

PROPOSED RULEMAKING

INDEPENDENT REGULATORY REVIEW COMMISSION

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

General Revisions

The Independent Regulatory Review Commission (Commission) proposes to amend Chapters 301, 303, 305, 307, 309, 311, 311a and 315 to read as set forth in Annex A.

Statutory Authority

This rulemaking is proposed under the authority in section 11(a) of the Regulatory Review Act (act) (71 P. S. § 745.11(a)).

Purpose

This proposed rulemaking implements the act to clarify definitions, when documents are to be delivered to the Commission and what should be included in agency rulemaking packages, as well as to ensure consistency with the act and current practice and procedure.

Summary of Amendments

Proposed amendments to § 301.1 (relating to definitions) clarify the definitions of “comments” and “transmittal sheet” and add a definition of “preamble.”

Proposed amendments to §§ 301.2 and 303.1 (relating to regulation files; and notice of Commission public meetings; participation; minutes) clarify the retention schedule for regulation files and the location of the Commission’s fee schedule and Right to Know Law Policy.

Proposed amendments to § 301.3 (relating to determination of date and time of delivery of comments and documents) clarify that the time of delivery will be determined by when documents are received by the Commission.

Proposed amendments to § 301.7 (relating to withdrawal of a regulation) provide that a withdrawal notice should be delivered to the Commission and the committees before the Commission’s public meeting.

Proposed amendments to § 301.9 (relating to procedure for public hearings) provide that public hearings may be scheduled for any matter before the Commission, rather than just for regulations that are under review. This is consistent with section 11(c) of the act.

Proposed amendments to §§ 305.1, 307.2 and 307.3 (relating to delivery of a proposed regulation; delivery of a final-form regulation; and delivery of a final-omitted regulation) add cross-references to clarify the information that should be included in the preamble of a rulemaking. Proposed amendments to § 305.1 also add a requirement that instructions for submitting public comments should be included. Section 5(b) of the act (71 P. S. § 745.5(b)) requires a public comment period.

Proposed amendments to § 307.2 clarify what should be included in the final rulemaking package. Section 5.1(a) of the act (71 P. S. § 745.5a(a)) provides that the agency shall include in the package the names and addresses of commentators who have requested additional information. Accordingly, proposed amendments to

§ 307.2 state that if no commentator requested additional information, this should be specified by the agency.

Proposed amendments to § 307.3a (relating to formatting the text of a final regulation) take into consideration that prior to publication in the *Pennsylvania Bulletin*, the Legislative Reference Bureau may make revisions to the text of a proposed rulemaking to comply with its editorial policies and procedures. The published text is considered to be the official version of the proposed rulemaking. Therefore, § 307.3a is proposed to be amended to require an agency to use the official version when preparing and delivering a final rulemaking package.

Proposed § 307.3a(f) recognizes that there may be an instance when it is impractical for an agency to use the standard formatting method in a final rulemaking. In this case, the agency should contact the Commission to discuss an alternative method that will still allow readers to easily determine the changes that were made from the proposed rulemaking.

Proposed amendments to § 309.1 (relating to Commission and committee action on a final regulation) correct typographical errors.

Proposed amendments to § 311.1 (relating to Commission disapproval of a final regulation) replace “may” with “will” regarding the Commission’s notification to commentators to be consistent with section 6(a) of the act (71 P. S. § 745.6(a)).

Proposed amendments to § 311.4 (relating to report for a disapproved regulation submitted with revisions) require an agency to include a Regulatory Analysis Form (RAF) with a revised previously-disapproved regulation. The RAF will capture new cost data or other changes that may differ from the previously submitted final-form rulemaking.

Proposed amendments to §§ 311a.1—311a.5 and 311a.7 clarify that delivery before and after the end of the legislative session must be made between the 4th Monday in January and the 2nd Monday after publication of the General Assembly committee designations in the *Pennsylvania Bulletin*. Proposed amendments to § 311a.4 (relating to delivery of a final regulation within 20 days before the end of the legislative session) correct a typographical error.

Proposed amendments to § 315.1 (relating to review of an existing regulation) replace “investigation” with “further review” to be consistent with section 8.1 of the act (71 P. S. § 745.8a).

The headings for Chapter 315 (relating to existing regulations and published or unpublished documents) and § 315.2 (relating to review of a published or an unpublished document) are proposed to be amended to accurately reflect the content of the chapter and the section.

Persons and Entities Affected

This proposed rulemaking will affect Commonwealth agencies that promulgate regulations by way of the regulatory review process. It also provides clarity for members of the public and other entities that wish to comment on rulemakings or otherwise participate in the process.

Fiscal Impact

This proposed rulemaking is not expected to have a fiscal impact on the Commission, the regulated commu-

nity (that is, the promulgating agencies), the Commonwealth, local governments or the general public. This proposed rulemaking clarifies the requirements of the existing regulatory review process.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Provisions

The Commission will make this proposed rulemaking effective upon final-form publication after conducting an analysis and evaluation of the comments, suggestions or objections received. The Commission will not establish a sunset date for these regulations. However, the Commission will continue to closely monitor the regulations for effectiveness and consistency with the act.

Public Comments

Written comments, suggestions or objections will be accepted for 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. The Commission invites comments from the General Assembly, the legislative standing committees, executive and independent agencies, and interested parties. Comments should be addressed to Leslie Lewis Johnson, Esq., Chief Counsel, Independent Regulatory Review Commission, 333 Market Street, 14th Floor, Harrisburg, PA 17101, (717) 783-5417, fax (717) 783-2664, ljohnson@irrc.state.pa.us, irrc@irrc.state.pa.us.

Contact Persons

This proposed rulemaking is available on the Commission's web site at www.irrc.state.pa.us. Questions may be referred to either Leslie Lewis Johnson, Chief Counsel, ljohnson@irrc.state.pa.us, or Michelle L. Elliott, Regulatory Analyst, melliott@irrc.state.pa.us, (717) 783-5417.

Alternative means of providing public comments and alternative formats of the proposed rulemaking may be made available to persons with disabilities upon request by contacting Cheryl Yohn, cyohn@irrc.state.pa.us, or Stephen F. Hoffman, shoffman@irrc.state.pa.us, (717) 783-5417.

Regulatory Review

Under sections 5(a) and 11(a) of the act, on October 13, 2015, the Commission submitted a copy of this proposed rulemaking and an RAF to the Joint Committee on Documents and to the Chairpersons of the House State Government Committee and the Senate Rules and Executive Nominations Committee. A copy of this material is available to the public upon request and is available on the Commission's web site at www.irrc.state.pa.us.

Under section 5(g) of the act, the Joint Committee on Documents may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. Prior to final publication of the regulation, the Joint Committee on Documents, the General Assembly and the Governor are afforded the opportunity, under the procedures in the act, to review the comments and recommendations received and objections raised.

JOHN F. MIZNER, Esq.,
Chairperson

Fiscal Note: 70-9. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 1. GENERAL PROVISIONS

PART III. INDEPENDENT REGULATORY REVIEW COMMISSION

CHAPTER 301. GENERAL PROVISIONS

§ 301.1. Definitions.

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

Act—The Regulatory Review Act (71 P.S. §§ 745.1— [745.15] 745.14).

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

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

Comments—Written statements delivered to the **agency or Commission**[,] supporting, opposing or recommending changes to a final, proposed or existing regulation which is subject to review by the Commission. Comments do not include previously published or copyrighted material.

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

***Preamble*—A document that provides information about a regulation that includes the effective date, statutory authority, purpose and explanation of the regulation, a description of the amendments to the regulation, fiscal impact, contact person and details regarding the public comment period.**

Promulgate—As defined in section 3 of the act.

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

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§ 301.2. Regulation files.

(a) The Commission will retain regulation files [**in accordance with**] **for no less than the time period in the following schedule:**

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(e) The Commission may charge reasonable fees for copying, certifying and mailing material contained in a regulation file. [**Fees will be posted on the website.**] **Fees are established in the Commission's Right to Know Law Policy, which is available in the Commission's office and posted on the web site.**

§ 301.3. Determination of date and time of delivery of comments and documents.

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

(1) *E-mail*. [**As**] **The time and date of receipt by the Commission as indicated on the Commission's computer system.**

(2) *Fax.* [**As**] **The time and date of receipt by the Commission as indicated on the transmittal report generated by the Commission's facsimile machine.**

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§ 301.7. Withdrawal of a regulation.

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

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§ 301.9. Procedure for public hearings.

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

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CHAPTER 303. MEETINGS OF THE COMMISSION

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

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(e) The Commission may charge reasonable fees for copying, certifying and mailing minutes. [**Fees will be posted on the website.**] **Fees are established in the Commission's Right to Know Law Policy, which is available in the Commission's office and posted on the web site.**

CHAPTER 305. PROCEDURES FOR DELIVERY AND REVIEW OF PROPOSED REGULATIONS

§ 305.1. Delivery of a proposed regulation.

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

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

- (1) A completed regulatory analysis form.
- (2) A face sheet signed by the agency head, the Office of Attorney General and the Office of General Counsel or the chief counsel of an independent agency.
- (3) A transmittal sheet signed by the committees.
- (4) The preamble, **which must include the information described in § 301.1 (relating to definitions).**
- (5) **Instructions for submitting public comments to the agency.**

[(5)] (6) The text of the regulation.

CHAPTER 307. PROCEDURES FOR DELIVERY AND REVIEW OF FINAL REGULATIONS

§ 307.2. Delivery of a final-form regulation.

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

(1) A completed regulatory analysis form relating to the final-form regulation.

(2) A face sheet signed by the agency head and the Office of General Counsel or chief counsel of an independent agency.

(3) A transmittal sheet signed by the committees.

(4) The agency's response to the comments received. **This response may be included in the preamble or in a separate document submitted with the regulation.**

(5) The preamble, **which must include a summary of the changes made to the proposed regulation and the information described in § 301.1 (relating to definitions).**

(6) The names and addresses of commentators who requested additional information on the final-form regulation **or a statement that no commentator requested additional information.**

(7) The text of the final-form regulation.

§ 307.3. Delivery of a final-omitted regulation.

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

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(4) The preamble, **which must include the information described in § 301.1 (relating to definitions).**

(5) The text of the final-omitted regulation.

§ 307.3a. Formatting the text of a final regulation.

(a) **When preparing and formatting the text of the final-form regulation, the agency shall use as its source document the proposed regulation as published by the LRB in the *Pennsylvania Bulletin*.**

[(a)] (b) If the proposed regulation was published in the format prescribed in § 305.1a(a) (relating to formatting the text of a proposed regulation) as an amendment to an existing regulation, amendments in the final-form regulation shall be illustrated as follows:

(1) Strikeout type to indicate language in the existing or proposed regulation which is being deleted.

(2) Capital letters to indicate new language which is being added to the final-form regulation which was not included in the existing or proposed regulation.

[(b)] (c) If the entire proposed regulation was published in the format set forth in § 305.1a(b) as new, and not an amendment to an existing regulation, amendments in the final-form regulation shall be illustrated as follows:

(1) Brackets to indicate language in the proposed regulation which is being deleted.

(2) Underscoring or bolding to indicate new language which is being added in the final-form regulation.

[(c)] (d) If the entire final-omitted regulation is new, and not an amendment to an existing regulation, the formatting described in subsections [(a) and] (b) and (c) is not required.

[(d)] (e) If the final-omitted regulation is an amendment to an existing regulation, amendments in the final-omitted regulation shall be illustrated as follows:

(1) Brackets to indicate language in the existing regulation which is being deleted.

(2) Underscoring or bolding to indicate new language which is being added in the final-omitted regulation.

(f) If there are extenuating circumstances that may prevent an agency from using the requirements of this section, the agency shall contact the Commission to discuss alternative formatting methods.

CHAPTER 309. ACTION ON REGULATIONS

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

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(c) The Commission is deemed to have approved a final-form regulation under sections [5g] 5(g) and 5.1(e) of the act (71 P. S. §§ 745.5(g) and 745.5a(e)) [,] if one of the following conditions [apply] applies:

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CHAPTER 311. PROCEDURES FOR REVIEW OF DISAPPROVED FINAL REGULATIONS

§ 311.1. Commission disapproval of a final regulation.

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(b) The Commission will deliver its disapproval order to the LRB, the committees, the agency and the Attorney General. The Commission [may] will notify commentators listed by the agency as having requested information on the final regulation by delivery of the disapproval order or by publication of a legal notice under 45 Pa.C.S. Chapter 3 (relating to Newspaper Advertising Act).

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§ 311.4. Report for a disapproved regulation submitted with revisions.

If the agency chooses to revise or modify the final regulation under § 311.2(a)(2) (relating to response by an agency to Commission disapproval), the report must contain the following:

(1) A completed regulatory analysis form.

[(1)] (2) The revised final regulation, formatted in accordance with § 307.3a (relating to formatting the text of a final regulation).

[(2)] (3) The Commission's disapproval order.

[(3)] (4) A detailed explanation of how the revisions respond to the Commission's disapproval order.

[(4)] (5) A signed transmittal sheet indicating that the report was delivered to the committees on the same day on which it was delivered to the Commission.

§ 311.5. Subsequent review of disapproved regulation.

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

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CHAPTER 311a. DELIVERY OF REGULATIONS, COMMENTS, REPORTS AND ORDERS BEFORE AND AFTER THE END OF THE LEGISLATIVE SESSION

§ 311a.1. Delivery of a proposed regulation after the end of the legislative session.

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(c) If the agency does not deliver the proposed regulation and required material to the committees on the fourth Monday in January or by the second Monday after the publication of both committee designations in the Pennsylvania Bulletin, whichever is later, the regulation [will] shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency shall submit a new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act (71 P. S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).

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§ 311a.2. Delivery of public comments after the end of the legislative session.

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(c) If the agency does not deliver public comments received after the end of the legislative session to the committees on the fourth Monday in January or by the second Monday after the publication of both committee designations in the Pennsylvania Bulletin, whichever is later, the agency may be in violation of the act and this part, under section 5.2(b)(6) of the act (71 P. S. § 745.5b(b)(6)).

§ 311a.3. Delivery of Commission comments after the end of the legislative session.

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(c) The Commission will deliver Commission comments issued after the end of the legislative session to the committees on the fourth Monday in January or by the second Monday after the publication of both committee designations in the Pennsylvania Bulletin, whichever is later.

§ 311a.4. Delivery of a final regulation within 20 days before the end of the legislative session.

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(b) If the end of the legislative session occurs before the committees have had at least 20 days to review the regulation, the agency shall redeliver the final regulation and required material to the [Commission] Commission and committees in the next legislative session.

(c) The agency may not redeliver the final regulation and required material to the Commission and the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(d) If the agency does not redeliver the final regulation on the fourth Monday in January or by the second Monday after the publication of both committee designations in the Pennsylvania Bulletin, whichever is later, the regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency may submit one of the following:

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§ 311a.5. Delivery of a final regulation after the end of the legislative session.

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(c) If the [two-year] 2-year period for promulgation of a final-form regulation under section 5.1(a) of the act (71 P. S. § 745.5(a)) and § 307.1 (relating to two-year period for promulgation) expires after the end of the legislative session, the agency shall deliver the final-form

regulation and required material to the Commission and the committees **on the fourth Monday in January** or by the second Monday after publication of both committee designations in the *Pennsylvania Bulletin*, **whichever is later**. If the agency does not deliver the final-form regulation and required material by this date, the regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency may submit one of the following:

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§ 311a.7. **Delivery of the report for subsequent review of a disapproved regulation.**

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(c) If the agency does not deliver its report and required material **on the fourth Monday in January** or by the second Monday after both committee designations have been published in the *Pennsylvania Bulletin*, **whichever is later**, the disapproved final regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency shall submit either a new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act (71 P. S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation), a new final-form regulation to the Commission and the committees in accordance with section 5.1(a) of the act (71 P. S. § 745.5a(a)) and § 307.2 (relating to delivery of a final-form regulation), or a final-omitted regulation to the Commission, the committees and the Attorney General in accordance with section 5.1(c) of the act and § 307.3 (relating to delivery of a final-omitted regulation).

CHAPTER 315. EXISTING REGULATIONS AND PUBLISHED OR UNPUBLISHED DOCUMENTS

§ 315.1. **Review of an existing regulation.**

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

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

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

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§ 315.2. **Review of a published or an unpublished document.**

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

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