

RULES AND REGULATIONS

Title 51—PUBLIC OFFICERS

STATE ETHICS COMMISSION

[51 PA. CODE CHS. 11, 13, 15, 17, 19,
21, 23 AND 25]

Technical Revisions for Statutory Consistency, Clarity and Modernization

The State Ethics Commission (Commission) amends Chapters 11, 13, 15, 17, 19, 21, 23 and 25 by amending §§ 11.1, 11.3, 13.1—13.3, 13.5, 15.1—15.3, 17.1, 17.4—17.7, 19.1, 19.3, 19.4, 21.5, 21.21, 21.23, 21.24, 21.26, 21.29, 23.1, 23.3, 23.4, 23.7, 23.22, 23.23 and 25.2 to read as set forth in Annex A.

Effective Date

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Commission issues this final-omitted rulemaking under the authority of 65 Pa.C.S. § 1107(1) (relating to powers and duties of commission), which provides the Commission with the general authority to establish rules and regulations to carry out the provisions of 65 Pa.C.S. Chapter 11 (relating to Public Official and Employee Ethics Act) (Ethics Act), and section 204(3) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(3)), which authorizes publication of a final-omitted rulemaking when public comment is unnecessary.

Omission of Proposed Rulemaking

Public notice of the intention to amend the regulations under the procedures set forth in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) was omitted as authorized under section 204(3) of the CDL. Public comment is unnecessary under the circumstances because this final-omitted rulemaking consists of technical revisions necessary for statutory consistency, clarity and modernization to regulations that have not been updated since 2001.

Purpose and Background

Section 1101.1(a) of 65 Pa.C.S. (relating to purpose) declares that “clear guidelines are needed in order to guide public officials and employees in their actions. Thus, the General Assembly by this chapter intends to define as clearly as possible those areas which represent conflict with the public trust.” Therefore, the Commission considers it important to resolve any ambiguity between the Ethics Act and the Commission’s regulations.

The Commission’s regulations have not undergone a wholesale review since they were promulgated in 1993. Many changes have been made in the manner in which the Commission conducts business since that time. To help guide the regulated community and to assist the Commission in its ability to regulate the ethical conduct of those subject to the Ethics Act, certain technical changes are necessary. This final-omitted rulemaking remedies inconsistencies between the Ethics Act and the Commission’s regulations, modernizes the Commission’s practices by allowing for electronic mail as an acceptable means for filing and service of documents, and provides clarity to the Commissioners and those subject to the Ethics Act and the regulations of the Commission.

Specifically, this final-omitted rulemaking benefits the regulated community by remedying inconsistencies between the Ethics Act and the Commission’s regulations, thus lessening the chance of confusion and misunderstanding and deleting superfluous Statements of Financial Interests (SFI) reporting requirements that are not required by the Ethics Act.

This final-omitted rulemaking also modernizes the Commission’s practices by adding electronic mail as an acceptable means of filing and service of documents, making it easier for individuals to file their SFIs and other documents with the Commission. At the time the regulations were promulgated, e-mail was not a widely used means of filing documents, and allowing e-mail filing through this final-omitted rulemaking brings the Commission’s practices up to date with current technology. These regulatory changes also utilize more modern terminology.

Further, this final-omitted rulemaking provides clarity for the general public and those subject to the Commission’s regulations. It corrects statutory references, removes the Commission’s incorrect address and business hours, and clarifies the timing of the elections of Commission officers and the length of service for those officers. Accordingly, this final-omitted rulemaking benefits the Commission, the regulated community and the general public.

Description of Final-Omitted Regulations

This final-omitted rulemaking seeks to amend various sections of the regulations for clarity, consistency and modernization.

Clarity

This final-omitted rulemaking amends §§ 11.1, 13.1, 13.3, 23.4, 23.22 and 25.2 to correct the statutory references to Purdon’s to the codified version in the *Pennsylvania Consolidated Statutes*. Although § 21.5(l) (relating to conduct of investigations) contains an incorrect statutory reference, subsection (l) is being reserved and will be addressed in a future proposed rulemaking because the referenced statutory subsection, to the extent it prohibits public disclosure of Ethics Act complaint filings, has been permanently enjoined as an unconstitutional restraint on free speech. See *Stilp v. Contino*, 629 F.Supp.2d 449 (M.D. Pa. 2009), affirmed and remanded 613 F.3d 405 (3rd Cir. Pa. 2010), on remand 743 F.Supp.2d 460 (M.D. Pa. 2010).

Additionally, § 19.1 (relating to forms; filing) deletes the postal address of the Commission as it is no longer accurate or necessary, while § 19.4 (relating to availability of Statements of Financial Interests) deletes the business hours of the Commission for the identical reason. Section 19.4 also clarifies the time frame in which SFIs shall be kept on file by specifying that the forms shall be maintained for 5 years after the governmental body receives the SFI. This final-omitted rulemaking also deletes the phrase “[f]or cases to which the act applies” from § 21.21 (relating to general) because it is unnecessary given that the Commission’s jurisdiction obviously is limited to those cases to which the Ethics Act is applicable.

For further clarification, this final-omitted rulemaking modifies § 23.7 (relating to election of Chair and Vice Chair) to clarify the date of election and the length of the terms of the Commission’s Chair and Vice Chair. Section

21.23 (relating to scope of hearing) reorganizes the types of hearings that may be conducted by the Commission to better reflect the order of complexity of hearings. Section 21.24 (relating to hearing officer) of this final-omitted rulemaking amends the term “insure” to “ensure” to accurately characterize that the hearing officer makes certain that various duties occur, rather than protects against loss or damage which is the common definition of “insure.”

Consistency

Also proposed are numerous technical changes to make the regulations consistent with the Ethics Act. This final-omitted rulemaking updates § 13.2(k) (relating to advice of counsel) to add the word “working” to the time limitation in which the Chief Counsel shall issue the written advice to the requester. This change makes the time frame consistent with the time period prescribed earlier in subsection (k). In § 15.2 (relating to public officials and public employees) of this final-omitted rulemaking, the word “for” is replaced with “of” to be consistent with the requirements of the Ethics Act and to eliminate confusion as to what years an individual is required to file an SFI. This final-omitted rulemaking corrects the description of local officials in § 15.3 (relating to candidates/nominees) to include the term “level” or “public” to be consistent with the Ethics Act and other subparagraphs in § 15.3 which refer to “local level public officials.”

This final-omitted rulemaking also amends § 17.7 (relating to office, directorship and employment) to state that a “person required to file a Statement of Financial Interests” rather than delineating the specific individuals required to file, such as public officials and public employees, because this section is inconsistent with the Ethics Act and other sections of the regulations insofar as it fails to include a number of individuals required to file an SFI. A similar change in terminology is included in § 19.1 of this final-omitted rulemaking.

The word “deficient” is added to § 19.3 (relating to late or deficient filings) of this final-omitted rulemaking to reflect that an SFI may be delinquent or deficient, which is consistent with the Ethics Act and other provisions of the regulations. Section 21.5 replaces the phrase “subject of the investigation” with the word “respondent” as this term is a more accurate description of the individual responding to a findings report and it also makes this section consistent with the language of the Ethics Act. Section 21.24 changes the word “presiding” officer to “hearing” officer to be consistent with the Ethics Act and other provisions of the regulations.

Modernization

To further the goal of modernization, this final-omitted rulemaking updates the terms “filed” and “service” to include electronic mail as an appropriate means of filing and serving documents with the Commission in an effort to update the Commission’s practices with today’s technology. Section 11.3 (relating to statute of limitations) deletes the grandfather clause from the regulations because it is obsolete. Sections 11.1, 21.5, 21.21, 21.26, 23.1, 23.3 and 23.7 amend the terms “Chairperson” and “Vice Chairperson” to “Chair” and “Vice Chair” while §§ 11.1, 15.1, 15.2, 17.1, 17.6 and 23.23 update the term “employee” to the more commonly utilized “employee.” Sections 11.1, 13.1, 13.2 and 21.29 amend the term “Requestor” to the common vernacular “Requester” and update the term “chief counsel” to begin with capital letters. Section 13.5 (relating to public access) contains amendments to the

various names of associations and professional groups to reflect their current proper names.

Section 17.1 (relating to general) regarding SFIs deletes the requirement that a person required to file an SFI include his county of residence as this is superfluous and not required by the Ethics Act. Section 17.4 (relating to income) is amended to correct a simple grammatical error. Section 19.1 is amended to specifically authorize electronic filing as an appropriate means by which to file an SFI. It also deletes the requirement that an individual who files an SFI by facsimile shall also provide to the Commission the signed original document by regular mail.

Paperwork Requirements

This final-omitted rulemaking will not result in an increase in paperwork for the Commission, individuals or entities.

Fiscal Impact

This final-omitted rulemaking will not result in any fiscal impact to the Commonwealth, its political subdivisions or the general public.

Sunset Date

The Commission continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Public Comment

Public notice of the intention to amend the regulations under the procedures set forth in sections 201 and 202 of the CDL was omitted as authorized under section 204(3) of the CDL. Public comment is unnecessary under the circumstances because this final-omitted rulemaking consists of technical revisions necessary for statutory consistency, clarity and modernization to regulations that have not been updated since 2001.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)) on January 24, 2024, the Commission submitted a copy of the final-omitted rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the chairperson of the State Government Committee of the Senate and the chairperson of the Judiciary Committee of the House of Representatives. A copy of this material is available to the public upon request.

On the same day, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506). The Office of Attorney General approved the final-omitted rulemaking on February 12, 2024.

Under section 5.1(j.2) of the Regulatory Review Act, the rulemaking was deemed approved by the State Government Committee of the Senate and the Judiciary Committee of the House of Representatives on March 20, 2024. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2024, and approved the final-omitted rulemaking.

Contact Person

Individuals interested in further information may contact Bridget K. Guilfoyle, Chief Counsel, State Ethics Commission, Finance Building, 613 North Street, Room 309, Harrisburg, PA 17120-0400, telephone (717) 783-1610, fax (717) 787-0806 or e-mail at ra-etlegaldivision@pa.gov.

Findings

The Commission finds that:

1) Public notice of the Commission’s intention to amend its regulations under the procedures set forth in sections 201 and 202 of the CDL has been omitted for good cause as authorized under section 204(3) of the CDL. The Commission finds that the notice procedures are, under the circumstances, unnecessary because this final-omitted rulemaking consists of technical revisions necessary for statutory consistency, clarity and modernization of regulations that have not been updated since 2001.

2) The amendment of the Commission’s regulations in the manner provided in this order is necessary and appropriate for administration of its authorizing statute and is in the public interest.

Order

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

1) The regulations of the Commission, 51 Pa. Code Chapters 11, 13, 15, 17, 19, 21, 23 and 25, are amended by amending §§ 11.1, 11.3, 13.1—13.3, 13.5, 15.1—15.3, 17.1, 17.4—17.7, 19.1, 19.3, 19.4, 21.5, 21.21, 21.23, 21.24, 21.26, 21.29, 23.1, 23.3, 23.4, 23.7, 23.22, 23.23 and 25.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2) The Commission shall submit this final-omitted rulemaking to the Office of Attorney General for approval as to form and legality as required by law.

3) The Commission shall submit this final-omitted rulemaking to IRRC and the Committee on State Government of the Senate and the Judiciary Committee of the House of Representatives and as required by law.

4) The Commission shall certify this final-omitted rulemaking and deposit it with the Legislative Reference Bureau as required by law.

5) This final-omitted rulemaking shall take effect immediately upon publication in the Pennsylvania Bulletin.

MICHAEL A. SCHWARTZ,
Chair

(Editor’s Note: See 54 Pa.B. 1907 (April 6, 2024) for IRRC’s approval order.)

Fiscal Note: 63-08. No fiscal impact; recommends adoption.

Annex A

TITLE 51. PUBLIC OFFICERS

PART I. STATE ETHICS COMMISSION

CHAPTER 11. GENERAL PROVISIONS

§ 11.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise. Additional definitions are set forth in the act.

Act—Chapter 11 of 65 Pa.C.S. (relating to Public Official and Employee Ethics Act).

Administering or monitoring grants—Directing, supervising or approving the expenditure or reimbursement of grant funds or monitoring another person’s or organization’s administering of grant funds. The term does not include compiling expenditures, comparing actual to planned expenditures or reimbursements, preparing com-

parative reports or completing grant proposals or reimbursement forms under specific direction.

Advice—A directive of the Chief Counsel of the Commission issued under 65 Pa.C.S. § 1107(11) (relating to powers and duties of commission) and based exclusively on prior Commission opinions, the act, regulations promulgated under the act and court opinions which interpret the act. See 65 Pa.C.S. § 1102 (relating to definitions).

Appointing authority—The person who is vested with the power to appoint, hire or terminate; if the power is vested in a governmental body, a majority vote of a quorum of that body constitutes the appointing authority.

Audit—A review of statements of financial interests to determine compliance with the act and to provide technical assistance in its administration.

Chair—The Chair of the Commission.

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Employed by—Used in any capacity, with or without compensation. This definition is only used in the context of 65 Pa.C.S. § 1106(d)(5) (relating to State Ethics Commission).

Employer—One who uses the services of others and pays their wages, salaries or other compensation.

Filed—Official papers are filed on the date they are physically received at the Commission office whether delivered by United States mail, express carrier, hand delivery, electronic mail, facsimile or any other method approved by the Commission.

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Opinion—A directive of the Commission issued under 65 Pa.C.S. § 1107(10) setting forth a public official’s or public employee’s duties under the act.

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Public employee—

(i) The term includes an individual who is employed by the Commonwealth or a political subdivision and who is responsible for taking or recommending official action of a nonministerial nature with regard to one or more of the following:

- (A) Contracting or procurement.
(B) Administering or monitoring grants or subsidies.
(C) Planning or zoning.
(D) Inspecting, licensing, regulating or auditing a person.
(E) Other activities in which the official action has greater than a de minimis economic impact.

(ii) The following criteria will be used, in part, to determine whether an individual is within the definition of “public employee”:

- (A) The individual normally performs his responsibility in the field without onsite supervision.
(B) The individual is the immediate supervisor of a person who normally performs his responsibility in the field without onsite supervision.
(C) The individual is the supervisor of a highest level field office.
(D) The individual has the authority to make final decisions.

(E) The individual has the authority to forward or stop recommendations from being sent to the person or body with the authority to make final decisions.

(F) The individual prepares or supervises the preparation of final recommendations.

(G) The individual makes final technical recommendations.

(H) The individual's recommendations or actions are an inherent and recurring part of his position.

(I) The individual's recommendations or actions affect organizations other than his own organization.

(iii) The term does not include individuals who are employed by the Commonwealth or a political subdivision of the Commonwealth in teaching as distinguished from administrative duties.

(iv) Persons in the following positions are generally considered public employees:

(A) Executive and special directors or assistants reporting directly to the agency head or governing body.

(B) Commonwealth bureau directors, division chiefs or heads of equivalent organization elements and other governmental body department heads.

(C) Staff attorneys engaged in representing the department, agency or other governmental bodies.

(D) Engineers, managers and secretary-treasurers acting as managers, police chiefs, chief clerks, chief purchasing agents, grant and contract managers, administrative officers, housing and building inspectors, investigators, auditors, sewer enforcement officers and zoning officers in all governmental bodies.

(E) Court administrators, assistants for fiscal affairs and deputies for the minor judiciary.

(F) School superintendents, assistant superintendents, school business managers and principals.

(G) Persons who report directly to heads of executive, legislative and independent agencies, boards and commissions except clerical personnel.

(v) Persons in the following positions are generally not considered public employees:

(A) City clerks, other clerical staff, road masters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.

(B) Law clerks, court criers, court reporters, probation officers, security guards and writ servers.

(C) School teachers and clerks of the schools.

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Requester—The person seeking an advice or opinion from the Commission.

Respondent—The person who is the subject of a complaint, inquiry or investigation.

Service—Official papers are deemed served on the date of United States postmark if delivered by United States mail, the pickup date if delivered by express carrier or the date received from the Commission if hand delivered or transmitted by electronic mail or fax.

Staff—The Executive Director, the Chief Counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

Sworn complaint—A complaint on a form promulgated by the Commission or its equivalent which is notarized and contains the provision that the complaint is signed under the penalty of perjury.

Unannounced write-in candidate—An individual who is not a "candidate" as defined in the act and who received sufficient write-in votes on election day to be elected to or nominated for an office.

Vice Chair—The Vice Chair of the Commission.

§ 11.3. Statute of limitations.

The Commission may investigate a violation of the act within 5 years of its occurrence. The occurrence transpires when an act is complete or requires no further action.

CHAPTER 13. OPINIONS AND ADVICES OF COUNSEL

§ 13.1. General provisions.

(a) An advice or an opinion may be requested by a public official or public employee as to his own conduct or by the authorized representative of the person, his present employer, or appointing authority of the person through majority action of the appointing authority, if applicable.

(b) The requester shall provide the following information in writing:

(1) The name, address and phone number of the person who is the subject of the request and if different, the name, address and phone number of the person initiating the request.

(2) The name of the governmental body with which the subject serves and the name or title of the person's public office or position.

(3) If the requester is the appointing authority, employer or representative of the subject of the request, the nature of the relationship.

(4) The nature and duties of the subject's office or job. Include an organization chart, bylaws of the organization, if available, and a job description.

(5) List the relevant facts and circumstances surrounding the request.

(c) The requester may ask that an opinion or advice be issued under either 65 Pa.C.S. § 1107(10) or (11) (relating to powers and duties of commission).

(d) The Commission will decide, within 14 days, whether an opinion or advice should be issued and will so advise the requester.

(e) If a requester seeks an opinion and is advised that an advice should be issued or if the requester seeks an advice and is advised that an opinion should be issued, the requester may either withdraw the request by notifying the Commission within 14 days of the date of receiving notice under subsection (d) or may elect to have the opinion or advice issued as docketed by the Commission.

(f) Advices and opinions are matters of public record except as provided in this section.

(g) A requester may seek a confidential advice or opinion in writing at the time of the request or within 7 days of notification of docketing as an advice or opinion.

(h) A confidential advice or opinion will be publicly filed but will contain deletions and changes to preserve the confidentiality of the requester's or subject's identity.

(i) The files relating to a confidential advice or opinion will not be public and will so remain unless released by the requester or the public official or public employee who is the subject of the advisory.

(j) If a Petition for Review or other legal pleading is filed in a court of law regarding a confidential advice or opinion, the files will become public on the date that the Commission record is transmitted to court or on the date the responsive pleading, motion, application or other legal document is filed by the Commission, whichever date comes first, unless the court directs otherwise.

(k) Documents and submissions to the Commission relating to a request for an opinion or an appeal of an advice shall be made at least 7 days prior to the meeting of the Commission during which the appeal or opinion will be reviewed.

§ 13.2. Advice of counsel.

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(g) An advice of counsel may be appealed to the Commission by the requester or the subject of the request.

(h) An appeal from an advice to the Commission shall be in writing and filed within 30 days of the issuance of the advice.

(i) An appeal from an advice will be considered by the Commission after which an opinion will be issued either affirming, modifying or reversing the original advice.

(j) Reconsideration may be requested under § 21.29 (relating to finality; reconsideration) of an opinion disposing of an appeal of an advice if the request is filed within 30 days of the issuance of the opinion.

(k) An advice shall be a complete defense in an enforcement proceeding initiated by the Commission, and evidence of good faith conduct in another civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the Commission in good faith, disclosed truthfully the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the Commission to provide advice within 21 working days of the request or the later extended time.

§ 13.3. Opinions.

(a) Opinions shall be issued under the provisions of 65 Pa.C.S. § 1107(10) (relating to powers and duties of commission).

(b) Requests for Commission opinions will be considered in accordance with the procedures outlined in §§ 23.1—23.6.

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§ 13.5. Public access.

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(b) The Commission will transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each authority appointing Commission members under this act, the County Commissioners Association of Pennsylvania, the Pennsylvania State Association of Boroughs, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities and Municipalities.

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CHAPTER 15. STATEMENTS OF FINANCIAL INTERESTS, APPLICABILITY

§ 15.1. Federal officials, employees and candidates.

(a) Federal officials, employees and candidates are not required to file the Statement of Financial Interests with regard to their Federal position.

(b) Federal officials, employees and candidates who serve with the Commonwealth or a political subdivision as part of an exchange or comparable program are required to file a Statement of Financial Interests.

§ 15.2. Public officials and public employees.

(a) Public officials and employees shall file a Statement of Financial Interests for the preceding calendar year by May 1 of each year during which they hold office or a position and by May 1 of the year after they leave the position.

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(d) Public employees of the Commonwealth shall file with the State agency with which they are employed.

(e) County and local officials, and employees, shall file with the governing body of the political subdivision in which they serve or are employed.

(f) In an election year, public officials and public employees who are also candidates, shall, in addition, file at the times and locations required by candidates.

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§ 15.3. Candidates and nominees.

(a) A candidate for State level public office shall file a Statement of Financial Interests with the Commission on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.

(b) A candidate for county or local level public office shall file a Statement of Financial Interests with the governing authority of the political subdivision wherein the candidate is seeking office on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.

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(e) A write-in-candidate shall file a Statement of Financial Interests within 30 days of having been nominated or elected unless the person declines the nomination or office within that period of time.

(1) The Statement shall be filed with the Commission for State level public office and with the governing authority of the political subdivision wherein the person has been elected or nominated for county or local level public office.

(2) For the purposes of calculating the 30-day period during which the Statement of Financial Interests shall be filed, the time shall commence on the date that the appropriate board of elections certifies the individual as the winner of a nomination or election.

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CHAPTER 17. STATEMENTS OF FINANCIAL INTERESTS, CONTENT

§ 17.1. General.

The person required to file shall list the following general identification information:

(1) The full name and address of the public official, public employee or candidate.

(2) [Reserved].

(3) The position sought or held, and name of the governmental body associated with the position sought or held.

(4) An occupation or profession.

§ 17.4. Income.

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(d) An individual or an individual and a spouse who have an investment portfolio with a broker, other than a mutual fund, shall list individually the income from each asset to which subsection (b) applies if the asset may be bought and sold by the individual or by the individual and a spouse.

§ 17.5. Gifts.

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(d) The term "friend," under this section, does not include a registered lobbyist or an employee of a registered lobbyist.

§ 17.6. Expense reimbursement.

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(b) This subsection does not apply to expenses reimbursed by a governmental body, or to expenses reimbursed by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.

(c) The reporting requirement shall be based upon the actual expense amount.

§ 17.7. Office, directorship and employment.

A person required to file a Statement of Financial Interests shall disclose the name and address of the business entity with which he is associated and the position held, and whether the person required to disclose is an officer, director, fiduciary or partner—limited or general.

CHAPTER 19. STATEMENTS OF FINANCIAL INTERESTS, MISCELLANEOUS

§ 19.1. Forms; filing.

(a) A person required to file a Statement of Financial Interests shall file Form SEC-1, as published and revised by the Commission.

(b) The Statement of Financial Interests form is available at the Commission, the State Board of Elections, the County Board of Elections and other locations as conditions warrant.

(c) Additional sheets may be attached to the Statement of Financial Interests form if more space is required.

(d) A Statement of Financial Interests sent by a form of electronic transmission that has been approved by the Commission is considered to be filed on the date the Commission receives the electronic copy.

§ 19.3. Late or deficient filings.

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(c) The individual notified in accordance with subsection (a) has 20 days from the mailing date of the notice to correct deficiencies or to file a Statement of Financial Interests. If the individual fails to file or to correct his Statement within that time, the Commission will review the matter to determine whether a civil penalty is appropriate under the act.

(d) If the Commission determines that a penalty is appropriate, it will issue a rule to show cause, notifying the individual of his deficiency under the act and of the grounds for the rule and of his opportunity to respond in

writing to the rule. If cause is not shown, the rule and penalty therein become absolute.

(e) The Commission may assess a penalty of not more than \$25 per day for the time a Statement of Financial Interests remains delinquent or deficient, up to a maximum of \$250 total.

(f) The penalty in subsection (d) is in addition to other penalties provided by law and the filing of a Statement of Financial Interests in accordance with subsection (a) does not otherwise vitiate the failure to comply with the act.

§ 19.4. Availability of Statements of Financial Interests.

(a) Statements of Financial Interests filed with the Commission under the act are available for public inspection and copying at a charge not to exceed actual cost at the office of the Commission in Harrisburg, Pennsylvania during the Commission's regular business hours.

(b) A governmental body required to maintain Statements of Financial Interests shall make them available for public inspection and copying during regular business hours.

(c) Statements of Financial Interests more than 1 year old will be made available for public inspection and copying within 2 working days after the request has been made for the Statements. The Statements shall be kept on file for 5 years after the Commission or governmental body receives the Statements.

CHAPTER 21. INVESTIGATIONS

GENERAL

§ 21.5. Conduct of investigations.

* * * * *

(i) Subpoenas issued under subsection (g) or (h) will be authorized by the Commission and signed by the Chair or Vice Chair. Subpoenas may be served by a person empowered to do so or as designated by the Executive Director.

(j) Within 180 days of commencing the investigation, the Commission will do one of the following:

(1) Terminate the investigation and notify the complainant and respondent.

(2) Rule upon a request for an extension by the Executive Director, upon a showing of need, not to exceed 90 days.

(i) The granting of or denial of a request for an extension requires a majority vote of a quorum of the Commission.

(ii) A maximum of two extensions may be granted.

(iii) A findings report will be issued within 180 days after the commencement of an investigation or within the time period of a granted extension.

(3) Issue a findings report which sets forth the pertinent facts, and affords the respondent an opportunity to respond to the findings and to request an evidentiary hearing.

(k) The respondent shall file a response to the findings report of the Commission within 30 days, unless an application for an extension is made to the Commission and granted for good cause shown.

(l) The respondent shall admit or deny the allegations in the findings report by number. Anything not specifically denied or general denials will be deemed an admission of the individual factual finding.

(2) New matter raised by a respondent in his answer does not require a reply by the Commission.

(1) [Reserved].

(m) If an investigation conducted under the act indicates that no violation has been committed, the Commission will immediately terminate the investigation and send written notice of the determination to the complainant and the person who was the subject of the investigation.

(n) Subsection (h) supersedes 1 Pa. Code §§ 35.142 and 35.145 (relating to subpoenas; and depositions).

HEARINGS

§ 21.21. General.

(a) The Commission will conduct hearings upon the request of a respondent. A respondent shall request a hearing in his answer to the findings report or separately within 30 days of the issuance of the findings report. Failure to request a hearing within the time period will be deemed a waiver.

(1) The respondent may be granted an extension for filing an answer upon application to the Chief Counsel and for good cause shown. The Chief Counsel may grant an extension up to 30 days.

(2) Further requests shall be made to the Chair 2 weeks prior to the extended deadline. The Chair may grant a second extension if extraordinary circumstances are demonstrated in writing.

(3) Extensions granted will correspondingly advance other deadlines provided for in the act.

(4) A hearing will be held within 45 days after the respondent's answer to the findings report unless the time is extended upon application for good cause shown.

(5) A notice of hearing will be issued to the respondent unless represented by counsel in which case to counsel within a reasonable period of time prior thereto. The notice will advise of the date, time and location of the hearing, and of the hearing rights, privileges, process and procedures in this section.

(6) Hearings will be conducted in Harrisburg, Pennsylvania. A request for a hearing in Philadelphia or Pittsburgh will be granted, if filed with the Commission within 7 days after the notice of hearing is mailed. Failure to request a hearing in those locations within the time period will be deemed a waiver of the right.

(b) Hearings will be conducted before one or more members of the Commission. The Commission may appoint a hearing officer for the conduct of the hearings.

§ 21.23. Scope of hearing.

(a) Hearings may be conducted as follows based upon the express agreement of the parties:

(1) Full evidentiary hearing.

(1.1) Limited hearing based on partially stipulated facts.

(2) Oral argument based on stipulated findings.

(3) Submission on briefs.

(4) [Reserved].

(b) The respondent has the right to a full hearing, if so requested.

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§ 21.24. Hearing officer.

(a) It is the duty of the hearing officer and he has the power to do one or more of the following:

(1) Schedule and conduct a hearing as required to resolve the matter and to provide the parties with proper notice of the hearing.

(2) Administer oaths or affirmations to witnesses.

(3) Rule on motions, objections or other matters arising during the hearing.

(4) Ensure that all parties have a full and fair opportunity to be heard.

(5) Ensure that a record of the proceedings is available for review by the Commission.

(6) Advise witnesses and parties to the hearing of the confidentiality requirements of the act.

(7) Advise witnesses or the respondents, when not represented by counsel, of their rights as witnesses.

(8) Issue subpoenas upon written request for the production of documents, records and persons needed for the proceeding. The hearing officer will be provided with the name and addresses of the persons and a description of the documents or records involved, and will be satisfied that the documents, records or testimony are relevant and are not protected by privilege.

(9) Arrange for the payment of witness fees and mileage expenses or pay other related expenses as required by law.

(b) The hearing officer will make the following available to the Commission to the extent applicable:

(1) A transcript of the hearing, including exhibits.

(2) Motions, briefs, memorandums or documents filed by a party to the proceeding.

(c) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

§ 21.26. Motions.

(a) A motion filed prior to the issuance of a notice of hearing will be submitted to the Chair, Vice Chair or designated hearing officer who will rule on the matter unless in the exercise of his discretion the motion should be submitted to the Commission for a determination at the next scheduled executive session of the Commission.

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§ 21.29. Finality; reconsideration.

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(b) A party may ask the Commission to reconsider an order or opinion within 30 days of service of the order or opinion. The requester shall present a detailed explanation setting forth the reason why the order or opinion should be reconsidered.

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**CHAPTER 23. COMMISSION
GENERAL PROVISIONS**

§ 23.1. Meetings.

Meetings of the Commission will be held at the call of the Chair or any four members, at a time and location and for a purpose as may be determined by the Chair or the four other members.

§ 23.3. Presiding officer.

(a) The Commission will elect a Chair and Vice Chair. The Chair will preside over Commission meetings. If the Chair is absent or that position is vacant, the Vice Chair will preside.

(b) If the Chair and Vice Chair will be absent from a Commission meeting, the Chair, or the Vice Chair if presiding, may designate a Commission member to preside for a scheduled meeting.

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§ 23.4. Conduct of meetings.

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(c) *Public meetings.* Meetings of the Commission will be open to the general public at a time and place announced in advance under 65 Pa.C.S. §§ 701—716 (relating to Sunshine Act).

(d) *Executive session.* Executive sessions of the Commission will be announced at public meetings of the Commission, including the time and reason for holding of an executive session.

§ 23.7. Election of Chair and Vice Chair.

(a) At the first meeting of every odd calendar year, a quorum of the Commission will elect a Chair and Vice Chair. Commission members who are nominated for these positions are not precluded from voting.

(b) The term of office for the Chair and Vice Chair is 2 years or until the election of the Chair and Vice Chair as set forth in subsection (a).

(c) The Chair and Vice Chair are eligible to serve successive terms.

(d) Notice of the election will be public and announced during the final meeting of the Commission in the year preceding the year in which the terms of office of the serving officers expire.

(e) In the event of the completion of the term of office and non-reappointment, resignation, removal or incapacity of the Chair, the Vice Chair will serve the unexpired term of the Chair or will serve during the period of incapacity of the Chair.

(f) Upon the resignation, removal, completion of the term and non-reappointment, or in the event that the Vice Chair must assume the duties of the Chair, a majority of the quorum of the Commission may schedule a special election to elect a Vice Chair.

(g) Notice of a special election will be publicly announced at least 30 days prior to the election. Notice will be forwarded to the members of the Commission.

(h) The Chair, or Vice Chair may be removed as officers, but not as Commissioners, for just cause upon a majority vote of the Commission.

(i) A motion to remove a member of the Commission from the offices mentioned in subsection (h) may be made by a Commission member.

(j) A member may not be removed unless given reasonable notice and an opportunity to be heard.

CODE OF CONDUCT

§ 23.22. Prohibited activities.

* * * * *

(e) If a Commissioner violates 65 Pa.C.S. § 1106(d) (relating to State Ethics Commission), a majority of the Commission may declare the seat vacant.

(1) A motion to remove a Commissioner will be made by a Commission member.

(2) A Commissioner may not be removed prior to notice and an opportunity to be heard.

§ 23.23. Limitations on voting/recusal.

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(d) A Commissioner’s participation involving parties with whom the Commissioner has had substantial prior contact may present a conflict under subsection (b) depending on the totality of the circumstances. Circumstances to be considered include whether the matter involves one or more of the following:

- (1) A relative of the Commissioner.
(2) A former employer or employee.

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CHAPTER 25. WRONGFUL USE OF THE ACT

§ 25.2. Initiation of proceedings.

(a) The Commission may initiate proceedings to determine whether there has been a wrongful use of the act through the filing of a notification by a public official/public employee as provided for in 65 Pa.C.S. § 1108(l) (relating to investigations by commission), which notification shall contain the following:

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