), the requirements for administrator access were amended to allow two different departments to have access instead of two individuals who may not always be onsite.

The cross reference to the procedure for notifying technical field representatives prior to installing software was added in § 461a.20(e). Lastly, not all systems are configured to allow individuals to input their Board issued credential numbers when logging into the system. Section 461a.20(1)(2) was expanded to allow for inputting an employee specific username instead of the board issued credential number.

Section 471a.1(a) (relating to fees generally) was updated 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) have been amended for clarity and to more accurately reflect Board practice. The Board address was updated in § 491a.3(b) (relating to Office of the Clerk) to reflect that the Office of Hearings and Appeals has relocated.

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

Section 491a.8(d) (relating to hearings generally) was amended to reiterate the prohibition on engaging in ex parte communications and is consistent with 4 Pa.C.S. Part II (relating to gaming) and amendments made in the Board's rulemaking 125-141 published at 41 Pa.B. 5368 (October 8, 2011). An additional amendment was made in the final-form rulemaking to eliminate the notice and an opportunity to participate. If notice and an opportunity to participate are given, by definition, the communication is not an ex parte communication.

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

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

Section 493a.10(c) was amended to reflect that affidavits and admissions were removed from the provisions regarding discovery in § 493a.11(c) (relating to discovery).

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

The provisions on discovery in § 493a.11 were amended to clarify, streamline and more accurately define expectations regarding discovery consistent with administrative practices throughout the Commonwealth.

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

Section 494a.10 was also rescinded. Board staff verify 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) was 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 a slot machine licensee 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, the renewal period was changed to once every 3 years. The amended language requires the slot machine licensee to submit a summary of its compulsive and problem gambling program by the last business day of July. Subsection (b) was added detailing the information that must be contained in the annual summary.

Chapter 511a (relating to persons required to be excluded) was amended for consistency with amendments made to 4 Pa.C.S. Part II by the act of January 7, 2010 (P.L. 1, No. 1). In § 511a.3 (relating to criteria for exclusion or ejection), a provision was added allowing persons to be added to the exclusion list if the person poses a threat to the safety of people who are on the property of the licensed facility, such as persons in the licensee's parking lot.

Language was added to § 511a.4 allowing the Office of Enforcement to file a request for a temporary emergency order to temporarily place someone on the exclusion list until the Board act upon an underlying petition for exclusion. As discussed regarding § 403a.7(b), this provi-

sion was added because while awaiting Board action on an underlying petition for exclusion, individuals have been found cheating at other facilities. This provision will not be utilized except in instances when there is insufficient time to provide notice and a hearing prior to exclusion, emergency exclusion is necessary to preserve the public health, welfare or safety, or the integrity of gaming in this Commonwealth and the individual meets the criteria in § 511a.3.

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

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

Specificity was added in § 511a.7 (relating to Board review) providing that after a hearing or if a hearing is not requested and the facts alleged in the complaint are deemed admitted, the Board may: issue an order approving a petition for exclusion and place the person's name on the excluded list; remove the person's name from the list; deny placement if emergency placement was not issued; or refer the matter back to the Office of Hearings and Appeals to develop the evidentiary record.

Comment and Response Summary

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

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

Section 403a.7(l) was deleted. In the preamble to the proposed rulemaking, the Board explained that subsection (l) was deleted because it was duplicative of the hearing procedures in Chapter 494a. IRRC requested that the Board explain how the role of the Office of Enforcement Counsel is adequately addressed in Chapter 494a.

Under 4 Pa.C.S. § 1517 (relating to investigations and enforcement), the Office of Enforcement Counsel acts as the prosecutor in noncriminal enforcement actions. As the prosecutor, the Office of Enforcement Counsel: initiates, in its sole discretion, proceedings for violations of 4 Pa.C.S. Part II; files recommendations and objections relating to the issuance of licenses, permits and registrations; and may petition the Board for the appointment of a trustee. Because the duties of the Office of Enforcement Counsel are specified by statute, the Board does not believe it is necessary to reiterate those requirements in the regulations.

Section 403a.7(o) was deleted. IRRC asked that the Board explain why the provision regarding the appeal

rights was deleted. This provision was deleted as unnecessary because appeal rights are governed by the Pennsylvania Rules of Appellate Procedure which dictate that an appeal may be taken as of right from any final order of an administrative agency. See Rule of Appellate Procedure 341 (relating to final orders; generally). Additionally, since the Board does not issue resolutions related to this section, the provision was inapplicable.

The proposed rulemaking contained a provision in § 437a.2 (relating to gaming service provider registration applications) regarding reimbursing the Board for costs incurred in the investigation of a gaming service provider. The section is not included in the final-form rulemaking and will be addressed in a comprehensive amendment package on Subpart B (relating to licensing, permitting, certification and registration).

In § 461a.1, the Board reviewed and amended the definitions associated with server supported slot systems.

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

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

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

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

In §§ 493a.9(f) and 494a.4(e) (relating to preliminary motions; and report or report and recommendation of the presiding officer) and § 493a.10(e), the Board amended the language stating that the regulations supersede instead of supplement provisions of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). IRRC inquired why the Board was making these amendments. The Board's regulations should have superseded provisions in 1 Pa. Code Part II from the time the regulations were initially drafted. If the Board regulations merely supplemented 1 Pa. Code Part II, in some areas the regulations would conflict with 1 Pa. Code Part II and lead to confusion. For instance, a provision in 1 Pa. Code Part II requires that answers or objections to motions be filed within 10 days while the Board requirement is 30 days. Additionally, Board regulations address specific types of motions and the process to address those motions while sections in 1 Pa. Code Part II address motions generally. It is unclear what part of 1 Pa. Code Part II the regulations are meant to supplement. The Board believed it necessary to amend the provision stating that the regulations will supersede the provisions of 1 Pa. Code Part II listed.

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

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

The Board added a provision in § 495a.6(b) stating that pleadings filed electronically will be considered originals. IRRC commented that more specificity was needed regarding the type of electronic filings that would be accepted. The e-mail address of the Board Clerk was added to this subsection and § 497a.1(a)(4) (relating to date of filing).

IRRC commented that the requirement in § 501a.4(b)(4)(v) to include additional information as requested by the Director of the Office of Compulsive and Problem Gambling was too vague. The Board removed this provision from the final-form rulemaking.

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

Affected Parties

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

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

Private sector. Because this final-form rulemaking deals primarily with internal Board practice and procedure, it is not anticipated that this final-form 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 final-form rulemaking will not have fiscal impact on the general public except those individuals who may be placed on the Board’s exclusion list.

Paperwork Requirements

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

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 15, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 5373, to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 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 November 30, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 13, 2012, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II.

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 403a, 405a, 407a, 461a, 471a, 491a, 493a, 494a, 495a, 497a, 499a, 501a and 511a, are amended by deleting §§ 494a.3 and 494a.10 and amending §§ 401a.3, 403a.7, 405a.6, 407a.1, 461a.1, 461a.20, 471a.1, 491a.1—491a.5, 491a.7, 491a.8, 493a.1, 493a.2, 493a.4, 493a.5, 493a.7—493a.10, 493a.10a, 493a.11, 493a.12, 494a.1, 494a.4, 494a.6—494a.9, 495a.1, 495a.2, 495a.6, 497a.1,

499a.1, 499a.2, 501a.4 and 511a.1—511a.9 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(Editor’s Note: Sections 491a.3, 497a.1, 511a.4 and 511a.8 were not included in the proposed rulemaking published at 41 Pa.B. 5373. Amendments to §§ 437a.2 and 437a.3 included in the proposed rulemaking have been withdrawn by the Board. The proposed rescission of § 511a.7 has been withdrawn by the Board and this section is amended in this final-form rulemaking.)

(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*.

WILLIAM H. RYAN, Jr.,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7877 (December 29, 2012).)

Fiscal Note: Fiscal Note 125-156 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Board—The Pennsylvania Gaming Control Board.

Board web site—www.gamingcontrolboard.pa.gov.

Central control computer—A central site computer controlled by the Department and accessible by the Board to which all slot machines communicate for the purpose of auditing capacity, real-time information retrieval of the details of a financial event that occurs in the operation of a slot machine, including, coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure, and remote machine activation and disabling of slot machines.

* * * * *

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:

(i) Whose job duties require the employee to be:

(A) On the gaming floor but do not require the employee to touch or have contact with slot machines or associated equipment other than exterior cleaning.

(B) In a restricted area and the employee:

(I) Is under the constant supervision of an employee of the slot machine licensee who is licensed or permitted and has appropriate access clearance to be in the restricted area.

(II) Is not required to touch or have contact with slot machines or associated equipment other than exterior cleaning.

(ii) Who the Board determines, after a review of the work being performed, requires registration for the protection of the integrity of gaming.

* * * * *

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 the Executive Director of the Board or the Executive Director's designee. A temporary emergency order may be issued without a hearing and without advanced notice in accordance with this section.

(b) A temporary emergency order may be issued to do one of the following:

(1) Suspend a license, certification, permit or registration.

(2) Temporarily exclude a person from a licensed facility pending Board action on an underlying petition for exclusion.

(3) Direct that a person 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 suspension or exclusion; emergency suspension or exclusion is necessary to preserve the public health, welfare or safety, or the integrity of gaming in this Commonwealth; and the Executive Director has determined that one of the following has occurred:

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

(2) A person meets one or more of the criteria for exclusion or ejection under § 511a.3 (relating to criteria for exclusion or ejection).

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

(d) If the Office of Enforcement Counsel determines that circumstances exist which require that immediate action be taken against a person's license, certification, permit or registration, or to place a person on the exclusion list, the Office of Enforcement Counsel may submit a request for a temporary emergency order. The request will include:

(1) The circumstances upon which the request for a temporary emergency order was made.

(2) The legal grounds upon which the temporary emergency order is being requested.

(3) The specific relief sought.

(e) By the close of the next business day following its issuance, a temporary emergency order, together with the request required under subsection (d), will be filed with the Clerk.

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

(g) The Bureau will serve the request and the issued order upon the person named in the temporary emergency order. Service required by this subsection will be made as expeditiously as possible following the issuance of the order and the request. Service will be made in the manner prescribed by § 491a.5 (relating to service).

(h) If a person files a request for an informal hearing, the hearing will be held before the Executive Director or a designee within 3 business days at a location determined in accordance with § 491a.8(e) (relating to hearings generally).

(i) At the conclusion of the informal hearing, the Executive Director or a designee will render a decision within 3 business days as to whether the temporary emergency order will continue, be modified or dissolved. Service of the decision will be made in accordance with § 491a.5.

(j) Unless the Executive Director or a designee dissolves the temporary emergency order, the Executive Director, in consultation with the Office of Chief Counsel, will refer the matter for a formal hearing before either:

(1) The Board to determine the validity of the suspension in accordance with subsection (m).

(2) The Office of Hearings and Appeals which will thereafter prepare a report and recommendation for the Board's consideration in accordance with subsection (p).

(k) If the person named in the temporary emergency order does not file a request for an informal hearing within 10 business days of the issuance of the temporary emergency order, the matter will be referred in accordance with subsection (j).

(l) Until the temporary emergency order is presented to the Board for consideration or the Office of Hearings and Appeals has issued its report and recommendation, the Executive Director or a designee may dissolve or modify a temporary emergency order previously issued.

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

(1) If the Board finds that the facts and circumstances presented are sufficient to support the issuance of the emergency order, and that dissolution of the emergency order would pose a threat to the public health, safety or welfare, or the public's interest in the effective regulation of gaming demands the action, it may issue an order ratifying or modifying the order of suspension. The Board order may thereafter be appealed under § 494a.11 (relating to appeals).

(2) If the Board finds that there is insufficient cause to continue the emergency order, it may issue an order dissolving the emergency order and the privileges of the person named in the order will be reinstated.

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

(n) Board orders ratifying or dissolving temporary emergency orders will not have effect upon the power and duty of the Office of Enforcement Counsel to initiate, in its sole discretion, proceedings for violations of the act or this part or upon the outcome of any proceeding so initiated.

(o) Copies of the Board's final order will be served on the person named in the order in accordance with § 491a.5.

(p) If at any point the Board or Executive Director refers the matter to the Office of Hearings and Appeals, the formal hearing will be subject to the following requirements:

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

(2) Within 10 business days following the conclusion of the hearing, the presiding officer will forward a report and recommendation for action on the temporary emergency order to the Board. A copy of the report and recommendation will be served on the person named in the temporary emergency order in accordance with § 491a.5.

(3) Upon receipt of a report and recommendation from the Office of Hearings and Appeals, the matter will be placed on an upcoming Board meeting agenda for final consideration.

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405a.6. Enforcement action.

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 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).

(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 30 days from the date of service of complaint for an enforcement action, the person may file 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 answer to the Office of Enforcement Counsel. Failure to file an answer within 30 days will be deemed:

(1) A waiver by the person of any right to an administrative hearing before the Board or the Office of Hearings and Appeals.

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

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

(d) Upon the person's failure to file an answer within the prescribed 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 order, adopt the proposed enforcement order.

(e) The Clerk will serve a copy of the Board's final order upon the person in accordance with § 491a.5.

CHAPTER 407a. PUBLIC ACCESS TO BOARD FILES

§ 407a.1. Case files.

(a) The Clerk will maintain a file for all formal records.

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

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

(2) A request for access to information will be addressed in accordance with the Right-to-Know Law (65 P. S. §§ 67.101—67.3104).

(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 information for a given proceeding. All parties to a proceeding shall mark documents in accordance with the directives of the Board or its designee and in accordance with § 493a.10a (relating to motions to protect confidential information).

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE AND TABLE GAME DEVICE 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:

* * * * *

Reset amount—The award value that a progressive award will revert to after the progressive award is paid out.

Server supported slot system—One or more slot machines connected to a slot machine server and an associated computer network.

Skill—The application of intelligence and specific knowledge to achieve the best result when a slot machine offers a choice of options during game play.

Slot machine bill validator—A component, made up of software and hardware that accepts and reads instruments such as bills, vouchers and coupons, into gaming devices such as slot machines and automated gaming voucher and coupon redemption machines.

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

Slot monitoring system—The collective hardware, software, communications technology and other ancillary equipment used to collect, monitor, interpret, analyze, authorize, report and audit data with regard to activity at slot machines, inclusive of slot machine meter readings, error conditions, slot machine security, accounting, player tracking and productivity analysis.

* * * * *

§ 461a.20. Server supported slot systems.

(a) A slot machine licensee may utilize a server supported slot system that complies with the minimum design standards and the submission, testing and approval requirements of §§ 461a.2—461a.7 and 461a.26.

- (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. 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 Board staff, a report detailing the outcome of each automated verification including notifications identifying any invalid programs.
 - (d) Administrator access to server supported slot systems require the presence and participation of at least two departments. Dual access may be achieved using split passwords, dual keys or other suitable method. The slot machine licensee shall specify in its internal controls under § 465a.2 (relating to internal control systems and audit protocols) the two departments that have administrator access to the system and the method by which access will be achieved.
 - (e) A technical field representative shall be notified of the installation and loading of software on an approved slot machine server in accordance with § 461a.26 (relating to testing and software installation on the live gaming floor).
 - (f) Downloads of slot machine programs or computer files on a server supported slot system and activations, deactivations or changes thereto shall be controlled and implemented using scheduling software approved by the Bureau of Gaming Laboratory Operations. Except as otherwise authorized by the Board, written notice of downloads, schedules and changes shall be provided to the Bureau of Gaming Laboratory Operations, the Bureau of Casino Compliance Representatives and the Department at least 72 hours prior to implementation in accordance with § 461a.26.
 - (g) Access to slot machine programs or computer files on a server supported slot system may be provided at terminals in secure, restricted locations within the licensed facility as approved by the Bureau of Gaming Laboratory Operations. The slot machine licensee shall provide read-only access to the Bureau of Gaming Laboratory Operations and the Bureau of Casino Compliance.
 - (h) Prior to implementing 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 of § 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.
 - (l) 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 or other secure username identifier of the person logging in.
 - (3) Identification numbers of the games added, deleted or changed.
 - (4) The history of changes to programs on each player terminal.
 - (5) Changes to the configuration of player terminal settings.
 - (m) Prior to adding or removing software from a server supported slot machine, changing any configuration or activating or deactivating a slot machine game on a server supported slot machine, a complete set of meter information for the slot machine shall be accurately communicated to a slot machine server, a slot monitoring system or other Board approved slot accounting system.
 - (n) 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 and approve activity.
 - (p) Any approved connection utilized under subsection (o) must include, at a minimum:
 - (1) A secure, hard-wired, dedicated, exclusive network.
 - (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 document for which a 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.
- (b) The fees collected by the Board will be deposited into the State Gaming Fund as established in section

1403 of the act (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

(c) Fees shall be paid by money order or check made payable to the "Commonwealth of Pennsylvania." Cash will not be accepted by the Board.

(d) To recover the initial cost of the investigation and processing of applications, each application for a license, permit, certification or registration must be accompanied by a nonrefundable fee.

(e) An applicant may be subject to additional fees based on the actual expenses incurred by the Board in conducting the background investigation.

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 act based on specific terms which are entered into by all parties to a proceeding to resolve a disputed matter.

* * * * *

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

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

* * * * *

Respondent—A person 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 the Clerk by any of the following means:

- (1) *United States Postal Service:*

Office of the Clerk
Pennsylvania Gaming Control Board
P. O. Box 69060
Harrisburg, Pennsylvania 17106-9060

- (2) *E-mail:* boardclerk@pa.gov

- (3) *In person:*

Hearings and Appeals Office
303 Walnut Street
2nd Floor, Strawberry Square
Harrisburg, Pennsylvania 17101

(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 filed with the Clerk must clearly designate the docket number, 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, mailing address, 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 Clerk may decline to accept it for filing and may return it without filing, or the Clerk may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The Clerk may require redundant, immaterial, obscene or otherwise inappropriate comments stricken from documents filed.

§ 491a.5. Service.

(a) *Applicability.* This section applies to service of an order, notice or other document 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.

(2) *Personal.* Service may be made personally by 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 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 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 to the Board while the matter is pending before the presiding officer.

(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 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 may provide for:

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

(d) Unless required by this part or authorized by law, a party may not engage in an ex parte communication with the Board or presiding officer.

(e) Unless otherwise specified in the written notice, hearings will be conducted in Harrisburg, Pennsylvania, and may be conducted by video conference or by telephone as directed by the Board, Executive Director or presiding officer.

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

(g) Motions shall be filed with the Clerk, served upon the parties and will be docketed and referred to the Board, Executive Director or presiding officer for disposition.

(h) Hearings will be scheduled by the OHA, except for hearings under § 441a.7 which will be scheduled as directed by the Board.

(i) A party may waive the right to a hearing before the Board, Executive Director or presiding officer by filing with the Clerk a Notice of Waiver of Hearing. The matter will then be forwarded to the appropriate bureau for

action or to the Board for disposition. This section supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

(j) Hearing transcripts will be available for public inspection. If the Board receives a request for a transcript of a hearing for which a transcript has not been prepared, the Board will prepare a transcript and make it available for inspection within 30 days.

(k) This section supplements 1 Pa. Code Chapter 35, Subchapter B (relating to hearings and conferences).

CHAPTER 493a. PLEADINGS

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

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

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

(7) Notices.

(b) 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 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 of the person subject to the pleading, if applicable. The Clerk will assign a docket number if one has not been assigned.

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

§ 493a.2. Complaints.

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

(b) Complaints may be filed by the Office of Enforcement Counsel.

(c) Complaints will be served in accordance with § 491a.5 (relating to service).

(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 the Office of Enforcement Counsel, parties, applicants, licensees, permittees, persons registered or certified by the Board, and other persons authorized by the Board.

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

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

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

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

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

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

(c) Answers may contain the following:

- (1) Admissions of the matter complained of and the alleged facts, in whole or in part.
- (2) New matter or explanation by way of defense.
- (3) Legal objections.
- (4) Affirmative defenses.
- (5) A request for a hearing.

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

(e) This section 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.

(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.

(f) The presiding officer may rule upon any motion filed prior to the submission of a report or report and recommendation to the Board. When 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 supersedes 1 Pa. Code §§ 35.177—35.180 (relating to motions).

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

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

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

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

(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) *Supersession.* This section 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 legal grounds to justify why the information should be deemed confidential and therefore protected.

(2) 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) 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.

(b) The presiding officer may grant a request for discovery if the request will serve to facilitate an efficient and expeditious hearing process, will not unduly prejudice and burden the responding party and as may be required in the interests of justice.

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

- (1) Written interrogatories.
- (2) Depositions.
- (3) Production of documents or things.

(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 opposing party and all documents or other material in the possession or control of the opposing party which the opposing party reasonably expects will be introduced into evidence. The opposing party shall be under a continuing duty to update its response to this request.

(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 (d), if following a proffer by the party seeking to present the evidence, the presiding officer determines that justice so requires.

(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.

(g) If a party fails to respond to a discovery request, which was granted by the presiding officer, the opposing party may file a motion to compel discovery with the Clerk. The presiding officer may grant or deny the motion in accordance with § 493a.8(e) (relating to motions generally).

(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(z) (relating to licensing hearings for slot machine licenses).

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

CHAPTER 494a. HEARING PROCEDURE

§ 494a.1. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be conducted from Harrisburg, in person, by means of video conference or by telephone, unless a different site is designated by the Board, Executive Director or the pre-

siding officer. The Board, Executive Director or the presiding officer, in its discretion with or without motion, 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 appearances).

(c) In 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. (Reserved).

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

(a) Following a hearing, a report or report and recommendation of the presiding officer may be required by the Board, except that recommendations will not be made in proceedings involving the issuance, approval, renewal, revocation, suspension or conditioning of a license.

(b) The presiding officer will, through the Clerk, certify to the Board a verbatim record of any oral hearing, all documents submitted for consideration, and a report or report and recommendation, when required, as soon as practicable after the conclusion of the hearing and expiration of the time for filing of briefs.

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

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

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

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

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

(e) This section 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 Clerk, prior to the issuance of an order of the Board or a report or report and recommendation, a motion to reopen the record for the purpose of taking additional evidence. The motion must set forth clearly the facts claimed to constitute grounds requiring reopening of the record, including material changes of fact or law alleged to have occurred since the 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 Clerk, a motion to reopen the record for the purpose of taking additional evidence. The motion must set forth clearly the facts claimed to constitute grounds requiring reopening of the 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 motion. If no answers are filed, objections to the granting of the motion are waived.

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

(e) Prior to filing a report or report and recommendation, the presiding officer, after notice to the parties, may reopen the 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 record.

(f) Prior to the issuance of a final order, the Board, after notice to the parties, may reopen the 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 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) A response to exceptions shall be filed within 15 days of the date of service of the exceptions.

(d) The record, including exceptions and responses thereto, will be forwarded to the Board for its consideration.

(e) This section 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 motion within 15 days after the final order of the Board.

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

(c) The 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 motion.

(d) Answers to 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 motion for rehearing or reconsideration within 30 days after it is filed, the motion will be deemed to have been denied.

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

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

§ 494a.9. Briefs and oral argument.

(a) All parties shall be afforded an opportunity to submit briefs prior to the issuance of a report or report and recommendation in accordance with a briefing schedule established by the OHA. Briefs shall be filed with the Clerk and served on the parties.

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

§ 494a.10. (Reserved).

CHAPTER 495a. DOCUMENTARY FILINGS

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

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

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

(c) Pleadings or other documents filed with the Clerk in a proceeding must clearly designate the docket number if one has been assigned, and a short title identifying the pleading or document. The identity of the individual making the submission, including name, mailing address, status (for example, party or attorney for a party) and Board issued credential number of the person subject to the pleading, if applicable, must appear on the document.

(d) Pleadings or other documents must include an address, fax number or e-mail address where papers may be served in connection with the proceedings.

(e) Notation of counsel's current Supreme Court identification number issued by the Court Administrator of Pennsylvania constitutes proof of the right to practice in this Commonwealth.

(f) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5 and 33.3 (relating to communications and filings generally; and incorporation by reference).

§ 495a.2. Form of documents.

(a) The Board may establish the paper, printing and binding requirements for pleadings filed with the Clerk. If the Board establishes paper, printing and binding requirements, the requirements will be printed in the *Pennsylvania Bulletin* and posted on the Board's web site.

(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 Clerk at

the time of filing, except as may be otherwise ordered or requested by the Board or the presiding officer.

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

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

CHAPTER 497a. TIME

§ 497a.1. Date of filing.

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

(1) On the date actually received in the Office of the Clerk.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter does not constitute proof of the date of mailing.

(4) On the date that the pleading or other document is received by electronic transmission, sent to boardclerk@pa.gov, in the Office of the Clerk.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

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 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 under § 499a.1 (relating to appearance in person) to be represented by an attorney in the proceeding, shall be represented by:

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

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

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

(b) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which does not permit attorneys licensed in this Commonwealth to appear before its courts and agencies may, at the discretion of the Board, be authorized to appear in connection with a particular proceeding. The Board will determine whether to grant the authorization upon the filing of a motion with the Clerk by an attorney admitted to practice law before the Pennsylvania Supreme Court and in good standing therewith, which contains the information required to satisfy the written notice provision of Pa.B.A.R. 301 (relating to admission pro hac vice), and provided that the attorney filing the motion shall be and remain the attorney of record in the proceeding and further provided that both the attorney of record and the attorney admitted under this subsection shall both sign all documents submitted or filed in connection with the proceeding.

(c) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

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 by the last business day of July.

(b) The annual summary must 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.

Subpart J. EXCLUSION OF PERSONS

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

§ 511a.1. Definitions.

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

Career or professional offender—A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities in 4 Pa.C.S. § 1518(a) (relating to prohibited acts; penalties).

Cheat—

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

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

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

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

(C) The value of a wagering instrument.

(D) The value of a wagering credit.

(iii) The term does not include altering a slot machine, table game, table game device or associated equipment for required maintenance and repair.

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

Excluded person—A person who has been placed upon the exclusion list and who is required to be excluded or ejected from a licensed facility.

Exclusion list—A list of names of persons who are required to be excluded or ejected from a licensed facility.

OCPG—The Office of Compulsive and Problem Gambling.

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

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

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

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

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and other physical characteristics which may assist in the identification of the person.

(3) The person's date of birth.

(4) The date the person was added to the list.

(5) A recent photograph, if available.

(6) The last known address of record.

(7) Other identifying information available to the Board.

(8) The reason for placement on the excluded persons list.

(d) The following information will be made available to the public for each excluded person on the exclusion list:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) A recent photograph, if available.

(4) Birth year.

§ 511a.3. Criteria for exclusion or ejection.

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

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

(2) An individual with a known relationship or connection with a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

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

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

(i) Cheats.

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

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

(iv) Persons who pose a threat to the safety of the patrons, employees or persons on the property of a slot machine licensee.

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

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

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

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

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

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" if known attributes of the person's character and background meet one or more of the following criteria:

(1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a licensed facility.

(2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.

(3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or another jurisdiction, or with a particular slot machine licensee or licensees or an affiliate, intermediary, subsidiary or holding company thereof.

(3) The nature and frequency of contacts or associations of the person with a slot machine licensee or licensees, or with employees or agents thereof.

(4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 511a.4. Duties of the Bureau and the Office of Enforcement Counsel.

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

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Office of Enforcement Counsel will file

a petition for exclusion with the Clerk, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion or ejection under section 1514 of the act or this chapter.

(c) In addition to filing the petition for exclusion, if exigent circumstances exist, the Office of Enforcement Counsel may file a request for a temporary emergency order in accordance with § 403a.7 (relating to temporary emergency orders) provided that:

(1) The procedures in § 403a.7(a)—(i) are applicable to requests for temporary emergency orders filed in conjunction with petitions for exclusion.

(2) If the request for a temporary emergency order is granted, the person named in the emergency order will be temporarily placed on the exclusion list until the Board acts upon the underlying petition.

(3) If the person named in the emergency order files a request for an informal hearing under § 403a.7(h), the request for an informal hearing does not toll or stay the time period to request a formal hearing in accordance with § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list).

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

(a) A person may be placed on the exclusion list upon any of the following:

(1) Entry of an order of the Board.

(2) Receipt of an order from a court of competent jurisdiction within this Commonwealth, excluding or ejecting the person from licensed facilities in this Commonwealth.

(3) Issuance of a temporary emergency order by the Executive Director in accordance with § 403a.7 (relating to temporary emergency orders).

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from licensed facilities.

(c) An excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(e) For the purposes of this section, any winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

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

(a) Upon the filing of a petition for exclusion, the Office of Enforcement Counsel will serve the petition upon the person by personal service or certified mail at the last known address of the person. The notice must inform the person of the right to a hearing under 4 Pa.C.S. § 1514(g) (relating to regulation requiring exclusion or ejection of certain persons) and include a copy of the petition.

(b) Upon service of the petition, the person subject to the petition shall have 30 days to demand a hearing before the Board or presiding officer. Failure to demand a hearing within 30 days after service will be deemed an admission of all matters and facts alleged in the Office of

Enforcement Counsel's petition for exclusion and preclude the person from having an administrative hearing.

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

§ 511a.7. Board review.

After a hearing, or if a hearing was not requested and the facts in the petition are deemed admitted, the Board may:

- (1) Issue an order placing the person's name on the exclusion list.
- (2) Issue an order removing or denying the placement of the person's name on the exclusion list.
- (3) Refer the matter to a presiding officer for further hearing.

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

(a) Slot machine licensees shall establish procedures to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures shall be submitted to and approved by the Director of OCPG prior to implementation.

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

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

- (1) An excluded person.
- (2) A person known to the slot machine licensee to satisfy the criteria for exclusion in section 1514 of the act (relating to regulation requiring exclusion or ejection of certain persons) and § 511a.3 (relating to criteria for exclusion or ejection).

(d) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall:

- (1) Immediately notify the casino compliance representatives at the licensed facility.
- (2) Notify the Director of OCPG in writing within 24 hours.

(e) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list or a person who has been excluded or ejected under subsection (c)(2) and the reason for placement on the exclusion list.

§ 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 Office of Enforcement Counsel may file an answer in accordance with § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response).

(c) 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.

(d) A petition for early consideration must contain the information required under subsection (b). Upon receipt of the petition, the Office of Enforcement Counsel may file an answer in accordance with § 493a.5.

(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. 13-178. Filed for public inspection February 1, 2013, 9:00 a.m.]