

RULES AND REGULATIONS

Title 1—GENERAL PROVISIONS

INDEPENDENT REGULATORY REVIEW COMMISSION

[1 PA. CODE CHS. 101, 201, 301, 303, 305, 307, 309, 311, 313 AND 315]

Practice and Procedure

By this order, the Independent Regulatory Review Commission (Commission) adopts the amendments to 1 Pa. Code (relating to general provisions), as set forth in Annex A. Commission is deleting Chapters 101 and 201 in their entirety and adding Chapters 301, 303, 305, 307, 309, 311 and 315.

These amendments delete Commission's regulations promulgated under the Regulatory Review Act (71 P. S. §§ 745.1—745.15) (act) as originally enacted, the act of June 25, 1982 (P. L. 633, No. 181). Because the subsequent reenactment and amendments drastically changed the structure of the review process, the prior regulations are largely inapplicable and unenforceable. For this reason, Commission has deleted them in their entirety.

Embargoed material is covered in these amendments. Therefore, Commission has also deleted in its entirety Chapter 201 (relating to embargoed material—statement of policy).

Statutory Authority

These amendments are adopted under the authority contained in section 11(a) of the act (71 P. S. § 745.11(a)).

Background

This rulemaking implement the act of June 25, 1997 (P. L. 252, No. 24) (Act 24) amendments to the act. These amendments respond to administrative and procedural concerns that have continually surfaced since the previous revision of the act in 1989. The Legislative intent of the act and the mission of the Commission remain the same. However, the process has been streamlined and made more flexible, saving both the regulators and the regulated time and money.

The major changes brought about by the Act 24 amendments are as follows:

- Define terms that are widely used in the review process to insure their consistent application.
- Eliminate the responsibility of agencies to send copies or summaries of a final-form regulation to all parties who commented on the proposed regulation. Now agencies are only obliged to send this material to commentators who specifically request it.
- Allow the agency to toll the review process to make changes recommended by the Commission or the standing committee of the House or Senate committee designated to review the agency's regulations.
- Reduce the blackout period from 72 hours to 48 hours.
- Establish uniform procedures for the submittal and review of regulations and reports immediately prior to

and after the adjournment sine die of the General Assembly or the expiration of the Legislative session in even numbered years.

- Modify the time line for the Commission review of regulations to insure that the Commission has at least 10 days to consider committee comments and action.
- Restrict the Commission from reviewing an existing regulation that has been in effect for less than 3 years.

Purpose

The purpose of this rulemaking is twofold. First, it deletes obsolete regulations designed to implement the original version of the act that is no longer in effect. Second, it implements the latest revision to the act.

Summary of Amendments

Chapter 301 (relating to general provisions) sets forth the general provisions relating to the Commission's operation.

- Section 301.1 (relating to definitions) cross references terms defined in the act and defines additional commonly used terms and phrases to insure their consistent application. Terms and phrases defined in this section include: "blackout period," "deemed approved," "delivery," "embargoed material," "end of Legislative session," "existing regulation," "face sheet," "final regulation," "form letters," "LRB," "order," "public meeting," "regulatory analysis form," "regulatory review criteria," "Sunshine Act" and "transmittal sheet."

- Section 301.2 (relating to regulation files) implements section 5.1(k) of the act (71 P. S. § 745.5a(k)), which provides that Commission shall retain public records on regulations for 4 years after promulgation. This provision: (1) clarifies Commission's timetable for retaining files of regulations which are withdrawn or deemed withdrawn, or final regulations that have not been promulgated; (2) lists the materials that are retained in the public files; and (3) provides that after Commission takes final action on a regulation, the file will be closed, and only documents addressed to Commission will be included in a closed file.

- Section 301.3 (relating to determination of date and time of delivery) establishes how Commission determines and confirms the date and time of delivery of documents.

- Section 301.4 (relating to expiration of time period for delivery) establishes how Commission will determine when the committee and Commission review periods expire. Generally, if the allotted time ends on a day when Commission or committee is closed because of a holiday, weekend or an emergency, the review period is extended to the first business day thereafter.

- Section 301.6 (relating to delivery of a regulation to the wrong committee) provides direction to the agency when a regulation is inadvertently delivered to the wrong committee.

- Section 301.7 (relating to withdrawal of a regulation) describes the effects of a withdrawal or deemed withdrawal of a regulation.

- Section 301.8 (relating to agency contact person) requires an agency to designate a contact person to receive documents transmitted by Commission.

- Section 301.9 (relating to procedure for public hearings) implements section 11(c) of the act (71 P. S.

§ 745.11(c)). It establishes when and how Commission may conduct a public meeting.

Chapter 303 (relating to meetings of the Commission) describes how Commission meetings will be conducted.

- Section 303.1 (relating to notice of Commission public meetings; participation; minutes) provides that Commission will: (1) give notice of and conduct its meetings in accordance with the Sunshine Act, 65 Pa.C.S. §§ 701—716; and (2) notify an affected agency and committees of a rescheduled meeting, in accordance with section 4(h) of the act (71 P. S. § 745.4(h)).

- Section 303.2 (relating to blackout period) outlines Commission's handling of documents received during the blackout period.

- Section 303.3 (relating to quorum) implements section 4(i) of the act. It provides that three members of Commission must be physically present to constitute a quorum. Once a quorum is present, the remaining members of Commission may participate and vote by teleconference or proxy.

- Section 303.4 (relating to proxy voting) establishes the procedures for proxy voting. It provides that the proxy shall be: (1) in writing, signed by the Commissioner and addressed to the Chairperson at Commission's office address; and (2) delivered by first class mail or facsimile, prior to the commencement of the public meeting. The Commissioner must file a separate proxy for each vote. The Chairperson or a delegate will present the proxy at the time of the vote on the regulation, and the proxy will be recorded as the Commissioner's vote.

Chapter 305 (relating to procedures of delivery and review of proposed regulation) implements section 5 of the act (71 P. S. § 745.5). It outlines the procedures for delivery and review of proposed regulations

- Section 305.1 (relating to procedures for delivery and review of proposed regulation) provides that an agency shall deliver a proposed regulation on the same date to the Commission, the committees and the LRB, lists the material which must accompany the regulation and incorporates the uniform sine die provisions in section 5(f) of the act if delivery is precluded due to the end of the Legislative session.

- Section 305.2 (relating to delivery of comments and information by an agency) outlines the agency's responsibility for delivering comments it has received to Commission and committees.

- Section 305.3 (relating to Commission review period) provides that Commission has 10 days after the expiration of the committee review period to complete its review of the regulation.

- Section 305.4 (relating to Commission comments on a proposed regulation) outlines the procedure for Commission delivery and agency receipt of Commission's comments. It provides that if Commission has not objected to a provision in the proposed regulation, subsequent disapproval of the final-form regulation may only be based on changes made to the proposed regulation, or recommendations from a committee.

Chapter 307 (relating to procedures for delivery and review of final regulations) implements section 5.1 of the act. It outlines the procedures for delivery of final-form and final-omitted regulations.

- Section 307.1 (relating to two-year period for promulgation) requires an agency to deliver a final-form regulation within 2 years of the close of the public comment

period. If an agency does not meet this deadline, the regulation is deemed withdrawn.

- Sections 307.2 and 307.3 (relating to delivery of a final-form regulation; and delivery of a final-omitted regulation) provide for the delivery of final-form regulations, lists the materials which must accompany the regulation and incorporates uniform sine die provisions in section 5.1(f) of the act, if delivery is precluded due to the end of the Legislative session.

- Section 307.4 (relating to tolling the review period) outlines the procedures to be followed by an agency and the Commission if the agency tolls the review period. It also establishes how the Commission calculates the resumption of the review period after the tolled regulation has been delivered.

- Section 307.5 (relating to procedure for tolling) provides that: (1) the Commission has 10 days for review after the expiration of the committee review period; (2) the Commission's review period may be extended if the Commission action is precluded due to lack of a quorum; and (3) the Commission will consider all comments received in determining whether a regulation meets the regulatory review criteria.

Chapter 309 (relating to action on regulations) implements section 6 of the act (71 P. S. § 745.6). It outlines the actions the Commission and committees may take on regulations, and the results of specific actions.

- Section 309.1 (relating to Commission and committee action on a final regulation) provides that if the Commission and the committees approve or are deemed to have approved a regulation, the agency may proceed with promulgation. This provision also outlines what must occur for a regulation to be deemed approved.

- Section 309.2 (relating to Commission approval/committee disapproval of a final regulation) provides that if Commission approves a regulation, which a committee has disapproved, Commission must notify the disapproving committee within 2 business days of its approval.

Chapter 311 (relating to procedures for review of disapproved final regulations) outlines the procedures for subsequent review of disapproved final-form and final-omitted regulations.

- Section 311.1 (relating to Commission disapproval of a final regulation) implements section 6(a) and (b) of the act. It provides that Commission's disapproval order will: (1) specify the review criteria which the regulation failed to meet; (2) be delivered to the LRB, the committees and the agency; and (3) bar the agency from promulgating the regulation until subsequent Commission and committee review is completed.

- Section 311.2 (relating to response by an agency to Commission disapproval) implements section 7(a) and (a.1) of the act (71 P. S. § 745.7(a) and (a.1)). It requires the agency to notify the Commission and the committees within 7 days whether the agency will withdraw, resubmit without revision or revise a disapproved regulation. This provision cross references section 7(a.1) of the act if the agency is precluded from delivering its notification because of the end of the Legislative session.

- Section 311.3 (relating to subsequent review of regulation without revisions or modifications) implements section 7(b) of the act. It provides for: (1) agency delivery of a report to the committees if the agency decides to resubmit a disapproved regulation without revision; (2) materials the report must contain; (3) the time period for

committee review of the report; and (4) a cross reference to section 7(d) of the act, which outlines the concurrent resolution process.

- Section 311.4 (relating to delivery of regulation with revisions) implements section 7(c) of the act. It provides for: (1) agency delivery of a report to the Commission and committees if the agency decides to revise and resubmit the regulation; (2) material that the report must contain; (3) the time period for the Commission and committee review of the report; and (4) a cross reference to section 7(d) of the act, which outlines the concurrent resolution process.

Chapter 313 (relating to emergency certified regulations) implements section 6(b) the act. It outlines the procedures for the delivery and review of emergency certified regulations.

- Section 313.1 (relating to general) describes when and how an agency may submit a final-form or final-omitted regulation certified as an emergency by either the Governor or Attorney General.

- Section 313.2 (relating to review of an emergency certified final regulation) establishes that an emergency certified regulation takes effect immediately upon publication in the *Pennsylvania Bulletin*. If disapproved, the regulation will be rescinded after 120 days or upon final disapproval under section 7(d) of the act, whichever occurs later. This provision also incorporates the statutory and regulatory tolling provisions.

Chapter 315 (relating to existing regulations and unpublished documents) outlines the procedures for review of existing regulations and statements of policy.

- Section 315.1 (relating to review of an existing regulation) implements section 8.1 of the act (71 P.S. § 745.8a). It provides that: (1) the Commission may review an existing regulation which has been in effect for at least 3 years; (2) if warranted, the Commission will notify the agency of issues raised and request a response; and (3) after a review of all pertinent material, the Commission will issue a report to the agency, committees, Governor and Attorney General setting forth its findings and recommendations.

- Section 315.2 (relating to review of an unpublished document) implements section 7.1 of the act (71 P.S. § 745.7a). It provides that if the Commission finds a published or an unpublished document should be promulgated as a regulation, it may present the matter to the Joint Committee on Documents.

Fiscal Impact and Paperwork Requirements

These amendments do not create a negative fiscal impact or an increased paperwork requirement. In fact, allowance for electronic and facsimile transmission of documents will reduce paperwork.

Summary of Public Comments and Changes

These amendments were published as proposed 29 Pa.B. 980 (February 20, 1999). The regulations were also published on the Commission's website at www.irrc.state.pa.us. Written comments, suggestions or objections were requested within a 45-day period after publication of the proposed amendments. Comments were received from the Office of General Counsel, the Office of Attorney General and the Hospital and Healthsystems Association of Pennsylvania. Under section 11(a) of the act (71 P.S. § 745.11(a)), the Joint Committee on Documents also filed comments. Following is a summary of the comments,

the Commission's response to those comments and the changes to the proposed rulemaking.

Comment

In § 301.1, the definition of the term "regulation" is not the same as the definition of the term as it appears in the act. To maintain consistency, the definition of the term in the regulation should be changed to mirror the definition in the act. Also, in the definition of "embargoed material," the word "entity" should be replaced with "agency," since that is the term used in the act.

Response

The definition of "regulation" has been replaced with a cross reference to section 3 of the act. The Commission did not replace "entity" with "agency" in the definition of "embargoed material" because the blackout established in section 5.1(j) of the act applies to both public and agency comments. To clarify the act's intent, the phrase "any entity" has been replaced with "anyone."

Comment

In § 301.2(b)(2), the phrase "correspondence from the Attorney General" should be deleted to avoid confusion.

Response

The phrase "correspondence from the Attorney General" has been deleted from § 301.2(b)(2).

Comment

In § 301.3(b), the regulation references the "date and time of delivery" of a regulation. It is more appropriate for the regulation to reference the date and time of receipt, since receipt is the defining event.

Response

"Delivery" has been defined to mean both the deposit of regulations and other material with the Commission and the deposit of orders and other material with agencies and other parties. Because delivery and receipt are simultaneous events, a change in language is not necessary.

Comment

In § 301.3(b), "shall" should be replaced with "should." The Commission should continue to confirm receipt of an agency regulation.

Response

This provision is intended to refer to public commentators and not promulgating agencies. The Commission has always given agencies confirmation of its receipt of regulations. Generally, this is accomplished by returning a copy of the signed transmittal sheet to the agency. The Commission has no intention of discontinuing this practice. To clarify the intent of this provision, the word "sender" has been replaced with "commentator."

Comment

It is unnecessary to reference "legal holidays" in §§ 301.4 and 301.5, because the other enumerated days in these sections would encompass all "legal holidays."

Response

The Statutory Construction Act, 1 Pa.C.S. § 1908 (relating to computation of time), provides that whenever the last day of a period of time falls on a Saturday, Sunday or legal holiday, that day shall be omitted from the computation of time for that period. Therefore, it is not necessary to reference Saturday, Sunday or legal holidays in the provisions relating to the Commission's and the committees' review periods. To make the regulation more concise, these references have been deleted.

Comment

The requirement in proposed § 301.6 that a person receiving a regulation on behalf of a committee chairperson, Attorney General or the LRB sign the transmittal sheet with a full name, not initials, will impede the effective delivery of a regulation.

Response

This section, relating to signature on transmittal sheet, has been deleted.

Comment

Proposed § 301.6(b) and (c) (now § 301.6) were unnecessary. The phrase "designated committee" should be changed to "correct committee." "Delivery" should be replaced with "receipt."

Response

Subsections (b) and (c) have been deleted. Also, "designated committee" has been changed to "correct committee" for clarity. However, because "delivery" has been defined as the deposit of regulations with the committees, and delivery and receipt are simultaneous events, "delivery" will not be replaced with "receipt."

Comment

The requirement in proposed § 301.9 (now § 301.8) that agencies designate a single contact person would create an impediment to the efficient operation of the regulatory process from the agencies' perspective. Not all agencies are structured so that a single person acts as a regulatory coordinator who is immediately available to receive Commission documents sent by facsimile or electronic mail. Another concern is that documents should not be deemed delivered if sent by e-mail or facsimile.

Response

The Commission agrees that it may not be practical for an agency to designate a single person to function as a contact person. Likewise, it may not always be presumed that delivery is made upon facsimile or electronic transmission. Therefore, the phrase "or office" will be added at the end of the first sentence. The phrase "or office and delivery is confirmed" will be added at the end of the second sentence.

Comment

In § 303.2(a), the use of the term "party" is imprecise. Technically, the agency is the only party to a regulation. In subsection (b), the term "embargoed" should be replaced with "embargoed material," which is a defined term.

Response

Consistent with the change in the definition of "embargoed material," "any party" has been replaced with the term "anyone." In subsection (b), "material" has been added after "embargoed."

Comment

The Commission's statutory authority for establishing a procedure for proxy voting in § 303.4 is questioned.

Response

The Commission derives statutory authority for establishing a procedure for proxy voting from sections 2(a) and 4(a)(i) and 11(a) of the act (71 P.S. §§ 745.2(a)(i), 745.4(a)(i) and 745.11(a)). Section 2(a), relating to Legislative intent, provides, in part:

... The General Assembly finds that it must establish a procedure for oversight and review of regula-

tions adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania. It is the intent of this act to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function. . . (Emphasis added.)

Section 4(a) of the act, relating to the composition of the Commission, provides for representation of all four Legislative caucuses and the Governor. Bipartisan representation insures the Commission's independence.

Section 4(i) of the act provides that the only restriction on conducting Commission business is that three members be physically present to constitute a quorum. However, the provision does not limit or restrict the manner of participation for Commissioners who are not part of the quorum.

Section 11(a) of the act affords the Commission broad authority to establish procedures for conducting its business. That section provides in part:

The commission, in the performance of its functions under this act, has the power to promulgate and enforce regulations necessary to carry out the purposes of this act. (Emphasis added.)

These four provisions, read in pari materia, contemplate that the Commission will be an independent body, actively and continuously engaged in reviewing executive agency regulations. The proxy voting procedure implements the act by providing a Commissioner with the means to carry out this Legislative mandate in those instances when the Commissioner is unable to attend a Commission meeting at which a quorum is present.

Comment

The second sentence of § 305.1(a) prohibits agencies from the simultaneous delivery of regulations to the committees and the Commission in situations where time is of the essence. It should not matter whether the Commission is the last to receive the regulation. Further, the act does not require that the Commission be the final recipient of any regulation.

Response

In §§ 305.2(a), 307.2(a) and 307.3(a), the second sentence, providing that delivery to the Commission after delivery to the committees and, in the case of final-omitted regulations, to the Attorney General, has been deleted. The purpose of this sentence was to insure that delivery is made to the Commission and committees on the same day, as required in the act. Confirmation that delivery is made in accordance with the act is necessary for the Commission to accurately set its timeline for review. However, this is accomplished through §§ 305.2(b)(3), 307.2(c)(3) and 307.3(b)(3), which provide that the agency deliver a signed transmittal sheet indicating receipt by the committees and Attorney General.

Comment

The requirement in §§ 305.1(b)(4), 307.2(c)(4) and 307.3(b)(4), that the agency head or Office of General Counsel certify that the regulation was delivered to the committees in accordance with the act, is problematic. The act does not require this certification. Furthermore, the agency head and Office of General Counsel would not

have first hand knowledge of the manner of delivery, and would have to issue this certification upon the representations of the messenger. Because this certification would not be based upon first hand knowledge, it would expose the certifying individual to adverse consequences if the certification were inaccurate and do little to assure the regulation was delivered correctly.

Response

This requirement has been deleted. As noted previously, delivery of the signed transmittal sheet will provide assurance that the regulation has been delivered in accordance with the act.

Comment

The provisions of § 305.2(a) are inconsistent with the act in that they expands the agencies' duty to deliver public comments well beyond the public comment period and obligates agencies to forward comments until the expiration of the Commission's review period.

Response

A cross reference to § 305.3 has been added, indicating that the requirement that agencies deliver comments received to the Commission extends only through the Commission's review period. This requirement is consistent with section 5(c) of the act.

Comment

Section 305.4(e)(2) allows the Commission to disapprove a final-form regulation on the basis of changes that the agency made to the final-form regulation. It is not clear whether this provision allows disapproval on the basis of additions to the final-form regulation.

Response

Section 305.4(e)(2) has been revised to indicate that changes such as revisions, deletions or additions may form the basis of Commission disapproval of a final-form regulation.

Comment

Section 307.2(b) requires the agency to mail a copy of the regulation or a summary of the changes to commentators who request information on the final-form regulation. The Commission should require agencies to send a copy of the final-form regulation, not just a summary of the changes.

Response

The language of § 307.2(b) has been changed to mirror the language in section 5.1(b) of the act. Rather than requiring only a summary of the changes from the proposed regulation, the provision now requires agencies to send a "copy of the text of the final-form regulation or copy of all changes to the proposed regulation which are incorporated into the final-form regulation."

Comment

Not all agencies have adopted the drafting convention in § 307.2(c)(7) and 307.3(b)(5). Some agencies use bold or highlighted text to indicate changes in final-form regulations. So long as the changes are immediately apparent and consistent throughout the regulation, the agencies should retain the discretion to choose how to best reflect these changes.

Response

The Commission believes that changes to executive agency regulations should be indicated in a consistent manner. Doing so will avoid confusion by the General

Assembly and the public as to the scope of the changes. Accordingly, §§ 307.2(c)(6) and 307.3(b)(5) will not be changed.

Comment

Sections 307.4 and 307.5 do not provide an opportunity for commentators to comment on changes to a tolled regulation. The Commission should establish a reasonable period of time for comment for changes made to a final-form regulation as a result of the tolling process.

Response

This section will not be changed. The act does not impose any requirement on agencies to notify commentators that the time for review of a regulation has been tolled or provide commentators with an additional period of time to review the changes made during the tolling period. Although the act does not require agencies to share revised regulations with commentators, they are clearly not prohibited from doing so.

Two important statutory provisions safeguard against changes made during the tolling period which may arbitrarily impose new requirements on regulated parties without prior notice. First, tolling is limited to changes recommended by the Commission and the committees. Second, the review period may not be tolled if the Commission objects. The Commission may object if the scope of the changes exceeds the recommendations of the Commission or a committee.

Comment

Section 307.4 inappropriately restricts the tolling provisions in the act. The phrase "and this section" should be deleted from subsection (a). The act contains the requirements for tolling, and the regulation should not restrict or expand the circumstances regarding the procedure for tolling a regulation.

Response

The Commission is authorized to promulgate regulations to implement the act. With the changes discussed, the Commission finds that the regulations implement the act without imposing new requirements on agencies. Therefore, the phrase "and this section" is appropriate and will not be deleted.

Comment

Section 307.4(c) and (f) inappropriately restrict the ability of an agency to toll the review of a regulation. An agency may toll on its own initiative, and without the suggestion of the committees or Commission. Furthermore, the process established in the regulation is somewhat inefficient. When an agency notices an error with the citation in a regulation, it is counterintuitive for the agency to suggest to the Commission or committees that the review period needs to be tolled for the regulation to be amended. Then, the agency must have the Commission or the committees suggest to the agency that it toll the review period in order to make the change. In addition, the second sentence of subsection (f) is outside the scope of the act.

Response

Section 5.1(g)(1) of the act provides in part: "... the agency may, unless the commission shall object, toll the time for the commission's and the committees' review of the final-form or final-omitted regulation in order to allow time for the agency to consider *revisions to the final-form or final-omitted regulation recommended by the commission or a committee.*" (Emphasis added). The language of subsection (c) has been revised to more closely mirror this

language of the act. The word "only" has been deleted and the word "make" has been replaced with "consider." The second sentence of subsection (f) has been revised to more accurately reflect the circumstances under which the Commission may exercise its discretion to object to the tolling of the review period.

Comment

Section 307.5(b) is unduly restrictive and inconsistent with the act. The act provides that an agency may toll the review period to "consider revisions." It does not require the agency to make any revisions or have specific revisions in mind when it tolls the review period. Subsection (b) assumes that the agency has a solution to address a problem with a regulation before the review period is tolled. Agency consideration during the tolling period may result in no change or a change that was not known at the time the review period was tolled. The reason for the 30-day tolling period is to permit the agency to re-examine the regulation, consider revisions and to make a determination as to the best way to proceed. The act does not require the agencies to have the answers in advance.

Response

Subsection (b) is designed to require the agency to provide the Commission with the minimum information necessary for it to determine whether it should object. This provision has been revised for greater consistency with the act and other provisions in this section.

Section 307.5 allows for the possibility that the agency may ultimately decide not to revise the regulation. In this instance, the agency need only provide the Commission with written notice that the regulation will not be revised.

Comment

Subsections (l) and (m) of § 307.5 are unnecessary, as they are provided for expressly in the act.

Response

Subsection (l), like subsection (k), outlines the time for review once a regulation is returned to the review process. Although the committee and Commission review periods are established in the act, inserting these provisions in the regulation provides an easily accessible reference point and avoids confusion as to the starting and ending dates of each review period. Therefore, subsection (l) will be retained. However, subsection (m), which provides a cross reference to the sine die provisions in the act, will be deleted. Because the statutory sine die provisions are detailed and comprehensive, the cross reference may be deleted in the interest of conciseness. Similar cross references will be deleted from §§ 305.1(c), 307.2(d) and 307.3(c).

Additional Changes

In addition to the changes made in response to the comments received, the Commission made the following additional changes:

- In the definition of "delivery," the words "or committees" were added after "Commission" in subparagraph (i). This change clarifies the use of the term "delivery" in § 301.6.
- In § 301.8 (relating to agency contact person), the words "e-mail address" were added after "address" in the first sentence.
- To accurately reflect the Commission's recently adopted practice of holding one public session instead of two on scheduled meeting days, the definition of "staff

review meeting" has been deleted and the definition of "public meeting" has been revised. Corresponding changes have been made to §§ 303.1 and 303.2.

- To clarify that a notice of intent to toll must be delivered prior to the beginning of the blackout period, § 307.4(d) has been revised.

Tolling

On June 7, 1999, the review period was tolled, and the regulation was resubmitted with revisions recommended by the House State Government Committee and the Senate Rules and Executive Nominations Committee. The revisions were as follows:

1. The reference to "staff review meeting" was deleted from the definition of "blackout period." The staff review is now a part of the public meeting, and is no longer a separate session. This revision is consistent with similar revisions made throughout the regulations, and tracks the change in the Commission's meeting procedure.
2. The definition of "deemed approved" was revised to improve its clarity.
3. In the definition of "delivery," the reference to "other parties" was deleted and replaced with "persons."
4. In the definition of "end of Legislative session," the word "regular" was inserted before "Legislative." This change will insure that sine die adjournment is not confused with the end of a special Legislative session.
5. In the definition of "Sunshine Act," the statutory citation was corrected.
6. In §§ 301.4 and 301.5, the references to Saturday, Sunday and legal holiday were restored to improve clarity.
7. In § 303.4(a)(2), "commencement of the public meeting" was deleted and replaced with "vote." Accordingly, a proxy may be presented anytime before the vote is taken.
8. In § 303.4(b), the reference to "a delegate" was deleted and replaced with "another Commissioner or the Executive Director." This change clarifies who may deliver a proxy vote.
9. In § 307.5(g), the second sentence was deleted. In § 307.5(h), the phrase "signed by the committees" was added after "sheet." These revisions are consistent with similar revisions to the regulation, which clarify that a regulation does not have to be delivered to the Commission last. However, a completed transmittal sheet must be delivered with the regulation.

10. In § 309.1(a), the word "present" was deleted and replaced with "participating." This change clarifies that the votes of members who are participating either by telephone or proxy are counted toward the majority.

11. In § 309.2(a), revisions were made to clarify the provision's application to situations where a regulation is either approved or deemed approved.

Regulatory Review

Under sections 5(a) and 11(a) of the act, Commission submitted a copy of the proposed amendments on February 9, 1999, to the Joint Committee on Documents, the Senate Rules and Executive Nominations Committee and the House State Government Committee. In addition to submitting the proposed amendments, Commission has provided the Joint Committee on Documents and the Committees with a copy of a completed Regulatory Analysis Form. A copy of this material is available to the public upon request.

In compliance with section 5.1(a) and (b) of the act, Commission also provided the Joint Committee on Documents and the Committees with copies of all comments received.

In preparing these final-form regulations, the Commission has considered all comments received from the Joint Committee on Documents, the Committees and the public.

These final-form regulations were submitted to the Senate Rules and Executive Nominations Committee, the House State Government Committee and the Joint Committee on Documents on May 20, 1999. On June 7, 1999, the review period was tolled and the final-form regulations were resubmitted with revisions recommended by both Committees. The final-form regulations were approved by the Senate Rules and Executive Nominations Committee on June 14, 1999, by the House State Government Committee on June 8, 1999, and by the Joint Committee on Documents on June 21, 1999, in accordance with sections 5.1(d) and (e) of the act.

Findings

Commission finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order has been 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 in 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the act.

Order

The Commission, acting under the act, orders that:

(a) The regulations of Commission, Chapters 101, 201, 301, 303, 305, 307, 309, 311, 313 and 315, are amended by deleting §§ 101.1—101.11 and 201.1—201.3 to read as set forth at 29 Pa.B. 980 (February 20, 1999) and by adding §§ 301.1—301.9, 303.1—303.4, 305.1—305.4, 307.1—307.6, 309.1, 309.2, 311.1—311.4, 313.1, 313.2, 315.1 and 315.2 to read as set forth in Annex A.

(b) The Chairperson of Commission shall certify this order, 29 Pa.B. 980 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

JOHN R. MCGINLEY, Jr.,
Chairperson

Fiscal Note: Fiscal Note 70-6 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 1. GENERAL PROVISIONS

PART III. INDEPENDENT REGULATORY REVIEW COMMISSION

CHAPTER 301. GENERAL PROVISIONS

| | |
|--------|--|
| Sec. | |
| 301.1. | Definitions. |
| 301.2. | Regulation files. |
| 301.3. | Determination of date and time of delivery. |
| 301.4. | Expiration of time period for delivery. |
| 301.5. | Expiration of committee and Commission review periods. |
| 301.6. | Delivery of a regulation to the wrong committee. |
| 301.7. | Withdrawal of a regulation. |
| 301.8. | Agency contact person. |
| 301.9. | Procedure for public hearings. |

§ 301.1. Definitions.

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

Act—The Regulatory Review Act (71 P. S. §§ 745.1—745.15).

Agency—As defined in section 3 of the act (71 P. S. § 745.3).

Blackout period—The 48-hour period immediately preceding the call to order of the public meeting.

Commission—As defined in section 3 of the act.

Committee—As defined in section 3 of the act.

Commonwealth Attorneys Act—As defined in section 3 of the act.

Commonwealth Documents Law—As defined in section 3 of the act.

Deemed approved—The approval of a regulation by the Commission or a committee by operation of law when the committee or the Commission has not approved or disapproved the regulation by majority vote.

Delivery—

(i) The deposit of regulations, correspondence or other documents with the Commission or committees through postal or other delivery service, hand delivery, electronic mail (e-mail) or facsimile.

(ii) The deposit of orders, comments, correspondence or other documents with agencies, committees or persons through postal or other delivery service, hand delivery, e-mail or facsimile.

Embargoed material—Documents pertaining to a regulation on the agenda for the Commission's public meeting delivered during the blackout period by anyone, except documents from the committee or a member of the committee.

End of Legislative session—The adjournment sine die or the expiration of the regular Legislative session in an even-numbered year.

Existing regulation—An enforceable regulation codified in the *Pennsylvania Code*.

Face sheet—A form accompanying a regulation for filing documents with the LRB, completed in accordance with the regulations of the Joint Committee on Documents. See 1 Pa. Code § 13.12 (relating to requirements as to form and size).

Final regulation—A final-form or final-omitted regulation.

Final-form regulation—As defined in section 3 of the act.

Final-omitted regulation—As defined in section 3 of the act.

Form letters—Letters which contain verbatim text.

LRB—The Legislative Reference Bureau of the Commonwealth.

Order—The statement of the Commission's findings and action on a final regulation, which is not subject to appeal.

Promulgate—As defined in section 3 of the act.

Proposed regulation—As defined in section 3 of the act.

Public meeting—The scheduled meeting of the Commission conducted in accordance with the Sunshine Act.

Regulation—As defined in section 3 of the act.

Regulatory analysis form—The form accompanying a regulation that contains the information required under section 5(a) of the act (71 P. S. § 745.5(a)).

Regulatory review criteria—The criteria delineated in section 5.1(h) and (i) of the act (71 P. S. § 745.5a(h) and (i)).

Sunshine Act—65 Pa.C.S. §§ 701—716.

Transmittal sheet—The form accompanying a regulation which lists the regulation number, the title of the regulation, the agency promulgating the regulation, the type of regulation, the date of delivery and the signatures of the persons receiving the regulation on behalf of the committees, the Commission, the Attorney General (for final-omitted regulations) and the LRB.

Withdrawal—As defined in section 3 of the act.

§ 301.2. Regulation files.

(a) The Commission will retain regulation files in accordance with the following schedule:

(1) *Promulgated regulations.* Four years after the date of promulgation.

(2) *Withdrawn or deemed withdrawn regulations.* Four years after the date of delivery of the proposed or final-omitted regulation to the Commission.

(3) *Final regulations which are not promulgated.* Four years after the date of delivery to the Commission.

(b) The files shall include the following materials:

(1) The original regulatory analysis form and the original regulation.

(2) Documents received, including comments, correspondence from the agency, transcripts and manuals.

(3) Subpoenas.

(4) Correspondence from the Commission.

(5) Commission comments.

(6) Commission orders.

(c) After the Commission takes final action on a regulation under section 6(a) or 7(c) of the act (71 P. S. §§ 745.6(a) and 745.7(c)), the Commission's regulation file will be closed. Only correspondence and documents addressed to the Commission or directed to the Commission's attention will be added to a closed regulation file.

(d) Upon request, a person may examine or copy the materials contained in the regulation files during the Commission's normal business hours.

(e) The Commission may charge a reasonable fee for copies of material contained in a regulation file.

§ 301.3. Determination of date and time of delivery.

(a) The Commission will determine the date and time of delivery of documents as follows:

(1) *E-mail.* As indicated on the Commission's computer system.

(2) *Fax.* As indicated on the transmittal report generated by the Commission's facsimile machine.

(3) *Postal or other delivery service.* As indicated on the Commission's time and date stamp.

(4) *Hand delivery.* As indicated on the Commission's time and date stamp.

(b) If the commentator requests confirmation of delivery of a hand-carried document, the commentator shall include an additional copy of the first page. The Commission will stamp the copy with the date and time of delivery and return it to the commentator. If the commentator requests confirmation of a document delivered through the postal or another delivery service, the commentator shall include an additional copy of the first page and a stamped, self-addressed envelope. The Commission will stamp the additional copy with the date and time of delivery and mail it to the commentator.

(c) If the commentator requests confirmation of delivery of an e-mailed or faxed document, the Commission will fax or e-mail confirmation of delivery to the commentator.

(d) The commentator shall have the responsibility to obtain confirmation that a document was delivered prior to the blackout period.

(e) The Commission will stamp the date and time of delivery of a regulation on the transmittal sheet and on the regulatory analysis form.

§ 301.4. Expiration of time period for delivery.

(a) The time period for an agency to deliver a regulation or report to the Commission or a committee will expire on the first business day after the expiration day established in the act or this part if that day is one of the following:

(1) A legal holiday.

(2) Declared a holiday by the Office of Administration.

(3) A day on which Commonwealth offices located in Harrisburg are closed due to emergency circumstances.

(4) A day on which the staff offices of the Senate or House of Representatives are officially closed.

(5) A Saturday or Sunday.

(b) A part-day holiday is considered a normal business day and not a day that would require the extension of a time period for delivery.

§ 301.5. Expiration of committee and Commission review periods.

(a) A committee review period will expire the first business day after the expiration day established under the act or this part if that day is one of the following:

(1) A legal holiday.

(2) Declared a holiday by the Office of Administration.

(3) A day on which Commonwealth offices located in Harrisburg are closed due to emergency circumstances.

(4) A day on which the staff offices of the Senate or House of Representatives are officially closed.

(5) A Saturday or Sunday.

(b) The Commission review period will expire on the first business day after the expiration day established under the act or this part if that day is one of the following:

(1) A legal holiday.

(2) Declared a holiday by the Office of Administration.

(3) A day on which Commonwealth offices located in Harrisburg are closed due to emergency circumstances.

(4) A Saturday or Sunday.

(c) A part-day holiday is considered a normal business day and not a day that would require the extension of a committee or Commission review period.

§ 301.6. Delivery of a regulation to the wrong committee.

(a) Immediately upon discovery that the agency has delivered a regulation to a committee other than a committee as defined in § 301.1 (relating to definitions), the agency shall deliver the regulation to the correct committee.

(b) With the delivery of a proposed regulation to the correct committee, the agency shall include all comments received since the beginning of the public comment period.

(c) The review period of the correct committee will begin as follows:

(1) For proposed regulations, the day after the close of the public comment period or the day after delivery, whichever is later.

(2) For final regulations, the day after delivery.

§ 301.7. Withdrawal of a regulation.

(a) If an agency withdraws or is deemed to have withdrawn a regulation, the Commission and the committees will cease their review of the regulation and will not take further action on the regulation.

(b) If the agency withdraws a proposed regulation, but subsequently desires to proceed with promulgation, the agency shall deliver a new proposed regulation in accordance with § 305.1 (relating to delivery of a proposed regulation).

(c) If the agency withdraws a final-form regulation after delivery to the Commission, but subsequently desires to proceed with promulgation, the agency may deliver a new final-form regulation in accordance with § 307.2 (relating to delivery of a final-form regulation), within 2 years from the close of the public comment period.

(d) If the agency desires to proceed with promulgation of a withdrawn regulation but does not submit a new final-form regulation within 2 years from the close of the public comment period, the agency shall deliver a new proposed regulation.

§ 301.8. Agency contact person.

An agency shall notify the Commission, in writing, of the name, title, address, e-mail address, telephone number and facsimile number of the agency representative or office designated to receive comments, orders, embargoed material and other documents, which the Commission delivers by facsimile or e-mail to the agency. Delivery is deemed made if sent by facsimile or e-mail to the designated agency representative or office and delivery is confirmed.

§ 301.9. Procedure for public hearings.

(a) The Commission may schedule public hearings on matters that are related to a proposed, a final or an existing regulation under review.

(b) Notice of a public hearing will be published in accordance with the Sunshine Act. The notice will include the date and time of the public hearing, the subject matter of the public hearing and the address where the public hearing will take place.

(c) The Chairperson will designate a hearing officer to preside at the public hearing. The hearing officer will be

charged with preserving order during the public hearing. The hearing officer may determine the agenda, the order of commentators and the time allotted to each commentator.

(d) When participating at a public hearing, commentators shall bring 10 written copies of their comments and supporting documents to the Commission.

CHAPTER 303. MEETINGS OF THE COMMISSION

| | |
|-------|---|
| Sec. | |
| 303.1 | Notice of Commission public meetings; participation; minutes. |
| 303.2 | Blackout period. |
| 303.3 | Quorum. |
| 303.4 | Proxy voting. |

§ 303.1. Notice of Commission public meetings; participation; minutes.

(a) The Commission will give notice of its public meetings in accordance with the Sunshine Act.

(b) The Commission will deliver notice of a rescheduled public meeting to the committees and affected agencies at least 10-calendar days prior to the meeting date.

(c) Commission public meetings are conducted in compliance with the Sunshine Act.

(d) Minutes of public meetings will be available for public inspection at the Commission office during regular business hours.

§ 303.2. Blackout period.

(a) During the blackout period, Commissioners and Commission staff will not communicate with anyone, except a committee, committee member or committee staff person, regarding the substance of a regulation on the Commission's public meeting agenda.

(b) Comments and documents delivered by anyone, except a committee, committee member or committee staff person, during the blackout period will be embargoed material.

(c) Within 24 hours of receipt, the Commission will deliver embargoed material and committee comments received during the blackout period to the agency.

(d) Upon the call to order of the public meeting, embargoed material will be distributed to the Commissioners and Commission staff assigned to review the regulation.

§ 303.3. Quorum.

(a) For purposes of conducting official business, three Commissioners shall be physically present to constitute a quorum.

(b) Once a quorum is established, Commissioners may participate in meetings and vote on regulations by teleconference or proxy.

§ 303.4. Proxy voting.

(a) A Commissioner may vote by proxy on any issue before the Commission, including the approval or disapproval of a regulation, if the following conditions are met:

(1) The proxy shall be in writing, signed by the Commissioner and addressed to the Chairperson at the Commission's office address.

(2) The Commissioner will deliver the proxy to the Commission, either by first-class mail or facsimile, prior to the vote.

(3) The Commissioner will deliver a separate proxy for each vote.

(b) The Chairperson, another Commissioner or the Executive Director will present the proxy at the public meeting at the time of the Commission vote.

(c) The proxy shall be recorded as the Commissioner's vote.

CHAPTER 305. PROCEDURES FOR DELIVERY AND REVIEW OF PROPOSED REGULATIONS

Sec.

- 305.1. Delivery of a proposed regulation.
- 305.2. Delivery of comments and information by an agency.
- 305.3. Commission review period.
- 305.4. Commission comments on a proposed regulation.

§ 305.1. Delivery of a proposed regulation.

(a) The agency shall deliver a proposed regulation to the LRB, the committees and the Commission on the same date.

(b) The agency shall include the following material with the regulation:

- (1) A completed regulatory analysis form.
- (2) A face sheet signed by the Office of Attorney General and the Office of General Counsel or chief counsel of an independent agency.
- (3) A transmittal sheet signed by the committees.
- (4) The preamble and the text of the regulation set forth in an Annex A.

§ 305.2. Delivery of comments and information by an agency.

(a) From the date of delivery of the proposed regulation until the expiration of the Commission's review period as in § 305.3 (relating to Commission review period), the agency shall deliver to the Commission and committees copies of the following material relating to the regulation:

- (1) The comments received.
- (2) Reports from advisory groups.
- (3) Public notices or announcements regarding solicitation of public comments and information regarding meetings the agency has held or will hold.
- (b) The agency shall deliver copies of comments to the Commission within 5 days of its receipt of the comments.

(c) The agency shall deliver one copy of form letters received, and indicate the number of copies of that form letter it has received as of the date of delivery.

§ 305.3. Commission review period.

The Commission has 10 days after the expiration of the committee review period to review the regulation and deliver its comments to the agency. The Commission will calculate its review period as beginning the day after the expiration of the committee review period.

§ 305.4. Commission comments on a proposed regulation.

(a) The Commission will deliver its comments on a proposed regulation to the agency on or before the date the comments are due.

(b) To verify receipt of the comments by hand delivery, the agency staff person shall sign the Commission's receipt card. To verify receipt of the comments by facsimile, the agency staff person shall sign the cover sheet and send it back to the Commission by facsimile. To verify receipt of the comments by e-mail, the agency staff person shall send an e-mail message to the Commission indicating receipt of the comments.

(c) The comments shall contain objections to the regulation, specifying the regulatory review criteria that the regulation has not met. The comments may also contain recommendations for amendment of the regulation in final-form.

(d) If the Commission or a committee does not object to a provision in the proposed regulation by the expiration of its review period, and if the agency has not changed that provision in the final-form regulation, the Commission will be deemed to have approved that provision.

(e) The Commission may disapprove the final-form regulation only on the basis of one or more of the following:

- (1) Objections which the Commission raised in its comments on the proposed regulation.
- (2) Changes, such as revisions, deletions or additions, which the agency made to provisions in the final-form regulation.
- (3) Recommendations, comments or objections of a committee relating to the regulation.

CHAPTER 307. PROCEDURES FOR DELIVERY AND REVIEW OF FINAL REGULATIONS

Sec.

- 307.1. Two-year period for promulgation.
- 307.2. Delivery of a final-form regulation.
- 307.3. Delivery of a final-omitted regulation.
- 307.4. Tolling the review period.
- 307.5. Procedure for tolling.
- 307.6. Commission review of a final regulation.

§ 307.1. Two-year period for promulgation.

If an agency does not deliver, or withdraws and does not resubmit, a final-form regulation within 2 years of the close of the public comment period for the proposed regulation, the agency is deemed to have withdrawn the regulation.

§ 307.2. Delivery of a final-form regulation.

(a) The agency shall deliver a final-form regulation to the committees and the Commission on the same date.

(b) On the same date that the agency submits the regulation to the committees and the Commission, the agency shall send, by first class or electronic mail, a notice of submission and a copy of the text of the final-form regulation or a copy of all changes to the proposed regulation which are incorporated into the final-form regulation, to those commentators who requested information on the final-form regulation.

(c) The agency shall include the following documents with the regulation:

- (1) A completed regulatory analysis form relating to the final-form regulation.
- (2) A face sheet signed by the Office of General Counsel or chief counsel of an independent agency.
- (3) A transmittal sheet signed by the committees.
- (4) The agency's response to the comments received.
- (5) The preamble.
- (6) The text of the final-form regulation the agency intends to adopt indicating any changes made from the proposed regulation using the following format:

(i) Brackets to indicate language proposed to be deleted from the existing regulation.

(ii) Underscoring to indicate the new language proposed to be added to the existing regulation.

(iii) Strikeout type to indicate the new language in the proposed regulation which is deleted in the final-form.

(iv) Capital letters to indicate the new language in the final-form regulation which was not included in the proposed regulation.

(7) The names and addresses of commentators who requested additional information on the final-form regulation.

§ 307.3. Delivery of a final-omitted regulation.

(a) The agency shall deliver a final-omitted regulation to the committees, the Attorney General and the Commission on the same date.

(b) The agency shall include the following documents with the regulation:

- (1) A completed regulatory analysis form.
- (2) A face sheet signed by the Office of General Counsel or chief counsel of an independent agency.
- (3) A transmittal sheet signed by the committees and the Office of Attorney General.
- (4) The preamble.
- (5) The text of the final-omitted regulation indicating amendments to the existing regulation using the following format:

- (i) Brackets to indicate language deleted from the existing regulation.
- (ii) Underscoring to indicate language added to the existing regulation.

§ 307.4. Tolling the review period.

(a) After delivery of a final regulation to the Commission and committees, an agency may revise the regulation only if it tolls the review period in compliance with section 5.1(g) of the act (71 P. S. § 745.5a(g)) and this section.

- (b) An agency may only toll the review period one time.
- (c) The agency may toll the review period to consider revisions recommended by the Commission or a committee.

(d) The agency shall toll the review period prior to whichever of the following events occurs first:

- (1) The day on which either committee takes action on the regulation.
- (2) The expiration of the committee review period, if neither committee takes action.
- (3) The beginning of the blackout period.
- (e) The agency may only toll the review period for up to 30 days.

(f) The agency may not toll the review period if the Commission objects. The Commission may object if the agency indicates in its intent to toll that it is considering revisions that are broader than or inconsistent with those recommended by the Commission or a committee.

§ 307.5. Procedure for tolling.

- (a) The agency shall deliver written notice of its intention to toll to the Commission and the committees on the same date.
- (b) The written notice shall include the following:
 - (1) A citation to the section the agency is considering revising.

(2) A description of the revisions the agency is considering.

(3) An explanation of how the revisions the agency is considering will satisfy the Commission's or committee's concerns.

(c) The agency shall deliver the written notice of its intention to toll prior to the expiration of the committees' 20-day review period or the day on which either committee takes action on the regulation, whichever occurs first.

(d) If the Commission objects to the tolling, it will notify the agency and the committees of its objections within 2 business days after its receipt of the agency's notice.

(e) If the Commission objects, the review period will not be tolled and the regulation will be reviewed within the original time period established under section 5.1(d)—(f) of the act (71 P. S. § 745.5a(d)—(f)).

(f) The Commission will notify the agency, the committees, the Attorney General and the General Counsel of the first and 30th day of the tolling period.

(g) Before the expiration of the tolling period, the agency shall deliver a revised regulation, or a written notice that the regulation will not be revised, to the committees, the Commission and the Attorney General (for a final-omitted regulation) on the same date.

(h) The agency shall include a transmittal sheet signed by the committees with delivery of the regulation, or written notice that the regulation will not be revised.

(i) If the agency does not deliver a revised regulation, or written notice that the regulation will not be revised, before the expiration of the tolling period, the agency is deemed to have withdrawn the regulation. The Commission will notify the agency, the committees, the Attorney General and the Office of General Counsel that the regulation is deemed withdrawn.

(j) Upon receipt of the revised regulation, or written notice that the regulation will not be revised, the Commission will notify the agency, the committees, the Attorney General and the Office of General Counsel of the beginning and ending dates of the committee review period.

(k) The committees have the remainder of their 20-day review period or 10 days from the date of receipt of the revised regulation or written notice that the regulation will not be revised, whichever is longer, to approve or disapprove the regulation. The committee review period begins the day after the revised regulation or written notice is received.

(l) The Commission has 10 days after the expiration of the committee review period, or until its next regularly scheduled meeting, whichever is later, to approve or disapprove the original or revised regulation.

§ 307.6. Commission review of a final regulation.

(a) The Commission has 10 days after the expiration of the committee review period, or until its next regularly scheduled meeting, whichever is later, to approve or disapprove a final regulation. The Commission will calculate its review period as beginning the day after the expiration of the committees' review period.

(b) If the Commission is unable to approve or disapprove a final regulation because of the lack of a quorum, its review period will be extended for 30 days or until the next meeting at which a quorum is present, whichever occurs first.

(c) To determine whether the final regulation meets the regulatory review criteria, the Commission will consider comments from interested parties, members of the General Assembly and the committees, and the agency's response to those comments.

CHAPTER 309. ACTION ON REGULATIONS

| | |
|--------|--|
| Sec. | |
| 309.1. | Commission and committee action on a final regulation. |
| 309.2. | Commission approval/committee disapproval of a final regulation. |

§ 309.1. Commission and committee action on a final regulation.

(a) The Commission and each committee may approve or disapprove a final regulation by majority vote of members participating.

(b) If a committee does not approve or disapprove the regulation within 20 days of receipt, the committee is deemed to have approved the regulation.

(c) The Commission is deemed to have approved a final-form regulation if the following conditions apply:

(1) All of the following events occur:

(i) The Commission has not objected to the regulation as proposed.

(ii) The agency has not made changes in the final-form regulation which were not included in the proposed regulation.

(iii) A committee has not conveyed to the Commission or agency any recommendations, comments or objections.

(2) The Commission does not take action within the time period established under § 307.6 (relating to Commission review of a final regulation).

(3) The Commission's vote results in a tie.

(d) The Commission will notify the LRB, the committees and the agency of its action on a regulation.

(e) When the committees and the Commission approve or are deemed to have approved a regulation, the agency may proceed with promulgation of the regulation.

§ 309.2. Commission approval/committee disapproval of a final regulation.

(a) When the Commission approves or deems approved a final regulation which one or both of the committees has disapproved, the Commission will deliver its approval order or notice indicating the regulation has been deemed approved to the disapproving committee and the agency within 2 business days after the approval or deemed approval.

(b) The agency may not promulgate the regulation for 14 days pending the report of a concurrent resolution from the disapproving committee, under section 7(d) of the act (71 P. S. § 745.7(d)).

(c) If the Commission is prevented from delivering the order or notice because of the end of the Legislative session, the Commission will deliver its order or notice under section 6(c) of the act (71 P. S. § 745.6(c)).

CHAPTER 311. PROCEDURES FOR REVIEW OF DISAPPROVED FINAL REGULATIONS

| | |
|--------|---|
| Sec. | |
| 311.1. | Commission disapproval of a final regulation. |
| 311.2. | Response by an agency to Commission disapproval. |
| 311.3. | Subsequent review of regulation without revisions or modifications. |
| 311.4. | Delivery of a regulation with revisions. |

§ 311.1. Commission disapproval of a final regulation.

(a) If the Commission disapproves a final regulation, the Commission will issue a disapproval order specifying the regulatory review criteria that the regulation has not met.

(b) The Commission will deliver its disapproval order to the LRB, the committees, the agency, the Attorney General and the commentators listed by the agency as having requested information on the final regulation.

(c) The Commission's disapproval order shall continue the bar on the promulgation of the regulation until the review provided under section 7 of the act (71 P. S. § 745.7) and this chapter is completed.

§ 311.2. Response by an agency to Commission disapproval.

(a) Within 7 calendar days of receipt of the Commission's disapproval order, the agency shall provide written notification to the Governor, the committees and the Commission of its selection of one of the following three options:

(1) To proceed with promulgation of the regulation without revisions.

(2) To revise the regulation to respond to the Commission's objections.

(3) To withdraw the regulation.

(b) If the agency does not select an option within 7-calendar days after receipt of the Commission's disapproval order, the agency is deemed to have withdrawn the regulation.

(c) If the agency is prevented from notifying the committees of the option selected because of the end of the Legislative session, the agency shall proceed in accordance with section 7(a.1) of the act (71 P. S. § 745.7(a.1)).

§ 311.3. Subsequent review of regulation without revisions or modifications.

(a) If the agency chooses to proceed with promulgation of the regulation without revision under § 311.2(a)(1) (relating to response by an agency to Commission disapproval), the agency shall deliver a report to the Commission and the committees within 40-calendar days of receipt of the Commission's disapproval order.

(b) The report shall contain the following:

(1) The final regulation.

(2) The Commission's disapproval order.

(3) The agency's response to the Commission's disapproval.

(4) A signed transmittal sheet.

(c) If the agency does not deliver the report within 40-calendar days of receipt of the Commission's disapproval order, the agency is deemed to have withdrawn the regulation.

(d) Upon receipt of the report, the committees may proceed in accordance with section 7(d) of the act (71 P. S. § 745.7(d)).

(e) If the agency is prevented from delivering its report to the committees because of the end of the Legislative session, the agency shall proceed in accordance with section 7(b) of the act.

§ 311.4. Delivery of a regulation with revisions.

(a) If the agency chooses to revise or modify the final regulation under § 311.2(a)(2) (relating to response by an agency to Commission disapproval), the agency shall deliver a report to the committees and the Commission within 40-calendar days of receipt of the Commission's disapproval order.

(b) The report shall contain the following:

- (1) The revised final regulation.
- (2) The Commission's disapproval order.
- (3) A detailed explanation of how the revisions respond to the Commission's disapproval order.
- (4) A signed transmittal sheet.

(c) If the agency does not deliver the report within 40-calendar days of receipt of the Commission's disapproval order, the agency is deemed to have withdrawn the regulation.

(d) The committees have 10-calendar days from receipt of the report to approve or disapprove the report. If a committee does not disapprove the report within the 10-day period, that committee is deemed to have approved the report.

(e) The Commission has 7 days after the expiration of the committee review period, or until its next regularly scheduled meeting, whichever is later, to approve or disapprove the report. The Commission will calculate its review period as beginning the day after the expiration of the committee review period.

(f) If the Commission does not disapprove the report, the Commission is deemed to have approved the report.

(g) If the committees and the Commission approve or are deemed to have approved the report, the agency may proceed with promulgation of the revised final regulation.

(h) If the Commission or a committee disapproves the report, the bar on the promulgation of the final regulation shall continue until the review provided under section 7(c) and (d) of the act (71 P. S. § 745.7(c) and (d)) is completed.

(i) If the agency is prevented from delivering its report to the committees because of the end of the Legislative session, the agency shall proceed in accordance with section 7(c) of the act.

(j) If the Commission is prevented from delivering its approval or disapproval order to the committees because of the end of the Legislative session, the Commission will deliver its order in accordance with section 7(c) of the act.

CHAPTER 313. EMERGENCY CERTIFIED REGULATIONS

| | |
|--------|--|
| Sec. | |
| 313.1. | General. |
| 313.2. | Review of an emergency certified final regulation. |

§ 313.1. General.

(a) An agency may deliver a final regulation as an emergency certified regulation in either of the following situations:

- (1) The Attorney General certifies that the regulation is required to satisfy the order of a State or Federal court, or to implement the provisions of a Federal statute or regulation.
- (2) The Governor certifies that the regulation is required to avoid an emergency which may threaten the public health, safety or welfare, cause a budget deficit or

create the need for supplemental or deficiency appropriations of greater than \$1 million.

(b) The agency shall deliver the emergency certified final-form regulation and the certification from the Attorney General or the Governor in accordance with § 307.2 (relating to delivery of a final-form regulation).

(c) The agency shall deliver the emergency certified final-omitted regulation and the certification from the Attorney General or the Governor in accordance with § 307.3 (relating to delivery of a final-omitted regulation).

§ 313.2. Review of an emergency certified final regulation.

(a) An emergency certified final regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*, or on the date specified in the agency's adoption order.

(b) Review of an emergency certified regulation shall be in accordance with Chapters 307, 309 and 311 (relating to procedures for delivery and review of final regulations; action on regulations; and procedures for review of disapproved final regulations). If the emergency certified regulation is disapproved, the regulation shall be rescinded after 120 days or upon final disapproval under section 7(d) of the act (71 P. S. § 745.7(d)), whichever occurs later.

(c) Except as provided in section 5.1(g) of the act (71 P. S. § 745.5a(g)) and §§ 307.4 and 307.5 (relating to tolling the review period; and procedures for tolling), an agency may not make changes to an emergency certified regulation after the agency delivers the regulation to the Commission and the committees.

CHAPTER 315. EXISTING REGULATIONS AND UNPUBLISHED DOCUMENTS

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| Sec. | |
| 315.1. | Review of an existing regulation. |
| 315.2. | Review of an unpublished document. |

§ 315.1. Review of an existing regulation.

(a) The Commission, on its own motion or at the request of any person or member of the General Assembly, may review an existing regulation which has been in effect for at least 3 years. If a committee of the Senate or House of Representatives requests the review, the Commission will assign it high priority.

(b) Upon delivery of a request to review an existing regulation, the Commission will initiate a preliminary review to determine whether further investigation is warranted.

(c) If the Commission determines that an investigation is not warranted, the matter will be closed. The Commission will notify the person or entity requesting the review of the existing regulation that no further action will be taken.

(d) If it is determined that an investigation is warranted, the Commission will notify the agency of the issues that have been raised and request a written response.

(e) After review of the agency's response and other relevant material, the Commission will issue a report setting forth its findings, conclusions or recommendations.

(f) The Commission will deliver its report to the agency, the committees, the Governor and the Attorney General.

The Commission's report may include recommendations for amendment of the statute that provides statutory authority for the regulation.

§ 315.2. Review of an unpublished document.

If the Commission finds that a published or unpublished document should be promulgated as a regulation, the Commission will present its finding to the Joint Committee on Documents. The Joint Committee on Documents shall determine whether the document should be promulgated as a regulation, and may order the agency to promulgate the document as a regulation within 180 days, or to desist from using the document in its business.

[Pa.B. Doc. No. 99-1048. Filed for public inspection July 2, 1999, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 91]

[Correction]

Age of Operator

The document amending § 91.4 (relating to age of operator), which appeared at 29 Pa.B. 3213 (June 26, 1999), was printed with an incorrect heading referencing Lake Winola, Wyoming County. The head should have read "Age of Operator." The remaining text of the final rulemaking was accurate.

[Pa.B. Doc. No. 99-1011. Filed for public inspection June 25, 1999, 9:00 a.m.]
