

RULES AND REGULATIONS

Title 51—PUBLIC OFFICERS

LOBBYING DISCLOSURE REGULATIONS COMMITTEE

[51 PA. CODE CHS. 51, 53, 55, 57, 59, 61, 63, 65,
67 AND 69]

Lobbying Disclosure

The Lobbying Disclosure Regulations Committee (Committee) adopts Chapters 51, 53, 55, 57, 59, 61, 63, 65, 67 and 69 to read as set forth in Annex A. The rulemaking implements the act of November 1, 2006 (P. L. 1213, No. 134) (act), which added 65 Pa.C.S. Chapter 13A (relating to lobbying disclosure).

Notice of proposed rulemaking was published at 38 Pa.B. 435 (January 19, 2008). Publication was followed by a 30-day public comment period. The Committee received eight comments from the following organizations: the Pennsylvania Bar Association (PBA), the Philadelphia Bar Association, O'Melveny and Myers, the Pennsylvania Association of Government Relations (PAGR), the Pennsylvania Association of Nonprofit Organizations (PANO), the Pennsylvania Association of Resources: Autism (PAR), Common Cause and the Pennsylvania State Education Association (PSEA). On March 24, 2008, the Committee held a public hearing and invited all of the groups that had provided comments on the proposed regulations to testify. The Committee considered all comments received directly or indirectly in February and March of 2008. The Committee also considered the comments that were received verbally during the public comment period at the end of each committee meeting. The Independent Regulatory Review Commission (IRRC) submitted comments on the proposed rulemaking on March 20, 2008. Neither the House Judiciary Committee nor the Senate State Government Committee submitted comments, thereby deeming the proposed final-form regulations approved.

On November 6, 2008, the IRRC disapproved the regulations, finding that the final-form regulations exceeded the authority of the act. The Committee invited the public to submit comments and on November 25, 2008, the Committee held a meeting and considered all comments received. On February 9, 2009, the Committee resubmitted the regulations to IRRC the Senate State Government Committee and the House Judiciary Committee. On February 26, 2009, IRRC voted to approve the regulations. The Committee did not receive comments from the Senate State Government Committee or the House Judiciary Committee, thereby deeming the final-form regulations approved.

Statutory Authority

The final-form rulemaking is authorized under 65 Pa.C.S. § 13A10(d) (relating to registration fees; fund established; system; regulations) which requires comprehensive regulations to be promulgated by a committee comprised of the Attorney General, who is designated as the Chairperson of the Committee, the Chairperson of the Pennsylvania State Ethics Commission (Commission), the chief counsel of the Disciplinary Board of the Supreme Court of Pennsylvania (Board), the Secretary of the Commonwealth, an individual appointed by the President Pro Tempore of the Senate, an individual appointed by the Minority Leader of the Senate, an individual appointed by the Speaker of the House of Representatives,

an individual appointed by the Minority Leader of the House of Representatives, or their designees, and a lobbyist appointed by the Governor.

Summary of Comments and Responses to Proposed Rulemaking

Chapter 51. General Provisison.

The Committee adopted Chapter 51 by adding 11 sections which include general provisions regarding: definitions; filing deadlines to fall on Commonwealth business days; registration periods and reporting periods; delinquency; deficiency; biennial review of exemption threshold and reporting threshold; forms, records and Department publications; amended filings; filings to be originals signed under oath or affirmation; electronic filing; parent corporations and subsidiaries.

§ 51.1. Definitions.

“Administrative action.”—The PAR commented that subparagraph (ii) should be removed because information submitted for review under the Regulatory Review Act is already public and should not be included in the definition. Subparagraph (ii) tracks the definition in the act in 65 Pa.C.S. § 13A03 (relating to definitions), which defines

“Administrative action” to include “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.”—Therefore, the Committee declined to make the suggested amendment because the regulation tracks the act.

The IRRC, PANO and PAGR commented that subparagraph (vi) which included “grants, the release of funds from the capital budget, loans and investment of funds” in the definition of “administrative action” should be removed because it broadens the definition. The commentators believed that subparagraph (vi) should be removed because the Procurement Code in 62 Pa.C.S. § 102(a) (relating to application of part) does not apply to the investment of funds, 62 Pa.C.S. § 102(f) does not apply to grants and 62 Pa.C.S. § 102(f.1) does not apply to loans. The Committee agreed with the comments and amended the definition of “administrative action” by removing subparagraph (vi) from the final regulation.

“Anything of value.”—Common Cause commented that earlier drafts of the definition included items explaining the scope of the definition such as “a discount or rebate not extended to the public generally,” which provided perspective. PAGR commented that the regulation should state whether or not the forgiveness of a loan is considered to be a “gift.” Then, at a public meeting, a representative of PAGR commented that the forgiveness of a loan would probably be considered “anything of value,” rather than a “gift.” The definition of “anything of value” states that the term includes any of the following: gifts, hospitality, transportation, lodging, services, loans and money. The Committee considered the comments and decided not to add all of the previous examples of what is included in “anything of value,” but did decide to add that “anything of value” includes the forgiveness of a loan.

“Audit contract period.”—The Committee amended this definition by changing the term to “audit period” defined as the previous calendar year. The Committee reasoned that because 65 Pa.C.S. § 13A08(f)(2) (relating to administration) requires a drawing after the close of each fourth quarter reporting period, the audit subjects should only be audited for the previous calendar year.

“Direct communication”—IRRC commented that subparagraph (ii) does not appear in the act’s definition, and should be removed from the definition in the regulations. Subparagraph (ii) listed items that the term “direct communication” did not include. The Committee amended the definition by moving the language in subparagraph (ii) of the definition to § 55.1(g)(3)(ii) to explain what the term does not include.

“Gift”—PAGR asked whether or not the forgiving of a loan is a gift. The definition of gift in 65 Pa.C.S. § 13A03 and § 51.1(ii)(B) of the regulations states that a “gift” does not include “a commercially reasonable loan made in the ordinary course of business.” While, the forgiving of a loan without receiving compensation would probably be considered to be a gift, the definition of “gift” is set forth by statute and, while the Committee may clarify the definition in the regulations, it may not change or expand the definition. Therefore, the Committee declined to make the suggested amendment.

IRRC commented that subparagraph (ii)(C) and (E)—(G) significantly expand the scope of the act’s definitions and therefore should be removed from the definition in the regulations. The subparagraph explained what the term does not include. The Committee amended the definition by moving the language in subparagraph (ii)(C) and (E)—(G) to § 55.1(g)(3)(ii) to clarify what the term does not include.

“Effort to influence administrative action or legislative action”—IRRC, PAGR, PANO, PAR and the Philadelphia Bar Association commented that the retainer language in subparagraph (i) should be removed because it exceeds the act. The proposed regulation stated that an “effort to influence” included paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action. The comments stated that there must be an action taken to constitute an effort to influence. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a) (relating to registration), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee then amended the definition of “effort to influence administrative action or legislative action” to use the statutory language of administrative action, legislative action and lobbying. For example, the Committee amended the definition to state that an effort to influence legislative action or administrative action includes paying an individual or entity economic consideration for lobbying services. The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

On November 6, 2008, IRRC rejected the final-form regulations, in part based on the language in subparagraph (i) of the definition of “effort to influence legislative or administrative action.” The language had stated that “[t]he term includes paying an individual or entity economic consideration for lobbying services.” IRRC, in its

order rejecting the final-form regulations, found that the language exceeded the act and that the phrase “lobbying services” “lacks clarity because the regulation does not specify what constitutes ‘lobbying services.’” To address IRRC’s concerns, the Committee further amended subparagraph (i) by removing the term “lobbying services,” and replacing the remaining language in subparagraph (i) with “the term includes engaging a lobbyist.” The Committee believed that the new language is clear and explains that engaging a lobbyist is considered to be an effort to influence legislative action or administrative action.

IRRC, PAGR, PANO, PAR, the Philadelphia Bar Association and the PSEA commented that the language on monitoring in subparagraph (ii) exceeded the act and should be removed. The proposed regulation stated that an effort to influence includes the monitoring of legislation, legislative action or administrative action. The comments stated that monitoring alone is not lobbying. The Committee decided to amend the definition of “effort to influence administrative action or legislative action” to clarify that monitoring alone is not lobbying. However, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. The Committee reasoned that the second sentence of 65 Pa.C.S. § 13A05(b)(2) (relating to reporting) requires that expense reports shall include monitoring in the total costs of personnel expenses, among other things. The definition of “personnel expense” in 65 Pa.C.S. § 13A03 includes “research and monitoring staff.” Therefore, it is reasonable that principals and their lobbyists be required to disclose the time that they and their staff spent monitoring once it occurs with activity that constitutes lobbying.

“Engaging a lobbyist”—The Committee removed the phrase “or otherwise arranging for the services of” from the definition of “engaging a lobbyist.” The Committee left in the word “contracting” and changed the definition to “contracting in any form with a lobbyist or lobbying firm for lobbying on behalf of a principal for economic consideration.” The Committee believed that this amended language sufficiently covered any type of agreement that may be made to engage a lobbyist or lobbying firm to lobby on behalf of a principal. Additionally, the Committee added the phrase “in any form” to be clear that the contract is not limited to written contracts.

“Hospitality”—PAGR commented that the terms “recreation” and “entertainment” should be included within the proposed definition of “hospitality” as follows: “(C) Recreation and entertainment. Entertainment includes, but is not limited to, performances like concerts, theater productions, motion pictures or sporting events. Recreation includes, but is not limited to, hobbies like boating, hunting, fishing, golf, skiing and tennis.” Also, PAGR commented that the distinction between “lodging” and “hospitality” must be clarified. First, the definition of “hospitality” is set forth by statute and, while the Committee may clarify the definition by regulation, it may not change or expand the act’s definition. Therefore, the Committee declined to make the suggested amendment. Secondly, the Committee believed that the distinction between “lodging” and “hospitality” was already clear in the definition in stating that “hospitality” includes meals and beverages but does not include lodging. Therefore, the Committee declined to make the suggested amendment.

IRRC commented that subparagraph (ii)(B) and (C) significantly expanded the scope of the act’s definition

and therefore should be removed from the definition in the regulation. The paragraph listed items that the term did not include. The Committee amended the definition by moving the language in subparagraph (ii)(B) and (C) to § 55.1(g)(3)(ii) to explain what the term does not include.

“Indirect communication”—IRRC commented that subparagraph (vi) does not appear in the act’s definition, and should be removed from the definition in the regulation. The subparagraphs listed items that the term does not include. The regulation also changes the order of the paragraphs in the regulations to track the order of the paragraphs in the act. The Committee amended the definition by moving the language in subparagraph (vi) to § 55.1(g)(3)(ii) to explain what the term does not include and amended the order of the subparagraphs in the definition to track the definition in the act.

“Items”—PAGR commented that the term “items” needed to be defined as it relates to § 55.1(k)(1), which refers to hospitality “items.” The Committee considered the suggestion but decided that it was not necessary to define the term “items” in the regulation. However, if further clarification is needed, a registrant may ask for an advisory from the Ethics Commission.

“Legislation”—IRRC commented that including the phrase “including draft legislation” in subparagraph (i), the term “legislative” in subparagraph (ii) and all of subparagraph (iii) depart from the act’s definition of “legislation.” The Committee amended the definition by removing the phrases from within the definition to track the definition in the act. The Committee then moved the phrases in question to explain what “any other matter which may become the subject of action by either chamber of the General Assembly” includes. The Committee considered including the language regarding the “release of funds from the capital budget” and the “investment of funds” in the definition of “legislation.” However, after receiving comments from the Philadelphia Bar Association, the Committee reconsidered and determined the placement of that language to be beyond the scope of the act. Nevertheless, as noted in the preamble for the definition of “legislative action,” lobbying for the inclusion of funds in the capital budget is an effort to influence legislative action. Therefore, any costs related to lobbying for the inclusion of funds in the capital budget must be reported.

“Legislative action”—IRRC, PAGR and PANO commented that subparagraph (v), regarding the “grants, the release of funds from the capital budget, loans and investment of funds,” should be removed from the term because the Procurement Code in 62 Pa.C.S. § 102(a) does not apply to investment of funds, 62 Pa.C.S. § 102(f) does not apply to grants and 62 Pa.C.S. § 102(f.1) does not apply to loans. The Committee also removed the language on the “release of funds from the capital budget” and the “investment of funds,” recognizing that the “release of funds” and the “investment of funds” are actions taken by the executive branch of government, rather than the legislative branch. However, lobbying for the inclusion of funds in the capital budget is an effort to influence legislative action because it would be considered lobbying on legislation. Therefore, any costs related to lobbying for the inclusion of funds in the capital budget must be reported.

“Lobbying”—IRRC commented that the term “lobbying firm” appears in the regulation, but not in the act’s definition. The definition of “lobbying” in 65 Pa.C.S. § 13A03(3) provides: “providing any gift, hospitality, transportation or lodging to a State official or employee

for the purpose of advancing the interest of the lobbyist or principal.” This language exactly tracks the language in the repealed Lobbying Disclosure Act of 1998. The new lobbying disclosure act requires lobbying firms to register and report, so it seems logical to add lobbying firms to the definition. Therefore, the Committee declined to amend the definition of “lobbying.”

“Lobbyist”—The Philadelphia Bar Association commented that the regulation needed to clarify that volunteers are not lobbyists. The definition of “lobbyist” is set forth by statute, and while the Committee may clarify the definition by regulation, it may not change or expand the definition in the act. However, the Committee added language to § 55.1(a) and (g)(1), to clarify that individuals or entities that are exempt under 65 Pa.C.S. § 13A06 (relating to exemption from registration and reporting) of the act do not have to register and report.

“Materially correct”—The Committee added the definition of “materially correct,” defining the term as being free from material misstatements, as it is used in 65 Pa.C.S. § 13A08(f)(3) (relating to administration) and in § 61.2(a), both of which relate to audits. The Committee added the definition because auditors use the phrase “being free from material misstatements,” and the Committee wanted to clarify that “materially correct” includes the phrase “being free from material misstatements.”

“Office expense”—PAGR commented that the definition needed to be clarified with the following language: “An expenditure for an office, equipment or supplies *reasonably allocated* for lobbying.” The definition in the regulations tracks the definition in 65 Pa.C.S. § 13A03. Therefore, the Committee declined to make the suggested amendment.

“Personnel expense”—IRRC commented that “lawyers” was added to this definition, but does not appear in the act’s definition. The definition of “personnel expenses” in the regulation provides that: “[a]n expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, *lawyers*, publications and public relations staff, technical staff, clerical and administrative support staff. . . .” (Emphasis added). The addition of “lawyers” to the definition of “personnel expenses” merely enumerates another category of individuals whose salaries, and the like should be reported as personnel expenses when lawyers engage in lobbying. Therefore, the Committee declined to amend the definition.

§ 51.2. Filing deadlines to fall on Commonwealth business days.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 51.3. Registration periods and reporting periods.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 51.4. Delinquency.

IRRC commented that the reliability of § 51.4(a)(1) is questionable and it is not clear why filers need to be able to file hard copies of their filings after 5 p.m., when filers can file electronically after 5 p.m. Also, because § 51.4(a)(1) states that The Department of State of the Commonwealth (Department) will have a designee on the date that registration statements or reports are due, a designee would have to be available every day because a

registration statement could be filed every day. The Committee decided to continue to allow for hard copies of only quarterly expense reports to be filed after 5 p.m. as a convenience for registrants. Then, the Committee amended § 51.4(a)(1) to state that the only time a registrant has the option of filing a hard copy between 5 p.m. and midnight with the Department's designee are on the days that the quarterly expense reports are due.

IRRC found that § 51.4(a)(1) is not clear regarding filing with a designee. Because the regulation provides that filing is required with a designee "as noted on the Department's publications or on its website," it is unclear which to consult, and these can be changed without notice. IRRC commented that the regulation should provide a definite filing location to file documents with the designee. The Committee decided to clarify the regulation and amended § 51.4(a)(1) to state that the filing location and the Department's designee will be noted on the Department's web site.

IRRC also commented that § 51.2 stated that the filing dates will be extended until the next business day even if the deadline falls on a weekend or a holiday. However, § 51.4(c) provided that photographs and filing fees may be received "within 5 Commonwealth business days." IRRC recommended using calendar days throughout the regulations to improve the clarity of deadlines. The Committee agreed with the suggestion and amended § 51.4 to clarify that all deadlines shall be calculated by using calendar days.

§ 51.5. Deficiency.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 51.6. Biennial review of exemption threshold, reporting threshold and filing fees.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 51.7. Forms, records and Department publications.

IRRC commented that § 51.7(b) was not clear when it stated that "additional sheets of equal size on forms prescribed by the Department may be attached to any hard copy form filed under the act, if more space is needed." IRRC questioned whether the section meant that a person can attach any 8.5 inch by 11 inch paper, or must the attachment be on a form prescribed by the Department? The Committee agreed that the section may cause confusion, so the Committee amended § 51.7(b) to clarify that paper filers may attach additional forms prescribed by the Department if more space is required.

IRRC commented that a cross-reference to the language of 65 Pa.C.S. § 13A08 which stated that "the Department shall make all registrations and reports available on a publicly accessible internet website" needed to be added to § 51.7(c). The Committee agreed and added the suggested cross-reference to the Department's web site.

§ 51.8. Amended filings.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 51.9. Signing and designation of certain filings.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 51.10. Electronic filing.

IRRC commented that in § 51.10(a), in the sentence, "the use of an electronic signature shall have the same force and effect as a manual signature upon acceptance by the filer," (emphasis added) it is not clear what the phrase "upon acceptance by the filer" meant. The Committee agreed that the phrase "upon acceptance by the filer" is unclear and removed the phrase from § 51.10(a).

§ 51.11. Enforcement of Commission orders.

IRRC commented that this section, which stated that "[t]he Commission through its staff may take appropriate action to enforce its orders," was vague. The Committee agreed and withdrew what was § 51.11 in the proposed regulations because it did not clarify a specific action. The Committee then renumbered the following section.

§ 51.11 (formally § 51.12). Parent corporations and subsidiaries.

IRRC commented that this section should include a cross-reference to the eligibility standards of the Internal Revenue Service. The Committee agreed and amended § 51.11 to add a cross-reference in this section referring to the eligibility standards of the Internal Revenue Service in 26 U.S.C.A. § 1501. In accordance with 1 Pa.C.S. § 1937 (relating to references to statutes and regulations), if the citation in the Internal Revenue Code changes, the current citation will be referring to the cite dealing with Internal Revenue Service eligibility standards for filing on a consolidated basis.

Chapter 53. Registration and Termination.

§ 53.1. Biennial filing fee.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 53.2. Principal registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not "lobbying" and statements stating that accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase "for purposes including lobbying" should be rewritten to clearly require lobbying to be the action that requires registration. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration "within ten days of acting in any capacity as a lobbyist, lobbying firm or principal," could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations and removed the phrase "for purposes including lobbying." The Committee then amended § 53.2(a)(1) to use the statutory language regarding lobbying. For example, the Committee amended § 53.2(a)(1) to state that "engaging an individual or entity for lobbying services or paying economic consideration to an individual or entity for lobbying services constitutes acting in the capacity of a principal." The Committee opted to use the term "economic consideration" because it is a defined term in the statute, and it includes both compensation and reimbursement.

On November 6, 2008, IRRC rejected the final-form regulations, in part based on the language in § 53.2(a)(1). The language had stated that “[e]ngaging an individual or entity for lobbying services or paying economic consideration to an individual or entity for lobbying services constitutes acting in the capacity of a principal.” IRRC, in its order rejecting the final-form regulations, found that that the language exceeded the act and that the phrase “lobbying services” “lacks clarity because the regulation does not specify what constitutes ‘lobbying services.’” To address IRRC’s concerns, the Committee removed the term “lobbying services” from the final-form regulations replacing it with the term “lobbying,” which is a defined term in the act. The Committee then amended the language in § 53.2(a)(1), to state that an individual or entity must register upon the earlier of the following: contracting in any form for lobbying or engaging in lobbying, unless exempt under 65 Pa.C.S. § 13A06.

The Committee believes that the amended language in § 53.2(a)(1) clarifies when an individual or entity must register and provides a “bright line” for the regulated community to follow, as requested by some of the Commissioners on November 6, 2008 when they discussed the final-form regulation. Additionally, the Committee believes that the language addresses IRRC’s comments and some of the other public comments that the previous language may have led individuals and entities to believe that they must register for actions that are not covered by the act. The amended language now clearly states that the individual or entity must register when the individual or entity contracts in any form for *lobbying* or is engaging in *lobbying*, unless an exemption applies. The Committee also added the phrase “in any form” to be clear that the contract is not limited to written contracts.

IRRC made similar comments about §§ 53.3(a)(1) and 53.4(a)(1). The Committee amended the language in those sections to match the amended language in § 53.2(a)(1) for the same reasons.

IRRC commented that § 53.2(b) should contain a cross-reference to § 51.7(a) because the section required that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.2(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulation stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists required the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.2(c) to match the registration forms and require the permanent business address of each filer.

§ 53.3. Lobbying firm registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer was not “lobbying” and statements to the effect that accepting a retainer was lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewritten

to clearly require lobbying to be the action that requires registration. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee amended § 53.3(a)(1) to use the statutory language regarding lobbying. For example, the Committee amended § 53.3(a)(1) to state that “accepting an engagement to provide lobbying services or accepting economic consideration to provide lobbying services constitutes acting in the capacity of a lobbying firm.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

On November 6, 2008, IRRC rejected the final-form regulations, in part based on the language in § 53.3(a)(1). The Committee amended the language in § 53.3(a)(1) similarly to how the language in § 53.2(a)(1) was amended, for the same reasons as stated previously.

IRRC commented that § 53.3(b) should contain a cross-reference to § 51.7(a) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.3(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulation stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.3(c) to match the registration forms and require the permanent business address of each filer.

§ 53.4. Lobbyist registration.

IRRC, the PBA and the Philadelphia Bar Association commented that in § 53.2(a)(1), accepting mere payment of a retainer is not “lobbying” and statements stating that accepting a retainer is lobbying in these sections should be deleted. IRRC also commented that the phrase “for purposes including lobbying” should be rewritten to clearly require lobbying to be the action that requires registration. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving, and the like could

exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee amended § 53.4(a)(1) to use the statutory language regarding lobbying. For example, the Committee amended § 53.4(a)(1) to state that “accepting an engagement to provide lobbying services or accepting economic consideration to provide lobbying services constitutes acting in the capacity of a lobbyist.” The Committee opted to use the term “economic consideration” because it is a defined term in the statute and it includes both compensation and reimbursement.

On November 6, 2008, IIRC rejected the final-form regulations, in part based on the language in § 53.4(a)(1). The Committee amended the language in § 53.4(a)(1) similarly to how the language in §§ 53.2(a)(1) and 53.3(a)(1) was amended, for the same reasons as stated previously.

The Philadelphia Bar Association suggested that a new paragraph (5) be added to § 53.4(a), to clarify that “a lawyer rendering *pro bono publico* services in activities for improving law as provided in Rule 1.6 of the Pennsylvania Rules of Professional Conduct, when such activity is not undertaken for compensation, is not engaging in lobbying as defined in the act and is not required to register as a lobbyist.” The Committee considered the comment, but decided that by cross-referencing 65 Pa.C.S. § 13A06 in § 53.4(a), it is unnecessary to specifically exempt lawyers who render *pro bono publico* services. Also, it is possible that a lawyer who renders *pro bono publico* services to still be compensated. For example, if a lawyer renders *pro bono publico* services and the lawyer’s law firm counts the time as billable hours, the lawyer has been compensated. Therefore, the Committee decided to generally reference the exemptions contained in 65 Pa.C.S. § 13A06 and declined to make the suggested amendment.

IIRC commented that § 53.4(b) should contain a cross-reference to § 51.7(a) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

In § 53.4(c), Common Cause questioned the propriety of not requiring the filer to provide a street address. The language in the proposed regulations stated that “for each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer’s option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when service is required by law.” However, the registration form for principals, lobbying firms and the lobbyists requires the permanent business address for each address that is to be disclosed. On the registration statements, the permanent business address is a required field, and a registration cannot be completed unless a permanent business address is entered. Therefore, the Committee decided to amend § 53.4(c) to match the registration forms and require the permanent business address of each filer.

§ 53.5. Amended registration statements.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 53.6. Termination.

IIRC commented that § 53.6(a) should contain a cross-reference to § 51.7(a) because the section requires that information be “on a form prescribed by the Department.” The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

§ 53.7. Public inspection and copying.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

Chapter 55. Reporting.

§ 55.1. Quarterly expense reports.

The PBA and the Philadelphia Bar Association commented that in § 55.1(a), the sentence “[t]he threshold of \$2,500 includes any retainers or other compensation paid by a principal to a lobbying firm, whether or not the lobbying firm or lobbyist then spends the retainer” should be deleted. The comments stated that the language on retainers exceeded the act. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration “within ten days of acting in any capacity as a lobbyist, lobbying firm or principal,” could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language on retainers from the regulations. The Committee then amended § 55.1(a) to use the statutory language regarding lobbying. For example, the Committee amended § 55.1(a) to state that the threshold of \$2,500 includes any economic consideration paid by a principal to a lobbying firm or lobbyist. The Committee opted to use the term “economic consideration” because it is a defined term in the statute, and it includes both compensation and reimbursement.

In § 55.1(a), IIRC commented that due to the concerns from commentators about grassroots activities, § 55.1(a) should include a cross-reference to all of the exemptions in 65 Pa.C.S. § 13A06. The Committee agreed with the suggestion and amended 65 Pa.C.S. § 55.1(a) to include a cross-reference to the exemptions in 65 Pa.C.S. § 13A06. This includes individuals who travel to Harrisburg to lobby and remain exempt under 65 Pa.C.S. § 13A06. However, the principal shall report the expenses of the individuals who are exempt from registration and reporting, as provided in § 55.1(i)(4).

The PBA commented that in § 55.1(a), the section should clearly state that the economic consideration paid by principals to lobbying firms or lobbyists is for lobbying. The Committee amended the section to add the phrase “for lobbying” at the end of the second sentence in § 55.1(a) to clarify that the threshold for reporting includes the economic consideration paid by principals to lobbying firms or lobbyists for lobbying.

In § 55.1(e)(1), Common Cause commented that the subsection should be changed to read “[i]f within 30 days of the due date, a principal amends its quarterly expense report to include the omitted lobbying expenses of its lobbyists or lobbying firm in compliance with § 51.8(c) . . .” The Committee considered the suggestion

but decided that the language in the subsection is clear. Therefore, the Committee declined to make the suggested amendment.

PANO, PBA and the Philadelphia Bar Association commented that § 55.1(g)(1) should state that principals only have to list those lobbyists or lobbying firms that are *required to register* to prevent any interpretation that grassroots participants or volunteers who accept the benefit of indirect communication are lobbyists. The Committee agreed with the suggestion and amended the section to add the suggested language and add a cross reference to all of the exemptions in 65 Pa.C.S. § 13A06. The added language clarifies that only those individuals or entities who are required to register and who are not exempt have to be listed by principals on the principal's quarterly expense report.

Common Cause requested that in § 55.1(g)(2), when a principal checks off one of the boxes, the principal should be required to provide a general explanation of the position taken on the general issue to provide useful information to the public. The regulation in § 55.1(g)(2) tracks the act in 65 Pa.C.S. § 13A05(b)(1), which states that the expense report shall include "the general subject matter or issue being lobbied." Because IRRC has cautioned the Committee about adding requirements to the statute, the Committee declined to make the suggested amendment.

The PBA commented that in § 55.1(g)(3), the phrase "including retainers or other compensation paid by principals to lobbying firms or lobbyists, whether or not the lobbying firm or lobbyist then spends the retainer" should be removed because it exceeds the act. In considering these comments, the Committee noted that 65 Pa.C.S. § 13A04(a), requiring registration "within ten days of acting in any capacity as a lobbyist, lobbying firm or principal," could be subject to multiple interpretations that would impact both registration and reporting requirements. The Committee reasoned that an interpretation that would limit 65 Pa.C.S. § 13A04(a) to require registration within 10 days of lobbying communications, gift-giving and the like could exclude from disclosure advance payments. The Committee reasoned that such an interpretation could enable persons to avoid registration or reporting requirements through the timing of payments. The Committee removed all language referring to retainers from the regulations. The Committee then amended § 55.1(g)(3) to use the statutory language regarding lobbying. For example, the Committee amended § 55.1(g)(3) by adding subparagraph (iii) to address how lobbying costs include the amount of economic consideration paid by principals to lobbying firms or lobbyists. The Committee opted to use the term "economic consideration" because it is a defined term in the statute, and it includes both compensation and reimbursement. Although a registrant is only required to report the amount of economic consideration that is attributable to lobbying in this Commonwealth, the entire amount shall be reported unless the principal, lobbying firm or lobbyist maintains records that establish the portion attributable to lobbying, as well as the portion attributable to non-lobbying services.

The PBA also commented that in § 55.1(g)(3)(iii), the section should clearly state that only the economic consideration paid by principals to lobbying firms or lobbyists for lobbying must be included in lobbying costs. The Committee amended the section to add the phrase "for lobbying" at the end of the first sentence in § 55.1(g)(3)(iii) to clarify that only the economic consideration

paid by principals to lobbying firms or lobbyists for lobbying must be included in lobbying costs.

IRRC commented that subparagraphs in § 51.1(ii)(C) and (E)—(G) on gifts, hospitality, direct communication and indirect communication expanded the scope of the act's definitions and therefore should be removed from the definitions section in the regulations. The Committee removed the sections from § 51.1(ii), and added them to § 55.1(g)(3)(ii)(A)—(D), to clarify what the terms include and do not include when allocating expenses.

In considering the comments on monitoring from IRRC, PAGR, PANO, PAR, the Philadelphia Bar Association and PSEA, the Committee amended § 55.1(g)(3) by adding subparagraph (iv), to add language on monitoring to clarify that monitoring alone is not lobbying. However, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying. The Committee reasoned that the second sentence of 65 Pa.C.S. § 13A05(b)(2) requires that expense reports shall include monitoring in the total costs the costs of personnel expenses, among other things. The definition of "personnel expense" in 65 Pa.C.S. § 13A03 includes "research and monitoring staff." Therefore, it is reasonable that principals and their lobbyists be required to disclose the time that they and their staff spent monitoring once it occurs with activity that constitutes lobbying.

Common Cause commented that if § 55.1(g)(6) meant that a principal does not have to track, record, and report expenses for gifts, hospitality, transportation or lodging that are under \$10, it seemed contrary to the language of the act, and there appeared to be no authority for the exemption. The Committee believed that it was reasonable to exempt from disclosure small gifts, hospitality, transportation and lodging valued at \$10 or less provided to State officials or employees or their immediate families. However, when the amount is over \$10 to more than one State official or employee, it must be disclosed on the principal's quarterly expense report. Without such a reasonable threshold, principals, lobbying firms and lobbyists would be required to report the small amounts that would be of little concern to the public viewing the reports. As a relevant point of reference, the gift rules for the United States House of Representatives and Senate have a similar \$10 exemption for gifts given to members, officers or employees of the United House of Representatives and United Senate. Therefore, the Committee declined to make the suggested amendment.

In § 55.1(g)(6), IRRC commented that the reporting limit of \$10 needed to be clarified. Within the section, the specified limits are "a value not exceeding \$10" and "\$10 or more" making the limits overlap at \$10. The Committee amended the section to clarify that gifts, hospitality, transportation and lodging that are \$10 or less are exempt from disclosure. However, when the amount is more than \$10 to more than one State official or employee, it must be disclosed on the principal's quarterly expense report.

In § 55.1(h), PAGR commented that the wording of the section indicated that an agency engages in the bidding of contracts, which it does not; rather, agencies award bids to contractors. PAGR commented that the section should read as follows: "A registered principal that attempts or that retains a lobbying firm or lobbyist to attempt to influence an agency's preparing and awarding bidding and entering into or approving a contract pursuant to 62 Pa.C.S. (relating to procurement) shall ensure that the expenses are included in calculating totals references by

subsection (g)(3).” The Committee agreed and amended the section to clarify that agencies award bids and approve contracts pursuant to 62 Pa.C.S. (relating to procurement).

In § 55.1(i)(4), the Committee added a sentence stating that reportable expenses must include transportation, food and lodging paid for any individuals in furtherance of lobbying. The Committee reasoned that the amendment clarifies that a principal must report all expenses for any individuals in furtherance of lobbying, even if those individuals are exempt from registration and reporting. For example, a principal busses 30 individuals, who are volunteering and are exempt from registration and reporting under 65 Pa.C.S. § 13A06, to come and spend a day at the Capitol promoting the principal’s legislative agenda. The costs associated with the individuals lobbying activities, including the bus trip, would have to be reported on the principal’s next quarterly expense report.

Common Cause commented that in § 55.1(j)(3)(ii) and (4)(ii), the “source of the gift” and “source of the payment” needed clarification as to what source means. Section 55.1(j) requires that a quarterly expense report must identify State officials or employees who received anything of value over the thresholds. Section 55.1(j)(3) refers to reporting the costs for gifts and subparagraph (ii) states that a registrant is required to list the “name and the source of the gift.” Section 55.1(j)(4) refers to reporting the costs for transportation, lodging and hospitality and subsection (ii) states that a registrant is required to list the “name and address of the source of the payment.” The section is merely asking where the gift or payment came from. These sections seem to be clear. Therefore, the Committee declined to make the suggested amendment.

PAGR commented that § 55.1(k)(1) was silent as to whether a State official or employee can partially reimburse a registrant to drop below the \$650 threshold and guidance was needed. The Committee considered the comment but found that it is clear that an item that is returned, declined or fully reimbursed does not have to be reported. Therefore, the Committee declined to make the suggested amendment.

Common Cause suggested that in § 55.1(k)(2), a registrant should have to report the face value of the ticket because the public official benefits in the same manner as the person who pays the full face value of the ticket. Section 55.1(k)(2) in the proposed regulations stated that “the valuation of a complimentary ticket to a fundraiser must be based upon the reasonable amount of the goods or services received by the State official or employee. The valuation may not include a political contribution, which is otherwise reportable as required by law.” Section 13A06(14) provides that “[e]xpenditures and other transactions subject to reporting under Article XVI of the act of June 3, 1927 . . . , known as the Pennsylvania Election Code” are not required by the act to be reported on quarterly expense reports. The campaign finance provisions of the Election Code are separate requirements from the reporting of lobbying activity subject to reporting by state or local candidates or political committees, including political action committees (PACs). The first sentence of this subsection refers to how a *complimentary* ticket to a fundraiser is to be reported under the lobbying law. The second sentence is referring to how a political contribution should be reported under the Election Code. To clarify, the second sentence has been amended to state that, “this provision shall not apply to expenditures and other transactions subject to reporting under section 1626 of the Election Code.”

IRRC commented that in § 55.1(k)(2), there was a phrase “as required by law,” which should include a reference to the law. The Committee amended § 55.1(k)(2) by referencing section 1626 of the Election Code.

PAGR commented that § 55.1(k)(3)—(4) arbitrarily distinguished between those registrants who purchase tickets earlier in time from those registrants who purchased last-minute tickets to sporting events or concerts without a rational basis. Also, § 55.1(k)(3)—(5) did not provide a clear calculation for valuing the costs of luxury box tickets at a sporting event or concert. Therefore, PAGR requested that more guidance was needed in the regulation. Section 55.1(k)(3)—(5) describe how to value gifts, transportation, lodging or hospitality in different circumstances. Paragraph (3) describes how to value gifts, and the like when a registrant purchased the item in market place transactions; paragraph (4) describes how to value gifts, etc. when the registrant did not actually purchase the item, but perhaps was given the item; and subparagraph (5) states that when neither paragraph (3) or (4) apply, use any reasonable method. The paragraphs do not distinguish between when a ticket is purchased, as the comment suggested. Therefore, the Committee declined to make the suggested amendment. As for how to value luxury box tickets, the Committee decided against listing specific examples in the regulation. However, in general, the Committee decided to consider providing additional examples in the manual, which the Committee must prepare and publish to set forth guidelines on accounting and reporting in accordance with 65 Pa.C.S. § 13A10(d)(5) (relating to registration fees; fixed established; system registration).

IRRC commented that §§ 55.1(m), (m)(1)(3)(n)(2) and 55.2(a)(1) require information “on a form prescribed by the Department,” and for clarity, all of the provisions should cross-reference § 51.7(a). The Committee agreed and amended the section to include a cross-reference to § 51.7(a).

IRRC commented that § 55.1(n)(6) required the lobbyist to “promptly” provide a copy to the principal and the regulation should specify a specific time period. The Committee agreed with the suggestion and amended the section to state that a lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall provide it to the principal contemporaneous with filing it with the Department.

§ 55.2. Records, maintenance, retention and availability.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 55.3. Public inspection and copying.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 55.4. Reliance on documents.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

Chapter 57. Exemption from Registration and Reporting.

§ 57.1. General rule.

The Committee did not receive any comments on this section and did not make any changes. Therefore, the Committee adopted this section as proposed.

§ 57.2. Qualifications for exemption.

In § 57.2(a)(1), PAR commented that to balance the need for accountability and transparency with the need for nonprofit organizations to carry out their mission-critical activities involving education and advocacy, the following sentence should be deleted: “[t]o the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection.” PAR suggested that the sentence should be replaced with: “[s]ubmitting material in connection with the Regulatory Review Act and similar activities where materials are *already subject to public scrutiny*, such as comments submitted to an agency on an administrative action, shall be exempt from reporting and registration.” Section 57.2(a)(1) discusses the exemption from registration and reporting in section 13A06(1) which states that if the “lobbying activities consist of preparing testimony and testifying before the General Assembly or participating in an administrative proceeding,” the individual or entity is exempt.

The exemption is based on the type of lobbying activity in which the individual or entity participates. If the individual or entity is only testifying or participating in an administrative proceeding, then the individual or entity is exempt from registration and reporting, which would cover any costs for materials for those specific activities. However, if the individual or entity participates in other lobbying activities aside from testifying or participating in an administrative proceeding, the individual or entity must register and report the total costs for all lobbying activities, including costs for testifying or participating in an administrative proceeding. The sentence that the comment suggested should be added would make any *material* subject to public scrutiny exempt from reporting and registration. However, 65 Pa.C.S. § 13A03 defines “administrative action” to include “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act.” If materials are submitted in an effort to influence “the review, revision, approval or disapproval of a regulation under the Regulatory Review Act,” and the individual or entity does not qualify for this exemption, then the total costs for the materials must be reported. Therefore, the Committee declined to make the suggested amendment.

Common Cause commented that in § 57.2(a)(1), the exemption for those who give testimony before legislative committees, must be limited to those situations in which the comments are presented to an agency at a properly sunshined public meeting. Otherwise the activity should be considered subject to registration and reporting standards unless exempt under another exemption. The language in the regulation closely tracks the exemption as stated in 65 Pa.C.S. § 13A06(1), which does not state that the meeting must be properly sunshined. Because IRRC has cautioned the Committee against adding requirements to the statute, the Committee declined to make the suggested amendment.

PAR commented that in § 57.2(a)(4), the sentence “[t]his economic consideration must be for lobbying in which an agent of the principal actually engages on behalf of the principal” should be added to this section. The section states that: “[t]he exemption in section 13A06(4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.” The language appears to already state that the economic consideration is for

lobbying as the comment suggests. Therefore, the Committee declined to make the suggested amendment.

PSEA commented that in § 57.2(a)(3) and (4), the “reimbursement of expenses” should be excluded from “economic consideration” in determining whether employees of the principal who are otherwise exempt under § 57.2(a)(3) and (4), need to register as lobbyists. The act in 65 Pa.C.S. § 13A03 defines “economic consideration” as “anything of value offered or received. The term includes compensation and reimbursement of expenses.” Therefore, the Committee declined to make the suggested amendment.

O’Melveny & Myers, LLP commented that in § 57.2(b)(2), the clause “between the vendor’s and the covered agency’s contracting officer” is unclear as to whether it applies to the final action (“communications concerning the procurement process”) or to any or all of the proceeding actions (“submission of questions, participation in a site visit, prebid or preproposal conference”). To clarify, the Committee amended the section by adding semicolons between the clauses so that it is clear that the clause “between the vendor’s and the covered agency’s contracting officer” applies to “communications concerning the procurement process.”

O’Melveny & Myers, LLP commented that in § 57.2(b)(4), the section does not exempt a class of vendor activities that are necessary and incidental to performing an existing contract or business arrangement and therefore should be expanded to exempt ordinary and customary communications and activities undertaken pursuant to the servicing of existing contracts with covered state agencies. The Committee intended that activities necessary and incidental to performing an existing contract be exempt. Therefore, the Committee amended § 57.2(b)(2), which was previously subsection (b)(4), to clarify that the following activities and communications are exempt: those that are necessary or incidental to performing an existing contract or the demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract.

Chapter 59. Opinions and Advices of Counsel.

The Committee did not receive any comments on this chapter and did not make any changes. Therefore, the Committee adopted this chapter as proposed.

Chapter 61. Compliance Audits.

The Committee did not receive any comments on this chapter. However, the Committee amended this chapter to clarify the scope of the compliance audit. Section 13A08(f)(2) of the act addresses the random selection of 3% of all completed registrants and expense reports filed with the Department for an audit. In § 61.1(a) (relating to lotteries), the Committee amended the section to state that the Department will randomly select 3% of all principals, 3% of all lobbying firms and 3% of all lobbyists who have completed registration statements and reports filed with the Department. The Committee reasoned that the audit should include registrants who are principals, lobbying firms and lobbyists.

In § 61.2(b) (relating to compliance audits), the Committee amended the section to clarify that the audit will be limited in time to the previous calendar year. The Committee reasoned that because 65 Pa.C.S. § 13A08(f)(2) requires a drawing after the close of each fourth quarter reporting period, the audit subjects should only be audited for the previous calendar year. However, when the audit falls in the second year of a registration period, the audit must include the registration statement

filed in the previous year. The Committee reasoned that a registration statement filed in the previous year of the registration period should be included in the audit because the 65 Pa.C.S. § 13A08(f)(3) requires an audit of each registration statement and expense report.

In § 61.3(a)—(c), the Committee specified which general procedures for audits will be employed by the Department and which will be employed by the independent auditor. The Committee reasoned that the sections needed to distinguish which procedures will be employed by the Department and the independent auditor.

In § 61.3(c), the Committee removed paragraph (1) and subsection (d), reasoning that because the audit will be conducted in accordance with generally accepted auditing standards, the regulation should not state what the audit may include. The first sentence of § 61.3(c)(2) was amended to become the new subsection (d), stating that the registrant who is the subject of the audit shall cooperate fully in the audit. The Committee added, to what is now subsection (d), that the audit shall be conducted in accordance with generally accepted auditing standards, reasoning that the amendment clarifies how the audit will be conducted. The Committee further amended § 61.3(2), by moving the second sentence of paragraph (2) and making it subsection (e). Subsection (e) now states that if the independent auditor believes that the audit subject is not cooperating, the independent auditor shall inform the Department in writing. This statement was amended from the proposed regulation to state that the independent auditor shall inform the Department in writing if the audit subject “is not cooperating,” rather than if the audit subject “is delaying the submission of requested records.” The Committee reasoned that the amendment clarifies that the independent auditor should make the Department aware, in writing, if the audit subject is not cooperating in any manner. The Committee also reasoned that the reorganization and renumbering clarified § 61.3(2).

Chapter 63. Commission Referrals, Investigative Proceedings and Noninvestigative Proceedings.

§ 63.1. Commission referrals.

In § 63.1(c), regarding conflicts of interest, Common Cause commented that the section appeared to misinterpret the statute and the rules for professional conduct. Common Cause commented that the Attorney Disciplinary Board and the Ethics Commission have concurrent authority under 65 Pa.C.S. § 1307(d)(8). The section referred to matters referred to the Board for its exclusive review under 65 Pa.C.S. § 13A07(d)(8) (relating to prohibited activities). The section 13A07(d)(8) of the act states that: “[c]omplaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” Section 63.1(c) closely tracks the act and states that the Commission will refer any alleged violation of section 13A07(d) to the Board. Therefore, the Committee declined to make the suggested amendment.

Common Cause commented that § 63.1(g) is errant and the phrase “[e]xcept for a matter under section 1307A(d)(8) of the act,” should be deleted to make it accurate. Section 63.1(g) states that: “[e]xcept for a matter under section 13A07(d)(8) of the act, a referral by the Commission or the Office of Attorney General to the Board will not preclude the referring agency from also conducting its own enforcement proceeding under the

act.” Section 13A07(d)(8) of the act states that: “Complaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” (Emphasis added). Due to the language in the act in section 13A07(d)(8), § 63.1(g) is not errant. Therefore, the Committee declined to make the suggested amendment.

§ 63.2. Commission proceedings regarding prohibited activities under section 13A07 of the act.

In § 63.2(a) and (b), regarding conflicts of interest, Common Cause commented that the section appeared to misinterpret the statute and the rules for professional conduct. Common Cause commented that the Attorney Disciplinary Board and the Ethics Commission have concurrent authority under 65 Pa.C.S. § 13A07(d)(8). The section refers to matters referred to the Board for its exclusive review under 65 Pa.C.S. § 13A07(d)(8). Section 13A07(d)(8) of the act states that: “[c]omplaints regarding violations of this subsection involving a lobbyist or principal who is an attorney at law shall be referred to the board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct.” Section 63.1(c) closely tracks the act and states that the Commission will refer any alleged violation of 65 Pa.C.S. § 13A07(d) to the Board. Therefore, the Committee declined to make the suggested amendment.

Chapter 65. Prohibition Against Lobbying for Economic Consideration as a Sanction.

The Committee did not receive any comments on this chapter and did not make any changes. Therefore, the Committee adopted this chapter as proposed.

Chapter 67. Prohibited Activities.

§ 67.1. Prohibited activities.

Common Cause commented that the regulation did not currently contain a section dealing directly with section 13A07 of the act on “prohibited activities.” Common Cause found that including a delineation of the unlawful acts in the regulations would establish a single source reference and make it easier for lobbyists to understand and comply with their obligations. Section 13A07 of the act delineates the unlawful acts under the act. The regulations do not necessarily need to repeat this section of the act. However, to the extent that it informs the regulated community where prohibited activities can be found in the act, the Committee added § 67.1 to cross-reference 13A07 of the act.

Chapter 69. Severability.

§ 69.1. Severability.

In 1 Pa.C.S. § 1925 of the Statutory Construction Act (relating to constitutional construction of statutes), it states that the provisions of every statute are severable. The Committee added § 69.1 to clarify that the provisions of the regulations are also severable.

Fiscal Impact

Commonwealth

The final-form rulemaking will impose an additional fiscal impact upon the Commonwealth and specifically upon the Office of Attorney General (OAG), the Department, the Commission and the Board. The OAG costs are derived from personnel, operating and program expenses (which include travel, office furnishings and real estate rental) needed for chairing the Committee and for investigating and prosecuting violations of the act. The Depart-

ment costs are derived from administrative costs (which include the collection and processing of fees, registrations and reports), personnel and office expenses needed for staffing the Committee and fulfilling its obligations under the proposed rulemaking and the act. The Commission costs are derived from nonrecurring expenses which include new computer workstations and office furniture and recurring expenses such as staffing and travel expenses needed for being a member of the Committee and for conducting investigations and holding hearings related to alleged violations of the act, as well as performing other duties under the act. The Board's expenses are derived from potential cases and the funding will come from attorney registration fees.

Local Government

Local government will not have any expenses associated with these regulations. However, if a local government is required to register as a principal, the local government would have the cost of the registration fee, which is \$100, and would then be considered to be part of the regulated community. Thus, it will have administrative costs to comply with the act, as described in the next section.

Private Sector

The regulated community will have expenses in the form of a registration fee of \$100. There will also be costs for the regulated community for administrative staff to prepare the reports. However, the costs are too speculative to be quantified at this time. Costs for compliance with the act may include costs for: determining whether or not a person or entity is required to register; administrative staff; and time spent allocating costs for indirect communication, direct communication, hospitality, transportation and gifts. These costs will vary greatly between lobbyists, lobbying firms and principals.

Paperwork Requirements

Commonwealth

The final-form rulemaking will change the previous registering and reporting requirements. Because the previous Lobbying Disclosure Act was ruled unconstitutional in 2002 by the Pennsylvania Supreme Court, there were not any requirements for registering and reporting until the act went into effect on January 1, 2007. The final-form rulemaking, in accordance with the act, now requires that all registrations and reports for principals, lobbying firms and lobbyists be filed with the Department.

Local Government

Local government will not have any paperwork requirements associated with this final-form rulemaking. However, if a local government is required to register as a principal and file expense reports, the local government would have paperwork requirements but would then be considered to be part of the regulated community.

Regulated Community

The final-form rulemaking, in accordance with the act, requires that all principals, lobbying firms and lobbyists register with and report to the Department.

Regulatory Review Act Requirements

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 9, 2009, the Committee submitted a copy of this final-form rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate State Government Committee and the House Judiciary Committee.

In compliance with section 5(c) of the Regulatory Review Act, the Committee also provided IRRC, the Senate State Government Committee and the House Judiciary Committee with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Committee considered all comments from IRRC, the Senate State Government Committee, the House Judiciary Committee and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 25, 2009, the final-form rulemaking was deemed approved by the Senate State Government Committee and the House Judiciary Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 26, 2009, and approved the final-form rulemaking.

Contact Person

Additional information may be obtained by contacting Louis Lawrence Boyle, Deputy Chief Counsel, Department of State, 301 North Office Building, Harrisburg, PA 17120-0029 or llboyle@state.pa.us.

Findings

The Lobbying Disclosure Committee finds that:

(1) Public notice of proposed rulemaking was 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 promulgated under those sections in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) These amendments to the proposed lobbying disclosure regulations are necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Committee therefore orders that:

(a) Title 51 of the Pa. Code is amended by adding §§ 51.1—51.11, 53.1—53.7, 55.1—55.4, 57.1, 57.2, 59.1—59.3, 61.1—61.6, 63.1—63.7, 65.1, 65.2, 67.1 and 69.1 to read as set forth in Annex A.

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

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

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ROBERT A. MULLE,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 1369 (March 14, 2009).)

Fiscal Note: Fiscal Note 16-40 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 51. PUBLIC OFFICERS

PART III. LOBBYING DISCLOSURE

Chap.		Sec.
51.	GENERAL PROVISIONS	51.1
53.	REGISTRATION AND TERMINATION	53.1
55.	REPORTING	55.1
57.	EXEMPTION FROM REGISTRATION AND REPORTING	57.1
59.	OPINIONS AND ADVICES OF COUNSEL	59.1
61.	COMPLIANCE AUDITS	61.1
63.	INVESTIGATIONS, HEARINGS AND REFERRALS	63.1
65.	PROHIBITION AFAINST LOBBYING AS A SANCTION	65.1
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CHAPTER 51. GENERAL PROVISIONS

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§ 51.1. Definitions.

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

Act—65 Pa.C.S. Chapter 13A (relating to lobbying disclosure).

Administrative action—The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy; approval or rejection of a regulation; or procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement).

(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

(iii) The Governor's approval or veto of legislation.

(iv) The nomination or appointment of an individual as an officer or employee of the Commonwealth.

(v) The proposal, consideration, promulgation or rescission of an executive order.

Affiliated political action committee—

(i) Includes a "political action committee" as defined in section 1621(l) of the Election Code (25 P. S. § 3241(l)), which has an officer who:

- (A) Is a chairperson or treasurer.
- (B) Is one or more of the following:
 - (I) A principal.
 - (II) An officer or employee of a principal.
 - (III) A lobbyist.
 - (IV) An employee of a lobbyist.

(ii) The term does not include a Federal political action committee registered only with the Federal Election Commission, which is not required to register as a political committee in this Commonwealth under section 1624(a) of the Election Code (25 P. S. § 3244(a)).

(iii) If an employee of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

Agency—The term includes the following:

(i) A department of the Executive Department of the Commonwealth, as described in Article IV, Section 1 of the Pennsylvania Constitution.

(ii) Any Commonwealth:

(A) Agency, as defined at 42 Pa.C.S. § 102 (relating to definitions), to include any executive agency or independent agency.

(B) Board.

(C) Commission.

(D) Authority.

Amendment—The term means a change in any filing including:

(i) Any change in the information required for the registration statement under section 13A04(b) and (c) of the act (relating to registration) including any changes in the relationships between principals, lobbying firms and lobbyists such as:

(A) In the case of a principal, when engaging a new lobbyist or lobbying firm or when ceasing to engage a lobbyist or lobbying firm.

(B) In the case of a lobbying firm, when the lobbying firm is engaged by a new principal, when the lobbying firm engages a new lobbyist, when the lobbying firm ceases to be engaged by a principal or when the lobbying firm ceases to engage a lobbyist.

(C) In the case of a lobbyist, when the lobbyist is engaged by a new principal or new lobbying firm or when the lobbyist ceases to be engaged by a principal or lobbying firm.

(ii) Any change in the information required in the quarterly expense reports under section 13A05(b) of the act (relating to reporting).

(iii) Any change in the information required for a statement of limited knowledge under section 13A05(b)(6) of the act.

(iv) Any change in the information required for a notice of termination under section 13A04(e) of the act. See also § 53.6(d) (relating to termination) on amending a notice of termination.

Anything of value—

(i) For the limited purpose of reporting gifts, transportation, lodging or hospitality under section 13A04 or 13A05 of the act, these terms include any tangible or intangible item of worth. See § 55.1(g)(6) (relating to quarterly expense reports).

(ii) The term includes any of the following:

- (A) Gifts.
- (B) Hospitality.
- (C) Transportation.
- (D) Lodging.
- (E) Services.
- (F) Loans or the forgiveness of a loan.
- (G) Money.

Association—

(i) An “association” as defined in the Association Code in 15 Pa.C.S. § 102 (relating to definitions).

(ii) The term includes two or more persons associated in a common enterprise or undertaking and a corporation, a partnership, a limited liability company or a business trust.

(iii) The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans’ court division in general).

*Attorney at law—*An individual admitted to practice law by a court of record of the Commonwealth.

*Audit period—*A time span of the previous calendar year.

*Bidder—*As defined in 62 Pa.C.S. § 103 (relating to definitions).

*Board—*The Disciplinary Board of the Supreme Court of Pennsylvania.

*Candidate—*Any candidate for State office, as defined in section 1621(a) of the Election Code.

*Candidate political committee—*A “candidate’s political committee” as defined in section 1621(m) of the Election Code, and a candidate’s political action committee (PAC) which includes any political committee formed by or on behalf of a specified candidate or authorized by the candidate.

*Child—*The term includes adopted and biological children.

*Commonwealth business day—*The time from midnight to the next midnight on a day when the Commonwealth offices are open.

*Commission—*The State Ethics Commission of the Commonwealth.

*Compensation—*Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

*Complaint—*A complaint on a form prescribed by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints as defined under §§ 11.1 and 21.1 (relating to definitions; and complaints).

*Conflict of interest—*When, during a given session of the General Assembly one of the following occurs:

(i) The representation of one principal by a registrant is directly adverse to another principal.

(ii) The representation of one or more principals is materially limited by the lobbying firm’s or lobbyist’s responsibilities to another principal, a previous principal or a third person or by a personal interest of the lobbyist.

*Contractor—*As defined in 62 Pa.C.S. § 103.

*Department—*The Department of State of the Commonwealth.

*Direct communication—*An effort, whether written, oral or by another medium, made by a lobbyist, lobbying firm or principal, directed to a State official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses.

*Docket—*The term includes the official listing of entries to the record of a matter before the Commission, and the initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the record of a matter before the Commission.

Economic consideration—

(i) The term includes anything of value offered or received.

(ii) The term includes compensation and reimbursement for expenses.

*Effort to influence legislative action or administrative action—*Any attempt to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action on behalf of a principal for economic consideration.

(i) The term includes engaging a lobbyist.

(ii) Monitoring of legislation, monitoring of legislative action or monitoring of administrative action is not lobbying. However, for an individual or entity that is not exempt, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying.

*Election Code—*The Election Code (25 P. S. §§ 2600—3591).

*Employee—*An individual from whose wages an employer is required under the Internal Revenue Code (26 U.S.C.A.) to withhold Federal Income Tax. For the limited purpose of determining exemption under section 13A06(2) of the act (relating to exemption from registration and reporting), the term “employee” includes an “independent contractor” under the Internal Revenue Code, when the employee engages in the activity of gathering, commenting on and disseminating the news.

*Engaging a lobbyist—*Contracting in any form with a lobbyist or lobbying firm for lobbying on behalf of a principal for economic consideration.

*Engaging in lobbying—*Any act by a lobbyist, lobbying firm or principal that constitutes an effort to influence legislative action or administrative action in this Commonwealth, as defined in the definition of “lobbying” in section 13A03 of the act (relating to definitions).

Entity—

(i) Something that has a separate and distinct existence, from its members, if any.

(ii) The term includes, but is not limited to, a governmental unit.

*Ethics Act—*65 Pa.C.S. §§ 1101—1113 (relating to Public Official and Employee Ethics Act).

*Filed—*Registration statements, reports and other official statements or papers under the act are filed on the date they are received at the Department office whether filed electronically or delivered by United States mail, express carrier or hand-delivery. Documents filed with the Commission under the act are deemed filed on the date they are received at the Commission office whether filed electronically or delivered by United States mail, express carrier or hand-delivery or by fax.

*Fund—*The Lobbying Disclosure Fund established in section 13A10(b) of the act (relating to registration fees; fund established; system; regulations).

Gift—

(i) Anything that is received without consideration of equal or greater value.

(ii) The term does not include any of the following:

(A) A political contribution otherwise reportable as required by law.

(B) A commercially reasonable loan made in the ordinary course of business.

(C) Hospitality, transportation or lodging.

Hospitality—

(i) The term includes the following:

(A) Meals.

(B) Beverages.

(C) Recreation and entertainment.

(ii) The term does not include:

(A) Gifts.

(B) Transportation or lodging.

Immediate family—An individual's spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law and daughter-in-law.

Indirect communication—

(i) An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action.

(ii) The term includes letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues.

(iii) The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

(iv) The term may include personnel expenses and office expenses.

Intentional—The term has the meaning set forth in 18 Pa.C.S. § 302(b) (relating to general requirements of culpability).

Legislation—Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives. The term includes any other matter which may become the subject of legislative action by either chamber of the General Assembly. Any other matter includes:

(i) Draft legislation.

(ii) Any bills, resolutions, amendments and nominations pending or proposed by any State official or employee.

Legislative action—An action taken by a State official or employee involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of any of the following:

(i) Legislation.

(ii) Legislative motions.

(iii) A veto by the Governor.

(iv) Confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.

Lobbying—

(i) An effort to influence legislative action or administrative action in this Commonwealth.

(ii) The term includes the following:

(A) Direct or indirect communications.

(B) Office expenses.

(C) Providing any gift, hospitality, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist, lobbying firm or principal.

Lobbying firm—An entity that engages in lobbying for economic consideration on behalf of a principal other than the entity itself.

Lobbyist—An individual, association, corporation, partnership, business trust or other entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney at law while engaged in lobbying. Membership in an association alone is not sufficient to make an association member a lobbyist.

Marketplace transaction—Includes the costs for:

(i) *Goods*. The usual and normal charge for goods purchased in an arms-length transaction in the market in which they ordinarily would have been purchased.

(ii) *Services*. The hourly or piecemeal charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

Materially correct—Being free from material misstatements, as it is used in section 13A08(f)(3) (relating to administration) of the act and in § 61.2(a) (relating to scope of compliance audits).

Negligence—The absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances.

Offeror—As defined in 62 Pa.C.S. § 103.

Office expense—An expenditure for an office, equipment or supplies utilized for lobbying.

Person—Includes a corporation, partnership, limited liability company, business trust, other association, government entity, estate, trust, foundation or natural person.

Personnel expense—An expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, lawyers, publications and public relations staff, technical staff, clerical and administrative support staff and includes individuals who engage in lobbying but are exempt from reporting under section 13A06 of the act. For an individual for whom lobbying is incidental to regular employment, the term means a good faith prorated estimate based on the value of the time devoted to lobbying.

Political subdivision—The term as defined in section 1102 of the Ethics Act (relating to definitions).

Principal—

(i) An individual, association, corporation, partnership, business trust or other entity, including a Commonwealth agency or political subdivision on whose behalf a lobbying

firm or lobbyist engages in lobbying, or that engages in lobbying on the principal's own behalf.

(ii) Membership in an association alone is not sufficient to make an association member a principal.

Reception—

(i) An event attended by invited State officials or State employees that is hosted by a registered lobbyist, lobbying firm or principal in which items such as appetizers, beverages or light fare are served for afternoon or evening events and items such as coffee, juice, pastries or bagels are served for morning events. A related hospitality event will not be considered or included as part of a reception.

(ii) The cost per individual shall be based on the invoiced amount for prospective attendees, irrespective of the actual number of attendees, and may not be greater than \$75 unless the reception takes place in a high-cost locality as classified by the Internal Revenue Service in Publication 1542, in which case the cost per individual may not exceed \$125. On a biennial basis, beginning April 11, 2009, the Department will have the authority to review these amounts, and subject to the concurrence of the Commission, to increase them if it is deemed appropriate. For purposes of determining the cost per individual herein, the guidelines found in § 55.1(k)(6) are not applicable.

(iii) The term does not include an event subject to the reporting requirements under Article XVI of the Election Code (25 P. S. §§ 3241—3260(b)).

(iv) This definition will not be interpreted as eliminating the obligation of the principal, lobbying firm or lobbyist to maintain records for purposes of disclosing total hospitality expenses in quarterly expense reports.

*Registrant—*A registered lobbyist, registered lobbying firm or a registered principal.

*Regulation—*Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute administered by or relating to the agency, or prescribing the practice or procedure before the agency.

*Regulatory Review Act—*71 P. S. §§ 745.1—745.12.

*Reporting period—*Any of the following periods:

- (i) January 1 through March 31.
- (ii) April 1 through June 30.
- (iii) July 1 through September 30.
- (iv) October 1 through December 31.

*Respondent—*The subject of a complaint, notice of alleged noncompliance, investigation or formal proceeding before the Commission.

*Service (of official papers)—*Official papers are deemed served by the Commission, or by a division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand-delivered.

*State budget process—*The consideration and passage of acts relating to expenditures of funds and the generation of revenues by the General Assembly.

*Statement of policy—*The term includes a guideline, as defined in 1 Pa. Code § 1.4 (relating to definitions).

*State official or employee—*An individual elected or appointed to a position in State government or employed

by State government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

*Sua sponte—*Being done on one's own volition.

*Termination—*That point in time when the registration of a lobbyist, lobbying firm or principal ends in this Commonwealth, as provided at section 13A04(e) of the act.

Total resources—

(i) Includes all receipts by the principal during the reporting period.

(ii) The term includes dues and grants received by the principal.

*Transportation and lodging or hospitality received in connection with public office or employment—*Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employee or State official or employee as those terms are defined under the Ethics Act or the act, respectively.

Vendor—

(i) An offeror, bidder or contractor that, for economic consideration, sells or provides a service or supply or engages in construction.

(ii) The term does not include an attorney at law, a lobbyist or a lobbying firm.

§ 51.2. Filing deadlines to fall on Commonwealth business days.

When the deadline for filing a registration statement, report, answer, brief or other official paper, under the act, with either the Department or Commission, falls on a weekend or holiday, or on another day that the office of the filing location is closed or closes early, the deadline for the filing will be extended to the following Commonwealth business day.

§ 51.3. Registration periods and reporting periods.

(a) Registration under section 13A04 of the act (relating to registration) shall be biennial. The first registration period which commenced January 1, 2007, continues through December 31, 2008. Subsequent registrations shall commence on January 1 of each odd numbered year.

(b) Reporting under section 13A05 of the act (relating to reporting) shall be quarterly within each calendar year: for January through March; April through June; July through September; and October through December. Quarterly expense reports shall be filed on or before the 30th day after the quarterly reporting period ends.

§ 51.4. Delinquency.

(a) A registration statement or report required to be filed under section 13A04 or 13A05 of the act (relating to registration; and reporting) is delinquent if not received by the Department on the date due as follows:

(1) Hard copy filings must be received by 5 p.m. in the office. For quarterly expense reports, from 5 p.m. until 12 a.m. midnight, a hard copy filing may be filed with the Department's designee. The filing location and the Department's designee will be on the Department's web site.

(2) Electronic filings may be filed until 12 a.m. midnight.

(b) A failure to timely file a registration statement, a quarterly expense report, a separate expense report, a

notice of termination or an amendment to one of these filings constitutes a failure to register or report as required by the act; delinquency continues until the filing is received by the Department in proper form.

(c) A registration statement will not be considered delinquent if the Department receives a registration statement electronically by the due date and the required photograph (in the case of a lobbyist's registration statement) and the filing fee, if due, are received by the Department within 5 calendar days of the Department's receipt of the original electronic filing, in accordance with § 51.10(b) (relating to electronic filing). If the 5 days end on a weekend or holiday, or on another day that the office of the filing location is closed or closes early, the deadline for the filing will be extended to the following Commonwealth business day.

§ 51.5. Deficiency.

(a) A registration statement, expense report or notice of termination required to be filed under section 13A04 or 13A05 of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

- (1) It does not fully and accurately include and disclose all that is required by the act and this part.
- (2) It includes a false statement.
- (3) It is illegible.
- (4) The filer fails to use the appropriate form prescribed by the Department.
- (5) The filer fails to date the registration statement, expense report or notice of termination.
- (6) The filer fails to sign the expense report under oath or affirmation as set forth in § 51.9 (relating to signing and designation of certain filings).

(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient expense report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, expense report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

§ 51.6. Biennial review of exemption threshold, reporting threshold and filing fees.

(a) On a biennial basis commencing in January 2009, the Department will review the threshold under section 13A06 of the act (relating to exemption from registration and reporting) for registration under section 13A04 of the act (relating to registration) and the threshold for reporting under section 13A05(d) of the act (relating to reporting), and, if appropriate, will increase these amounts prospectively to rates deemed reasonable for assuring appropriate disclosure.

(b) On a biennial basis commencing in January 2009, the Department will review the filing fee established under section 13A10 of the act (relating to registration fees; fund established; system; regulations) and may by regulation under section 13A08(j) of the act (relating to administration), adjust this amount if the Department determines that a higher fee is needed to cover the costs of carrying out the provisions of the act.

(c) Changes to the thresholds made under this section will become effective prospectively as determined by the Department. Changes to the thresholds will not be effective until the beginning of a calendar quarter.

(d) The Department will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2009, and by June 1 every 2 years thereafter, as necessary.

§ 51.7. Forms, records and Department publications.

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, or notices of termination under the act may be obtained by contacting the Department at: Bureau of Commissions, Elections and Legislation, 210 North Office Building, Harrisburg, Pennsylvania 17120, (717) 787-5280; or by visiting the Department's office during business hours on Commonwealth business days. Forms are also available at the Department's web address: www.dos.state.pa.us.

(b) Paper filers may attach additional forms prescribed by the Department if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, and notices of termination filed with the Department will remain on file for 4 years and will be available for public inspection at the office of the Department in Harrisburg, Pennsylvania during business hours on Commonwealth business days. The Department will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost. All registrations and reports will also be available on the Department's web site at www.dos.state.pa.us.

(d) Payments to the Commonwealth for charges under subsection (c) shall be deposited into the Fund established by section 13A10(b) of the act (relating to registration fees; fund established; system; regulations).

(e) Under section 13A08(d) of the act (relating to administration), the Department will prepare and publish the following in a searchable electronic format:

(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which will identify affiliated political action committees, lobbying firms and lobbyists that are registered to lobby for the principals.

(3) An annual listing of lobbying firms and lobbyists not associated with lobbying firms, which will identify affiliated political action committees and the principals for whom the lobbying firm or lobbyist is registered to lobby.

(4) An annual listing of registered lobbyists for each lobbying firm, which will identify affiliated political action committees and principals.

(5) A biennial directory of all registered lobbyists, which will include photographs, as well as registered lobbying firms.

(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

(ii) Revenue received by the Commonwealth from sales of this directory will be deposited into the Fund established by section 13A10(b) of the act.

(6) Paper copies of the directory and annual reports will be made available to the public at a price not to exceed the actual cost of production.

(7) Any of the items in paragraphs (1)—(4) may, at the discretion of the Department, be supplemented or be combined in a single publication.

§ 51.8. Amended filings.

(a) Filings under the act may be amended.

(b) When there is a change in information required for the registration statement under section 13A04(b)(3) of the act (relating to registration), an amended registration statement will be filed with the Department within 14 days of the end of the year in which the change occurs.

(c) When amending registration statements or quarterly expense reports, principals, lobbyists and lobbying firms need only complete those portions of their registration statements or quarterly expense reports requiring amendment, in addition to the identification of the principal, lobbyist or the lobbying firm filing the amendment.

(d) Amended registration statements must conform to the additional requirements detailed in § 53.5 (relating to amended registration statements).

(e) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

§ 51.9. Signing and designation of certain filings.

(a) *Signing of certain filings.*

(1) Quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge and amendments to these forms filed with the Department must be signed originals bearing the signature of the filer. See § 51.10 (relating to electronic filing) for requirements when filing electronically.

(i) A document will be deemed to be a signed original if it is filed electronically under § 51.10 or if it bears an original manual signature in ink.

(ii) Except as noted in subsection (b)(2), principals, lobbying firms or lobbyists that are individuals shall sign their own filings.

(iii) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(iv) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(v) The signature must appear on the line indicated on the form as prescribed by the Department.

(2) Registration statements are not required to be signed.

(3) Registration statements, quarterly expense reports, separate expense reports, notices of termination and amendments to these filed under the act must include an affirmation subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

(4) A lobbyist who signs a principal's quarterly expense report or amendment, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information pro-

vided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(5) A lobbyist attaching a statement to a principal's quarterly expense report or an amendment, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided in the statement is true and correct to the best of the lobbyist's knowledge, information and belief.

(b) *Designation of certain filings.* A principal, lobbying firm or lobbyist may designate another individual or firm to complete any of its filings on the following conditions:

(1) The principal, lobbying firm or lobbyist designating another individual or firm to complete any of its filings is still responsible for the timely filing and accuracy of the information in the filing.

(2) When a principal, lobbying firm or lobbyist designates another individual or firm to complete a form on its behalf, the principal, lobbying firm or lobbyist shall make that designation on the registrant's registration statement.

(3) A signature of an individual not included on a registrant's registration statement filed with the Department is not a valid signature as to the registrant.

(4) Signing a principal's quarterly expense report on behalf of the principal does not satisfy the requirements of section 13A05(b)(4) of the act (relating to reporting), pertaining to attestation of principal expense reports by lobbying firms and lobbyists not associated with lobbying firms.

§ 51.10. Electronic filing.

(a) Forms that are required to be filed under the act may be filed electronically. The use of an electronic signature shall have the same force and effect as a manual signature.

(1) Lobbyists, lobbying firms and principals shall be deemed to comply with section 13A10(c) of the act (relating to registration; fees; fund established; system; regulations) for the remainder of the calendar year if they submit a registration statement, an amended registration statement or an expense report electronically using the Department's online filing on its web site.

(2) In submitting a registration statement, an amended registration statement or an expense report electronically using the Department's online filing on its web site, the applicant will be deemed to agree to all of the following:

(i) For any registration statement, amended registration statement or notice of termination that the applicant files with the Department electronically, the typing of the applicant's name in the electronic submission constitutes the applicant's affirmation as set forth in § 51.9(a)(3) (relating to signing and designation of certain filings).

(ii) For any quarterly expense report, separate quarterly expense report or amended quarterly expense report that the applicant files with the Department electronically, the electronic signature constitutes the applicant's signature under oath or affirmation as set forth in § 51.9(a)(3).

(iii) The use of the electronic signature to "sign" a quarterly expense report, or amendment filed by another constitutes the applicant's affirmation as set forth in § 51.9(b).

(iv) The use of the electronic signature to attach a statement to a quarterly expense report, or an amend-

ment to the quarterly expense report filed by another constitutes the applicant's affirmation as set forth in § 51.9(b).

(b) A registration statement or an amended registration statement that is submitted to the Department electronically is filed on the date the Department receives the document electronically if the Department receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 calendar days.

(1) If the Department does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 calendar days from the date of receiving the document electronically, the registration statement or amended registration statement is filed on the date the Department receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

§ 51.11. Parent corporations and subsidiaries.

(a) Subject to the requirements of subsection (b), a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service, in 26 U.S.C.A. § 1501, for filing a consolidated corporate tax return.

(b) When registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly expense reports, and notices of termination must disclose with particularity all of the required information as to the parent corporation and the subsidiaries.

(c) If a parent corporation and its subsidiaries file separately, each shall pay the registration fee and file all subsequent quarterly expense reports separately until the filing of a notice of termination.

CHAPTER 53. REGISTRATION AND TERMINATION

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53.4.	Lobbyist registration.
53.5.	Amended registration statements.
53.6.	Termination.
53.7.	Public inspection and copying.

§ 53.1. Biennial filing fee.

(a) Under section 13A10(a) of the act (relating to registration fees; fund established; system; regulations), a principal, lobbying firm or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Department, made payable to the "Commonwealth of Pennsylvania."

(1) The biennial filing fee shall be tendered to the Department with the filing of the principal's, lobbying firm's or lobbyist's first registration statement in each registration period. However, if the Department receives the filing fee within 5 calendar days of the filing of a registration statement, the registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency).

(2) The biennial filing fee will be a flat fee for the registration period in which paid. A registrant will not be required to pay more than one biennial filing fee in any

given biennial registration period, unless a registrant terminates and attempts to reregister during the same biennial registration period.

(3) A separate biennial filing fee shall be paid for each principal, lobbying firm or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the fee.

(4) The biennial filing fee is nonrefundable and non-transferable.

(5) Filing fees expire at the end of each registration period, regardless of when paid.

(b) The failure to pay a biennial filing fee as required by the act and this section will constitute a failure to register as required by the act.

(c) Money received from biennial filing fees will be deposited in the Fund.

§ 53.2. Principal registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a principal shall register with the Department within 10 days of the earlier of the following:

(1) Contracting in any form with an individual or entity for lobbying.

(2) Engaging in lobbying.

(b) Lobbying by a principal on the principal's own behalf constitutes acting in the capacity of a principal.

(1) A principal that is required to register and that engages in lobbying solely on its own behalf need only register as a principal. However, a principal that engages in lobbying on behalf of others also would be required to register as a lobbyist or lobbying firm.

(2) Unless exempt under section 13A06 of the act, members or employees of a principal who engage in lobbying on behalf of the principal shall register as lobbyists under § 53.4 (relating to lobbyist registration).

(c) A principal shall register by filing a registration statement with the Department, on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications), which discloses at least the following information:

(1) The name, permanent address, daytime telephone number, email address, if available, and name and nature of the business of the principal.

(2) The name, registration number and acronyms of all "affiliated political action committees" as defined in section 13A03 of the act (relating to definitions).

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf. The principal need not list individuals exempt under section 13A06 of the act.

(4) If the principal is an organization or association, the number of its dues-paying members in the past calendar year.

(5) The name, permanent business address, daytime telephone number, fax number and email address of every lobbying firm which represents the principal.

(6) The registration number of the principal when available.

(d) For each address that is to be disclosed on a registration statement, the filer shall include the permanent business address. If the filer has more than one permanent business address, indicate the primary business address of the filer.

(e) The registration statement must include the principal's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Department.

(f) The registration statement must include a statement that the principal has received, read and understands the requirements and prohibitions of the act.

(g) The registration statement must also include a statement that the information on the principal's statement is true, correct and complete to the best of the registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(h) A principal will not be considered registered until the completed registration statement and the biennial filing fee, in proper form as required by the act and this section, are received by the Department. However, if the Department receives the filing fee within 5 calendar days of the filing of a registration statement, the registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency).

(i) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The principal shall file a new registration statement after that date, to the extent the principal is required to be registered under the act and this section.

(j) A person who is a principal as defined in section 13A03 of the act (relating to definitions) consents to receive service of process, even if that person is located out-of-State under 42 Pa.C.S. § 5322 (relating to the bases of personal jurisdiction over persons outside this Commonwealth).

§ 53.3. Lobbying firm registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a lobbying firm shall register with the Department within 10 days of the earlier of one of the following:

- (1) Contracting in any form to engage in lobbying.
- (2) Engaging in lobbying.

(b) Lobbying by a lobbying firm on a principal's behalf constitutes acting in the capacity of a lobbying firm.

(1) A lobbying firm that is required to register and that engages in lobbying on its own behalf shall also register with the Department as a principal.

(2) Unless exempt under section 13A06 of the act, members or employees of a lobbying firm who engage in lobbying on behalf of the lobbying firm shall register as lobbyists with the Department under § 53.4 (relating to lobbyist registration).

(c) A lobbying firm shall register by filing a registration statement with the Department, on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications), which discloses at least the following information:

(1) The name, permanent address, daytime telephone number, email address if available, and name and nature of business of the lobbying firm.

(2) The name, registration number and acronyms of all "affiliated political action committees" as defined in section 13A03 of the act (relating to definitions).

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf. The lobbying firm need not list individuals exempt under section 13A06 of the act.

(4) The name, permanent business address, daytime telephone number and registration number when available of every principal that the lobbying firm represents.

(5) The registration number of the lobbying firm when available.

(d) For each address that is to be disclosed on a registration statement, the filer shall include the permanent business address. If the filer has more than one permanent business address, indicate the primary business address of the filer.

(e) The registration statement must include the lobbying firm's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Department.

(f) The registration statement must include a statement that the lobbying firm, through its authorized representative, has received, read and understands the requirements and prohibitions of the act.

(g) The registration statement must also include a statement that the information on the lobbying firm's statement is true, correct and complete to the best of the registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(h) A lobbying firm will not be considered registered until the completed registration statement and the biennial filing fee, in proper form as required by the act and this section, are received by the Department. However, if the Department receives the filing fee within 5 calendar days of the filing of a registration statement, the registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency).

(i) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The lobbying firm shall file a new registration statement after that date, to the extent the lobbying firm is required to be registered under the act and this section.

(j) A person who is a lobbying firm as defined in section 13A03 of the act consents to receive service of process, even if that person is located out-of-State under 42 Pa.C.S. § 5322 (related to bases of personal jurisdiction over persons outside this Commonwealth).

§ 53.4. Lobbyist registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Department within 10 days of the earlier of one of the following:

- (1) Contracting in any form to engage in lobbying.
- (2) Engaging in lobbying.

(b) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist or lobbying firm, it and each of its members or employees that engage in lobbying on behalf of the principal shall register with the Department, unless exempt under section 13A06 of the act.

(c) When a lobbyist engages in lobbying on the lobbyist's own behalf, the lobbyist shall also register as a principal.

(d) A lobbyist shall register by filing a registration statement with the Department on a form prescribed by the Department, as required under § 51.7(a) (relating to forms, records and Department publications), which includes and discloses at least the following information:

(1) The name, permanent business address, email address, if available, and daytime telephone number of the lobbyist. The filer shall also indicate if the lobbyist is a licensed attorney, and, if so, whether the attorney is licensed in this Commonwealth.

(2) A recent passport-sized (approximately 2 inches x 2 inches) photograph of the lobbyist, the specifications of which will be determined by the Department and published on its web site.

(3) The name, permanent business address, daytime telephone number and registration number when available of each principal the lobbyist represents.

(4) The name, registration number and acronyms of all "affiliated political action committees," as defined in section 13A03 of the act (relating to definitions).

(5) The name and registration number when available of every lobbying firm with which the lobbyist has a relationship involving economic consideration.

(6) The name, registration number and acronym of any non-Federal candidate's political committee of which the lobbyist is an officer who must be included in a registration statement under section 1624(b)(2) and (3) of the Election Code (25 P. S. § 3244(b)(2) and (3)), regarding registration.

(7) The registration number of the lobbyist when available.

(e) For each address that is to be disclosed on a registration statement, the filer shall include the permanent business address. If the filer has more than one permanent business address, indicate the primary business address of the filer.

(f) The registration statement must include the lobbyist's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Department.

(g) The registration statement must include a statement that the lobbyist has received, read and understands the requirements and prohibitions of the act.

(h) The registration statement must also include a statement that the information on the lobbyist's statement is true, correct and complete to the best of the registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(i) A lobbyist registering on behalf of an association will not be required to register on behalf of each member of that association. However, if a lobbyist represents a member in a separate capacity, both the lobbyist and the member shall file the appropriate registrations.

(j) A lobbyist will not be considered registered until the completed registration statement, the biennial filing fee and a photograph of the lobbyist, in proper form as required by the act and this section, are received by the Department. However, if the Department receives the filing fee and a photograph of the lobbyist within 5 calendar days of the filing of a registration statement, the

registration will not be considered delinquent, in compliance with § 51.4 (relating to delinquency). If the 5 days end on a weekend or holiday, or on another day that the office of the filing location is closed or closes early, the deadline for the filing will be extended to the following Commonwealth business day.

(k) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The lobbyist shall file a new registration statement after that date, to the extent the lobbyist is required to be registered under the act and this section.

(l) A person who is a lobbyist as defined in section 13A03 of the act (relating to definitions) consents to receive service of process, even if that person is located out-of-State under 42 Pa.C.S. § 5322 (related to bases of personal jurisdiction over persons outside this Commonwealth).

§ 53.5. Amended registration statements.

(a) A principal required to be registered under the act shall file an amended registration statement whenever there is a change in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Department within 14 days after the change occurs, except that if the change is solely as to the number of dues-paying members in the past calendar year, the amended registration statement shall be filed with the Department within 14 days of the end of the year in which the change occurs.

(b) A lobbyist or lobbying firm required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the lobbyist's or the lobbying firm's registration statement. The amended registration statement shall be filed within 14 days after the change occurs.

(c) Principals, lobbyists and lobbying firms shall amend only those portions of their registration statements that need to be amended, in addition to the identification of the principal, lobbyist and the lobbying firm, as provided in § 51.8 (relating to amended filings).

§ 53.6. Termination.

(a) A lobbyist, lobbying firm or a principal may terminate its registration by filing with the Department a completed notice of termination on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications).

(b) A separate notice of termination is required for each registration statement.

(c) A notice of termination must identify the registration number of the principal, lobbying firm or lobbyist terminating registration.

(d) A notice of termination may be amended, but cannot be withdrawn.

(e) A registration statement cannot be revived or otherwise made effective after a notice of termination as to the registration statement has been filed.

(f) Lobbying may not occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Department and which, at the time of the lobbying, has not been terminated.

(g) After a review of the notice of termination, the Department will issue to the lobbyist, lobbying firm or principal who filed the notice of termination a letter stating that the registrant has terminated registration. The letter will be issued within 15 days after the Department's receipt of the notice of termination.

(h) The filing of a notice of termination or a termination report, or the issuance of a Department letter stating that the registrant has terminated registration, does not affect the Department's authority to conduct audits, or the Commission's, the Attorney General's or the Board's authority to conduct investigations, hearings or other proceedings under the act and this part.

(i) Nothing in this subsection shall be construed to exempt a lobbyist, lobbying firm or principal from any of the requirements in section 13A05 of the act (relating to reporting).

§ 53.7. Public inspection and copying.

(a) The Department will make completed registration statements and notices of termination, which have been filed with the Department, available for public inspection and provide copies of these documents at a price not in excess of the actual cost of copying.

(b) The Department will make all registrations and notices available on a publicly accessible Internet web site. Documents maintained and reproducible in an electronic format will be provided in that format upon request.

(c) The Department will make electronically submitted documents available either on paper or electronically. The Department will make documents submitted on paper available both on paper and electronically.

CHAPTER 55. REPORTING

Sec.	
55.1.	Quarterly expense reports.
55.2.	Records maintenance, retention and availability.
55.3	Public inspection and copying.
55.4	Reliance on documents

§ 55.1. Quarterly expense reports.

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal, registered lobbying firm or registered lobbyist lobbying on the principal's behalf, together, exceed \$2,500 in a quarterly reporting period. The threshold of \$2,500 includes any economic consideration paid by a principal to a lobbying firm or lobbyist for lobbying. Individuals exempt under section 13A06 of the act (relating to exemption from registration and reporting) need not register or report.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered principal, registered lobbying firm or registered lobbyist lobbying on the principal's behalf, together, are \$2,500 or less, a statement to that effect shall be filed with the Department by checking the appropriate block on the quarterly expense report form.

(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under section 13A05 of the act (relating to reporting), section 13A05(b)(2.1) of the act permits filers to use any reasonable methods of estimation and allocation.

(d) The principal shall file a quarterly expense report or statement of failure to meet the reporting threshold on or before the 30th day after the quarterly reporting period ends.

(e) Under section 13A05(b)(6) of the act and as detailed in subsection (n), a lobbyist or lobbying firm required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if during the reporting period, the lobbyist or the lobbying firm engaged in lobbying which was not contained in any report filed by a principal represented by the lobbyist or lobbying firm. The deadline for filing a separate report shall be the 30th day after the due date of the principal's report. The following apply to filing a separate expense report by a lobbyist or a lobbying firm:

(1) If within 30 days of the due date, a principal amends its quarterly expense report in compliance with § 51.8(c) (related to amended filings), a lobbyist or lobbying firm need not file a separate quarterly expense report as to the principal's expenses.

(2) The filing of a separate quarterly expense report by a lobbyist or lobbying firm does not relieve a principal of any reporting requirements.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists or lobbying firms and amendments to these shall be filed on forms prescribed by the Department.

(g) A quarterly expense report of a principal required to be registered under the act must include at least the following information:

(1) The names and, when available, the registration numbers of all lobbyists or lobbying firms that are required to be registered, by whom the lobbying is conducted on behalf of the principal. If a lobbyist is a lobbying firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included. Individuals exempt under section 13A06 of the act need not be included.

(2) The general subject matter or issue being lobbied shall be indicated by checking the appropriate block on the form or completing the category designated "other." A principal, lobbying firm or lobbyist engaged in procurement may include this subject under the "other" category. Examples of items that need not be reported include:

(i) A listing indicating which lobbyists are lobbying on which matters.

(ii) The specific bill numbers for which the lobbying is being done.

(iii) The specific contents of any communications or the identity of those with whom the communications take place.

(3) The total costs of all lobbying for the period. The total must include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to State officials or employees, and any other lobbying costs.

(i) The total amount reported under this paragraph shall be allocated in its entirety among the following categories:

(A) The costs for gifts, hospitality, transportation and lodging given to or provided to State officials or employees or their immediate families.

(B) The costs for direct communication.

(C) The costs for indirect communication.

(ii) Registrants shall use a good faith effort to allocate expenses required to be reported under this subsection to

one of the three categories listed herein. A given expense may not be included in more than one category. When allocating expenses:

(A) Gifts should not include expenses for the following:

(I) Direct communication or indirect communication.

(II) Personnel expenses and office expenses, as defined in the act and this section.

(III) Services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of his office or employment.

(IV) Information received by a legislator or other State official or employee within the scope of his office or employment, except to the extent that the medium in which the information was received has a fair market value itself.

(B) Hospitality should not include expenses for the following:

(I) Personnel expenses and office expenses, as defined in the act and this section.

(II) Direct communication or indirect communication.

(C) Direct communication should not include expenses for the following:

(I) Gifts or hospitality.

(II) Transportation or lodging.

(D) Indirect communication should not include expenses for the following:

(I) Gifts or hospitality.

(II) Transportation or lodging.

(iii) Lobbying costs include the amount of economic consideration paid by principals to lobbying firms or lobbyists for lobbying. Although a registrant is only required to report the amount of economic consideration that is attributable to lobbying in the Commonwealth, the entire amount shall be reported unless the principal, lobbying firm or lobbyist maintains records that establish the portion attributable to lobbying, as well as the portion attributable to nonlobbying services.

(iv) Monitoring of legislation, monitoring of legislative action or monitoring of administrative action is not lobbying. However, for an individual or entity which is not exempt, the costs of monitoring are subject to the reporting requirements of the act when the monitoring occurs in connection with activity that constitutes lobbying.

(4) The information required to be disclosed under section 13A05(b)(3) of the act, as detailed by paragraph (3)(i), and subsections (j) and (k).

(5) The name, permanent business address and daytime telephone number of any individual, association, corporation, partnership, business trust or other business entity which contributed more than 10% of the total resources for lobbying received by the principal during the reporting period. The term "total resources" includes all contributions to the principal during the reporting period. The term also includes dues and grants received by the principal.

(6) The total costs for gifts, hospitality, transportation and lodging, given to or provided to State officials or employees or their immediate families, except that any cost under this paragraph which is of a value not exceeding \$10 need not be reported under section

13A05(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to more than one State official or employee, the aggregate economic value of which is more than \$10, that value shall be included in the appropriate totals reported under section 13A05(b)(2) of the act.

(h) A registered principal that attempts or that retains a lobbying firm or lobbyist to attempt to influence an agency's preparing, awarding of a bid, entering into or approving a contract pursuant to 62 Pa.C.S. (relating to procurement) shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(3).

(1) There is no prohibition against lobbyists or vendors being paid fees for procurement lobbying contingent upon the successful outcome of their lobbying.

(2) With certain exceptions, provided in 31 U.S.C. § 1352 (relating to limitation on the use of appropriated funds to influence certain Federal contracting and financial institutions), Federal funds cannot be spent by any recipient of a Federally-funded contract to pay any person for lobbying a Federal agency, employee or member of Congress.

(i) Within the total costs of all lobbying for the period reported in subsection (g)(3), the amount spent for office and personnel expenses must include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

(1) Any reasonable method may be used to determine how to allocate among direct and indirect communications.

(2) Because the definitions of "gift" and "hospitality" in section 13A03 of the act (relating to definitions) do not explicitly include personnel expenses and office expenses, if a principal sponsors an event for public officials and employees, the principal's expenses for mailing invitations, and the time its staff spends planning this event should be reported as direct or indirect communications.

(3) Reportable personnel costs include costs for expenditures for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, lawyers, publications and public relations staff and technical staff, as well as clerical and administrative support staff and individuals who engage in lobbying but who are exempt from reporting under section 13A06 of the act.

(4) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying. These expenses include transportation, food and lodging paid for any individuals in furtherance of lobbying.

(5) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a prorated estimate based on the value of the time devoted to lobbying.

(j) A quarterly expense report must also identify, by name, position and each occurrence, the State officials or employees, or both, who received from a principal, lobbying firm or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per calendar year.

(2) Each occurrence must include the date and the circumstances of the gift and the payment or reimbursement for transportation, lodging or hospitality.

(3) The reporting of the provision of gifts in the aggregate of \$250 or more per calendar year to a State official or employee must identify:

(i) The name and position of the State official or employee, including the governmental body of the State official or employee.

(ii) The name and address of the source of the gift.

(iii) The value of the gift.

(iv) The circumstances of the gift, including the nature of the gift.

(4) The reporting of the provision of transportation/lodging/hospitality in the aggregate exceeding \$650 per calendar year to a State official or employee in connection with public office or employment must identify the following:

(i) The name and position of the State official or employee, including the governmental body of the State official or employee.

(ii) The name and address of the source of the payment.

(iii) The value of the transportation, lodging or hospitality.

(5) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act does not include the cost of a reception which the State official or employee attends in connection with public office or employment. However, a principal, lobbying firm or lobbyist shall maintain records for purposes of disclosing the total costs of a reception as hospitality expenses in quarterly expense reports, in compliance with section 13A05(b)(2)(i) of the act and subsection (g)(3)(i).

(6) For purposes of the act, there is no requirement under section 13A05 to disclose anything of value received from immediate family when the circumstances make it clear that motivation for the action was the personal or family relationship.

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 13A05 of the act, the following apply:

(1) Any gift, transportation, lodging or hospitality item that is returned unused, declined or is fully reimbursed to the registrant within 30 days of the date of receipt need not be reported. For a gift, the date of receipt is the date the State official or employee first has possession or control of the gift. For purposes of calculating the 30 days for fully reimbursing an item of transportation, lodging or hospitality, the date of receipt is the date the State official or employee actually receives the benefit of the item.

(2) The valuation of a complimentary ticket to a fundraiser must be based upon the reasonable value of the gifts, hospitality, transportation or lodging received by the State official or employee. This provision does not apply to expenditures and other transactions subject to reporting under section 1626 of the Election Code (25 P. S. § 3246).

(3) The value of gifts, transportation, lodging or hospitality must equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality must equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality.

(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(iii) Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

(l) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each State official or employee of the State official's or employee's inclusion in the report at least 7 days prior to the submission of the report to the Department. The notice must include the information which will enable the public official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act. The notice may not include the cost of a reception that the State official or employee attends in connection with State office or employment.

(m) A lobbying firm or lobbyist not associated with a lobbying firm, required to be registered under the act, shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the lobbying firm's or lobbyist's knowledge. If the principal is unable to secure the signature of a lobbyist or authorized representative of a lobbying firm, the principal shall attach a statement to the report, setting forth the attempts made and the reasons for the inability to obtain the signature. The statement must be on a form prescribed by the Department as required under § 51.7(a) (relating to forms, records and Department publications).

(1) A lobbying firm or lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's or lobbying firm's knowledge concerning the expenditures contained in the report. Lobbying firms' or lobbyists' statements as to limitations of knowledge must be on a form prescribed by the Department as required under § 51.7(a), and describe the limitations and the reasons for the limitations with specificity.

(2) An individual in a lobbying firm, a lobbyist or any other individual may also sign the quarterly expense

report of the principal on behalf of the principal, attesting to the accuracy of the report, with authorization by the principal on its registration statement. The registration statement will designate all individuals who may sign expense reports on behalf of the principal.

(i) If an individual or lobbyist signs a principal's quarterly expense report on the principal's behalf without authorization by the principal on its registration statement, the quarterly expense report will not be considered a valid filing by the principal.

(ii) A principal that authorizes an individual to sign the quarterly expense reports of the principal on behalf of the principal on its registration statement is still responsible for the accuracy and timely filing of the quarterly expense report.

(iii) When an individual signing the principal's quarterly expense report, attesting to the accuracy of the report, is an official or employee of the principal who also serves as one of the principal's registered lobbyists as indicated on the report, that signatory shall still be required to affirm the accuracy of the report as a lobbyist of the principal, as provided by section 13A05(b)(4) of the act.

(n) When a lobbying firm or lobbyist is required to file a separate report under subsection (e), the following apply:

(1) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the due date of the principal's report.

(2) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form prescribed by the Department as required under § 51.7(a).

(3) A separate quarterly expense report or separate amended quarterly expense report must contain the identity of the principal for whom the lobbying was performed.

(4) A separate quarterly expense report must include the information required by section 13A05(b)(2), (3) and (7) of the act.

(5) A separate quarterly expense report or separate amended quarterly expense report may include a statement which specifies the limitations of the lobbying firm's or the lobbyist's knowledge and the reasons for the limitations.

(6) A lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall provide it to the principal contemporaneously with filing it with the Department.

(7) A lobbying firm or lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each State official or employee of the State official's or employee's inclusion in the report at least 7 days prior to the submission of the report to the Department. The notice must include the information which will enable the State official or employee to comply with section 1105(b)(6) and (7) of the Ethics Act.

(8) An individual in a lobbying firm, a lobbyist or any other individual may also sign the quarterly expense report of the lobbying firm or lobbyist on behalf of the lobbying firm or lobbyist, attesting to the accuracy of the report, with authorization by the lobbying firm or lobbyist on the lobbying firm's or lobbyist's registration statement.

The registration statement will designate all individuals who may sign expense reports on behalf of the lobbying firm or lobbyist.

(i) If an individual or lobbyist signs a lobbying firm's or lobbyist's quarterly expense report on the lobbying firm's or lobbyist's behalf without authorization by the lobbying firm or lobbyist on the lobbying firm's or lobbyist's registration statement, the quarterly expense report will not be considered a valid filing by the lobbying firm or lobbyist.

(ii) A lobbying firm or lobbyist that authorizes an individual to sign the quarterly expense report of the lobbying firm or lobbyist on the lobbying firm's or lobbyist's registration statement is still responsible for the accuracy and timely filing of the quarterly expense report.

(o) Whenever any person makes an expenditure for indirect communication under this section, for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, automated telephone calls, print or electronic media advertisement, billboard, publication or education campaign, the communication must clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.

§ 55.2. Records maintenance, retention and availability.

(a) A registrant shall maintain records reasonably necessary to substantiate the filings of lobbying activity made under sections 13A04 and 13A05 of the act (relating to registration; and reporting).

(1) The Department will prescribe standardized forms for reports, which shall be used by all principals, lobbying firms and lobbyists required to be registered under the act.

(2) In maintaining records, registrants may use any reasonable methods of estimation and allocation.

(3) Records of lobbying activity may be kept under any reasonable accounting basis, which includes:

(i) *Cash basis.* Revenue and related assets are recognized when received and expenses are recognized when payment is disbursed. For example, payroll costs are reported when paid, not when the associated hours are worked.

(ii) *Accrual basis.* Income is recognized when earned and expenses when incurred. For example, payroll is recognized when the associated hours are worked regardless of when payment is made.

(iii) *Modified accrual basis.* Recognizes an economic transaction or event as revenues in the operating statement when the revenues are both measurable and available to liquidate liabilities of the current period. Available means collectible in the current period or soon enough thereafter to be used to pay liabilities of the current period. Similarly, expenditures are generally recognized when an event or transaction is expected to draw on current spendable resources.

(4) Records of lobbying activity shall be maintained in sufficient detail to enable the registrant to fully comply with the act and this part.

(5) The records must identify the general subject matter or issue being lobbied. The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.

(6) A registrant should keep its records on the same accounting basis for the 2-year period covering its registration under the act. If a registrant changes its accounting basis, then it should make an internal record noting the date of the change and the reason for the change.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's nonlobbying activity. A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.

(1) Records that integrate both lobbying and nonlobbying activities shall be retained and made available for inspection or audit under this section and Chapter 61 (relating to compliance audits).

(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method, but the method used shall be described in detail in the records maintained as to the expenditure.

(3) A registrant may value time spent lobbying in using any of the following examples of viable options as long as the method selected is a reasonable method of estimation and allocation:

(i) A registrant may employ a good faith estimate by using any reasonable method of estimation and allocation.

(ii) A registrant may keep a record of all of the time spent lobbying.

(iii) A registrant may use the entire fee expended for lobbying.

(c) A registrant shall retain the documents used in recordkeeping reasonably necessary to substantiate the filings to be made under section 13A04 or 13A05 of the act for 4 years from the date of filing.

(1) The documents to be used in recordkeeping include, but are not limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form to the extent possible.

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the Department, the Commission, the Office of Attorney General or the Board to access in readable form all of the information reasonably necessary to substantiate the registration statements or reports.

(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit must be as complete and detailed as is reasonably possible, and include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry or other written or electronic form of record to document the expenditure. The record must include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures must reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

(2) The date of the transaction.

(3) The dates and forms of payments.

(4) The full name and official position of each State official or employee who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.

(5) The number of immediate family members of a State official or employee, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 13A05(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 13A05(b)(5) of the act must reflect for each reportable item, the following information:

(1) The full names of the donor and donee.

(2) The amount or value and date of the contribution.

(3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.

(4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General, the Department, the Commission or the Board, documents reasonably necessary to substantiate filings made under sections 13A04 and 13A05 of the act shall be made available for inspection and copying within 30 days.

(1) The Office of Attorney General, the Department, the Commission or the Board may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

(2) Computerized/electronic records shall be provided in readable form.

§ 55.3. Public inspection and copying.

(a) The Department will make completed expense reports, which have been filed with the Department, available for public inspection and provide copies of these documents at a price not in excess of the actual cost of copying.

(b) The Department will make all reports available on a publicly accessible Internet web site. Documents maintained and reproducible in an electronic format shall be provided in that format upon request.

§ 55.4. Reliance on documents

(a) *Reliance on manual.* A registrant's establishment and maintenance of records, as well as the filing of quarterly expense reports based on those records, in accordance with any manual or interim guidelines

adopted by the Committee shall serve as evidence of the registrant's good faith effort to comply with the act during the time when the manual or guidelines are in effect.

(b) *Reliance on instructions for forms.* A registrant's completion of registration statements and quarterly expense reports in accordance with instructions published by the Department shall serve as evidence of the registrant's good faith effort to comply with the act during the time when the instructions are in effect.

CHAPTER 57. EXEMPTION FROM REGISTRATION AND REPORTING

Sec.	
57.1.	General rule.
57.2.	Qualifications for exemption.

§ 57.1. General rule.

(a) Unless specified in § 57.2 (relating to qualifications for exemption), a person, principal, lobbying firm or lobbyist that qualifies for any exemption under § 57.2 will not be required to register or report with respect to any activity covered by the exemption. However, if an individual does not qualify for an exemption in § 57.2(a), then the activity described in the exemption shall be included within the reports otherwise required by the act.

(b) Upon losing exempt status, a person, principal, lobbying firm or lobbyist is immediately subject to the registration and reporting requirements of the act.

(c) Upon losing exempt status, a principal is not required to retroactively file reports for previous quarterly reporting periods in which the exemption applied.

(d) Upon losing exempt status, a lobbying firm or lobbyist is not required to retroactively sign or file reports for previous quarterly reporting periods in which the exemption applied.

§ 57.2. Qualifications for exemption.

(a) *Exemption from registration.* The following persons and activities shall be exempt from registration under section 13A04 of the act (relating to registration) and reporting under section 13A05 of the act (relating to reporting):

(1) The exemption in section 13A06(1) of the act (relating to exemption from registration and reporting) is limited to an individual or entity whose only lobbying activities consist of preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding. Participating in an administrative proceeding includes, but is not limited to, preparing and delivering comments on regulations or preparing and delivering comments at agency advisory committee meetings. To the extent an individual or entity, which is otherwise required to register and report under the act, engages in those activities, the individual or entity does not qualify for the exemption under this subsection.

(2) The exemption in section 13A06(2) of the act is limited to an individual or entity which is engaged in the business of publishing or broadcasting, regardless of the medium used, while engaged in the gathering and dissemination of news and comment on the news to the general public in the ordinary course of business. The term "individual" in this subsection includes employees and independent contractors.

(i) To qualify for this exemption, the individual or entity shall satisfy all of the following criteria:

(A) Regularly report or comment on government news or current events.

(B) Receive compensation or revenue for the publications or broadcasts.

(C) Make the publications or broadcasts available to the general public, whether for a fee or free of charge.

(D) Be independent of any principal, lobbying firm or lobbyist that is engaged in lobbying activities under the act.

(E) Be independent of any organization or entity that is not a news organization.

(ii) To the extent an individual or entity, which is otherwise required to register and report under the act, engages in activities other than the publishing or broadcasting of news or comment on the news, the other activities will not be afforded an exemption under this subsection.

(3) The exemption in section 13A06(3) of the act is limited to an individual who does not receive any economic consideration for lobbying.

(4) The exemption in section 13A06(4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(5) The exemption in section 13A06(5) of the act is limited to an individual who engages in lobbying on behalf of the individual's employer if the lobbying activity represents less than 20 hours during any reporting period.

(6) The exemption in section 13A06(6) of the act is limited to a principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

(7) The exemptions in section 13A06(7), (8), (9) and (10) of the act (as referenced in section 13A05(b)(8)) exclude Commonwealth governmental entities and political subdivisions as well as elected officials, appointed officials and employees of the entities or subdivisions from the registration and reporting requirements of the act to the extent that the lobbying activities are performed by the governmental entities or by their officials/employees in an official capacity. Specifically, these sections exempt lobbying by a governmental entity on its own behalf and lobbying by an official/employee of the entity acting in an official capacity so that neither the official/employee nor the governmental entity would be required to register or report as to those activities under the act. The governmental entity would be required to register and report as a principal if other lobbyists or lobbying firms would engage in lobbying on behalf of the governmental entity and the total expenditures for those lobbying activities would not bring the governmental entity within the exemption in section 13A06(6) of the act.

(8) The exemption in section 13A06(11) of the act is limited to an individual representing a bona fide church or bona fide religious body of which the individual is a member, or the bona fide church or bona fide religious body itself, when the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion. Lobbying on issues beyond the scope of the free exercise of religion does not qualify for this exemption no matter who engages in the lobbying.

(9) The exemption in section 13A06(12) of the act applies to an individual who is not otherwise required to register and who serves on an advisory board, working

group or task force at the request of an agency or the General Assembly. This exemption is limited to the scope of the individual's service on the advisory board, working group or task force.

(10) The exemption in section 13A06(13) of the act applies to the activity of participating as a party or as an attorney at law or representative of a party, case or controversy in any administrative adjudication pursuant to 2 Pa.C.S. (relating to administrative law and procedure). This activity is exempt whether performed by an individual or entity, but will not operate to exclude from reporting other activities performed by individuals or entities that are otherwise required to register and report under the act.

(11) The exemption in section 13A06(14) of the act applies to expenditures and other transactions subject to reporting under Article XVI of the Election Code (25 P. S. §§ 3241—3260b).

(b) *Vendor activities.* The exemption in section 13A06(15) of the act applies to vendor activities under 62 Pa.C.S. §§ 514 and 516 (relating to small procurements; and emergency procurement) and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals. This exemption also includes:

(1) The following vendor activities in response to public procurement actions initiated by the Commonwealth:

(i) Submission of supplier pricing requests and sealed quotes, bids and proposals in response to a Request for Quotes, Invitation For Bids, Request for Proposals or other competitive procurement process.

(ii) Submission of questions; participation in a site visit; prebid or preproposal conference; and communications concerning the procurement process between the vendor's and the covered agency's contracting officer designated by the competitive procurement document related to an active procurement.

(iii) Submission of a response to a Request for Expressions of Interest or Request For Information seeking formal expression of interest or identification of vendor capabilities for a potential future procurement.

(2) Activities and communications necessary or incidental to performing an existing contract or the demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract.

(3) Participation in trade shows, conventions or product demonstrations open to the public or held for an open community when Commonwealth representatives are among the attendees.

(4) Participation in an open, public forum for vendors conducted by the Commonwealth.

CHAPTER 59. OPINIONS AND ADVICES OF COUNSEL

Sec.	
59.1.	Ethics Act regulations in Part I as to opinions and advices of counsel.
59.2.	Standing requirements.
59.3.	Prospective conduct to be reviewed.

§ 59.1. Ethics Act regulations in Part I as to opinions and advices of counsel.

(a) The Commission will provide advices of counsel and opinions in accordance with the procedures in section 1107 of the Ethics Act (relating to powers and duties of commission) and Chapter 13 (relating to opinions and advices of counsel).

(b) A person who acts in good faith based upon a written advice or opinion of the Commission issued as to that person will not be held liable for a related violation of the act if the material facts are as stated in the request.

(c) A respondent or defendant who reasonably relies upon advices or opinions of the Commission shall have an affirmative defense under section 13A09(g)(1) of the act (relating to penalties).

§ 59.2. Standing requirements.

(a) The following shall have standing to request an advisory under the act:

(1) A principal, lobbying firm, lobbyist, State official or employee, the Department, the Board or the authorized representative of any of the aforesaid.

(2) Individuals, entities or their authorized representatives regarding their status or duties under the act.

(b) A principal or lobbying firm shall have standing to request an advisory regarding the status, duties or activities of its employees.

(c) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and will not be entertained.

(d) The Department and the Board will have standing to request an advisory as to questions or issues regarding their respective duties and authority under the act.

§ 59.3. Prospective conduct to be reviewed.

An advice or opinion will only be issued as to prospective conduct, pertinent to the subject of the request.

CHAPTER 61. COMPLIANCE AUDITS

Sec.	
61.1.	Lotteries.
61.2.	Scope of compliance audits.
61.3.	Audit procedures.
61.4.	Audit report.
61.5.	Confidentiality.
61.6.	Duty of the Department to contract for an audit.

§ 61.1. Lotteries.

(a) Each year, the Department will randomly select, at a public drawing 60 days following the close of each fourth quarter reporting period, 3% of all principals, 3% of all lobbying firms and 3% of all lobbyists who have completed registration statements and expense reports filed with the Department under the act.

(b) A lobbyist, lobbying firm or principal will not be selected for a random audit in consecutive audit periods.

§ 61.2. Scope of compliance audits.

(a) The audits will be conducted in accordance with generally accepted auditing standards and will test as to whether each registration statement or expense report is materially correct.

(b) An audit will be limited in time to the previous calendar year. However, where the audit falls in the second year of a registration period, the audit shall include the registration statement filed in the previous year. Lobbying activities performed prior to January 1, 2007, will not be audited under the act.

§ 61.3. Audit procedures.

The following general procedures will be employed for audits conducted under section 13A08(f) of the act (relating to administration):

(1) The Department, at least 30 days prior to the initiation of the audit, will advise each audit subject by

letter that the audit subject was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(2) The independent auditor will obtain the subject's reports on file with the Department applicable to the audit period. Lobbying activities performed prior to January 1, 2007, will not be audited under the act.

(3) The independent auditor will initiate the audit by way of conference (in person or by telephone) between the auditor and the audit subject or the designated representative thereof.

(4) The registrant who is the audit subject shall cooperate fully in the audit, which shall be conducted in accordance with generally accepted auditing standards.

(5) If the independent auditor believes that the audit subject is not cooperating, the independent auditor shall inform the Department in writing.

(6) The independent auditor will offer to conduct an audit exit conference with the audit subject, or the designated representative thereof, prior to the issuance of a final report.

§ 61.4. Audit report.

(a) The certified public accountants or certified public accounting firms, selected under section 13A08(f)(1) (relating to administration) and § 61.6 (relating to duty of the Department to contract for an audit), that are responsible for performing compliance audits will, at the conclusion of each audit, prepare an audit report which must include findings.

(b) An audit report may include recommendations as to recordkeeping, reporting and other related practices arising from the audit.

(c) Upon completion, the independent auditor shall send a copy of the audit report and the findings of fact by certified mail to the audit subject. The independent auditor shall issue the audit report within 1 year of being notified of the selection of the audit subject.

(1) Issuance of the audit report will be deemed complete upon mailing to the audit subject.

(2) Within 30 days of issuance of the audit report, the audit subject may file with the Department a statement setting forth the subject's position as to the audit report.

(d) Audit reports and any related responses shall be submitted to the Department for review and may form the basis for further proceedings or referrals under the act or the Ethics Act.

§ 61.5. Confidentiality.

The audit report and findings will be confidential except that the Department will make an audit report and findings available to the Commission if the Commission is investigating an alleged violation of this chapter involving the audited registration or expense report within the requirements of the act and Chapters 53 and 55 (relating to registration and termination; and reporting). The Commission will include the relevant portion of an audit as part of its findings of fact in a Commission order that results from an investigation arising out of an audit.

§ 61.6. Duty of the Department to contract for an audit.

Every 2 years, the Department will contract for the services of one or more certified public accountants or

certified public accounting firms. The contract will be awarded in a manner consistent with 62 Pa.C.S. Part I (relating to Commonwealth Procurement Code), and no certified public accountant or certified public accounting firm will be eligible to obtain a contract for 2 successive contract periods.

CHAPTER 63. COMMISSION REFERRALS, INVESTIGATIVE PROCEEDINGS AND NONINVESTIGATIVE PROCEEDINGS

Sec.	
63.1.	Commission referrals.
63.2.	Commission proceedings regarding prohibited activities under section 13A07 of the act.
63.3.	Commission proceedings regarding late or deficient filings. 13A04 or 13A05 of the act.
63.4.	Noninvestigative process for late or deficient filings.
63.5.	Investigative process for late or deficient filings.
63.6.	Administrative penalties for late or deficient filings.
63.7.	Commission decisions as to late or deficient filings.

§ 63.1. Commission referrals.

(a) If the Commission has reason to believe that an intentional violation of the act has been committed, it will refer all relevant documents and other information to the Office of Attorney General and, if the lobbyist or principal is an attorney at law, to the Board.

(b) The Commission may refer any alleged violation of section 13A07(f) of the act (relating to prohibited activities) to the Office of Attorney General for both investigation and prosecution.

(c) The Commission will refer any alleged violation of section 13A07(d) or (f) of the act to the Board if the subject of the alleged violation is an attorney at law.

(d) Under section 13A09(b) of the act (relating to penalties) and § 63.4(16) (relating to noninvestigative process for late or deficient filings), if the Commission finds that a failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution and, if the person is an attorney at law, to the Board.

(e) Nothing contained in the act or this part will prohibit the Office of Attorney General from independently initiating an investigation or prosecution under the act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.

(f) Nothing contained in the act or this part will restrict the Board's authority to discipline an attorney-at-law who is acting as a lobbyist or principal.

(g) Except for a matter under section 13A07(d)(8) of the act, a referral by the Commission or the Office of Attorney General to the Board will not preclude the referring agency from also conducting its own enforcement proceeding under the act.

§ 63.2. Commission proceedings regarding prohibited activities under section 13A07 of the act.

(a) Upon receipt of a complaint as defined in § 51.1 (relating to definitions), the Commission, through its Executive Director, will conduct a preliminary inquiry into an alleged negligent or unintentional violation of section 13A07 of the act (relating to prohibited activities). A preliminary inquiry will not be conducted for matters under the act that are required to be referred to the Board for the Board's exclusive review pursuant to section 13A07(d)(8) or for matters involving section 13A07(f) that the Commission, in its discretion, chooses to refer to the Office of Attorney General for investigation.

(b) Except for matters required to be referred to the Board for its exclusive review pursuant to section 13A07(d)(8) of the act, the Commission, upon the motion of the Executive Director, may conduct a preliminary inquiry into an alleged negligent or unintentional violation of section 13A07 of the act.

(c) Preliminary inquiries will be conducted in accordance with the procedures for preliminary inquiries set forth in section 1108 of the Ethics Act (relating to investigations by commission) and § 21.3 (relating to preliminary inquiries), to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent or unintentional violations of section 13A07 of the act by a lobbyist, lobbying firm or principal, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(2) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(e) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent or unintentional violations of section 13A07 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order).

(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

§ 63.3. Commission proceedings regarding late or deficient filings.

(a) Commission proceedings under sections 13A04 or 13A05 of the act (relating to registration; and reporting) may be initiated based upon one or more of the following:

- (1) Receipt of a complaint.
- (2) Information submitted by the Department, at its discretion, including, but not limited to, referrals or other information pertaining to late or incomplete filings, the failure to file required registration statements and the failure to file quarterly expense reports.

(3) A referral by the Department of any information arising from an audit, which, in the view of the Department, is appropriate for the Commission to consider.

(4) Reviews of filings conducted by Commission staff.

(5) On the motion of the Commission's Executive Director, which is based upon a reasonable belief that a violation of section 13A04 or 13A05 of the act may have occurred.

(b) The Commission, through its Executive Director, will initiate proceedings involving sections 13A04 or 13A05 of the act under either the noninvestigative procedures in § 63.4 (relating to noninvestigative process for late or deficient filings) or under the investigative procedures in § 63.5 (relating to investigative process for late or deficient filings).

(1) In each case, the Executive Director of the Commission will elect the process to be followed based upon factors which include, but are not limited to:

- (i) The complexity of the matter.
- (ii) Whether an investigation is needed to fully review the matter.
- (iii) Whether the filer has had prior notice of the requirements of the act.
- (iv) Whether the filer has in the past complied with the act.

(2) The election of the process to be followed will not be controlled by the manner in which the alleged negligent violation or noncompliance comes to the attention of the Commission.

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a registration or report containing a false statement, the Commission through its Executive Director may elect to proceed in the matter under the noninvestigative procedures of § 63.4 rather than through the investigative procedures of § 63.5.

(4) A complainant will be notified of the Executive Director's election of the process to be followed.

(5) Information received under subsection (a) may form the basis for proceedings under either the noninvestigative procedures of § 63.4, or, on the motion of the Commission's Executive Director, the investigative procedures of § 63.5.

(c) If the Department makes a referral to the Commission based on an audit, the Commission will handle the referral through the investigative process.

§ 63.4. Noninvestigative process for late or deficient filings.

The noninvestigative process for matters under section 13A04 or 13A05 of the act (relating to registration; and reporting) will include the following procedures:

(1) Prior to the issuance of a notice of alleged noncompliance pursuant to section 13A09 of the act (relating to penalties), the Executive Director of the Commission will issue a warning notice to the lobbyist, lobbying firm or principal that has allegedly failed to register or report as required by the act. The warning notice may encompass multiple alleged failures to comply with the act. The warning notice will state the nature of the alleged noncompliance and the administrative and criminal penalties for failing to register, failing to file a report, or filing a report that contains a false statement or that is incomplete.

(2) The recipient of the warning notice shall have 30 days from the mailing date of the warning notice in which to cure the alleged noncompliance. The Investigative Division, may extend the 30-day time period for curing the alleged noncompliance. If the alleged noncompliance is not cured within the 30-day period or any extension thereof, the Investigative Division of the Commission may file with the Commission a notice of alleged noncompliance. The notice will be served upon the respondent by the Investigative Division. A notice of alleged noncompliance may encompass multiple alleged failures to comply with the act.

(3) The notice of alleged noncompliance will set forth the pertinent factual averments in numbered paragraph form and will state the nature of the alleged noncompliance and the administrative and criminal penalties for

failing to register, failing to file a report, or filing a report that contains a false statement or that is incomplete. A notice of alleged noncompliance will also advise of the right to appeal from the notice, to file a written answer to the notice and to request a hearing before the Commission. A notice of alleged noncompliance will set forth the time and manner in which to file an appeal, file a written answer and request a hearing.

(4) An answer to the notice of alleged noncompliance must be filed (received at the Commission) within 30 days of service of the notice upon the respondent, and the notice of alleged noncompliance will include a statement to this effect. Filing of an answer is deemed to be both an appeal and a request for a hearing.

(5) An answer to the notice of alleged noncompliance must specifically admit or deny each of the factual averments made in the petition, set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied will be deemed admitted. The notice of alleged noncompliance will include a statement to this effect.

(6) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the notice of alleged noncompliance. The notice of alleged noncompliance will include a statement to this effect.

(7) To the extent that a respondent does not file an answer, a request by the respondent for a hearing must be in writing and be received at the Commission within 30 days of service of the notice of alleged noncompliance upon the respondent. Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(8) If the recipient of a notice of alleged noncompliance fails to file a written answer or otherwise fails to file an appeal or a request for a hearing, the notice of alleged noncompliance is deemed admitted and the Commission may find the respondent to be in noncompliance and impose a penalty or penalties pursuant to the act. Furthermore, filing a notice of appeal will automatically constitute a request for a hearing.

(9) If the respondent does not file an answer or otherwise submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(10) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(11) If a hearing is requested by the respondent or Investigative Division or is scheduled by the Commission, the respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(12) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged, or information not within paragraph (11).

(13) A hearing under section 13A09(b) of the act as to a negligent failure to register or report will be public and will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of commission; and investigations by Commission), and to the extent applicable, the related

provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(14) The hearing officer or the parties may request that briefs be presented. The filing of briefs must be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs) to the extent applicable.

(15) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission will determine, based upon the record before it, whether the respondent was required to register or report under the act; whether the failure to register or report was negligent; and if the failure was negligent, the amount of the administrative penalty to be imposed. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

(16) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution, and if the person is an attorney at law, the Commission will also refer the matter to the Board.

(17) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(18) At any time prior to a final adjudication by the Commission, the Investigative Division will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this section. Settlement agreements will be subject to review and approval by the Commission. Settlement agreements may include arrangements for deferral or termination of proceedings prior to any adjudicative disposition, or terms for an adjudicative disposition, including penalties provided by the act.

(19) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures in § 21.29(b) and (d)—(f) (relating to finality; reconsideration) to the extent applicable.

(20) The Commission will notify the Board of any administrative/civil penalty imposed by the Commission against an attorney at law for failure to register or report.

(21) A complainant will be notified of the final resolution of the matter.

(22) The official record of the case before the Commission will be publicly available.

(23) The files of the Investigative Division will not be publicly available.

§ 63.5. Investigative process for late or deficient filings.

The investigative process for matters under section 13A04 or 13A05 of the act (relating to registration; and reporting) will include the following procedures:

(1) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of section 13A04 or 13A05 of the act. Preliminary inquiries will be conducted under the procedures for preliminary inquiries in section 1108 of the Ethics Act (relating to investigations by commission) and, to the extent applicable, § 21.3 (relating to preliminary inquiries).

(2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concern-

ing alleged negligent violations of section 13A04 or 13A05 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

(i) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(ii) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(iii) A person has a duty to comply with a lawfully issued subpoena, even if that person is located out-of-State pursuant to 42 Pa.C.S. § 5322 (relating to the bases of personal jurisdiction over persons outside this Commonwealth).

(3) At any time prior to a final adjudication by the Commission, the Investigative Division will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this section. Settlement agreements will be subject to review and approval by the Commission. Settlement agreements may include arrangements for deferral or termination of proceedings prior to any adjudicative disposition, or terms for an adjudicative disposition, including penalties provided by the act.

(4) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 13A04 or 13A05 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§ 21.28—21.30 (relating to decision; finality; reconsideration; and effect of order). At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

§ 63.6. Administrative penalties for late or deficient filings.

Following a noninvestigative process under § 63.4 (relating to noninvestigative process for late or deficient filings), or an investigative process under § 63.5 (relating to investigative process for late or deficient filings), if the Commission finds negligent failure to register or report as required by the act, the Commission may, upon the vote of at least four of its members present, levy one or more administrative penalties as provided for in this section.

(1) Each negligent failure to register or report as required by the act is punishable by an administrative penalty of up to \$50-per-day for each day the registration statement or report is delinquent or deficient.

(2) An administrative penalty will be calculated from the first day the registration statement or report is delinquent or deficient, through the date a complete and accurate registration statement or report is filed or the Commission decides the matter, whichever occurs first.

(3) In determining whether to impose an administrative penalty that is less than \$50-per-day, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the delinquency, deficiency or false statement.

(ii) Whether the respondent has raised any justifiable excuse such as, for example, the following:

(A) The unavailability of records due to loss, theft or destruction through no fault of the respondent.

(B) Incapacitating physical or mental illness, hospitalization, accident involvement, or death of a person required to register or report, a person whose participation is essential to the filing, or a member of the immediate family of the person.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the registration/reporting requirements of the act.

(iv) Whether Commission records indicate that the Commission has previously notified the respondent, in writing, of other delinquent, deficient, or false registration statements or reports.

(v) Whether proceedings have previously been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(vi) Whether there are any other factors that should be considered as aggravating or mitigating factors in the case.

(4) The imposition of an administrative penalty by the Commission will not preclude a criminal prosecution for intentional violation of the act.

§ 63.7. Commission decisions as to late or deficient filings.

The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

CHAPTER 65. PROHIBITION AGAINST LOBBYING FOR ECONOMIC CONSIDERATION AS A SANCTION

Sec.	
65.1.	Basis for prohibition against lobbying for economic consideration.
65.2.	Procedures for imposing prohibition against lobbying for economic consideration.

§ 65.1. Basis for prohibition against lobbying for economic consideration.

(a) Under sections 13A07 and 13A09 of the act (relating to prohibited activities; and penalties), the Commission may prohibit a lobbyist from lobbying for economic consideration for up to 5 years when the lobbyist has done one or more of the following:

- (1) Violated section 13A07(d) of the act.
- (2) Violated section 13A07(f) of the act.

(b) Under section 13A09(e)(4) of the act, the Commission may prohibit a person from lobbying for economic consideration for up to 5 years when the person has done one or more of the following:

- (1) Intentionally failed to register or report as required by the act, as provided in section 13A09(e)(1) of the act.
- (2) As a registrant, filed a report under the act with knowledge that the report contained a false statement or was incomplete, as provided in section 13A09(e)(2) of the act.

(3) Otherwise intentionally violated the act, as provided in section 13A09(e)(3).

(4) Failed to comply with section 13A04, 13A05 or 13A07 of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested, as provided in section 13A09(d).

(c) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have been notified of noncompliance when served with both of the following:

(1) A findings report, notice of alleged noncompliance or other form of process which meets the requirements of section 13A09(a) of the act.

(2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(d) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have failed to comply after notice of alleged noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order finding the respondent in noncompliance/violation, or within another time for compliance as specified by the order.

(e) The prohibition against lobbying for economic consideration will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

(f) At any time prior to a final determination by the Commission as to the imposition of a prohibition against lobbying for economic consideration, the Investigative Division of the Commission will have authority to negotiate settlements and to enter into settlement agreements to resolve matters under this chapter. Settlement agreements will be subject to review and approval by the Commission. Settlement agreements may include arrangements for deferral or termination of proceedings prior to any disposition, or terms for a disposition, including the duration of any prohibition against lobbying for economic consideration to be imposed under the act.

(g) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible in a Commission proceeding involving the imposition of a prohibition against lobbying for economic consideration. At the hearing, the Commission will determine initially whether the defendant or respondent violated the act. If the Commission makes an initial determination that the defendant or respondent violated the act, the defendant/respondent may thereafter present argument regarding an appropriate penalty.

§ 65.2. Procedures for imposing prohibition against lobbying for economic consideration.

(a) Giving consideration to the factors in subsection (b)(14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying for economic consideration.

(b) The procedures for the imposition of a prohibition against lobbying for economic consideration will be as follows:

(1) The proceedings will be initiated with the Commission through the filing of a petition by the Investigative Division. The petition will be served upon the respondent by the Investigative Division.

(2) The petition will set forth the pertinent factual averments in numbered paragraph form, and will notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition will be docketed to the same number

as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition will be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition must specifically admit or deny each of the averments made in the petition, and set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied will be deemed admitted.

(5) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition seeking the prohibition.

(6) A request by the respondent for a hearing must be in writing and be received at the Commission within 30 days of service of the petition upon the respondent. The Commission will schedule a hearing at least 30 days after the filing of an answer.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(8) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The Investigative Division of the Commission will give the respondent access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of commission; and investigations by commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under § 21.27 (relating to briefs), to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying for economic consideration is to be imposed against the respondent.

(i) If a lobbyist or person has been found to be in noncompliance or in violation of the act in a proceeding before the Commission, for which noncompliance or viola-

tion the penalty of prohibition against lobbying for economic consideration may be imposed, the finding of noncompliance or violation will be res judicata, and the Commission's further determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying for economic consideration.

(ii) To the extent any factual matters remain to be proven, the matters will be proven by clear and convincing evidence.

(iii) A prohibition against lobbying for economic consideration may only be imposed by a vote of at least four members of the Commission present at a meeting.

(14) In determining whether and for how long a prohibition against lobbying for economic consideration is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(v) Whether there are other factors that should be considered as aggravating or mitigating factors in the case.

(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures in § 21.29(b) and (d)—(f) (relating to finality; reconsideration), to the extent applicable.

(17) The official record of the case, including a consent agreement, before the Commission will be publicly available.

(18) The files of the Investigative Division will not be publicly available.

(c) If a lobbyist or person is convicted in a criminal proceeding for a violation of the act for which the penalty of prohibition against lobbying for economic consideration may be imposed, the conviction will be res judicata, and the Commission's determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying.

CHAPTER 67. PROHIBITED ACTIVITIES

§ 67.1. Prohibited activities.

A list of prohibited activities and penalties can be found in section 13A07 of the act (relating to prohibited activities).

CHAPTER 69. SEVERABILITY

§ 69.1. Severability.

If any provision or clause of this part or the application thereof to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

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