

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84]

Tables Approved for Use in Determining Minimum Nonforfeiture Standards and Minimum Standards for Valuation

The Insurance Department (Department) amends Chapter 84 (relating to tables approved for use in determining minimum nonforfeiture standards and minimum standards for valuation). This final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), regarding the general rule-making authority of the Department, sections 301 and 303 of The Insurance Department Act of 1921 (40 P.S. §§ 71 and 73), regarding computation of reserve liability and minimum reserve requirements of companies charging less than net premiums computed on mortality tables, and section 410A of The Insurance Company Law of 1921 (40 P.S. § 510.1), regarding standard nonforfeiture law for life insurance.

Purpose

The purpose of this final-form rulemaking is to adopt new mortality tables for use in determining the minimum reserves that insurers must maintain for annuities. These new minimum standards apply to annuities issued on or after August 8, 2016, the effective date of this final-form rulemaking. The amendments are based upon changes to National Association of Insurance Commissioners (NAIC) Model Regulation 821, which was adopted by the NAIC in 2012. The 2012 Individual Annuity Mortality Table was developed by the Society of Actuaries and the American Academy of Actuaries in cooperation with the Life Actuarial (A) Task Force and reflects improved mortality experience resulting from increased life expectancies. The new table is a generational table that incorporates projections for future mortality improvements. In other words, because people are living longer, mortality tables must be updated so that insurers can maintain accurate reserves. Increased reserving will strengthen insurer solvency and thereby protect consumers by ensuring reliable payment of benefits when due.

The Department's adoption of the mortality tables will help to assure the solvency of insurance companies by requiring adequate and accurate reserves based on the most recent mortality tables. Additionally, this final-form rulemaking promotes consistency with other states.

Comments and Responses

Notice of proposed rulemaking was published at 46 Pa.B. 460 (January 23, 2016) with a 30-day public comment period. A comment was received from the Insurance Federation of Pennsylvania in support of the proposed rulemaking and recommending an immediate effective date.

The Independent Regulatory Review Commission (IRRC) did not have objections, comments or recommendations regarding the proposed rulemaking.

Affected Parties

The final-form rulemaking applies to life insurance companies and fraternal benefit societies issuing annuity and pure endowment contracts in this Commonwealth.

Fiscal Impact

State government

There will not be an increase in cost to the Department due to the adoption of new annuity tables since this final-form rulemaking does not impose additional requirements on the insurance industry.

General public

It is unlikely that there will be adverse fiscal impact on the consumers who purchase annuity contracts. The general public will be purchasing annuity contracts from more financially stable insurers.

Political subdivisions

The final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

The final-form rulemaking may have some fiscal impact on insurance companies marketing annuity contracts. Insurers will be required to expend the time necessary to determine if their current annuity reserve standards meet the new requirements. To the extent that the standards do not comply with the new requirements, an insurance company must increase the reserves for contracts issued on or after August 8, 2016. However, negative fiscal impact would be minimized by requiring the new tables be used only for contracts issued after August 8, 2016.

Paperwork

The final-form rulemaking will not impose additional paperwork on the Department. The final-form rulemaking will not change an insurer's existing reporting, recordkeeping or other paperwork requirements.

Effectiveness Date and Sunset Date

The final-form rulemaking will become effective August 8, 2016, 30 days after final adoption and publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

Contact Person

Questions or comments concerning this final-form rulemaking may be addressed in writing to Bridget E. Burke, Regulatory Coordinator, 1341 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, briburke@pa.gov.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 11, 2016, the Department submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 460, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered comments from the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 8, 2016, the final-form rulemaking was deemed approved by the House and Senate

Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective June 8, 2016.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 84, are amended by adding § 84.3a and Appendices I—IV and amending § 84.2 to read as set forth at 46 Pa.B. 460 and amending § 84.3 to read as set forth in Annex A.

(b) The Department shall submit this order, 46 Pa.B. 460 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect on August 8, 2016.

TERESA D. MILLER,
Insurance Commissioner

(Editor's Note: See 46 Pa.B. 3161 (June 18, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 11-255 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 84. TABLES APPROVED FOR USE IN DETERMINING MINIMUM NONFORFEITURE STANDARDS AND MINIMUM STANDARDS FOR VALUATION

§ 84.3. 1983 Table "a," Annuity 2000 Mortality Table, 1983 GAM Table, 1994 GAR Table and 2012 IAR Mortality Table.

(a) The 1983 Table "a," the Annuity 2000 Mortality Table excluding mortality rates independent of sex, the 1983 GAM Table, the 1994 GAR Table and the 2012 IAR Mortality Table are approved by the Commissioner as annuity mortality tables for valuation.

(b) At the option of the company, the 1983 Table "a" may be used in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued prior to January 1, 1986, and for an annuity or pure endowment purchased prior to January 1, 1986, under a group annuity or pure endowment contract.

(c) The 1983 Table "a," or the Annuity 2000 Mortality Table excluding mortality rates independent of sex shall be used in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1986, and prior to June 26, 1999.

(d) The Annuity 2000 Mortality Table excluding mortality rates independent of sex shall be used, except as provided by subsections (e) and (f), in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after June 26, 1999.

(e) Except as provided in subsection (f), the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after August 8, 2016.

(f) The 1983 Table "a" shall be used in determining the minimum standard of valuation for an individual annuity or pure endowment contract issued on or after June 26, 1999, when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(1) Settlements of claims pertaining to court settlements or out of court settlements from tort actions.

(2) Settlements of claims, such as worker's compensation claims.

(3) Settlements of long term disability claims when a temporary or life annuity has been used instead of continuing disability payments.

(g) At the option of the company, the 1983 GAM Table or the 1994 GAR Table may be used in determining the minimum standard of valuation for an annuity or pure endowment purchased prior to January 1, 1986, under a group annuity or pure endowment contract.

(h) The 1983 GAM Table or the 1994 GAR Table shall be used in determining the minimum standard of valuation for an annuity or pure endowment purchased on or after January 1, 1986, and prior to June 26, 1999, under a group annuity or pure endowment contract.

(i) 1994 GAR Table.

(1) The 1994 GAR Table shall be used in determining the minimum standard of valuation for an annuity or pure endowment purchased on or after June 26, 1999, under a group annuity or pure endowment contract.

(2) In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ shall be calculated as follows:

$q_x^{1994+n} = q_x^{1994} (1-AA_x)^n$ where the values of q_x^{1994} and AA_x are as specified in the 1994 GAR Table.

[Pa.B. Doc. No. 16-1166. Filed for public inspection July 8, 2016, 9:00 a.m.]

Title 61—REVENUE

BOARD OF FINANCE AND REVENUE

[61 PA. CODE CHS. 701, 702 AND 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)), rescinds Chapter 701 and adopts Chapters 702 and 703 (relating to general provisions; and tax and other appeal proceedings) to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to adopt 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. The regulations include: 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 requests for reconsideration. Chapters 702 and 703 shall be liberally construed.

Chapters 702 and 703 supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP) as referenced in the regulations. The Board expressly cites the supersession in each regulation because Commonwealth Court ruled in *Eugene F. Ciavarra v. Commonwealth of Pennsylvania*, 970 A.2d 500 (2009), in footnote 5 that:

The GRAPP governs the practice and procedure before agencies of the Commonwealth, except where a statute or regulation sets forth inconsistent rules on the same subject. 1 Pa. Code § 31.1. If an agency intends that its own regulation supersede the GRAPP, the superseded provision must be expressly cited, along with a statement that the cited provision is not applicable to proceedings before the agency. 1 Pa. Code § 13.38. There is no other statute or regulation governing a request for reconsideration before the Board; thus, we conclude that the GRAPP governs such requests.

Chapter 702. General Provisions

Subchapter A (relating to overview) states the scope of Chapters 702 and 703 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 does not have subpoena or deposition power.

Subchapter B (relating to time) sets forth 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 the requirements for what forms shall be completed for a petitioner to identify an individual that may be representing them before the Board. Nonattorneys have always been permitted to represent petitioners before the Board so long as that representation does not constitute the unauthorized practice of law as defined by the Pennsylvania Supreme Court. The Board has not experienced problems regarding nonattorney representatives. The Board also establishes notification procedures regarding changing a representative, an address or a withdrawal representation.

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

Subchapter A (relating to submissions) states the minimum general requirements for what information a Petition for Relief must contain. Additionally, under this subchapter the Board will acknowledge the receipt of the

petition. This subchapter also contains regulations regarding the following: the Department of Revenue filing a submission in response to a petition; Board-requested additional submissions from petitioners; service requirements; 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. Compromises are voluntary and negotiations only take place between the parties.

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

Subchapter D (relating to hearings) sets forth the following: deadlines; 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 basis of the request for reconsideration; 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 of the petition. This subchapter also sets forth the timing of the 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 final-form 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 final-form rulemaking.

Fiscal Impact

The Board has determined that this final-form rulemaking will not have fiscal impact on the Commonwealth.

Effectiveness

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

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 the notice of proposed rulemaking, published at 45 Pa.B. 2362 (May 16, 2015), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 9, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 10, 2016, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) A public comment period was provided as required by law.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 45 Pa.B. 2362.

(4) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Board, 61 Pa. Code, are amended deleting §§ 701.1—701.7 and adding §§ 702.1—702.6, 702.11, 702.12, 702.21, 702.22, 702.31, 702.32, 703.1—703.9, 703.11, 703.21, 703.31—703.35, 703.41—703.45, 703.51 and 703.52 to read as set forth in Annex A.

(*Editor's Note:* Proposed §§ 702.5 and 702.8 included in the proposed rulemaking published at 45 Pa.B. 2362 have been withdrawn by the Board.)

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Committees as required under the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

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

(e) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

JACQUELINE COOK,
Chairperson

(*Editor's Note:* See 46 Pa.B. 1623 (March 26, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 64-5 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 61. REVENUE

PART IV. BOARD OF FINANCE AND REVENUE

CHAPTER 701. (Reserved)

§§ 701.1—701.7. (Reserved).

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. Oaths.
- 702.6. Formal rules of evidence.

§ 702.1. Scope.

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

(b) This part supersedes 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to the extent 1 Pa. Code Part II is applicable to the practice and procedure before the Board.

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

§ 702.2. Liberal construction.

(a) This part 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 part, 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.

Board's web site—www.patresury.gov.

Business day—A day on which the Board's office is 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—A petitioner seeking relief or a remedy before the Board and the Commonwealth agency against whom the petitioner seeks relief or a remedy.

Personal financial information—The term as defined in section 102 of the Right-to-Know Law.

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

Petitioner—A taxpayer or other claimant.

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

Right-to-Know Law—65 P.S. §§ 67.101—67.3104.

Secretary—The secretary of the Board of Finance and Revenue, who is the Board officer with whom submissions 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.

Submission—A document or evidence submitted to the Board by a party to support its claim.

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) Submissions filed with the Board shall be submitted in one of the following manners:

- (1) In person or by mail to the following address:

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

- (2) Electronically to bfr@patreasury.gov.

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

(b) When 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 parties bear the burden of proving timely submission of an electronic petition or submission for which there was a delay due to transmittal issues.

(d) Submissions served on the Department shall be submitted in either of the following manners:

- (1) In person or by mail to the following address:

Pennsylvania Department of Revenue
 Attn: BFR Matter
 Office of Chief Counsel
 327 Walnut Street
 10th Floor, PO Box 281061
 Harrisburg, Pennsylvania 17128-1061

- (2) Electronically to RA-RVOCBFRNOTIF@pa.gov.

(e) Submissions served on the petitioner shall be submitted in either of the following manners:

- (1) In person or by mail to the address on the petition.
- (2) Electronically to petitioner’s e-mail address provided on the petition.

(f) Subsections (a)—(e) 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. Oaths.

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

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

§ 702.6. Formal rules of evidence.

(a) The Board may consider the rules of evidence as it deems appropriate.

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

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 shown on the delivery receipt attached to or included within the envelope containing the submission.
- (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 submission is submitted by means of electronic delivery on a day other than a business day, the submission 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 any proceeding that a power of attorney, signed and executed by the petitioner, be filed with the Board before recognizing any person as representing the petitioner.

(c) *Notice of petitioner's representative.* A petitioner shall identify his representative on a petition form as required under § 703.2(a)(2) (relating to petition content).

(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 by a method in § 702.4 (relating to filing generally).

(f) *Change in address.* A change in address that occurs during the course of a proceeding shall be reported promptly to the secretary by a method in § 702.4.

(g) *Withdrawal of representative.* Representation before the Board continues until a petitioner or petitioner's representative notifies the secretary in writing by a method in § 702.4 that the designation of representation is rescinded or until final disposition of the petition by the Board.

(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 competency 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 meanings, unless the context clearly indicates otherwise:

Communication—A verbal, written or electronic correspondence.

Ex parte communication—A communication regarding the substantive merits of a petition, outside of a public hearing and without notice and opportunity for the other party to participate.

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.

§ 702.32. General rules.

(a) *Communication with Board members and staff.* Neither Board members nor staff may participate in an ex parte communication.

(b) *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, consistent with § 703.6 (relating to service).

(c) *Notification.* The Board and staff will make every reasonable effort to avoid an ex parte communication. Upon discovery of an ex parte communication, the Board or staff will promptly notify the other party in writing by way of electronic transmittal, when available, and if not, in writing by mail as set forth in § 702.4 (relating to filing generally). The Board may take any 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.	Department submissions.
703.5.	Other submissions.
703.6.	Service.
703.7.	Consolidation.
703.8.	Timeliness of submissions.
703.9.	Withdrawal or termination of appeal.

§ 703.1. Petitions generally.

(a) *General requirements.* Petitions 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.* To constitute a properly filed petition, a petition must include, at a minimum, 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 box number.
- (5) The appeal type and relevant periods for review.

(6) The amount of tax or other amounts 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.

(10) A statement indicating whether the petitioner will submit a compromise offer to the Department within 30 days of filing the petition.

(11) An affidavit of the petitioner or the petitioner's authorized representative that the petition is not made for the purpose of delay and that the facts in the petition are true.

(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 by a method prescribed in § 702.4 (relating to filing generally) 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 petitioner.

(d) *Petitions not properly filed.* The Board will provide petitioners an opportunity to correct a petition that does not comply with § 703.1 (relating to petitions generally) or this section. The Board may dismiss petitions which are not properly filed.

(e) *Supersession.* Subsections (a)—(d) 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, 35.45, 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. Department submissions.

The Department may file a submission in a manner set forth in § 702.4 (relating to filing generally) in response to the petition.

§ 703.5. Other submissions.

(a) *Submission requests.* The Board may request a party to provide additional submissions in a format designated by the Board.

(b) *Requirements.* 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.* Parties are required to file with the Board one copy of a submission 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 submission and, when feasible, its attachments, are capable of being printed and copied without restriction. If the Board is unable to

access an electronic submission due to a security restriction of the party, the submission will not be considered.

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

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

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

(g) *Supersession.* Subsections (a)—(f) supersede 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.

§ 703.6. Service.

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

(b) Subsection (a) does not apply to the petition form and the first 20 pages of a submission filed with the petition which the Board will docket onto the Department's appeal system.

(c) The Department will be deemed to be served electronically when the Board docketed the petition onto the Department's appeal system.

(d) The preferred method of service is electronic. If electronic service is not available, service shall be by mail or in person using a method prescribed in § 702.4 (relating to filing generally).

(e) Subsection (a)—(d) supersedes 1 Pa. Code §§ 33.31—33.37 (relating to service of documents).

§ 703.7. Consolidation.

(a) *Same petitioners.* The Board, in its own discretion, may consolidate petitions, issues or proceedings involving a common question of law or fact for the same petitioner.

(b) *Different petitioners.* The Board may consolidate proceedings of different petitioners for the limited purpose of hearings with the consent of the parties.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

§ 703.8. Timeliness of submissions.

(a) *Time.* Unless a different time is prescribed by the Board or staff, a party shall file submissions no later than 60 days after the filing date of the petition. The Board shall provide the opposing party 30 days to respond to the submission. Submissions filed after the prescribed deadlines may be reviewed by the Board upon good cause shown.

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

§ 703.9. 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 notice to withdraw the appeal by a method prescribed in § 702.4 (relating to filing generally).

(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 party offering a compromise shall submit to the Board and to the other party a completed Board of Finance and Revenue Request for Compromise Form within 30 days from the petition filing date. The submission of a request for compromise will extend the time under section 2704(f)(1) of the Tax Reform Code of 1971 (72 P.S. § 9704(f)(1)). A blank compromise form may be obtained from the Board and will be posted on the Board's web site.

(c) The 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.

(d) Negotiations of a compromise are voluntary and will take place between the petitioner and the Department.

(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 by a method prescribed in § 702.4 (relating to filing generally). The staff may conduct a prehearing conference in response to a request or when the Board or staff deem necessary.

(b) *Scheduling prehearing conferences.* Staff will notify the parties, by a method prescribed in § 702.4, 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 within 6 months after the receipt of the petition unless the deadline has been extended consistent with section 7204(1), (2) or (3) of the Tax Reform Code of 1971 (72 P.S. § 9704(1), (2) and (3)), by a written order of the majority of the Board based on the submissions and information available to the Board. Failure of the Board to dispose of a petition within the time period results in a deemed denial and the starting of the appellate period.

(b) If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction in which any claim made in the petition may be established, the Board, upon the written request of the petitioner, may defer consideration of the petition until the final judgment determining the question involved in the petition has been decided. If consideration of the petition is deferred, the Board will issue a decision and order disposing of the petition within 6 months after final judgment.

(c) If a matter pending before the Board would be materially affected by an audit or other proceeding before the Internal Revenue Service or by an audit or other proceeding conducted by another state, the Board, upon the written request of the petitioner, may defer consideration of the petition until the other audit or proceeding is complete. If consideration of the petition is deferred, the Board will issue a decision and order disposing of the petition within 6 months after the audit or other proceeding is final.

(d) The parties shall notify the Board, as part of the petition or subsequently in writing, utilizing a method set forth in § 702.4 (relating to filing generally) as to whether a petition shall be disposed of with or without a public hearing. A public hearing will be scheduled if any party requests one or if it is deemed necessary by the Board.

(e) The Board will notify the parties of the date of the scheduled hearing. The petitioner shall notify the Board as to whether it intends to attend the hearing by filing a Hearing Reply Form with the Board at least 10 days prior to the scheduled hearing.

(f) If a party fails to file a hearing reply at least 10 days prior to the scheduled hearing, the party may only present an oral argument with the consent of the Board.

(g) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.13, 31.15, 35.101 and 35.121—35.128.

§ 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 public hearings and maintain a hearing calendar of all 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 good cause, may reschedule a hearing. Requests to reschedule a hearing shall be filed 10 days prior to the scheduled hearing.

(e) The submission of a request to reschedule a hearing will extend the time under 2704(f)(1) of the Tax Reform Code of 1971 (72 P.S. § 9704(f)(1)).

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

§ 703.34. Hearing procedure.

(a) At the 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, after which the Board will render its decision.

(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 a submission that was not previously submitted. Neither the sufficiency of the submission nor a determination as to whether a party satisfied its burden of proof is a basis for a reconsideration.

(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 shall be submitted to the Board and the opposing party utilizing a method in § 702.4 (relating to filing generally).

(c) *Supersession.* Subsections (a) and (b) 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 all 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 original 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 Revenue). When the Board grants a request for reconsideration the time period for filing an appeal is stayed until the Board issues a reconsidered order. The reconsidered order will replace the original order and will be a "final order" appealable to Commonwealth 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 a redacted version of 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 petitioner time to identify any 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 informa-

tion, 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 petitioner that meets the definition of a "trade secret" or "confidential proprietary information." The petitioner is responsible for notifying the Board within 30 days of the mailing date of the order of any trade secret or confidential proprietary information that 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.

(4) Other information determined by the Board to be confidential under State or Federal law.

(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 the Board will make every reasonable effort to redact the confidential information promptly.

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