

RULES AND REGULATIONS

Title 4—ADMINISTRATION

Title 61—REVENUE

BOARD OF CLAIMS

[4 PA. CODE CH. 121]

[61 PA. CODE CH. 899]

Rules of Procedure

The Board of Claims (Board) deletes 4 Pa. Code Chapter 121 (relating to rules of practice and procedure) and 61 Pa. Code §§ 899.1—899.12 (relating to practice and procedure) and adopts 61 Pa. Code §§ 899.101—899.109, 899.201—899.206, 899.301, 899.302, 899.401—899.403, 899.501, 899.601, 899.701 and 899.702.

There are several purposes for the amendments. First, the Board is deleting two sets of rules of practice and procedure in 4 Pa. Code Chapter 121 and 61 Pa. Code Chapter 899 which were duplicative and replacing them with a single set of updated rules. Second, the prior rules referred to rules of practice and procedure in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) which no longer govern practice before the Board. Section 2(a) of the act of April 28, 1978 (P. L. 202, No. 53) (72 P. S. § 4651-8) and case law, *Pennsylvania Institutional Health Services, Inc. v. Commonwealth of Pennsylvania, Department of Corrections*, 167 Pa. Cmwlth. 226, 647 A.2d 692 (1994) mandate that all matters before the Board are governed by the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) The new rules supplement the Pa.R.C.P. and are compatible with it. Finally, the Board has experienced a steady increase in the volume of claims and their complexity. The new rules will provide for more expeditious and efficient handling of claims.

The Board is an independent agency and may promulgate rules of practice and procedure under the proposed rulemaking omitted process. Under section 204(1) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204) (CDL) and the regulation thereunder, 1 Pa. Code § 7.4, proposed rulemaking has been omitted.

Notice of the Board's intention to submit new rules by final order, proposed rulemaking omitted was published in the *Pennsylvania Bulletin* on April 19, 1997. The public was invited to review the rules and submit comments. Also, copies of the rules were sent to State agencies and attorneys who regularly appear before the Board, to the Independent Regulatory Review Commission (IRRC) and the Office of General Counsel (OGC). In preparing these final-form rules, the Board has considered the comments it received.

Analysis

The following is a description of some of the major changes included in the rules governing practice before the Board.

§ 899.102—Scope of Rules

The new rules of procedure supplement the Pa.R.C.P. which govern all matters before the Board. As indicated in this Preamble, this is mandated by statute and case law. All references to 1 Pa. Code II relating to the general rules of administrative procedure have been eliminated because they do not apply to the Board.

§ 899.106—Representation by counsel

This rule requires that counsel appearing before the Board must be admitted to practice and in good standing before the Supreme Court of Pennsylvania. If counsel is not admitted to practice in this Commonwealth, counsel shall have an associate counsel who is qualified to practice in this Commonwealth.

§ 899.108—Service of legal papers other than the claim

Except for the original claim and any amended claim, which are served in accordance with § 899.201, all documents filed with the Board shall be served on all parties to the action and a certificate of service shall be attached to the documents. This rule changes the procedure under 61 Pa. Code § 899.4 with respect to filing and serving the response to the complaint.

§ 899.201—Statement of Claim

The rule replaces 61 Pa. Code § 899.3 and adds the requirement that each claim filed with the Board shall include the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

§ 899.202—Copies of written contracts

When the claim is based on a written contract, the plaintiff shall attach a copy of the contract or relevant portions as an exhibit to the claim. The exception to this requirement is if the plaintiff avers that all copies of the contract are in the possession of the defendant. This rule replaces 4 Pa. Code § 121.11.

§ 899.204—Response to Claim

Within 30 days of service of the claim, the defendant shall file an original and two copies of its answer or other response with the Board and serve all parties. This section extends the time frame from 20 to 30 days for the defendant to respond to a claim. This rule replaces 61 Pa. Code § 889.4.

§ 899.205—Preliminary Objections

A major change in practice before the Board is that a party filing preliminary objections must also file a supporting brief. Failure to file a brief may result in automatic dismissal of the preliminary objections. The requirement of a brief was added to discourage the filing of frivolous preliminary objections and to aid the Board in its consideration of the merits of the preliminary objections.

§ 899.401—Discovery

Section 899.401(a) eliminates the filing of discovery material with the Board. It is similar to Pa.R.C.P. 4002.1, but has an additional requirement. Section 899.401(e) requires that the party serving a discovery request or response file a notice of service and § 899.401(f) sets forth the form of the notice. This will allow the Board to maintain a docket of discovery requests and responses and be apprised of the prosecution of the case.

§ 899.403—Limitation on discovery

To prevent discovery abuse, the Board limits each party in an action to the service of 60 interrogatories or requests, or both, for admission. To be exempt from this limitation, a party must file a motion and show good cause for the additional discovery.

Authority

The amendments are promulgated under section 10 of the act of May 20, 1937 (P. L. 728, No. 193) (72 P. S. § 4651-10). This section provides the Board with the power and duty to promulgate rules governing practice before it.

Fiscal Impact

The Board has determined that deletion of the prior rules and adoption of the new rules will have no significant fiscal impact.

Paperwork

The amendments will not generate substantial additional paperwork for the public or the Commonwealth.

Effective Date

These amendments will become effective 30 days after publication in the *Pennsylvania Bulletin*.

Contact Person

The person to contact for an explanation of the new rules is Robert McLaughlin, Esquire, Senior Counselor, Board of Claims, 200 N. Third Street, Suite 700, Harrisburg, PA 17101-1501 (717) 787-3325.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on May 9, 1997, the Board submitted a copy of the rules with the proposed rulemaking omitted to IRRC and the Chairpersons of the Senate and House Finance Committees. On the same date, the amendments were submitted to the Office of Attorney General (OAG) for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the amendments were deemed approved by the Senate Finance Committee on May 29, 1997, and deemed approved by the House Finance Committee on May 29, 1997. IRRC met on June 5, 1997, and approved the amendments.

Findings

The Board finds that:

- (1) There is good cause to delete the rules of practice and procedure, 4 Pa. Code Chapter 121 and 61 Pa. Code §§ 899.1—899.12.
- (2) The new rules of procedure, 61 Pa. Code §§ 899.101—899.702 are necessary and appropriate for practice before the Board.
- (3) Under section 204(1) of the CDL, the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) do not apply because these amendments relate to agency practice.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board, 61 Pa. Code Chapter 899, are amended by deleting §§ 899.1—899.12 and adding §§ 899.101—899.109, 899.201—899.206, 899.301, 899.302, 899.401—899.403, 899.501, 899.601, 899.701 and 899.702.
- (b) The regulations of the Board, 4 Pa. Code, are amended by deleting §§ 121.1—121.17.
- (c) The Chief Administrative Judge shall submit this order and Annex A to the OAG for approval as to form and legality as required by law.

(d) The Chief Administrative Judge shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect July 28, 1997.

DAVID C. CLIPPER,
Chief Administrative Judge

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)

Fiscal Note: 105-3. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART VI. ARBITRATION

CHAPTER 121. (Reserved)

§§ 121.1 and 121.2. (Reserved).

§§ 121.11—121.17. (Reserved).

TITLE 61. REVENUE

PART VI. BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

Subchap.

- A. PRELIMINARY PROVISIONS**
- B. PLEADINGS**
- C. MOTIONS**
- D. DISCOVERY**
- E. PREHEARING**
- F. HEARINGS**
- G. SETTLEMENT**

Subchapter A. PRELIMINARY PROVISIONS

Sec.

- 899.1—899.12. (Reserved).
- 899.101. Title and citation of rules.
- 899.102. Scope of rules.
- 899.103. Definitions.
- 899.104. Principles of interpretation.
- 899.105. Jurisdiction of the Board.
- 899.106. Representation by counsel.
- 899.107. Entry of appearance.
- 899.108. Service of legal papers other than the claim.
- 899.109. Copy fees.

§§ 899.1—899.12. (Reserved).

§ 899.101. Title and citation of rules.

This chapter shall be known as the Board of Claims Rules of Procedure and may be cited as BOC R.P.

§ 899.102. Scope of rules.

(a) This chapter and the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) govern all matters before the Board. If a discrepancy between this chapter and the Pa.R.C.P. arises, this chapter applies.

(b) When circumstances arise in individual cases when the application of any Board rule is impractical or inequitable, the Board, on its own motion or upon the request of a party and after notice to the parties, may prescribe other procedures as may be required by the circumstances in the particular case.

§ 899.103. Definitions.

In addition to the definitions in Pa.R.C.P. No. 76, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Board—The Board of Claims of the Commonwealth.

Rule—A rule adopted by the Board.

Claim—The statement of facts describing the furnishing of goods or services, or both, to the Commonwealth, actions or inactions by Commonwealth employees which give rise to a demand for payment, and refusal by the Commonwealth to make payment.

§ 899.104. Principles of interpretation.

The principles of interpretation and rules of construction embodied in Pa.R.C.P. Nos. 101—153 apply to this chapter.

§ 899.105. Jurisdiction of the Board.

The Board has jurisdiction to hear and determine the following:

(1) Claims against the Commonwealth arising from contracts entered into with the Commonwealth when the amount in controversy is \$300 or more.

(2) Claims against the Commonwealth for actions or inactions by its employees giving rise to implied contracts.

(3) Claims against the Commonwealth for goods or services, or both, furnished to the Commonwealth but not within the terms of valid, existing contracts.

§ 899.106. Representation by counsel.

(a) A person may be represented before the Board by an attorney who is admitted to practice and is in good standing before the Supreme Court of Pennsylvania.

(b) Parties represented by counsel not admitted to practice in this Commonwealth shall associate counsel qualified under subsection (a).

§ 899.107. Entry of appearance.

When counsel for plaintiff files a claim and counsel for defendant files a response, their appearances are deemed entered before the Board. Thereafter, a counsel's appearance for a party may not be withdrawn without leave of the Chief Administrative Judge, unless another lawyer has previously entered or simultaneously enters an appearance for the party.

§ 899.108. Service of legal papers other than the claim.

Except for the claim and any amended claim, pleadings and other documents filed with the Board shall be served upon all parties to the action. A certificate of service shall be attached to all filings with the Board.

§ 899.109. Copy fees.

The fee for copying is 25¢ per page for opinions, pleadings, briefs and exhibits, and \$1 per page for docket sheets. The fee for certifying a document is \$5.

Subchapter B. PLEADINGS

Sec.

- 899.201. Statement of claim.
- 899.202. Copies of written contracts.
- 899.203. Oral contracts.
- 899.204. Response to claim.
- 899.205. Preliminary objections.
- 899.206. Amendment of pleadings.

§ 899.201. Statement of claim.

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and four copies of the claim with the Board, accompanied by a \$50 check made payable to the Commonwealth of Pennsylvania.

(c) Service of the claim and any amended claim will be made by the Board. The Board will serve one copy of the claim and any amended claim to the defendant involved, and one copy to the Attorney General.

(d) The claim is timely only if it is received at the Board's address within 6 months after it accrued.

§ 899.202. Copies of written contracts.

When the contract on which the claim is based is in writing, in whole, or in part, the plaintiff shall attach copies of the contract or relevant portions of the contract as an exhibit to all copies of the claim, unless one of the following exists:

(1) The plaintiff avers in the claim that all copies of the contract are in the possession of the defendant.

(2) The Chief Administrative Judge directs that the contract or relevant portions not be attached.

§ 899.203. Oral contracts.

When the contract on which the claim is based is oral, in whole or in part, the plaintiff shall plead the terms and details of the contract with particularity, and shall identify all agents who are alleged to have contracted on behalf of the defendant.

§ 899.204. Response to claim.

Within 30 days of service of the claim, the defendant shall file an original and two copies of its answer or other response with the Board. The answer, or other response, shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the defendant. The defendant or its counsel shall sign and verify the answer or other response.

§ 899.205. Preliminary objections.

(a) Preliminary objections shall be filed with the Board and served upon the adverse parties or their counsel. Preliminary objections shall be accompanied by a supporting brief. Failure to file a brief may result in automatic dismissal of the preliminary objections.

(b) Within 30 days after service of the preliminary objections, the adverse parties or their counsel shall file a response and a responsive brief with the Board and serve it upon the opposing parties or counsel.

§ 899.206. Amendment of pleadings.

(a) *Form of amended pleading.* An amended pleading, whether filed under Pa.R.C.P., by the agreement of the parties or by leave of the Board, shall be entirely restated and comply with the form of the original pleading, except an amendment allowed in the course of a hearing.

(b) *Allowance by Board.*

(1) If the amended pleading requires leave of the Board before a hearing, the party seeking the amendment shall give 5 days' notice to all parties of the intended application, enclosing a copy of the proposed amended pleading. The Board may allow the amendment or order the issue for argument.

(2) If the request for an amendment to a pleading is made at the hearing, the Board will dispose of the request at its discretion. If a continuance is granted by the Board, the party in whose favor the amendment is allowed shall file the amended pleading within 20 days after allowance by the Board, unless otherwise ordered.

Subchapter C. MOTIONS

Sec.
899.301. Motions and petitions.
899.302. Form of briefs.

§ 899.301. Motions and petitions.

(a) Each motion or petition shall be deemed contested unless certified to the contrary by the moving party. Except as provided in subsection (c) and § 899.402(b) (relating to discovery motions), a brief shall accompany each motion or petition. A motion or petition not accompanied by a brief may be dismissed by the Board.

(b) Each answering party shall file its response with the Board within 30 days of the date of service of the moving party's motion or petition. A response shall be accompanied by a supporting brief.

(c) If the moving party certifies that the motion or petition is uncontested, no brief is required.

§ 899.302. Form of briefs.

A brief shall contain a statement of the pertinent facts of the case, the questions involved and the argument. The statement of questions involved shall be drawn so that the Board may quickly determine all the legal questions requiring determination. The argument shall be divided into as many parts as there are questions involved.

Subchapter D. DISCOVERY

Sec.
899.401. Discovery.
899.402. Discovery motions.
899.403. Limitation on discovery.

§ 899.401. Discovery.

(a) Except when required under subsection (c) or (d), discovery material may not be filed with the Board. The party serving the discovery material or taking the deposition shall retain the original and be custodian of it.

(b) If a part of discovery material is used as evidence in connection with a motion, the relevant part shall be set forth, verbatim, in the motion or response. If discovery material is used as evidence at the hearing, the party offering it shall read it into the record or, if directed to do so by the Board, offer it as an exhibit.

(c) The Board will resolve a dispute concerning the accuracy of a quotation of discovery material used as provided in subsection (b) and may require production of the original paper or transcript.

(d) The Board, on its own motion, on the motion of a party or on an application by a nonparty, may require the filing of original discovery material. The parties may provide for the filing by stipulation.

(e) A party serving a request for discovery including depositions by oral examination, and a party filing written responses thereto shall file with the Board and serve upon all other parties or their counsel a notice of service substantially in the form prescribed in subsection (f). A party which files a motion or petition under § 899.301 or § 899.402 (relating to motions and petitions; and discovery motions) in response to a discovery request or a discovery response is not required to file and serve a notice of service in addition thereto.

(f) The notice of service required by subsection (e) shall be substantially in the following form:

(CAPTION)

Notice of Service

You are hereby notified that on the ____ day of _____, 19 __, (identify discovery request or response) was served upon the following parties or their counsel via United States Mail, first class, postage prepaid, and addressed as follows:

(names and addresses to whom discovery request or response were directed)

Name
Supreme Court I. D. No.
Address
Phone
Attorneys for

§ 899.402. Discovery motions.

(a) A discovery motion shall be prepared in accordance with § 899.301 (relating to motions and petitions).

(b) A moving party filing a motion to compel answers to interrogatories or production of documents need not file a brief with the motion, if the motion avers only that a response or objection has not been timely served. The Pa.R.C.P. which are relied upon shall be cited in the motion. The Board may grant or deny the motion without waiting for a response.

§ 899.403. Limitation on discovery.

(a) During the pendency of an action, a party may not serve on another party more than 60 interrogatories, including all subparts and requests for admission.

(b) If the party files a motion showing good cause, the Chief Administrative Judge may allow a party to exceed the limit in subsection (a). The motion shall be prepared in accordance with § 899.301 (relating to motions and petitions).

Subchapter E. PREHEARING

Sec.
899.501. Prehearing procedure.

§ 899.501. Prehearing procedure.

(a) *Status conference.*

(1) At the discretion of the Chief Administrative Judge, a status conference may be held within 120 days after the filing of the claim. The conference may be by telephone or in person. Matters to be considered at the conference include:

- (i) Jurisdictional defects.
- (ii) Prospects of amicable settlement.
- (iii) Establishing a schedule for remaining prehearing proceedings including discovery deadlines and prehearing memoranda filings.

(2) A scheduling order will be issued as soon as practical after the conference.

(b) *Prehearing memoranda.* Prehearing memoranda shall be filed and served as directed by the Chief Administrative Judge in the scheduling order. Unless the scheduling order directs otherwise, the prehearing memorandum of each party shall include:

- (1) A statement of the issues in the case.
- (2) The identification and numbering of exhibits.

(3) A stipulation of facts not in dispute to be prepared jointly by the parties, which may include qualification of expert witnesses and admission of exhibits.

(4) Identification of witnesses who will appear at the hearing and a short summary of the testimony expected from each witness.

(5) Copies of expert witnesses' final reports.

(c) *Prehearing conferences and settlement conferences.*

(1) The Chief Administrative Judge will determine the necessity for the scheduling of, and the procedures for, a prehearing or settlement conference. Notice of a conference will be given to counsel or unrepresented parties.

(2) The Chief Administrative Judge may dismiss the case, or enter judgment against a party for failing to participate in a prehearing conference or failing to provide the required memorandum.

(3) The Board may refuse to allow a party to call witnesses or offer evidence not disclosed at the prehearing conference or in the prehearing memorandum.

Subchapter F. HEARINGS

Sec.
899.601. Place of hearings.

§ 899.601. Place of hearings.

Unless the Board directs another location, proceedings before the Board and its panels will be held in Harrisburg.

Subchapter G. SETTLEMENT

Sec.
899.701. Notice of proposed settlement.
899.702. Termination of case by settlement.

§ 899.701. Notice of proposed settlement.

If during the pendency of an action before the Board the parties agree upon a proposed settlement, the parties shall immediately notify the Board.

§ 899.702. Termination of case by settlement.

Within 10 days after the conclusion of the settlement, the parties shall notify the Board in writing. The Board will mark its record of the case "settled."

[Pa.B. Doc. No. 97-1023. Filed for public inspection June 27, 1997, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Corrections to Drainage Lists

The Environmental Quality Board (Board) by this order amends §§ 93.9c—93.9g, 93.9i, 93.9l, 93.9n—93.9t and 93.9w—93.9y.

This order was adopted by the Board at its meeting of April 15, 1997.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555 (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464 (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. This rulemaking is available electronically through the Department of Environmental Protection's (Department's) Website (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final rulemaking is made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law.

D. Background of the Amendment

The Commonwealth's Water Quality Standards, which are set forth in part at Chapter 93 (relating to water quality standards), implement the provisions of sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals which are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department continuously reviews its water quality standards and receives various requests to investigate possible errors in §§ 93.9a—93.9z from regional staff, the Fish and Boat Commission and the general public. In response to these requests, the Department investigated the alleged errors by researching previous rulemaking activities and changes that resulted from the 1992 reforming of stream drainage lists in Chapter 93, and by comparing the drainage lists to the *Gazetteer of Streams* and topographic maps for these streams. Based upon the data collected in this research, the Board approved the amendments at its June 18, 1996, meeting, and notice of the proposed rulemaking was published at 26 Pa.B. 3637 (August 3, 1996). The proposal included provisions for a 45-day public comment period, which concluded on September 17, 1996. The recommended revisions do not change the protected uses or impose any additional requirements for any of the streams within the proposal. This rulemaking merely corrects duplicate entries, typographical errors or reinserts entries that have been incorrectly removed or changed. These changes allow wastewater treatment requirements for dischargers to these streams to be consistent with the water uses to be protected. The rulemaking makes only nonsubstantive modifications and does not alter the protected uses that have been implemented for the stream sections in question.

E. Summary of Comments and Responses on the Proposed Rulemaking

There were no public comments received on the proposed regulatory revisions during the public comment period. The House and Senate Standing Committees did not respond or provide comments on the amendments.

The Independent Regulatory Review Commission (IRRC) offered no objections, comments or suggestions on these amendments.

F. *Summary of Changes to the Proposed Rulemaking*

Although there were no public comments, objections or suggestions provided during the public comment period, some additional potential errors in the Chapter 93 stream lists were identified by Department staff subsequent to the comment period and during the development of this final rulemaking. The following errors were identified as being consistent with the type of errors considered by this rulemaking and would not enlarge the scope or purpose of the proposed rulemaking:

a) The last entry for 3-Maiden Creek and the 4-Willow Creek entry in § 93.9f have inconsistent zone descriptions and need to be placed in their proper order. The correct entries should encompass the Willow Creek tributary to Maiden Creek.

b) Duplicate and misplaced entry for Tunungwant Creek in § 93.9p should be deleted since a later entry correctly identifies the main stem of the Tunungwant Creek from the confluence of the East and West Branches to the PA-NY State border as WWF, Delete Water Contact (WC).

c) The Armstrong County reference in the first entry for 5-South Branch Plum Creek and 6-Reddings Run in § 93.9s should be Indiana County.

d) Add reference that Lake Erie in § 93.9x is in the Great Lakes Basin in Pennsylvania.

e) Genesee River in § 93.9y is in the Great Lakes Basin in Pennsylvania (Lake Ontario), not the Susquehanna River Basin as currently shown in Chapter 93.

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in question by correcting errors or clarifying descriptions of stream zones or stream orders.

2. *Compliance Costs*—The changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth, political subdivisions or the private sector. No costs will be imposed directly upon local government by this recommendation. There are no changes from the proposal which impose more stringent requirements than would already be imposed for these streams.

3. *Compliance Assistance Plan*—The Department does not anticipate the need for compliance assistance plans to support these amendments since they do not impose more stringent requirements than would already be imposed for these streams.

4. *Paperwork Requirements*—The regulatory revisions should have no paperwork impact on the Commonwealth, its political subdivisions or the private sector since the

revisions do not change the designated uses already being implemented for the streams contained in this rulemaking. The rulemaking is based on existing Department programs and policies.

H. *Sunset Review*

This rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the amendments effectively fulfill the goals for which it was intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 24, 1996, the Department submitted a copy of the notice of proposed rulemaking to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comments. The notice was published at 26 Pa.B. 3637. In addition to submitting the amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

There were no comments received from the public, IRRC or the Standing Committees on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Committees on May 27, 1997. IRRC met on June 5, 1997, and approved the amendments in accordance with section 5(c) of the Regulatory Review Act.

J. *Findings of the Board*

The Board finds that:

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

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These amendments do not enlarge the purpose of the proposal published at 26 Pa.B. 3637.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

K. *Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9c—93.9e, 93.9g, 93.9i, 93.9l, 93.9n, 93.9o, 93.9q, 93.9r, 93.9t and 93.9w to read as set forth at 26 Pa.B. 3637 and by amending § 93.9f, 93.9p, 93.9s, 93.9x and 93.9y to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order, 26 Pa.B. 3637 and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this order, 26 Pa.B. 3637 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 26 Pa.B. 3637 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

JAMES M. SEIF,
Chairperson

(Editors Note: Sections 93.9c—93.9h, 93.9l, 93.9n, 93.9q, 93.9r, 93.9t, 93.9w and 93.9x were proposed to be amended at 27 Pa.B. 1449 and 1459 and remain outstanding.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)

Fiscal Note: Fiscal Note 7-299 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania

Schuylkill River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
3-Tumbling Run	Basin, Source to Tumbling Run Dam	Schuylkill	HQ-CWF	None
3-Tumbling Run	Basin, Tumbling Run Dam to Mouth	Schuylkill	CWF	None
3-Maiden Creek	Basin, Lake Ontelaunee Dam to Willow Creek	Berks	WWF	None
4-Willow Creek	Basin	Berks	CWF	None
3-Maiden Creek	Basin, Willow Creek to Mouth	Berks	WWF	None
3-Unnamed Tributaries to Schuylkill River	Basins, Berks-Chester-Montgomery County Border to Valley Creek (except those in Spring City and Phoenixville)	Chester	HQ-TSF	None
3-Unnamed Tributaries to Schuylkill River	Basins, Berks-Chester-Montgomery County Border to Valley Creek	Montgomery	WWF	None
3-Perkiomen Creek	Basin, Source the Second LR 06119 (SR 1010) Bridge at Hereford	Berks	CWF	None
3-Valley Creek	Basin	Montgomery-Chester	EV	None
3-Unnamed Tributaries to Schuylkill River	Basins, Valley Creek to Tide	Chester-Montgomery	WWF	None
3-Mellshamic Creek	Basin	Montgomery	WWF	None

§ 93.9p. Drainage List P.

Ohio River Basin in Pennsylvania

Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
3-McCrea Run 2-Allegheny River (NY)	Basin	McKean	CWF	None
		* * * * *		

§ 93.9s. Drainage List S.

Ohio River Basin in Pennsylvania

Allegheny River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
5-South Branch Plum Creek 6-Reddings Run	Basin, Source to Reddings Run Basin	Indiana Indiana	HQ-CWF CWF	None None
		* * * * *		

§ 93.9x. Drainage List X.

Great Lakes Basin in Pennsylvania

Lake Erie

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		
3-Unnamed Tributaries	Basins, (all sections in PA) Source to PA-OH State Border	Erie-Crawford	CWF; MF	None
3-Fish Creek	Basin	Crawford	CWF; MF	None
3-Foster Run	Basin	Crawford	CWF; MF	None
3-Crazy Run	Basin	Crawford	CWF; MF	None
		* * * * *		

§ 93.9y. Drainage List Y.

Great Lakes Basin in Pennsylvania

(Lake Ontario)

Genesee River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
		* * * * *		

[Pa.B. Doc. No. 97-1024. Filed for public inspection June 27, 1997, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 101]

Investments of Fire and Casualty Companies

The Insurance Department (Department) deletes Chapter 101 (relating to investments of fire and casualty companies) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and sections 802.1 and 803.1 of The Insurance Company Law of 1921 (40 P. S. §§ 912.1 and 913.1). Chapter 101 was previously promulgated under sections 517, 602 and 802 of The Insurance Company Law of 1921 (40 P. S. §§ 652, 722 and 912) (now repealed). Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL). The regulations prescribe that the investments of mutual fire and mutual casualty insurance companies are subject to investment laws that have been repealed.

Purpose

The purpose of this final-omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations were adopted October 1, 1958, under the authority of sections 517, 602 and 802 of The Insurance Company Law of 1921 which related to the investment of capital by stock fire, stock casualty and mutual insurance companies. The regulations subject mutual fire insurance companies and mutual casualty insurance companies to the investment laws applicable to stock fire insurance companies and stock casualty insurance companies. Sections 517, 602 and 802 of The Insurance Company Law of 1921 were repealed by sections 1, 4 and 9 of the act of December 22, 1989 (P. L. 755, No. 106) (Act 106). Act 106 enacted the investment requirements that are currently effective for mutual fire and mutual casualty insurance companies and are found at sections 802.1 and 803.1 of The Insurance Company Law of 1921. Therefore, Chapter 101 of the regulations has been superseded by sections 802.1 and 803.1 of The Insurance Company Law of 1921. Because Chapter 101 implements a statute that is no longer in existence, the regulations are no longer needed.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the notice procedures are impracticable and unnecessary. The deletion of Chapter 101 eliminates regulations made obsolete by amendments to The Insurance Company Law of 1921. Furthermore, public comments cannot change the obsolete status of the regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

Affected Parties

There are no parties affected by the deletion of the regulations because the regulations are obsolete.

Fiscal Impact

The deletion of the regulations has no fiscal impact.

Paperwork

The deletion of the regulations has no impact on paperwork.

Effectiveness/Sunset Date

This order is effective upon publication in the *Pennsylvania Bulletin*. No sunset date had been assigned because the order deletes obsolete regulations.

Contact Person

The person to contact for information on the deletion of these regulations is Stephen Johnson, Director, Bureau of Examinations, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 783-4312.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on June 15, 1997, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on June 4, 1997. IRRC met on June 5, 1997, and approved the regulations.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to delete the regulations effective upon publication. Deferral of the effective date of the deletion of the regulations is impractical or contrary to the public interest under section 204 of the CDL because no purpose is served by deferring the effective date, and an immediate effective date best serves the public interest by deleting unnecessary regulations.

(2) There is good cause to forego public notice of the intention to delete Chapter 101 because public notice of the deletion is unnecessary and impractical, for the following reasons:

(i) Deletion of the regulations eliminates a rulemaking that is obsolete and no longer applicable to investments of mutual fire and mutual casualty insurance companies.

(ii) Public comment cannot change the fact that the regulations are obsolete.

Order

The Insurance Commissioner, acting under the statutory authority, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 101, are amended by deleting §§ 101.1 and 101.2 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as to form and legality as required by law.

(c) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

LINDA S. KAISER,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)

Fiscal Note: 11-156. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VI. MUTUAL INSURANCE

CHAPTER 101. (Reserved)

§§ 101.1 and 101.2. (Reserved).

[Pa.B. Doc. No. 97-1025. Filed for public inspection June 27, 1997, 9:00 a.m.]

[31 PA. CODE CH. 109]

Conversion of Certain Mutual Insurance Companies

The Insurance Department (Department) deletes Chapter 109 (relating to conversion of certain mutual insurance companies) under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and sections 801-A—818-A of The Insurance Company Law of 1921 (40 P. S. §§ 911-A—928-A). Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL).

Purpose

The purpose of this final-omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations were adopted effective October 2, 1976, under the authority of the act of December 10, 1970 (P. L. 884, No. 279) (Act 1970) (40 P. S. §§ 1010.1—1010.14) (now repealed) relating to the conversion of mutual companies. The purpose of the regulations was to implement Act 1970 and facilitate compliance with its provisions. Act 1970 was repealed by section 16(a) of the act of December 21, 1995 (P. L. 714, No. 79). The currently effective requirements for the conversion of mutual companies are found in sections 801-A—818-A of The Insurance Company Law of 1921 known as the Insurance Company Mutual-to-Stock Conversion Act (40 P. S. §§ 911-A—928-A). Therefore, Act 1970 and its regulations have been superseded by the Insurance Company Mutual-to-Stock Conversion Act. Because Chapter 109 implements a statute that is no longer in existence, the regulations are no longer needed.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the notice procedures are impracticable and unnecessary. The deletion of Chapter 109 eliminates obsolete regulations that are no longer applicable to conversions of mutual insurance companies. Furthermore, public comments cannot change the obsolete status of the regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (40 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

Affected Parties

There are no parties affected by the deletion of the regulations because the regulations were made obsolete by the repeal of Act 1970.

Fiscal Impact

The deletion of the regulations has no fiscal impact.

Paperwork

The deletion of the regulations has no impact on paperwork.

Effectiveness/Sunset Date

This order is effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned because the order deletes obsolete regulations.

Contact Person

The person to contact for information on the deletion of these regulations is Stephen Johnson, Director, Bureau of Examinations, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 783-4312.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on June 15, 1997, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on June 4, 1997. IRRC met on June 5, 1997, and approved the rulemaking.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to delete the regulations effective upon publication. Deferral of the effective date of the deletion of the regulations is impractical or contrary to the public interest under section 204 of the CDL because no purpose is served by deferring the effective date, and an immediate effective date best serves the public interest by deleting unnecessary regulations.

(2) There is good cause to forego public notice of the intention to delete Chapter 109 because public notice of the deletion is unnecessary and impractical, for the following reasons:

(i) Deletion of the regulations eliminates a rulemaking that is obsolete and no longer applicable to conversions of mutual insurance companies.

(ii) Public comment cannot change the fact that the regulations are unnecessary.

Order

The Insurance Commissioner, acting under the statutory authority, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 109, are amended by deleting §§ 109.1—109.6 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as to form and legality as required by law.

(c) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

LINDA S. KAISER,
Insurance Commissioner

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)

Fiscal Note: 11-158. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VI. MUTUAL INSURANCE

CHAPTER 109. (Reserved)

§§ 109.1—109.6. (Reserved).

[Pa.B. Doc. No. 97-1026. Filed for public inspection June 27, 1997, 9:00 a.m.]

[31 PA. CODE CH. 113]

Premium Taxes for Foreign Fire Insurance

The Insurance Department (Department) hereby amends Chapter 113 (relating to miscellaneous provisions) by deleting Subchapter B (relating to premium taxes for foreign fire insurance). The deletion is proposed under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the Foreign Fire Insurance Tax Distribution Law (53 P. S. §§ 895.701—895.803). Notice of proposed rulemaking is omitted in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL).

Purpose

The purpose of this final-omitted rulemaking is to eliminate obsolete, unnecessary regulations. The regulations were adopted April 15, 1970, under the authority of the act of June 28, 1895 (P. L. 408, No. 289) (Act 1895) (72 P. S. § 2262) (now repealed). Act 1895 provided that the 2% premium tax paid by foreign fire insurers was to be distributed to political subdivisions and used for relief or pension funds for paid or volunteer employees of fire departments. The regulations require foreign fire insurers to assign a code number to each policy to identify the political subdivision in which the insured property is located. The Department of Revenue previously used the codes to assure that tax revenue was being properly distributed among the various political subdivisions.

Act 1895 was repealed by the Foreign Fire Insurance Tax Distribution Law (Act 1984) (53 P. S. §§ 895.701—895.803) in particular section 801(a) (53 P. S. § 895.801(a)). Act 1984 provides for the distribution of the 2% tax based on population and market values of property. The location of the insured property is irrelevant under Act 1984. Accordingly, the Department of Revenue no longer requires information concerning locations of insured properties and no longer assigns codes to political subdivisions. Therefore, the regulations adopted to implement Act 1895 have been superseded by the distribution mechanism provided in Act 1984.

Under section 204(3) of the CDL, notice of proposed rulemaking may be omitted if the agency finds that the

notice procedures are impracticable and unnecessary. The deletion of Subchapter B eliminates obsolete regulations that are no longer applicable to the distribution of the 2% premium tax paid by foreign fire insurers. Furthermore, public comments cannot change the obsolete status of these regulations. Accordingly, the Insurance Commissioner finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are impracticable and unnecessary in this situation.

Affected Parties

The regulations apply to foreign fire insurance companies doing business in this Commonwealth. Because the regulations are obsolete, there are no parties affected by the deletion of the regulations.

Fiscal Impact

The deletion of the regulations has no fiscal impact.

Paperwork

The deletion of the regulations has no impact on paperwork.

Effectiveness/Sunset Date

This order is effective upon publication in the *Pennsylvania Bulletin*. No sunset date has been assigned because the order deletes obsolete regulations.

Contact Person

The person to contact for information on the deletion of these regulations is Elaine Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120 (717) 787-8840.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on June 15, 1997, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the rulemaking was deemed approved by the Senate and House Committees on June 4, 1997. IRRC met on June 4, 1997, and approved the regulations.

Findings

The Insurance Commissioner finds that:

(1) There is good cause to delete the regulations effective upon publication. Deferral of the effective date of the deletion of the regulations is impractical or contrary to the public interest under section 204 of the CDL because there is no purpose served by deferring the effective date, and an immediate effective date best serves the public interest by deleting unnecessary regulations.

(2) There is good cause to forego public notice of the intention to delete Subchapter B because public notice of the deletion is unnecessary and impractical, for the following reasons:

(i) Deletion of the regulations eliminates a rulemaking that was adopted under a statute that has been repealed, and implements requirements on the distribution of the 2% premium tax paid by foreign fire insurers which are no longer effective.

(ii) Public comment cannot change the fact that the regulations have been rendered obsolete due to the revision of statutory law.

Order

The Insurance Commissioner, acting under the statutory authority, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 113, are amended by deleting §§ 113.21—113.23 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as to form and legality as required by law.

(c) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

LINDA S. KAISER,
Insurance Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 3000 (June 21, 1997).)

Fiscal Note: 11-154. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 113. MISCELLANEOUS PROVISIONS

Subchapter B. (Reserved)

§§ 113.21—113.23. (Reserved).

[Pa.B. Doc. No. 97-1027. Filed for public inspection June 27, 1997, 9:00 a.m.]