

PART V-A. RULES OF PROCEDURE

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Cross References

This part cited in 7 Pa. Code § 136.9 (relating to appeals procedure).

CHAPTER 131. RULES OF PRACTICE AND PROCEDURE

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Authority

The provisions of this Chapter 131 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and section 35 of the Administrative Agency law (71 P. S. § 1710.35) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 131 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340, unless otherwise noted.

Cross References

This chapter cited in 7 Pa. Code § 136.9 (relating to appeals procedure).

PRELIMINARY PROVISIONS**§ 131.1. Scope.**

(a) This chapter governs the practice and procedure before the Department in adjudicatory proceedings relating to matters within the jurisdiction of the Department.

(b) This chapter is not applicable to a proceeding to the extent that the applicable statute governing or authorizing the proceeding sets forth inconsistent practice or procedure.

(c) Existing rules and regulations of the Department relating to practice and procedure are hereby suspended to the extent they are inconsistent with this chapter.

Source

The provisions of this § 131.1 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.2. Definitions.

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

Action—An order, decree, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a person, including, but not limited to, denials, modifications, suspensions and revocations of permits, licenses and registrations, and orders to cease the operation of an establishment or facility.

Department—The Department of Agriculture.

Hearing examiner—A person designated to preside at hearings or conferences.

Intervener—A person intervening or petitioning to intervene as provided by this chapter when admitted as a participant to a proceeding.

Party—The department whose action is appealed from, an intervener and a person appealing an action whether designated as an applicant, respondent or otherwise.

Person—An individual, partnership, association, corporation, political subdivision, municipality, authority or other entity.

Respondent—A person subject to a statute or other delegated authority administered by the Department to whom an order or notice is issued by the Department instituting a proceeding or investigation on its own initiative or otherwise.

Secretary—The Secretary of Agriculture. Where appropriate, the term means a hearing examiner or other person acting for the Secretary.

Supersedeas—A suspension of the effect of an action of the Department pending proceedings before the Secretary.

Source

The provisions of this § 131.2 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

GENERAL PROVISIONS

§ 131.11. Time.

(a) Appeals, briefs, notices and other documents required or permitted to be filed under this chapter shall be received by the Secretary within the time limits, if any, for the filing. The date of receipt by the Secretary and not the date of deposit in the mails is determinative. The time fixed or the period of time prescribed for the filing may be extended by the Secretary for good cause upon motion made before expiration of the time for filing.

(b) Actions of the Department are effective as of the date of issuance of written notification of the action unless otherwise specially provided in the notice. The day of issuance is the day the Department mails or delivers copies of the notice of the action to the parties or makes the copies public.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.11 and 35.31 (relating to timely filing required; and notice and action on petitions to intervene) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a) and (b).

Source

The provisions of this § 131.11 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.12. Appearances.

(a) A party may appear in his own behalf or may be represented by an attorney at law admitted to practice before the Supreme Court of Pennsylvania. In appropriate circumstances, the Secretary may require that a party be represented by an attorney.

(b) In the absence of an attorney, a partnership may be represented by any of its members; a corporation or association may be represented by any of its officers.

(c) A notice of appearance shall be filed with the Secretary.

(d) Subsections (a)—(c) supplement 1 Pa. Code §§ 31.21 and 31.22 (relating to appearance in person; and appearance by attorney).

Source

The provisions of this § 131.12 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.13. Service.

(a) Notices and other documents shall be served upon the person designated in the notice of appearance and shall be served by mail, in which case, unless provided otherwise in this chapter, the date of service shall be the day of deposit in the United States mail or by personal service. Where appropriate, the Secretary may require proof of service.

(b) Publication of a notice of action or proposed action by the Department in the *Pennsylvania Bulletin* constitutes notice to or service upon all persons, except a party, effective as of the date of publication.

(c) Subsections (a) and (b) supplement 1 Pa. Code § 33.33 (relating to effect of service upon an attorney) and supersede 1 Pa. Code §§ 31.26 and 35.105 (relating to service on attorneys; and notice of nonrulemaking proceedings) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a) and (b).

Source

The provisions of this § 131.13 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.14. Interveners.

(a) Petitions for leave to intervene in a proceeding before the Secretary shall be filed prior to initial presentation of evidence in the proceeding and shall set forth the specific grounds for the proposed intervention, the position and interest of the petitioner in the proceeding and a statement wherein the interest is or may be inadequately represented in the proceeding.

(b) Intervention is discretionary with the Secretary and shall be subject to the terms and conditions the Secretary may prescribe.

(c) Subsections (a) and (b) supplement 1 Pa. Code §§ 35.28 and 35.29 (relating to eligibility to intervene; and form and contents of petitions to intervene) and supersede 1 Pa. Code §§ 35.27, 35.30 and 35.31 (relating to initiation of intervention; filing petitions to intervene; and notice and action on petitions to intervene) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a) and (b).

Source

The provisions of this § 131.14 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.15. Subpoenas.

(a) Upon request, the Secretary will provide to the parties subpoenas for the attendance of witnesses or for the production of documentary evidence which will be served in the same manner as notices and other documents.

(b) Compliance with subpoenas may be excused by the Secretary when he determines that the testimony of documents are not relevant or material to the issues or for other cause.

(c) Subsections (a) and (b) supplement 1 Pa. Code § 35.142 (relating to subpoenas).

Source

The provisions of this § 131.15 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.16. Supersedeas.

(a) An appeal or other proceeding before the Secretary does not act as a supersedeas to the action of the Department unless granted by the Department or the Secretary.

(b) A petition for supersedeas may be filed with the Secretary at any time during the proceeding and shall set forth the specific grounds for which it is requested. In granting a supersedeas, the Secretary may impose conditions warranted by the circumstances including, where appropriate, the filing of a bond or other security. Except for compelling reasons justifying a supersedeas, a supersedeas will be denied in cases of health hazard or nuisance which either exists or is threatened.

Source

The provisions of this § 131.16 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.17. Docket.

(a) The Secretary will maintain a docket of proceedings and each proceeding as initiated will be assigned an appropriate designation.

(b) The docket shall be available for inspection and copying by the public during regular office hours of the office of the Secretary.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.51 (relating to docket) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a) and (b).

Source

The provisions of this § 131.17 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

INSTITUTION OF PROCEEDINGS

§ 131.21. Appeals.

(a) Actions taken by a subordinate officer under authority delegated by the Secretary may be appealed to the Secretary by filing a written appeal within 15 days from the date of service of notice of the action.

(b) The appeal shall set forth the name, address and telephone number of the appellant and shall include or be accompanied by a copy of the written notification of the action of the Department and a specification of objections setting forth the manner in which appellant is aggrieved by the action and the relevant issues to be resolved by the Secretary. Thereafter, the proceedings shall be limited to the issues set forth in the specification of objections.

(c) Failure to comply with this section shall be a sufficient basis for dismissing the appeal. The action of the Department is final to a person who fails to file an appeal or to perfect an appeal under this section.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.20 (relating to appeals from actions of the staff) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as provided in subsections (a)—(c).

Source

The provisions of this § 131.21 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 340.

§ 131.22. Special actions.

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

(b) Within 15 days from the date of service of the complaint, petition or order, the person against whom it is directed shall file with the Secretary a verified answer responding to the allegations in the complaint, petition or order and setting forth whether a hearing is desired. Allegations in the complaint, petition

or order which are not specifically denied shall be deemed to have been admitted. Failure to file an answer or to specifically deny the essential allegations of the complaint, petition or order which are not specifically denied shall be deemed to have been admitted. Failure to file an answer or to specifically deny the essential allegations of the complaint, petition or order shall constitute a sufficient basis for the entry of a default order or adjudication.

(c) Subsections (a) and (b) supplement 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause).

Source

The provisions of this § 131.22 adopted April 14, 1972, effective April 15, 1972, 2 Pa.B. 664.

HEARINGS AND CONFERENCES

§ 131.31. Conferences.

(a) The Secretary, on his own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of considering offers of settlement, adjustment of the proceeding or an issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.

(b) Stipulations of the parties or rulings of the Secretary as a result of the conference shall be binding upon the parties.

(c) Subsections (a) and (b) supplement 1 Pa. Code §§ 35.111 and 35.114 (relating to conferences to adjust, settle or expedite proceedings; and authority of presiding officer at conference).

Source

The provisions of this § 131.31 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 664.

§ 131.32. Hearings.

(a) When the proceedings are at issue and hearing is required, a formal evidentiary hearing shall be scheduled and a notice of hearing shall be sent to all parties to the proceedings. Unless ordered otherwise hearings shall be held in Harrisburg.

(b) The Secretary may order proceedings involving a common question of law or fact to be consolidated for hearing of any or all of the matters in issue in the proceedings.

(c) A hearing will not be held if waived by appellant or respondent or if the parties stipulate all of the essential facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form, sworn or affirmed on personal knowledge or by deposition.

(d) Hearings will not be continued except for compelling reasons. Requests for continuances shall be submitted to the Secretary in writing with a copy served upon the other parties to the proceedings.

(e) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.101, 35.121 and 35.122 (relating to waiver of hearing; initiation of hearings; and consolidation of formal proceedings) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a)—(c).

Source

The provisions of this § 131.32 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 664.

§ 131.33. Evidence.

(a) Parties shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The Secretary will not be bound by technical rules of evidence but relevant and material evidence of reasonable probative value shall be admissible. The Secretary may limit the number of witnesses upon an issue and may require a party to present additional evidence on an issue. Witnesses shall be sworn or shall affirm.

(b) Written testimony, on numbered lines in either narrative or question and answer form, of a witness may be admitted into evidence provided the witness is present and sworn or affirmed and provided a copy of the testimony was served upon and actually received by all other parties at least 3 days prior to the hearing.

(c) Applications, permits, licenses, registrations, orders and formal notices relating to the proceeding may be considered by the Secretary in adjudicating the case even though they have not been made a part of the record or referred to therein. The Secretary may also take official notice of an official or public document not relating to the proceeding and of any matter subject to judicial notice.

(d) In case a matter contained in a report or other document on file with the Department is offered in evidence, the report or document need not be produced or marked for identification but may be offered in evidence by specifying the report, document or other file containing the matter so offered.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.126, 35.161, 35.162, 35.164, 35.166 and 35.173, and other applicable sections of the general rules including sections thereof concerning the same, similar or related subject matter as subsections (a)—(d).

Source

The provisions of this § 131.33 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 664.

§ 131.34. Briefs, suggested findings.

(a) The parties may, and upon request shall, submit briefs within the time the Secretary prescribes and shall serve a copy of the brief on the other parties.

(b) Upon request, the parties shall submit suggested findings of fact, with references to the appropriate exhibit or page of the transcript, and conclusions of law which may be included in a brief.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.191—35.193 (relating to briefs) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a) and (b).

Source

The provisions of this § 131.34 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 664.

§ 131.35. Transcript.

(a) Hearings shall be stenographically reported and a transcript of the report shall be a part of the record.

(b) Parties desiring copies of the transcript shall obtain the copies from the official reporter. Parties shall also have the opportunity to review a copy of the transcript on file with the Secretary.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.131 and 35.133 (relating to recording of proceedings; and copies of transcripts) and other applicable sections of the general rules including sections concerning the same, similar or related subject matter as subsections (a) and (b).

Source

The provisions of this § 131.35 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 664.

§ 131.36. Adjudication.

(a) At the conclusion of the proceedings, the Secretary will issue an adjudication containing findings of fact, conclusions of law and an order.

(b) The Secretary will serve a copy of the adjudication on all parties to the proceedings or their representative.

Source

The provisions of this § 131.36 adopted February 25, 1972, effective February 26, 1972, 2 Pa.B. 664.

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