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INDEPENDENT REGULATORY  
REVIEW COMMISSION

# Regulatory Analysis Form

(1) Agency

Pennsylvania Gaming Control Board

(2) I.D. Number (Governor's Office Use)

125 - 93

IRRC Number:

2723

(3) Short Title

Amendments to Rules of Practice and Procedures

(4) PA Code Cite

58 PA. Code  
Chapters 403a, 491a, 493a, 494a,  
495a, 497a, 499a and 511a

(5) Agency Contacts & Telephone Numbers

Primary Contact: Richard Sandusky  
717-214-8111 / rsandusky@state.pa.us

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

These amendments make a number of revisions to the Board's practice and procedure regulations to improve their clarity, conform to current practice and simplify some of the existing requirements.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

§ 1202(b)(30) of the Act (4 Pa.C.S. § 1202(b)(30)) provides the Board with general authority to promulgate regulations the Board deems necessary to carry out the policy and purposes of the Act.

§ 1205 (4 Pa.C.S. § 1205) provides more specific authority for the amendments.

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Based on the Board's experience, the Board believes these amendments will improve the clarity of and eliminate unnecessary provisions in its practice and procedure regulations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with this regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Entities and individuals who are involved in Board proceedings will benefit from the added clarity, the reduction of the number of copies of documents that must be filed and use of electronic filing and service options.

Individuals who participate in videoconferencing for hearings will save both time and money due to reduced travel requirements.

The number of people who will benefit will be a function of the number of proceedings in a given year.

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**Regulatory Analysis Form**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Because this rulemaking clarifies the regulations and may reduce costs, no one will be adversely affected by this rulemaking.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Entities and individuals who are involved in Board proceedings will be impacted by these amendments.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

No specific public input was solicited prior to the proposal of these amendments.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Board anticipates that there will be some minor saving for entities and individuals who are involved in Board proceedings due to the reduction in the number of copies of documents that must be filed and the use of electronic filing and service.

Overall, the Board expects the savings to be about \$25,000 annually.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Board anticipates that there will be no costs or savings to local governments as a result of these amendments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Board is the only state agency affected by the amendments. The Board estimates that there will be no significant costs or savings to the Board associated with these amendments.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$12,500	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Savings</b>	\$12,500	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
<b>COSTS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Costs</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Revenue Losses</b>	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

The savings above represent reduced costs due to the reduction in the number of copies of documents that must be filed and the use of electronic filing and service.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current I
Board Budget	\$13,200,000	\$26,400,000	\$29,984,000	\$33,300,0

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Because there are no costs associated with these amendments, the benefits describe in Question #17 clearly exceed the costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Because these amendments could only be done by amending the Board's current regulations, no nonregulatory options were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no corresponding Federal requirements.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Nothing in these amendments will put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These regulations will amend existing provisions in Chapters 403a, 491a, 493a, 494a, 495a, 497a, 499a and 511a in 58 PA. Code.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No additional hearings or meetings have been scheduled.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This proposed rulemaking reduces the number of copies of documents that must be filed with the Board, permits electronic filing of documents and allows electronic service to replace mailing of documents to provide service.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been added.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

These regulations will be effective upon publication as a final rule in the *Pennsylvania Bulletin*.

It is anticipated that final regulations will be adopted in the first quarter of 2009.

(31) Provide the schedule for continual review of the regulation.

No formal review schedule has been established. Instead, the Board will be constantly reviewing its regulations and proposing amendments as the need arises.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

*2723*

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Copy below is hereby approved as to form and legality.  
Attorney General

By: *Amy M. Elliott*  
(Deputy Attorney General)  
**SEP 23 2008**  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct  
copy of a document issued, prescribed or promulgated  
by:

**Pennsylvania Gaming  
Control Board**  
FISCAL NOTE NO. : 125- 93  
DATE OF ADOPTION: 8-28-08.  
BY: *Mary DiGiacomo*  
Mary DiGiacomo Collins, CHAIRMAN

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY: *R. Douglas Sherman*  
R. Douglas Sherman, Acting Chief Counsel  
**8-28-08**  
DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
objection within 30 days after submission.

**PROPOSED RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA**

**58 PA. CODE, SUBPARTS A, H, J  
CHAPTERS 403a, 491a, 493a, 494a, 495a, 497a, 499a and 511a**

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA.CODE CHAPTERS 403a, 491a, 493a, 494a, 495a, 497a, 499a  
and 511a]

AMENDMENTS TO RULES OF PRACTICE AND PROCEDURES

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1205 (relating to license or permit application hearing process; public input hearings), proposes to amend Chapters 403a, 491a, 493a, 494a, 495a, 497a, 499a and 511a (relating to Board operations and organization; general rules of practice; pleadings; hearing procedure; documentary filings; time; representation before the Board; and persons required to be excluded) to read as set forth in Annex A.

*Purpose of the Proposed Rulemaking*

The proposed rulemaking makes a number of revisions to the Board's practice and procedure regulations to: improve their clarity; conform to current practice; and simplify some of the existing requirements.

*Explanation of Amendments to Chapters 403a, 491a, 493a, 494a, 495a, 497a 499a and 511a*

Throughout this proposed rulemaking, the phrase "report or recommendation" has been replaced with "report or report and recommendation." This reflects what the presiding officer actually does.

The Board has also eliminated the definition of the term "hearing officer" and various provisions and references to the term. The existing provisions in Chapter 491a include hearing ~~officers and presiding officers, but in practice, the Board only~~ uses presiding officers. Therefore, the provisions related to hearing officers are not needed.

In § 491a.3 (relating to Office of the Clerk) the address for the Office of the Clerk has been updated to reflect their current location.

In § 491a.7(c) (relating to presiding officers) "issues of law" has been added to "a fact in issue" as a matter that the presiding officer will not discuss with one party without giving notice and an opportunity to participate to the other parties.

In §§ 491a.8 and 493a.9 (relating to hearings generally; and prehearing and other conferences) language has been added to allow the use of video conferencing. This will make it easier for parties to participate in prehearing conferences and hearings.

Subsection 491a.8(j), which makes hearing transcripts available for public inspection, has been expanded to include language stating that if the Board receives a request for a hearing transcript that has not been prepared, the Board will prepare the transcript and make it available for public inspection within 30 days.

Section 493a.2 (relating to complaints) has been rewritten to improve its organization, eliminate duplicative provisions and move provisions related to answers to § 493.5 (relating to answers to complaints, petitions, motions and other filings requiring a response).

In § 493a.4 (relating to petitions generally) duplicative provisions have been deleted.

Section 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response) has been amended to delete duplicative provisions and add provisions pertaining to answers that previously were in § 493a.2.

In §§ 493a.5, 493a.10, 493a.13 and 494a.6 (relating to answers to complaints, petitions, motions and other filings requiring a response; motions for summary judgment and judgment on the pleadings; intervention; and reopening of record) deadlines have been shifted from date of service to date of filing. This will make it easier for the Board to determine if ~~answers have been filed in a timely manner.~~

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A new § 493a.11 (relating to motions to protect confidential information) has been added to Chapter 493a. What is considered to be confidential information under the act has been a controversial issue. Accordingly, the Board is proposing this new section to establish a process that can be used in proceedings to address this issue.

In § 494a.8 (relating to rehearing or reconsideration) a new subsection (b) has been added to clarify that filing a petition for rehearing or reconsideration does not toll the 30-day appeal period.

In § 495a.1 (relating to form of documentary filings generally) subsection (d) has been amended to allow parties to indicate a fax number or email address where papers may be served instead of a mailing address. This is being done to make it easier and faster to serve documents.

Section 495a.6 (relating to number of copies) has been revised to only require that the original copy of documents be filed with the Board. Because the Board is using an electronic internal filing system, multiple copies of documents are no longer needed.

In § 497a.1 (relating to time) new provisions have been added that allow documents to be submitted via electronic transmission. However, documents will not be deemed to be officially filed until the Board receives any required filing fees.

In § 499a.4 (relating to notice of appearance or withdrawal) subsection (c) has been deleted. The Board has never required and can not foresee a need to require a practitioner to file a power of attorney authorizing the practitioner to represent their client.

In § 499a.6 (relating to contemptuous conduct) subsection (a) has been amended to include contemptuous conduct before a presiding officer, as well as the Board, as a basis for exclusion from a hearing.

### ***Affected Parties***

These amendments will affect entities and individuals who are involved in Board proceedings.

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### ***Fiscal Impact***

### ***Commonwealth***

Because most of the revisions in this rulemaking reflect current Board practice or reflect relatively minor changes, there will be no significant costs or savings to the Board or other state agencies as a result of these revisions. The Board

will experience some savings from being allowed to file and serve some documents electronically.

***Political Subdivisions***

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

***Private Sector***

Entities and individuals who are involved in Board proceedings will experience some slight savings from being required to submit fewer copies of documents and being able to file and serve documents electronically. Individuals who participate in videoconferencing for hearings should also experience savings from reduced travel.

***General Public***

This proposed rulemaking will have no fiscal impact on the general public.

***Paperwork requirements***

This proposed rulemaking reduces the number of copies of documents that must be filed with the Board and allows electronic service to replace mailing of documents to provide service.

***Effective Date***

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

***Public Comments***

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, ~~within 30 days after the date of publication in the *Pennsylvania Bulletin*~~ to Mickey Kane, Acting Secretary, Pennsylvania Gaming Control Board, P.O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-93.

***Contact Person***

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

***Regulatory Review***

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 24, 2008, 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.

MARY DIGIACOMO COLINS,  
Chairman

Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

\* \* \* \* \*

CHAPTER 403a. BOARD OPERATIONS AND ORGANIZATION

\* \* \* \* \*

§ 403a.7. Temporary emergency orders.

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

Subpart H. PRACTICE AND PROCEDURE

\* \* \* \* \*

CHAPTER 491a. GENERAL RULES OF PRACTICE

\* \* \* \* \*

§ 491a.2. Definitions.

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

\* \* \* \* \*

*Exception* - A formal objection to a report or report and recommendation of a presiding officer.

\* \* \* \* \*

[*Hearing officer* - An employee of the Board designated to conduct a hearing relating to a matter within the jurisdiction of the Board.]

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\* \* \* \* \*

§ 491a.3. Office of the Clerk.

\* \* \* \* \*



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

Office of the Clerk  
Pennsylvania Gaming Control Board  
[P.O. Box 69060  
Harrisburg, PA 17106-9060]  
One Penn Center  
2601 North 3<sup>rd</sup> Street, Suite 502  
Harrisburg, PA 17110

\* \* \* \* \*

§ 491a.6. (Reserved). [Hearing officers.

(a) A hearing officer may be a presiding officer.

Hearing officers shall be attorneys in good standing with the Supreme Court of Pennsylvania and shall be responsible for the timely disposition of assigned matters. Hearing officers are employed by the Board and may be discharged only for misconduct or good cause shown.

(b) Duties of the hearing officers may include:

- (1) Conducting full and complete hearings, partial and bifurcated hearings.
- (2) Taking testimony of witnesses.
- (3) Presiding over or causing depositions to be

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taken.

(4) Submitting reports or recommendations to the Board.

- (5) Other matters as the Board may direct.

(c) A hearing officer may withdraw when the hearing officer deems himself disqualified or a hearing officer may be withdrawn by the Board for good cause found after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the Board or another presiding officer to whom the Board has delegated the matter for investigation and report.

(d) This section supersedes 1 Pa. Code § 35.186 (relating to disqualification of a presiding officer).]

§ 491a.7. Presiding officers.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

§ 491a.8. Hearings generally.

\* \* \* \* \*

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

\* \* \* \* \*

(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.

\* \* \* \* \*

§ 491a.9. Prehearing and other conferences.

\* \* \* \* \*

(b) When the Board or presiding officer directs that a prehearing conference be held, all parties shall appear at the time and place designated. Notice of the time and place of the conference will be given to all parties. At the discretion of the Board or presiding officer, the conferences may be conducted telephonically or by video conference.

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\* \* \* \* \*

CHAPTER 493a. PLEADINGS

\* \* \* \* \*

§ 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.] 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 setting forth in ordinary and concise language the matter complained of and the facts supporting the complaint.

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

(c) [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.

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~~(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 of the hearing date 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)] (d) This section supplements 1 Pa. Code §§ 35.9--35.11 and 35.14 (relating to formal complaints; and orders to show cause).

\* \* \* \* \*

§ 493a.4. Petitions generally.

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

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(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 to complaints, petitions, motions and other filings requiring a response.

(a) Answers to complaints, petitions, motions and other filings requiring a response shall be filed with the Clerk and served on all other parties within 20 days after the date of [service] filing of [a] the complaint, petition, motion or other pleading, unless a different time is prescribed by the Board or presiding officer.

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(b) [~~The procedures in 1 Pa. Code §§ 35.35--35.40~~ apply.] 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.

[(c)] (d) This section supplements 1 Pa. Code §§ 35.35--35.40.

\* \* \* \* \*

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

\* \* \* \* \*

(c) *Answers to motions.* An answer to a motion for summary judgment or a motion for judgment on the pleadings, including an opposing affidavit to a motion for summary judgment, may be filed within 10 days of the date of [service] filing of the motion. An answer to a motion for summary judgment may be supplemented by pleadings and ~~depositions, answers to interrogatories or further~~ affidavits and admissions.

(d) *Decisions on motions.* If a motion is granted in whole or in part by a presiding officer, it will be in the form of a report or report and recommendation. The Board



will make a final ruling on a motion for judgment on the pleadings or a motion for summary judgment.

\* \* \* \* \*

§ 493a.11. Motions to protect confidential information.

(a) A party or individual may seek to protect confidential information under § 407a.3 (relating to confidential information) in pleadings and other papers by filing a Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information shall:

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

(2) Label as confidential all documents or portions of documents in the filing that the party or individual is seeking to protect.

(c) Upon the filing of the Motion to Protect Confidential Information, the Director of Hearings and Appeals shall review the motion and accompanying documents and may, upon determining that a substantial basis exists,

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issue an interim order to protect the documents from disclosure until such time the Board considers the matter in accordance with the Sunshine Act (65 Pa.C.S.A. §§ 701 - 716).

§ [493a.11] 493a.12. Discovery.

\* \* \* \* \*

§ [493a.12] 493a.13. Intervention.

\* \* \* \* \*

(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] filing of the petition, unless for cause the Board prescribes a different time.

\* \* \* \* \*

§ [493a.13] 493a.14. Consent agreements.

\* \* \* \* \*

CHAPTER 494a. HEARING PROCEDURE

\* \* \* \* \*

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

(a) A report or report and 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 **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:

\* \* \* \*

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

\* \* \* \*

**§ 494a.5. Review.**

\* \* \* \*

(b) The Board will review the record of the hearing and the report or **report and 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 **report and** 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 **report and** recommendation by a presiding officer and before the Board issues its final order, a party in a proceeding may file with the Board, 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 **report and** recommendation.

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

\* \* \* \* \*

(e) Prior to filing a report or **report and recommendation**, the presiding officer, after notice to the parties, may reopen the proceeding[s] 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 proceeding[s].

\* \* \* \* \*

**§ 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.

\* \* \* \* \*

(c) Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report or **report and recommendation[s]**. Exceptions to any part of ~~the report or **report and recommendation[s]** 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.

\* \* \* \* \*

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

\* \* \* \* \*

§ 494a.8. Rehearing or reconsideration.

\* \* \* \* \*

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

(c) 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)] (d) \* \* \*

[(d)] (e) \* \* \*

[(e)] (f) \* \* \*

[(f)] (g) \* \* \*

\* \* \* \* \*

CHAPTER 495a. DOCUMENTARY FILINGS

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

\* \* \* \* \*

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

\* \* \* \* \*

§ 495a.6. Number of copies.

(a) An original [and three copies] copy 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 or the presiding officer.

(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) Subsection[s (a)–(b) supersede] 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:

\* \* \* \* \*

(4) On the date that the pleading or other document is received by electronic transmission in the Office of the Clerk.

\* \* \* \* \*

(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.] Pleadings or other documents that require a filing fee will not be deemed filed until the Board receives the required fee.

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

\* \* \* \* \*

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CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

\* \* \* \* \*

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

[(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.]

\* \* \* \* \*

§ 499a.6. Contemptuous conduct.

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

\* \* \* \* \*

Subpart J. EXCLUSION OF PERSONS

\* \* \* \* \*

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

\* \* \* \* \*

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

\* \* \* \* \*

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

Board, the presiding officer will prepare a report and recommendation as provided in § 494a.4 (relating to report or report and recommendation of the presiding officer) for consideration by the Board.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 125-93

DATE: 9-24-08

SUBJECT: Subparts A, H, J - Chapters 403a, 491a, 493a, 494a, 495a, 497a, 499a and 511a

AGENCY: Pennsylvania Gaming Control Board

**TYPE OF REGULATION**

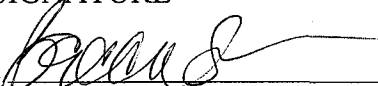
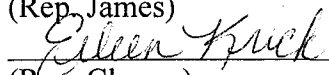
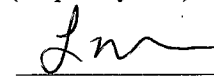
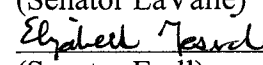
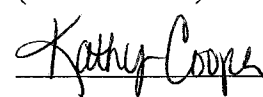

- Proposed Regulation
- Final-Form Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2008 SEP 24 PM 3:15

RECEIVED

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
1. <u>9/24/2008</u>	<u></u> (Rep. James)	House Gaming Oversight Committee
2. <u>9/24/08</u>	<u></u> (Rep. Clymer)	
3. <u>9/24/08</u>	<u></u> (Senator LaValle)	Senate Community, Economic & Recreational Committee
4. <u>9-24-08</u>	<u></u> (Senator Earl)	
5. <u>9/24/08</u>	<u></u>	Independent Regulatory Review Commission
6. <u>9/24/08</u>	<u></u>	Legislative Reference Bureau