

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

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(1) Agency:

Board of Claims

(2) Agency Number: **105**

Identification Number: **105-5**

IRRC Number: **3089**

(3) PA Code Cite:

61 Pa. Code §§ 899.103, 899.105, 899.108, 899.109, 899.201(c) and 899.401(f)

(4) Short Title:

Amendments to the Board of Claims Rules of Procedure

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact:

Frank C. Kahoe, Jr., Counsel

(717) 783-3325

fkahoe@boc.state.pa.us

Secondary Contact:

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Board's Rules of Procedure supplement the Pennsylvania Rules of Civil Procedure and govern practice before the Board. The amendments to the Board's Rules: modify the definition of "Claim" to conform to 62 Pa.C.S. §§ 1701 and 1712.1(c) (Rule 899.103); repeal Rule 899.105, to eliminate conflict with 62 Pa.C.S. § 1724 (jurisdiction); change the requirements for service of claims, amended claims, and legal papers other than the claim to conform to 62 Pa.C.S. § 1725(a) and (b) (Rules 899.108 and 899.201(c)); change the copy fees charged by the Board to conform to its Right-to-Know-Law policy (Rule 899.109); and update the notice of service form to the correct year beginning with "20."

(8) State the statutory authority for the regulation. Include specific statutory citation.

62 Pa.C.S. § 1722(6) authorizes the Board to establish, by regulation, rules governing practice before the Board.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The amendments to the Rules are necessary to conform with the Board’s enabling statute, which was originally set forth in the Board of Claims Act [formerly 72 P.S. §§ 4651-1 to 4651-10] but was relocated to the Procurement Code by the Act of December 3, 2002 (P.L. 1147, No. 142) (62 Pa.C.S. §§ 101-2311). The definition of “Claim” in Rule 899.103 is changed to conform to 62 Pa.C.S. §§ 1701 and 1712.1(c). Rule 899.105 (Board Jurisdiction) is repealed as Board jurisdiction is fully addressed directly at 62 Pa.C.S. § 1724. The language of Rules 899.109 and 899.201(c), regarding service, is amended to conform to 62 Pa.C.S. § 1725(a) and (b). Amendments to Rule 899.109 reflect the Board’s publication of its Right-to-Know Policy in accordance with the Right-to-Know Law, and the form for notice of service in Rule 899.401(f) contains a technical change reflecting years beginning with “20.” The amendments benefit parties to litigation before the Board and their legal representatives by conforming Board rules to its current statutory enabling provisions.

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

No/not applicable.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

As the Board of Claims is created by statute, no comparison with rules of procedure in other states is relevant. The regulation has no effect on Pennsylvania's ability to compete with other states.

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

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board will consider any comments, recommendations or objections, and will respond as required.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Only parties and their attorneys bringing an action before the Board of Claims will be affected by the amendments to the Rules of Procedure.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

As noted in question (15) above, all parties and their attorneys in any action before the Board of Claims must comply with the amendments to the Rules of Procedure.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

None.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Litigants before the Board of Claims will benefit as the amendments eliminate potential inconsistencies with the Board of Claims enabling provisions of the Procurement Code. There are no costs or adverse affects.

(19) 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. Explain how the dollar estimates were derived.

None.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

None.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

None.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

None.

(23) 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:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community						
Local Government						
State Government						
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Not applicable.

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

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

None/not applicable.

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

Not applicable.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

None/not applicable.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Not applicable.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: N/A
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: March 2015
- D. The expected effective date of the final-form regulation: June 2015
- E. The date by which compliance with the final-form regulation will be required: June 2015
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Not applicable.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>_____ Board of Claims (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>105-5</u></p> <p>DATE OF ADOPTION: <u>March 5, 2015</u></p> <p>BY: <u>Jeffrey F. Smith</u> Jeffrey F. Smith, Chairman Chief Administrative Law Judge TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Jack C. Kalish</u></p> <p>_____ March 5, 2015 DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Final-Omitted Rulemaking

TITLE 61. REVENUE

PART VI. BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

Preamble

The Board of Claims (Board) hereby adopts these amendments to the Rules of Procedure, 61 Pa. Code Chapter 899, as set forth in Annex A. The Board acts under authority of 62 Pa.C.S. § 1722(6).

Purpose and Explanation of These Amendments

The final-omitted rulemaking amends the Board of Claims Rules of Procedure to conform to the Board's enabling statute, Chapter 17, Subchapter C of the Procurement Code, 62 Pa.C.S. §§ 1701-1726, and the act of February 14, 2008 (P.L. 6, No. 3) (65 P.S. §§ 67.1-1 – 67.3104), known as the Right-to-Know Law (RTKL).

The definition of "Claim" in Rule 899.103 is changed to conform to 62 Pa.C.S. §§ 1701 and 1712.1(c). Rule 899.105 (Board Jurisdiction) is repealed to eliminate conflict with 62 Pa.C.S. § 1724 which now addresses Board jurisdiction. The language of Rules 899.109 and 899.201(c), regarding claim service, is amended to conform to 62 Pa.C.S. § 1725(a) and (b). Amendments to Rule 899.109 reflect the Board's publication of its Right-to-Know Policy in accordance with Section 504 of the RTKL (65 P.S. § 67.504). The Board also makes a technical amendment to the form for notice of service in Rule 899.401(f), reflecting years beginning with "20" rather than "19."

Contact Person

Interested persons may contact Frank C. Kahoe, Jr., Counsel, Board of Claims, at 200 North 3rd Street, Suite 700, Harrisburg, PA 17101-1518; (717) 787-3325; or fkahoe@boc.state.pa.us.

Effective Date

The final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

Final-Omitted Rulemaking

The Board has promulgated this regulation as a final-omitted rulemaking. The Board believes this regulation meets the criteria in Section 204(1)(iii) of the Commonwealth Documents Law (CDL), 45 P.S. § 1204(1)(iii), and 1 Pa. Code § 7.4(1)(iii), which permit the omission of notice of proposed rulemaking for regulations which relate to “agency procedure or practice.” On February 10, 2015, the Board submitted the final-omitted regulation to the Office of Attorney General, Civil Law Division, Legal Review Section, to conduct a “pre-review” of the Board’s justification for submittal as a final-omitted regulation under Section 204(1)(iii) of the CDL. On February 17, 2015, the Legal Review Section notified the Board that it had approved the submission of the regulation as a final-omitted rulemaking.

Regulatory Review

Under Section 5.1 of the Regulatory Review Act (71 P.S. § 745a(c)), on March 6, 2015, the Board submitted a copy of the final-omitted regulation to the Chairpersons of the House Finance Committee and the Senate State Government Committee, and to the Independent Regulatory Review Commission (IRRC). On the same date, the regulations were submitted to the Office of Attorney General for review and approval for form and legality under the

Commonwealth Attorneys Act (71 P.S. §§ 732-101 – 732-506). On March 5, 2015, the Counsel to the Board, an independent agency, reviewed and approved for form and legality the regulations under Section 402(5) of the Commonwealth Attorneys Act (71 P.S. § 732-402(5)).

Under Section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(d)), the regulation was deemed approved by the House Finance Committee and the Senate State Government Committee on **TBD**. Under Section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5(e)), IRRC met and approved the regulation on **TBD**.

Findings

The Board finds that:

- (1) The Board may omit notice of proposed rulemaking under Section 204(1)(iii) of the CDL and the regulations thereunder, 1 Pa. Code § 7.4(1)(iii).
- (2) The amendments to the Rules of Procedure, 61 Pa. Code §§ 899.103, 899.105, 899.108, 899.109, and 899.201(c), are necessary and appropriate for practice before the Board.

Order

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

- (a) The Rules of Procedure of the Board of Claims, 61 Pa. Code Chapter 899, are amended by changing §§ 899.103, 899.108, 899.109, and 899.201(c), and repealing § 899.105, as set forth in Annex A.
- (b) The Chief Administrative Law 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 Law 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 upon publication in the *Pennsylvania Bulletin*.

Jeffrey F. Smith, Chairman
Chief Administrative Law Judge

Annex A

TITLE 61. REVENUE

PART VI. BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

* * * * *

Rule 899.103. Definitions.

In addition to the definitions in Pa.R.C.P. No. 76, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Board—The Board of Claims of the Commonwealth.

Claim—The statement of facts [describing the furnishing of goods or services, or both, to the Commonwealth, actions or inactions by Commonwealth employes which give rise to a demand for payment, and refusal by the Commonwealth to make payment] filed by a contractor or Commonwealth agency stating the grounds upon which the contractor or Commonwealth agency asserts a controversy exists.

Rule—A rule adopted by the Board.

Rule 899.104. Principles of interpretation.

The principles of interpretation and rules of construction embodied in Pa.R.C.P. Nos. 101—153 apply to this chapter.

[Rule 899.105. Jurisdiction of the Board.

The Board has jurisdiction to hear and determine the following:

- (1) Claims against the Commonwealth arising from contracts entered into with the Commonwealth when the amount in controversy is \$300 or more.
- (2) Claims against the Commonwealth for actions or inactions by its employes giving rise to implied contracts.
- (3) Claims against the Commonwealth for goods or services, or both, furnished to the Commonwealth but not within the terms of valid, existing contracts.]

* * * * *

Rule 899.108. Service of legal papers [other than the claim].

[Except for the claim and any amended claim,]All pleadings and other documents filed with the Board shall be served by the filing party upon all other parties to the action by mail. A certificate of service shall be attached to all filings with the Board.

Rule 899.109. Copy fees.

[The fee for copying is 25¢ per page for opinions, pleadings, briefs and exhibits, and \$1 per page for docket sheets. The fee for certifying a document is \$5.]Charges for copying, certifying or otherwise producing documents requested from the Board will be as established by the Board in its Right-to-Know Law Policy which is posted at the Board's office and on its website in accordance with the act of February 14, 2008 (P.L. 6, No. 3) (65 P.S. §§ 67.101- 67.3104), known as the Right-to-Know Law (RTKL).

Subchapter B. PLEADINGS

Rule 899.201. Statement of claim.

* * * * *

(c) [Service of the claim and any amended claim will be made by the Board.]The Board will [serve one copy of the claim and any amended claim to the defendant involved, and one copy] deliver to the Attorney General[.] a copy of all claims, counterclaims or cross-claims made against the Commonwealth, and any amendments thereto.

* * * * *

Rule 899.401. Discovery.

* * * * *

(f) The notice of service required by subsection (e) shall be substantially in the following form:

(CAPTION)

Notice of Service

You are hereby notified that on the

—
day of

—
, [19] 20

—
, (identify discovery request or response) was served upon the following parties or their counsel via United States Mail, first class, postage prepaid, and addressed as follows:
(names and addresses to whom discovery request or response were directed)

Name

Supreme Court I. D. No.

Address

Phone

Attorneys for

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

I.D. NUMBER: 105-5
SUBJECT: Amendments to Rules of Procedure
AGENCY: Board of Claims

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - With Revisions Without Revisions

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE FINANCE COMMITTEE</i>		
3/6/15		MAJORITY CHAIR <u>O'Neill</u>
3/6/15		MINORITY CHAIR <u>Wheatley</u>
<i>SENATE STATE GOVERNMENT COMMITTEE</i>		
	3/6/15	MAJORITY CHAIR <u>Folmer</u>
	3/6/15	MINORITY CHAIR <u>Williams</u>
3/6/15	K. Cooper	<i>INDEPENDENT REGULATORY REVIEW COMISSION</i>
	3/6/15	<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>