

# PROPOSED RULEMAKING

## ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]  
Practice and Procedure

The Environmental Hearing Board (EHB) proposes to revise Chapter 1021 (relating to practice and procedures) by amending existing rules as well as adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have several objectives:

(1) To provide the regulated community and the Department of Environmental Protection (Department) and other potential litigants with more specific guidance on how to represent their interests before the EHB.

(2) To improve the rules of practice and procedure before the EHB.

### I. Statutory Authority for Proposed Revisions

The EHB has the authority under section 5 of the Environmental Hearing Board Act (act) (35 P. S. § 7515) to adopt regulations pertaining to practice and procedure before the EHB.

### II. Description of Proposed Revisions

The proposed revisions are modifications to provisions of the rules to improve practice and procedure before the EHB. These proposed revisions are based on the recommendations of the EHB Rules Committee, a nine member advisory committee created by section 5 of the act to make recommendations to the EHB on its rules of practice and procedure. For the recommendations to be promulgated as regulations, a majority of the EHB members must approve the recommendations.

This summary provides a description of (1) the existing rules of practice and procedure when relevant to proposed revisions; (2) the EHB's proposed revisions; and (3) how the proposal differs from the EHB Rules Committee's recommendations.

Some of the recommendations of the EHB Rules Committee were not in proper legislative style and format, so they have been modified, where necessary, to conform to those requirements. Similarly, some of the recommendations did not contain proper cross references to 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure), so references to those rules have been added.

The proposed rules can be divided into four categories: 1) substantive amendments; 2) adoption of an existing rule; 3) changes limited to superseding the General Rules of Administrative Practice and Procedure; and 4) repeals. Substantive amendments or additions were made as follows: definitions (§ 1021.2), construction and application of rules (§ 1021.4), extensions of time (§ 1021.17), representation (§ 1021.22), filing (§ 1021.30), service by a party (§ 1021.32), date of service (§ 1021.33), certificate of service (§ 1021.34), number of copies (§ 1021.35), commencement, form and content (§ 1021.51), timeliness of appeal (§ 1021.52), complaints filed by the Department (§ 1021.56), answers to complaints filed by the Department (§ 1021.57), procedure after an answer is filed (§ 1021.58), motions-general (§ 1021.70), prehearing procedures (§ 1021.81), prehearing memorandum

(§ 1021.82), continuance of hearings (§ 1021.87), motions in limine (§ 1021.88), presentation by the parties (§ 1021.89), limiting number of witnesses and additional evidence (§ 1021.90), oral argument after hearing (§ 1021.92), evidence (§ 1021.107), written testimony (§ 1021.108), subpoenas (§ 1021.114), briefs (§ 1021.116), amicus curiae (§ 1021.117), sanctions (§ 1021.125), prepayment of penalties (§ 1021.161) and hearing on inability to prepay penalty (§ 1021.162).

Rules which only reflect the amendment of the EHB rules superseding the General Rules of Administrative Practice and Procedure include: effective dates of EHB adjudications and preliminary orders (§ 1021.15), service by the EHB (§ 1021.31), docket (§ 1021.41), consolidation (§ 1021.80), initiation of hearings (§ 1021.85), conduct of hearings (§ 1021.86), transcript (§ 1021.104) and adjudications (§ 1021.118).

The following are rules which recently were considered by the Procedural Rules Committee but no change was recommended: amendments to rules (§ 1021.3); notice of appearance (§ 1021.23); waiver of hearings (§ 1021.94); venue of hearings (§ 1021.96); and view of premises (§ 1021.98).

Rules which the Committee recommended be repealed are: timely filing required (§ 1021.11); appearance in person (§ 1021.21); publication of notice (§ 1021.36); general (§ 1021.56); form and content (§ 1021.57); special actions (§ 1021.61); pleadings, generally (§ 1021.64); complaints (civil penalties) (§ 1021.65); and answers (§ 1021.66).

These amendments in large part reflect the evolution and refinement of practice before the EHB since the mid-1970's when the EHB's rules of practice and procedure were first adopted.

Next year, in light of the revisions to the rules the EHB will ask the Rules Committee to consider reorganizing the rules in a more orderly format as well as adding cross references to make the rules more user friendly.

### 1. Definitions

The EHB's existing rule on definitions is § 1021.2. The section provides definitions for the following terms: "act," "action," "Board," "Costs Act," "Department," "dispositive motion," "hearing examiner," "intervenor," "party," "permittee," "person," "supersedeas" and "third-party appeal." The definitions supplement the General Rules of Administrative Practice and Procedure.

The proposed amendments include a definition of "pleading" which excludes the notice of appeal so that pleadings are involved only in actions instituted by complaint. The Committee adopted the amendment at the EHB's recommendation. The EHB's case law on whether a notice of appeal is a pleading has been divergent. To clarify and provide uniformity for persons who appear before the EHB, the Committee recommended the following definition: "Pleading—A complaint filed under § 1021.56 (relating to complaints filed by the Department) or answer filed under § 1021.57 (relating to answers to complaints filed by the Department). Documents filed in appeals, including the notice of appeal, are not pleadings." The section states that the definitions supplement the General Rules of Practice and Procedure except for the definition of pleadings which supersedes the definition in the General Rules of Practice and Procedure. This change is consistent with the newly proposed rules

on pleadings in actions initiated by complaint (§§ 1021.56—1021.58) but still permits an attack on the legal sufficiency of a notice of appeal by a motion to dismiss or a motion for summary judgment.

The EHB concurs with the proposed amendments.

## 2. Construction and Application of Rules

The EHB's existing rules do not provide a rule for the construction and application of rules. Proposed § 1021.4 is designed to permit the EHB to act so as to secure the just, speedy and relatively inexpensive determination of proceedings before it. The proposed section is patterned after Pa.R.C.P. No. 126. The proposed section is the same as the one recommended by the EHB Rules Committee. The EHB adopted the section as received from the Committee.

## 3. Timely Filing Required

The EHB's existing § 1021.11 includes provisions that documents filed with the EHB shall be received within the time limits for the filing, that the date of receipt by the EHB and not the date of deposit in the mail is determinative.

The Committee believed this section's provisions were duplicative to the provisions in the new section on filing, § 1021.30. Thus, the Committee decided to delete the text in the section and mark § 1021.11 as Reserved.

The EHB concurs with this recommendation.

## 4. Effective Dates of EHB Adjudications and Preliminary Orders

The EHB's existing § 1021.15 provides that adjudications and orders of the EHB become effective on the date of entry.

The Committee decided to retain the section. The Committee's only recommendation is a technical change of "supplement" to "supersedes" so this section will supersede the provision of the General Rules of Administrative Practice and Procedure.

The EHB concurs with this recommendation.

## 5. Extensions of Time

The EHB's existing § 1021.17 provides the grounds for the extensions of time for the filing of a document and for the continuances of hearings.

The Committee recommended amendments regarding the provision for extension of time so it is clear that the time for filing an appeal cannot be extended beyond the 30-day requirement set forth in the rules. The Committee also proposed that the language "before the expiration of the time for filing" be deleted to allow the provision to apply to requests for extensions made both before and after the expiration of the time for filing. The provision of the existing section for continuance of hearings shall be moved to § 1021.87 relating to hearings.

The EHB concurs with these recommendations.

## 6. Appearance in Person and Representation

The EHB's existing §§ 1021.21 and 1021.22 have separate rules for the appearance in person and the appearance by attorney. The section on appearance in person provides that an individual may appear in his own behalf; that a partnership may be represented by its members; that an association may be represented by its officers; and that an authority or governmental agency, other than the Department, may be represented by an officer or employee. The section on appearance by attorney provides that a corporation shall be represented by an attorney

admitted to practice before the Supreme Court of Pennsylvania, that a person may be represented in a proceeding by an attorney-at-law admitted to practice before the Supreme Court of Pennsylvania, that the EHB may require that a party be represented by an attorney, that a party other than the Commonwealth may not be represented by an attorney or person who is at the same time an employe of the Commonwealth.

The Committee recommended that the two sections be consolidated into one section on representation. The section includes the following new provisions: 1) parties, except individuals appearing in their own behalf, shall be represented by an attorney admitted to practice before the Supreme Court of Pennsylvania at all stages subsequent to the filing of the notice of appeal; and 2) pro hac vice representation may, upon written request, be by an attorney admitted to practice in jurisdictions other than the Commonwealth if the jurisdiction where the attorney is admitted to practice accords a like privilege to attorneys of this Commonwealth.

The EHB's existing section requires that a corporation must be represented by an attorney. The proposed section extends this requirement to unincorporated associations. This change is mandated by the statute prohibiting the unauthorized practice of law, 42 Pa.C.S. § 2524 (relating to penalty for unauthorized practice of law), and is in accordance with the General Rules of Administrative Practice and Procedure applicable to adversarial proceedings before all State agencies, 1 Pa. Code §§ 31.21—31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

The EHB recognizes that citizen groups have made great contributions to the development of environmental law. However, those contributions have been made, for the most part, by groups represented by counsel dedicated to innovation in these types of proceedings and who have the capacity to select the types of expert witnesses necessary to provide the factual backdrop for these legal developments. The EHB's experience with unrepresented citizen groups as appellants has been that these groups are rarely successful with lay representation. In addition, the EHB's efforts to administer appeals by large numbers of citizens by appointing a lay spokesperson for the group invariably leads to the unauthorized practice of law by persons who are not bound by the restrictions placed on attorneys by the Rules of Professional Conduct. While associations may employ persons who are not attorneys, that person may not render legal services unless admitted to practice law. 42 Pa.C.S.A. § 2524. Representation before the EHB in discovery proceedings and in the hearing on the merits clearly is the rendering of legal services.

The Commonwealth Court recently reiterated that a party does not have a right to be represented in administrative procedures by anyone other than an attorney. *Westmoreland County v. Rodgers*, 693 A.2d 996, 999 (Pa. Cmwlth. 1997). The Court further stated that an administrative agency, through its rules and regulations, cannot confer the power to engage in the unauthorized practice of law.

This change was proposed only after a great deal of discussion and deliberation both by the Committee and the EHB. Citizen involvement helps ensure that the decisions of the EHB are grounded upon complete and full information. The EHB desires to comply with the law regarding the unauthorized practice of law yet still make sure that such a rule does not act to curtail citizen

involvement in its adjudicatory proceedings. In this regard the EHB has worked closely with the Pennsylvania Bar Association to implement a program to provide representation by an attorney before the EHB to qualified pro se individuals. This program will begin a 1-year trial period in January, 1999.

The Committee decided to retain the existing provisions that: 1) an individual may appear on his own behalf or be represented in a proceeding by an attorney admitted to practice before the Supreme Court of Pennsylvania and in appropriate circumstances the EHB may require an individual or group of individuals to be represented by an attorney; and 2) a party, other than the Commonwealth, may not be represented by an attorney or person who is at the same time an employe of the Commonwealth.

The EHB concurs with these recommendations.

#### 7. *Filing*

The EHB's existing sections do not include a section governing filing of documents. The proposed § 1021.30 is designed to provide universal guidelines for the filing of documents.

This proposed section is new and consists of three sections which require: 1) that all documents be filed at the EHB's headquarters; 2) that the date of filing is the date the EHB receives the document; and 3) that the documents may be filed by personal delivery, by mail or by facsimile. Furthermore, the section provides that the original of a faxed document shall be deposited in the mail on the same day of the faxing. In addition, if the document which is faxed exceeds ten pages then only the first five pages and the last five pages as well as the certificate of service must be faxed. Finally, the section provides that a filing received after the close of the business day at 4:30 pm Eastern Time shall be deemed to be filed on the following business day.

The EHB concurs with these recommendations.

#### 8. *Service by the EHB*

The current § 1021.31 provides that orders, notices and other documents from the EHB shall be served on the person designated in the notice of appearance by mail or in person.

The Committee recommended a technical change of "supplement" to "supersedes" in subsection (b) so that this section will supersede the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 33.31 (relating to service by the agency).

The EHB concurs with this recommendation.

#### 9. *Service by a Party*

The EHB's existing section on service by a party is § 1021.32. This section provides that pleadings, submissions, briefs and other documents shall be served upon participants when they are filed or tendered to the EHB; that complaints for civil penalties should include a notice to plead and a statement certifying that it is a true and complete copy of the complaint; that appeals of Department actions should be filed with the Department officer taking the action and the office of chief counsel of the Department or agency taking the action; that service of an appeal upon the recipient of a permit, license, approval or certification shall be made at the address in the document evidencing the action by the Department or at the chief place of business and that documents filed with the EHB shall be filed at its headquarters.

The proposed section, which will supersede the comparable requirements of the General Rules of Practice and

Procedure, is rewritten to coincide with amendments to other rules and to streamline the requirements of service. The proposed section deletes all of the current provisions regarding service for pleadings, submissions, briefs, other documents; complaints for civil penalties; appeals from actions; service of an appeal upon recipient of a permit, license, approval or certification; and where the documents are to be filed. The section provides that copies of each document filed with the EHB shall be served upon every party to the proceeding on or before the day that the document is filed with the EHB and the service upon a party represented by an attorney shall be made by serving the attorney.

The Committee proposed that service be made on the same day the document is filed with the EHB.

The EHB decided the proposed section should require service on or before the date of filing but otherwise concurs with the recommendations.

#### 10. *Date of Service*

The EHB's sections provide for the date of service, § 1021.33. Under the existing section the date of service is the date the document served is deposited in the United States mail, or is delivered in person.

The Committee proposed amendments to make the date of service the date the document is mailed or delivered in person. If service is made by mail 3 additional days are added to the time required for filing a response. The section provides the additional time because it allows for the time for the processing and receipt of mail by the receiving party and is similar to the provisions applicable in Pennsylvania courts.

The EHB concurs with the proposed amendments.

#### 11. *Certificate of Service*

The EHB's existing § 1021.34 provides for the proof of service. The section gives the EHB discretion to require proof of service.

The Committee proposed to require a certificate of service for every document. The proposed section provides that all filings include a certificate of service as well as the name and address of the person served.

The EHB concurs with the Committee's recommendation but limits the requirement to documents "required to be" filed with the EHB. This eliminates the need for a certificate for correspondence or other informal requests for administrative action by the EHB.

#### 12. *Number of Copies*

The EHB's existing § 1021.35 provides the following number of copies for: 1) pleadings and briefs—three copies; and 2) other documents—one copy as well as that a copy of briefs and other documents be served on the other party in a proceeding.

The Committee proposed to amend the section to more accurately reflect the practice before the EHB. The proposed amendments include requiring three copies of dispositive motions and posthearing briefs and giving the EHB discretion to alter the requirements by order if it deems necessary.

The EHB generally concurred with the amended section. However, the EHB decided also to require two copies for prehearing memoranda, petitions for supersedeas and all motions, other than motions for stays, extensions and continuances of procedural deadlines.

### 13. *Publication of Notice*

The EHB's existing § 1021.36 states that the publication of a notice of an action or proposed action by the Department or EHB in the *Pennsylvania Bulletin* shall constitute notice to or service upon all persons, except a party, effective as of the date of publication.

The Committee recommended deleting the section because it is unnecessary in view of the provisions of § 1021.52 relating to the timeliness of an appeal.

The EHB does not concur with this recommendation because this section is necessary with respect to notices which must be published by the EHB.

### 14. *Docket*

The EHB's existing § 1021.41 provides that the EHB will maintain a docket of proceedings and that proceeding, as initiated, shall be assigned an appropriate designation, that the EHB will maintain a complete official file on proceedings, and that the docket and the official file shall be available for inspection and copying by the public during the office hours of the EHB insofar as consistent with the proper discharge of the duties of the EHB.

The Committee recommends a technical change of "supplements" to "supersedes" so this section will supersede the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 33.57 (relating to docket).

The EHB concurs with this recommendation.

### 15. *Commencement, Form and Content*

The EHB's existing § 1021.51 did not have a provision with respect to prepayment of a penalty in an appeal from an assessment of a civil penalty.

The proposed amendment of subsection (f) requires that an appeal from an assessment of a civil penalty must be accompanied by a check in the amount of the penalty or a bond to secure payment or a verified statement that the appellant is unable to pay.

The EHB concurs with the recommendation.

### 16. *Timeliness and Perfection*

The EHB's existing § 1021.52 no longer contains a provision which allows for the dismissal of an appeal if the appellant does not submit information required for an appeal under § 1021.51 after the EHB requests it. This authority was inadvertently omitted when the EHB recently revised its rules to eliminate the practice of filing a "skeletal appeal."

The proposed section includes in subsection (b) a provision that the appellant shall submit any missing information required by § 1021.51(c), (d) and (i) within 20 days or suffer dismissal of the appeal. Any failure to include specific grounds for appeal as required by subsection (e) will be considered only in connection with a motion from the opposing party.

The EHB concurs with this recommendation.

### 17. *Complaints Filed by the Department*

The EHB's existing regulations include §§ 1021.56 and 1021.57 (relating to special actions). The sections set forth the following: 1) that complaints for civil penalties may be filed by the Department when authorized; 2) that action for civil penalties shall commence when the complaint is filed and service of the complaint and of notice to plead is made upon the defendants; and 3) the form and content requirements of a complaint.

The proposed §§ 1021.56—1021.58 more accurately reflect the practice before the EHB. The EHB not only has jurisdiction over complaints for civil penalties but also has jurisdiction over other proceedings which must be instituted by complaint. A prominent example is a complaint to recover the Department's costs of response to releases of hazardous substances under the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1304). The Committee believed that these sections should apply to all Department actions that must be instituted by complaint. Thus to avoid confusion and to provide consistency, the Committee redrafted the rules. The Committee decided to make the following changes: 1) rename the undesignated center heading from "Complaints for civil penalties" to "Special Actions"; 2) state more specific guidelines on when and how a complaint may be filed and the required contents of a complaint in § 1021.56; and 3) change § 1021.57 to address the requirements for answers to complaints which must be filed with the EHB within 30 days after the date of service of the complaint, unless for cause the EHB prescribes a different time. The answer must state any legal objections and denials in a single pleading whether or not they might under other civil practice be expressed by way of preliminary objection. The answers must be in writing and must express the matters of fact and law relied upon for a defense. The failure to do so may result in the admission of facts in the complaint or other sanctions.

The Committee proposed a totally new § 1021.58, which addresses subsequent procedures to an answer to a complaint. The rule provides that after an answer is filed the prehearing procedures in § 1021.81, which is also applicable to an appeal, shall be followed.

Having made these comprehensive amendments the Committee determined that existing § 1021.61 (Special actions), § 1021.64 (Pleadings: generally), § 1021.65 (Complaints) and § 1021.66 (Answers) were no longer necessary and thus repealed them.

The EHB concurs with these recommendations.

### 18. *Complaints for Civil Penalties—General*

As noted previously, existing § 1021.56 is deleted.

### 19. *Complaints for Civil Penalties—Form and Content*

As noted previously, existing § 1021.57 is deleted.

### 20. *Special Actions*

For the reasons stated previously, existing § 1021.61 is deleted.

### 21. *Pleadings: Generally*

For the reasons stated previously, existing § 1021.64 is deleted.

### 22. *Complaints (Civil Penalties)*

For the reasons stated previously, existing § 1021.65 is deleted.

### 23. *Answers (Civil Penalties)*

For the reasons stated previously, existing § 1021.66 is deleted.

### 24. *Motions—General*

The EHB had requested the Committee to include orders precluding a party from contesting well pled facts in a complaint or motion which the responding party does not fairly meet in its response in the sanction rule. The EHB already has a rule in terms of motions that requires people to come back with detailed responses to factual averments of a motion. Thus, when the party does not

respond to a motion or address the motion the EHB should have a mechanism to deem any facts admitted. After discussion with the Committee, the Committee recommended that the motions rule—§ 1021.70, specifically subsection (e), be amended to empower the EHB to find facts consistent with those averred when there is no response to the facts. The exact proposed language reads, “. . . Material facts set forth in the motion that are not denied may be deemed admitted for the purposes of deciding the motion.”

The EHB concurs with this recommendation.

#### 25. Consolidation

The EHB's existing § 1021.80 allows the EHB to consolidate proceedings involving a common question of law or fact for hearing of any or all of the matters in issue in proceedings whether it is on its own motion or on the motion of any party.

The Committee recommends a technical change of “supplements” to “supersedes” in subsection (b) so this section will supersede the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 35.45 (relating to consolidation).

The EHB concurs with this recommendation.

#### 26. Prehearing Procedure

The EHB's existing § 1021.81 provides among other items, that the party with the burden of proof shall serve its expert reports and answers to all expert interrogatories within 120 days of the date of the prehearing order. The opposing party shall serve its expert reports and answers to all expert interrogatories within 30 days after receipt of the expert reports and interrogatories from the party with the burden of proof.

The EHB believes that to clarify the second sentence of this provision, the following language should be added so the sentence would read, “The opposing party . . . within 30 days after receipt of the expert reports and all answers to expert interrogatories from the party with the burden of proof.”

#### 27. Initiation of Hearings

Section 1021.85 provides that if the proceedings are at issue and a hearing is required, a formal evidentiary hearing shall be scheduled and a notice of hearing shall be sent to all parties to the proceedings.

The Committee recommends a technical change of “supplements” to “supersedes” so this section will supersede the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 35.121 (relating to initiation of hearings).

The EHB concurs with the Committee's recommendations.

#### 28. Conduct of Hearings

The EHB's existing § 1021.86 provides that hearings may be held, at the discretion of the EHB, before the whole EHB, by individual members as administrative law judges or by hearing examiners; any hearing held by a hearing examiner who is not a member of the EHB will be decided by the EHB after review of the record and the examiner's proposed adjudication; all final decisions of the EHB shall be decided by majority vote; and petitions for supersedeas and other petitions and motions may be decided by the EHB member hearing the petition or motion.

The Committee recommends a technical change of “supplement” to “supersedes” so this section will super-

se the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 35.123 (relating to the conduct of hearings).

The EHB concurs with this recommendation.

#### 29. Continuance of Hearings

The existing part of § 1021.17 provides that hearings may not be continued except for compelling reasons, requests for continuances shall be submitted to the EHB in writing with a copy served upon other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

The Committee recommended that this provision be moved to the hearing section, specifically § 1021.87, since that is the most logical location for this section. This section will supersede the General Rules of Practice and Procedure in 1 Pa. Code § 31.15 (relating to extensions of time).

The EHB concurs with that recommendation.

#### 30. Motions in Limine

The EHB currently does not have a section which specifies the procedure to be used for motions in limine, although the motion is referenced in the provisions on prehearing motions. Since the EHB does receive these requests the EHB believes that it would be appropriate to have a section as guidance to those individuals who appear before the EHB.

The proposed § 1021.88 states that a party may get a ruling on evidentiary issues by filing a motion in limine similar to practice in civil courts in this Commonwealth. A threshold motion may be made before or during the hearing.

The EHB concurs with this recommendation.

#### 31. Presentation by the Parties

The current § 1021.88 provides that parties shall have the right of presentation of evidence, cross examination, objection, motion and argument.

The Committee recommends that the section be renumbered to § 1021.89 and amended to state that parties have the right to an opening statement and closing argument in addition to those matters already listed and that the party with the burden of proof is required to make a prima facie case by the close of its case-in-chief. In addition, the Committee recommends a technical change of “supplement” to “supersedes” so that this section will supersede the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 35.126 (relating to presentation by the parties).

The EHB concurs with these recommendations.

#### 32. Limiting Number of Witnesses and Additional Evidence

The EHB's existing § 1021.90 states that the EHB may limit the number of witnesses upon an issue and may require a party to present additional evidence on an issue.

The Committee recommended to the EHB that “require” be amended to “request.” This amendment permits the parties, rather than the presiding judge, to decide what evidence will be presented to the full EHB.

The EHB concurs with the Committee's recommendation.

### 33. *Oral Argument After Hearing*

The current § 1021.92 provides that a party may, within 5 days after hearing and prior to adjudication, request oral argument before the entire EHB and that the EHB may grant or deny the request.

The Committee recommended that the section be changed so that a request need not be filed until after the parties have fully briefed the case. This change gives the parties a better chance to evaluate whether they should make a request.

The EHB concurs with the recommended amendment, but has changed the language from "briefing" to "the last posthearing brief."

### 34. *Transcript*

The current § 1021.104 provides: that hearings shall be stenographically reported, a transcript of the report be made a part of the record, parties can obtain copies of the transcript from the court reporter, and parties shall have the opportunity to review a copy of the transcript on file with the EHB.

The Committee discussed the ramifications of the decision of *Sierra Club v. PUC*, 702 A.2d 1131 (Pa. Cmwlth. 1998), which upheld the validity of a similar regulation of the Pennsylvania Public Utility Commission against a claim that the Commission was required by the Right-to-Know Act to provide a copy of the transcript to the public for the cost of copying. The Supreme Court has granted a petition for review of the case. The Committee recommended only the technical change of "supplement" to "supersedes" so that this rule will supersede the provision of the General Rules of Administrative Practice and Procedure and to add two other sections of the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 35.132 and 35.133, which are superseded by the EHB's rules.

The EHB concurs with the recommendation.

### 35. *Evidence*

The EHB's existing § 1021.107 provides that the EHB is not bound by technical rules of evidence but that relevant and material evidence of reasonable probative value is admissible as provided in 2 Pa.C.S. § 505 (relating to evidence and cross-examination). The section also provides that written testimony of a witness may be admitted into evidence provided the witness is present for cross-examination and provided a copy of the testimony was served upon and received by other parties. It also requires that copies of an exhibit to be offered into evidence shall be made available to parties at the time it is identified as an exhibit and witnesses shall be sworn or shall affirm.

The proposed section would make the following amendments: add a note to subsection (a) that the EHB generally applies the Pennsylvania Rules of Evidence, repeal current subsection (b) in favor of a new § 1021.108—Written testimony, renumber the remaining subsections, and change "supplement" to "supersede" in the reference to the General Rules of Administrative Practice and Procedure.

The EHB concurs with the recommendations.

### 36. *Written Testimony*

The Committee believed that a separate section on written testimony would enhance the practice before the EHB and offer more specific guidance to parties who come before the EHB.

The Committee has proposed a new § 1021.108, which provides: 1) that a witness' written testimony be on numbered lines in a question and answer form; 2) that the testimony may be admitted into evidence provided the witness is present for cross-examination; 3) that written testimony shall be filed concurrently with the prehearing memorandum unless the EHB prescribes otherwise; 4) that any objections to the testimony which can be reasonably anticipated prior to hearing must be in writing and filed at least 5 days before the hearing or unless ordered by the EHB; and 5) a party who wishes to file written testimony at a later date must obtain EHB approval by motion. Any approval shall include the scope of the testimony and the time for filing and service upon opposing counsel.

The EHB concurs with the recommendations.

### 37. *Subpoenas*

The EHB's existing § 1021.114 provides that the EHB will provide parties with subpoenas for the attendance of witnesses or for the production of documentary evidence upon request.

The Committee proposed that, except as otherwise provided in this regulatory chapter or by order of the the EHB, requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. Rules 234.1—234.4 and 234.6—234.9 and that proof of service of the subpoena need not be filed with the EHB. The proposal provides that upon the request of a party the Secretary to the EHB shall issue a subpoena in blank signed and under seal of the EHB in accordance with the Pa.R.C.P.

The EHB concurs with the recommendation.

### 38. *Briefs*

The current § 1021.116 provides that the parties may submit briefs upon their request and within the time prescribed by the EHB. The briefs shall be served on other parties and shall include suggested findings of fact and conclusions of law.

The Committee recommends that the section be amended as follows: the section be renamed "posthearing" briefs, that initial posthearing briefs contain proposed findings of fact with appropriate references to the exhibit or page of the transcript, an argument with citations to supporting legal authority, and proposed conclusions of law. The proposed section also provides for reply briefs which shall be as concise as possible and not exceed 25 pages, unless the presiding administrative law judge permits otherwise. Finally, the proposed section contains a provision which specifically states that any issue which is not argued in a post-hearing brief is waived. This section supersedes the General Rules of Administrative Practice and Procedure.

These changes reflect the Committee's desire to make the EHB's sections more specific and to codify policies which the EHB already implements. The limit on reply briefs is necessary to assure the parties state their full position in their initial briefs. The waiver of arguments not presented in posthearing briefs has been the rule adopted by Commonwealth Court in *Lucky Strike Coal Co. v. DER*, 547 A.2d 447 (Pa. Cmwlth. 1988), in which the Court stated that issues not raised in a posthearing brief are deemed to have been waived.

The EHB concurs with these recommendations.

### 39. *Amicus Curiae*

The EHB's existing sections do not have a provision for amicus curiae filings. The EHB however submitted to the

Committee for review a proposed § 1021.117 for amicus curiae. The EHB believes that to better serve the citizens of this Commonwealth and to have the EHB's practice more closely track judicial practice in other courts of the Commonwealth its procedural rules should include a section for amicus curiae briefs.

The Committee adopted the following amendments to the proposed section: 1) that anyone interested in legal issues in any matter pending before the EHB may request leave to file an amicus curiae brief or memorandum of law regarding those issues; 2) the amicus curiae shall state in its request the legal issues to be addressed in the brief and a copy of the request must be served on all parties; 3) the brief shall be filed within the time prescribed by the EHB and a copy be served on all the parties; 4) any party may file a response to the brief amicus curiae which is adverse to its interests; and 5) the amicus curiae may present legal argument only as the EHB may direct.

The EHB concurs with the section as proposed by the Committee.

#### 40. *Adjudications*

The EHB's existing § 1021.118 provides that the EHB will issue an adjudication which will contain a discussion, findings of fact, conclusions of law and an order at the conclusion of the proceedings and that it will serve a copy of the adjudication on all parties to the proceedings or their representatives.

The Committee recommends a technical change of "supplement" to "supersedes" so this section will supersede the provision of the General Rules of Administrative Practice and Procedure in 1 Pa. Code § 35.226 (relating to final orders).

The EHB concurs with the recommendation.

#### 41. *Sanctions*

The EHB's existing § 1021.125 provides that the EHB may impose sanctions upon a party for failure to abide by a EHB order or EHB rule of practice and procedure. Those sanctions may include dismissing an appeal or adjudication against the offending party, precluding the introduction of evidence or documents not disclosed, barring the use of witnesses not disclosed in compliance with an order, barring an attorney from practice before the EHB for repeated flagrant violation of orders or other sanctions permitted in similar situations by the Pa.R.C.P.

The Committee proposed changes to the language of the section to ensure clarity and to be grammatically correct. The proposed section also eliminates the sanction of barring an attorney from practice before the EHB because disbarment is a power exercised only by the Supreme Court of Pennsylvania.

The EHB concurs with the recommendations.

#### 42. *Prepayment of Penalties*

The EHB's rules currently do not specify a procedure for required prepayment of penalties or the posting of a bond in lieu of prepayment.

The proposed § 1021.161 is to give guidance to parties who have to meet the requirement of a number of statutes which condition the right to appeal from a penalty assessment upon the prepayment of the penalty or the posting of a bond to secure payment if the appeal is unsuccessful. This new section sets forth the procedure for prepayment or posting and to whom a check should be made payable. In addition to the section, a note is also

included which sets forth that a payment of posting of a bond under the Air Pollution Control Act (35 P. S. §§ 4001—4015) must be made in favor of the EHB. The Air Pollution Control Act, however, is the only exception to the rule of other statutes which require that the bond must be made in favor of the Department.

The EHB concurs with the recommendations.

#### 43. *Hearing on Inability to Prepay Penalty or Post a Bond*

The EHB does not have an existing section for a hearing on an inability to prepay a penalty or post a bond.

Proposed § 1021.162 provides that if an appellant submits with the appeal a verified statement that the appellant is unable to pay, the EHB may schedule a hearing on the validity of this claim and may require the appellant to submit appropriate financial information to the Department in advance of the hearing. Finally, the section provides that if the EHB determines that the appellant is able to prepay the assessed penalty or post a bond it will order the appellant to do so within a period not to exceed 30 days.

The EHB concurs with the recommendation.

#### 44. *Sections Which Were Considered But Were Not Changed*

The Committee decided not to change several sections: Amendments to (§ 1021.3); Notice of appearance (§ 1021.23); Waiver of hearings (§ 1021.94); Venue of hearings (§ 1021.96) and View of premises (§ 1021.98).

### II. *Fiscal Impact of the Proposed Revisions*

The proposed amendments should have little fiscal impact on the Commonwealth, political subdivision and the private sector, as many of the proposed procedures reflect EHB practice. The impact of the new procedures, such as the required exchange of expert reports is expected to expedite appeals before the EHB.

### III. *Paperwork Requirements for Proposed Revisions*

The proposed revisions would require the EHB to modify certain of its standard orders.

### IV. *Government Reviews of Proposed Revisions*

On February 16, 1999, as required by section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the EHB submitted copies of the proposed revisions to the Independent Regulatory Review Commission (IRRC) and the Senate and House Standing Committees on Environmental Resources and Energy. The EHB also provided IRRC and the Committees with copies of a Regulatory Analysis Form prepared by the EHB in compliance with Executive Order 1982-2 (relating to improving government regulations). Copies of the Regulatory Analysis Form are available to the public upon request.

If IRRC has objections to any of the proposed revisions, it will notify the EHB within 10 days of the close of the Committees' review period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures for review, prior to final publication of the proposed revisions, by the EHB, the General Assembly and the Governor of objections raised.

### V. *Public Comment Regarding Proposed Revisions*

The EHB invites interested persons to submit written comments, suggestions or objections regarding the proposed revisions to William T. Phillipy, IV, Secretary to the Environmental Hearing Board, 2nd Floor, Rachel Carson

State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, within 30 days of the date of this publication.

GEORGE J. MILLER,
Chairperson

Fiscal Note: 106-4. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND PROCEDURES

Subchapter A. PRELIMINARY PROVISIONS

GENERAL

§ 1021.2. Definitions.

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

\* \* \* \* \*

Pleading—A complaint filed under § 1021.56 (relating to complaints filed by the Department) or answer filed under § 1021.57 (relating to answers to complaints filed by the Department). Documents filed in appeals, including the notice of appeal, are not pleadings.

\* \* \* \* \*

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions), except for "pleading" which supersedes the definition of "pleading" in 1 Pa. Code § 31.3 (relating to definitions).

§ 1021.4. Construction and application of rules.

The rules in this chapter shall be liberally construed to secure the just, speedy and inexpensive determination of every appeal or proceeding in which they are applicable. The Board at every stage of an appeal or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

TIME

§ 1021.11. [ Timely filing required ] (Reserved).

[ (a) Appeals, briefs, notices, and other documents required or permitted to be filed under this chapter shall be received by the Board within the time limits, if any, for the filing. The date of receipt by the Board and not the date of deposit in the mails is determinative.

(b) Subsection (a) supplements 1 Pa. Code § 31.11 (relating to timely filing). ]

§ 1021.15. Effective dates of Board adjudications and preliminary orders.

\* \* \* \* \*

(b) Subsection (a) [ supplements ] supersedes 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

§ 1021.17. Extensions of time [ ; continuance of hearings ].

(a) The time fixed or the period of time prescribed for the filing of a document required or permitted to be filed under this chapter, other than the notice of appeal,

may be extended by the EHB for good cause upon motion [ before expiration of the time for filing ].

(b) [ Hearings may not be continued except for compelling reasons. Requests for continuances shall be submitted to the Board in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

(c) ] Subsections (a) and (b) [ supplement ] supersede 1 Pa. Code § 31.15 (relating to extensions of time).

Note: The motion in subsection (a) shall conform to the provisions in § 1021.71 (relating to procedural motions)

§ 1021.21. [ Appearance in person ] (Reserved).

[ (a) An individual may appear in his own behalf; a partnership may be represented by its members; an association may be represented by its officers; and an authority or governmental agency, other than the Department, may be represented by an officer or employe.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.21 and 31.23 (relating to appearance in person; and other representation prohibited at hearings). ]

§ 1021.22. [ Appearance by attorney ] Representation.

(a) [ A corporation shall be represented by an attorney admitted to practice before the Supreme Court of Pennsylvania.

(b) A person may be represented in a proceeding by an attorney-at-law admitted to practice before the Supreme Court of Pennsylvania. In appropriate circumstances, the Board may require a that a party be represented by an attorney. ]

Parties, except individuals appearing in their own behalf, shall be represented by an attorney admitted to practice before the Supreme Court of Pennsylvania at all stages of the proceedings subsequent to the filing of the notice of appeal.

(b) [ A person ] An individual may be represented in a proceeding by an attorney [ at-law ] admitted to practice before the Supreme Court of Pennsylvania. In appropriate circumstances, the Board may require an individual or group of individuals to be represented by an attorney.

(c) Representation by pro hac vice may, upon written request, be by an attorney admitted to practice in jurisdictions other than this Commonwealth if the jurisdiction where the attorney is admitted to practice accords a like privilege to attorneys of this Commonwealth.

[ (c) ] (d) \* \* \*

(e) Subsections (a) [ and (c) supplement ]—(d) supersede 1 Pa. Code §§ [ 31.22 ] 31.21—31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

Subchapter B. DOCUMENTARY FILINGS
FILING AND SERVICE OF DOCUMENTS

§ 1021.30. Filing.

(a) Documents filed with the Board shall be filed at its headquarters—2nd Floor, Rachel Carson State

Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457.

(b) The date of filing shall be the date the document is received by the Board.

(c) Documents may be filed by personal delivery, by mail or by facsimile. When a document is filed by facsimile, the original shall be deposited in the mail on the same day. If a document exceeds ten pages, the facsimile shall consist of the first five pages and last five pages of the document and the certificate of service. Any filing received after the close of the business day at 4:30 pm Eastern Time shall be deemed to be filed on the following business day.

§ 1021.31. Service by the Board.

\* \* \* \* \*

(b) Subsection (a) [supplements] supersedes 1 Pa. Code § 33.31 (relating to service by the agency).

§ 1021.32. Service by a party.

(a) [Pleadings, submittals, briefs and other documents filed in the proceedings pending before the Board, when filed or tendered to the Board shall be served upon participant in the proceeding. The service shall be made by delivering in person, or by mailing, properly addressed with postage prepaid.

(b) Complaints for civil penalties when served, shall be enclosed with the following:

(1) A statement certifying that it is true and complete copy of the complaint filed with the Board.

(2) A notice to plead.

(c) Appeals from actions of the Department shall be served upon the following:

(1) The officer of the Department taking the action.

(2) The Office of Chief Counsel of the Department or agency taking the action appealed.

(d) If service of an appeal upon the recipient of a permit, license, approval, or certification is required, the service shall be made at the address set forth in the document evidencing the action by the Department or at the chief place of business in this Commonwealth of the recipient. Reference should be made to § 1021.51(f) (relating to commencement, form and content).

(e) Documents filed with the Board shall be filed at its headquarters, 2nd Floor, Rachel Carson State Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457. ]

Copies of each document filed with the Board, shall be served upon every party to the proceeding on or before the day that the document is filed with the Board. Service upon a party represented by an attorney shall be made by serving the attorney.

[ (f) Subsection (a)—(e) supplement ] (b) Subsection (a) supersedes 1 Pa. Code § 33.32 (relating to service by a participant).

§ 1021.33. Date of service.

(a) The date of service shall be the date the document served is [ deposited in the United States mail, or is delivered in person ] mailed or delivered in person.

When service is by mail, 3 days shall be added to the time required by these rules for responding to the document.

(b) Subsection (a) [ is identical to ] supersedes 1 Pa. Code § 33.34 (relating to service by participant).

§ 1021.34. [ Proof ] Certificate of service.

(a) [ The Board may require, if appropriate, a proof of service ] Each document which is required to be filed with the Board shall include a certificate of service which shall certify the date and manner of service and the name and address of the person served.

\* \* \* \* \*

§ 1021.35. Number of copies.

(a) [ The ] Unless otherwise ordered by the Board, the following number of copies shall be filed with the EHB:

(1) [ Pleadings and ] Dispositive motions and posthearing briefs—three copies.

(2) Prehearing memoranda, petitions for supersedeas and all motions, other motions for stays, extensions and continuances of procedural deadlines—two copies.

(3) Other documents—one copy.

(b) One copy of briefs and other documents shall be served on the other [ party in a ] parties to the proceeding.

\* \* \* \* \*

§ 1021.41. Docket.

\* \* \* \* \*

(d) Subsections (a)—(c) [ supplement ] supersede 1 Pa. Code § 33.57 (relating to docket.).

Subchapter C. FORMAL PROCEEDINGS

§ 1021.51. Commencement, form and content.

\* \* \* \* \*

(f) When the appeal is from an assessment of a civil penalty that requires an appellant to prepay the penalty or post a bond, the appellant shall submit to the Board with the appeal a check in the amount of the penalty or an appropriate bond securing payment of the penalty or a verified statement that the appellant is unable to pay.

(g) Concurrent with or prior to the filing of a notice of appeal, the appellant shall serve a copy thereof on each of the following:

[ (g) ] (h) \* \* \*

[ (h) ] (i) \* \* \*

[ (i) ] (j) Subsections (a)—[ (h) ] (i) supersede 1 Pa. Code §§ 35.5—35.7 and [ §§ ] 35.9—35.11 (relating to informal complaints; and formal complaints).

§ 1021.52. Timeliness of appeal.

\* \* \* \* \*

(b) The appellant shall, within 20 days of the mailing of a request from the Board, file any missing information required by § 1021.51(c),(d) and (i) (relating to commencement, form and content) or suffer dismissal of the appeal.

(c) [ Subsection ] Subsections (a) [ supersedes ] and (b) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

\* \* \* \* \*

[ COMPLAINTS FOR CIVIL PENALTIES ] SPECIAL ACTIONS

§ 1021.56. [ General ] Complaints filed by the Department.

(a) [ Complaints for civil penalties may be filed by the Department when authorized by statute. ] When authorized by statute, the Department may initiate the action by filing a complaint or petition, together with a certificate of service and a notice of a right to respond.

(b) [ An ] This action [ for civil penalties ] shall commence when the complaint is filed and service of the complaint and of a notice [ to plead ] of a right to respond is made upon the defendant.

(c) [ Subsections (a) and (b) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints). ] The complaint shall set forth the statutory authority under which the Board is authorized to act and shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for action is based.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

§ 1021.57. [ Form and content ] Answers to complaints filed by the Department.

(a) [ The caption of a complaint for civil penalties shall be in the following form:

Commonwealth of Pennsylvania,  
Department of \_\_\_\_\_

v. EHB Docket No. \_\_\_\_\_

John Doe  
234 Main Street  
Smithtown, Jones County, Pennsylvania

(b) The complaint for civil penalties shall set forth the statutory authority under which the Board is authorized to assess the penalties.

(c) The complaint for civil penalties shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for civil penalties is based. ]

Answers to complaints shall be filed with the Board within 30 days after the date of service of the complaint, unless for cause the Board, with or without motion, prescribes a different time. An answer will not be required in less than 10 days after date of service.

(b) Answers to complaints shall set forth any legal objections as well as any denial of facts, in a single pleading, regardless of whether they would ordinarily be raised as preliminary objections or other preliminary pleading. Answers shall be in writing and so drawn as to fully and completely advise the parties and the Board as to the nature of the defense. Answers shall admit or deny specifi-

cally and in detail each material allegation of the complaint and state clearly and concisely the facts and matters of law relied upon.

(c) A defendant failing to file an answer within the prescribed time shall be deemed in default and all relevant facts in the complaint may be deemed admitted. Further, the Board may impose any other sanctions for failure to file an answer in accordance with § 1021.125 (relating to sanctions).

\* \* \* \* \*

SUBSEQUENT PROCEDURE

§ 1021.58. Procedure after an answer is filed.

After an answer is filed, the prehearing procedures in § 1021.81 (relating to prehearing procedure) shall be followed.

[ SPECIAL ACTIONS ]

§ 1021.61. [ Special actions ](Reserved).

[ (a) In cases when the Department chooses or is required to take or request action after a hearing or an opportunity for a hearing, it may initiate or request the action by filing a verified complaint or petition, together with an order to show cause issued by the Department or the Board, upon the person against whom it is directed.

(b) Within 20 days from the date of service of the complaint, petition, or motion, the person against whom it is directed shall file with the Board a verified answer responding to the allegations in the complaint, petition or motion and setting forth whether a hearing is desired. Allegations in the complaint, petition or motion which are not specifically denied shall be deemed to have been admitted. Failure to file an answer or to specifically deny the essential allegations of the complaint, petition or motion shall constitute a sufficient basis for the entry of a default order or adjudication. ]

[ PLEADINGS: GENERALLY ]

[ PLEADINGS: CIVIL PENALTY PROCEEDINGS ]

(Editor's Note. As part of this proposal, the Board is proposing to delete the full text of §§ 1021.64—1021.66 which appear at 25 Pa. Code pages 1021-19 and 1021-20, serial pages (248239) and (248240).)

§ 1021.64. (Reserved).

§ 1021.65. (Reserved).

§ 1021.66. (Reserved).

MOTIONS

§ 1021.70. General.

\* \* \* \* \*

(e) A response to a motion shall set forth in correspondingly-numbered paragraphs all factual disputes and the reason the opposing party objects to the motion. Material facts set forth in the motion that are not denied may be deemed admitted for the purposes of deciding the motion.

\* \* \* \* \*

CONSOLIDATION

§ 1021.80. Consolidation.

\* \* \* \* \*

(b) Subsection (a) [supplements] supersedes 1 Pa. Code § 35.45 (relating to consolidation).

**PREHEARING CONFERENCES AND PREHEARING PROCEDURES**

**§ 1021.81. Prehearing procedure.**

(a) Upon the filing of an appeal, the Board will issue a prehearing order providing that:

\* \* \* \* \*

(2) The party with the burden of proof shall serve its expert reports and answers to all expert interrogatories within 120 days of the date of the prehearing order. The opposing party shall serve its expert reports and answers to all expert interrogatories within 30 days after receipt of the expert reports and all answers to expert interrogatories from the party with the burden of proof.

\* \* \* \* \*

**HEARINGS**

**§ 1021.85. Initiation of hearings.**

\* \* \* \* \*

(b) Subsection (a) [supplements] supersedes 1 Pa. Code § 35.121 (relating to initiation of hearings).

**§ 1021.86. Conduct of hearings.**

\* \* \* \* \*

(b) Subsection (a) [supplements] supersedes 1 Pa. Code § 35.123 (relating to the conduct of the hearings).

**§ 1021.87. [ (Reserved) ] Continuance of hearings.**

(a) Hearings may not be continued except for compelling reasons. Requests for continuances shall be submitted to the Board in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

**§ 1021.88. [ Presentation by the parties ] Motions in limine.**

[ (a) Parties shall have the right of presentation of evidence cross-examination, objection, motion and argument.

(b) Subsection (a) supplements 1 Pa. Code § 35.126 (relating to presentation by the parties). ]

A party may obtain a ruling on evidentiary issues by filing a motion in limine.

**§ 1021.89. [ (Reserved) ] Presentation by the parties.**

(a) Parties shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument and closing argument.

(b) The party with the burden of proof is required to make a prima facie case by the close of its case-in-chief.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.126 (relating to presentation by the parties).

**§ 1021.90. Limiting number of witnesses and additional evidence.**

(a) The EHB may limit the number of witnesses upon an issue and may [ require ] request a party to present additional evidence on an issue.

\* \* \* \* \*

**§ 1021.92. Oral argument after hearing.**

(a) A party may, within 5 days after [ hearing ] the last posthearing briefing and prior to adjudication, request oral argument before the entire Board. The Board may grant or deny the request.

\* \* \* \* \*

**TRANSCRIPT**

**§ 1021.104. Transcript.**

\* \* \* \* \*

(d) Subsections (a)—(c) [ supplement ] supersede 1 Pa. Code §§ 35.131—35.133 (relating to [ recording of proceedings ] general provisions).

**EVIDENCE**

**§ 1021.107. Evidence.**

(a) The EHB is not bound by technical rules of evidence and relevant and material evidence of reasonable probative value is admissible. **Note: The Board generally applies the Pennsylvania Rules of Evidence.**

(b) [ Written testimony, on numbered lines in either narrative or question and answer form of a witness may be admitted into evidence provided the witness is present for cross-examination and provided a copy of the testimony was served upon and actually received by other parties at least three days prior to the hearing.

(c) [ Copies of an exhibit to be offered into evidence shall be made available to parties at the time it is identified as an exhibit unless otherwise ordered by the Board.

[ (d) ] (c) \* \* \*

[ (e) ] (d) Subsections (a)—[ (d) supplement ] (c) supersede, 1 Pa. Code §§ 35.137—35.139, 35.162 and 35.166.

**§ 1021.108. Written testimony.**

(a) Written testimony of a witness, on numbered lines in question and answer form, may be admitted into evidence provided the witness is present for cross-examination.

(b) Written testimony shall be filed concurrently with the prehearing memorandum unless a different time is prescribed by the Board. Objections to written testimony which can be reasonably anticipated prior to hearing shall be in writing and filed at least 5 days before the hearing unless otherwise ordered by the Board.

(c) If a party desires to file written testimony at a later date, it may do so only upon motion approved by the Board. The approval will include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

**SUBPOENAS**

**§ 1021.114. Subpoenas.**

(a) [ Upon request, the Board will provide to the parties subpoenas for the attendance of witnesses or for the production of documentary evidence.

(b) Subsection (a) supplements 1 Pa. Code § 35.142 (relating to subpoenas). ]

Except as otherwise provided in this chapter or by order of the Board, requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. Rules 234.1—234.4 and 234.6—234.9. When the term “court” is used in Pa.R.C.P. “Board” is to be understood; when the terms “Prothonotary” or “clerk of court” are used in Pa.R.C.P. “Secretary to the Board” is to be understood.

(b) Proof of service of the subpoena need not be filed with the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.142 and 35.139 (relating to subpoenas; fees of witnesses).

**BRIEFS**

§ 1021.116. [ Briefs ] Posthearing briefs.

(a) [ The parties may, upon request, submit briefs within the time as the Board prescribes and serve a copy of the brief on the other parties. ] The initial posthearing brief of each party shall contain proposed findings of fact (with references to the appropriate exhibit or page of the transcript), an argument with citation to supporting legal authority, and proposed conclusions of law.

(b) [ Post-hearing briefs shall include suggested findings of fact (with references to the appropriate exhibit or page of the transcript) and conclusions of law. ] Reply briefs shall be as concise as possible and may not exceed 25 pages. Longer briefs may be permitted at the discretion of the presiding administrative law judge.

(c) Any issue which is not argued in a post-hearing brief may be waived.

[(c)](d) Subsections [(a) and (b) supplement] (a)—(c) supersede 1 Pa. Code §§ 35.191—35.193 (relating to briefs).

§ 1021.117. Amicus curiae.

(a) Anyone interested in legal issues involved in any matter pending before the Board may request leave to file an amicus curiae brief or memorandum of law, in regard to those legal issues. The amicus curiae shall state in its request the legal issues to be addressed in the brief or and shall serve a copy of the request on all parties.

(b) When the Board grants a request, the amicus curiae shall file the brief or within the time prescribed by the Board and shall serve a copy on all parties. Any party may file a response to a brief amicus curiae which is adverse to its interests.

(c) The amicus curiae may present oral argument only as the Board may direct.

**ADJUDICATIONS**

§ 1021.118. Adjudications.

\* \* \* \* \*

(c) Subsections (a) and (b) [ supplement ] supersede 1 Pa. Code § 35.226 (relating to final orders).

**SANCTIONS**

§ 1021.125. Sanctions.

The Board may impose sanctions upon a party for failure to abide by a Board order or Board rule of practice

and procedure. The sanctions may include [ the dismissal of ] dismissing an appeal [ or ], entering adjudication against the offending party, [ orders ] precluding introduction of evidence or documents not disclosed [ in compliance with an order ], barring the use of witnesses not disclosed [ in compliance with an order, barring an attorney from practice before the EHB for repeated or flagrant violation of orders ], or other appropriate sanctions [ as are permitted in similar situations by Pa.R.C.P. for practice before the court of common pleas ].

**PREPAYMENT OF PENALTIES**

§ 1021.161. Prepayment of penalties.

If a statute requires that an appellant prepay or post a bond to secure payment of a penalty assessed by the Department, the appellant shall submit to the Board with the appeal a check in the amount of the penalty or an appropriate bond securing payment of the penalty as required by statute. The check shall be made payable to the Commonwealth of Pennsylvania.

*Note:* The bond shall be in favor of the Department of Environmental Protection except in the case of the Air Pollution Control Act (35 P.S. §§ 4001—4106) which currently requires the bond to be in favor of the Board.

§ 1021.162. Hearing on inability to prepay penalty or post a bond.

In the event an appellant submits a verified statement that he is unable to pay in accordance with § 1021.51 (relating to application for counsel fees under more than one statute), the Board may schedule a hearing on the validity of this claim and may require the appellant to supply appropriate financial information to the Department in advance of the hearing. If the Board determines that the appellant is able to prepay the penalty assessed or post a bond the Board will order the appellant to do so, within a period not to exceed 30 days.

**APPELLATE MATTERS**

§ [ 1021.161 ] 1021.171. Composition of the certified record on appeal to Commonwealth Court.

\* \* \* \* \*

[Pa.B. Doc. No. 99-303. Filed for public inspection February 26, 1999, 9:00 a.m.]

**FISH AND BOAT COMMISSION**

[58 PA. CODE CH. 61]

Commonwealth Inland Waters

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment relates to fishing.

*A. Effective Date*

The proposed amendment, if approved on final rulemaking, will go into effect on January 1, 2000, or upon

publication of an order adopting the amendment in the *Pennsylvania Bulletin*, whichever occurs later.

**B. Contact Person**

For further information on the proposed change, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

**C. Statutory Authority**

The proposed amendment is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations, seasons, sizes, creel limits and devices).

**D. Purpose and Background**

The proposed amendment is designed to update, modify and improve Commission regulations related to fishing. The specific purpose is described in more detail under the Summary of Proposal.

**E. Summary of Proposal**

The Commission is proposing to reduce the Statewide daily creel limit of trout from eight to five during the regular season. The three trout per day creel limit during the extended season would remain unchanged. This proposal would not apply to the Conowingo Reservoir, the Delaware River or Lake Erie and its tributaries.

An advance notice of proposed rulemaking was published at 28 Pa.B. 5816 (November 21, 1998) in an effort to obtain public and angler input on the concept of reducing the regular season daily limit of trout from eight to five. The Commission received public comments by e-mail and by regular mail. Generally, the comments received were in favor of the proposal. The Commission also conducted an "online survey" on its web site. About 300 individuals participated in this survey. Survey participants included individuals who submitted public comments. The majority of those responding to the survey favor reduction in the creel limit. This is not a scientific survey of public opinion, and it would not be accurate to characterize the participants views as representative of a cross-section of trout anglers.

As noted in both the advance notice of proposed rulemaking and in prior Commission agendas, staff believe adoption of the reduced trout creel limits will have no distinct resource impacts. This is principally a social and policy issue based on perception. From a fisheries management perspective, the reduced creel limit will

have few, if any, positive or negative impacts. However, this change may affect public perceptions about the value of these fish and the appropriate number of fish to be taken each day.

**F. Paperwork**

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

**G. Fiscal Impact**

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment will impose no new costs on the private sector or the general public.

**H. Public Comments**

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 60 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-95. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART II. FISH AND BOAT COMMISSION**  
**Subpart B. FISHING**  
**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.1. Commonwealth inland waters.**

\* \* \* \* \*

(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	Regular Season: 8 a.m. first Saturday after April 11, to midnight Labor Day	7 inches	<b>[ 8 ] 5</b> —Streams, lakes and ponds (combined species) except areas with special regulations 3 (combined species)
	Extended Season: All approved Trout waters streams plus lakes and ponds: January 1—last day of February and day after Labor Day to midnight, last day of February of the following year.	7 inches	

\* \* \* \* \*

[Pa.B. Doc. No. 99-304. Filed for public inspection February 26, 1999, 9:00 a.m.]

**[58 PA. CODE CH. 75]  
Endangered Species**

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments relate to fishing.

*A. Effective Date*

These proposed amendments will, if approved on final rulemaking, go into effect upon publication of an order adopting the regulations.

*B. Contact Person*

For further information on the proposed changes, contact Andrew L. Shiels, Nongame and Endangered Species Management, (814) 359-5113, 450 Robinson Lane, Bellefonte, PA 16823, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

*C. Statutory Authority*

These proposed amendments are published under the statutory authority of sections 2102 and 2305 of the code (relating to rules and regulations; and threatened and endangered species).

*D. Purpose and Background*

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to endangered, threatened and candidate fish species. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. This notice of proposed rulemaking supplements the notice of proposed rulemaking published at 28 Pa.B. 3591 (August 1, 1998).

*E. Summary of Proposal*

The Commission maintains a list of fishes, reptiles, amphibians and aquatic organisms that have declined in distribution and abundance to levels resulting in their determination as endangered, threatened or candidate species in this Commonwealth. These lists have been developed over the years with the help and judgment of recognized experts on Pennsylvania species, such as the Fishes Advisory Committee (Committee). This staff/outside expert committee makes recommendations to the Commission staff, and ultimately, the Commissioners, regarding species lists.

A multiyear cooperative study involving staff and faculty from Penn State University and the Commission by means of funding from the Wild Resource Conservation Fund has resulted in a method of objectively classifying fish species as to their distribution and abundance within this Commonwealth. The number of locations where a species has been found is combined with the number of individuals of that species found at each location to develop a standardized method of ranking the level of endangerment for all species of fish known to occur in this Commonwealth. This work combines the more than 11,000 fish records from the Commission's fisheries management database with those of retired Penn State professor Dr. Edwin Cooper, the Penn State Fish Museum, University of Michigan Museum of Zoology, Cornell University, National Museum of Natural History, Environmental Protection Agency and the Academy of Natural

Sciences in Philadelphia. All records were entered into a computer database and converted to Geographic Information System (GIS) data coverages. A ranking system was created to determine the relative rarity of each species of fish found in this Commonwealth.

The results indicated that changes to the current endangered, threatened and candidate lists were necessary. Presently, 46 fish species are listed. On August 1, 1998, the Commission published a notice of proposed rulemaking, containing changes to the list, at 28 Pa.B. 3591. In the notice of proposed rulemaking, the Commission proposed to amend the list to include 33 fish species as endangered, 16 as threatened and 12 as candidate for a total of 61 fish species. Four species were taken off the current list either because they were more common than previously believed or because they are believed to be extirpated.

After the notice of proposed rulemaking was published, the Committee met and further refined the list due to additional species location information received. This proposed rulemaking describes the recommended changes to the proposed rulemaking for which additional public comment is being sought. Specifically, the bridle shiner (*notropis bifrenatus*) is currently listed as a candidate species in § 75.3(b) (relating to candidate species), and this species kept this status in the pending proposed rulemaking. Based on additional information, however, the Commission is seeking public comment to list this fish as an endangered species under § 75.1(b) (relating to endangered species). The longhead darter is currently listed as an endangered species. The pending notice of proposed rulemaking proposed to move this species to the candidate list. This proposed rulemaking seeks public comment on including this fish on the threatened species list (§ 75.2(b) (relating to threatened species)). Finally, this proposed rulemaking deals with four species (silver lamprey, Potomac sculpin, spoonhead sculpin and deepwater sculpin) that were listed as candidate species on both the existing list and the list contained in the August 1998 proposed rulemaking. Based on additional information, it is proposed to remove these four species from the candidate list because the species are either extirpated in this Commonwealth or do not warrant listing.

As the result of the additional input from the Committee and consistent with the recommendations of the Commission's staff, the Commission approved the publication of a separate notice of proposed rulemaking, containing the revisions to the list. A review of the lists contained in 28 Pa. B. 3591 and in this proposed rulemaking shows that, if both are adopted as proposed, approximately 34% of Pennsylvania native fish species will be listed as endangered, threatened or candidate.

*F. Paperwork*

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

*G. Fiscal Impact*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new direct costs on the private sector or the general public. It is noted that the direct regulatory significance of designation of a species of fish as an endangered or threatened fish is limited to prohibiting persons from taking, catching, killing or possessing these fish in this Commonwealth. Since none of the species listed have any commercial or recreational significance because of their rarity,

there are no direct fiscal impacts from providing these protections. The private sector, regulated community has asserted that designation of certain fish as endangered or threatened may have fiscal impacts because of impacts on permitting decisions by the Department of Environmental Protection and other agencies. If an endangered or threatened species is found in an area slated for development, applicants for permits may be required to conduct additional studies or adjust the project to avoid impacts. These are fiscal impacts resulting from regulatory and statutory authorities other than those under the aegis of the Commission. In addition, this proposed rulemaking has extremely limited indirect fiscal impacts. One species (the bridle shiner found only in the Marshalls Creek watershed) is proposed to move from candidate status to endangered status, one from endangered status to threatened status (longnose darter) and four from candidate status to unlisted status.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the Pennsylvania Bulletin. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO, Executive Director

(Editor's Note: A proposal to amend §§ 75.1—75.3 remains outstanding at 28 Pa.B. 3591 (August 1, 1998).)

Fiscal Note: 48A-93. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

\* \* \* \* \*

(b) Fish. The following species are endangered:

\* \* \* \* \*

[ (9) Longhead Darter, Percina macrocephala. ]

\* \* \* \* \*

(36) Bridle shiner, Notropis bifrenatus.

\* \* \* \* \*

§ 75.2. Threatened species.

\* \* \* \* \*

(b) Fish. The following species are threatened:

\* \* \* \* \*

(10) Longhead darter, Percina macrocephala.

\* \* \* \* \*

§ 75.3. Candidate species.

\* \* \* \* \*

(b) Fishes.

(1) [ Silver Lamprey, Ichthyomyzon unicuspis. ]

[ (2) ] \* \* \*

[ (3) ] (2) \* \* \*

[ (4) ] (3) \* \* \*

[ (5) ] (4) \* \* \*

[ (6) ] (5) \* \* \*

[ (7) ] (6) \* \* \*

[ (8) ] (7) \* \* \*

[ (9) ] (8) \* \* \*

[ (10) ] (9) \* \* \*

[ (11) Brindle Shiner, Notropis bifrenatus. ]

[ (12) ] (10) \* \* \*

[ (13) ] (11) \* \* \*

[ (14) ] (12) \* \* \*

[ (15) ] (13) \* \* \*

[ (16) ] (14) \* \* \*

[ (17) ] (15) \* \* \*

[ (18) ] (16) \* \* \*

[ (19) ] (17) \* \* \*

[ (20) ] (18) \* \* \*

[ (21) ] (19) \* \* \*

[ (22) ] (20) \* \* \*

[ (23) ] (21) \* \* \*

[ (24) ] (22) \* \* \*

[ (25) ] (23) \* \* \*

[ (26) Potomac Sculpin, Cottus girardi.

(27) Spoonhead Sculpin, Cottus ricei.

(28) Deepwater Sculpin, Myoxocephalus thompsoni. ]

\* \* \* \* \*

[Pa.B. Doc. No. 99-305. Filed for public inspection February 26, 1999, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Application Fees

The State Board of Pharmacy (Board) proposes to amend § 27.91 (relating to schedule of fees) by revising certain application fees to read as set forth in Annex A.

*A. Effective Date*

The proposed amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

*B. Statutory Authority*

The proposed amendment is authorized under section 8.2 of the Pharmacy Act (act) (63 P. S. § 390-8.2).

*C. Background and Purpose*

The act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs, the fees for services to licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{aligned} & \text{number of minutes to perform the function} \\ & \quad \times \\ & \text{pay rate for the classification of personnel performing the} \\ & \quad \text{function} \\ & \quad + \\ & \text{a proportionate share of administrative overhead.} \end{aligned}$$

The analysis determined that the fees for applications for initial pharmacy licenses, new pharmacy permits, intern registration, changes in pharmacy permits, reinspections of new pharmacies after failure at first inspection, verifications of licenses and permits, and certifications of examination scores and internship hours did not accurately reflect the actual cost involved of providing the services. Fees for the Board in these categories have not been revised since 1988. In some cases the fees exceeded actual cost, but in most, the fees fell short of the cost to provide the service.

In this proposal, fees for the services identified would be adjusted to allocate costs to those who use the service or application. The Board would continue to apportion the enforcement and operating costs to the general licensing population when the Board makes its biennial reconciliation of revenue and expenditures.

*D. Compliance with Executive Order 1996-1*

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

*E. Fiscal Impact and Paperwork Requirements*

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The proposed amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*F. Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

*G. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 17, 1999, the Board submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendment, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor, of objections raised.

*H. Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Rita T. Solie, Chief, Health Licensing Division, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-548 (Application Fees), when submitting comments.

PAULA L. CASTOR, R.Ph.,  
*Chairperson*

**Fiscal Note:** 16A-548. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 27. STATE BOARD OF PHARMACY FEES**

**§ 27.91. Schedule of fees.**

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

Application for pharmacy intern certificate . . .	\$ [ 35 ] 30
Application for pharmacist license . . . . .	\$ [ 25 ] 40

**[ Effective with the March 1997 examinations:**

<b>North American Pharmacist Licensure Examination (NAPLEX) . . . . .</b>	<b>\$250</b>
<b>Federal Drug Law Examination (FDLE) . . . . .</b>	<b>\$75</b>
<b>Effective with the November 1, 1998, examinations: ]</b>	

\* \* \* \* \*

Certification of examination scores or internship hours . . . . .	\$ [ 15 ] 25
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**[ Certification of current ] Verification**  
**of licensure** ..... \$[ 10 ] 15  
 \* \* \* \* \*

New pharmacy permit application ..... \$[ 145 ] 100  
 Reinspection of new pharmacy after failure  
 at first inspection..... \$[ 45 ] 90  
 Pharmacy permit change without inspection. \$[ 15 ] 30  
 Pharmacy permit change when inspection  
 required..... \$[ 50 ] 95

Change in pharmacy ownership or Board of  
 Directors..... \$[ 15 ] 30

**[ Certification of valid ] Verification of**  
 permit ..... \$[ 10 ] 15

\* \* \* \* \*

[Pa.B. Doc. No. 99-306. Filed for public inspection February 26, 1999, 9:00 a.m.]

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