

CHAPTER 607a. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION

Subchap.
A. GENERAL PROVISIONS607a.1
B. HEARINGS UNDER SECTION 2202(a)(10) OF THE ACT607a.6
C. LIST CANCELLATION HEARINGS607a.25

Authority

The temporary provisions of this Chapter 607a added under 71 Pa.C.S. §§ 2101—3304, unless otherwise noted.

Source

The temporary provisions of this Chapter 607a added March 11, 2022, effective March 12, 2022, expire 3 years from date of publication, 52 Pa.B. 1454, unless otherwise noted.

Cross References

This section cited in 4 Pa. Code § 602a.19 (relating to cancellation of eligible lists); and 4 Pa. Code § 605a.4 (relating to procedure).

Subchapter A. GENERAL PROVISIONS

- Sec.**
607a.1. Applicability of General Rules of Administrative Practice and Procedure.
607a.2. Public access.
607a.3. Presiding officer.
607a.4. Computation of time.
607a.5. Filings with Docket Clerk.

§ 607a.1. Applicability of General Rules of Administrative Practice and Procedure.

This chapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Office of Administration.

§ 607a.2. Public access.

Hearings scheduled by the Office of Administration under its authority under the act shall be open to the public. Notices of public hearing shall be published by the Office of Administration on its publicly accessible web site.

§ 607a.3. Presiding officer.

(a) Hearings scheduled by the Office of Administration under its authority under the act shall be conducted by a presiding officer designated, in writing, by the Secretary of Administration.

(b) Subsection (a) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

§ 607a.4. Computation of time.

(a) When any period of time is referred to in this chapter, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any period shall fall on Saturday, Sunday or a legal holiday under the laws of this Commonwealth or the United States, the day shall be omitted from the computation.

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

§ 607a.5. Filings with Docket Clerk.

(a) *Generally.* When a document is required to be filed with the Docket Clerk, the filing shall occur within the applicable time limits, if any, by first class mail or electronic mail. The Office of Administration shall indicate the mailing address and electronic mail address of the Docket Clerk on its publicly accessible web site.

(b) *Mail.* When a document is filed with the Docket Clerk by first class mail, the date of mailing, as evidenced by the United States Postal Service postmark on the envelope containing the filing, a United States Postal Service Form 3817 (Certificate of Mailing), or another similar United States Postal Service form from which the date of deposit with the United States Postal Service can be determined, shall be deemed the date of filing.

(c) *Electronic mail.* When a document is filed with the Docket Clerk by electronic mail, the date of receipt recorded by the Docket Clerk's electronic mail system shall be deemed the date of filing. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5(a), 31.11 and 33.34 (relating to communications and filings generally; timely filing required; and date of service).

Cross References

This section cited in 4 Pa. Code § 607a.6 (relating to order to show cause); 4 Pa. Code § 607a.7 (relating to answer to order to show cause); 4 Pa. Code § 607a.19 (relating to post-hearing brief); 4 Pa. Code § 607a.21 (relating to exceptions); and 4 Pa. Code § 607a.22 (relating to brief opposing exceptions).

Subchapter B. HEARINGS UNDER SECTION 2202(a)(10) OF THE ACT

Sec.	
607a.6.	Order to show cause.
607a.7.	Answer to order to show cause.
607a.8.	Representation.
607a.9.	Consolidation of proceedings.
607a.10.	Severance of proceedings.
607a.11.	Notice of hearing.
607a.12.	Continuances.
607a.13.	Subpoenas.
607a.14.	Authority of presiding officer.
607a.15.	Form of hearings.
607a.16.	Failure to attend hearing.
607a.17.	Additional hearings and evidence.
607a.18.	Record of proceedings.
607a.19.	Post-hearing brief.
607a.20.	Proposed decision and order.
607a.21.	Exceptions.
607a.22.	Brief opposing exceptions.
607a.23.	Further response or pleading.
607a.24.	Final decision and order.

§ 607a.6. Order to show cause.

(a) *Generally.* The Office of Administration shall commence a proceeding under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration) through the filing of a verified order to show cause with the Docket Clerk. The individual against whom the order to show cause is filed shall be deemed the respondent.

(b) *Content.* An order to show cause must set forth with specificity the grounds for the proceeding, including a concise statement of the relevant factual allegations, matters of law and a request for relief.

(c) *Entry of Appearance.* An order to show cause filed under this section shall be accompanied by an entry of appearance for the attorneys and legal interns representing the Office of Administration in the proceeding.

(d) *Service.* On the date of filing, the Office of Administration shall simultaneously serve a copy of the order to show cause on the respondent by first class mail. The date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk). The Office of Administration shall include with its order to show cause a certificate of service indicating proper service on the respondent.

(e) *Supersession.* Subsections (a), (b) and (d) supersede 1 Pa. Code §§ 33.31, 35.14 and 35.121 (relating to service by agency; orders to show cause; and initiation of hearings). Subsection (c) supersedes 1 Pa. Code § 31.24(b) (relating to notice of appearance).

§ 607a.7. Answer to order to show cause.

(a) *Generally.* A respondent shall file with the Docket Clerk an answer to the order to show cause within 20 days of the date of service indicated on the certificate of service accompanying the order to show cause.

(b) *Content.* An answer shall specifically admit or deny the allegations presented in the order to show cause, set forth the facts upon which the respondent relies, and state concisely the relevant matters of law. General denials of the allegations contained in the order to show cause will not be considered as complying with this section and may be deemed a basis for entry of a proposed decision and order without a hearing, unless otherwise required by the act, on the ground that the response has raised no issues requiring a hearing or further proceedings.

(c) *Service.* On the date of filing, a respondent shall simultaneously serve a copy of the answer on the Office of Administration's legal counsel by first class mail at the mailing address indicated in the order to show cause, unless the Office of Administration agrees to accept service by electronic mail. A respondent shall include with their answer a certificate of service indicating proper service on the Office of Administration.

(1) When an answer is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When an answer is served by electronic mail, the date of receipt recorded by the Office of Administration's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Failure to file answer.* A respondent failing to file an answer with the Docket Clerk within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted and provide a basis for entry of a proposed decision and order without a hearing, unless otherwise required by the act, on the ground that the response has raised no issues requiring a hearing or further proceedings.

(e) *Supersession.* Subsections (a), (b) and (d) supersede 1 Pa. Code § 35.37 (relating to answers to orders to show cause) and subsection (c) supersedes 1 Pa. Code § 33.32 (relating to service by a participant).

§ 607a.8. Representation.

(a) A respondent appearing before the Office of Administration may do so on their own behalf or may be represented by an attorney licensed to practice law in this Commonwealth or a legal intern certified by the Supreme Court of Pennsylvania. An appointing authority shall be represented by an attorney licensed to practice law in this Commonwealth or a legal intern certified by the Supreme

Court of Pennsylvania. Attorneys and legal interns shall file with the Docket Clerk an entry of appearance with the Office of Administration.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.21, 31.22, 31.23 and 31.24.

§ 607a.9. Consolidation of proceedings.

(a) The Office of Administration may consolidate two or more proceedings at its discretion where the proceedings involve a common question of law or fact, provided that consolidation does not prejudice any party thereto.

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

§ 607a.10. Severance of proceedings.

The Office of Administration may sever two or more proceedings at its discretion where the proceedings lack a common question of law or fact, provided that severance does not prejudice any party thereto.

§ 607a.11. Notice of hearing.

(a) The Office of Administration shall provide the parties advance notice of a scheduled hearing. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing.

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

§ 607a.12. Continuances.

The presiding officer may, upon a showing of good cause, grant a request for a continuance of a scheduled hearing. The requests shall be submitted as far in advance of the scheduled hearing date as possible, be made in writing, and must state the specific reason(s) for the continuance request. A copy of a request for a continuance shall be simultaneously served on the non-requesting party.

§ 607a.13. Subpoenas.

(a) *Procedure for requesting subpoena.*

(1) A subpoena for the attendance of witnesses or for the production of documents will be issued only upon written application to the presiding officer, with a copy to the non-requesting party. Notwithstanding the forgoing, the presiding officer may, by their own motion, issue a subpoena for the attendance of witnesses or the production of documents.

(2) A written application shall specify the relevance of the testimony or documentary evidence sought. For documentary evidence, the request must specify, to the extent possible, the documents desired and the facts to be proved thereby.

(3) A subpoena for new or additional witnesses will not be issued after a hearing has been started and continued unless orally requested on the record at the hearing and approved by the presiding officer; except that subpoenas issued prior to the start and continuance of the hearing may be reissued upon written request.

(4) Failure to adhere to the requirements of this subsection may result in the refusal to issue the requested subpoena.

(b) *Service of subpoena.*

(1) A subpoena for the attendance of a witness must be personally served on the witness at least 48 hours prior to the hearing, unless the witness agrees to waive the 48-hour requirement.

(2) A subpoena for the production of documents may be served personally, by mail, by facsimile machine or by other electronic means upon the individual in possession of the documents, the legal counsel for the entity or individual in possession of the documents, or the designated custodian of the documents. A subpoena for the production of documents shall be served no later than 10 business days prior to hearing.

(3) Failure to adhere to the requirements of this subsection may result in a ruling by the presiding officer denying the enforceability of the subpoena.

(c) *Enforcement of subpoena.*

(1) If the subject of a subpoena fails or refuses to comply with the terms of the subpoena, the subpoenaing party may file with the Docket Clerk a request for enforcement.

(2) If the presiding officer determines that the testimony or documentary evidence sought through the subpoena is probative of a material fact or issue relevant to the proceeding, the Secretary of Administration, or their designee, will petition a court of record for enforcement of the subpoena in accordance with 71 Pa.C.S. § 2202(c) (relating to duties of Office of Administration).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 35.142 and 35.145—35.152 (relating to subpoenas; and depositions).

§ 607a.14. Authority of presiding officer.

(a) A presiding officer has the discretionary authority to do the following:

(1) Determine the burdens of proof and production, if necessary, and determine the order of procedure.

(2) Regulate the conduct of hearings, including the scheduling, recessing, reconvening and adjournment, and to do acts and take measures necessary or proper for the efficient conduct of hearings.

(3) Administer oaths and affirmations.

(4) Receive evidence.

(5) Rule upon offers of proof and evidentiary objections.

(6) Hold appropriate conferences before or during hearings and order the parties to submit memoranda in advance of the conference.

- (7) Dispose of procedural requests, including discovery or similar matters.
 - (8) Specify the manner in which pleadings are to be submitted to the presiding officer, including the format and contents of these documents.
 - (9) Require that the parties, prior to the hearing, submit witness lists or lists of documents, or both, to be presented at the hearing.
 - (10) Take other actions as necessary and appropriate to discharge the presiding officer's vested duties, consistent with statutory and regulatory authority.
- (b) Subsection (a) supersedes 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers).

§ 607a.15. Form of hearings.

- (a) A hearing before the Office of Administration shall be formal but need not adhere to the technical rules of evidence or procedure. In cases involving issues of fact, oral testimony shall be under oath or affirmation.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.123 and 35.189 (relating to conduct of hearings; and manner of conduct of hearings).

§ 607a.16. Failure to attend hearing.

When a properly notified party fails to appear at a hearing, the hearing may be held without the participation of the non-appearing party and, thereafter, the presiding officer may take appropriate action in due course.

§ 607a.17. Additional hearings and evidence.

- (a) After the conclusion of a hearing, but prior to the issuance of a final disposition, the presiding officer may, upon their own motion or upon request of a party, allow one or more additional hearings or the submission of additional relevant evidence.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.128 (relating to additional evidence).

§ 607a.18. Record of proceedings.

- (a) A complete record of the proceedings shall be made. A party shall make arrangements to purchase copies of the record directly with the reporting service. The Office of Administration's copy of the record may be reviewed at the Office of Administration's office in Harrisburg. Arrangements to review the record may be made by contacting the Docket Clerk.
- (b) Subsection (a) supersedes 1 Pa. Code §§ 35.131 and 35.133 (relating to recording of proceedings; and copies of transcripts).

§ 607a.19. Post-hearing brief.

- (a) *Generally.* At the close of the proceedings, or as directed by the presiding officer, each party will be given the opportunity to file a legal brief in support of their position.

(b) *Briefing schedule.* The presiding officer will set forth a briefing schedule and the order in which the briefs shall be filed. The briefs shall be filed with the Docket Clerk.

(c) *Content of brief.* A post-hearing brief does not need to conform to a specific format but must include:

(1) A statement of the facts supporting the party's position, with citation to the relevant exhibits and pages of the transcript.

(2) A discussion of the arguments supporting the party's position, including citation to relevant statutes, regulations and case law.

(d) *Service.* On the date of filing, a party shall simultaneously serve a copy of the brief on the opposing party by first class mail, unless the parties mutually agree to accept service by electronic mail. A party shall include with their brief a certificate of service indicating proper service on the opposing party.

(1) When a brief is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When a brief is served by electronic mail, the date of receipt recorded by the opposing party's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code Chapter 35, Subchapter F (relating to briefs).

§ 607a.20. Proposed decision and order.

(a) *Generally.* Upon the closing of the record, the presiding officer shall issue a proposed decision and order, based on the established record, which will be provided to the parties and filed with the Docket Clerk.

(b) *Content.* The proposed decision and order shall contain a statement of (1) findings and conclusions, as well as the reasons or basis therefor, resolving all the material issues of credibility, fact and law presented on the record, and (2) an appropriate order, sanction, relief or denial.

(c) *Finality.* A proposed decision and order shall be deemed a final order of the Office of Administration upon the expiration of 20-calendar days from the date of issuance, unless exceptions are timely and properly filed in accordance with § 607a.21 (relating to exceptions).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 31.13 (relating to issuance of agency orders), 35.201—35.207 (relating to proposed reports generally) and 35.226 (relating to final orders).

§ 607a.21. Exceptions.

(a) *Generally.* A party aggrieved by the proposed decision and order may, within 20 days after the issuance of the proposed decision and order, appeal to

the Secretary of Administration, by filing with the Docket Clerk exceptions to the proposed decision and order, or part of it, in the form of a brief on exceptions.

(b) *Content.*

(1) A brief on exceptions shall, at a minimum:

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

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

(iii) Designate by page citation or exhibit number the portions of the record relied upon for each exception.

(2) A brief on exceptions may include specific findings and conclusions proposed in lieu of those to which exception is taken and any proposed additional findings and conclusions.

(c) *Service.* On the date of filing, a party shall simultaneously serve a copy of the brief on exceptions on the opposing party by first class mail, unless the parties mutually agree to accept service by electronic mail. A party shall include with their brief on exceptions a certificate of service indicating proper service on the opposing party.

(1) When a brief on exceptions is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When a brief on exceptions is served by electronic mail, the date of receipt recorded by the opposing party's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Waiver.* A party's failure to file with the Docket Clerk a brief on exceptions within the time allowed under this section shall constitute a waiver of all objections to the proposed decision and order. Objections to any part of a proposed decision and order that are not included in a party's brief on exceptions shall be deemed waived.

(e) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 35.190(a) and 35.211 (relating to appeals to agency head from rulings of presiding officers; and procedure to except to proposed report), subsections (b)—(d) supersede 1 Pa. Code §§ 35.211 and 35.212(a)(1) (relating to procedure to except to proposed report; and content and form of briefs on exceptions) and subsection (d) supersedes 1 Pa. Code 35.213 (relating to effect of failure to except to proposed report).

Cross References

This section cited in 4 Pa. Code § 607a.20 (relating to proposed decision and order); and 4 Pa. Code § 607a.22 (relating to brief opposing exceptions).

§ 607a.22. Brief opposing exceptions.

(a) *Generally.* In response to a brief on exceptions, a party may file with the Docket Clerk a brief opposing exceptions within 20 days of date of service of the brief on exceptions.

(b) *Content.* A brief opposing exceptions shall generally follow the same format prescribed in § 607a.21(b) (relating to exceptions) for a brief on exceptions.

(c) *Service.* On the date of filing, a party shall simultaneously serve a copy of the brief opposing exceptions on the opposing party by first class mail, unless the parties mutually agree to accept service by electronic mail. A party shall include with their brief opposing exceptions a certificate of service indicating proper service on the opposing party.

(1) When a brief opposing exceptions is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When a brief opposing exceptions is served by electronic mail, the date of receipt recorded by the opposing party's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.212(a) and (b) (relating to content and form of briefs on exceptions).

§ 607a.23. Further response or pleading.

After the filing of a brief opposing exceptions, or the expiration of the time period for filing a brief opposing exceptions, whichever occurs first, no further response or pleading by any party will be entertained unless the Secretary of Administration, or their designee, with or without motion, so orders.

§ 607a.24. Final decision and order.

(a) After reviewing the record, including any briefs on exceptions and briefs opposing exceptions, the Secretary of Administration, or their designee, shall issue a final decision and order, which will be provided to the parties and filed with the Docket Clerk. The Secretary of Administration, or their designee, may affirm, modify, or reverse the findings of credibility and fact, the conclusions of law, and the decision of the presiding officer as the secretary deems appropriate on the basis of all of the record evidence.

(b) Subsection (a) supersedes 1 Pa. Code § 35.226(a) (relating to final orders).

Subchapter C. LIST CANCELLATION HEARINGS

Sec.

- 607a.25. Generally.
607a.26. Notice of list of cancellation hearing.
607a.27. Format of hearing.
607a.28. Record of proceedings.
607a.29. Notice of list cancellation.

§ 607a.25. Generally.

(a) Under 71 Pa.C.S. § 2307(d) (relating to duration of eligible lists), the Office of Administration will hold a hearing before cancelling the whole or a part of an eligible list due to illegality or fraud in connection with the eligible list. The hearings shall be referred to as “list cancellation hearings.”

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

§ 607a.26. Notice of list cancellation hearing.

(a) The Office of Administration shall provide advance notice of a list cancellation hearing to those eligibles whose names appear on the relevant list. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing. Additionally, the notice will provide instructions on how an eligible can submit to the Office of Administration written objections concerning the list cancellation.

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

§ 607a.27. Format of hearing.

(a) At the onset of a list cancellation hearing, the presiding officer shall make a statement describing the circumstances necessitating the cancellation of the list, including the findings and conclusions of any investigation undertaken by the Office of Administration. Thereafter, each eligible whose name appears on the relevant list and objected, in writing, to the cancellation will be given an opportunity to state their objections, under oath or affirmation, on the record. After all objections are heard, the presiding officer shall adjourn the hearing, and the record shall be considered closed.

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

§ 607a.28. Record of proceedings.

(a) A complete record of the proceedings shall be made. Individuals may arrange to purchase copies of the record directly with the reporting service. The Office of Administration’s copy of the record may be reviewed at the Office of

Administration's office in Harrisburg. Arrangements to review the record may be made by contacting the Docket Clerk.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.131 and 35.133(a) and (b) (relating to recording of proceedings; and copies of transcripts).

§ 607a.29. Notice of list cancellation.

If, after holding a list cancellation hearing, the Office of Administration determines that cancellation of the whole or a part of an eligible list is warranted due to illegality or fraud in connection with the eligible list, the Office of Administration shall provide notice of the cancellation of the list to those eligibles whose names appeared on the relevant list.