

**RULES AND REGULATIONS**

**PENNSYLVANIA GAMING CONTROL BOARD**

**[58 PA. CODE CHS 492, 493 and 494]**

**Draft Temporary Regulations**

The Pennsylvania Gaming Control Board (Board), under authority in 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). Included in this draft are regulations pertaining 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

**RULES AND REGULATIONS**

**TITLE 58. RECREATION**

**CHS. 492, 493 and 494**

**PENNSYLVANIA GAMING CONTROL BOARD**

**TABLE OF CONTENTS**

**Title 58. Recreation**

**Part VII. Gaming Control Board**

**Subpart H. PRACTICE AND PROCEDURE**

**CHAPTER 492. HEARINGS AND APPEALS**

§ 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

**CHAPTER 493. PLEADINGS**

§ 493.1. Generally

§ 493.2. Formal complaints

§ 493.3. Satisfaction of formal complaints

§ 493.4. Petitions generally

§ 493.5. Petitions for declaratory orders

- § 493.6. Answers
- § 493.7. Intervention
- § 493.8. Consolidation
- § 493.9. Amendments and withdrawal of pleadings
- § 493.10. Motions generally
- § 493.11. Preliminary motions
- § 493.12. Motions for summary judgment and judgment on  
the pleadings

**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

**Subpart H. PRACTICE AND PROCEDURE**

**CHAPTER 492. HEARINGS AND APPEALS**

**§ 492.1. Generally.**

This subpart governs practice and procedure before the Board, and is intended to supplement 2 Pa.C.S. § 101, et seq. (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, Office of Hearings and Appeals** - The individual designated by the Board to administer the Office of Hearings and Appeals, who shall report 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, and/or without the knowledge 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 administering 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** - A member of the Board, or other person designated by the Board to conduct a proceeding. 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) shall consist 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 such other duties as the Board may direct.

**§ 492.4. Hearing officers.**

(a) A Hearing Officer is also a Presiding Officer. Hearing Officers must be attorneys in good standing with the Supreme Court of Pennsylvania and shall 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 as 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 Chairman or a Presiding Officer may preside at the hearing.

(b) The Board and Presiding Officers shall have the following powers and authority:

(1) To 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) To administer oaths and affirmations.

(3) To issue subpoenas.

(4) To rule upon offers of proof and receive evidence.

(5) To take or cause depositions to be taken.

(6) To hold appropriate conferences before or during hearings.

(7) To 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) Within their discretion, or upon direction of the Board, to certify any question to the Board for consideration and disposition.

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

(10) To 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 shall, 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 he deems it necessary, shall be made the subject of a special written report to the Board.

(e) In the event that participants or counsel should engage in disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the Presiding Officer may immediately submit to the Board his report thereon, together with his 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 where a prompt decision by the Board is necessary. In such 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 shall 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, such referral shall be deemed to have been denied.

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

**§ 492.6. Hearings generally.**

(a) Unless the Board hears the matter directly, the Chairman shall refer all matters to the OHA; provided, however, that the Chairman 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 shall be shall be public, except as provided in section 1206(f) of the act (relating to board minutes and records).

(c) Hearings shall 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.

(6) Unless required for the disposition of ex parte matters authorized by law, no party shall communicate directly or indirectly, in connection with any issue of law or any matter of fact which is disputed, with the Chairman or Presiding Officer, except upon notice and opportunity for all parties to participate.

(d) All hearings shall be conducted in Harrisburg, Pennsylvania, unless otherwise directed by the Board.

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

(f) 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, shall be served by the Clerk by mail.

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

(h) Motions shall be filed with the Clerk and shall be docketed and referred to the Board or Presiding Officer for disposition as appropriate.

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

(j) 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.

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

(l) This section supplements 1 Pa. Code, Part II, Subchapter B, §§ 35.101-35.251 (relating to hearings and conferences).

**§ 492.7. Prehearing and other conferences.**

(a) A prehearing conference may be scheduled by the Board or Presiding Officer at their 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 shall be given to all parties. At the discretion of the Presiding Officer, the conferences may be conducted telephonically.

(c) The following matters shall 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 shall be binding on the participants with respect to the matters stipulated.

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

**CHAPTER 493 PLEADINGS.**

**§ 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 shall be in accordance with a fee schedule published by the Board in the Pennsylvania

Bulletin, available on the Board's website, and in the Office of the Clerk.

(c) All 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 shall include a statement setting forth in ordinary and concise language the charges and the acts or omissions supporting such 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), and any such notice shall 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 shall constitute 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, in its discretion, order a hearing.

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

(h) The Clerk shall 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 shall 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 shall 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 shall state in clear and concise language the basis for the objections, and the relief sought.

(l) This section supplements 1 Pa. Code §§ 35.9-35.14. (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 complaint. The Consent Agreement shall be presented to the Board and the Board shall 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 shall be in writing, shall 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). All petitions shall conform to § 491.2 (relating to filing

generally) and chapters 495 and 497 (relating to documentary filings; and time), and shall 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 shall:

(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 all relevant statutory and regulatory provisions and case law.

(b) Declaratory orders and rulings shall 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 (relating to answers).

(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 shall issue a determination as soon as practicable. When a petition to intervene is filed with a Presiding Officer, the Presiding Officer shall 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 (relating to intervention) and 1 Pa. Code § 35.36 (relating to 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 supercedes 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 §§ 35.117-35.180 (relating to motions).

**§ 493.11. Preliminary motions.**

(a) A preliminary motion may be filed by a party, and shall state specifically the grounds relied upon, and shall 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, no answer may be filed until further directed by the Board or Presiding Officer.

(d) A preliminary motion shall 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 §§ 35.177-35.180 (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 shall be in the form of a recommendation which shall be subject to exceptions, and shall 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., §§ 35.177-35.180 (relating to motions).

**§ 493.12. Discovery.**

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

**CHAPTER 494. HEARING PROCEDURE.**

**§ 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 shall 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 shall be 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, shall be entered upon the record, with a notation on whose behalf each appearance is made. A notation shall 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 supercedes 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 shall be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted at all oral hearings.

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

**§ 494.2. Oral hearings.**

Oral Hearings shall be conducted in accordance with 1 Pa. Code §§ 35.121-35.126 and §§ 35.137-35.173 (relating to hearings; and evidence and witnesses).

**§ 494.3. Documentary hearings.**

(a) Documentary hearings shall be held before the Board or a Presiding Officer.

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

(c) Parties may submit documents and other evidence, except that witnesses shall 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, shall 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 shall file and certify with the Board a verbatim record of any oral hearing, all documents submitted for consideration, and a report or recommendation, when required, as soon as practicable after the conclusion of the hearing and expiration of the time for filing of briefs.

(c) The presiding officer's report or recommendation shall 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) All facts officially noticed, relied upon in the decision.

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

(e) This section supplements 1 Pa. Code §§ 35.201-35.206 (relating to proposed reports).

**§ 494.5. Review.**

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

(b) The Board shall 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 shall 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 shall 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 his 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 he 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 shall 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 shall 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 shall 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 shall 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 shall set forth the party's position in clear and concise terms and shall 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 such 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 shall be considered by the Board and shall be limited to the record established during the administrative hearing. However, 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 shall 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 shall be afforded an opportunity to submit briefs prior to a final order of the Board. Briefs shall be filed with the Clerk. If a 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) Filing of an appeal shall 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 Rules of Appellate Procedure, or from the Board upon such terms and conditions as it deems proper.

(c) Within ten 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.