

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 91, 93 AND 95]

Board Rules and Regulations

The Labor Relations Board (Board) proposes to amend 34 Pa. Code, Part V (relating to Labor Relations Board). The amendments are intended to update the Board's office locations and addresses, allow electronic filing of certain documents with the Board and permit service of certain documents on represented parties by e-mail.

These proposed changes to the rules and regulations were approved by the Board during a regularly scheduled meeting on September 18, 2018, and approved by the Secretary of Labor and Industry on November 6, 2018.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information contact Warren R. Mowery, Jr., Deputy Chief Counsel, 651 Boas Street, Room 418, Labor and Industry Building, Harrisburg, PA 17121, (717) 783-6016; or Nathan Bortner, Secretary, 651 Boas Street, Room 418, Labor and Industry Building, Harrisburg, PA 17121, (717) 783-6018.

This proposed rulemaking is available electronically at <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/Pages/default.aspx>.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of section 4(f) of the Pennsylvania Labor Relations Act (PLRA) (43 P.S. § 211.4(f)) (“[t]he board, by and with the approval of the Secretary of Labor and Industry, shall have authority, from time to time, to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this act”), and section 502 of the Public Employee Relations Act (PERA) (43 P.S. § 1101.502) (“[t]he board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act”).

D. *Background and Purpose*

Section 9(e) of the PLRA (43 P.S. § 211.9(e)) (“[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge”) established a 6-week statute of limitations for filing a Charge of Unfair Labor Practices with the Board. Police and Firefighters who have the right to organize under the Policemen and Firemen Collective Bargaining Act (P.L. 237, No. 111), are governed by the procedures and rules and regulations promulgated under the PLRA. *Philadelphia Fire Officers Association v. Pennsylvania Labor Relations Board*, 470 Pa. 550, 369 A.2d 159 (1977). Section 1505 of PERA (43 P.S. § 1101.1505) (“[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge”) similarly provides for a 4-month statute of limitations period for Charges of Unfair Practice involving public sector collective bargaining.

Additionally, there are other statutes and provisions governing the timeliness of documents filed with the Board, such as a request for fact-finding under Act 88 of 1992 (24 P.S. § 11-1122-A), or the 20-day period for filing of exceptions under § 95.98(a) (relating to decisions of the Board) of the Board's rules and regulations. See 34 Pa. Code § 95.98(a).

As presently promulgated, the Board's rules and regulations provide that documents submitted to the Board are filed only when received by the Board, or in the case of exceptions under 34 Pa. Code § 95.98, when mailed through the United States Postal Service with a Form 3817 Certificate of Mailing. This has on occasion resulted in untimely filing of charges and exceptions precluding an administrative remedy.

Use of e-mail to communicate and submit documentation has become standard and reliable in both the private and public sector. Updating the Board's rules and regulations to allow for e-mail filing of certain documents would utilize this commonly accepted technology to alleviate some of the inconveniences in timely filing documents with the Board.

Additionally, exceptions to a decision of the Board Secretary or a Board Hearing Examiner are due 20-days after issuance. The date of issuance of a Board letter or order is the date of mailing by certified mail to the filing party or their representative. The option of e-mail service of documents would allow for expedited receipt (often the same day as issuance) of Board issued letter and orders.

Further, the electronic filing of documents would alleviate the requirement for numerous paper copies to be filed with the Board.

The proposal was extensively discussed among Board staff with regard to meeting the statutory needs, administrative concerns and Board procedures, before drafting. Insight and suggestions were sought from other Commonwealth agencies and from public-sector labor relations authorities in other states through the Association of Labor Relations Authorities (ALRA). Comments were also sought from lawyers representing public-sector employers and unions before the Board, through inquiry to the Pennsylvania Bar Association's Labor and Employment Law Section. The proposal was reviewed and approved by the Board, prior to its submission as this proposed rulemaking.

E. *Summary of Rules and Regulations*

Chapter 91. Private and Public Employes

§ 91.2. Appearances.

Changes to this section would add the option of allowing the attorney or representative for a party to elect, in an entry of appearance, to receive service of filings by other parties, and copies of Board letters and orders by e-mail.

Chapter 93. Private Employes

§ 93.11. Institution of proceeding.

Changes to this section would update the regulations to reflect that the Board no longer has a regional office in Philadelphia.

§ 93.12. *Service and filing of papers.*

Changes to clause (a) of this section would eliminate the requirement of service by “registered mail” while retaining the requirement of service on an unrepresented party by certified mail. The changes to clause (a) would also add that where an attorney or representative has elected to accept e-mail service, that service of documents on the attorney or representative may be made by e-mail at the designated e-mail address.

The changes would create a new clause (b), Methods of Filing with the Board. Clause (b)(1) would retain the current method of filing with the Board by actual receipt, and clarify that Charges and Petitions sent to the Board by mail will be filed on the date of receipt by the Board. Clause (b)(2) would add the option of filing any document, except a Petition with a “showing of interest,” see 34 Pa. Code § 95.1 (relating to definitions), by e-mail to a resource e-mail account established exclusively for receipt of documents filed with the Board, and would also add the option of agreeing to e-mail service of letters and orders from the Board. This proposed rulemaking would place the burden on the filing party for a failed receipt of documents due to computer file errors in the attachments or because of disruptions in electronic transmission.

Previous clause (b) would be renamed as clause (c). Clause (c) retains the requirement that any filing with the Board, whether filed when received or by e-mail, must be filed with the Board before the close of business on the last day for filing.

Prior clause (c) would be renamed (d) and continue to require that filings be legible.

Previous clause (d) requiring multiple copies would be eliminated.

Chapter 95. Public Employes

§ 95.11(b)(8). Changes to this section would reflect the current address of the Board’s office in Harrisburg, PA.

§ 95.13(c). Changes to this section would reflect the current address of the Board’s office in Harrisburg, PA.

§ 95.31. *Charges.*

Changes to this section would eliminate the need to file multiple paper copies of Charges of Unfair Practices with the Board.

§ 95.41. *Service of papers.*

Changes to this section would eliminate the requirement of service by “telegram” while retaining the requirement of service on an unrepresented party by mail or in person. The changes would also add the provision that where an attorney or representative has elected to accept e-mail service, that service of documents on the attorney or representative may be made by e-mail at the designated e-mail address.

§ 95.42. *Filing of papers.*

Clause (b) of this section would be amended to reflect that the Board no longer has a regional office in Philadelphia, PA.

The changes to this section would create a new clause (c), Methods of Filing with the Board. Clause (c)(1) would retain the current method of filing with the Board by actual receipt, and clarify that Charges and Petitions sent to the Board by mail will be filed on the date of receipt by the Board. Clause (c)(2) would add the option of filing any document, except a Joint Election Request or Petition with a “showing of interest,” by e-mail to a resource e-mail account established for the Board set up exclu-

sively for receipt of filed documents, and would also add the option of agreeing to e-mail service of letters and orders from the Board. This proposed rulemaking would place the burden on the filing party for a failed receipt of documents due to computer file errors in the attachments or because of disruptions in electronic transmission.

Previous clause (c) would be renamed as clause (d). Clause (d) retains the requirement that the first paper filed with the Board contain an address of the parties for initial service of documents issued by the Board.

Prior clause (d) would be renamed (e) and continue to require that filings be legible.

Previous clause (e) requiring multiple copies would be eliminated.

§ 95.98. *Decisions of the Board.*

Existing clause § 95.98(a)(1), exceptions to a hearing examiner decision, allows the filing of exceptions to the Board based on “actual receipt” by the Board, or on the date deposited in the United States mail as shown on a Form 3817 Certificate of Mailing. Changes to clause (a)(1) would amend “actual receipt” to include the changes in § 93.12 (relating to service and filing of papers) and § 95.42 (relating to filing of papers), that would allow filing by actual receipt or by e-mail. Provisions in § 95.98(a)(1) allowing the filing of exceptions by United States mail with a Form 3817 would be retained.

Changes to § 95.98(c) would eliminate the need to file multiple copies of exceptions with the Board, and eliminate the requirement to serve a copy of a response to exceptions on the hearing examiner.

F. Benefits, Costs and Requirements

The jurisdiction of the Board extends to public employers, including but not limited to the Commonwealth, political subdivisions, municipalities, school districts and State-related universities. Board jurisdiction includes employees of public employers and employee representatives. The Board has very limited jurisdiction over private employers under the PLRA.

Benefits. The proposed changes to the Board’s rules and regulations to allow filing by e-mail, and to eliminate the need for parties to file multiple copies of documents, is a significant benefit of providing an additional means for timely filing of documents with the Board.

Costs. The changes to the Board’s rules and regulations to allow filing by e-mail, and to eliminate the need for parties to file multiple copies of documents, is also a cost savings for persons with cases and petitions before the Board.

Requirements. The proposed changes to the Board’s rules and regulations to allow filing by e-mail, and to eliminate the need for parties to file multiple copies of documents, does not require filing by e-mail or eliminate existing means of filing with the Board. Charge of Unfair Practice (PERA-9) and Charge of Unfair Labor Practice (PLRA-15) forms currently utilized by the Board, will remain in existence and per the proposed changes may also be filed by e-mail. Existing forms may be found on the Board’s web site at <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/Pages/default.aspx>.

G. Administrative Code and Commonwealth Attorney’s Act

Under section 232 of The Administrative Code of 1929 (71 P.S. § 232), the Board received a fiscal note, Fiscal Note 104-1, from the Office of the Budget for this proposed rulemaking.

The Board is an independent agency under the Commonwealth Attorney's Act, and under section 204(b) (71 P.S. § 732-204(b)), the Board submitted this proposed rulemaking to the Office of Attorney General for review for form and legality.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 28, 2019, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Labor and Industry Committees. In addition to submitting this proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period.

I. *Public Comments*

Interested persons are invited to submit comments, suggestions or objections regarding this proposed rulemaking by mail to Nathan Bortner, Secretary, Labor Relations Board, 651 Boas Street, Room 418, Labor and Industry Building, Harrisburg, PA 17121, fax (717) 783-2974, nbortner@pa.gov. A reference to this proposed rulemaking and a return name and address must be included for each submission. Comments, suggestions or objections must be received by the Board by May 7, 2019 (within 30 days of publication in the *Pennsylvania Bulletin*).

NATHAN BORTNER,
Secretary

Fiscal Note: 104-1. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART V. LABOR RELATIONS BOARD

CHAPTER 91. PRIVATE AND PUBLIC EMPLOYEES

GENERAL PROVISIONS

§ 91.2. Appearances.

(a) An attorney or other representative desiring to participate in a proceeding before the Labor Relations Board (Board) or a designated agent of the Board, and who wishes to be served with papers, shall file an appearance either by letter, or by a form provided by the Board or by oral request at the hearing. The entry of appearance shall indicate whether the attorney or representative will accept service by e-mail and, if so, provide a valid e-mail address for service.

(b) A person who has been employed by the Board is not permitted to appear as attorney or representative for a party in a case which was pending before the Board during the period of his employment.

CHAPTER 93. PRIVATE EMPLOYEES

PREHEARING PROVISIONS

§ 93.11. Institution of proceedings.

(a) Charges and petitions instituting proceedings before the Board may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in [**Philadelphia or**] Pittsburgh. Charge and petition forms are available at Board offices.

(b) Charges and petitions may be filed by a person entitled to do so under the act, shall be in writing, shall

contain pertinent information required by the act and shall be verified by the person filing the charges and petitions.

(c) In actions before the Board, the first paper filed on behalf of each party shall contain an address at which service of complaints, orders and other processes and papers of the Board may be made. Thereafter, a party may file with the Board [**a suggestion**] **an entry of appearance under § 91.2(a) (relating to appearances)**, which shall form part of the record in the case, setting forth a new address at which the service may be made. If he does not do so, notice sent to him by registered mail at his last address of record shall be equivalent to service.

§ 93.12. Service and filing of papers.

(a) Service of papers by a party on other parties shall be made personally, or by [**registered or**] certified mail, or by leaving a copy thereof with the person then in charge at the principal office or place of business of the person to be served. Where an attorney or representative has entered his appearance under § 91.2(a) (relating to appearances), complaints, orders and other processes and papers shall be served on the attorney or representative and need not be served on the party. **Service on an attorney or representative may be made personally, by United States Postal Service first-class mail, or where the attorney or representative has approved service by e-mail in an entry of appearance under § 91.2, by e-mail to the e-mail address provided in the entry of appearance.**

(b) Methods of Filing with the Board.

(1) In person at the principal office of the Board in Harrisburg, or with the regional office of the Board in Pittsburgh. If mailed to the Board through the United States Postal Service or third-party courier, the date of filing shall be the date of receipt by the Board in its Harrisburg or Pittsburgh office.

(2) Filings, other than a petition or other document with a showing of interest as defined by § 95.1 (relating to definitions), may be filed with the Board by electronic mail by e-mailing a portable document format (PDF) file of the scanned complete signed document, including attachments and exhibits thereto, to the Board at the Board's designated e-mail address. A party filing by e-mail is responsible for attaching the document using the proper format, and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the e-mailed document may not be properly received or timely filed.

[(b)] (c) When the acts, or this chapter or an order of the Board requires the filing of a motion, brief, exception or other paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board.

[(c)] (d) Papers, pleadings, briefs or other documents filed with the Board shall be legibly typed, printed or otherwise legibly duplicated.

[(d) An original and three copies of the papers, pleadings, briefs or other documents to be filed with the Board shall be submitted to the Board unless otherwise specified.]

**CHAPTER 95. PUBLIC EMPLOYEES
INSTITUTION OF REPRESENTATION
PROCEEDINGS**

§ 95.11. Request for certification.

(a) A public employe, employe organization or group of employes and the public employer may, when the public employe organization represents a majority of the employes in an appropriate unit, jointly submit to the Board a request for certification upon a form to be supplied by the Board.

(b) The request for certification shall set forth the following:

(1) The name, address and telephone number of the public employer and the person to contact, including his title, if known.

(2) The name, address and affiliation, if any, of the employe organization and the name, address and telephone number of its representative.

(3) A description and factual statement in support of the unit claimed to be appropriate for the purpose of exclusive representation.

(4) The budget submission date of the public employer.

(5) The signatures of the parties, including their titles and telephone numbers.

(6) A statement that the employe organization represents a majority of the employes in the unit and the method of determining the representative majority. Proof of the representative majority shall be submitted to the hearing examiner, if requested.

(7) The names and addresses of known employe representatives, individuals, labor organizations or groups claiming to represent any of the employes in the bargaining unit.

(8) Five days prior to the submission to the Board of the joint request for certification, the employer shall post on the bulletin boards at all locations where employes in the requested unit work a copy of the joint request for certification and a statement that the request will be filed with the Pennsylvania Labor Relations Board, [1601] 418 Labor and Industry Building, 651 Boas Street, Harrisburg, Pa. [17120] 17121, for the purpose of securing from that Board a certification of _____ as the exclusive bargaining

(Name of employe representative) representative for the employes within the unit.

(9) Other relevant facts.

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§ 95.13. Consent to election request.

(a) If a public employer consents to an election request by a public employe, a group of public employes or an employe organization, the consent shall be given in writing to the party giving notice within 10 days of the receipt of an election request.

(b) Upon consent to an election request, a joint election request shall be submitted to the Board, in triplicate, upon forms prepared by the Board, which shall include the following:

(1) A description and factual statement in support of the unit deemed appropriate.

(2) The basis for alleging a 30% interest or more.

(3) A list of all unit employes prepared by the employer in the order requested by the Board with occupations or classifications of those agreed upon as eligible to vote.

(4) Suggested times and places of holding the election.

(5) The budget submission date of the public employer.

(6) A 1% showing of interest among employes within the requested unit is required before another employe representative may be placed on the ballot. A 10% showing of interest among employes within the requested unit is required before another employe representative may be permitted to intervene as a party.

(7) If a public employer refuses to consent within the 10-day period to an election, the party making the request may file a petition for representation election. A public employer may file a petition for representation election if, after receiving a notice for an election request, the moving party thereafter fails to submit a joint election request within 10 days after consent is given by the employer.

(c) Five days prior to the submission to the Board of the joint election request, the employer shall post on the bulletin boards at all locations where employes in the requested unit work, a copy of the joint election request and a statement that the request will be filed with the Pennsylvania Labor Relations Board, [1601] 418 Labor and Industry Building, 651 Boas Street, Harrisburg, Pa. [17120] 17121, for the purpose of securing from that Board a certification of _____

(Name of employe representative)

as the exclusive bargaining representative for the employes within the unit.

UNFAIR PRACTICES PROCEEDINGS

§ 95.31. Charges.

(a) Charges shall be in writing on forms supplied by the Board and shall be signed and sworn to before a person authorized to administer oaths. An original [and three copies] of the charge shall be filed with the Board by one or more public employes, or an employe organization, acting in their behalf, or by a public employer.

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PREHEARING PROVISIONS

§ 95.41. Service of papers.

Service of papers by a party on other parties shall be made personally, by United States mail, [by telegram] or by leaving a copy of the papers with the person then in charge at the principal office or place of business of the person to be served. Where an attorney or representative has entered his appearance under § 91.2(a) (relating to appearances), complaints, orders and other processes and papers shall be served on the attorney or representative and need not be served on the party. **Service on an attorney or representative may be made personally, by United States Postal Service first-class mail, or where the attorney or representative has approved service by e-mail in an entry of appearance under § 91.2, by e-mail to the e-mail address provided in the entry of appearance.**

§ 95.42. Filing of papers.

(a) When the act, this chapter or an order of the Board requires the filing of a motion, brief, exception or other

paper in a proceeding, the document shall be received by the Board or the officer or agent designated by the Board to receive the document before the close of business of the last day of the time limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board.

(b) Charges and petitions may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in [**Philadelphia or**] Pittsburgh. Charge and petition forms are available at Board offices.

(c) Methods of Filing with the Board.

(1) In person at the principal office of the Board in Harrisburg, or with the regional office of the Board in Pittsburgh. If mailed to the Board through the United States Postal Service or third-party courier, the date of filing shall be the date of receipt by the Board in its Harrisburg or Pittsburgh office.

(2) Except for a Joint Election Request (Form PERA-3), Petition (Form PLRB-13 or Form PERA-4), or other document with a showing of interest, filing by electronic mail by e-mailing a portable document format (PDF) file of the scanned complete signed document, including attachments and exhibits thereto, to the Board at the Board's designated e-mail address. A party filing by e-mail is responsible for attaching the document using the proper format, and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the e-mailed document may not be properly received or timely filed.

[(c)] (d) Actions before the Board, the first paper filed on behalf of each party shall contain an address including zip code at which service of complaints, orders and other processes and papers of the Board may be made. Thereafter, a party may file with the Board [**a correction**] **an entry of appearance under § 91.2(a) (relating to appearances)**, which shall form part of the record in the case, setting forth a new address [**with zip code**] at which the service may be made. If he does not do so, notice sent to him by United States mail at his last address of record shall be equivalent to service.

[(d)] (e) Papers, pleadings, briefs or other documents filed with the Board shall be legibly typed, printed or otherwise legibly duplicated.

[(e) **An original and three copies of papers, pleadings, briefs or other documents to be filed with the Board shall be submitted to the Board, unless otherwise specified.**]

PROVISIONS FOR FORMAL PROCEEDINGS

§ 95.98. Decisions of the Board.

(a) *Exceptions to a hearing examiner decision.* Filing of statements of exceptions to a hearing examiner decision will be as follows:

(1) A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision issued under § 95.91(k)(1) (relating to hearings) or a nisi order issued under § 95.96(b) (relating to exceptions) certifying a representative or the results of an election. Exceptions will be deemed [**received upon actual receipt**] **filed in accordance with § 93.12 (relating to service and filing of papers) or § 95.42 (relating to filing of**

papers), or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions. The statement of exceptions shall:

(i) State the specific issues of procedure, fact or law, or other portion of the proposed decision to which each exception is taken.

(ii) Identify the page or part of the decision to which each exception is taken.

(iii) Where possible, designate by page citation or exhibit number the portions of the record relied upon for each exception.

(iv) State the grounds for each exception.

(2) No reference may be made in the statement of exceptions to any matter not contained in the record of the case.

(3) An exception not specifically raised shall be waived.

(4) The party shall, concurrent with its filing of the statement of exceptions and supporting brief, serve a copy of the same upon each party to the proceeding. Proof of service shall be filed with the Board.

(b) *Failure to file exceptions.* When no exceptions are filed to a proposed decision, it will become final upon the expiration of 20-calendar days from the date of issuance.

(c) *Response to exceptions.* Within 20-calendar days following the date of receipt of the statement of exceptions and supporting brief, a party may file [**an original and four copies of**] a response to the statement of exceptions and a supporting brief with the Board [**and one copy with the hearing examiner**]. Copies of these documents shall be served concurrently on each party, and proof of service shall be filed with the Board.

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[Pa.B. Doc. No. 19-486. Filed for public inspection April 5, 2019, 9:00 a.m.]

**DEPARTMENT OF
LABOR AND INDUSTRY**

[34 PA. CODE CH. 111]

Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeal Board

The Department of Labor and Industry (Department), Workers' Compensation Appeal Board (WCAB) proposes to amend 34 Pa. Code Chapter 111, Subchapter B (relating to appeals) to streamline the hearing and disposition of appeals to the WCAB.

Statutory Authority

The Department proposes these amendments under the authority contained in sections 401.1 and 435(a) and (c) of the Workers' Compensation Act (act) (77 P.S. §§ 710 and 991(a) and (c)) and section 2205 of The Administrative Code of 1929 (71 P.S. § 565).

Background

The WCAB's regulations currently require oral argument in all appeals and cross appeals unless the parties agreed to submission on briefs. See 34 Pa. Code

§§ 111.13(b) and 111.17(a) (relating to processing of appeals and cross appeals; and oral argument). Moreover, these regulations require the petitioner's brief to be filed at or before the date of the oral argument, while the respondent's brief is due 30 days after oral argument. See 34 Pa. Code § 111.16(a) and (b) (relating to briefs: content and form and time for filing). The petitioner generally is the party seeking to review a ruling or decision by a workers' compensation judge, while the respondent is the party or parties in whose favor the matter was decided by the judge. 34 Pa. Code § 111.3(a) (relating to definitions) specifically regarding the definitions of "petitioner" and "respondent."

The current briefing and oral argument requirements significantly delay the consideration and disposition of appeals. Oral arguments are scheduled more frequently in major population areas and less frequently in other areas. As a result, there is greater delay in processing appeals from a petitioner in less-populated areas where oral arguments are only held two or three times a year. Consequently, the appeal is not placed in line for decision until after the oral argument and the receipt of briefs. Under current practice, the WCAB's rules further permit oral request for extensions of the petitioner's brief at oral argument, 34 Pa. Code § 111.16(c), thereby facilitating additional delay in case processing. The average time for decision on appeals to the WCAB was approximately 471 days in 2015, 347 days in 2016 and 334 days in 2017.

The present requirement for oral argument in every case increases the WCAB's travel, lodging and meal expenses, as well as the parties' expenses to the extent that they or their attorneys must attend the arguments. The WCAB generally conducts six argument sessions a year in both Pittsburgh and Philadelphia, four in Harrisburg and Scranton, three in Johnstown, and two in Erie. The majority of these sessions are for multiple days. The WCAB's travel costs for fiscal year 2016-2017 totaled nearly \$53,000. These expenses outweigh the benefit of argument in most cases, particularly since the WCAB does not have both parties' briefs prior to the argument, and may not even have either party's briefs if the petitioner requests an extension at argument. The developments in communication and computer technology have reduced the need for the WCAB members to meet in-person to hear arguments, discuss pending cases or circulate decisions for signature.

Compliance with Executive Order 1996-1

The Department engaged in extensive public and stakeholder outreach during the drafting process. The Department sought comment from all participants in the workers' compensation system through its Workers' Compensation Automation and Integration System (WCAIS). WCAIS is the enterprise tool used regularly by every workers' compensation employer, insurer (or self-insurer) and legal practitioner to file and manage workers' compensation claims. Stakeholder input was also solicited through the Workers' Compensation Committee of the Pennsylvania Bar Association. Additionally, the Secretary of Labor and Industry reconstituted the Workers' Compensation Rules Committee, a committee originally established by the Secretary in 1978 for the purpose of obtaining comments on procedural rules governing the workers' compensation system. The Workers' Compensation Rules Committee voted on December 11, 2017, to approve the regulatory amendments outlined in Annex A.

This proposed rulemaking was also presented to the Pennsylvania Workers' Compensation Advisory Council created under section 447 of the Workers' Compensation Act on January 10, 2017, for review and comment.

Purpose

This proposed rulemaking eliminates the mandatory scheduling of oral argument in every case. Instead, the WCAB is given discretion to determine if oral argument is appropriate in select cases. Furthermore, oral argument will be conducted after briefs are submitted and may be conducted by telephone or other electronic means. These changes will streamline the processing and disposition of appeals, reduce the time for decision in most cases and achieve cost savings to both the WCAB and the parties.

Affected Persons

The persons affected by this proposed rulemaking include the WCAB's Commissioners and staff, attorneys practicing before the WCAB, and parties to appeals filed with the WCAB. The parties in workers' compensation cases include injured employees, possibly their dependents in the case of a fatal injury, self-insured employers, employers typically represented by workers' compensation insurance companies and the Department's Bureau of Workers' Compensation representing special funds created under the act.

Fiscal Impact

This proposed rulemaking is designed to reduce costs through reduced travel costs and litigation expenses, and will not result in increased costs to the public or private sectors. Because the workers' compensation system is funded through assessments on workers' compensation insurance carriers and self-insured employers, any savings realized in the administration of the system may result in savings to the regulated community through lowered assessments. See section 446 of the Workers' Compensation Act (77 P.S. § 1000.2) (creating the Workers' Compensation Administration Fund and providing for maintenance of the fund through an annual assessment).

Summary of Proposed Rulemaking

§ 111.13. Processing of Appeals and Cross Appeals.

This section is amended to eliminate the automatic scheduling of oral argument upon appeals or cross appeals as prerequisite to the WCAB's consideration of the appeal. Instead, appeals will be determined on briefs and the record, unless the WCAB decides to conduct oral argument in a particular case.

§ 111.16. Briefs: Content and Form and Time for Filing.

The proposed amendments to this section address the time for filing briefs. This section is amended to require that the petitioner's brief be filed within 30 days of the acknowledgement of receipt of appeal by the WCAB. The respondent's brief will be due 30 days after service of the petitioner's brief. A request for an extension of time to file a brief must indicate the other parties' position as to the request. The section is amended to eliminate references to oral argument.

This section is also amended to permit a reply brief by petitioner. A reply brief must be filed within 15 days after service of respondent's brief. The amendments to this section further require parties that wish to request oral argument to include a short statement in the brief addressing the criteria for granting oral argument established in § 111.17.

§ 111.17. *Oral Argument.*

The proposed amendments to this section allow oral argument to be scheduled at the WCAB's discretion, following the close of the briefing schedule, and authorizes oral argument to be conducted by telephone or other electronic means.

In deciding whether to grant oral argument, this section is amended to set forth criteria that the WCAB will use. The criteria include the preference for granting oral argument where there is a substantial or novel issue, where the issue is of precedential value, where the WCAB seeks clarification of a legal or factual point or where intervening court decisions, legislation or regulation may impact on the resolution of the matter. It also provides circumstances in which the granting of oral argument is generally not appropriate, including untimely or frivolous requests, issues lacking specificity, issues that are not novel or are adequately briefed, and issues where there is clear precedent.

This section is also amended to provide that where oral argument is scheduled, parties will be notified as far in advance as possible of the argument date.

§ 111.18. *Decisions of the Board.*

This section is amended to delete current subsection (b), which consists of an obsolete reference to section 441 of The Administrative Code of 1929 (71 P.S. § 151). Section 441 was repealed through the Act of November 9, 2006 (P.L. 1362, No. 147) and replaced by section 401.2 of the Act, 77 P.S. § 710.1. Current subsections (c) and (d) respectively are re-lettered as subsections (b) and (c) in light of this deletion.

Reporting, Recordkeeping and Paperwork Requirements

This proposed rulemaking does not require any new forms, and thus does not impose any additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community. They will reduce the need for the WCAB's staff to issue separate argument notices for all cases. The existing forms used by the WCAB to acknowledge appeals, notify parties of briefing requirements and oral argument may require minor modification since oral argument is no longer automatic; briefs are due before any oral argument granted by the WCAB in its discretion; and oral argument may be conducted by teleconference or other electronic means.

Sunset Date

A sunset date is not appropriate for this proposed rulemaking. The WCAB will periodically monitor this proposed rulemaking and submit amendments as needed.

Effective Date

This proposed rulemaking will be effective on publication of the final-form regulation in the *Pennsylvania Bulletin*.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Kelly K. Smith, Executive Deputy Chief Counsel, 651 Boas Street, Harrisburg, PA 17121, fax (717) 787-1303, kellysmith@pa.gov within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 27, 2019, the Department 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 and Senate Labor and Industry Committees. A copy of this proposed rulemaking is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this 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 this proposed rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

W. GERARD OLEKSIK,
Secretary

Fiscal Note: 12-105. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

**PART VII. WORKERS' COMPENSATION
APPEAL BOARD**

**CHAPTER 111. SPECIAL RULES OF
ADMINISTRATIVE PRACTICE AND PROCEDURE
BEFORE THE WORKERS' COMPENSATION
APPEAL BOARD**

Subchapter B. APPEALS

§ 111.13. **Processing of appeals and cross appeals.**

(a) Upon receipt of an appeal or cross appeal, the Board will acknowledge receipt to all parties.

(b) The Board will, in addition to acknowledging receipt of the appeal or the cross appeal, establish the briefing schedule and indicate that the appeal and the cross appeal will be **[scheduled for oral argument unless all parties agree to submission of the case on only briefs or record] determined on the briefs or record unless the Board decides, in its discretion, to conduct oral argument as set forth in § 111.17 (relating to oral argument).**

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

§ 111.16. **Briefs: content and form and time for filing.**

(a) A brief on behalf of a petitioner shall be filed with the Board **[at or before the date of oral argument. If oral argument is waived, petitioner shall file a brief]** within 30 days of the date of the Board's acknowledgement of receipt of the appeal as set forth in § 111.13 (relating to processing of appeals and cross appeals).

(b) A brief on behalf of a respondent shall be filed with the Board **within** 30 days after **[oral argument] service of the petitioner's brief.** Otherwise, the respondent shall file a brief with the Board within 60 days of the date of the Board's acknowledgment of receipt of the appeal as set forth in § 111.13.

(b.1) If a petitioner desires to address issues raised in respondent's brief, the petitioner may file a reply brief. A reply brief on behalf of the petitioner shall be filed with the Board within 15 days after service of the respondent's brief.

(c) Upon written request of a party directed to the **[Secretary of the] Board [or upon oral request at the time of oral argument,]** and with notice to all parties, the Board may extend **[or shorten]** the time for filing of the party's brief only for good cause shown. A party shall present a request to extend **[or shorten]** the time **[at or before the date set for filing that party's brief]** for filing a brief before the date set for filing that party's brief. The request shall indicate the position of the other parties with respect to the request.

(d) Briefs not filed with the Board in accordance with the schedule in this section or as modified by the Board under subsection (c) will not be considered and will result in disposition of the appeal without further notice or consideration of the brief of the party failing to comply with these deadlines or schedule.

(e) Briefs, except as otherwise allowed, shall consist of the following items, separately and distinctly set forth:

- (1) A short statement of the questions involved.
- (2) A statement of the facts by the petitioner, or counterstatement of the facts by the respondent.
- (3) The argument.
- (4) A short conclusion setting forth the precise relief sought.

(4.1) Where oral argument is requested, a short statement explaining the need for oral argument consistent with the criteria specified in § 111.17 (relating to oral argument).

(5) A proof of service as specified in § 111.12(e) (relating to filing, service and proof of service) insofar as applicable.

(f) An original brief shall be filed.

(g) Briefs shall be served on all parties.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 31.35, 33.37, 35.212 and 35.221 and also supersede 1 Pa. Code Chapter 35, Subchapter F (relating to briefs).

§ 111.17. Oral Argument.

(a) **[The Board will schedule oral argument in every appeal or cross appeal unless all parties to the appeal or the cross appeal, upon receiving the acknowledgement of appeal or cross appeal, indicate that no oral argument is requested, or that it is waived.]** Oral argument on an appeal or cross appeal may be scheduled at the discretion of the Board. In determining whether to schedule oral argument, the Board will apply the following criteria:

(1) Oral argument is generally unnecessary or inappropriate when:

- (i) The request has not been timely filed.**
- (ii) The request is frivolous.**
- (iii) The request does not set forth the issue with clarity and specificity.**
- (iv) The issue is tightly constrained, not novel and the briefs adequately cover the arguments.**
- (v) The issue in controversy has clearly been decided by the courts.**

(vi) The facts and legal arguments have been presented adequately in the record and accompanying briefs and oral argument would not be of significant assistance to the Board in the decisional process.

(2) A request for oral argument may be granted for any of the following reasons:

(i) The request presents a substantial or novel legal issue.

(ii) The resolution of the issue presented will be of institutional or precedential value.

(iii) The Board has asked counsel to clarify an important legal, factual or procedural point. In lieu of, or in combination with, the granting of a request for oral argument, the Board may request the participants to address these points in writing.

(iv) A court decision, legislation, regulation or an event subsequent to the filing of the last brief may bear significantly upon the matter. In lieu of, or in combination with, the granting of a request for oral argument, the Board may request the participants to address these issues in writing.

(v) An important public interest may be affected.

(b) **[The Board will hear oral argument on appeals and cross appeals according to a schedule prepared in advance for each calendar year. Oral argument will be conducted in Harrisburg, Philadelphia and Pittsburgh and in other locations throughout this Commonwealth, as the Board may schedule, or, as is appropriate in the Board's judgment.]** Oral argument may be conducted in Harrisburg, Philadelphia, Pittsburgh or other locations in this Commonwealth, or by telephone or other electronic means, as the Board may determine.

(c) **[Oral]** If allowed, oral argument will be scheduled at the earliest possible date [pursuant to the schedule as established by the Secretary of the Board] following the close of the briefing schedule.

(d) **[Parties shall be advised as far in advance as possible of the date of oral argument by the acknowledgment of appeal or cross appeal as specified in § 111.13(b) (relating to processing of appeals and cross appeals).]** The Board will notify parties of the scheduling of oral argument as far in advance as possible of the argument date.

(e) Oral argument shall consist of a presentation, including rebuttal, if necessary, by the petitioner and respondent.

(f) A petitioner or respondent represented by counsel need not be present at oral argument.

(g) Oral argument may be conducted before one or more members of the Board.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 33.51, 35.204, 35.214 and 35.221.

§ 111.18. Decisions of the Board.

(a) The decision of the Board on an appeal and a cross appeal shall be issued as promptly as possible following oral argument or the receipt of briefs, whichever occurs later.

[(b) Decisions of the Board on an appeal shall be issued under section 441 of the Administrative Code of 1929 (71 P.S. § 151).]

(c) **(b)** Decisions of the Board will be served on all parties and the judge from whose decision the appeal was taken.

[(d)] **(c)** Subsections **[(a)—(c)]** **(a)** and **(b)** supersede 1 Pa. Code §§ 31.13, 31.14, 35.201—35.207 and 35.226.

[Pa.B. Doc. No. 19-487. Filed for public inspection April 5, 2019, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 91 AND 92a]

Corrective Amendment to 25 Pa. Code § 91.22

The Environmental Quality Board has discovered a discrepancy between the agency text of proposed amendments to 25 Pa. Code § 91.22 (relating to fees) as deposited with the Legislative Reference Bureau and the official text of the proposal published in the *Pennsylvania Bulletin* at 49 Pa.B. 1518 (March 30, 2019) for public comment. An entry for Major Sewage Treatment Facility was inadvertently omitted from the proposed published chart in § 91.22.

Therefore, under 45 Pa.C.S. § 901 (relating to official text of published documents), the Environmental Quality Board has deposited with the Legislative Reference Bureau a correction to proposed amendments to 25 Pa. Code § 91.22.

The public comment period will close on May 14, 2019, for the proposed rulemaking published at 49 Pa.B. 1518 (March 30, 2019) which includes these amendments to § 91.22. The effective date of these proposed amendments will be upon final-form publication in the *Pennsylvania Bulletin*.

The corrected version of 25 Pa. Code § 91.22 appears in Annex A.

PATRICK McDONNELL,
Chairperson

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

APPLICATIONS AND PERMITS

§ 91.22. Fees.

(a) Applications for **new individual** water quality management permits [**from parties except agencies of the Commonwealth**], **reissuance of individual water quality management permits, and requests for permit amendments and transfers** shall be accompanied by a [**check**] **fee** payable to “Commonwealth of Pennsylvania,” in the [**following**] amounts[:] **specified below.**

- (1) For applications for single residence sewage treatment plant permits—\$25.
- (2) For applications for sewer extension permits—\$100.
- (3) For applications for other water quality management permits—\$500.]

<i>Category</i>	<i>Application Type</i>	<i>Fee</i>
Joint Pesticides Permit	New and Reissuance	\$500
	Amendment	\$100
	Transfer	\$50
Major Sewage Treatment Facility	New	\$10,000
	Amendment	\$2,000
	Transfer	\$250
Major Industrial Waste Treatment Facility	New	\$15,000
	Amendment	\$2,000
	Transfer	\$500
Minor and Non-NPDES Sewage Treatment Facility	New	\$5,000
	Amendment	\$500
	Transfer	\$250
Minor and Non-NPDES Industrial Waste Treatment Facility	New	\$7,500
	Amendment	\$500
	Transfer	\$250
Single Residence Sewage Treatment Plant	New	\$200
	Amendment	\$100
	Transfer	\$50

<u>Category</u>	<u>Application Type</u>	<u>Fee</u>
<u>Small Flow Treatment Facility</u>	<u>New</u>	<u>\$1,000</u>
	<u>Amendment</u>	<u>\$200</u>
	<u>Transfer</u>	<u>\$100</u>
<u>Sewer Extensions</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Pump Station</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Sewage</u>	<u>New and Reissuance</u>	<u>\$5,000</u>
	<u>Amendment</u>	<u>\$1,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Land Application and Reuse of Industrial Waste</u>	<u>New and Reissuance</u>	<u>\$10,000</u>
	<u>Amendment</u>	<u>\$2,000</u>
	<u>Transfer</u>	<u>\$250</u>
<u>Manure Storage and Wastewater Impoundment</u>	<u>New</u>	<u>\$2,500</u>
	<u>Amendment</u>	<u>\$500</u>
	<u>Transfer</u>	<u>\$250</u>

(b) [An] NOI fees for coverage under a general water quality management permit, **including fees for amendments to and transfers of general permit coverage**, shall be [accompanied by a check] made payable to the “Commonwealth of Pennsylvania[,]” [in the amount no greater than \$500 as set forth in the public notice for the general water quality management permit as described in § 91.27(b)(1) (relating to general water quality management permit).] **The fees for a general permit in § 91.27(b)(1) (relating to general water quality management permit) shall be established in the general permit. NOI fees may not exceed the individual permit application fees in subsection (a) for the equivalent category and application type.**

(c) **The Department will adjust fees for WQM permit applications required under subsection (a) every 2 years based on the United States Bureau of Labor Statistics Employment Cost Index for State and Local Government Compensation, or an equivalent index recognized by the United States Department of Labor, beginning 2 years after _____ (Editor’s Note: The blank refers to the effective date of the final-form rulemaking). The adjustment will be based upon the cost difference for the most recent 2-year period prior to the calculation. The fees shall not be adjusted if the application of the index would result in fees exceeding the Department’s costs to administer the Clean Water Program. The Department will publish the final adjusted fee schedule and effective date in the *Pennsylvania Bulletin*.**

(d) **The Department will review the adequacy of the fees established in this section every 3 years and provide a written report to the EQB. The report will identify disparities between the amount of program income generated by the fees and the costs to administer the program, and contain recommendations to increase fees to eliminate any disparities, including recommendations for regulatory amendments to increase program fees.**

(e) **Any Federal or Commonwealth agency or independent Commonwealth commission that provides funding to the Department for the implementation of the WQM program through terms and conditions of a mutual agreement may be exempt from the fees in this section.**

[Pa.B. Doc. No. 19-488. Filed for public inspection April 5, 2019, 9:00 a.m.]