

RULES AND REGULATIONS

Title 1—GENERAL PROVISIONS

INDEPENDENT REGULATORY REVIEW COMMISSION

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

Regulatory Review Act

By this order, the Independent Regulatory Review Commission (Commission) amends 1 Pa. Code Chapters 301, 303, 305, 307, 309, 311, 313 and 315 and adds Chapter 311a.

Statutory Authority

This final-form rulemaking is amended under the authority contained in section 11 of the Regulatory Review Act (act) (71 P. S. § 745.11(a)).

Purpose

The primary purpose of these amendments is to implement the provisions of the act relating to delivery and review of regulations and related documents. These amendments will streamline and clarify the procedures followed by both the Commission in conducting its review and by agencies in submitting their regulations to the Commission for review.

Summary of Proposed Amendments

- Revisions to § 301.2 (relating to regulation files) facilitate access to and copying of documents contained in the Commission's regulation files and setting fees.

- Editorial revisions to improve clarity were made to § 301.4 (relating to expiration of time period for delivery of regulations or reports).

- For consistency with § 301.4(a)(4), § 301.5(a) (relating to expiration of Commission review period) was amended by the addition of paragraph (4), to indicate that the Commission's review period will end on the first business day after the expiration day established under the act if that day occurs when the Commission is officially closed.

- Editorial revisions to improve clarity were made to § 301.6 (relating to delivery of a regulation to a committee other than the committee designated to review the agency's regulation).

- The last sentence of § 301.8 (relating to agency contact person), explaining how delivery of the Commission documents to an agency must be confirmed, was deleted. Procedures for confirmation of delivery were moved to § 305.3(d)(1)—(3), as amended.

- Editorial revisions to improve clarity were made to § 303.1 (relating to notice of Commission public meetings; participation; minutes). In addition, subsection (d) was amended to facilitate access to and copying of minutes of the Commission meetings.

- Editorial revisions to improve clarity were made to §§ 303.2 and 303.3 (relating to blackout period; and quorum).

- Section 305.1(b)(2) (relating to delivery of a proposed regulation) has been amended to clarify signature re-

quirements on the face sheet accompanying a proposed regulation. Subsections (c) and (d), containing formatting requirements have been deleted. Formatting requirements for proposed regulations have been moved to § 305.1a.

- New § 305.1a (relating to formatting the text of a proposed regulation) has been added to establish formatting requirements for proposed regulations. Most of the formatting requirements formerly contained in § 305.1(c) have been retained. However, for greater flexibility, agencies are now allowed to either bold or underscore new language proposed to be added to existing text.

- Section 305.2 (relating to delivery of comments and information by an agency; notification to commentators) has been revised for improved readability. Subsection (c) has also been amended to give agencies the option of bundling and submitting all form comment letters, or submitting one copy of the form comment letter with the number received indicated on the letter. Additionally, under certain circumstances, an agency may deliver a final-form regulation to a commentator by publishing the regulation on the agency's website.

- Section 305.3 (relating to Commission comments) and § 305.4 have been combined and retitled "Commission comments." Section 305.4 has been reserved. As amended, § 305.3 allows agencies to extend or reopen the public comment period and provides new timelines for the issuance of the Commission's comments after the end of the extended or reopened public comment period. Section 305.3(c)(1) provides that if the agency extends or reopens the public comment period before the Commission's review period ends, the Commission may have 30 days after the close of the extended or reopened public comment period to deliver the Commission comments to the agency and the committees. Section 305.3(c)(2) provides that if the agency reopens the public comment period after the Commission's review period ends, the Commission may have 30 days after the close of the reopened public comment period to deliver the Commission comments to the agency and the committees which, at the Commission's discretion, will either supplement or replace the original Commission comments. If the Commission does not deliver Commission comments within 30 days after the close of the reopened public comment period, the original Commission comments will remain the official Commission comments. Section 305.3(c)(3) provides that the 2-year period for promulgation will begin on the day after the extended or reopened public comment period ends.

- Subsections (b)—(d) of § 307.1 (relating to two-year period for promulgation) have been deleted. As explained previously, provisions relating to an extended or a reopened public comment period have been moved to amended § 305.3.

- Section 307.2(c)(2) (relating to delivery of a final-form regulation) has been amended to clarify signature requirements on a face sheet for a final-form regulation. In addition, subsections (d) and (e) have been deleted, as formatting requirements for final-form and final-omitted regulations have been moved to a new § 307.3a (relating to formatting the text of a final regulation).

- Section 307.3(b) (relating to delivery of a final-omitted regulation) has been amended to clarify signature requirements on a face sheet for a final-omitted regulation. In addition, subsection (c) has been deleted as

formatting requirements for final-form and final-omitted regulation has been moved to a new § 307.3a.

- A new § 307.3a has been added to establish formatting requirements for final regulations. While most of the formatting conventions formerly contained in §§ 307.2 and 307.3 have been retained, agencies have been given the option of either bolding or underscoring new language added to the existing text.

- Section 307.4 (relating to amending by withdrawing the regulation or tolling the review period) formerly entitled “Tolling” has been renamed “Amending by withdrawing the regulation or tolling the review period,” and has been significantly revised. No longer pertaining only to tolling, this section now clarifies that there are two methods for revising a final-form regulation after it has been submitted to the Commission and the committees: withdrawing, revising and resubmitting a regulation, or tolling the review period.

- Section 307.5 (relating to tolling the review period), formerly entitled “Procedure for tolling,” has been renamed “Tolling the review period.” This new section has also been significantly revised and establishes a much more streamlined method for tolling the review period to revise a regulation.

- Section 307.6 (relating to time period for Commission review of a final regulation), formerly entitled “Commission and committee review of a final regulation; time period for review” has been renamed “Time period for Commission review of a final regulation” to indicate that it refers only to the Commission’s and not a committee’s period for review. In addition, editorial revisions have been made for improved readability.

- Section 309.1 (relating to Commission and committee action on a final regulation) has been amended in several important respects. First, it will now allow for a regulation which meets the statutory criteria of sections 5(g) and 5.1(e) of the act (71 P. S. §§ 745.5(g) and 745a(e)) to be deemed approved 30 days after receipt, even if the Commission does not have a public meeting in that time. This will eliminate any delay in promulgating regulations which are not at all controversial. Second, it eliminates comments from a committee received during the Commission’s review period and already considered by the Commission as an obstacle for deemed approval. Only those committee recommendations received after the Commission has issued its comments will have the potential for triggering disapproval.

- Section 311.1(b) (relating to Commission disapproval of a final regulation) will change the way the Commission may notify commentators who have requested information on a final regulation of a disapproval. The Commission will now have the option of delivering a copy of its disapproval order to those commentators or publishing a legal notice under 45 Pa.C.S. Chapter 3 (relating to Newspaper Advertising Act). This will undoubtedly prove to be economical in those instances when a large number of parties have commented on a regulation.

- Editorial revisions have been made to §§ 311.2 and 311.3 (relating to response by an agency to Commission disapproval; and report for a disapproved regulation submitted without revisions or modifications) for improved readability.

- A new Chapter 311a (relating to delivery of regulations, comments, reports and orders before and after the end of the legislative session) has been added which clarifies the time frames and deadlines for delivering

regulations, comments, reports and orders immediately preceding and after the end of the legislative session.

Summary of Comments, Responses and Revisions

The Commission received written comments from the Joint Committee on Documents (JCD) and from the Governor’s Office of General Counsel (OGC). The Commission’s legal counsel met with several OGC attorneys and the Secretary of the JCD and discussed the comments. In response to the comments and as a result of this meeting, the Commission made several significant revisions to the final-form regulation.

The following is a discussion of the comments, the Commission’s response, and revisions to the final-form regulation made in response to those comments.

Section 301.1. Definitions

Comment

The definition of “form letters” was deleted in the definition section of the regulation; however, the term “form letters” is still used in the regulation. See § 305.2. The current requirement to count and compare form letters to determine whether the text is verbatim is unduly burdensome. However, § 305.2(c) permits, rather than requires, agencies to deliver one copy of a form letter and indicate the number of copies received. As a result, the amendment is interpreted to loosen the current requirement that agencies are required to submit just one copy of verbatim “form letters” after having compared the text to ensure that the wording is identical for each form letter counted and submitted to the Commission.

Response

The definition of “form letter” was deleted in error and has been restored in § 301.1. Commission counsel discussed with OGC counsel whether “verbatim” should be changed to “substantially the same” in reference to the wording of form letters. However, the Commission decided to retain the term “verbatim,” since “substantially the same” is a judgment call, and Commission staff’s opinion may differ from that of the agency staff. Because the Commission values the opinion of regulated and affected parties, it is reluctant to create a situation when significant information may be unwittingly forfeited.

As correctly noted in the comment, agencies will now have the option of either counting the form comment letters and delivering only one copy with the count indicated thereon, or bundling all form comment letters received and submitting all of them to the Commission and committees.

Revision

The definition of “form letter” has been restored to § 301.1.

Comment

The citations for the Commonwealth Attorneys Act and the Commonwealth Documents Law were inverted in the proposed rulemaking. The citations for the Commonwealth Attorneys Act and the Commonwealth Documents Law were corrected as follows:

Commonwealth Attorneys Act—71 P. S. §§ 732-101—732-506.

Commonwealth Documents Law—The act of July 31, 1968 (P. L. 390, No. 240) (45 P. S. §§ 1102 and 1201—1208) and 45 Pa.C.S. Part II.

Response

This error occurred in publication of the proposed rulemaking in the *Pennsylvania Bulletin*, and will be corrected by the *Pennsylvania Code* and *Pennsylvania Bulletin*.

Revision

The statutory citations in the definitions of both the Commonwealth Attorneys Act and the Commonwealth Documents Law will be revised upon final publication as noted.

*Section 301.2. Regulation files**Comment*

It was noted that § 301.2 provides the authority for the Commission to post the Commission's regulation files on its website. See § 301.2(d)(1). Permitting agencies the same authority to post regulations on their respective websites would be helpful. Technology allows for the use of electronic processes in lieu of slower paper processes. It would be very helpful for agencies to be permitted to transmit acknowledgement of receipt letters electronically, as well as posting final-form regulations on their agency websites. Many times regulations on an agency's website would be much less burdensome than providing paper copies of a final-form regulation to each commentator who requested the information.

Response

The Commission notes that section 5.1(a) of the act (71 P. S. § 745.5a(a)) provides in pertinent part: "Within five business days of receipt of a public comment, the agency shall notify the commentator of the agency's address and telephone number where the commentator may submit a request for the information concerning the final-form regulation under subsection (b)." Likewise, subsection (b) provides in pertinent part: "On the same date that the agency submits the material required in subsection (a) to the commission and the committees, the agency shall send a notice of submission and a copy of the text of the final-form regulation or a copy of all changes to the proposed regulation which are incorporated into the final-form regulation to each commentator who requested this information pursuant to subsection (a)."

The Commission acknowledges that using electronic means for compliance with the previously cited statutory provisions would be both cost-effective and expeditious. However, the Commission is aware that most agencies still continue to notify commentators and distribute copies of comments through postal mail, and is concerned that a number of commentators have come to rely upon and expect this type of response. These commentators have not had advance notice of this comment and the type of procedural change advocated. Therefore, the Commission is unwilling to adopt a sweeping change to this provision without prior notice to commentators through proposed rulemaking. Instead, the Commission has opted to revise this provision to allow an agency to transmit copies of the final-form through publication on its website only in those instances when the agency has ascertained that the commentator has Internet service and when the agency has notified the commentator, on the date that the final-form regulation is delivered to the Commission, that the final-form regulation is available online.

Revision

Section 305.2(d) has been revised to reflect the Commission's position as explained previously.

Comment

Subsection (e) provides that the Commission may charge reasonable fees for "certifying" material contained in a regulation file. It is unclear what the Commission would be certifying and for what purpose. See also § 303.1(e). Is the Commission's intent to allow its files to be used as evidence without requiring a custodian?

Response

From time to time, parties or their attorneys have asked the Commission to certify that copies of documents in our regulatory files are true and correct copies. In those instances, the Commission's records custodian usually prepares an affidavit to that effect, to which the custodian affixes the Commission's seal. Whether these certified records are ultimately used as evidence is determined by a court or stipulated to by parties in litigation.

Revisions

This section has not been revised.

*Section 303.2. Blackout period**Comment*

Subsection (c) provides that the Commission staff will deliver embargoed material and comments received during the blackout period to the agency and the committees "within 24 hours of receipt." The act, however, does not provide a 24-hour window for the delivery of material and comments received during the blackout period. Instead, the act provides for the transmission of comments "upon receipt." See 71 P. S. § 745.5a(j). Therefore, the "upon receipt" language should be maintained in the regulations since potentially the 24-hour time limit to deliver the material and comments could occur after a Commission meeting.

Response

The Commission agrees with the comment.

Revision

Section 303.2(c) has been revised by the deletion of "within 24 hours of receipt" and the restoration of "upon receipt."

*Section 303.3. Quorum**Comment*

Subsection (b) provides, "Once a quorum is established, Commissioners who subsequently leave the meeting may continue to participate in meetings and vote on regulations by teleconference or proxy."

First, under the act, it is unclear whether there is statutory authority for Commissioners to participate and vote without their physical presence. Therefore, it is questionable whether Commissioners can participate by "teleconference or proxy." See 71 P. S. § 745.4(i).

Second, the language should be rewritten since subsection (b) potentially provides for all Commissioners to be absent from the public meeting and be able to participate either by teleconference or proxy. Is this the Commission's intent?

Response

Section 303.3 and § 303.4 (relating to proxy voting), which authorize Commissioners to participate in public meetings by means of conference call and to vote by proxy, have been in place since March 2004. Under 1 Pa.C.S. § 1502(a)(1)(ii) (relating to application of part), these provisions have the force and effect of law.

Under § 303.3(a), which is not being revised, three Commissioners must be physically present to constitute a quorum. This provision reflects section 4(i) of the act.

Subsection (b) begins with the phrase “Once a quorum is established . . .” Therefore, as long as a quorum is established, the requirements of section 4(i) of the act and § 303.3(a) have been satisfied. Nothing in section 4(i) of the act prohibits a Commissioner from participating in a meeting and voting on regulations by proxy or teleconference if he cannot attend in person or must leave a meeting before adjournment. It is not the Commission’s intent that all Commissioners can be absent from a public meeting, and nothing in the language of this section suggests otherwise.

The Commission finds that it has the statutory authority for this provision under section 11(a) of the act (71 P.S. § 745.11(a)), which authorizes the Commission to “promulgate and enforce regulations necessary to carry out the purposes of this act.” Creating circumstances when Commissioners can continue to participate in public meetings even when they cannot be physically present is certainly aligned with the legislative intent and purpose of the act.

Revision

This section has not been revised.

Section 305.1a (relating to formatting the text of a proposed regulation).

Section 307.3a (relating to formatting the text of a final regulation).

Comment

Sections 305.1a and 307.3a provide for either the underscoring or bolding of text to indicate new language to be added to a regulation. It is within the sole jurisdiction of the Joint Committee on Documents to set the formatting conventions for the regulations. See 45 P.S. § 1206 and 1 Pa. Code § 7.6 (relating to format of regulations). The Joint Committee’s regulations provide “. . . [b]ills amending existing law . . . indicate language to be added by underscoring such language.” 101 Pa. Code § 9.22 (relating to brackets and underscoring). Providing for alternate formatting for bolding new text adds confusion to the regulatory process. There should be one uniform standard for formatting regulations and that standard has already been established by the Joint Committee on Documents.

Response

The Commission’s current regulations mirror the formatting requirements of the Joint Committee on Documents referenced in the comment. However, the *Pennsylvania Bulletin* has for some time used bolding to indicate proposed new language. Several executive agencies have asked the Commission if they could likewise use bolding in regulations submitted to the Commission for review. The Commission, in an effort to be flexible and accommodating, agreed to give agencies that option.

Revision

These provisions have not been revised.

Section 307.5. Tolling the Review Period.

Comment

To improve clarity, subsection (e) should be broken down into two sentences.

Response

The Commission agrees with the comment.

Revision

Subsection (e) has been broken down into paragraphs (1) and (2).

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

Comment

A cross-reference to section 5.1(e) of the act (71 P.S. § 745.5a(e)) should be included in subsection (c).

Response

The Commission agrees with this comment. Moreover, the Commission believes for consistency that a cross-reference to section 5(g) of the act should also be added.

Revision

The statutory cross-references to sections 5(g) and 5.1(e) of the act (71 P.S. §§ 745.5(g) and 745.5a(e)) have been added.

Comment

Subsection (c)(1)(iii) is unclear and should be redrafted for clarity.

Response

The Commission believes subsection (c)(1)(iii) clearly conveys its intent. Comments, recommendations and objections from a committee received during the Commission’s review period will certainly be weighed in the preparation of the Commission’s comments. If, however, the Commission does not address the committee’s concerns in its comments, it cannot then disapprove a regulation on the basis of those concerns. However, if the Commission receives input from the committees after the end of the Commission’s review period but before the end of the committees’ review period, it may certainly weigh the committees’ input in determining whether to disapprove.

Revision

This paragraph has not been revised.

Chapter 311a. Delivery of Regulations, Comments, Reports and Orders Before and After the End of the Legislative Session.

Comment

Chapter 311a adds helpful clarity to the regulatory process during the period leading up to and following sine die. The amended regulation provides a distinction between the time both committees have been designated in the next legislative session versus the deadline for delivering regulations or other required material. This distinction in language is interpreted as meaning that the agency is permitted to deliver a final-form regulation or other material as soon as both committees have been designated. The agencies are not required to wait until the committee designations are published in the *Pennsylvania Bulletin*.

Response

The comment correctly states the intent of this chapter. Accordingly, the first date on which an agency may deliver regulations or other required material is the day on which both committees have been designated. The last day on which delivery may be made is the second Monday after both designations have been published in the *Pennsylvania Bulletin*.

Revision

No revisions have been requested and none have been made.

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

Comment

Subsection (a) cites “§ 305.1a.” The citation should be changed to § 305.2.

Subsection (c) cites “71 P. S. § 745.5(b)(6).” The citation should be changed to 71 P. S. § 745.5b(b)(6).

Response

The first citation error occurred in publication of the proposed regulation in the *Pennsylvania Bulletin*, and will be corrected by the *Pennsylvania Code* and *Pennsylvania Bulletin*. The second error occurred on the part of the Commission, and will be corrected upon final publication.

Revision

The correct citations will be inserted upon final publication in the *Pennsylvania Bulletin* and *Pennsylvania Code*.

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

Comment

Subsection (d) is difficult to read. In addition, the language “either” implies that there are two options available to an agency when a regulation has been deemed withdrawn. Subsection (d), however, provides three options to an agency:

- Submission of a new proposed regulation;
- Submission of a new final-form regulation; or
- Submission of a final-omitted regulation.

Further, it is unclear how a “deemed withdrawn” final-form regulation can be resubmitted as a “new final-form regulation” since it has already been withdrawn.

Response

Subsection (d) has been broken into paragraphs to clarify the intent of the Commission. Any time a final-form regulation has been withdrawn or deemed withdrawn, it may be submitted as a new proposal. If the withdrawn or deemed withdrawn regulation meets the requirements of section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), it may also be resubmitted as a final-omitted regulation. If the withdrawn regulation is still within the 2-year window, it may be resubmitted as a final-form regulation, under § 307.4(1) of the Commission’s final-form regulation as revised in this final rulemaking.

Revision

Subsection (d) is broken into three paragraphs as outlined previously. Likewise, § 311a.5(c) (relating to delivery of a final regulation after the end of a legislative session) has been broken into two paragraphs.

Comment

Section 311a.6 cites “71 P. S. § 745.5(j.1).” The citation should be changed to 71 P. S. § 745.5a(j.1).

Response

The Commission agrees with the comment.

Revision

The statutory cross reference has been corrected.

Public Notice

The proposed amendments were published at 37 Pa. B. 1220 (March 17, 2007), with a 30-day public comment period. The proposed amendments were also published on the Commission’s website at www.irrc.state.pa.us.

Contact Person

Comments and questions on these final-form regulations may be referred to Leslie Lewis Johnson, Esq., Chief Counsel, Independent Regulatory Review Commission, 333 Market Street, 14th Floor, Harrisburg, PA 17101, (717) 783-5433.

Comments may also be faxed to (717) 783-2664 or e-mailed to irrc@irrc.state.pa.us.

Regulatory Review

Under sections 5(a) and 11(a) of the Regulatory Review Act (71 P. S. § 745.5(a) and 11(a)), on March 7, 2007, the Commission submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form to the Joint Committee on Documents and to the Chairpersons of the House State Government Committee and the Senate Rules and Executive Nominations Committee. A copy of this material is available to the public upon request.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a), the Commission also provided the Joint Committee on Documents and the committees with copies of all comments received.

In preparing these final-form regulations, the Commission has considered all comments received.

These final-form regulations were submitted to the Senate Rules and Executive Nominations Committee, the House State Government Committee and the Joint Committee on Documents on September 7, 2007. These final-form regulations were deemed approved by the Senate Rules and Executive Nominations Committee on October 10, 2007, approved by the House State Government Committee on October 10, 2007, and approved by the Joint Committee on Documents on October 11, 2007.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder at 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Commission, acting under the authority contained in the act, orders that:

(a) The regulations of the Commission are amended by amending §§ 301.2—301.6, 301.8, 303.1, 303.3, 305.1, 305.3, 305.4, 307.1—307.3, 307.4—307.6, 309.2, 311.1—311.5, 313.1, 313.2 and 315.1; by adding §§ 305.1a, 311a.1, 311a.3, 311a.7 and 311a.8; and by deleting § 305.4 to read as set forth at 37 Pa.B. 1220 (March 17, 2007); and by amending §§ 301.1, 303.2, 305.2, 307.5, 307.6 and 309.1; and by adding §§ 307.3a, 311a.2, 311a.4—311a.6 to read as set forth in Annex A.

(b) The Chairperson of the Commission shall certify this order, 37 Pa.B. 1220 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

ARTHUR COCCODRILLI,
Chairperson

Fiscal Note: Fiscal Note 70-8 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 1. GENERAL PROVISIONS

PART III. INDEPENDENT REGULATORY REVIEW COMMISSION

CHAPTER 301. GENERAL PROVISIONS

§ 301.1. Definitions.

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

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

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

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

Comments—Written statements delivered to the 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.

Commission comments—Objections, recommendations, statements or questions relating to a proposed regulation issued by the Commission in accordance with section 5(g) of the act (71 P. S. § 745.5(g)).

CDL—Commonwealth Documents Law—The act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102 and 1201—1208) and 45 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents).

Commission—The Independent Regulatory Review Commission.

Committee—As defined in section 3 of the act.

Committee action—Approval or disapproval of a regulation, or notice that the committee intends to review the regulation under section 5.1(j.2) of the act (71 P. S. § 745.5.a(j.2)); or reporting of a concurrent resolution under section 7(d) of the act (71 P. S. § 745.7(d)), within the time allotted by the act.

Commonwealth Attorneys Act—The act of October 15, 1980 (P. L. 950, No. 164) (71 P. S. §§ 732-101—732-506).

Deemed approved by the Commission—The approval of a regulation by the Commission by operation of law when the Commission has not approved or disapproved the regulation, in accordance with section 5.1(e) of the act. The approval of an agency report by operation of law when the Commission has not approved or disapproved the agency report, in accordance with section 7(c.1) of the act.

Deemed approved by a committee—The approval of a regulation by a committee by operation of law when the committee has not taken action on a regulation under sections 5.1(j.2) or 7(d) of the act.

Delivery—

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

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

Embargoed material—

(i) Comments pertaining to a regulation on the agenda for the Commission's public meeting delivered during the blackout period by anyone, except comments from the agency or members of the General Assembly and their staffs.

(ii) The term does not include comments submitted by any person at the request of the Commission.

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

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

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

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

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

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

Form letters—Letters which contain verbatim text.

LRB—The Legislative Reference Bureau of the Commonwealth.

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

Promulgate—As defined in section 3 of the act.

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

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

Regulation—As defined in section 3 of the act.

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

Regulatory review criteria—The criteria delineated in section 5.2(a) and (b) of the act (71 P. S. § 745.5b(a) and (b)).

Sunshine Act—65 Pa.C.S. §§ 701—716.

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

Website—The Commission's website at www.irrc.state.pa.us.

Withdrawal—As defined in section 3 of the act.

CHAPTER 303. MEETINGS OF THE COMMISSION

§ 303.2. Blackout period.

(a) During the blackout period, Commissioners and Commission staff may contact or request information from any person regarding the substance of a regulation on the Commission's public meeting agenda.

(b) During the blackout period, the Commission will continue to accept comments submitted by agency staff, a member or staff person of the General Assembly, or a person submitting information at the request of the Commission. Comments submitted by other persons will be embargoed.

(c) Upon receipt, the Commission staff will deliver embargoed material and comments received during the blackout period to the agency and the committees.

(d) Upon the call to order of the public meeting, embargoed material will be distributed to the Commissioners.

CHAPTER 305. PROCEDURES FOR DELIVERY AND REVIEW OF PROPOSED REGULATIONS

§ 305.2. Delivery of comments and information by an agency; notification to commentators.

(a) From the date of delivery of the proposed regulation until the date the Commission takes final action on the regulation, the agency shall deliver to the Commission and committees copies of the following material relating to the regulation:

(1) If a comment indicates that a copy has been sent to the Commission and the agency verifies that the comment was delivered to the Commission, the agency is not required to deliver an additional copy of that comment.

(2) Reports from advisory groups which the Commission or a committee has requested.

(3) Public notices or announcements regarding solicitations of public comments and information regarding meetings the agency has held or will hold which the Commission or a committee has requested.

(4) Transcripts of public hearings which the Commission or a committee has requested.

(b) The agency shall deliver copies of comments to the Commission and the committees within 5 business days of receipt.

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

(d) The agency shall inform each commentator of the following:

(1) The name, e-mail address, address and phone number of the person in the agency from whom the commentator may request further information on the final-form regulation and the agency's website address.

(2) That upon request, the agency will notify the commentator when the final-form regulation is delivered to the Commission and published on the agency's website.

(3) That upon request, the agency will provide the commentator with either a copy of the final-form regulation or a summary of the changes to the proposed regulation which are incorporated in the final-form regulation. If the agency ascertains that the commentator has Internet access and has been notified when the regulation

has been published on the agency's website, delivery may be made through publication of the regulation on the agency's website.

CHAPTER 307. PROCEDURES FOR DELIVERY AND REVIEW OF FINAL REGULATIONS

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

(a) 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) If the entire proposed regulation was published in the format set forth in § 305.1a(a) 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) If the entire final-omitted regulation is new, and not an amendment to an existing regulation the formatting described in subsections (a) and (b) is not required.

(d) 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.

§ 307.5. Tolling the review period.

(a) The agency may toll the review period for up to 30 days only to consider revisions recommended by a committee or the Commission in compliance with section 5.1(g) of the act (71 P. S. § 745.5a(g)).

(b) If the agency decides to toll the review period, the agency shall notify the committees and the Commission under section 5.1(g)(1) of the act. The notice from the agency must be in writing and include:

(1) A citation to each section the agency is considering revising.

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

(3) An explanation of how the revisions the agency is considering will respond to the Commission's or committee's recommendations.

(c) The agency may not toll the review period if the Commission objects. The Commission may object if the agency indicates in its notice of intent to toll that it is considering revisions that are broader than or inconsistent with those recommended by the Commission or a committee, or that do not meet the criteria in section 5.2 of the act (71 P. S. § 745.5b).

(d) If the Commission objects, the review period will not be tolled and the regulation will be reviewed within the time period established under section 5.1(e)—(j.3) of the act.

(e) Before the expiration of the 30-day tolled review period, the agency shall do one of the following:

(1) Deliver a revised regulation to the committees, the Commission and the Attorney General (for a final-omitted regulation) on the same date.

(2) Notify the Commission, the committees and the Attorney General (for a final-omitted regulation), on the same date, that it will not revise the regulation.

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

(g) If the revised regulation contains provisions that were not recommended by the Commission or a committee, the Commission may disapprove the regulation.

(h) The agency may toll the review period only one time.

§ 307.6. Time period for Commission review of a final regulation.

(a) The Commission may not act on a final regulation until the expiration of the time for committee review under section 5.1(j.1) of the act (71 P. S. § 745.5a(j.1)).

(b) The Commission may have until its next scheduled meeting which occurs no less than 30 days after delivery of the final regulation to take action on the regulation. The Commission will calculate its review period as beginning the day after the delivery of the regulation to the Commission and the committees.

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

(d) To determine whether the final regulation meets the regulatory review criteria, the Commission will consider the following:

- (1) Comments from the committees.
- (2) Comments from members of the General Assembly.
- (3) Pertinent opinions issued by Pennsylvania and Federal courts.
- (4) Comments from the public.
- (5) The agency's response to comments and Commission comments.

CHAPTER 309. ACTION ON REGULATIONS

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

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

(b) If a committee does not take action on a regulation under section 5.1(j.2) or (j.3) of the act (71 P. S. § 745.5a(j.2) and (j.3)), the committee is deemed to have approved the regulation.

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

- (1) All of the following events occur:
 - (i) The Commission has not issued comments relating to any portion of the regulation as proposed within the time provided for its review.

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

(iii) A committee has not conveyed to the Commission or agency any recommendations, comments or objections after the expiration of the Commission comment period under section 5(g) of the act but within the time frame for committee review under section 5.1(j.2) of the act.

(iv) The agency has complied with the act and this part.

(v) The Commission's next public meeting occurs more than 30 days after receipt of the final-form regulation.

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

(3) The Commission's vote results in a tie and the time for the Commission's review expires.

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

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

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

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

(a) The agency shall deliver public comments to the Commission in accordance with § 305.2 (relating to delivery of comments and information by an agency; notification to commentators).

(b) The agency may not deliver public comments to the committees which are received after the end of the legislative session 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.

(c) If the agency does not deliver public comments received after the end of the legislative session to the committees by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, 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.4. Delivery of a final regulation within 20 days before the end of the legislative session.

(a) An agency may deliver a final regulation to the Commission and the committees up to the end of the legislative session.

(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 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 by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, 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:

(1) 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).

(2) 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).

(3) 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).

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

(a) An agency may not deliver a final regulation and required material to the Commission and the committees after the end of the legislative session.

(b) The agency may not deliver 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.

(c) If the two-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 by the second Monday after publication of both committee designations in the *Pennsylvania Bulletin*. 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:

(1) 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).

(2) A final-omitted regulation to the Commission, the committees and the Attorney General in accordance with section 5.1(c) of the act (71 P. S. § 745.5a(c)) and § 307.3 (relating to delivery of a final-omitted regulation).

§ 311a.6. Delivery of notice of intent to toll the review period after the end of the legislative session.

After the end of the legislative session, an agency may not deliver notice of its intention to toll the review period until the committees resume their review in accordance with section 5.1(j.1) of the act (71 P. S. § 745.5a(j.1)).

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