

# Title 58—RECREATION

## PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401, 405, 421, 423, 435, 437 AND 441]

### Temporary Regulations

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2005-3 REG, entitled Adoption of Temporary Regulations, dated June 16, 2005, and Resolution No. 2005-4, entitled Adopting of Draft Regulations as Temporary Regulations for the General Licensing Standards for Slot Machine License Applicants Temporary Regulations, dated July 21, 2005, the Board has the authority to amend the temporary regulations, adopted on June 16, 2005, and July 21, 2005, as it deems necessary in accordance with the purpose of the act of July 5, 2004 (P. L. 572, No. 71) (Act 71) and to further the intent of Act 71. Therefore, the Board has decided to make editorial changes to the temporary regulations, dated June 16, 2005, and July 21, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 15, 2005) and 35 Pa.B. 4828 (August 6, 2005).

Therefore, the Board has deposited with the Bureau amendments to 58 Pa. Code §§ 401.4, 405.3, 421.2, 421.4, 423.5, 435.1, 435.2, 435.4, 437.1, 437.3, 441.7, 441.9 and 441.10. The amendments are effective as of December 15, 2005.

The temporary regulations of the Board, 58 Pa. Code Chapters 401, 405, 421, 423, 435, 437 and 441, are amended by amending §§ 401.4, 405.3, 421.2, 421.4, 423.5, 435.1, 435.2, 435.4, 437.1, 437.3, 441.7, 441.9 and 441.10 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-11. No fiscal impact; (8) recommends adoption.

### Annex A

## TITLE 58. RECREATION

### PART VII. GAMING CONTROL BOARD

#### Subpart A. GENERAL PROVISIONS

#### CHAPTER 401. PRELIMINARY PROVISIONS

##### § 401.4. Definitions.

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

\* \* \* \* \*

##### *Controlling interest—*

(i) A person shall be deemed to have the ability to control a publicly traded entity, or to elect one or more of the members of its board of directors, if the holder owns or beneficially holds 5% or more of the securities of the publicly traded domestic or foreign corporation, partnership, limited liability company or other form of legal entity, unless the presumption of control or ability to elect is rebutted by clear and convincing evidence.

(ii) A person who is a holder of securities of a privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity shall be

deemed to possess a controlling interest unless the presumption of control is rebutted by clear and convincing evidence.

(iii) A person who owns or is the beneficial holder of less than 5% of the securities of a privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity shall be deemed as having rebutted the presumption of control by clear and convincing evidence.

\* \* \* \* \*

##### *Gaming employee—*

(i) An employee of a slot machine licensee, including, but not limited to:

- (A) Cashiers.
- (B) Change personnel.
- (C) Counting room personnel.
- (D) Slot attendants.
- (E) Hosts or other persons authorized to extend complimentary services.
- (F) Machine mechanics or computer machine technicians.
- (G) Security personnel.
- (H) Surveillance personnel.
- (I) Supervisors and managers.

(ii) The term includes:

(A) Employees of a person holding a supplier license whose duties are directly involved with the repair, service or distribution of slot machines and associated equipment sold or provided to a licensed facility within this Commonwealth.

(B) Employees of a person holding a manufacturer license whose duties meet one or more of the following criteria:

(I) The employee's duties are directly involved with slot monitoring systems, casino management systems, player tracking systems and wide-area progressive systems approved and installed for use or play in this Commonwealth.

(II) The employee's presence may be required from time to time in restricted areas of a licensed facility.

(C) Other employees as determined by the Board.

(iii) The term does not include bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the Board.

\* \* \* \* \*

##### *Key employee—*

(i) Any individual who is:

(A) Employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage and credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptrol-

ler and any employee who supervises the operations of these departments or to whom these department directors or department heads report.

(B) Employed by a slot machine licensee or applicant, manufacturer licensee or applicant, supplier licensee or applicant, certified vendor or licensed junket enterprise whose duties affect or require contact with slot machines, slot monitoring systems, casino management systems, player tracking systems and wide-area progressive systems for use or play in this Commonwealth, whether or not the individual is assigned to gaming operations in this Commonwealth.

(C) Employed in other positions which the Board will determine based on detailed analyses of the employee's duties or the job descriptions as provided in the internal controls of the applicant or licensee as approved by the Board under section 1322(c) of the act (relating to slot machine accounting controls and audits).

(ii) All other gaming employees unless otherwise designated by the Board, will be classified as nonkey employees.

\* \* \* \* \*

*Key employee qualifier*—Officers; directors; persons who directly or indirectly hold any beneficial interest in or ownership of an amount equal to 5% or more of the securities of an applicant or licensee; a person who has the ability to control the applicant or licensee, has a controlling interest in the applicant or licensee, elects a majority of the board of directors of the applicant or licensee, or otherwise has the ability to control the applicant or licensee; a lender, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; an underwriter; a financial backer whose holdings are valued at an amount equal to 5% or more of an equity interest in the applicant or licensee including holders of convertible bonds, the conversion of which would or does result in the owner holding 5% or more of an equity interest in the applicant or licensee; employees of a slot machine applicant or licensee, manufacturer applicant or licensee or supplier applicant or licensee required to be licensed by the Board as a key employee qualifier; and any other person required to be licensed by the Board as a key employee qualifier.

\* \* \* \* \*

*Publicly traded*—An entity that meets one or more of the following criteria:

(i) The entity has a class or series of securities registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78nn).

(ii) The entity is a registered management company under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(iii) The entity is subject to the reporting obligations imposed by section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o) by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

\* \* \* \* \*

*Vendor*—A person who provides goods or services to a slot machine licensee or applicant, but who is not required to be licensed as a manufacturer, supplier, management company or junket enterprise.

**CHAPTER 405. BUREAU OF INVESTIGATION AND ENFORCEMENT.**

**§ 405.3. Office of Enforcement Counsel.**

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(d) The Director of the Office of Enforcement Counsel may be removed by the Board only for good cause shown.

**Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING**

**CHAPTER 421. GENERAL PROVISIONS**

**§ 421.2. Licenses, registrations, certifications and permits.**

(a) Licenses that may be issued by the Board include:

\* \* \* \* \*

(6) Junket enterprise license, which authorizes the approved licensee to arrange a junket to a licensed facility with a slot machine licensee.

(b) Permits that may be issued by the Board include occupation permits which authorize individuals to be employed as gaming employees by slot machine licensees, supplier licensees and manufacturer licensees who are excluded from the supplier requirement.

(c) Certifications that may be issued by the Board include vendor certifications which authorize approved vendors to provide goods or services to slot machine licensees on a regular or continuing basis.

(d) Registrations that may be issued by the Board include:

(1) Nongaming employee registration, which authorizes individuals to be employed as nongaming employees by slot machine licensees or certified vendors.

(2) Vendor registration, which authorizes approved vendors to provide goods or services to slot machine licensees or applicants.

**§ 421.4. Investigations; supplementary information.**

(a) The Board and the Bureau may:

(1) Make an inquiry or investigation concerning an applicant, licensee or any affiliate, intermediary, subsidiary or holding company of the applicant or licensee as it may deem appropriate either at the time of the initial application and licensure or at any time thereafter.

(2) Upon request from an eligible applicant or licensee and upon receipt of an application and appropriate fees, make an inquiry or investigation concerning a purchaser of an applicant or licensee prior to the conclusion of the purchase, as if the purchaser were an eligible applicant. This inquiry or investigation does not replace the application procedure or process required under the act and this part which is a requirement for licensure.

(b) It shall be the continuing duty of all applicants and licensees to provide full cooperation to the Board and the Bureau in the conduct of the inquiry or investigation and to provide supplementary information requested by the Board or the Bureau.

**CHAPTER 423. APPLICATIONS**

**§ 423.5. Application withdrawal.**

(a) A request for withdrawal of an application may be made by petition to the Board in the following manner:

(1) If the request for application withdrawal is made by an applicant for a Category 1, Category 2 or Category 3 slot machine license, the petition shall be filed within 6

months from the date slot machine license applications are deemed complete by the Board, unless otherwise designated by the Board.

(2) If the request for application withdrawal is made by an applicant for any license, permit, certification or registration or renewal thereof, other than an initial slot machine license applicant, the petition may be filed at any time prior to issuance by the Board of its determination with respect to the application.

(b) The petition should set forth the reasons for the withdrawal.

(c) An applicant may petition for the withdrawal of its application or an application submitted by one of its affiliates or persons or entities required to be qualified under section 1311 of the act (relating to slot machine license application business entity requirements), or both.

(d) In all requests for withdrawal, the Board may set the conditions of withdrawal and may deny or grant the request with or without prejudice.

(1) If a request for withdrawal is granted with prejudice, the person or entity whose application has been withdrawn will not be eligible to apply for licensure with the Board until after expiration of 5 years from the date of the withdrawal.

(2) If a request for withdrawal is granted without prejudice the Board will determine when the person or entity whose application has been withdrawn may be eligible to apply for licensure.

(e) Unless the Board otherwise directs, fees or other payments relating to any application will not become refundable by reason of withdrawal of the application or any portion thereof.

**CHAPTER 435. EMPLOYEES**

**§ 435.1. General provisions.**

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(m) The Board may issue, renew or deny a license, permit or registration under this section, consistent with 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(1) If the Board provides an individual with the opportunity to demonstrate rehabilitation, the individual shall provide certification from the Board of Probation and Parole or the county probation and parole office, whichever is applicable, that all obligations for restitution, fines and penalties have been met.

(i) The Board will provide notice to the district attorney of the individual's county of residence of the individual's request for a determination of rehabilitation.

(ii) The district attorney shall have 15 days from receipt of the notice to provide input into the determination.

(2) For an individual with out-of-State convictions, if the Board provides the individual with the opportunity to demonstrate rehabilitation, the individual shall provide certification from the equivalent state or county board of probation or parole, whichever is applicable, that all obligations for restitution, fines and penalties have been met.

(i) The Board will provide notice to the district attorney or equivalent thereof of the individual's place of conviction of the individual's request for a determination of rehabilitation.

(ii) The district attorney or equivalent thereof shall have 15 days from receipt of the notice to provide input into the determination.

(n) Nothing in subsection (m) will be construed to authorize the issuance of a license, permit or registration to an individual who meets one or more of the following criteria:

(i) The individual has been convicted of an offense under 18 Pa.C.S. (relating to crimes and offenses) or under the criminal laws of any other jurisdiction which conviction indicates that the issuance of the license, permit or registration to the individual would be inimical to the public policy of the act or this part.

(ii) The individual has been convicted in any jurisdiction of a felony or gambling offense within the past 15 years under section 1213 of the act (relating to license or permit prohibition).

**§ 435.2. Key employee qualifier license.**

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(g) Notwithstanding the definition of key employee qualifier in § 401.4 (relating to definitions), any of the following persons may request in writing that the Board waive their obligation to be licensed as a key employee qualifier as part of a manufacturer, supplier or slot machine license issuance or renewal, vendor certification or renewal or junket enterprise license issuance or renewal by making the appropriate showing:

(1) If the person required to be licensed is a key employee qualifier as an officer of an affiliate, intermediary, subsidiary or holding company of the applicant or licensee, the person shall be required to demonstrate that he is not significantly involved in and has no authority over the conduct of business of the applicant or licensee. The request must include, at a minimum, the following:

(i) A description of his title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(ii) The terms of his compensation.

(iii) A certification by the officer stating that the officer is not significantly involved in and has no authority over the conduct of business of the applicant or licensee.

(2) If the person required to be licensed as a key employee qualifier as an outside director of an affiliate, intermediary, subsidiary or holding company of an applicant or licensee, the person shall be required to demonstrate that he is not significantly involved in the management or ownership of the applicant or licensee. The request must include, at a minimum, the following:

(i) A description of his title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(ii) The terms of his compensation.

(iii) Any board committee memberships, including a description of the functions and responsibilities of the committee.

(iv) A description of his ownership interest.

(v) A certification by the director stating that the director is not significantly involved in the management of the applicant or licensee.

(3) If the person required to be licensed is a key employee qualifier as an owner of the applicant or licensee or any of its affiliates, intermediaries, subsidiar-

ies or holding companies, and requests a waiver as an institutional investor, the person shall be required to demonstrate the following:

(i) The institutional investor shall demonstrate that its ownership interest consists of one of the following:

(A) Under 15% of the equity securities of a licensee or its holding or intermediary companies, if the securities are those of a publicly traded corporation and its holdings of the securities were purchased for investment purposes only.

(B) Debt securities of a licensee or its affiliates, intermediaries, subsidiaries or holding companies or holding company of a licensee's affiliate, intermediary, subsidiary or holding company which is related in any way to the financing of the licensee, where the securities represent a percentage of the outstanding debt of the company not exceeding 20% or a percentage of any issue of the outstanding debt of the company not exceeding 50%, if the securities are those of a publicly traded corporation and its holdings of the securities were purchased for investment purposes only.

(ii) A request for waiver by an institutional investor must include, at a minimum, the following:

(A) The number of shares or units held by it and the percentage of ownership of the entity that the shares or units represent.

(B) A copy of the most recent notice filed by it with the Securities and Exchange Commission.

(C) A list of any direct or indirect owners of the institutional investor.

(D) An explanation as to why the investor should be considered an institutional investor under the definition in § 401.4.

(E) A certification by the investor stating that the investor has no present involvement in, and no intention of influencing or affecting the affairs of, the applicant or licensee or any of its affiliates, intermediaries, subsidiaries or holding companies and will give the Board 30 days notice if the investor intends to become involved in or to influence or affect the affairs in the future. The institutional investor will be permitted to vote on matters put to the vote of the outstanding security holders.

(4) If the person is otherwise required to be licensed as a key employee qualifier of the applicant or licensee or any of its affiliates, intermediaries, subsidiaries or holding companies, and requests a waiver, the person will be required to demonstrate the following:

(i) The person is not significantly involved in the activities of the applicant or licensee or its holding or intermediary companies and, in the case of security holders, does not have the ability to control the applicant or licensee or its holding or intermediary companies or elect one or more directors.

(ii) The licensure of the person is not necessary to protect the public interest.

(iii) Good cause exists for the granting of a waiver.

(5) A request for waiver must include, at a minimum, the following:

(i) The number of shares or units held by it, the dollar amount of the securities and the percentage of ownership of the entity that the shares or units represent.

(ii) A certification stating that the person has no present involvement in, and no intention of influencing or

affecting the affairs of, the applicant or licensee or any of its affiliates, intermediaries, subsidiaries or holding companies and will give the Board 30 days notice if the person intends to become involved in or to influence or affect the affairs in the future. The person will be permitted to vote on matters put to the vote of the outstanding security holders.

(h) A request for a waiver of a key employee qualifier license must include a nonrefundable application processing fee. The Board may charge additional fees based on the actual expenses incurred in processing the waiver request.

(i) Notwithstanding the provisions of subsection (g)(3), an applicant or licensee may file a notice and provide payment of the nonrefundable application processing fee set forth in subsection (h) on behalf of an institutional investor whose ownership interest consists of under 10% of the equity securities of an applicant or licensee or its holding or intermediary companies, if the securities are those of a publicly traded corporation and its holdings of the securities were purchased for investment purposes only. The notice shall consist of the following:

(1) The number of shares or units held by the institutional investor and the percentage of ownership of the entity that the shares or units represent.

(2) A copy of the institutional investor's most recent notice filed with the Securities and Exchange Commission.

(3) A certification by the applicant or licensee that the investor should be considered an institutional investor under the definition in § 401.4.

(4) A certification by the investor stating that the investor has no present involvement in, and no ability to influence or affect the business affairs of, the applicant or licensee or any of its affiliates, intermediaries, subsidiaries or holding companies and will give the Board 30 days notice if the investor intends to become involved in or to influence or affect the affairs in the future. The investor will be permitted to vote on matters put to the vote of the outstanding security holders.

(5) A certification by the applicant or licensee stating that it shall immediately notify the Board of any information about, or actions of, an institutional investor holding its equity securities where such information or action may impact upon the eligibility of the institutional investor for a waiver under this subsection.

#### § 435.4. Occupation permit.

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(f) A permit issued under this section shall be non-transferable.

(g) An individual who is employed by a licensed manufacturer that is specifically excluded from the supplier requirement shall be required to obtain a permit under this section.

### CHAPTER 437. VENDOR REGISTRATION AND CERTIFICATION

#### § 437.1. Vendor registration requirements.

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(d) Vendor registrations issued under this part shall be subject to renewal every 4 years upon the application of the slot machine licensee submitted to the Board at least 60 days prior to the expiration of the registration. The application for renewal must include an update of the information contained in the initial and any prior renewal

applications and the payment of any renewal fee required by the Board. A registration for which a completed renewal application and fee has been received by the Board will continue in effect unless the Board sends written notification to the slot machine licensee and the holder of the registration that the Board has denied the renewal of the registration.

**§ 437.3. Vendor certification requirements.**

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(e) Vendor certifications issued under this part shall be subject to renewal every 4 years upon the application of the slot machine licensee submitted to the Board at least 60 days prior to the expiration of the certification. The application for renewal must include an update of the information contained in the initial and any prior renewal applications and the payment of any renewal fee required by the Board. A certification for which a completed renewal application and fee has been received by the Board will continue in effect unless the Board sends written notification to the slot machine licensee and the holder of the certification that the Board has denied the renewal of the certification.

**CHAPTER 441. SLOT MACHINE LICENSES**

**§ 441.7. Procedure**

If the Board determines that the applicant has proven by clear and convincing evidence that it has the financial stability, integrity and responsibility and is of good character, honesty and integrity, it may issue a slot machine license under this chapter.

**§ 441.9. Responsibilities of licensed organizations.**

(a) *General.* A Category 1 license, including a Conditional Category 1 license, may be issued to any qualifying legal business entity within an organization, if a legal business entity within the organization has been approved or issued a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct thoroughbred or harness race meetings. If a Category 1 license is issued to a legal business entity within an organization, all requirements, duties and obligations imposed by this part or the act on the licensed racing entity or a licensed racetrack shall be deemed to be requirements imposed on any legal business entity within the organization that has been approved or issued a Category 1 license. If more than one licensed racing entity, on July 5, 2004, was conducting a racing meet at the same licensed racetrack where an organization has been issued a Category 1 slot machine license, section 1303 of the act (relating to additional category 1 slot machine license requirements) applies to each licensed racing entity at the licensed racetrack.

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**§ 441.10. Application bond or letter of credit requirement.**

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(b) Unless otherwise required by the Board, a payment bond or letter of credit provided under this section must comply with the following:

(1) A payment bond must be issued by a surety company that is licensed by the Insurance Department and guaranteed by a guarantor that is licensed by the Insurance Department.

(2) A letter of credit must be issued by a bank, trust company, National banking association or corporation subject to regulation by the Federal Reserve System

under the Bank Holding Company Act of 1956 (12 U.S.C.A. §§ 1841—1849) whose unsecured obligations or uncollateralized long term debt obligations have been assigned a rating within the three highest rating categories by Moody's or Standard and Poor's, or upon the discontinuance of Moody's or Standard and Poor's, by another Nationally recognized rating service.

(c) An application is not deemed complete until the Board investigates and approves the proposed terms of the payment bond or irrevocable letter of credit, the surety or financial institution that will issue the payment bond or irrevocable letter of credit and the guarantor that will guaranty the payment bond.

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(f) The payment bond or irrevocable letter of credit must state that it runs continuously and remains in full force and effect throughout the period in which the application is on file with the Board and until the application is denied or one of the following occurs:

(1) The license is issued and 10 business days have elapsed following the issuance of the license.

(2) The license fee is paid.

(3) The applicant is permitted by the Board to withdraw its application under § 423.5 (relating to application withdrawal).

[Pa.B. Doc. No. 05-2429. Filed for public inspection December 30, 2005, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD**

[58 PA. CODE CHS. 492—494]

**Hearings and Appeals; Draft Temporary Regulations**

The Pennsylvania Gaming Control Board (Board), under 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2005 (P. L. 572, No. 71) (Act 71). These draft regulations pertain to the hearings and appeals process and procedure before the Board. Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). By publishing these regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

*Contact Person*

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations to the Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment. The public comment period will end on Friday, January 15, 2006.

THOMAS A. DECKER,  
*Chairperson*

**Annex A**  
**TITLE 58. RECREATION**  
**PART VII. GAMING CONTROL BOARD**  
**Subpart H. PRACTICE AND PROCEDURE**  
**CHAPTER 492. HEARINGS AND APPEALS**

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492.1.	Generally.
492.2.	Definitions.
492.3.	Office of Hearings and Appeals.
492.4.	Hearing officers.
492.5.	Presiding officers.
492.6.	Hearings generally.
492.7.	Prehearing and other conferences.
492.8.	Presentation and effect of stipulations.

**§ 492.1. Generally.**

This subpart governs practice and procedure before the Board, and is intended to supplement 2 Pa.C.S. (relating to administrative law and procedure), and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

**§ 492.2. Definitions.**

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

*Consent agreement*—An agreement by all parties made to resolve a disputed matter within the jurisdiction of the Board.

*Director*—The individual designated by the Board to administer the Office of Hearings and Appeals, who reports to the Executive Director of the Board on administrative and operational matters.

*Documentary hearing*—A proceeding limited to a review of documentary evidence submitted by the parties, including documents, depositions, affidavits, interrogatories and transcripts.

*Ex parte*—An oral, written or electronic communication of any kind, concerning a matter pending before the Board, by a party or interested person to a Board member or presiding officer outside the presence of, or without the knowledge, or both, of the other party.

*Hearing*—A proceeding, documentary or oral, initiated by the filing of a complaint, answer, petition, motion, exceptions or by order of the Board.

*Hearing officer*—An individual designated by the Board to conduct a hearing relating to licensing, a violation of the act or this part, or any other matter within the jurisdiction of the Board.

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

*Office of Hearings and Appeals*—A division of the Board charged with administrating and conducting hearings relating to licensing, violations of the act, this part or other matters as the Board may direct.

*Oral hearing*—A proceeding wherein the parties may present sworn testimony, documents or other evidence, and of which a verbatim record is made.

*Prehearing conference*—A proceeding to establish a schedule, discuss offers of settlement and identify other issues as the Board or presiding officer may direct.

*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 definition of presiding officer).

**§ 492.3. Office of Hearings and Appeals.**

(a) The Office of Hearings and Appeals (OHA) consists of a director, clerk, hearing officers, support staff and clerical assistants as may be necessary to carry out the duties and responsibilities of the office.

(b) The director is responsible for the administration of all matters assigned to the OHA, including docketing, tracking, assignment of matters to presiding officers, ensuring that reports or recommendations are timely made to the Board, providing administrative support to the Board and presiding officers, and other duties the Board may direct.

**§ 492.4. Hearing officers.**

(a) A hearing officer is also a presiding officer. Hearing officers shall be attorneys in good standing with the Supreme Court of Pennsylvania and be responsible for the timely disposition of assigned matters. They may be discharged by the Board 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 depositions or testimony of witnesses.

(3) Submitting reports or recommendations to the Board.

(4) Other matters the Board may direct.

(c) A hearing officer may withdraw from a proceeding when he deems himself disqualified or he 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).

**§ 492.5. Presiding officers.**

(a) When evidence is to be taken in a proceeding, the Chairperson or a presiding officer may preside at the hearing.

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

(1) Regulate the course of hearings, including the scheduling thereof, subject to the approval of the Board, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Board, as provided in § 494.1(a) (relating to generally).

(2) Administer oaths and affirmations.

(3) Issue subpoenas.

(4) Rule upon offers of proof and receive evidence.

(5) Take or cause depositions to be taken.

(6) Hold appropriate conferences before or during hearings.

(7) Dispose of procedural matters, but not before a proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings.

(8) Certify any question to the Board for consideration and disposition within their discretion, or upon direction of the Board.

(9) Submit their proposed reports in accordance with this part.

(10) Take other action appropriate to the discharge of their duties as may be designated by the Board and authorized by the act.

(c) Except to the extent required for the disposition of ex parte matters as authorized by law and by this part, no presiding officer may, in a proceeding, consult with a person or party on a fact in issue unless upon notice and opportunity for parties to participate.

(d) Presiding officers shall conduct fair and impartial hearings and maintain order. Any disregard by participants or counsel of rulings of the presiding officer on matters of order and procedure shall be noted on the record, and if deemed necessary, shall be made the subject of a special written report to the Board.

(e) If participants or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Board a report thereon, together with recommendations, and, in his discretion, suspend the hearing.

(f) Rulings of presiding officers may not be appealed during the course of a hearing or conference except in extraordinary circumstances when a prompt decision by the Board is necessary. In that instance, the matter shall be referred forthwith by the presiding officer to the Board for determination.

(1) An offer of proof made in connection with an objection to a ruling of the presiding officer rejecting or excluding oral testimony must be a statement of the substance of the evidence which counsel contends would be adduced by testimony. If the excluded evidence is in documentary or written form, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.

(2) Unless the Board acts upon a question referred by a presiding officer for determination within 30 days, the referral will be deemed to have been denied.

(g) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers).

#### § 492.6. Hearings generally.

(a) Unless the Board hears the matter directly, the Chairperson will refer all matters to the Office of Hearings and Appeals (OHA). The Chairperson may, in his discretion, designate a member of the Board, or other qualified person to serve as presiding officer in a particular matter.

(b) Hearings will be public, except as provided in section 1206(f) of the act (relating to board minutes and records).

(c) Hearings will be documentary unless otherwise designated by the Board or presiding officer, or constitutionally permissible and may provide for:

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.

(5) Submission of a report or recommendations to the Board.

(d) Unless required for the disposition of ex parte matters authorized by law, a party may not communicate directly or indirectly, in connection with any issue of law or any matter of fact which is disputed, with the Chairperson or presiding officer, except upon notice and opportunity for all parties to participate.

(e) Hearings will be conducted in Harrisburg, Pennsylvania, unless otherwise directed by the Board.

(f) Notice of hearings will be provided to all parties, will be in writing and served in accordance with subsection (g).

(g) Orders, notices and other documents originating with the Board, including forms of Board action, complaints and similar pleadings, and other documents designated by the Board for this purpose, will be served by the clerk by mail.

(h) Parties who wish to contest notice of a violation or objection shall file notice with the OHA by mail within 15 days of the date of the notice of the violation or objection.

(i) Motions shall be filed with the clerk and shall be docketed and referred to the Board or presiding officer for disposition as appropriate.

(j) Hearings will be scheduled by the OHA, except for licensing hearings which will be scheduled as the Board may direct. Hearings for violations of the act will be scheduled within 60 days of the initiation of action by the Bureau.

(k) Participants may waive hearings in which case the Board or presiding officer may dispose of the matter without a hearing on the basis of submittals, consent agreements and proposed orders.

(l) Verbatim hearing transcripts will be available to interested persons for a transcription fee prescribed by the Board.

(m) This section supplements 1 Pa. Code, Part II, Subchapters B—J.

#### § 492.7. Prehearing and other conferences.

(a) A prehearing conference may be scheduled by the Board or presiding officer at his discretion. The Board or a presiding officer may also schedule a prehearing conference at the request of one party or by agreement of the parties.

(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 presiding officer, the conferences may be conducted telephonically.

(c) The following matters will be considered at prehearing conference:

(1) The possibilities for settlement of the proceeding, subject to the approval of the Board.

(2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates.

(3) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of the public interest, including, but not limited to, the following:

- (i) The simplification of the issues.

(ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.

(iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

(iv) The limitation of the number of witnesses.

(v) The discovery or production of data.

(vi) Other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(d) This section supplements 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

#### § 492.8. Presentation and effect of stipulations.

(a) Independently of the orders or rulings issued by the Board or presiding officer relating to prehearing and other conferences, the participants may stipulate as to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received will be binding on the participants with respect to the matters stipulated.

(b) This section supersedes 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

### CHAPTER 493. PLEADINGS

Sec.	
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493.11.	Preliminary motions.
493.12.	Motions for summary judgment and judgment on the pleadings.
493.13.	Discovery.

#### § 493.1. Generally.

(a) Pleadings permitted are as follows:

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

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

(c) Pleadings shall be filed with the clerk. The clerk will issue a file number, or if a file number has already been issued, stamp the pleading accordingly.

(d) This section supplements 1 Pa. Code §§ 35.1—35.7 (relating to applications; and formal complaints).

#### § 493.2. Formal complaints.

(a) Procedures for complaints shall be in accordance with 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints), and as supplemented by this part.

(b) Complaints may be filed by parties, applicants, eligible applicants, licensees, permittees, persons registered or certified by the Board, the Bureau and other persons designated by the Board.

(c) A proceeding against a licensee, permittee or employee of a licensee or permittee shall be brought on by written complaint filed by the Bureau, which must include a statement setting forth in ordinary and concise language the charges and the acts or omissions supporting the charges.

(d) Within 15 days of service of the complaint filed by the Bureau, the respondent may file with the clerk a notice of defense, in which he may perform one of the following:

- (1) Request a hearing.
- (2) Admit the accusation in whole or in part.
- (3) Present new matters or explanation by way of defense.
- (4) State any legal objection to the complaint.

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

(f) 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, but the Board may order a hearing.

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

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

(i) Applicants may request a hearing on any matter by filing a complaint, or as part of a petition for special relief. When a request for a hearing is initiated by complaint or petition, the party making the request shall state in clear and concise language the reasons for requesting a hearing and the basis for the request. The Board will act on the request in accordance with due process and its duties and obligations under the act.

(j) Applicants who receive notice of deficiencies may file objections to the notice, and request a hearing by filing a complaint. The complaint must state in clear and concise language the basis for the objections, and the relief sought.

(k) Applicants who object to nonadjudicatory actions of the Board may file objections to the action by filing a complaint. The complaint must state in clear and concise language the basis for the objections, and the relief sought.

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

#### § 493.3. Satisfaction of formal complaints.

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

(b) In lieu of a hearing, the complainant and respondent may certify to the Board or presiding officer that a consent agreement has been reached satisfying the com-



plaint. The consent agreement shall be presented to the Board and the Board will enter an order, if appropriate, incorporating and adopting the consent agreement.

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

**§ 493.4. Petitions generally.**

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

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

(c) The procedure for petitions shall be in accordance with 1 Pa. Code §§ 35.17—35.19 (relating to petitions). Petitions must conform to § 491.2 (relating to filing generally) and Chapters 495 and 497 (relating to documentary filings; and time), and be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition, including the Board. The service shall be evidenced with a certificate of service filed with the petition.

(d) Copies shall also be served in accordance with the Board's direction.

(e) This section supplements 1 Pa. Code §§ 35.17—35.19.

**§ 493.5. Petitions for declaratory orders.**

(a) Petitions for declaratory orders to resolve a disputed matter, or remove uncertainty shall be filed with the clerk for disposition by the Board at its discretion. Petitions for declaratory orders must:

- (1) Include a statement of fact.
- (2) Describe the interest of the petitioner.
- (3) Clearly and concisely state the issue which is the subject of the petition.
- (4) Cite relevant statutory and regulatory provisions and case law.

(b) Declaratory orders and rulings have the same status as decisions or orders in adjudicated cases.

(c) This section supersedes 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).

**§ 493.6. Answers.**

(a) Answers to complaints, petitions, motions and other pleadings shall be filed with the clerk within 20 days after the date of service, unless a different time is prescribed by statute, the Board or presiding officer.

(b) The procedure for answers shall be in accordance with 1 Pa. Code §§ 35.35—35.40.

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

**§ 493.7. Intervention.**

(a) The right to intervene in a proceeding before the Board or a presiding officer is within the sole discretion of the Board. When a petition to intervene is filed with the Board, the Board will issue a determination as soon as practicable. When a petition to intervene is filed with a presiding officer, the presiding officer will immediately notify the Board, and request a decision on the intervention.

(b) The procedures for requesting intervention shall be in accordance with 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

(c) This section supplements 1 Pa. Code §§ 35.27—35.32 and § 35.36.

**§ 493.8. Consolidation.**

(a) The Board or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Board or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

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

**§ 493.9. Amendments and withdrawal of pleadings.**

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

**§ 493.10. Motions generally.**

The procedures for motions shall be in accordance with 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

**§ 493.11. Preliminary motions.**

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

- (1) A motion questioning the jurisdiction of the Board or the presiding officer.
- (2) A motion to strike a pleading that is insufficient as to form.
- (3) A motion for a more specific pleading.

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

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

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

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

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

**§ 493.12. Motions for summary judgment and judgment on the pleadings.**

(a) *Motion for judgment on the pleadings.* After the pleadings are closed, but within a time so that the hearing is not delayed, a participant may move for judgment on the pleadings. An answer to a motion for judgment on the pleadings may be filed within 20 days of the date of service of the motion.

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

on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.

(1) An answer, including an opposing affidavit to a motion for summary judgment, may be filed within 20 days of the date of service of the motion.

(2) The answer may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

(c) *Decisions on motions.*

(1) The Board or presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to a judgment as a matter of law. If a motion is granted by a presiding officer, it will be in the form of a recommendation which will be subject to exceptions, and will be in writing. As in the case of other recommendations, the procedures regarding exceptions to the Board apply.

(2) The presiding officer may recommend a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to a judgment as a matter of law on one or more but not all outstanding issues. The presiding officer will grant or deny the motion in the form of a recommended decision.

(d) This section supplements 1 Pa. Code, Subchapter D (relating to motions).

#### § 493.13. Discovery.

Discovery shall be in accordance with 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

### CHAPTER 494. HEARING PROCEDURE

494.1.	Generally.
494.2.	Oral hearings.
494.3.	Documentary hearings.
494.4.	Report or recommendation of the presiding officer.
494.5.	Review.
494.6.	Reopening of record.
494.7.	Rehearing or reconsideration.
494.8.	Exceptions.
494.9.	Briefs and oral argument.
494.10.	Reports of compliance.
494.11.	Appeals.

#### § 494.1. Generally.

(a) A hearing calendar of all proceedings set for hearing will be maintained by the clerk to the Board. All matters required to be determined upon the record will be placed on the hearing calendar, and will be in their order of assignment as far as practicable. All matters will be heard in Harrisburg, unless a different site is determined by the Board. The Board, in its discretion with or without motion, for cause may at any time with due notice to the participants advance or postpone any proceeding on the hearing calendar.

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

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

(d) Subsection (a) supersedes 1 Pa. Code § 35.102 (relating to hearing calendar).

#### § 494.2. Oral hearings.

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

#### § 494.3. Documentary hearings.

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

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

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

(d) Transcripts of public input hearings, if any, will be included in the evidentiary record for the Board's consideration.

#### § 494.4. Report or recommendation of the presiding officer.

(a) A report or recommendation of the presiding officer may be required by the Board, in both oral and documentary hearings.

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

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

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

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

(3) The facts officially noticed, relied upon in the decision.

(d) The report or recommendation will be in writing, provided to all parties, and will be part of the public record, except for matters and materials designated as confidential by the Board. Service will be as provided in § 492.6 (e) (relating to hearings generally).

(e) This section supplements 1 Pa. Code §§ 35.201—35.206.

#### § 494.5. Review.

(a) The record of the hearing will be transmitted to the Board and will be made available to all parties.

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

(c) All parties have the right to file a brief prior to a final order of the Board.

**§ 494.6. Reopening of record.**

(a) After the conclusion of the hearing, a participant in a proceeding may file with the presiding officer, prior to the issuance of a report or recommendation, otherwise 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 hearing was concluded.

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

(c) As soon as practicable after the filing of the petition and answer, the Board or presiding officer will grant or deny the petition.

(d) Prior to filing a report or recommendation, the presiding officer, after notice to the participants, may reopen the proceedings for the reception of further evidence on his own motion, if the presiding officer had reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceedings.

(e) Prior to the issuance by the Board of a final order, the Board, after notice to the participants, may without motion reopen the proceeding for the reception of further evidence, if the Board has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

(f) This section supersedes 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

**§ 494.7. Rehearing or reconsideration.**

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

(b) No answers to petitions for rehearing or reconsideration will be entertained by the Board. If the Board grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(c) Unless the Board acts upon the petition for rehearing or reconsideration within 30 days after it is filed, the petition will be deemed to have been denied.

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

**§ 494.8. Exceptions.**

(a) A party may file exceptions to the report or recommendations of the presiding officer within 10 days of the date of the report or recommendations, unless the time is extended upon good cause shown.

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

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

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

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

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

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

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

**§ 494.9. Briefs and oral argument.**

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

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

**§ 494.10. Reports of compliance.**

(a) When a person subject to the jurisdiction of the Board is required to do or perform an act by a Board order, permit or license provision, there shall be filed with the clerk within 30 days following the date when the requirement becomes effective, a notice, stating that the requirement has or has not been met or complied with, unless the Board provides otherwise for compliance or proof of compliance.

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

**§ 494.11. Appeals.**

(a) A party may appeal final orders of the Board in accordance with the act, in the form prescribed in the

Pennsylvania Rules of Appellate Procedure. Notice of appeal shall be filed with the clerk.

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Board unless the stay is obtained from the court upon application in accordance with the Pennsylvania Rules of Appellate Procedure, or from the Board upon the terms and conditions it deems proper.

(c) Within 10 days, the party filing the notice of appeal shall file a concise statement of matters complained of with the Office of the Clerk. Matters not raised in the statement will be waived.

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