

# Regulatory Analysis Form

This space for use by IRRC

(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 401a, 403a, 405a, 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.

### **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.

Entities who file a motion to protect confidential information will experience some cost to prepare the motion. However these costs will be offset by the savings that will occur due to no longer having to spend time on this issue at prehearing conferences or in the actual proceedings.

(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.

Entities who file a motion to protect confidential information will experience some cost to prepare the motion. However these costs will be largely offset by the savings that will occur due to no longer having to spend time on this issue at prehearing conferences or in the actual proceedings.

### **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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<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 FY
Board Budget	\$13,200,000	\$26,400,000	\$29,984,000	\$33,300,000

(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 significant costs associated with these amendments, the benefits described 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 401a, 403a, 405a, 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 final-form 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)**

DO NOT WRITE IN THIS SPACE

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

By \_\_\_\_\_  
(Deputy Attorney General)

\_\_\_\_\_  
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

1-21-09

BY

Mary DiGiorgio  
Mary DiGiorgio Colins, 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

1-21-09  
DATE OF APPROVAL

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

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

**FINAL-FORM RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA**

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

## **RULES AND REGULATIONS**

### **PENNSYLVANIA GAMING CONTROL BOARD**

**[58 PA.CODE CHS. 401a, 403a, 405a, 491a, 493a, 494a, 495a, 497a, 499a and 511a]**

### **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), amends Chapters 401a, 403a, 405a, 491a, 493a, 494a, 495a, 497a, 499a and 511a to read as set forth in Annex A.

#### ***Purpose of the Final-form Rulemaking***

This final-form 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 401a, 403a, 405a, 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 (relating to general rules of practice) 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. The Board has also deleted the definition of "presiding officer" from § 491a.2 (relating to definitions) and placed it in § 401a.3 (relating to definitions) because the term is used in more than just subpart H (relating to practice and procedure).

In § 405a.6 (relating to enforcement action) an incorrect citation to § 493.2(d) in subsection (c) has been replaced with

the correct citation to § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response).

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.

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

In § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response), the section title has been changed and the section 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, 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.

A new § 493a.10a (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 adding 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.

#### ***Comment and Response Summary***

Notice of proposed rulemaking was published at 38 Pa.B. 5441 (October 4, 2008).

The Board received comments from Downs Racing, L.P. (Downs), Greenwood Gaming and Entertainment, Inc. (Greenwood), and Sands Bethworks Gaming, LLC (Sands). By letter dated December 3, 2008, the Independent Regulatory Review Commission

(IRRC) also submitted comments. All of these comments were reviewed by the Board and are discussed in detail below.

IRRC pointed out that although § 403a.7 (relating to temporary emergency orders) uses the term "presiding officer," there is no applicable definition to this term. Section 491a.2 (relating to definitions) defines that term, but that section applies only to subpart H (relating to practice and procedure), not subpart A (relating to general provisions), where § 403a.7 is located.

The Board concurs with IRRC. In response, the definition of "presiding officer" has been deleted from § 491a.2 and placed in § 401a.3 (relating to definitions), which applies to the entire part.

IRRC expressed concern that the amendments to § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response), § 493a.10 (relating to motions for summary judgment and judgment on the pleadings), § 493a.12 (relating to intervention) and § 493a.6 (relating to reopening of record), which change the trigger dates for responsive filings from the date of service to the date of filing, could make it difficult for parties who are served several days after filing to respond in a timely manner.

The Board notes that if a party is slow in providing service, the disadvantaged responding party is able to file a motion under § 497a.5 (relating to extensions of time and continuances) requesting additional time. Moreover, because this rulemaking will allow for electronic service, the Board does not expect that slow service will be an issue in the future. In addition, the existing regulation allows 10 days for the filing of answers to motions for summary judgment. While the Board thinks this is sufficient, it will monitor actual practice and consider using a longer period if experience shows that more time should be allotted.

Comments from the licensed facilities primarily offered opposition to the new proposed § 493a.10a. As the comments submitted by the licensed facilities raised substantially the same objections, references to the commentators, below, includes Greenwood, Downs and Sands.

The commentators stated that the process contained in § 493a.10a for filing a Motion to Protect Confidential Information unreasonably shifts the burden of protecting the information

from the Board to the filing parties. They pointed to current procedure under § 407a.3, whereby filing parties simply mark any information they deem confidential, as the proper way for the Board to implement its statutory duty to protect the confidential information of the licensees. They believe the effect of the proposed regulation would be to require a licensee to prevail on a motion seeking the confidentiality of material already defined and protected by the Act as confidential. IRRC echoed the commentators on this point and asked the Board to explain its authority in that regard.

The Board does not agree that § 493a.10a relieves the Board of its statutory duty to protect confidential information. The intent of § 493a.10a was not to establish an adversarial situation that requires the filing party to prevail on a contested motion to protect information from disclosure to the public. The Motion to Protect Confidential Information is intended to give the filing party the opportunity to clarify for the Board exactly what information should be protected and why that information falls within the scope of the protections provided by the Act and the Board's regulations. Having this information on the record will assist the Board in dealing with requests for information made pursuant to Pennsylvania's Right to Know Law.

In response to these comments, however, the Board has removed the language; "a party or individual may seek to protect confidential information" in § 493a.10a(a), and replaced it with; "a party or individual may designate information as confidential." This clarifies that the purpose of the Motion to Protect Confidential Information is for the filing party to identify for the record the confidential information in its pleadings and provide the reason it should be so designated. If the Motion is acted on favorably, the Board will protect the confidential information from disclosure to other parties, pursuant to the Act and its regulations.

The commentators also expressed concern over the treatment of the material sought to be protected during the pendency of the Motion to Protect Confidential Information. They questioned if the procedure in the proposed regulation would permit the information in question to be disclosed to another party prior to an interim ruling on the Motion by the Director of Hearings and Appeals.

The Board agrees that information sought to be designated confidential should be protected during the time it takes the

Director of Hearings and Appeals to issue an interim order on the Motion to Protect Confidential Information. The process established by § 493a.10a will enable the Director to issue an interim order in a short amount of time. In response to the comments, however, the Board has added language to the final-form regulation ensuring that all information that is the subject of the Motion to Protect Confidential Information will be treated as confidential during its pendency.

The commentators also felt that compliance with § 493a.10a would create a negative fiscal impact on the filing parties. They assert that the necessity of filing a separate Motion to Protect Confidential Information with every pleading would significantly increase costs to the industry without any identifiable benefit. IRRC also commented that compliance with this section will result in some costs to the regulated community.

The Board acknowledges that compliance with proposed regulation § 493a.10a will result in some additional cost to licensed facilities that appear regularly before the Board. The Board feels, however, that the additional cost will be minimal and is justified in establishing a clear record of what the filing party considers to be confidential information and the justification for protecting it as such.

Finally, the commentators felt that the term "pleading and other papers" in the proposed § 493a.10a was vague. IRRC raised this concern in its comments, as well. In response, the Board has changed this language to "any papers filed with the Clerk." This should clarify that anything filed with the Clerk can be the subject of a Motion to Protect Confidential Information.

In addition to reiterating some of the concerns of the licensed facilities, IRRC also raised several other issues regarding § 493a.10a. IRRC noted that § 493a.10a(a) refers only to "information," while subsection (b) refers to "information" and "documents" in separate paragraphs, and subsection (c) only refers to "documents."

The Board's intent was to treat any "documents that contain confidential information" as confidential. No distinction between "documents" and "information" was intended. The proposed regulation has been changed to make clear and consistent reference to confidential information.

IRRC asked whether the interim order issued by the Director of Hearings and Appeals and the final order issued by the Board would protect the substance of the Motion to Protect Confidential Information, as well as the documents attached to it.

The Board has added language to the final-form regulation which clarifies that, to the extent that the motion contains confidential information, that information will be protected by both the Director's interim order and the final order of the Board.

Finally, IRRC questioned whether the Motion to Protect Confidential Information is intended to apply to information other than the information described in 4 Pa.C.S. § 1206

In response to this question, the Board notes that this section is intended to apply to any information that is confidential under the Act and the Board's regulations, as well as any other statutes.

#### ***Additional Revisions***

In § 405a.6(c), the Board has corrected an incorrect citation to § 493.2(d) by replacing it with the correct citation to § 493a.5.

#### ***Affected Parties***

This final-form rulemaking will affect entities and individuals who are involved in Board proceedings.

#### ***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 final-form 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. Parties seeking to protect confidential information may experience some increased costs related to filing motions to protect confidential information, but since this process replaces a matter that was previously dealt with at prehearing conferences, the costs should not be significant.

### ***General Public***

This final-form rulemaking will have no fiscal impact on the general public.

### ***Paperwork requirements***

This 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.

Parties seeking to protect confidential information will have to file a motion to protect confidential information, but this will eliminate the need to resolve this issue as part of a prehearing conference.

### ***Effective Date***

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

### ***Contact Person***

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, 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, published at 38 Pa.B. 5441 (October 4,

2008) and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on **INSERT DATE**, 2009. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)) IRRC met on **INSERT DATE**, 2009 and approved the final-form rulemaking.

### ***Findings***

The Board finds that:

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

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

### ***Order***

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

(a) The regulations of the Board, 58 Pa. Code Chapters 401a, 403a, 405a, 491a, 493a, 494a, 495a, 497a, 499a and 511a are amended by amending §§ 403a.7, 491a.2, 491a.3, 491a.6 - 491a.9, 493a.2, 493a.4, 493a.5, 493a.10, 493a.12, 494a.4 - 494a.8, 495a.1, 495a.6, 497a.1, 499a.4, 499a.6, 511a.6 and 511a.9 to read as set forth at 38 Pa.B. 5441 and by amending §§ 401a.3, 405a.6 and 493a.10a to read as set forth in Annex A.

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

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

MARY DIGIACOMO COLINS,  
Chairman

Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

\* \* \* \* \*

*PRESIDING OFFICER* -

(i) A MEMBER OF THE BOARD, OR OTHER PERSON DESIGNATED BY THE BOARD TO CONDUCT A PROCEEDING.

(ii) THIS DEFINITION SUPERSEDES 1 PA. CODE § 31.3 (RELATING TO THE DEFINITIONS).

\* \* \* \* \*

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.

\* \* \* \* \*

**CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT**  
**§ 405a.6. Enforcement action.**

\* \* \* \* \*

(c) Within 20 days from the date of service of complaint for an enforcement action, the person may file a notice of defense in accordance with **§ 493.2(e) 493a.5 (RELATING TO ANSWERS TO COMPLAINTS, PETITIONS, MOTIONS AND OTHER FILINGS REQUIRING A RESPONSE)** and serve a copy of the

~~request~~ NOTICE OF DEFENSE on the Office of Enforcement Counsel. Failure to file a notice of defense for an enforcement action complaint within 20 days will be deemed:

\* \* \* \* \*

## 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.]

\* \* \* \* \*

~~*Presiding officer*~~

~~— (i) A member of the Board, or other person designated by the Board to conduct a proceeding.~~

~~— (ii) This definition supersedes 1 Pa. Code § 31.3 (relating to the definitions).~~

\* \* \* \* \*

§ 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. [Hearing officers.] (Reserved).

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

(b) Duties of the hearing officers may include:

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

(4) Submitting reports or recommendations to the Board.

(5) Other matters as the Board may direct.

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

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

§ 491a.7. Presiding officers.

\* \* \* \* \*

(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.

\*   \*   \*   \*   \*

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.

(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.

\* \* \* \* \*

(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.

(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.

(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.10a. Motions to protect confidential information.

(a) A party or individual may ~~seek to protect~~  
~~confidential~~ DESIGNATE information AS CONFIDENTIAL under §  
407a.3 (relating to confidential information) in pleadings  
and ~~other~~ ANY papers FILED WITH THE CLERK by filing a  
Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information must:

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

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

(c) Upon the filing of the Motion to Protect  
Confidential Information, the Director of Hearings and  
Appeals will review the motion and accompanying ~~documents~~  
FILINGS and ~~may~~, upon determining that a substantial basis  
exists, SHALL issue an interim order to protect the  
~~documents~~ INFORMATION, WHETHER IN THE MOTION OR THE  
ACCOMPANYING FILINGS, from disclosure until the Board  
considers the matter in accordance with 65 Pa.C.S.A. §§ 701  
- 716 (relating to open meetings). AT ALL TIMES DURING THE  
PENDENCY OF THE MOTION, THE INFORMATION IN THE MOTION AND  
THE ACCOMPANTING FILINGS SHALL BE TREATED AS CONFIDENTIAL.

\* \* \* \* \*

**§ 493a.12. 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.

\* \* \* \* \*

**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 **[recommendations] report and recommendations**. Exceptions to any part of the report or **[recommendations] report and 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.

\* \* \* \* \*

(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).

\* \* \* \* \*

#### 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.

(d)] \* \* \*

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

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

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

§ 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).

**\* \* \* \* \***



**COMMENTATORS WHO REQUESTED NOTICE  
OF THE FINAL-FORM REGULATION**

**FISCAL NOTE: 125-93**

**While § 5.1(a) of the Regulatory Review Act only requires the Board to provide a list of the commentators who have requested additional information and a copy of the final-form regulation, the PGCB sends a copy of the preamble, Regulatory Analysis Form and the final-form regulation to all commentators. These copies are sent by mail or emailed to the commentator if they request electronic delivery. For this rulemaking, copies of these materials have been sent to the following:**

**Bryan P. Schroeder, Esquire  
Assistant General Counsel  
Greenwood Gaming and Entertainment, Inc.  
3331 Street Road, Suite 200  
Bensalem, PA 19020**

**Alan C. Kohler, Esquire  
On behalf of Downs Racing, LP  
Wolf Block LLP  
213 Market Street, 9<sup>th</sup> Floor  
PO Box 865  
Harrisburg, PA 17108**

**Robert J. DeSalvio  
President  
Sands Casino Resort Bethlehem  
511 East Third Street  
Bethlehem, PA 18015**

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

**I.D. NUMBER:** 125-93

**DATE:** 2-11-09

**SUBJECT:** Subpart A (Chapters 401a, 403a, 405a); Subpart H (Chapters 491a, 493a, 494a, 495a, 497a & 499a); Subpart J (Chapter 511a)

**AGENCY:** Pennsylvania Gaming Control Board (PGCB)

**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

**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
1. <u>2/11/09</u>	<u></u> Senator Jane M. Earll	<b>Senate</b> Community, Economic & Recreational Development
2. <u>2/11/09</u>	<u></u> Senator Wayne D. Fontana	<b>Senate</b> Community, Economic & Recreational Development
3. <u>2/11/09</u>	<u></u> Representative Dante Santoni, Jr.	<b>House</b> Gaming Oversight
4. <u>2/11/09</u>	<u></u> Representative Curt Schroder	<b>House</b> Gaming Oversight
5. <u>2/11/09</u>	<u></u>	Independent Regulatory Review Commission
6.		Legislative Reference Bureau