

PROPOSED RULEMAKING

BOARD OF FINANCE AND REVENUE

[61 PA. CODE CHS. 701—703]

General Provisions; Tax and Other Appeal Proceedings

The Board of Finance and Revenue (Board), under the general authority in section 2703.1(m) of the Tax Reform Code of 1971 (72 P. S. § 9703.1(m)), proposes to rescind Chapter 701 (relating to special rules of administrative practice and procedure) and add Chapters 702 and 703 (relating to general provisions; and tax and other appeal proceedings) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The purpose of this proposed rulemaking is to add regulations consistent with the act of July 9, 2013 (P. L. 270, No. 52), which reorganized the Board and instituted new procedures for practicing before the Board. Proposed Chapters 702 and 703 include the following: an extensive definition section; filing procedures and deadlines; processes for representation by third parties before the Board, ex parte communications and petitioning the Board; compromise settlement procedures; procedures for the hearing process; and request for reconsideration.

Chapter 702. General provisions

Proposed Chapter 702 contains the following subchapters.

Subchapter A (relating to overview) provides the scope of Chapter 702 and for the liberal construction of the regulations so long as it does not affect the substantive rights of the parties. This subchapter also provides an extensive definition section. Additionally, the subchapter sets forth the following: the procedure on filing generally; the Board's office hours; administration of oaths; formal rules of evidence do not apply to Board matters; and the Board has no subpoena or deposition power.

Subchapter B (relating to time) contains the procedures for the date of filing a party's submission as well as how the Board will compute time for a submission.

Subchapter C (relating to representation before the Board) contains provisions for who may represent petitioners before the Board and the Board's criteria for limiting a person's right to practice before the Board.

Subchapter D (relating to ex parte communications) contains a definition section and the general rules for ex parte communication between a Board member or staff and a party.

Chapter 703. Tax and other appeal proceedings

Proposed Chapter 703 contains the following subchapters.

Subchapter A (relating to submissions) contains the general requirements for what information a Petition for Relief must contain at a minimum. Additionally, under this subchapter, the Board must acknowledge the receipt of the petition. This subchapter also contains the following requirements: Board-requested additional submissions from parties; consolidation of petitions; timeliness of submissions; and withdrawal or termination of appeals.

Subchapter B (relating to compromise procedures) sets forth the rules for compromise settlements before the Board. More specifically, the subchapter contains the rules for compromise settlements generally between the parties including time deadlines and waivers.

Subchapter C (relating to prehearing conferences) sets forth the procedure for requesting a prehearing conference, scheduling prehearing conferences and non-participation of one party.

Subchapter D (relating to hearings) sets forth the following: how to request a hearing; notice of proceedings will be in accordance with 65 Pa.C.S. Chapter 7 (relating to Sunshine Act); scheduling of hearings; hearing procedures; and a party's failure to appear.

Subchapter E (relating to request for reconsideration) sets forth the procedures for a party requesting reconsideration to object to a Board order including the following: the basis of the request for reconsideration; the time period for filing a request for reconsideration and extension; and the contents of the request. This subchapter also details how the Board will respond to requests for reconsideration and provides the party's appeal rights.

Subchapter F (relating to publication of orders) sets forth that the Board will publish on the Board's web site each final order, along with dissenting opinions, that grants or denies in whole or in part the petition. The subchapter also sets forth the timing of publication. Additionally, the subchapter sets forth what constitutes confidential information the Board will automatically redact and procedures for a petitioner to request additional redactions under the definition of "trade secret" or "confidential proprietary information" in section 102 of the Right-to-Know Law (65 P. S. § 67.102).

Contact Person

The contact person for this proposed rulemaking is Jennifer Langan, Deputy Chief Counsel, Treasury Department, (717) 787-9738.

Affected Parties

Taxpayers and representatives of taxpayers seeking relief in the administrative appeal process may be affected by this proposed rulemaking.

Fiscal Impact

The Board has determined that the proposed rulemaking will not have fiscal impact on the Commonwealth.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to Jacqueline Cook, Chairperson, Board of Finance and Revenue, 1101 South Front Street, Suite 400, Harrisburg, PA 17104-2539, Attention: Public Comment.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 10, 2015, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory

Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request and is available on the Board's web site at www.patreasury.gov/bfr/.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

JACQUELINE COOK,
Chairperson

Fiscal Note: 64-5. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART IV. BOARD OF FINANCE AND REVENUE

**CHAPTER 701. [SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE]
(Reserved)**

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to rescind Chapter 701 which appears in 61 Pa. Code pages 701-1—701-3, serial pages (265847)—(265849).)

§§ 701.1—701.7. (Reserved).

(Editor's Note: Chapters 702 and 703 are new and printed in regular type to enhance readability.)

CHAPTER 702. GENERAL PROVISIONS

Subchap.

- A. OVERVIEW**
- B. TIME**
- C. REPRESENTATION BEFORE THE BOARD**
- D. EX PARTE COMMUNICATIONS**

Subchapter A. OVERVIEW

- Sec.
- 702.1. Scope.
- 702.2. Liberal construction.
- 702.3. Definitions.
- 702.4. Filing generally.
- 702.5. Board office hours.
- 702.6. Oaths.
- 702.7. Formal rules of evidence do not apply.
- 702.8. Subpoenas and depositions.

§ 702.1. Scope.

(a) This chapter establishes the practice and procedure before the Board.

(b) This chapter supersedes 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(c) Subsection (a) supersedes 1 Pa. Code §§ 31.1 and 31.6 (relating to scope of part; and amendments to rules).

§ 702.2. Liberal construction.

(a) This chapter shall be liberally construed to secure the just, speedy and inexpensive determination of every proceeding before the Board. The Board, at any stage of a proceeding, may disregard an error or defect of procedure that does not affect the substantive rights of the parties.

(b) The Board, at any stage of a proceeding, may waive a requirement of this chapter, including a deadline, when

necessary or appropriate, if the waiver does not adversely affect a substantive right of either party.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.2 (relating to liberal construction).

§ 702.3. Definitions.

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

Board—The Board of Finance and Revenue.

Business day—A day on which the Board's office is scheduled to be open excluding Saturdays, Sundays or legal holidays.

Chairperson—The State Treasurer or the State Treasurer's designee.

Confidential proprietary information—The term as defined in section 102 of the Right-to-Know Law (65 P. S. § 67.102).

Department—The Department of Revenue of the Commonwealth.

Electronic delivery—A method of dispatching or receiving a submittal by electronic means such as e-mail, facsimile or the Board's electronic filing system.

Order—A decision by the Board that becomes final unless a timely request for reconsideration is filed by a party and is timely granted by the Board.

Party—

(i) A person who appears in a proceeding before the Board.

(ii) The term includes the following:

(A) A taxpayer.

(B) The Department.

(C) The claimant and the opposing governmental agency in appeals filed under section 503 of The Fiscal Code (72 P. S. § 503).

Personal financial information—The term means any of the following:

(i) Personal credit, charge or debit card information.

(ii) Bank account information.

(iii) Bank, credit or financial statements.

(iv) Account or PIN numbers.

(v) Other information regarding an individual's personal finances.

Petition—An application to the Board in which a petitioner seeks relief or remedy.

Petitioner—A taxpayer or other claimant.

Proceeding—A matter before the Board, including a petition, hearing or claim.

Secretary—The secretary of the Board. This individual is the Board officer with whom documents are filed and by whom official records are kept.

Staff—The attorneys, nonattorney tax petition reviewers and administrative personnel employed to support the Board in the performance of its duties and responsibilities.

Trade secret—The term as defined in section 102 of the Right-to-Know Law.

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 702.4. Filing generally.

(a) Documents filed with the Board should be submitted in one of the following manners:

(1) In person or by mail:

Secretary of the Board
 Pennsylvania Board of Finance and Revenue
 1101 South Front Street, Suite 400
 Harrisburg, Pennsylvania 17104-2539

(2) Electronically at bfr@patreasury.gov.

(3) By facsimile at (717) 783-4499.

(b) When the Board is of the opinion that a submission for filing does not sufficiently set forth required material or is otherwise insufficient, the Board may accept it for filing and advise the person submitting it of the deficiency and require that the deficiency be corrected.

(c) The petitioner bears the responsibility for the readability of documents filed with the Board. The petitioner accepts the risk that delay, disruption or interruption of a document filed with the Board by electronic delivery may cause the document to not be properly or timely filed.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.4, 31.5 and 33.61 (relating to information and special instructions; communications and filings generally; and applications for waiver of formal requirements).

§ 702.5. Board office hours.

(a) Unless otherwise directed by the Chairperson, the Board offices will be scheduled to be open from 8 a.m. until 4:30 p.m. on business days.

(b) Subsection (a) supersedes 1 Pa. Code § 31.5 (relating to communications and filings generally).

§ 702.6. Oaths.

(a) A Board member or the secretary has the power to administer oaths or affirmations with respect to a proceeding.

(b) Subsection (a) supersedes 1 Pa. Code § 35.148 (relating to officer before whom deposition is taken).

§ 702.7. Formal rules of evidence do not apply.

(a) Formal rules of evidence do not apply to matters before the Board.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.161—35.169 and 35.173 (relating to evidence; and official notice of facts).

§ 702.8. Subpoenas and depositions.

(a) The Board does not possess the power to issue subpoenas or to take depositions.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.142 and 35.145—35.152 (relating to subpoenas; and depositions).

Subchapter B. TIME

Sec.
 702.11. Date of filing.
 702.12. Computation of time.

§ 702.11. Date of filing.

(a) Whenever a party's submission is required or permitted to be filed, it will be deemed to be filed on the earliest of the following dates:

(1) On the date actually received by the Board.

(2) On the date deposited with an IRS-designated private delivery service (as set forth in an IRS Notice) as shown on the delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or noted on a United States Postal Service Form 3817, Certificate of Mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(4) When a document is submitted by means of electronic delivery on a day other than a business day, the document will be deemed to be filed on the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.11 (relating to timely filing required).

§ 702.12. Computation of time.

(a) Except as otherwise provided by statute, in computing a period of time prescribed by law, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is not a business day, in which event the period runs until the end of the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

Subchapter C. REPRESENTATION BEFORE THE BOARD

Sec.
 702.21. Representation.
 702.22. Limited practice before the Board.

§ 702.21. Representation.

(a) *Representative.* Appearances in proceedings before the Board may be by the petitioner or by an attorney, accountant or other representative provided the representation does not constitute the unauthorized practice of law as administered by the Pennsylvania Supreme Court.

(b) *Power of attorney.* The Board may require in a proceeding that a power of attorney, signed and executed by the petitioner, be filed with the Board before recognizing a person as representing the petitioner.

(c) *Notice of petitioner's representative.* A petitioner or his designated representative shall file with the secretary a petition that includes the name of the petitioner and, if applicable, the petitioner's representative. Unless another method is prescribed, the Department will be deemed to be served electronically when the Board docketed the case onto the Department's appeal system.

(d) *Designated representative after petition filed.* If a petitioner authorizes a representative after the petition is filed, the petitioner shall file with the secretary a form prescribed by the Board or a letter on the petitioner's letterhead naming the representative.

(e) *Change in representative.* A change in representative that occurs during the course of a proceeding shall be reported promptly to the secretary.

(f) *Change in address.* A change in address that occurs during the course of a proceeding shall be reported promptly to the secretary.

(g) *Withdrawal of representative.* Representation continues until a petitioner or the petitioner's representative notifies the secretary in writing that the designation of representation is rescinded.

(h) *Supersession.* Subsections (a)—(g) supersede 1 Pa. Code §§ 31.21—31.26.

§ 702.22. Limited practice before the Board.

(a) The Board may deny, temporarily or permanently, the privilege of representing a party before it in any way to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous or improper conduct with respect to any matter before the Board.

(3) Repeatedly failed to follow Board directives.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.27 and 31.28 (relating to contemptuous conduct; and suspension and disbarment).

Subchapter D. EX PARTE COMMUNICATIONS

Sec.

702.31. Definitions.

702.32. General rules.

§ 702.31. Definitions.

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

Communication—A verbal, written or electronic correspondence.

Ex parte communication—A communication, regarding the merits of a petition, outside of a public hearing, by one party with the Board or the staff not in the presence of the other party.

Waiver—An acknowledgement to the staff by a party or its representative that the party chooses not to participate in a communication between the staff and the other party and agrees not to thereafter object to the communication. The waiver must be in a format designated by the Board and published on the Board’s web site.

§ 702.32. General rules.

(a) *Communication with Board members.* Board members may not participate in an ex parte communication.

(b) *Communication with staff.* The staff may not participate in an ex parte communication, except in either of the following situations:

(1) A party provides a waiver.

(2) The staff provides a party or its representative with 10 days written notice of a meeting at which a communication will occur and the party or its representative fails to participate in the meeting.

(c) *Written and electronic submission.* A written or electronic submission provided to the Board or staff by a party shall be promptly provided to the other party.

(d) *Notification.* The staff will make every reasonable effort to avoid an ex parte communication. Upon discovery of an ex parte communication, the staff will promptly notify the other party. The Board may take reasonable measures deemed necessary to remedy an ex parte communication.

CHAPTER 703. TAX AND OTHER APPEAL PROCEEDINGS

Subchap.

A. SUBMISSIONS

B. COMPROMISE PROCEDURES

C. PREHEARING CONFERENCES

D. HEARINGS

E. REQUEST FOR RECONSIDERATION

F. PUBLICATION OF ORDERS

Subchapter A. SUBMISSIONS

Sec.

703.1. Petitions generally.

703.2. Petition content.

703.3. Board acknowledgment.

703.4. Other submissions.

703.5. Service.

703.6. Consolidation.

703.7. Timeliness of submissions.

703.8. Withdrawal or termination of appeal.

§ 703.1. Petitions generally.

(a) *General requirements.* Petitions for relief must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and the basis for the relief sought.

(b) *Petition form.* A petition shall be filed using the Board’s designated petition form or otherwise conform to the format of the Board’s designated form on the Board’s web site.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.17 (relating to petitions generally).

§ 703.2. Petition content.

(a) *General.* A petition must include the following, as applicable:

(1) The petitioner’s name, address, telephone number and e-mail address.

(2) The name, address, telephone number and e-mail address of the petitioner’s representative.

(3) The Board of Appeals docket number.

(4) The petitioner’s appropriate identifying designation, such as license number, Social Security number, claim number, file number, or corporate account or box number.

(5) The appeal type and relevant periods for review.

(6) The amount of tax or other amounts the petitioner claims to have been erroneously assessed or to have been overpaid.

(7) The basis upon which the petitioner claims that an assessment is erroneous or a refund is due.

(8) A statement of the relevant facts.

(9) A statement indicating whether a hearing before the Board is requested.

(b) *Accuracy of address for Board correspondence.* The Board is permitted to rely upon the accuracy of the physical or e-mail address provided by the petitioner. It is the duty of the petitioner to notify the Board when there is a change in an address provided to the Board.

(c) *Signature.* The petitioner or the petitioner’s authorized representative shall sign a petition. The Board may require evidence that the signatory has authority to sign on behalf of the petitioner.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 31.11—31.15, 33.1—33.4, 35.18—35.20, 35.23, 35.24, 35.27—35.32, 35.35—35.41 and 35.48—35.51, 35.54 and 35.55.

§ 703.3. Board acknowledgment.

The Board will acknowledge receipt of petitions. The acknowledgement will set forth deadlines for subsequent submissions.

§ 703.4. Other submissions.

(a) *Information requests.* The Board may request a party to furnish additional information in a format designated by the Board. The Board may deny the requested relief for failure to furnish the additional information.

(b) *Submissions.* Submissions filed subsequent to the petition must include the petitioner's name and the docket number.

(c) *Legibility.* Submissions made with the Board must be legible.

(d) *Copies.* Petitioners are required to file one copy of a document either in hard copy or electronically at the time of filing. In its sole discretion, the Board may require additional copies of submissions.

(e) Electronic submissions.

(1) An electronic submission made with the Board must be:

(i) In a format so that the document and, when feasible, its attachments are capable of being printed and copied without restriction, and may not require a password to view the contents.

(ii) Filed in accordance with the instructions regarding electronic submissions, if any, made available on the Board's web site.

(2) Petitioners may file one electronic copy at the e-mail address provided. Paper copies are not required unless the document is too large to transmit by means of electronic delivery.

(f) *Evidence will not be returned.* Evidence submitted to the Board will not be returned.

(g) *Supersession.* Subsections (a)—(e) supersedes 1 Pa. Code §§ 33.1—33.4, 33.11, 33.12, 33.15, 33.21—33.23, 33.31—33.37, 33.41, 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.191—35.193, 35.201—35.207, 35.211—35.214 and 35.221.

§ 703.5. Service.

(a) A party shall serve the other party with each submission.

(b) The Board will publish on its web site instructions regarding service.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 33.31—33.37 (relating to service of documents).

§ 703.6. Consolidation.

(a) The Board may consolidate petitions, issues or proceedings involving a common question of law or fact for the same petitioner. The Board may structure a proceeding to avoid unnecessary costs or delay.

(b) Subsection (a) is identical to 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

§ 703.7. Timeliness of submissions.

(a) *Time.* Unless a different time is prescribed by the Board or staff, submissions shall be submitted no later than 60 days after the filing date of the petition. The Board will provide the opposing party 30 days to respond

to the submission. Evidence filed after the prescribed deadlines may not be reviewed by the Board.

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

§ 703.8. Withdrawal or termination of appeal.

(a) A petitioner that wishes to terminate an appeal before final decision by the Board shall submit to the Board a written request to withdraw the appeal.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.42 and 35.51 (relating to withdrawal or termination; and withdrawal of pleadings).

Subchapter B. COMPROMISE PROCEDURES

Sec.

703.11. Compromise generally.

§ 703.11. Compromise generally.

(a) A compromise settlement will be ordered by the Board only with the agreement of the parties.

(b) A petitioner offering a compromise shall submit to the Board and to the Department a completed Board of Finance and Revenue Request for Compromise Form, which is posted on the Board's web site, with a petition or within 30 days from the petition filing date.

(c) Negotiations of a compromise will take place between the petitioner and the Department.

(d) The timely submission of a completed Board of Finance and Revenue Request for Compromise Form is required for the Board to grant a continuance for the purpose of pursuing a potential compromise.

(e) If the parties fail to agree to a compromise within 90 days from the petition filing date, the Board will schedule the petition for a hearing, if requested, and for a decision on the merits.

(f) If the Board issues a compromise order, the parties agree, as a condition of the compromise to waive any right to:

(1) Appeal the compromise order.

(2) Claim a refund of money paid pursuant to the compromise order.

(3) File a petition or appeal that raises the same issues of the tax period and liability addressed in the compromise order.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

Subchapter C. PREHEARING CONFERENCES

Sec.

703.21. Prehearing conference.

§ 703.21. Prehearing conference.

(a) *Request for a prehearing conference.* A party may request a prehearing conference with the staff. The staff may conduct a prehearing conference in response to a request or when the Board or staff deems necessary.

(b) *Scheduling prehearing conferences.* Staff will notify the parties of a prehearing conference date and time, which may be in the Board's office, by telephone or by another agreed-upon electronic method.

(c) *Nonparticipation of one Party.* A party may choose not to participate in the prehearing conference upon the submission of a waiver consistent with Chapter 702, Subchapter D (relating to ex parte communications) or by failing to participate in the prehearing conference after being provided notice and an opportunity to attend.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

Subchapter D. HEARINGS

- Sec.
- 703.31. Disposition of petitions.
- 703.32. Notice of proceeding.
- 703.33. Scheduling of hearing.
- 703.34. Hearing procedure.
- 703.35. Failure to appear at hearing.

§ 703.31. Disposition of petitions.

(a) Petitions filed with the Board will be resolved by a written order of the majority of the Board based on the submissions and information available to the Board.

(b) A petitioner who wishes a hearing shall request it on the petition form or subsequently, in writing.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.13, 35.101 and 35.121—35.128 (relating to issuance of agency orders; waiver of hearing; and hearing).

§ 703.32. Notice of proceeding.

(a) When notice of hearings is required, publication will be in accordance with 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.51 and 35.103—35.106 (relating to docket; and notice of hearing).

§ 703.33. Scheduling of hearing.

(a) The secretary will schedule hearings and maintain a hearing calendar of the petitions scheduled for hearing.

(b) Public hearings of the Board ordinarily will be held in the hearing room in the Riverfront Office Center, 1101 South Front Street, Suite 400, Harrisburg, Pennsylvania 17104-2539.

(c) The Board will consider requests for remote access to hearings and, if feasible, will grant these requests.

(d) The secretary or the Board in the exercise of discretion, or upon application for cause, may reschedule a hearing.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 31.15, 35.102—35.106 and 35.121.

§ 703.34. Hearing procedure.

(a) At a hearing, the petitioner shall present its case first. If the Department responds, the petitioner will be provided an opportunity to respond.

(b) The order of presentation in subsection (a) may be varied by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.123, 35.125, 35.127, 35.128, 35.131—35.133, 35.137—35.139, 35.173, 35.177—35.180, 35.185—35.190 and 35.201.

§ 703.35. Failure to appear at hearing.

(a) If a party requests a hearing and thereafter fails to appear at the scheduled hearing, the opposing party may present its case to the Board at the scheduled hearing.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.124 and 35.126 (relating to appearances; and presentation by the parties).

Subchapter E. REQUEST FOR RECONSIDERATION

- Sec.
- 703.41. Request for reconsideration.
- 703.42. Time for filing request for reconsideration and extension.
- 703.43. Filing a request for reconsideration.
- 703.44. Board's response to request for reconsideration.
- 703.45. Appeal rights.

§ 703.41. Request for reconsideration.

(a) *Basis of request for reconsideration.* A request for reconsideration may be filed by a party to object to a Board order due to the Board's alleged failure to address an issue raised in the appeal, error of law or fact, or computational error. A request for reconsideration will not be granted to review issues or arguments not raised before the Board or to review evidence that was not previously submitted.

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 35.231—35.233 and 35.241 (relating to reopening and rehearing).

§ 703.42. Time for filing request for reconsideration and extension.

(a) A request for reconsideration shall be filed by a party and provided to the other party within 15 days from the mailing date indicated on the order. When necessary, a request for reconsideration will serve as an automatic request for an extension of time under section 2704(f)(1) of the Tax Reform Code of 1971 (72 P. S. § 9704(f)(1)).

(b) Subsection (a) supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 703.43. Filing a request for reconsideration.

(a) *Request for reconsideration.* A request for reconsideration must be concise and identify the alleged error.

(b) *Manner of filing.* A request for reconsideration must be submitted to the Board electronically at bfr@patreasury.gov, by facsimile at (717) 783-4499 or at the following address:

Board of Finance and Revenue
 Riverfront Office Center
 1101 South Front St., Suite 400
 Harrisburg, Pennsylvania 17104-2539

(c) *Notice to the other party.* If the Department files a request for reconsideration, the Department will provide the petitioner, or the petitioner's representative, with a copy of the request for reconsideration at the same time the Department files the request. The notice must be made to the address in the Board's order or by electronic delivery to an e-mail address provided by the petitioner. If the petitioner files a request for reconsideration, a copy of the request for reconsideration shall be provided to the Department electronically at RA-RVOCBFRNOTIF@pa.gov or at the following address:

Pennsylvania Department of Revenue
 Office of Chief Counsel
 Attn: Request for BF&R Reconsideration
 10th Floor, Strawberry Square
 Harrisburg, Pennsylvania 17128-1061

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 703.44. Board's response to request for reconsideration.

The Board will respond to requests for reconsideration either granting or denying the request. If the Board

grants a request for reconsideration, the Board will issue a letter to both parties setting forth any future applicable deadlines. In all cases for which a reconsideration request is granted, the Board will subsequently issue a reconsidered order.

§ 703.45. Appeal rights.

(a) *Appeal rights.* A request for reconsideration is not a substitute for a court appeal. When the Board denies the request for reconsideration, the Board's order is a "final order" for purposes of appeal to Commonwealth Court within the time specified by Pennsylvania Rule of Appellate Procedure 1571(b) (relating to determinations of the Board of Finance and Review). When the Board grants a request for reconsideration and issues a reconsidered order, the reconsidered order will be a "final order" appealable to Court within the time specified by Pennsylvania Rule of Appellate Procedure 1571(b).

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 31.14, 35.190, 35.225, 35.226 and 35.251.

Subchapter F. PUBLICATION OF ORDERS

Sec.

703.51. Publication of orders.

703.52. Redaction.

§ 703.51. Publication of orders.

(a) *General rule.* The Board will publish each final order, along with any dissenting opinion, that grants or denies in whole or in part a petition.

(b) *Location of order publication.* Published orders will be indexed and published on a publicly accessible web site maintained by the Board and accessible through the Board's web site.

(c) *Timing of publication.* The Board will not publish an order for at least 30 days after the order's mailing date to enable the petitioner to identify a trade secret or confidential proprietary information that needs to be redacted from the order.

§ 703.52. Redaction.

(a) *Redaction of confidential information.* Prior to publication of an order, the Board will edit the order to redact the following:

(1) An individual's Social Security number, home address, driver's license number, personal financial information as defined in section 102 of the Right-to-Know Law (65 P. S. § 67.102), home, cellular and personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number, and a record identifying the name, home address or date of birth of a child 17 years of age or younger.

(2) Specific dollar amounts of tax.

(3) Information identified by the petitioner as and that meets the definition of a trade secret or confidential proprietary information as defined in section 102 of the Right-to-Know Law. The petitioner is responsible for notifying the Board within 30 days of the mailing date of the order of a trade secret or confidential proprietary information that the petitioner does not want to be published. The notification must clearly identify the language in the order that should be redacted and the reason for the requested redaction.

(b) *Confidential information in a published order.* If, after an order is published, it is discovered that the published order contains confidential information that should not have been published, the Board should be

notified as soon as possible and it will make every reasonable effort to redact the confidential information promptly.

[Pa.B. Doc. No. 15-909. Filed for public inspection May 15, 2015, 9:00 a.m.]

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

[49 PA. CODE CH. 37]

Renewal Fee

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) proposes to amend § 37.17 (relating to schedule of fees) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. It is anticipated that the increased biennial renewal fees will be implemented with the September 30, 2017, biennial renewal.

Statutory Authority

Section 9(a) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P. S. § 156(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for the Proposed Rulemaking

Under section 9 of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from other fees, fines and civil penalties. If fees are inadequate to meet the minimum enforcement efforts required, section 9(b) of the act requires the Bureau of Professional and Occupational Affairs, after consultation with the Board, to increase the fees so that adequate revenues are raised to meet the required enforcement effort.

At the Board's meeting on March 12, 2014, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's actual revenue and expenses for Fiscal Year (FY) 2006-2007 through FY 2012-2013 and projected revenue and expenses through FY 2026-2027. At the end of FY 2012-2013 (a nonrenewal year), the Board accrued a deficit of approximately \$660,000. The BFO projects that at the end of FY 2013-2014 (a renewal year), the Board's deficit will be approximately \$226,000 and that by the

end of FY 2014-2015 (a nonrenewal year), the deficit will grow to approximately \$1.383 million. The BFO further projects that if the renewal fee is not increased, by the end of FY 2016-2017 (a nonrenewal year) the deficit will swell to approximately \$2.27 million and will continue to grow thereafter. However, if the renewal fee are increased to \$125 beginning with renewals in 2017, the BFO projects that the Board will have a positive balance of \$370,000 at the end of FY 2017-2018 (a renewal year) and a balance of \$1.626 million at the end of FY 2019-2020 (a renewal year).

During FYs 2011-2012 and 2012-2013 (roughly corresponding to the 2011-2013 biennial renewal period), the Board's revenue was \$2,020,257, and its expenses were \$2,585,258, for an operating deficit of \$565,000. During FYs 2013-2014 and 2014-2015, the BFO projects revenue of \$1.981 million and expenses of \$2.704 million, for an operating deficit of \$723,000. Without an increase in the renewal fee, these operating deficits will continue to grow due to ever-increasing expenses of operating the Board and its required enforcement efforts.

As a result, the Board voted at its March 12, 2014, meeting to increase biennial renewal fees from \$50 to \$100 to read as proposed in Annex A. With approximately 31,750 active licensees, this fee will raise \$3.175 million during each biennial renewal period. The Board believes that this fee will be adequate to cover operating expenses through at least the 2021-2023 biennial renewal period and, together with application fees and revenue from civil penalties, will be adequate to erase the overall deficit by the 2019-2021 biennium and continue a positive balance through FY 2026-2027.

Description of the Proposed Amendment

The proposed rulemaking would amend § 37.17 to increase the biennial renewal fees for professional engineers, land surveyors and geologists from \$50 to \$100.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 27,550 licensed professional engineers, 1,975 professional land surveyors and 2,225 licensed professional geologists, for a total of approximately 31,750 licensees who will be required to pay more to renew their licenses when they expire in 2015 and thereafter. The vast majority of licensees are considered to be working for small businesses. They will be impacted because their license fees will increase. The proposed rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the proposed rulemaking will not create additional paperwork for the regulated community or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 4, 2015, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, State Registration Board for Professional Engineers, Land Surveyors and Geologists, P. O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4713 (renewal fee) when submitting comments.

MICHAEL F. BRINKASH, PLS,
President

Fiscal Note: 16A-4713. No fiscal impact. The fee increase is necessary to offset costs of the Board. (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

QUALIFICATIONS FOR LICENSURE

§ 37.17. Schedule of fees.

(a) *Renewal fee.* The Board will charge the following renewal fee:

Biennial renewal of registration [\$50] \$100

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[Pa.B. Doc. No. 15-910. Filed for public inspection May 15, 2015, 9:00 a.m.]