

OTHER AGENCIES

CASINO CONTROL COMMISSION

Hearings and Appeals

Proposed Repeals: N.J.A.C. 19:42

Proposed New Rules: N.J.A.C. 19:42A

Authorized By: Casino Control Commission, Matthew B. Levinson, Chairman.

Authority: N.J.S.A. 5:12-63, 69, 80, 86, 89, 94, 95, 107, and 108.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-175.

Submit written comments by February 1, 2013 to:

Teresa M. Pimpinelli, Senior Counsel

Casino Control Commission

Arcade Building

Tennessee Avenue and the Boardwalk

Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Amendments to the Casino Control Act (the Act), N.J.S.A. 5:12-1 et seq., effectuated significant changes in the structures and procedures for the regulation of casino gaming in New Jersey. (P.L. 2011, c. 19, effective February 1, 2011). Among other things, the legislation reallocated the duties and responsibilities between the Casino Control Commission (Commission) and the Department of Law and Public Safety, Division of Gaming Enforcement (Division).

In order to effectuate the legislative amendments, both the Commission and the Division must promulgate rules that reflect the new statutory allocation of responsibilities between the two agencies. Effective December 19, 2011, the Division exercised its authority pursuant to N.J.S.A. 5:12-69 to repeal N.J.A.C. 19:42-4, 6, and 8. (See 43 N.J.R. 2461(a); 3410(a)) By this notice of proposal, the Commission is promulgating new rules, to replace its rules currently codified at N.J.A.C. 19:42, as proposed Chapter 42A (Hearings and Appeals).

The proposed new rules in Chapter 42A address the Commission's standards and procedures for hearings and appeals. In many ways, the proposed new rules incorporate the Commission's existing rules. It was necessary to refine the existing rules to reflect only those functions for which the Commission is now responsible. Accordingly, the proposed new rules closely track the rules proposed for repeal, except where noted below. Proposed N.J.A.C. 19:42A-1 sets forth the general provisions of the Commission's hearing and appeal process. This is different from the subchapter proposed for repeal in that the Commission is now responsible for adjudicating appeals as well as contested case hearings. N.J.A.C. 19:42A-1.1 lists and defines words and terms used in the chapter. The following new terms were added: appeal, appeal hearing, appellant, case information statement, Casino Control Act, Commission, Division, final action, and hearing examiner. The previously defined term "letter report" is changed to "report" in the new rule. N.J.A.C. 19:42A-1.2 addresses the applicability of the chapter rules.

Proposed new N.J.A.C. 19:42A-2 sets forth the procedure to follow for the commencement of contested case hearings. N.J.A.C. 19:42A-2.1, previously codified at N.J.A.C. 19:42-1.3, requires the Commissioner to afford an opportunity for a hearing before it can act to deny, suspend, revoke, or disqualify an applicant, licensee, or qualifier. Due to the

legislative changes to the Casino Control Act, there are no circumstances under which the Commission could suspend a license or registration without first affording an opportunity for a hearing. Accordingly, reference to such authority was not carried forward into the new rule. N.J.A.C. 19:42A-2.2 provides the circumstances under which a contested case is commenced before the Commission. The new rule differs from the existing rule in that the Commission is only authorized to hold contested case hearings for casino license, casino key employee license, and individual qualifier matters and, therefore, the new rule does not provide for a contested case hearing before the Commission for matters relating to exclusions or forfeiture of winnings. In addition, as N.J.A.C. 19:42-2.10 is proposed for repeal, the filing requirements for reports from the Division, which are applicable to those matters the Commission is authorized to hold contested case hearings on, was relocated to subsection (b) of this section. It is noted that N.J.A.C. 19:42-2.10(a) was not included as it addresses complaints and petitions for exclusion, which are no longer within the Commission's jurisdiction. Similarly, N.J.A.C. 19:42A-2.3 addresses the Commission's obligation to provide notice of a right to a hearing. As the Commission is only authorized to hold contested case hearings for casino license, casino key employee license, and individual qualifier matters, the proposed rule eliminates the Commission's responsibility to provide notice of a right to a hearing for matters unrelated to such matters. N.J.A.C. 19:42A-2.4 provides how a party may request a hearing and allows an applicant or respondent 20 days to request a hearing, which is five days more than the time period established at N.J.A.C. 19:42-2.3, which is proposed for repeal. N.J.A.C. 19:42A-2.5 details the consequences of failing to request, or withdrawing a request for, a contested case hearing and is limited in scope to casino license, casino key employee license, and individual qualifier matters, which are the only matters over which the Commission now has jurisdiction in

light of the previously discussed 2011 amendments to the Casino Control Act. N.J.A.C. 19:42A-2.6 addresses the designation of a hearing examiner.

As a result of the 2011 amendments to the Casino Control Act, the Division Director is now empowered with the authority provided for in the subchapter and, therefore, N.J.A.C. 19:42-3 is proposed for repeal in its entirety. Proposed N.J.A.C. 19:42A-3 sets forth the conduct of contested case hearings. N.J.A.C. 19:42A-3.1 establishes the burden of proof for each party in contested case hearings involving casino licenses, casino key employee licenses, and individual qualifiers, which are the only matters over which the Commission has jurisdiction in light of the 2011 amendments to the Casino Control Act. N.J.A.C. 19:42A-3.2 addresses how a settlement reached prior to a hearing is to be handled. It is noted that N.J.A.C. 19:42-2.11, which is proposed for repeal, addresses settlements reached prior to a hearing. N.J.A.C. 19:42-2.11(b) and (c) have not been included in new N.J.A.C. 19:42A-3.2, as those subsections are covered by N.J.A.C. 1:1-19. N.J.A.C. 19:42A-3.3 provides for the circumstances under which a wage execution is required of an applicant, licensee, or petitioner.

N.J.A.C. 19:42A-4 is a new subchapter crafted in accordance with the Commission's new statutory authority pursuant to the Act to adjudicate appeals and sets forth the manner in which an appeal before the Commission is commenced. N.J.A.C. 19:42A-4.1 addresses who may appeal a final action, the types of appeals the Commission is authorized to hear, and how notice of a party's right to appeal will be provided. New N.J.A.C. 19:42A-4.2 through 4.7 did not exist in the rules proposed for repeal. N.J.A.C. 19:42A-4.2 sets forth how a party may commence an appeal and the standards for obtaining an extension of time to do so. N.J.A.C. 19:42A-4.3 sets forth what the record on appeal is and requires that the Division provide the Commission and each party to the appeal with a statement of items comprising the record and the Commission

with a copy of the items. N.J.A.C. 19:42A-4.3 further provides for a method to settle a dispute regarding the correctness of the record, which shall be by motion to the Division which determination may be reviewed by the Commission on a party's motion. The Commission may direct correction of the record. N.J.A.C. 19:42A-4.3 also sets forth the procedure for supplementing the appeal record with evidence which may be material to the issues on appeal, but was omitted during the proceedings before the Division. On a party's motion, or on the Commission or designated hearing examiner's own motion, the Commission may specify the taking of additional evidence by the Division and the making of findings of fact thereon, to supplement the appeal record. N.J.A.C. 19:42A-4.4 establishes the format of and information required to be provided in the Case Information Statement. N.J.A.C. 19:42A-4.5 establishes the filing and service of Case Information Statements, briefs, and motions for appeals, while N.J.A.C. 19:42A-4.6 establishes the time for filing appellate briefs. N.J.A.C. 19:42A-4.7 addresses the dismissal of an appeal, and the effect of a request to withdraw or subsequent stipulation on an appeal.

N.J.A.C. 19:42A-5 is a new subchapter crafted in accordance with the Commission's new statutory authority pursuant to the Act to adjudicate appeals and addresses the manner in which an appeal before the Commission will be conducted; this provision did not exist in the rules proposed for repeal. N.J.A.C. 19:42A-5.1 provides the rules that govern the conduct of an appeal hearing. N.J.A.C. 19:42A-5.2 identifies that oral argument must be requested. N.J.A.C. 19:42A-5.3 addresses the ways an appeal hearing can proceed. N.J.A.C. 19:42A-5.4 provides for the introduction of evidence in an appeal, while N.J.A.C. 19:42A-5.5 establishes the standard of review in an appeal. N.J.A.C. 19:42A-5.6 provides that an appeal decision is a final agency action for purposes of establishing jurisdiction on appeal.

Proposed Subchapter 6, previously codified as N.J.A.C. 19:42-5, sets forth the rules for hearings on complaints against the Division. N.J.A.C. 19:42A-6.1 provides the rules for hearings on complaints against the Division, while N.J.A.C. 19:42A-6.2, previously codified as N.J.A.C. 19:42-5.3, addresses the burden of proof in hearings on complaints against the Division. N.J.A.C. 19:42-5.3(a)3, which required a casino licensee to prove an actual disruption in service in order to bring a complaint against the Division is not proposed in the new rule. This burden is no longer on the casino licensee to prove what the Commission should be determining, that is, whether the Division's actions created a disruption in service warranting the relief sought through the filing of a complaint against the Division. It is noted that, as a result of 2011 amendments to the Casino Control Act, the Division is now the agency responsible for the day-to-day regulatory authority over casino operations and, for that reason, the new rules do not include any provision akin to N.J.A.C. 19:42-5.2.

N.J.A.C. 19:42A-7.1 sets forth the rule for hearings on rules.

This notice of proposal is not required to be referenced in a rulemaking calendar, since a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for repeal and new rules at N.J.A.C. 19:42A establish the standards and procedures the Commission will follow when there is a contested case hearing or appeal. Applicants, licensees, and petitioners who are eligible to have their matter heard by the Commission, either through a contested case hearing or a contested case appeal, will benefit from the establishment of these standards and procedures.

Economic Impact

The rules in N.J.A.C. 19:42A serve an informational and procedural purpose and therefore, the rules proposed for repeal and new rules are not anticipated to have any economic impact on casino employees, licensees, applicants, or any other person or entity in the New Jersey casino industry. Nonetheless, the Commission does incur costs in implementing the procedures set forth in N.J.A.C. 19:42A. Among other things, considerable staff time is required to review, prepare, oversee, and decide each contested case and appeal. However, such costs are far outweighed by the State's interest in providing clear, reasonable, and efficient procedures that ensure each affected person has a reasonable opportunity to be heard.

Likewise, licensees, applicants and other similarly situated parties also incur costs with the standards and procedural requirements in N.J.A.C. 19:42A. For example, there is both time and expense involved in the preparation and filing of requisite submissions, appearance, and, where desired, the retention of legal counsel. Nonetheless, compliance with these standards and procedures is essential to the successful implementation of the hearing and appeal processes required by the Casino Control Act.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for repeal and new rules are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for repeal and new rules are not anticipated to create new jobs in the New Jersey casino industry nor are they expected to have any impact on employment in the casino industry or any other business.

Agriculture Industry Impact

The rules proposed for repeal and new rules are not expected to have any impact upon the New Jersey agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for repeal and new rules apply to both individuals and entities. The contested case hearing rules apply to those applying for or looking to retain a previously granted casino key employee license, to casino licensees, and individual qualifiers of casino licenses. The appeal and hearing rules apply to both persons and entities, including casino service industry enterprise licensees and applicants or other vendor registrants, which may qualify as a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

If an entity that qualifies as a small business requests an appeal hearing before the Commission, they will have the opportunity to have their underlying matter reviewed, which will subject them to the procedural requirements set forth in the new rules. Some time and minimal administrative costs may be incurred in filing the requisite requests and responses. If the entity chooses to be represented by counsel, they would also incur attorney's fees. Since most of the new rules are procedural standards for the conduct of contested cases and appeals (for example, filing timelines and burden of proof), small businesses will not incur any costs in complying with these standards. Because an administrative agency's procedures must, as a matter of

fundamental fairness, be consistently applied to all similarly situated parties without exemptions or concessions based upon size, uniformity is necessary and essential to ensure administrative efficiency. For this reason, the public interest would not be served by exempting small businesses from the standards and procedures set forth in the new rules or by establishing different compliance requirements for such businesses. No additional professional services are required for compliance, other than as discussed in the Summary above.

Housing Affordability Impact Analysis

The rules proposed for repeal and new rules will have no impact on the affordability of housing in the State of New Jersey because they affect the regulation of Commission hearings in the New Jersey casino industry in Atlantic City.

Smart Growth Development Impact Analysis

The rules proposed for repeal and new rules will have an insignificant impact on smart growth. There is an extreme unlikelihood that the rules would evoke a change in the housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rule only affect the regulation of Commission hearings in the New Jersey casino industry in Atlantic City.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:42.

Full text of the proposed new rules follows:

CHAPTER 42A

HEARINGS AND APPEALS

SUBCHAPTER 1. GENERAL PROVISIONS

19:42A-1.1 Definitions

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

“Act” shall mean the Casino Control Act, N.J.S.A. 5:12-1 et seq.

“Appeal” means a review by the Commission of any final action of the Director, or his or her designee, as set forth in N.J.S.A. 5:12-63(1)(b).

“Appeal hearing” means the formal proceeding during which the Commission receives written and/or oral arguments related to an appeal.

“Appellant” means the party who files with the Commission a written request to appeal from a final action.

“Case Information Statement” means a form that provides the Commission with a brief summary of the underlying matter being appealed.

“Commission” shall mean the Casino Control Commission.

“Director” means the Director of the Division of Gaming Enforcement.

“Division” shall mean the Division of Gaming Enforcement, within the Department of Law and Public Safety.

“Exclusion list” means a list of persons who, pursuant to N.J.S.A. 5:12-71, and as defined at N.J.A.C. 13:69G-1.1, are required to be excluded or ejected from casino hotel facilities.

“Final action” means a decision or order issued by the Director, which may be appealed to the Commission pursuant to N.J.S.A. 5:12-63(1)(b).

“Hearing examiner” is the “judge” as defined in the UAPR, and shall also include the Commission, the Chair, a member of the Commission, or any other qualified person, other than an employee of the Commission, designated to hear facts and issues pertaining to a particular matter.

“OAL” means the Office of Administrative Law.

“Party” means any person or entity directly involved in a contested case, including petitioner, respondent, intervenor, or State agency proceeding in any such capacity.

“Report” means a written report from the Division setting forth its position on an initial or resubmission casino key employee license application.

“UAPR” means the Uniform Administrative Procedure Rules, as set forth at N.J.A.C. 1:1.

19:42A-1.2 Applicability of rules

(a) Any contested case or appeal hearing before the Commission initiated pursuant to the Casino Control Act shall be conducted pursuant to the UAPR, the special hearing rules, N.J.A.C. 1:19, the provisions of the Act, and this chapter.

(b) To the extent that the Casino Control Act and the rules contained in this chapter, which implement the Casino Control Act, are inconsistent with the UAPR, this chapter shall apply.

SUBCHAPTER 2. COMMENCEMENT OF CONTESTED CASE HEARING

19:42A-2.1 Right to a hearing

(a) The Commission shall not deny, suspend, or revoke any license or take action to disqualify any person required to establish individual qualification, unless it has first afforded the applicant,

licensee, or qualifier an opportunity for a hearing in accordance with law and the rules of the Commission.

(b) This section shall not apply where the Commission is required by law to deny an application or revoke a license or qualification without exercising any discretion in the matter on the basis of a judgment of a court of competent jurisdiction.

19:42A-2.2 Commencement of a contested case hearing

(a) A contested case shall be commenced at the direction of the Commission or by the filing of one of the following by the Division:

1. A report recommending that an application for a casino license, a casino key employee license, or individual qualification in connection with a casino license should not be granted;

2. A report recommending that a casino license, a casino key employee license, or an individual qualification in connection with a casino license should be revoked;

3. A written complaint requesting that the Commission suspend a casino license, casino key employee license, or individual qualification in connection with a casino license; or

4. At the request of the Director upon issuance of a report and recommendation in accordance with N.J.S.A. 5:12-87.1.

(b) The Division shall file an original and four copies of any such report or complaint concerning an applicant for or holder of a casino license, casino key employee license, or individual qualification in connection with a casino license by hand-delivery, electronic mail, or first class mail to the Commission at the address specified in N.J.A.C. 19:42A-2.4(a) or at an electronic mail address provided by the Commission.

(c) A filed report recommending that an application be granted, or taking no position on an application, will not commence a contested case unless otherwise directed by the Commission.

19:42A-2.3 Notice of right to a hearing

(a) When the Commission has been provided with a copy of the appropriate document set forth in N.J.A.C. 19:42A-2.2(a), the Commission shall serve upon the applicant, licensee, or qualifier a copy of the Division report or complaint and a written notice of the right to a hearing and the responsibility to request a hearing, with a copy of same to the Division, as follows:

1. Reports regarding a contested application shall be served upon an applicant by certified and ordinary mail; and

2. Complaints shall be served upon an applicant, licensee, or qualifier either personally or by certified mail.

(b) All written notices advising of the right to a hearing and the responsibility to request a hearing shall be sent to the most recent known address provided to the Commission by the Division.

19:42A-2.4 Request for a hearing

(a) Any request for a hearing before the Commission shall be filed with the Commission by hand-delivering or mailing it to:

New Jersey Casino Control Commission

Document Control Unit

ATTN: Hearings and Appeals Unit

Tennessee Avenue and the Boardwalk

Atlantic City, New Jersey 08401

One copy of a request for a hearing shall be submitted to the Division and each other party, if applicable, within 20 calendar days of the Commission's notification to the applicant or respondent of their right to a hearing. Such request shall include a notice of defense, which sets forth:

1. Admission or denial of the allegations in whole or in part;
2. Affirmative defenses, new matters, or explanations by way of defense; or
3. Any legal objection to the findings and determinations contained in the Division's report or complaint including, but not limited to, constitutional issues, statutory authority, and/or regulatory authority.

19:42A-2.5 Failure to request a hearing; withdrawal of a request; final action

(a) If a party fails to timely file a request for a hearing before the Commission pursuant to N.J.A.C. 19:42A-2.4, or withdraws a request for a hearing, the Commission may:

1. Order a hearing on its own motion; or
2. Determine that such action constitutes a waiver of the right to a hearing and an admission of all material allegations concerning the failure of the applicant or respondent to qualify or maintain his or her qualifications. Upon such a determination, the Commission may take final action including, without limitation:
 - i. Denial of any pending application;
 - ii. Revocation of a license or qualification;
 - iii. Other relief that is consistent with the policies of the Act and in the public interest.

19:42A-2.6 Transmission to the OAL or designation of a hearing examiner

(a) Pursuant to N.J.S.A. 5:12-107(a), unless the Commission hears a contested case directly, the Chair may refer the matter to the OAL or designate a member of the Commission, or other qualified person other than an employee of the Commission, to serve as a hearing examiner.

(b) If a hearing examiner becomes unavailable at any time after the commencement of a hearing, but prior to the filing of the initial decision, the Chair may appoint another hearing examiner or transfer the contested case to the OAL or the Commission. The Commission or the new hearing examiner may either continue the hearing and render a decision upon the entire record or begin the hearing anew.

SUBCHAPTER 3. CONDUCT OF CONTESTED CASE HEARING

19:42A-3.1 Burden of proof

(a) An applicant or respondent shall have the affirmative obligation to establish by clear and convincing evidence satisfaction of the applicable affirmative standards set forth in the Act and rules of the Commission for licensure or individual qualification.

(b) The Division shall have the affirmative obligation to establish by a preponderance of the evidence the disqualification, pursuant to N.J.S.A. 5:12-86, of an applicant, licensee, or individual qualifier requested in accordance with N.J.A.C. 19:42A-2.2(a)1 or 2.

(c) The Division shall have the affirmative obligation to establish by a preponderance of the evidence the grounds for suspension of an applicant, licensee, or individual qualifier requested in accordance with N.J.A.C. 19:42A-2.2(a)3.

19:42A-3.2 Settlement prior to transmission

(a) If the parties agree to a settlement prior to transmission of the case to the Commission or its designated hearing examiner or the OAL, a written stipulation signed by all parties, and their representatives, shall be submitted to the Commission. The settlement shall be scheduled for disposition by the Commission at a public meeting at which the Commission shall:

1. Approve the settlement;
2. Approve the settlement as modified by the Commission with the consent of the parties;
3. Reject the settlement and remand the contested case to be scheduled for further proceedings; or
4. Take such action as the Commission deems appropriate.

(b) Settlements reached at a prehearing conference scheduled pursuant to N.J.A.C. 1:19-13.1 shall be submitted to the Commission for disposition pursuant to (a) above.

19:42A-3.3 Wage executions

(a) The Commission may condition the granting or retention of a casino key employee license or the granting of a petition pursuant to N.J.A.C. 13:69A-8.9 or 8.10 upon compliance with a court order or a consent agreement with the Division pursuant to which a portion of the applicant's, licensee's, or petitioner's wages will be withheld as an installment payment against a financial obligation owed or secured, directly or indirectly, to the State of New Jersey or any subdivision thereof or other governmental entity.

(b) Any individual who is subject to a Commission order pursuant to (a) above shall:

1. Submit a copy of the Commission order and the relevant court order or consent agreement to his or her current casino employer and to any future casino employer until the obligation is paid in full; and

2. Notify the Commission and the Division when the terms of the court order or consent agreement have been satisfied, including evidence that the obligation has been paid in full. Such notice shall be directed to the Commission's Document Control Unit at the address specified in N.J.A.C. 19:42A-2.4 and to the Division at the address specified in the rules of the Division.

SUBCHAPTER 4. COMMENCEMENT OF APPEAL HEARING

19:42A-4.1 Right to appeal; notice of right to appeal

(a) Any licensee, applicant for a license, or registrant who is aggrieved by a final action of the Division shall have the right to appeal to the Commission. Pursuant to N.J.S.A. 5:12-63(b) and 107(h), an appeal may be taken from the following Division actions:

1. A notice of violation and penalty assessment issued upon any applicant, qualifier, licensee, or registrant;
2. A ruling on an application for a casino service industry enterprise pursuant to N.J.S.A. 5:12-92;
3. A ruling on an application for any other license or qualification under the Act;
4. Revocation of a license or registration;
5. A ruling by the Director regarding a request for a statement of compliance pursuant to N.J.S.A. 5:12-81(a); and
6. Placement on an exclusion list.

(b) All appeals from final actions of the Division shall be heard by the Commission, or designated hearing examiner, in accordance with the Act, the UAPR, and this chapter.

(c) The Division shall provide any party against whom final action is taken with notice of their right to appeal to the Commission and an appeal request form. The Division shall also provide the Commission with such notification by mailing a copy of the final action to the address set forth at N.J.A.C. 19:42A-4.2(a).

19:42A-4.2 Commencement of appeal hearing; extension of time to appeal

(a) Any party may appeal a final action of the Division by filing with the Commission a written request to appeal. Such written request shall be filed by hand-delivering or mailing it within 20 calendar days of the Commission's notification to the party of the party's right to appeal to:

New Jersey Casino Control Commission

Document Control Unit

ATTN: Hearings and Appeals Unit

Tennessee Avenue and the Boardwalk

Atlantic City, New Jersey 08401

One copy of a request to appeal shall also be submitted to the Division and any other party. The appeal will be docketed upon receipt by the Commission and acknowledged in writing.

(b) Any request to extend the time to appeal a final action shall be made in writing to the Commission's Document Control Unit, ATTN: Hearings and Appeals Unit, at the address specified in (a) above. The Commission may, upon a showing of good cause and in the absence of prejudice, or in the interest of public policy, extend the time within which a request to appeal may be filed for an additional 20 days.

(c) Upon receipt of a party's request to appeal, the Commission shall provide the appellant with an opportunity to submit a Case Information Statement.

19:42A-4.3 Record on appeal

(a) The record on appeal shall include all papers and exhibits, including audio and video recordings, on file with the Division, together with all entries as to matters made on the record, the stenographic transcript of the proceedings at the Division, and all papers filed with the Division hearing examiner.

1. Within 15 days of the service upon it of a notice of appeal the Division shall file a statement with the Commission of the items comprising the record on appeal and shall serve a copy thereof on each party to the appeal and shall file a copy of the items comprising the record with the Commission.

(b) A party who questions whether the record fully or truly discloses what occurred in the Division proceedings shall apply on motion to the Division to settle the record. The Commission or its designated hearing examiner, on a party's motion, may review such determination or, in the Commission or designated hearing examiner's own discretion, direct correction of the record.

(c) If at any time during the pendency of an appeal, it appears that evidence not adduced in the proceedings before the Division may be material to the issues on appeal, the Commission or its designated hearing examiner, on its or his or her own motion, or on the motion of any party, may order, on such terms as the Commission or its designated hearing examiner deems appropriate, that the record on appeal be supplemented by the taking of additional evidence and the making of findings of fact thereon by the Division.

19:42A-4.4 Case Information Statement form

(a) A Case Information Statement shall be in a format prescribed by the Commission and shall require the appellant to provide the following information:

1. Appellant's name;
2. Appellant's current address and telephone number;
3. Names of all parties involved;
4. A brief statement of the facts and procedural history;
5. The proposed issues sought to be raised on appeal;
6. Any legal objection to the decision, including, but not limited to, constitutional issues, statutory authority, and/or regulatory authority; and
7. Whether the appellant wants an opportunity to present oral argument.

19:42A-4.5 Filing and service of Case Information Statements, briefs, and motions

One copy of all Case Information Statements, briefs, and motions filed pursuant to this chapter shall be served on all parties, and proof of such service shall be appended to the original, which shall be filed with the Commission.

19:42A-4.6 Time for filing and service of briefs

- (a) The appellant may serve and file a brief in support of the appeal within 20 days after the appeal has been filed.
- (b) The respondent may serve and file an answer brief within 20 days after service of the appellant's brief.

(c) The appellant may serve and file a reply brief within 10 days after service of the Division's brief.

19:42A-4.7 Dismissal of appeal; withdrawal; effect of stipulation on appeal

(a) An appellant shall provide any information that is requested by the Commission, and failure to provide such information may result in dismissal of the appeal. The Commission may at any time on its own motion, or on motion of either party, dismiss an appeal if the appellant fails to cooperate or maintain contact with the Commission during the pendency of their appeal or if the Commission determines that the motive for filing an appeal was frivolous or improper.

(b) An appellant may withdraw an appeal at any time prior to the issuance of the Commission or its designated hearing examiner's decision, whereupon the Commission or its designated hearing examiner shall discontinue all proceedings and notify all parties accordingly.

(c) An appeal may be settled at any time prior to issuance of the Commission or its designated hearing examiner's decision, provided that the parties notify the Commission or its designated hearing examiner of any settlement and file the dispositive stipulation with the Commission or its designated hearing examiner, whereupon the appeal shall be dismissed.

SUBCHAPTER 5. CONDUCT OF APPEAL HEARING

19:42A-5.1 Conduct of appeal hearing

The Commission shall conduct appeal hearings in accordance with N.J.S.A. 5:12-107, the UAPR, the special hearing rules, and this chapter.

19:42A-5.2 Oral argument

- (a) Any party may request an opportunity to orally present their appellate arguments. Such request must be made in writing and submitted to the Commission's Document Control Unit, ATTN: Hearings and Appeals at the address specified in N.J.A.C. 19:42A-4.2(a).
- (b) The Commission may grant a request for oral argument for good cause shown.

19:42A-5.3 Determination of appeal hearing procedure

(a) Upon timely receipt of a completed Case Information Statement, the Commission or its designated hearing examiner shall notify the parties that their appeal hearing will proceed as follows:

1. Where an opportunity to present oral argument is not requested, the appeal may be considered on the appeal record and any timely and relevant submissions of the parties, unless directed otherwise in accordance with the provisions of this chapter.

2. Where an opportunity to present oral argument is requested and granted, the appeal will be scheduled for oral argument before the hearing examiner, with the oral argument transcribed and made a part of the record on appeal.

3. Where an opportunity to present oral argument is requested and denied, the appeal will be considered on the appeal record and any timely and relevant submissions of the parties.

19:42A-5.4 Evidence; new evidence

(a) The parties may agree by written stipulation that certain specified evidence may be admitted, pursuant to N.J.S.A. 5:12-107, although such evidence shall be otherwise subject to objection.

(b) The record on appeal may only be supplemented with new evidence upon motion of any party and a showing by the party seeking to supplement the record of one or more of the following:

1. Mistake, inadvertence, surprise, or excusable neglect;
2. Fraud, misrepresentation, duress, or other conduct of an adverse party; or
3. Any other reason consistent with the public policy of the Act and in the interests of

justice.

(c) The parties shall be notified by the Commission of the time and place such evidence will be taken.

19:42A-5.5 Standard of review

Appeals of final actions shall be reviewed by the Commission *de novo* without regard to the factual and legal determinations of the Division hearing examiner.

19:42A-5.6 Appeal decision

Any appeal decision shall be considered a final order of the Commission, which shall constitute final agency action for purposes of establishing jurisdiction on appeal in the New Jersey Superior Court.

SUBCHAPTER 6. HEARINGS ON COMPLAINTS AGAINST THE DIVISION

19:42A-6.1 Hearings on complaints against the Division

In its sole discretion, the Commission may conduct hearings on complaints against the Division that have been initiated pursuant to N.J.S.A. 5:12-63(h). Such hearings shall be held in accordance with the provisions of the UAPR, the special hearing rules, the Casino Control Act, and this chapter. To the extent that the Casino Control Act and this chapter are inconsistent with the UAPR, this chapter shall apply.

19:42A-6.2 Burden of proof

(a) In order to prevail against the Division in a complaint filed pursuant to this subchapter, the casino licensee shall have the affirmative responsibility of establishing by clear and convincing evidence that:

1. The procedures of the Division had no reasonable law enforcement purpose; and
2. The procedures of the Division were so disruptive as to inhibit unreasonably casino or simulcasting operations.

SUBCHAPTER 7. HEARINGS ON RULES

19:42A-7.1 Hearings on regulations

(a) Pursuant to section 69(a) of the Act, the Commission shall adopt, amend, and repeal its rules in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Consistent with the requirements of the Act and the Administrative Procedure Act, the Commission may, in its discretion, conduct hearings concerning the adoption, amendment, or repeal of its rules.

(c) Any public hearing held in connection with a proposed rule shall be conducted in accordance with N.J.S.A. 52:14B-4(g).

(d) The Commission shall provide at least 15 days notice of any public hearing conducted in connection with a proposed rule. Such notice shall be published in the New Jersey Register or provided in a manner reasonably calculated to reach the interested public in accordance with N.J.A.C. 1:30-5.5(b).

(e) When a hearing is held in connection with a proposed rule, all interested parties shall be afforded the opportunity to attend and to appear before the Commission to submit oral argument in support of or in opposition to the proposed rule. Such participation does not include the right to present evidence or to cross-examine witnesses, which may be permitted solely in the discretion of the Commission.

1. The Commission may require notice in advance of the date of the proceedings of any individual's intent to participate.

2. This section shall not be construed to establish a right of any individual to appear before the Commission in the event that the Commission may act at a subsequent date to adopt the proposed rule.