

Regulatory Analysis Form		RECEIVED 2001 MAR 22 AM 10:51 STATUTORY REVIEW COMMISSION	
(1) Agency: Board of Claims		IRRC Number #2180	
(2) I.D. Number (Governor's Office Use) 105-4			
(3) Short Title: Amendments to Rules of Procedure			
(4) PA Code Cites: 61 Pa. Code §§899.201(b), 899.201(d) and 899.801		(5) Agency Contacts & Telephone Numbers: Primary Contact: Louis R. Martin, Senior Counsel (717) 787-3325 Secondary Contact: Connie G. Rode, Executive Secretary (717) 787-3325	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The Rules of Procedure supplement the Pennsylvania Rules of Civil Procedure and govern the practice before the Board. The amendments to the Rules change the number of copies of a claim which must be filed (Rule 201(b)); repeal the rule regarding time period for filing (Rule 201(d)), and provide that no post-hearing motions may be filed (Rule 801).			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions: 72 P.S. §4651-10 authorizes the Board of Claims to establish rules governing practice before it. Further, <u>Dick Enterprises Inc. v. Commonwealth of Pennsylvania, Department of Transportation</u> , 746 A.2d 1164 (Cmwlth. Ct., January 21, 2000), stated that if the Board does not wish to accept post-trial motions, it may amend its regulations to dispose of the requirement stated in Rule 227.1(c)(2) of the Pennsylvania Rules of Civil Procedure.			

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments make three changes. Rule 201(b) is changed so that the number of copies of a claim which must be filed is now three copies instead of four. Rule 201(d) which refers to a time period of six months for filing an action is repealed because in some circumstances it does not apply. Rule 801 is added and it states the long standing practice of the Board not to entertain post-hearing motions. Rule 801 overrides the requirement for such motions which is found in Rule 227.1(c)(2) of the Pennsylvania Rules of Civil Procedure.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The litigants filing claims with the Board of Claims will benefit. The amendments will provide for more expeditious and efficient handling of claims and will eliminate any confusion over the time limits for filing claims and eliminate the requirement for post-hearing motions prior to appeal.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All parties and their attorneys in any actions before the Board of Claims must comply with the amendments to the Rules of Procedure.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Board also submitted a draft of the amendments to attorneys which regularly appear before the Board. Comments were received and some changes were made. Notices of these amendments were published in the Pennsylvania Bulletin on April 1, 2000 and on September 23, 2000.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance including any legal, accounting or consulting procedures which may be required.

None.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

None.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<i>Total Savings</i>						
COSTS:						
Regulated Community						
Local Government						
State Government						
<i>Total Costs</i>						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
<i>Total Revenue Losses</i>						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

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(20b) Provide the past three year expenditure history for programs affected by the regulation

Not applicable.

Program	FY - 3	FY - 2	FY - 1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No other nonregulatory alternatives were considered. The Board's Rules appear in regulation and must be amended by another regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provision and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

No.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The amendments to the Rules of Procedure will cut down the amount of paperwork filed with the Board, clarify current practice before the Board and eliminate any confusion about Board requirements.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These Rules of Procedure will diminish the amount of paperwork to be filed with the Board. No extra forms or reports will be requested by these Rules of Procedure.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

These amendments to the Rules of Procedure will be effective 30 days after publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

None

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

#2180

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LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION



Do not write in this space

Copy below is hereby approved as to form and
legality. Attorney General

By: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

Board of Claims

(Agency)

Document/Fiscal Note No. 105-4

Date of Adoption: March 20, 2001

By: D. C. Clipper

David C. Clipper, Chairman

Title: Chief Administrative Judge
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality, Executive or
Independent Agencies

By: Laura M. ...

March 20, 2001

DATE OF APPROVAL

(~~Chief General Counsel~~)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney
General approval or objection within
30 days after submission.

**FINAL REGULATIONS
WITH NOTICE OF PROPOSED RULEMAKING OMITTED**

**COMMONWEALTH OF PENNSYLVANIA
BOARD OF CLAIMS**

**AMENDMENT TO RULES OF PROCEDURE
(Title 61, Chapter 899)
(§§201(b), 201(d) and 801)**

TITLE 61 - REVENUE

BOARD OF CLAIMS

{61 PA. CODE CH. 899}

Rules of Procedure

By this Order, the Board of Claims (Board) hereby adopts these amendments to the Rules of Procedure, 61 Pa. Code §§899.201(b), 899.201(d) and 899.801.

The purpose of the amendment to Rule 201(b) is to reduce the number of copies of a claim which must be filed with the Board from four copies to three copies. Rule 201(d) is being repealed because this rule does not accurately state the time period during which some types of actions may be filed. Rule 801 is being added. It states the long-standing practice of the Board not to entertain post-hearing motions.

Section 2(a) of the Act of April 28, 1978 (P.L. 202) as amended (72 P.S. sec. 4651-8) and case law, Pennsylvania Institutional Health Services, Inc. v. Commonwealth of Pennsylvania, Department of Corrections, 167 Pa. Cmwlth. 226, 647 A.2d 692 (1994) mandate that all matters before the Board are governed by the Pennsylvania Rules of Civil Procedure (Pa. R.C.P.) as well as regulations promulgated by the Board.

In 1997, the Board amended its regulations to add new Rules of Procedure, 61 Pa. Code §§899.101 - 899.702. Those Rules supplement the Pa. R.C.P. and provide that "(I)f a discrepancy between this chapter and the [Pa.R.C.P.] arises, this chapter applies." 61 Pa. Code §899.102. Rule 227.1 of the Pa. R.C.P. requires the filing of post-trial motions prior to appeal, but the Board will now amend its regulations to add Rule 801 which will dispose of this requirement.

The Board is an independent agency and as such may promulgate rules of practice and procedure under the proposed rulemaking omitted process. Under Section 204(1) of the Act of July 31, 1968 (CDL) (P.L. 769, No. 240) (45 P.S. §1204) and the regulations thereunder, Pa. Code §7.4, proposed rulemaking has been omitted.

Notices of the Board's intention to submit new rules by final order, proposed rulemaking omitted were published in the Pennsylvania Bulletin on April 1, 2000 and September 23, 2000. The public was invited to review the rules and submit comments. Also, copies of the rules were sent to state agencies and attorneys who regularly appear before the Board, to the Independent Regulatory Review Commission (IRRC) and the Office of General Counsel (OGC). In preparing these final-form rules, the Board has considered the comments it received.

Analysis

The following is a description of the changes made by the amendments to the rules governing practice before the Board.

Rule 201 - Statement of Claim

Rule 201(b) previously provided that a plaintiff shall file an original and four copies of its claim with the Board. This rule is being changed to now require only an original and three copies be filed.

Rule 201(d) is being repealed. It states that a claim is timely if it is received by the Board within six (6) months of accrual. Because of certain provisions added in 1998 to the Procurement Code, 62 Pa. C.S. sec. 101 et seq., Rule 201(d) may not be an accurate statement of the filing time for every action and will be repealed to avoid misleading any litigants.

Rule 801 - No Post-Hearing Motions

Rule 801 provides that no post-hearing motions may be filed. It has long been the practice of the Board not to accept and dispose of post-hearing motions and this amendment to the regulations continues that practice and formally exempts the Board from the requirements of Rule 227.1 of the Pennsylvania Rules of Civil Procedure.

Authority

The amendments are promulgated under 72 P.S. §4651-10. This section provides the Board with the power and duty to promulgate rules governing practice before it.

Fiscal Impact

The Board has determined that these amendments to its Rules of Procedure will have no significant fiscal impact.

Paperwork

The amendments will not generate substantial additional paperwork for the public or the Commonwealth. In fact, it will cut paperwork.

Effective Date

These amendments will become effective thirty (30) days after publication in the Pennsylvania Bulletin.

Contact Person

The person to contact for an explanation of the new rules is Louis Martin, Esquire, Senior Counsel, Board of Claims, 200 North Third Street, Suite 700, Harrisburg, PA 17101-1518.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), the Board submitted a copy of the amendments to the rules with the proposed rulemaking omitted on March 22, 2001, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Finance Committees. On the same date, the amendment was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§732-101 - 732-506). In accordance with section 5(c) of the Regulatory Review Act, the amendment was deemed approved by the Senate Finance Committee on _____, 2001 and deemed approved by the House Finance Committee on _____, 2001. IRRC met on _____, 2001 and approved the rules.

Findings

The Board finds that:

(1) There is good cause to amend the Rules of Procedure, 61 Pa. Code §§899.201(b), 899.201(d) and 899.801.

(2) The amendments to the Rules of Procedure, 61 Pa. Code §§899.201(b) and 899.801, and the repeal of 61 Pa. Code §899.201(d) are necessary and appropriate for practice before the Board; and

(3) Under Section 204(1) of the CDL, the proposed rulemaking procedures in Section 201 and 202 of the CDL (45 P.S. §§1201 and 1202) do not apply because these amendments relate to agency practice.

Order

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

(a) The regulations of the Board of Claims, 61 Pa. Code Chapter 899, are amended by changing Rule 201(b), repealing Rule 201(d), and adding Rule 801 (as set forth in Annex A)

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

(c) The Chief Administrative Judge shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect thirty (30) days after its publication in the Pennsylvania Bulletin.

David C. Clipper
Chief Administrative Judge

ANNEX A

TITLE 61

PART VI BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

Sub Chap.		Rule
B.	PLEADINGS	201(b) & (d)
H.	POST-HEARING	801

TITLE 61

PART VI BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

Subchapter B. PLEADINGS

Rule 201.

...

- (b) The plaintiff shall file an original and three copies of the claim with the Board, accompanied by a \$50.00 check made payable to the Commonwealth of Pennsylvania.

...

- (d) [Repealed]

Subchapter H. POST-HEARING

Rule 801. No Post-Hearing Motions.

After hearing and the issuance by the Board of its findings of fact, conclusions of law, opinion, and order, post-hearing motions may not be filed. The findings of fact, conclusions of law, opinion, and order are a final appealable order.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 105-4
 SUBJECT: Rules of Procedure
 AGENCY: Board of Claims

2001 MAR 22 AM 10:51
 REGULATORY
 REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X** Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Attorney General

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>3/22/01</u>	<u>P. Macart</u> (Majority)	HOUSE COMMITTEE ON FINANCE
<u>3/22/01</u>	<u>Cathy Greeley</u> (Minority)	
<u>3/22/01</u>	<u>Janice Hesse</u> (Majority)	SENATE COMMITTEE ON FINANCE
<u>3/22/01</u>	<u>Julie Kuper</u> (Minority)	
<u>3/22/01</u>	<u>E. Pagan</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>3-22-01</u>	<u>Jeff M. White</u>	ATTORNEY GENERAL
<u>3/22/01</u>	<u>C. DeBour</u>	LEGISLATIVE REFERENCE BUREAU

Original: 2180



Board Members
David C. Clipper, Esquire
Chairman/Chief Administrative Judge

James W. Harris
Vice-Chairman/Citizen Member

Louis G. O'Brien, P. E.
Secretary/Engineer Member

Commonwealth of Pennsylvania
BOARD OF CLAIMS
200 North Third Street, Suite 700
Harrisburg, PA 17101-1518
(717) 787-3325
Facsimile Number (717)787-0415
April 11, 2001

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2001 APR 16 AM 9:53
REVIEW COMMISSION

David J. DeVries, Chief Deputy Attorney General
Review and Advice Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

Re: Board of Claims' Regulation No. 105-4

Dear Mr. DeVries:

Your memorandum received on April 5, 2001 requests that the Board cite the provisions of the Procurement Code which affect Rule 201(d).

Rule 201(d) is being repealed because there are circumstances under which it could conflict with Section 1712(e) of the Procurement Code. The Board chose to repeal the Rule in order to avoid misleading counsel practicing before the Board, and to try to minimize the number of situations in which a conflict will arise.


The conflict arises because Section 1712(e) purports to narrow the Board's jurisdiction by limiting the time a claim may be filed to "...within 30 days of receipt of the decision" from the contracting agency. The Board's statutory grant of jurisdiction under 72 P.S. sec. 4651-6 covers breach of contract claims filed within six months of accrual of the action. If the 30 day period under Section 1712(e) has expired but the six month statute of limitations under the Board of Claims Act has not yet expired, a conflict arises. Under such circumstances the Board of Claims intends to accept jurisdiction pursuant to the Act.

The Board also notes there are other sections of the Procurement Code which could potentially conflict with the jurisdiction and operation of the Board, including Sections 1712 (a) and (f), 1725 (b) and (c), 1726 and 1751. If conflicts arise, they will have to be resolved by an appellate court. Meanwhile, the Board now attempts to avoid at least one of these conflicts.

David J. DeVries, Chief Deputy Attorney General
April 11, 2001
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Please note that on March 16, 2001 the regulation which amends the Board's Rules of Procedure was submitted to Chuck Anderson of your staff for review. He spoke to Board Counsel, Sally Treweek, on that date and indicated his approval.

I hope that this letter clarifies the Board's position. If you need anything further for your review of the regulation, please call me.

Sincerely,

Louis R. Martin,
Chief Counsel

cc: Michael Stevens, Regulatory Analyst (IRRC)
Chris Markham, Regulatory Analyst (IRRC)