

# RULES AND REGULATIONS

## Title 1—GENERAL PROVISIONS

### INDEPENDENT REGULATORY REVIEW COMMISSION

#### [1 PA. CODE CHS. 301, 303, 305, 307, 309 AND 311] Implementation of the Regulatory Review Act

The Independent Regulatory Review Commission (IRRC) amends Chapters 301, 305, 307, 309 and 311.

This final-form rulemaking implements amendments to the Regulatory Review Act (act) enacted by the act of December 6, 2002 (P. L. 1227, No. 148) (Act 148). Because Act 148 made several substantive procedural changes, regulations relating to the review process had to be revised.

#### *Statutory Authority*

This final-form rulemaking is made under the authority in section 11(a) of the act (71 P. S. § 745.11(a)).

#### *Background*

This final-form rulemaking implements the Act 148 amendments to the act. Act 148 made several substantive changes in the order and time for committee and IRRC review. The legislative intent of the act and the mission of IRRC remain the same. However, the process has been streamlined and made more flexible, saving both the regulators and the regulated time and money.

The three major changes brought about by the Act 148 amendments are as follows.

- Committees are no longer restricted to a 20-day period to comment on proposed rulemakings. They may issue comments at any time until the agency submits the rulemaking in final-form. This change allows the committees to review IRRC's analysis before deciding whether to issue comments on a proposed rulemaking.

- Committees no longer have a maximum of 20 days to take action on a final-form rulemaking and are no longer limited to approval or disapproval. Instead, a committee has until 24 hours before IRRC's public meeting to approve or disapprove a final-form rulemaking or to notify IRRC that it intends to review the rulemaking further.

- If an agency decides to resubmit a disapproved rulemaking without changes, the rulemaking must again be submitted to IRRC for review.

In addition to the three major changes, Act 148 made several additional administrative changes.

- The 48-hour blackout immediately preceding IRRC's public meeting only applies to unsolicited public comments. Communication with the agency and members of the General Assembly may continue. In addition, IRRC may initiate contact with any party to obtain information on a final rulemaking.

- IRRC is only required to retain comments and not all documents in its public regulatory files. Miscellaneous correspondence and research materials need not be retained.

- IRRC now has a minimum of 30 days to review and take action on a final rulemaking. However, IRRC may

not act on a final rulemaking for at least 20 days after receipt, to give the committees a minimum time period for review.

- An additional criterion for review, and thus a basis for disapproval, is agency noncompliance with the act and IRRC's regulations.

#### *Purpose*

The purpose of this final-form rulemaking is to implement the Act 148 revisions to the act.

#### *Summary of the Final-Form Rulemaking*

Chapter 301 (relating to general provisions) sets forth the general provisions relating to IRRC operation.

- Section 301.1 (relating to definitions) adds definitions for "comments," "Commission comments," "committee action" and "deemed approved by a committee." In addition, it revises definitions for "deemed approved by the Commission," "embargoed material" and "regulatory review criteria."

- Sections 301.2—301.6, 301.8 and 301.9 are revised to provide greater clarity.

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

- Section 303.2 (relating to blackout period) implements the newly relaxed blackout rules.

- Section 303.4 (relating to proxy voting) allows a Commissioner participating in a public meeting by phone to verbally give proxy to the Chairperson if a Commissioner is unable to remain for the duration of the meeting.

Chapter 305 (relating to procedures for delivery and review of proposed regulations) outlines the procedures for delivery and review of proposed rulemakings.

- Section 305.1 (relating to delivery of a proposed regulation) provides formatting conventions for the text of proposed rulemakings.

- Section 305.2 (relating to delivery of comments and information by an agency; notification to commentators) outlines the agency's responsibilities with respect to the delivery of comments to IRRC and committees.

- Section 305.3 (relating to Commission review period) incorporates the new 30-day timeline for IRRC review of a proposed rulemaking.

- Section 305.4 (relating to Commission comments on a proposed regulation) has been revised to add greater clarity.

Chapter 307 (relating to procedures for delivery and review of final regulations) outlines the procedures for delivery of final-form and final-omitted rulemakings.

- Section 307.1 (relating to two-year period for promulgation) clarifies when the 2-year period for promulgation ends in instances when the agency has extended or has reopened the public comment period.

- Sections 307.2 and 307.3 (relating to delivery of a final-form regulation; and delivery of a final-omitted regulation) provide formatting conventions for the texts of final-form and final-omitted rulemakings.

- Section 307.4 (relating to tolling the review period) has been revised to provide greater clarity.

- Section 307.5 (relating to procedure for tolling) outlines the new timelines for IRRC and committee review when the agency tolls the review period.

- Section 307.6 (relating to Commission and committee review of a final regulation; time period for review) outlines the new time period for IRRC review of final-form and final-omitted rulemakings.

Chapter 309 (relating to action on regulations) outlines the actions IRRC and committees may take on rulemakings and the results of specific actions.

- Section 309.1 (relating to Commission and committee action on a final regulation) outlines the time and options for committee action. Other clarifying revisions have also been made.

- Section 309.2 (relating to committee disapproval or notification of intent to review/Commission approval of a final regulation) outlines what happens if IRRC approves a rulemaking that a committee has disapproved or intends to review.

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

- Section 311.2 (relating to response by an agency to Commission disapproval) implements the newly revised procedures for agency response to IRRC disapproval.

- Sections 311.3 and 311.4 (relating to report for a disapproved regulation submitted without revisions or modifications; and report for a disapproved regulation submitted with revisions) outline the agency's responsibility, respectively, for delivery of a report for a rulemaking submitted without revisions and a rulemaking submitted with revisions.

- Section 311.5 (relating to subsequent review of disapproved regulation) is new. It implements the Act 148 changes to the order and procedure for subsequent committee and IRRC review of disapproved regulations. Committees act after, and not prior to, IRRC review of a report submitted with a rulemaking with revisions or a report submitted with a rulemaking without revisions. Even when the committees have approved the rulemaking in the first instance and IRRC has approved the report, the committees are given another opportunity for review. They have 14 days to report out a concurrent resolution.

#### *Summary of Public Comments and Changes*

A proposed rulemaking was published at 33 Pa.B. 3501 (July 19, 2003). The proposed rulemaking was also published on IRRC's website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us). Written comments, suggestions or objections were requested within a 45-day period after publication of the proposed rulemaking. Public comments were received from the Pennsylvania Association of Resources for People with Mental Retardation and the Department of Public Welfare. The Joint Committee on Documents, the House State Government Committee and the Senate Rules and Executive Nominations Committee did not file comments.

Following is a summary of the comments and IRRC's response to the comments. For the following reasons, no changes were made to the proposed rulemaking.

#### *§ 301.1*

##### *Comment*

The definition of "Commission comments," which includes statements or questions, could severely prejudice an agency, since the agency may be forced to "guess"

whether the response it provides will be deemed satisfactory. The agency's response may be the basis for possible disapproval of the rulemaking.

##### *Response*

The definition of "Commission comments" merely formalizes the practice IRRC has been following for several years. Since the process was bifurcated into proposed and final review with the reenactment of the act in June 1989, IRRC comments have frequently contained statements and questions, in addition to objections and recommendations.

The issuance of IRRC comments is far from the only contact IRRC has with an agency. During the review process, IRRC routinely meets with agency representatives. At these meetings, questions or issues IRRC may have with a rulemaking are discussed. Many of IRRC's concerns are resolved in the meeting. The agency is advised that the others will likely be included in IRRC's comments so that the agency may formally respond in its comment and response document. After the issuance of comments, IRRC staff is always available to answer questions the agency may have or to schedule additional meetings with the agency. Even after the rulemaking is submitted in final-form, IRRC routinely meets with the agency to discuss any outstanding concerns.

#### *§ 301.8 (relating to agency contact person)*

##### *Comment*

IRRC should permit one contact person and one alternate to be designated to receive documents and comments transmitted by IRRC. This will prevent a delay in receiving time sensitive documents if the designated contact person is not available.

##### *Response*

IRRC's aim is to transmit documents and comments to the agency as quickly and efficiently as possible. For this reason, IRRC is alerting agencies that they may designate a contact person or office for receipt of this material. However, IRRC has no control over the internal operations of an agency. It is up to the agency to take the necessary steps to insure that the appropriate party receives the material IRRC transmits.

#### *§ 305.2(a)*

##### *Comment*

IRRC's statutory authority for requiring an agency to continue to submit comments received on a proposed rulemaking until the rulemaking is approved in final-form is questioned. Also, there is confusion as to whether an agency must continue to submit public comments received on a rulemaking after IRRC has issued its comments, until the time that IRRC meets to approve or disapprove a rulemaking.

##### *Response*

IRRC finds that it has the statutory authority to require agencies to continue to submit comments on a rulemaking until IRRC meets to approve or disapprove the rulemaking. A rulemaking remains in proposed form until action is taken on it in final-form. There is no time limit in section 5(c) of the act (71 P. S. § 745.5(c)) for the requirement to submit comments on a proposed rulemaking. Indeed, for IRRC to fulfill its statutorily mandated role as clearinghouse for comments on proposed rulemakings, established under section 12 of the act (71 P. S. § 745.12), it must be able to review all comments received on a rulemaking. For this reason, § 305.2(a) was revised accordingly.

It should be noted that the agency's obligation extends only to comments on a proposed rulemaking and not other documents pertaining to the rulemaking. "Comment" is defined as a written statement supporting, opposing or recommending changes to a proposed rulemaking.

§ 305.2(a)(1)

*Comment*

The amendment to the rulemaking providing that an agency is not required to submit a comment to the rulemaking if IRRC has been copied on the rulemaking and the agency has verified that IRRC has received the rulemaking may be administratively burdensome to an agency. If the agency receives a large volume of comments, it may have to cull through each one of them to determine if IRRC has been copied and then spend the time necessary to verify that IRRC has actually received the comment.

*Response*

This amendment was actually designed to relieve the burden on the agency to transmit all comments received within 5 business days of receipt. If the agency confirms that IRRC has received a copy of the comment directly from the sender, it need not submit a copy of that comment. Of course, if it is easier for the agency to bundle all comments received and transmit them to IRRC, the agency may do so.

*Public Notice*

This final-form rulemaking is on IRRC's website. The proposed rulemaking was published at 33 Pa.B. 3501 with a 45-day public comment period.

*Contact Person*

Comments and questions on this final-form rulemaking should be sent to Mary S. Wyatt, Chief Counsel, Independent Regulatory Review Commission, 333 Market Street, 14th Floor, Harrisburg, PA 17101, (717) 783-5417, fax (717) 783-2664, irrc@irrc.state.pa.us.

*Regulatory Review*

Under sections 5(a) and 11(a) of the act (71 P.S. § 745.5(a) and 11(a)), on June 30, 2003, IRRC submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form to the Joint Committee on Documents and to the Chairpersons of the House State Government Committee and the Senate Rules and Executive Nominations Committee. A copy of this material is available to the public upon request.

In compliance with section 5.1(a) of the act (71 P.S. § 745.5a(a)), IRRC also provided the Joint Committee on Documents and the Committees with copies of all comments received.

Neither the Joint Committee on Documents nor the Committees filed comments on this final-form rulemaking. In preparing this final-form rulemaking, IRRC has considered all comments received from the public.

This final-form rulemaking was submitted to the Committees and the Joint Committee on Documents on

January 27, 2004. This final-form rulemaking was deemed approved by the Committees on March 10, 2004, and approved by the Joint Committee on Documents on March 11, 2004.

*Findings*

IRRC 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 at 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 of the act.

*Order*

IRRC, acting under the act, orders that:

(a) The regulations of IRRC, 1 Pa. Code Chapters 301, 303, 305, 307, 309 and 311, are amended by amending §§ 301.1—301.6, 301.8, 301.9, 303.2, 303.4, 305.1—305.4, 307.1—307.6, 309.1, 309.2, 311.1—311.4 and by adding § 311.5 to read as set forth at 33 Pa.B. 3501.

(b) The Chairperson of IRRC shall certify this order and 33 Pa.B. 3501 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

**Fiscal Note:** Fiscal Note 70-7 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-521. Filed for public inspection March 26, 2004, 9:00 a.m.]

**Title 49—PROFESSIONAL  
AND VOCATIONAL  
STANDARDS**

**STATE BOARD OF BARBER EXAMINERS  
[49 PA. CODE CH. 3]**

[Correction]

**Deletion of Examination Fees**

An error occurred in the Fiscal Note number for the final-form rulemaking which appeared at 34 Pa.B. 1574, 1575 (March 20, 2004).

The correct Fiscal Note is as follows:

**Fiscal Note:** Fiscal Note 16A-425 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-476. Filed for public inspection March 19, 2004, 9:00 a.m.]