

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 493a, 494a, 495a,
497a AND 499a]

Practice and Procedure

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. § 1205 (relating to license or permit application hearing process; public input hearings), proposes to add Chapters 493a, 494a, 495a, 497a and 499a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 493 and 494 at 36 Pa.B. 1578 (April 1, 2006) and in Chapters 495, 497 and 499 at 35 Pa.B. 4045 (July 16, 2005). Under 4 Pa.C.S. Part II (relating to gaming), the temporary regulations expire on July 5, 2007.

The Board is proposing to replace the temporary regulations with the permanent regulations in this proposed rulemaking.

Explanation of Chapter 493a

Chapter 493a (relating to pleadings) contains general rules pertaining to the filing of pleadings with the Board. These regulations provide guidance as to the form and filing of pleadings, including motions, complaints, answers and other pleadings, service, time requirements, the content of the pleadings, discovery and intervention.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes that improve the clarity of the language in the temporary regulations. Some of the language in the temporary regulations has been eliminated as unnecessary as a result of the development of the Board's hearing process.

Explanation of Chapter 494a

Chapter 494a (relating to hearing procedure) contains general rules regarding hearing procedure before the Board. These regulations discuss the scheduling of hearings and the rules for oral and documentary hearings. These regulations also provide guidance as to the procedure for hearings including the report or recommendation of the hearing officer, Board review, the procedure for reopening the record, filing exceptions, rehearing or reconsideration, briefs and oral argument, reports of compliance and the appeal process.

Amendments to the temporary regulations in this proposed rulemaking include a large number of editorial changes that improve the clarity of the language in the temporary regulations. In § 494a.11 (relating to appeals), the language has been modified to ensure compliance with the Pennsylvania Rules of Appellate Procedure (See 210 Pa. Code).

Explanation of Chapter 495a

Chapter 495a (relating to documentary filings) lists the form requirements for documentary filings with the Board. This chapter includes regulations on incorporation

by reference in a documentary filing, execution of documents, and verification and affidavit forms. This chapter also notifies parties of the number of copies that are required to be submitted to the Board.

This chapter contains minor editorial changes to the temporary regulations intended to improve the clarity of the language.

Explanation of Chapter 497a

Chapter 497a (relating to time) provides guidance as to the Board's method of calculation of time for the purpose of filing pleadings and other documents with the Board. This chapter also provides guidance as to the commencement of the appeal period.

This chapter contains minor editorial changes to the temporary regulations intended to improve the clarity of the language.

Explanation of Chapter 499a

Chapter 499a (relating to representation before the Board) contains regulations pertaining to representation before the Board. This chapter includes the form and procedure by which an individual may file a notice of appearance with the Board. Also included in this chapter are prohibitions on contemptuous conduct and the Board's ability to deny the privilege of appearance before the Board.

This chapter contains minor editorial changes to the temporary regulations intended to improve the clarity of the language.

Affected Parties

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

Fiscal Impact

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

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

Private sector. Entities appearing before the Board in a hearing will experience some costs to comply with the filing and procedural requirements in these chapters and the filing fees published by the Board.

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

Paperwork Requirements

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

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days after publication to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-56.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 9, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

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

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-56. (1) State Gaming Fund; (2) Implementing Year 2006-07 is \$600,000; (3) 1st Succeeding Year 2007-08 is \$630,000; 2nd Succeeding Year 2008-09 is \$662,000; 3rd Succeeding Year 2009-10 is \$695,000; 4th Succeeding Year 2010-11 is \$730,000; 5th Succeeding Year 2011-12 is \$767,000; (4) 2005-06 Program—\$26,400,000; 2004-05 Program—\$13,200,000; 2003-04 Program—\$2,900,000; (7) State Gaming Board; (8) recommends adoption.

(Editor's Note: In Annex A, some references to chapters not yet adopted as permanent regulations appear in this proposed rulemaking. The chapter number of the permanent regulations will have an "a" indicator after the chapter number. Refer to the corresponding temporary regulations adopted by the Board when necessary.)

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 493a. PLEADINGS

Sec.	
493a.1.	Generally.
493a.2.	Complaints.
493a.3.	Satisfaction of complaints.
493a.4.	Petitions generally.
493a.5.	Answers.
493a.6.	Consolidation.
493a.7.	Amendments and withdrawal of pleadings.
493a.8.	Motions generally.
493a.9.	Preliminary motions.
493a.10.	Motions for summary judgment and judgment on the pleadings.
493a.11.	Discovery.
493a.12.	Intervention.
493a.13.	Consent agreements.

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

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

(b) Filing fees for pleadings, copies and other administrative requests will be in accordance with a fee schedule published by the Board in the *Pennsylvania Bulletin*, available on the Board's website, and in the Office of the Clerk.

(c) Pleadings shall be filed with the Clerk and contain a docket number. 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) The procedures for filing complaints shall be in accordance with 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints) as supplemented by this chapter.

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

(c) A proceeding against a licensee, permittee, persons registered or certified by the Board or 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 setting forth in ordinary and concise language the matter complained of and the facts supporting the complaint.

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

(e) Within 20 days of service of the complaint filed by the complainant, the respondent may file with the Clerk a notice of defense, in which the respondent may:

- (1) Request a hearing.
- (2) Admit the matter complained of and the alleged facts in whole or in part.
- (3) Present new matter or explanation by way of defense.
- (4) State any legal objection to the complaint.
- (5) Present affirmative defenses.

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

(g) Failure to timely file the required notice of defense or to appear at the hearing constitutes an admission of all matters and facts contained in the complaint and a waiver of the respondent's rights to a hearing. The Board may conduct a hearing despite a respondent's failure to timely file the required notice of defense or to appear at the hearing.

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

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

(j) Applicants, licensees, permittees, persons registered or certified and other persons authorized by the Board may request a hearing on any matter by filing a written petition for special relief in accordance with § 493a.4 (relating to petitions generally).

(k) The complainant has the burden to demonstrate, by a preponderance of the evidence, that the respondent has failed to comply with the act or this part.

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

§ 493a.3. Satisfaction of complaints.

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

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

§ 493a.4. Petitions generally.

(a) Petitions may be filed by 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) The procedure for petitions shall be in accordance with 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations). 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) Copies shall also be served in accordance with the Board's direction.

(e) This section supplements 1 Pa. Code §§ 35.17 and 35.18.

§ 493a.5. Answers.

(a) Answers shall be filed with the Clerk and other parties within 20 days after the date of service of a complaint, petition, motion or other pleading, unless a different time is prescribed by the Board or presiding officer.

(b) The procedures in 1 Pa. Code §§ 35.35—35.40 (relating to answers) apply.

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

§ 493a.6. Consolidation.

(a) The Board or presiding officer, with or without motion, may consolidate proceedings involving a common question of law or fact.

(b) This section supersedes 1 Pa. Code § 35.45 (relating to consolidation).

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

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

§ 493a.8. Motions generally.

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

§ 493a.9. Preliminary motions.

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

(1) A motion questioning the jurisdiction of the Board or the presiding officer.

(2) A motion to strike a pleading that is insufficient as to form.

(3) A motion for a more specific pleading.

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

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

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

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

(f) This section supplements 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. An answer to a motion for judgment on the pleadings may be filed within 10 days of the date of service of the motion.

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

(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 within 10 days of the date of service of the motion. An answer to a motion for summary judgment may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

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

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

§ 493a.11. Discovery.

(a) Upon written request from a party in a proceeding served upon another party in the proceeding, the requesting party shall be entitled to the name and address of any witness who may be called to testify on behalf of the

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

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

(c) Confidential information furnished to or obtained by the Board or the Bureau from any source will not be discoverable under this subsection.

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

§ 493a.12. Intervention.

(a) The decision to grant a petition to intervene in a proceeding before the Board or a presiding officer is within the sole discretion of the Board.

(b) A person wishing to intervene in a proceeding may file a petition with the Clerk which shall be served on all named parties to the underlying proceeding. When a petition to intervene is filed with the Clerk, it will be referred to the Board which will issue a determination as soon as practicable.

(c) The Board may grant a petition to intervene if it determines:

(1) The person has an interest in the proceeding which is substantial, direct and immediate.

(2) The interest is not adequately represented by a party to the proceeding.

(3) The person may be bound by the action of the Board in the proceeding.

(d) Petitions to intervene may be filed at any time following the filing of an application, petition, complaint, or other document seeking Board action, but no later than 30 days prior to the date set for a hearing unless, in extraordinary circumstances for good cause shown, the Board authorizes a later filing.

(e) Petitions to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition or complaint initiating the proceeding, and citing by appropriate reference provisions or other authority relied on.

(f) A party may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. Answers shall be filed within 10 days after the date of service of the petition, unless for cause the Board prescribes a different time.

(g) Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of written statements

attested to under oath. The written statements shall be part of the evidentiary record.

(h) Notwithstanding the provisions of this section, petitions to intervene in licensing hearings for slot machine licenses shall be governed by § 441.19(x) (relating to licensing hearing 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).

§ 493a.13. Consent agreements.

(a) Parties may propose consent agreements at any time prior to the entry of a final order.

(b) Consent agreements must be in writing, signed by all parties and accurately reflect the terms of the consent agreement, including the facts agreed to by the parties constituting the grounds for the action proposed in the consent agreement.

(c) If the consent agreement is proposed in a matter that is the subject of a proceeding before a presiding officer, the proposal of the consent agreement will stay the proceeding until the consent agreement is acted upon by the Board.

(d) The consent agreement shall be presented to the Board for its approval or disapproval. If the Board approves the consent agreement, it will become the final order of the Board. If the Board disapproves the consent agreement, the parties will be notified and the consent agreement and any documents solely relating to the consent agreement will not constitute part of the record.

CHAPTER 494a. HEARING PROCEDURE

Sec.	
494a.1.	Generally.
494a.2.	Oral hearings.
494a.3.	Documentary hearings.
494a.4.	Report or recommendation of the presiding officer.
494a.5.	Review.
494a.6.	Reopening of record.
494a.7.	Exceptions.
494a.8.	Rehearing or reconsideration.
494a.9.	Briefs and oral argument.
494a.10.	Reports of compliance.
494a.11.	Appeals.

§ 494a.1. Generally.

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

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

(c) In oral and documentary hearings, neither the Board nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonable probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hear-

ings. 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.2. Oral hearings.

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

§ 494a.3. Documentary hearings.

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

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

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

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

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

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

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

(1) Findings and conclusions, as well as the reasons or basis therefore, 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 recommendation will be in writing, provided to all parties, and will be part of the public record, except for matters and materials designated as confidential by the Board. Service will be in accordance with § 491a.9(e) (relating to hearings generally).

(e) This section supplements 1 Pa. Code §§ 35.201—35.206, regarding proposed reports generally.

§ 494a.5. Review.

(a) The Clerk will transmit the record of the hearing to the Board and will make it available to all parties.

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

§ 494a.6. Reopening of record.

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

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

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

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

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

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

(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 recommendations of the presiding officer within 10 days of the date of the report or recommendations, unless the time is extended upon good cause shown.

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

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

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

time the ruling was made or within an extension of time prescribed by the presiding officer.

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

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

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

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

§ 494a.8. Rehearing or reconsideration.

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

(b) The petition must state concisely the alleged errors in the adjudication or other order of the Board. If a final order or other order of the Board is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the petition.

(c) Answers to petitions 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.

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

(e) 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 section 1204 of the act (relating to licensed entity application appeals from board).

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

§ 494a.9. Briefs and oral argument.

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

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

§ 494a.10. Reports of compliance.

(a) When a person subject to the jurisdiction of the Board is required to do or perform an act by a Board order, permit or license provision, the person shall file,

with the Clerk within 30 days following the date when the requirement becomes effective, a notice stating that the requirement has or has not been met or complied with, unless the Board specifies an alternate means to demonstrate compliance or proof of compliance.

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

§ 494a.11. Appeals.

(a) A party may appeal final orders of the Board in accordance with the act, in the form prescribed in the Pennsylvania Rules of Appellate Procedure. (See 210 Pa. Code.)

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Board unless a stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure, or the Board granted a stay prior to the filing of the appeal.

(c) Within 10 days, the party filing the notice of appeal shall file a concise statement of matters complained of with the Office of the Clerk.

CHAPTER 495a. DOCUMENTARY FILINGS

Sec.

495a.1.	Form of documentary filings generally.
495a.2.	Form of documents.
495a.3.	Incorporation by reference.
495a.4.	Single pleading covering more than one matter.
495a.5.	Execution of documents.
495a.6.	Verification.
495a.7.	Number of copies.

§ 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 need not be attached if reference by docket number is made to the proceeding in which they were filed.

(c) Pleadings or other documents filed with the Board in a proceeding must clearly show the docket number or similar identifying symbols, if any, and title of the proceeding before the Board. They must also show, in the title of a particular pleading or other document filed, the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Pleadings or other documents must include an address and phone number where papers may be served in connection with the proceedings. Use of a fax number constitutes an agreement to accept papers connected with the proceeding by fax.

(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 (relating to communications and filings generally).

§ 495a.2. Form of documents.

(a) The method of receipt and transmission of information will be under a policy published by the Board.

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

§ 495a.3. Incorporation by reference.

(a) Except as otherwise provided in subsection (b), documents on file with the Board may be incorporated by reference into a subsequently filed pleading or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was filed.

(b) A document which has been on file with the Board for more than 7 years may not be incorporated by reference in a current document unless the person filing the current document first makes inquiry to the Office of the Clerk and ascertains that the earlier document continues to be readily available in the active records of the Board.

§ 495a.4. Single pleading covering more than one matter.

(a) Except as otherwise provided under this chapter, a single pleading may be accepted for filing with respect to a particular transaction and one or more related transactions and will be deemed to be a single filing for purposes of the computation of fees under Chapter 471a (relating to schedule of fees payable to the Board).

(b) If, upon review, the Board determines that the transactions are not closely related or otherwise properly joined, the Board will direct that the single pleading be refiled as two or more separate pleadings. Each pleading will be subject to a separate filing fee.

(c) Subsection (a) supersedes 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).

§ 495a.5. Execution of documents.

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original and all copies of a pleading, or other document shall be signed in ink by the party in interest, or by his attorney, as required by subsection (b), and show the office and post office address of the party or attorney.

(b) *Subscription.*

(1) A pleading or other document filed with the Board shall be subscribed by one of the following:

- (i) The person or persons filing the documents.
- (ii) An officer if it is a corporation, trust, association or other organized group.
- (iii) An officer or authorized employee thereof if it is another agency, a political subdivision, or other governmental authority, agency or instrumentality.
- (iv) An attorney authorized to subscribe on behalf of the client.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.

(c) *Effect.*

(1) The signature of the person subscribing a document filed with the Board constitutes a certificate by the individual that:

- (i) The person has read the document being subscribed and filed, and knows the contents thereof.
- (ii) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the Board, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 1518 of the act (relating to prohibited acts; penalties).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 33.11 (relating to execution).

§ 495a.6. Verification.

(a) Pleadings or other documents containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed, written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the facts. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____
(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of _____ with that corporation,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the facts.

(Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 20 ____.

(Signature of official administering oath)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Board shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 495a.7. Number of copies.

(a) An original and three copies of pleadings or documents other than correspondence shall be furnished to the Board at the time of filing, except as may be otherwise ordered or requested by the Board.

(b) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(c) Subsections (a)—(b) supersede 1 Pa. Code § 33.15 (relating to number of copies).

CHAPTER 497a. TIME

Sec.
 497a.1. Date of filing.
 497a.2. Computation of time.
 497a.3. Issuance of Board orders.
 497a.4. Effective dates of Board orders.
 497a.5. Extensions of time and continuances.

§ 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 will not constitute proof of the date of mailing.

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

(c) Except as otherwise permitted by the Board, a document transmitted by facsimile or electronically to the Board will not be accepted for filing within the meaning of this section.

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

§ 497a.2. Computation of time.

(a) In computing a period of time prescribed or allowed by the act or this part, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) In computing a period of time prescribed or allowed by the act or this part which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action shall run until the next preceding day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.12 (relating to computation of time).

§ 497a.3. Issuance of Board orders.

(a) In computing a period of time involving the date of the issuance of an order by the Board, the day of issuance of an order will be the date the Clerk enters the order. An order will not be made public prior to its entry except when, in the Board's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Board. The Clerk will clearly indicate on each order the date of its adoption by the Board and the date of its entry.

(b) The date of entry of an order which is subject to review by the Supreme Court of Pennsylvania is governed by 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action). The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Board action.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 497a.4. Effective dates of Board orders.

(a) An order of the Board promulgating regulations will be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Board will be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

§ 497a.5. Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may be extended by the Board, for good cause, upon a motion made before expiration of the period originally prescribed or as previously extended. Upon a motion made after the expiration of the specified period, the time period within which the act may be permitted to be done may be extended when reasonable grounds are shown for the failure to act.

(2) Requests for an extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the Board or presiding officer, for good cause shown allows a shorter time.

(3) Requests for a continuance of a hearing shall be by motion in writing, stating the facts on which the request rests, except that during the course of a proceeding, a request may be made by oral motion in the hearing. Requests for continuance will be considered only for good cause shown.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

Sec.
 499a.1. Appearance in person.
 499a.2. Appearance by attorney.
 499a.3. Other representation prohibited at hearings.

- 499a.4. Notice of appearance or withdrawal.
 499a.5. Form of notice of appearance.
 499a.6. Contemptuous conduct.
 499a.7. Suspension and disbarment.

§ 499a.1. Appearance in person.

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

(b) A party, other than an individual appearing on his own behalf, in an adversary 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) Subsections (a) and (b) supersede 1 Pa. Code § 31.21 (relating to appearance in person).

§ 499a.2. Appearance by attorney.

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

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

(2) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which permits attorneys licensed in this Commonwealth to practice before its courts and agencies.

(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).

§ 499a.3. Other representation prohibited at hearings.

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Board except:

(1) As stated in §§ 499a.1 and 499a.2 (relating to appearance in person; and appearance by attorney).

(2) As otherwise permitted by the Board in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

§ 499a.4. Notice of appearance or withdrawal.

(a) An individual appearing without representation before the Board shall file with the Office of the Clerk an address for service of a notice or other written communi-

cation. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk within 3 business days.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Office of the Clerk shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Office of the Clerk a written notice of the appearance, which states his name, address and telephone number and the name and address of the person on whose behalf he appears. The notice shall be served on the other parties in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk within 3 business days.

(c) A person appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his authority to act in that capacity.

(d) Except as provided in subsection (e), an attorney may not withdraw his appearance without leave of the Board or presiding officer. An attorney may request leave to withdraw his appearance through petition to the Board or presiding officer. Copies of the petition shall be served on all parties. The attorney requesting withdrawal shall immediately notify the party previously represented by ordinary mail of an order granting leave to withdraw.

(e) An attorney may withdraw his appearance without leave of the Board or presiding officer if one of the following occurs:

(1) Another attorney has previously entered his appearance on behalf of the party.

(2) Another attorney is simultaneously entering an appearance on behalf of the party, and the change of attorneys does not delay any stage of the litigation.

(f) An attorney who wishes to withdraw an appearance under subsection (d) shall file with the Office of the Clerk a written notice of withdrawal. The notice shall be served on the other parties.

(g) Subsections (a) and (d) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

§ 499a.5. Form of notice of appearance.

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA
 BEFORE THE PENNSYLVANIA GAMING
 CONTROL BOARD

In the Matter of:

[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above designated matter on behalf of _____.

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

[] On the basis of this notice, I request a copy of each document hereafter issued by the Board in this matter.

[] I am already receiving or have access to a copy of each document issued by the Board in this matter and do not on the basis of this notice require an additional copy.

Signature

Attorney Identification Number

Name (Printed)

P. O. address

City, state and zip code

Telephone Number (including area code)

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to form of notice of appearance).

§ 499a.6. Contemptuous conduct.

(a) Contemptuous conduct at a hearing before the Board shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 31.27 (relating to contemptuous conduct).

§ 499a.7. Suspension and disbarment.

(a) The Board may deny, temporarily or permanently, the privilege of appearing or practicing before the Board to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous or improper conduct before the Board.

(3) Repeatedly failed to follow Board directives.

(b) For the purpose of subsection (a), practicing before the Board includes the following:

(1) Transacting business with the Board.

(2) Preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Board in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.

(3) Appearances at a hearing before the Board.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to suspension and disbarment).

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