

PROPOSED RULEMAKING

LOBBYING DISCLOSURE REGULATIONS COMMITTEE

[51 PA. CODE CHS. 31, 33, 35, 37, 39, 41, 43, 45
51, 53, 55, 57, 59, 61, 63 AND 65]

Lobbying Disclosure

The Lobbying Disclosure Regulations Committee (Committee) proposes to amend 51 Pa. Code by deleting Part II Chapters 31, 33, 35, 37, 41, 43 and 45 and by adding Part III, Chapters 51, 53, 55, 57, 59, 61, 63 and 65 as required by the act of November 1, 2006 (P. L. 1213, No. 134) (act) 65 Pa.C.S. Chapter 13A (relating to lobbying disclosure). The act provided for a new lobbying disclosure law, and repealed the act of October 15, 1998 (P. L. 729, No. 93), known as the Lobbying Disclosure Act, 65 Pa.C.S. Chapter 13. Section 13A10(d) of the act (relating to registration fees; fund established; system; regulations), requires comprehensive regulations to be promulgated by a committee comprised of the Attorney General, who is designated as the Chairperson of the Committee, the Chairperson of the State Ethics Commission (Commission), the Chief Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania (Board), the Secretary of the Commonwealth, an individual appointed by the President Pro Tempore of the Senate, an individual appointed by the Minority Leader of the Senate, an individual appointed by the Speaker of the House of Representatives, an individual appointed by the Minority Leader of the House of Representatives, or their designees, and a lobbyist appointed by the Governor. The act also sets forth other requirements, which are also addressed in the proposed rulemaking.

Purpose

This proposed rulemaking sets forth regulations to establish, implement and administer a system for lobbying disclosure, in accordance with section 13A10(d) of the act, in addition to other requirements contained in the act.

Description of Proposed Amendments

A description of the proposed rulemaking appears as follows.

Chapter 51. General Provisions

The Committee proposes to adopt Chapter 51 (relating to general provisions) to set forth 12 sections which include general provisions regarding: definitions; filing deadlines to fall on Commonwealth business days; registration periods and reporting periods; delinquency; deficiency; biennial review of exemption threshold and reporting threshold; forms, records and Department of State (Department) publications; amended filings; signing and designation of certain filings; electronic filing; enforcement of commission orders; parent corporations and subsidiaries.

Section 51.1. Definitions.

Section 13A03 of the act provides definitions for words and phrases used in the act. The Committee proposes to add to some definitions as defined under the act and add other definitions as follows:

“Administrative action”—For the first time, the procurement of supplies, services and construction under 62

Pa.C.S. (relating to procurement) falls within administrative action for lobbying disclosure. Subparagraphs (i)—(v) of this definition come from section 13A03 of the act (relating to definitions). In subparagraph (vi), the Committee added language to both the definitions of “administrative action” and “legislative action” to clarify the statutory intent that lobbying would include communication on grants, the release of funds in the capital budget, loans and investment of funds.

“Affiliated Political Action Committee”—In subparagraph (i), the Committee proposes to reformat the definition. In subparagraph (ii), the Committee proposes to clarify that the term does not include a Federal political action committee registered only with the Federal Election Commission and is not required to register in this Commonwealth. The Committee recommends that the Federal Election Campaign Act of 1971 (2 U.S.C. § 453(a)) preempts State laws regarding registration, reporting and compliance for Federal candidates and committees.

“Agency”—The Committee clarifies that an “independent agency” is an agency included in the term. The Committee discussed this issue and resolved it by applying Article IV, Section 1 of the Pennsylvania Constitution, 42 Pa.C.S. § 102 (relating to definitions) and the case of *Ford v. Philadelphia Housing Authority*, 879 A.2d 162, 164 (Pa. 2005) (“A Commonwealth agency is any executive or independent agency and includes entities such as commissions, authorities, boards, and other agencies of the commonwealth government.”) to conclude that the definition of “agency” and the phrase “the Executive Department of the Commonwealth” includes an “independent agency.” The Committee also proposes to reformat the definition to clarify the legislative intent.

“Amendment”—The Committee clarifies that an amendment, rather than a notice of termination, is used to make changes to any filing, which includes a registration statement, a quarterly expense report, a statement of limited knowledge or a notice of termination.

“Anything of value”—The Committee proposes to add a definition for “anything of value” to clarify what a registrant must report under section 13A05 of the act (relating to reporting).

“Association”—The Committee adds a definition for “association” because the term is used in the definitions of “lobbyist” and “principal” in section 13A03 of the act.

“Audit contract period”—The definition for “audit contract period” means a time span of 2 years beginning each odd-numbered year. The Committee reasoned that a term was needed to describe the contract period for auditors as described under section 13A08(f)(1) of the act (relating to administration).

“Candidate”—The Committee adds a definition for “candidate” which limits the term to candidates for State office because section 403(a) of the Federal Election Campaign Act of 1971 preempts state laws regarding registration, reporting and compliance for Federal candidates and political committees.

“Candidate political committee”—The Committee proposes to add a definition for “candidate political committee” due to the inclusion of the phrase in section 13A07(a) of the act (relating to prohibited activities). This is also consistent with the way in which the Department has stated on its instructions of the Lobbying Registration

Statement: "List all political committees of candidates for which the lobbyist is an officer, including both a candidate's authorized political committee and a candidate's political action committee."

"Child"—The Committee proposes to define the word "child" because it is used in the definition of "immediate family" in section 13A03 of the act.

"Commonwealth business day"—The Statutory Construction Act at 1 Pa.C.S. § 1908 (relating to computation of time), provides that in determining time in statutes, whenever the last day of a deadline falls on a Saturday, Sunday or holiday, that day "shall be omitted from the computation of time." Furthermore, the Statutory Construction Act at 1 Pa.C.S. § 1991 (relating to definitions) defines "day" as "[t]he time from midnight to the next midnight." Because there is no definition of business day in the act, the Committee proposes to use "Commonwealth Business Day" throughout the regulations.

"Complaint"—The Committee proposes a definition to clarify its meaning as it is used in the act and the regulations.

"Conflict of interest"—This language closely tracks Rule 1.7 of the Pennsylvania Supreme Court's Rules of Professional Conduct.

"Direct communication"—This proposed language includes personnel expenses and office expenses and exclude gifts, hospitality, transportation and lodging from the definition of "direct communication." The Committee reasoned that the proposed language would clarify what expenses should be reported as direct communication.

"Docket"—The Committee proposes to clarify the meaning of this term because it is used throughout the regulations.

"Effort to influence legislative action or administrative action"—The Committee decided to define this term because it is used in section 13A03 of the act in the definition of lobbying. The Committee discussed this definition and the one for "Engaging a lobbyist" and reasoned that the two definitions should be consistent and should include lobbying on behalf of a principal for economic consideration. The Committee proposes that lobbying includes paying a lobbyist a retainer, even if that lobbyist does not make direct or indirect communications. A principal hiring a lobbyist not to make any direct or indirect communications is an effort to influence legislative action or administrative action because it is furthering the principal's intent to influence legislative or administrative action or the lack thereof. By hiring a lobbyist to not make any direct or indirect communications, a principal could prevent that lobbyist from working for another principal with opposing views. Also the committee proposes that this definition should include monitoring legislation, legislative action or administrative action.

"Employee"—The Committee clarifies the meaning of this term as it is used in the act and the regulations. The Committee utilized the Internal Revenue Code, *Black's Law Dictionary* and the Pennsylvania worker's compensation cases of *Triangle Bldg. Ctr. v. W.C.A.B. (Linch)*, 560 Pa. 540, 553 (Pa. 2000) (quoting Worker's Compensation Act, 77 P.S. § 22); and *Mature v. Angelo*, 373 Pa. 593, 596 (1953) to arrive at the proposed definition.

"Engaging a lobbyist"—The Committee proposes to define this term to clarify its meaning because it is used throughout the regulations. The Committee discussed this definition and the one for "Effort to influence legislative

action or administrative action," and reasoned that the two definitions should be consistent and should include lobbying on behalf of a principal for economic consideration, as discussed previously.

"Engaging in lobbying"—The Committee defines this term to clarify its meaning because it is used throughout the regulations as well as in section 13A03(b)(1)(vii) of the act.

"Entity"—The Committee proposes a definition to clarify its meaning as it is used in the act and the regulations.

"Filed"—The Committee clarifies the meaning of this term, which is used throughout the act and the regulations.

"Intentional"—The Committee proposes a definition to clarify its meaning as it is used in the act and the regulations.

"Legislation"—The Committee proposes language to include legislation that the Governor's office drafts which may or may not become legislation and legislation pending or proposed by any State official or employee.

"Lobbying"—The Committee proposes language to give examples of what the term includes.

"Lobbyist"—The Committee proposes language to add "association, corporation, partnership, business trust or other entity" to clearly include groups which are lobbyists because they engage in lobbying on behalf of a principal for economic consideration.

"Marketplace transaction"—The Committee proposes a definition to clarify its meaning as it is used in the regulations at § 55.1(k)(3) and (4) (relating to quarterly expense reports). Furthermore, the term is used in the Committee's *Interim Guidelines for Accounting and Reporting*. In both the regulations and the *Guidelines*, the Committee reasoned that this term was necessary to clarify how registrants should uniformly report the value of goods and services provided to State officials and employees. The Committee drafted the definitions of the goods and services from the definitions of terms "anything of value" and "usual and normal charge for goods and services" found in the Federal Election Commission regulations at 11 CFR 100.52(d)(1) and (2) (relating to gift subscription, loan, advances of deposit of money).

"Negligence"—The Committee defines this term to clarify its meaning as it is used in the act and in the regulations. The Committee derived this definition from the case of *Martin v. Evans*, 551 Pa. 496, 502, 711 A.2d 458, 461 (1998) (quoting *Lanni v. Pa R. Co.*, 371 Pa. 106, 88 A.2d 887 (1952), and Pa. SSJI (Civ) 3.01).

"Person"—The Committee proposes a definition to clarify its meaning as it is used in the act and in the regulations.

"Political subdivision"—The Committee clarifies the meaning of this term, which is used in the act and in the regulations.

"Reception"—The Committee proposes a definition to clarify its meaning as it is used in the act and in the regulations. The term is used in section 13A05(b)(3)(iii) of the act (relating to reporting) as a cost not to be included as a hospitality expense if the State official or employee attends in connection with public office or employment. The Committee reasoned that there may be confusion as to what constitutes a reception. Section 13A05(b)(3)(iii) of the act informs a registrant that the amount spent on a reception does not count as part of the threshold amount

in excess of \$650, which if reached, the registrant shall send written notice to the State official or employee as required under section 13A05(b)(3)(iv) of the act. However, a registrant is still required to report the cost of the reception as costs for hospitality given to or provided to State officials or employees as required under section 13A05(b)(2)(i) of the act.

“Respondent”—The Committee proposes a definition to clarify its meaning as it is used in the act and in the regulations.

“Service (of official papers)”—The Committee proposes to clarify the meaning of this term as it is used in the act and in the regulations.

“*Sua sponte*”—The Committee proposes a definition to clarify its meaning as it is used in the act and in the regulations.

“Termination”—The Committee proposes a definition to clarify its meaning as it is used in the act and in the regulations. A notice of termination should not be used if the intent is only to change information on a registration or a report. If a registrant’s intent is only to change information on a filing, by adding or deleting information, the registrant should use an amendment. In contrast, a registrant should terminate if the registrant no longer intends to engage in lobbying.

“Total resources”—The Committee proposes a definition to clarify the meaning of these terms as they are used in section 13A05(b)(5) of the act and § 55.1(g)(5).

“Transportation and lodging or hospitality received in connection with public office or employment”—The Committee proposes to clarify the meaning of this term as it is used in the act and in the regulations.

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

Section 13A04(a) of the act (relating to registration) provides the deadline for filing a registration and section 13A05(a) of the act provides the deadline for the filing of a quarterly expense report with the Department of State (Department). In § 51.2, the Committee proposes that the filing deadlines for registration, reporting and any other official paper shall fall on a Commonwealth business day as defined in § 51.1. The Committee reasoned that the deadline should fall on the next day that the Commonwealth offices are open if the literal statutory deadline falls on a weekend or holiday or another day that the Department or Commission offices are closed or close early.

Section 51.3. Registration periods and reporting periods.

Section 13A04 of the act provides for biennial registration. In § 51.3, the Committee proposes that the registration period begins on January 1 of each odd numbered year. The Committee reasoned that clarification was needed so registrants knew when the registration and reporting periods begin.

Section 51.4. Delinquency.

Section 13A04 of the act provides that a lobbyist, lobbying firm or a principal shall register with the Department within 10 days of acting in any capacity as a lobbyist, lobbying firm or a principal. Section 13A05 of the act provides that quarterly expense reports are to be filed with the Department no later than 30 days after the last day of the quarter. In § 51.4(a) and (b), the Committee proposes to add language to inform registrants when a registration statement or report is considered delinquent and constitutes a failure to register as required by

the act. The Committee, in § 51.4(a)(1), proposes that hard copy filings must be received at 5 p.m. in the office and from 5 p.m. until 12 a.m. midnight, hard copy filings may be filed with the Department’s designee. The Department has typically used the Capital Police as a designee after 5 p.m. on the day that filings are due. As the Committee proposes, the Department will note its designee and the appropriate filing procedures in its publications or on its website.

In § 51.4(c), the Committee proposes a 5-day grace period for receiving the required photo and filing fee if a registrant registers electronically. The Committee reasoned that as long as the registrant registers electronically by the deadline and the photograph and the fee are received within 5 Commonwealth business days, the registrant should not be considered delinquent.

Section 51.5. Deficiency.

Section 13A04 of the act provides for the registration requirements. Section 13A05 of the act provides for the reporting requirements. In § 51.5(a)(1)—(5), the Committee proposes language which lists ways in which a registration or report can be deficient. In § 51.5(b)—(d), the Committee proposes language that a deficient filing constitutes a failure to meet registration or reporting, or both, requirements. In § 51.5(e), the Committee proposes language that a registration statement, expense report or notice of termination continues to be deficient until it is amended. The Committee reasoned that the proposed added language clarifies when a filing will be deficient and how to cure the deficiency by filing an amendment.

Section 51.6. Biennial review of exemption threshold and reporting threshold.

Section 13A08(j) of the act (relating to administration) provides for biennial review of the threshold for registration and reporting by the Department. Section 13A08(j) of the act also provides for biennial review of the filing fee. In § 51.6(c), the Committee proposes that the change to the thresholds will not be effective until the beginning of a calendar quarter. The Committee reasoned that clarification was needed for both registrants and the administrative agencies as to when a change in thresholds would go into effect.

Section 51.7. Forms, records and Department publications.

Section 13A08(b) of the act provides that the Department will prescribe registration and reporting forms. In § 51.7(a), the Committee proposes to add language on where the forms can be obtained. The Committee reasoned that it should be clear to registrants where the forms are available. Section 13A08(d) of the act requires the Department to publish an annual report on lobbying activities in this Commonwealth. In § 51.7(e), the Committee proposes that the annual report and directory be published in a searchable electronic format. The Committee reasoned that the added language informs registrants that the directory and annual reports are also available in a searchable electronic format.

Section 51.8. Amended filings.

Section 13A04(d) of the act provides for amended registrations. In § 51.8(c), the Committee proposes that registrants shall complete only those portions of their registration statements and quarterly expense reports that need to be amended in addition to the identification of the registrant. The Committee reasoned that a registrant should only have to file the information that has been changed with the identification of the registrant.

Section 51.9. Signing and designation of certain filings.

Section 13A08(b) of the act requires that registration and reporting forms shall be signed under oath or equivalent information. In § 51.9(b), the Committee proposes that a registrant may designate another individual or firm to complete any of its filings if the registrant amends its registration statement. The Committee reasoned that lobbyists, lobbying firms and principals often designate third parties to prepare forms for filing, and the proposed language would allow for the designated third parties to file the necessary forms.

Section 51.10. Electronic filing.

Section 13A10 of the act requires the Department to implement a computerized filing system. In § 51.10, the Committee proposes that registrants may file electronically and use an electronic signature that will have the same force and effect as a manual signature. The Committee reasoned that since an electronic signature has the same force and effect as a manual signature, forms filed with an electronic signature should be considered as signed under oath or equivalent information as required under section 13A08(b) of the act (relating to administration).

Section 51.11. Enforcement of Commission orders.

In section 13A09 of the act, the Commission can levy administrative penalties and may prohibit a person from lobbying for economic consideration for up to 5 years. In § 51.12, the Committee proposes the Commission through its staff may take appropriate action to enforce its orders. The Committee reasoned that registrants ought to be aware that the orders of the Commission will be enforced.

Section 51.12. Parent corporations and subsidiaries.

Section 13A04 of the act requires registration and section 13A05 of the act requires reporting. In § 51.12, the Committee proposes that a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return. The Committee reasoned that if a parent corporation and its subsidiaries can file on a consolidated basis with the Internal Revenue Service, it should be allowed to do so under the act.

Chapter 53. Registration and Termination

The Committee proposes to adopt Chapter 53 to set forth seven sections which include general provisions regarding the biennial filing fee; principal registration; lobbying firm registration; lobbyist registration; amended registration statements; termination; and public inspection and copying.

Section 53.1. Biennial filing fee.

Section 13A04 of the act, requires lobbyists, lobbying firms and principals, unless they are excluded under section 13A06 of the act (relating to exemption from registration and reporting), to register within 10 days of acting in their capacity as lobbyists, lobbying firms or principals. Section 13A10(a) of the act provides that at the time of registration, persons required to be registered shall pay a biennial registration fee of \$100 to the Department of State (Department), which will be deposited into the Lobbying Disclosure Fund as a special fund in the State Treasury, as required by section 13A10(b)(1) and (2). Because a lobbyist, lobbying firm or principal can register online with the Department, and because the Department does not yet have online payment of filing fees, the Committee proposes at § 53.1(a)(1) that a

registrant may send the filing fee to the Department within 5 Commonwealth business days of the date of filing, and the filing would be considered timely.

Section 53.2. Principal registration.

Section 13A04(b)(1) of the act contains the filing requirements for a principal's registration statement. In reviewing § 53.2(b)(3) on July 19, 2007, when the Committee discussed the requirement at section 13A04(b)(1) of the act, which would provide that the principal list the "name and permanent business address of each individual who will for economic consideration engage in lobbying on behalf of the principal or lobbying firm," it also considered the exemptions for registration and reporting at section 13A06 of the act (relating to exemption from registration and reporting). The Committee reasoned that it was not logical to require principals to list all employees or contract lobbyists hired by a principal as lobbyists or lobbying firms if those same individuals or firms are exempt from registration and reporting under section 13A06 of the act. In applying the rules of statutory construction, the Committee decided to read these different statutory provisions in sections 13A04 and 13A06 together, in pari materia, in accordance with 1 Pa.C.S. § 1932 (relating to statutes in pari materia). Furthermore, the Committee reasoned that the General Assembly did not intend a result that is absurd, as provided at 1 Pa.C.S. § 1922(1) (relating to presumptions in ascertaining legislative intent), and that it would be absurd to require a principal to list an employee or contract lobbyist on its registration statement if that individual did not qualify as a "lobbyist" due to an exemption at section 13A06 of the act.

Section 53.3. Lobbying firm registration.

Section 13A04(b)(1) and (2) of the act contains the filing requirements for a lobbying firm's registration statement. Because the prior Lobbying Disclosure Act (Act 93 of 1998) did not include lobbying firms, the Committee created new language for this section that tracks the requirements of the act. However, the Committee applied the same concept in § 53.3(a) that it had used with principals in § 53.2(a) and concluded that lobbying firms that were not exempt under section 13A06 of the act shall register with the Department.

Section 53.4. Lobbyist registration.

Section 13A04(c) of the act contains the filing requirements for lobbyists filing a registration statement. As in § 53.2(a), the Committee proposes to retain the language from the previous regulation at § 33.3(a) (relating to lobbyist registration), which provided that lobbyists that were not exempt must register.

Section 13A04(c)(5) of the act requires all lobbyists who register to include a recent photograph. Because the Committee allows registrants to submit their filing fee within 5 Commonwealth business days of filing a registration statement, the Committee proposes that lobbyists be allowed the same time frame to submit their photograph.

In § 53.4(b)(6), the Committee proposes to include regulations that comply with a new requirement in section 13A04(c)(9) of the act, which provides that a lobbyist who is an officer for a candidate's political committee shall disclose on the lobbyist's registration statement the name, registration number and acronym of the candidate's political committee. The Committee proposes to clarify that this requirement applies only to non-Federal candidates because section 403(a) of the Federal Election Campaign Act of 1971 and the Federal

Election Commission regulation at 11 CFR 108.7 (relating to effect on State law (2 U.S.C. 453)) provides that Federal laws preempt state laws regarding registration, reporting and compliance for Federal candidates and political committees. Finally, the disclosure requirement at § 53.4(b)(6) is necessary because section 13A07(a) of the act (relating to prohibited activities) prohibits a lobbyist from serving as a treasurer or other officer (that is, chairperson) for a candidate's political committee or a candidate's political action committee if the candidate is seeking a Statewide office or the office of Senator or Representative in the General Assembly.

Section 53.5. Amended registration statements.

Section 13A04(d) of the act addresses amendments to registration statements and the Committee, in § 53.5(a), followed the statutory directive to require that changes in the information on registration statements require amendments within 14 days. In the definition of amendment in § 51.1, the Committee clarifies that amendments are appropriate when principals employ new lobbying firms or lobbyists and when lobbying firms or lobbyists retain new principals as clients. In § 53.5(c), the Committee proposes to add a provision to allow registrants to amend only those portions of their registration statements that require changes, in addition to the identification of the registrant. This practice is consistent with the Department's procedures with respect to the filing of amendments to campaign finance registration statements and expense reports.

Section 53.6. Termination.

Section 13A04(e)(1) of the act addresses the filing of notices of termination with the Department, and the Department's corresponding responsibility to issue letters terminating registrants in 13A04(e)(2) of the act. The regulations track these requirements in § 53.6(a)—(e) and in § 53.6(g), respectively. Likewise, § 53.6(f) follows the requirement in section 13A04(e)(3) of the act that no lobbying occur after a registrant has filed a notice of termination, while § 53.6(i) would implement the requirement for continued reporting required by section 13A04(e)(4) of the act. Because reporting continues after a registrant's filing of a notice of termination, the Committee proposes to continue the enforcement provisions of the act in § 53.6(h). Without § 53.6(h), registrants could avoid enforcement by filing a notice of termination.

Section 53.7. Public inspection and copying.

Section 13A08(c) of the act (relating to administration) requires the Department to make completed registration statements and notices of termination available for public inspection, provide copies of these documents, and make registration statements available on a publicly accessible website. Section 53.7 not only contains these requirements for registration statements but also for notices of termination.

Chapter 55. Reporting

The Committee proposes to adopt Chapter 55 to set forth four sections which include general provisions regarding: quarterly expense reports; records maintenance, retention and reliability; public inspection and copying; and reliance on documents.

Section 55.1. Quarterly expense reports.

Section 13A05(a) and (b)(4) and (6) of the act, requires the reporting of expenses each quarter by registered principals, and in some cases, by registered lobbyists or lobbying firms, when these expenses exceed \$2,500 in a quarterly reporting period, as specified in § 55.1(a).

Based on a comment received on August 2 by the Philadelphia Bar Association, the Committee on August 9 decided to clarify that when expenses by principals, lobbyists or lobbying firms together exceed the \$2,500 threshold, reporting is required. Also on August 9, the Committee decided to add the language in the second sentence of § 55.1(a) regarding retainers because once a principal pays a retainer to a lobbyist or lobbying firm to represent the principal, the principal is engaging in lobbying as that term is defined in § 51.1. The Committee proposes to add similar language on retainers in § 55.1(g)(3).

In § 55.1(e), when a lobbying firm or lobbyist is required to file a separate expense report as provided at section 13A05(b)(6) of the act, the Committee proposes granting a lobbying firm or lobbyist 30 days to file the separate report from the time that the principal's report was due to provide the lobbyist or lobbying firm with sufficient time to obtain the necessary data and file the report. In addition, the Committee proposes two additional provisions at this subsection: (1) If within 30 days of the due date, a principal amends its quarterly expense report in compliance with § 51.8(c), a lobbyist or lobbying firm need not file a separate quarterly expense report; and (2) The filing of a separate quarterly expense report by a lobbyist or lobbying firm does not relieve a principal of any reporting requirements. The second provision is necessary because section 13A05(a) of the act requires principals to file quarterly expense reports.

Based on testimony provided on August 2 by Kimball & Associates, on August 9, the Committee added the words "for lobbying" in § 55.1(g)(5) to clarify that the requirement in section 13A05(b)(5) of the act was meant to apply solely to lobbying and not to the principal's receipts or transactions in the ordinary course of business. Also, the Committee proposes to include in this section the fact that total resources includes dues and grants received by the principal. Thus, a principal that is a lobbying coalition with many members would have to include dues from its members in reporting its resources received of more than 10% from one entity. A principal that is a trade association with many members would have to include dues from its members in reporting its resources received of more than 10% from one entity, when the dues are being paid for lobbying services conducted by the trade association.

In § 55.1(g)(6), the Committee proposes that it is reasonable to exempt from disclosure small gifts, hospitality, transportation and lodging valued at \$10 or less provided to State officials or employees or their immediate families. However, when the amount is over \$10 to more than one State official or employee, it must be disclosed. Without a reasonable threshold, principals, lobbying firms and lobbyists would be required to report the small amounts that would be of little concern to the public viewing the reports. The gift rules for the United States House of Representatives and Senate have a similar \$10 exemption for gifts given to members, officers or employees of the United States House of Representatives and United States Senate.

The Committee proposes in § 55.1(j) to provide details on the itemization of gifts and hospitality, as required by section 13A05(b)(3) of the act and, 65 Pa.C.S. § 1105(b)(6) and (7) (relating to statement of financial interests) (Ethics Act). Specifically in § 55.1(j)(2), the Committee proposes requiring the disclosure of the date and circumstances of a gift and the payment or reimbursement for transportation, lodging or hospitality because this infor-

mation is necessary for the recipient State official or employee to report to the Commission, as required by section 13A05(b)(3)(iv) of the act. Also, the Committee, in § 55.1(j)(3)(i) and (4)(i), proposes that in addition to disclosing the name and position of the State official or employee, the principal must disclose the governmental body of the State official or employee because inherent in the position is the governmental body of the State official or employee.

At § 55.1(m)(2), the Committee proposes explaining how a lobbyist or individual in a lobbying firm may sign the quarterly expense report of a principal on the principal's behalf, with authorization by the principal on its registration statement. This issue has become increasingly important as more principals from outside this Commonwealth are asking their lobbyists or lobbying firms in this Commonwealth to submit their quarterly expense reports on their behalf.

In listing the ways in which indirect communications may be made in § 55.1(o), the Committee proposes to add automated telephone calls to the list of communications already required by section 13A05(e) of the act because it is a prevalent way of making the indirect communications. Also automated telephone calls are similar to other public outreach efforts as mailings, telephone banks, billboards and print or electronic media advertisements required by section 13A05(e) of the act.

Section 55.2. Records maintenance, retention and availability.

Section 13A05(b)(2.1) of the act, provides that a registrant may use any reasonable method of estimation and allocation in filing an expense report. In applying this provision to recordkeeping, the Committee proposes at § 55.2(a)(3) that records of lobbying activity may be kept under any reasonable accounting basis. The Committee proposes a list of the three prevalent methods of recordkeeping that are included in any reasonable accounting basis: cash basis, accrual basis and modified accrual basis and proposes definitions for these recordkeeping methods.

Likewise, the Committee proposes in § 55.2(a)(6) that a registrant should keep its records on the same accounting basis for the 2-year period covering its registration under the act. If a registrant changes its accounting basis, it should make an internal record of the date of the change and the reason for the change. Although the Committee's proposal is not a requirement, it is recommended so that the registrant's recordkeeping will be consistent for a registration period, in the event that the registrant's records are audited.

The Committee also proposes applying the statutory requirement for any reasonable method of estimation and allocation to methods that a registrant may use to value time spent lobbying in § 55.2(b)(3). The Committee further proposes three possible methods, as long as the method selected is a reasonable method of estimation and allocation. The three possible methods listed in § 55.2(b)(3)(i)—(iii) include: employ a good faith estimate by using any reasonable method of estimation and accounting; keep a record of all of the time spent lobbying; or use the entire fee expended for lobbying.

Section 55.3. Public inspection and copying.

Section 13A08(c) of the act requires the Department to make completed expense reports available for public inspection, provide copies of these documents, and make

these expense reports available on a publicly accessible website. Section 55.3 contains these requirements for completed expense reports.

Section 55.4. Reliance on documents.

The previous lobbying law, Act 1998-93, had no enforcement until regulations went into effect. Therefore, the Committee published its *Interim Guidelines for Accounting and Reporting* on May 30, 2007, to provide guidance to the regulated community until the Committee published final regulations. In its *Interim Guidelines*, the Committee stated that registrants may use its *Interim Guidelines* and any updated *Interim Guidelines* for guidance until the finalization of the regulations, when the Committee will produce a final copy of the *Manual of Guidelines for Accounting and Reporting*, in compliance with section 13A10(d)(5) of the act. In § 55.4(a), the Committee proposes that registrants who follow the *Interim Guidelines* or *Manual* will serve as evidence of the registrant's good faith effort to comply with the act during the time when the *Guidelines* or *Manual* are in effect.

In § 55.4(b), the Committee proposes a similar regulation for a registrant's reliance on the forms and instructions published by the Department. Because these forms are required by section 13A08(b) of the act and because the act required that registrants file quarterly expense reports prior to the issuance of any regulations, it is logical that registrants that rely on the forms and instructions should serve as evidence of the registrant's good faith effort to comply with the act.

Chapter 57. Exemptions from registration and reporting.

The Committee proposes to adopt Chapter 57, which includes a general rule and an explanation of how an individual or entity may qualify for an exemption.

Section 57.1. General rule.

Section 13A06 of the act provides various exemptions from registration and reporting for persons and activities that might otherwise fall within the requirements of the act. Whenever an individual or other entity addressed in section 13A06 of the act qualifies for an exemption, that individual or entity is not required to register or report under the act, unless one of the following two conditions occurs. First, the proposed regulation addresses the fact that when a registrant under the act performs an activity that would otherwise be exempt from reporting, the registrant shall include the activity within its report. For example, a lobbyist who prepares testimony for a Committee of the General Assembly, in addition to engaging in other lobbying activities, shall report the preparation of the testimony in his reports. Second, this section recognizes that individuals and entities may lose their exempt status, which will trigger an obligation to register within 10 days. Thereafter, the registrant will need to file appropriate reports for those quarters in which the prior exemption no longer applied.

Section 57.2.

In § 57.2(a), the Committee proposes to clarify and amplify the exemptions at section 13A06 of the act as follows:

(1) The Committee proposes to clarify that participating in an administrative proceeding included more than preparing testimony and testifying before a committee. The Committee determined that preparing comments on regulations and preparing and delivering comments at agency advisory committee meetings are similar to preparing testimony, as exempted at section 13A06(1) of the

act. In addition, the Committee proposes to clarify that an individual or entity already registered no longer qualifies for exemptions under this subsection of the regulations.

(2) The Committee clarified that the exemption in section 13A06(2) of the act would not be limited to a specific news medium and noted that the term individual should include employees and independent contractors, also known as “stringers” in the industry. The Committee also set forth basic criteria that an individual or entity shall meet to ensure the exemption was not interpreted too broadly.

(3) The exemption in § 57.2(a)(3) required no explanation or expansion.

(4) The exemption in § 57.2(a)(4) required no explanation or expansion.

(5) The exemption in § 57.2(a)(5) required no explanation or expansion.

(6) The exemption in § 57.2(a)(6) required no explanation or expansion.

(7) The exemption in § 57.2(a)(7) represents a combination of the exemptions found in section 13A06(7)–(10) of the act. The Committee clarified that a governmental entity may lobby on its own behalf and neither that nor lobbying by an official/employee of the entity acting in an official capacity would require registration or reporting of their activities under the act. However, a governmental entity would be required to register and report as a principal if it hired other lobbyists or lobbying firms to engage in lobbying on behalf of the governmental entity with respect to those nonexempt lobbying activities assuming the total expenditures for the nonexempt lobbying activities would not bring it under the exemption at section 13A06(6) of the act. See also the following advisory opinions issued by the Commission: 07-1001 and 07-1002.

(8) The Committee proposes in § 57.2(a)(8) to track the exemption at section 13A06(11) of the act to protect the First Amendment constitutional right of the free exercise of religion. However, the Committee clarified that this exemption would not extend to lobbying on issues beyond the free exercise of religion. Lobbying beyond the free exercise of religion could subject an individual who otherwise qualified for this exemption to the registration and reporting requirements of the act.

(9) The Committee tracked the language in section 13A06(12) of the act and proposes, as in other proposed regulations immediately before and after this subsection, that the exemption is limited to the individual’s activity covered by the exemption and any additional activity would require the individual to register and report under the act.

(10) In this subsection, the Committee also tracked the language in section 13A06(13) of the act and again proposes that any additional activity would require the individual to register and report under the act.

(11) The Committee not only tracked the language at section 13A06(14) of the act, but also reasoned that the expenditures referenced in the Pennsylvania Election Code are already disclosed to the public.

In § 57.2(b), the Committee proposes to clarify and amplify the exemption at section 13A06(15) of the act to encompass the full scope of vendor activities which occur under 62 Pa.C.S. (relating to Commonwealth Procurement Code).

As mentioned in the preamble to § 51.1, lobbying related to procurement activities is being regulated for the first time in this Commonwealth. After input from the regulated community and the Department of General Services as the Commonwealth’s lead purchasing agency, the Committee proposes to recognize and set forth as exempt the various types of vendor activities that routinely occur as part of the full range of procurement methods such as: vendor activities authorized and regulated by the Procurement Code; vendor participation in other open, public forums; and vendor activities authorized by contract. The Committee reasoned that the purpose of the vendor exemption in section 13A06(15) of the act is to distinguish between a vendor’s participation in an agency procurement activity authorized and regulated by the Procurement Code and lobbying activity by the vendor or its lobbyist. The proposed list of exempted vendor activities does not provide an exclusive or restrictive list of procurement methods for which vendor participation is exempted.

Therefore, the subsection creates a distinction between: (1) exempted vendor participation in response to Commonwealth-initiated procurement actions; (2) nonexempt, unsolicited vendor activities; and (3) nonexempt vendor activities occurring outside of or not in accordance with the procedures governing an active procurement. The subsection exempts the listed activities only by the vendor, and not by a lobbyist, per the statutory definition.

Chapter 59. Opinions and Advices of Counsel

The Committee proposes to adopt Chapter 59 to set forth three sections which include general provisions regarding: the Ethics Act regulations in Part I as to opinions and advices of counsel; standing requirements; and prospective conduct to be reviewed.

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

Section 13A08(a) of the act, provides that the Commission will provide written advice and opinions regarding compliance with the act. Section 59.1(b) relates to section 13A08(a) of the act, which states that a person who acts in good faith based upon the written advice or opinion of the Commission may not be held liable for a violation of the act if the material facts are as stated in the request for an advisory. Section 59.1(c) relates to section 13A09(g)(1) of the act, which states that a respondent’s or defendant’s reliance on advice or opinions of the Commission constitutes an affirmative defense to an action brought under the act or the Ethics Act. The Committee reasoned that section 13A09(g)(1) should be cross-referenced for clarity.

Section 59.2. Standing requirements.

Section 13A08(a) of the act provides that the Commission will provide written advice and opinions to a lobbyist, a lobbying firm, a principal, the Department, the Board or a State official or employee, that seeks advice regarding compliance with the act. At § 59.2(b), the Committee proposes to add that a principal or lobbying firm shall have standing to request an advisory regarding the status, duties or activities of its employees. At § 59.2(d), the Committee proposes to add that the Department and the Board will have standing to request an advisory as to questions or issues regarding their respective duties and authority under the act. The Committee reasoned that § 59.2(d) will clarify that the duties and authority of the Department and the Board do not extend to the conduct of a principal, lobbying firm or lobbyist.

Section 59.3. Prospective conduct to be reviewed.

Section 13A08 of the act provides for the Commission to provide written advice and opinions. In § 59.3, the Committee proposes to provide that an advice or opinion will only be issued as to prospective conduct, pertinent to the subject of the request. The Committee reasoned that the proposed language clarifies that advice or opinions will be given only for questions about future conduct, consistent with section 1107 of the Ethics Act (relating to powers and duties of the commission).

Chapter 61. Compliance Audits.

The Committee proposes to adopt Chapter 61 to set forth six sections which include general provisions regarding: lotteries; the scope of compliance audits; audit procedures; audit reports; confidentiality; and the duty of the Department to contract for an audit.

Section 61.1. Lotteries.

Section 13A08(f)(2) of the act, addresses the random selection of 3% of all completed registrations and expense reports filed with the Department for an audit. In § 61.1(b), the Committee proposes that a registrant will not be selected for a random audit in consecutive audit contract periods. The Committee reasoned that it was not the legislative intent for a registrant to have to submit to continuous audits and the proposed language would disallow that from occurring.

Section 61.2. Scope of compliance audits.

Section 13A08(f)(3) of the act addresses how the audits will be conducted and the Committee followed the statutory directive to require that audits will be conducted with generally accepted auditing standards. In § 61.2(b), the Committee reasoned that activities before January 1, 2007, the effective date of the registration and reporting requirements of the act, should not be audited under the act.

Section 61.3. Audit procedures.

Section 13A08(f) of the act contains the requirements for audits of the regulated community. In § 61.3 (a)—(e), the Committee proposes to add language which gives specifics on conducting an audit such as: notifying the registrants selected for audit; the records the audit may include; and the registrant's affirmative duty to cooperate fully in any audit. The Committee reasoned that including specific audit procedures helps to ensure that audits are fair and complete.

Section 61.4. Audit report.

Section 13A08(f)(4) of the act provides for an audit report. In § 61.4(c), the Committee proposes that the independent auditor shall issue the audit report within 1 year of being notified of the selection of the subject of the audit based on Committee discussions that there should be a deadline by which registrants could expect the audit to be completed.

Section 61.5. Confidentiality.

Section 13A08(f)(4) of the act contains a requirement for confidentiality of the audit report and findings subject to an exception that the audit report and findings are to be made available to the Commission if the Commission is investigating an alleged violation of the act involving the audited registration or expense report. Section 13A08(f)(4) of the act further directs that the Commission include the relevant portion of an audit as part of its findings of fact in a Commission order resulting from an investigation arising out of an audit. The Committee reasoned that this statutory language establishes that a

Commission investigation may arise out of an audit. In § 61.5, the Committee tracks the statutory requirements of section 13A08(f)(4) of the act.

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

The Committee proposes to adopt Chapter 63 to set forth seven sections which include general provisions regarding: Ethics Commission (Commission) referrals; Commission proceedings under section 13A07 of the act; late or deficient filings—Commission proceedings under section 13A04 or section 13A05 of the act; noninvestigative process for late or deficient filings; investigative process for late or deficient filings; administrative penalties for late or deficient filings; Commission decisions as to late or deficient filings.

Section 63.1. Commission referrals.

Sections 13A07(d)(8) and (f)(3)(i)—(ii), 13A09(b)(2) and 13A09(h) of the act provide for various discretionary and mandatory referrals by the Commission to the Attorney General or Board. Section 13A07(d)(8) of the act provides that an alleged violation of section 13A07(d) of the act by an attorney-at-law shall be referred to the Board to be investigated, considered and resolved in a manner consistent with the Rules of Professional Conduct. Section 63.1 would track the aforesaid statutory provisions as to referrals. In § 63.1(e), the Committee proposes to clarify that the Office of Attorney General need not await a referral from the Commission before initiating an investigation or prosecution under the Attorney General's own statutory authority. In § 63.1(f), the Committee proposes to clarify that nothing in the act or the regulations will restrict the Board's authority to discipline an attorney-at-law who is acting as a lobbyist or principal. In § 63.1(g), the Committee proposes to clarify that except for a matter under section 13A07(d)(8) of the act, a referral by the Commission or Office of Attorney General to the Board does not preclude the referring agency from also conducting its own enforcement proceedings under the act. The Committee reasoned that further clarification is needed in regards to a referral for an alleged violation by a registrant who is also an attorney-at-law because the prior Lobbying Disclosure Act (Act 93 of 1998, Chapter 13) was declared void based upon its impact upon attorneys.

Section 63.2. Commission proceedings regarding prohibited activities under section 1307-A of the act.

Section 13A07 of the act lists certain activities that are prohibited under the act.

At § 63.2(a)—(e), the Committee proposes language that Commission proceedings regarding prohibited activities under section 13A07 of the act will be conducted in accordance with the procedures in sections 1107 and 1108 of the Ethics Act (relating to powers and duties of the commission; and investigations by commission) and §§ 21.1—21.30 (relating to investigations), to the extent applicable. The Committee reasoned that this approach would satisfy the statutory requirements of section 13A08(g) of the act.

At § 63.2(b), the Commission proposes language referring to the Board's exclusive review pursuant to section 13A07(d)(8) to clarify that the Board has exclusive review over complaints regarding violations of section 13A07(d) by a lobbyist or principal who is also an attorney-at-law.

Section § 63.3. Commission proceedings regarding late or deficient filings.

Section 13A09 of the act provides for Commission proceedings involving alleged failure to register or report

as required under the act. In § 63.3(a)(1)—(5), the Committee proposes to clarify how these Commission proceedings may be initiated. The Committee reasoned that it ought to be clear to the regulated community and to the agencies administering the act how these Commission proceedings may be initiated.

In § 63.3(a)(3), the Committee proposes that the Department may refer to the Commission any information arising from an audit which, in the view of the Department, is appropriate for the Commission to consider. Section 13A08(f) of the act states that the Commission may be provided with an audit report and findings if the Commission is investigating an alleged violation of the act involving the audited registration or expense report. However, the same section of the act also states that a Commission investigation may arise out of an audit. Therefore, the Committee found that the common-sense reconciliation of these provisions suggests that the Commission may receive information regarding an audit even if there is no investigation pending.

In § 63.3(b), the Committee proposes that the Commission, through its Executive Director, will initiate either a noninvestigative process as in § 63.4 (relating to noninvestigative process for late or deficient filings) or an investigative process as in § 63.5 (relating to investigative process for late or deficient filings). The Committee reasoned that the Commission ought to be able to determine which process may be used in deciding whether there was negligent failure to register or report based on certain factors such as whether an investigation is needed to fully review the matter. However, in § 63.3(c), the Committee proposes that the Commission must use the investigative process if a referral is made by the Department based on an audit. The Committee reasoned that a referral based on an audit would be complex and an investigation would be needed to fully review the matter.

Section § 63.4. Noninvestigative process for late or deficient filings.

In § 63.4(1)—(23), the Committee proposes a noninvestigative process to determine if a registrant negligently failed to register or report as required by the act. The Committee reasoned that the noninvestigative process for late or deficient filings ought to be clear to the regulated community and to the agencies administering the act.

In § 63.4(1) and (2), the Committee proposes the issuance of a warning notice with an opportunity to cure alleged noncompliance prior to the initiation of formal proceedings through a notice of alleged noncompliance.

In § 63.4(3)—(6), the Committee proposes to provide for the filing of a written answer to a notice of alleged noncompliance.

Neither a warning notice nor a written answer is provided for in section 13A09(a) of the act (relating to penalties). The Committee reasoned that the provision of a warning notice with an opportunity to cure alleged noncompliance prior to the initiation of formal proceedings might resolve matters without a need for formal proceedings. The Committee further reasoned that in the event of formal proceedings, providing for the filing of an answer to a notice of alleged noncompliance would enhance due process.

Section § 63.5. Investigative process for late or deficient filings.

In § 63.5(1)—(4), the Committee proposes an investigative process for determining whether a registrant negli-

gently failed to register or report as required by the act. The Committee reasoned that the investigative process for late or deficient filings should satisfy the statutory requirements of section 13A08(g) of the act.

In § 63.5(5), the Committee proposes to add language clarifying that a person has a duty to comply with a lawfully issued subpoena from the Commonwealth, even if the person is out-of-State under 42 Pa.C.S. § 5322 (relating to the basis of personal jurisdiction over persons outside this Commonwealth). Section 5322(a)(1)(i) of 42 Pa.C.S., (ii) and (iv) gives a tribunal within this Commonwealth the ability to exercise personal jurisdiction over a person who transacts any business with this Commonwealth for the purpose of realizing pecuniary benefit; doing a single act in this Commonwealth for the purpose of accomplishing an object with the intention of initiating a series of such acts; or engaging in any business or profession within this Commonwealth. Also, 42 Pa.C.S. § 5322(a)(9) gives a tribunal in this Commonwealth the ability to exercise personal jurisdiction over a person who makes an application to any government unit for any registration. The Committee reasoned that those provisions of 42 Pa.C.S. § 5322 give any person who is out-of-State a duty to comply with a lawfully issued subpoena from the Commonwealth.

Section 63.6. Administrative penalties for late or deficient filings.

Section 13A09(a)(5), (b)(3) and (c)(1) and (2) of the act provide for an administrative penalty if failure to register or report was negligent. In § 63.6, the Committee proposes that if the Commission finds that there was negligent failure to register or report as required by the act following either the noninvestigative process under § 63.4 or an investigative process under § 63.5, then one or more administrative penalties may be levied. In § 63.6(2) and (3)(i)—(vi), the Committee proposes how such an administrative penalty will be calculated and allows for consideration of aggravating and mitigating factors.

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

In § 63.7, the Committee proposes that the determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

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

The Committee proposes to adopt Chapter 65 to set forth two sections which include general provisions regarding: the basis for prohibition against lobbying for economic consideration and procedures for imposing prohibition against lobbying for economic consideration

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

Section 13A07(d)(6)(ii), (f)(2)(ii) and (e)(4) of the act, provides for when the Commission may prohibit a lobbyist from lobbying for economic consideration for up to 5 years. In § 65.1(a) and (b), the Committee proposes to add language to inform registrants of violations of the act that could result in the Commission prohibiting a lobbyist or lobbying firm from lobbying for economic consideration for up to 5 years. In § 65.1(c), the Committee proposes to inform respondents of when they shall be deemed to have been notified of noncompliance. In § 65.1(d) and (f), the Committee proposes to add language that informs registrants: of when they shall be deemed to have failed to comply after notice of noncompliance; that prohibition

against lobbying for economic consideration will not be imposed unless the registrant has been afforded the opportunity for a hearing; and that at any time prior to a final determination, the Commission has the authority to negotiate settlements and to enter into settlement agreements. The Committee reasoned that it needed to be clear to registrants what violations could result in being prohibited from lobbying for economic consideration. The Committee also reasoned that registrants should be aware that they will be afforded the opportunity for a hearing before a prohibition against lobbying for economic consideration is imposed.

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

Section 13A07(d)(6)(ii), (f)(2)(ii) and 13A09(e)(4) of the act, provide that the Commission may prohibit a lobbyist from lobbying for economic consideration only after an investigation, notice and hearing. In § 65.2(a) and (b), the Commission proposes to provide the procedures the Commission will follow for the imposition of a prohibition against lobbying for economic consideration. In § 65.2(b)(14), the Committee proposes to add language that lists factors that the Commission may consider in determining whether and for how long a prohibition against lobbying for economic consideration is to be imposed upon a respondent. In § 65.2(c), the Committee proposes that if a person is convicted in a criminal proceeding for violation of the act for which the penalty of prohibition against lobbying for economic consideration may be imposed, the conviction will be *res judicata*. The Committee reasoned that the procedures for imposing a prohibition against lobbying for economic consideration needed to be clear to registrants.

Fiscal Impact and Paperwork Requirements

Fiscal Impact

Commonwealth:

The proposed rulemaking will impose an additional fiscal impact upon the Commonwealth and specifically upon the Office of Attorney General (OAG), the Department, the Commission and the Pennsylvania Supreme Court Disciplinary Board (Board). The OAG costs are derived from personnel, operating and program expenses (which include travel, office furnishings and real estate rental) needed for chairing the Committee and for investigating and prosecuting violations of the act. The Department costs are derived from administrative costs (which include the collection and processing of fees, registrations and reports), personnel and office expenses needed for staffing the Committee and fulfilling its obligations under the proposed rulemaking and the act. The Commission costs are derived from nonrecurring expenses which include new computer workstations and office furniture and recurring expenses such as staffing and travel expenses needed for being a member of the Committee and for conducting investigations and holding hearings related to alleged violations of the act, as well as performing other duties under the act. The Board's expenses are derived from potential cases and the funding will come from attorney registration fees.

Local Government

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

Private Sector:

The regulated community will have expenses in the form of a registration fee which is \$100.

Paperwork Requirements

Commonwealth:

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

Local Government:

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

Regulated Community:

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

Effective Date

The regulations will take effect upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Effective Date

The amendments will take effect upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review Act Requirements

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on January 9, 2008, the Committee submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate State Government Committee and the House State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Committee, the General Assembly and the Governor of comments, recommendations or objections raised.

Contact Person

Persons interested in commenting on the proposed rulemaking may contact Louis Lawrence Boyle, Deputy Chief Counsel, Pennsylvania Department of State, 301 North Office Building, Harrisburg, PA 17120-0029 or e-mail at llboyle@state.pa.us. Comments must be received by February 19, 2008.

ROBERT A. MULLE,
Chairperson

Fiscal Note: 16-40. No fiscal impact; (8) recommends adoption. The proposed rulemaking will implement Act

134 of 2006 related to lobbying disclosure. Funds have been included in the budget to cover costs not funded by the biennial registration fee.

Annex A

TITLE 51. PUBLIC OFFICERS

PART II. [Resesrve]

- CHAPTER 31. [Reserved].
- CHAPTER 33. [Reserved].
- CHAPTER 35. [Reserved].
- CHAPTER 37. [Reserved].
- CHAPTER 39. [Reserved].
- CHAPTER 41. [Reserved].
- CHAPTER 43. [Reserved].
- CHAPTER 45. [Reserved].

PART III. LOBBYING DISCLOSURE

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| <p>Chap.
51.
53.
55.
57.
59.
61.
63.
65.</p> | <p>GENERAL PROVISIONS
REGISTRATION AND TERMINATION
REPORTING
EXEMPTION FROM REGISTRATION AND REPORTING
OPINIONS AND ADVICES OF COUNSEL
COMPLIANCE AUDITS
COMMISSION REFERRALS, INVESTIGATIVE PROCEEDINGS AND NONINVESTIGATIVE PROCEEDINGS
PROHIBITION AGAINST LOBBYING FOR ECONOMIC CONSIDERATION AS A SANCTION</p> |
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CHAPTER 51. GENERAL PROVISIONS

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| <p>Sec.
51.1.
51.2.
51.3.
51.4.
51.5.
51.6.

51.7.
51.8.
51.9.
51.10.
51.11.
51.12.</p> | <p>Definitions.
Filing deadlines to fall on Commonwealth business days.
Registration periods and reporting periods.
Delinquency.
Deficiency.
Biennial review of exemption threshold, reporting threshold and filing fees.

Forms, records and Department publications.
Amended filings.
Filings to be originals signed under oath or affirmation.
Electronic filing.
Enforcement of Commission orders.
Parent corporations and subsidiaries.</p> |
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§ 51.1. Definitions.

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

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

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

- (i) An agency’s proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy; approval or rejection of a regulation; or procurement of supplies, services and construction under 62 Pa.C.S. (relating to procurement).
- (ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.
- (iii) The Governor’s approval or veto of legislation.
- (iv) The nomination or appointment of an individual as an officer or employee of the Commonwealth.
- (v) The proposal, consideration, promulgation or rescission of an executive order.
- (vi) Grants, the release of funds from the capital budget, loans and investment of funds.

Affiliated political action committee—

(i) Includes a “political action committee” as defined in section 1621(l) of the Election Code (25 P. S. § 3241(l)), which meets the following conditions:

- (A) Has an officer who is a chairman or treasurer.
- (B) Who is one or more of the following:
 - (I) A principal.
 - (II) An officer or employee of a principal.
 - (III) A lobbyist.
 - (IV) An employee of a lobbyist.

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

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

Agency—The term includes the following:

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

(ii) Any Commonwealth:

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

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

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

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

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

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

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

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

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

Anything of value—

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

(ii) The term includes any of the following:

- (A) Gifts.
- (B) Hospitality.
- (C) Transportation.
- (D) Lodging.
- (E) Services.
- (F) Loans.
- (G) Money.

Association—

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

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

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

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

*Audit contract period—*A time span of 2 years beginning on January 1 of each odd-numbered year, during which time the independent certified public accountants or certified public accounting firms will fulfill their contractual obligations under section 13A08(f)(3) of the act (relating to administration).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The term does not include gifts, hospitality, transportation and lodging.

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

Economic consideration—

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

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

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

(i) Paying a lobbyist or lobbying firm a retainer or other compensation, even if that lobbyist or lobbying firm does not make direct or indirect communications or take any other action.

(ii) Monitoring legislation, legislative action or administrative action.

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

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

*Engaging a lobbyist—*Contracting or otherwise arranging for the services of a lobbyist or lobbying firm for lobbying on behalf of a principal for economic consideration.

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

Entity—

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

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

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

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

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

Gift—

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

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

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

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

(C) Direct or indirect communications.

(D) Hospitality, transportation or lodging.

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

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

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

Hospitality—

(i) The term includes the following:

(A) Meals.

(B) Beverages.

(C) Recreation and entertainment.

(ii) The term does not include:

(A) Gifts, transportation or lodging.

(B) Personnel expenses and office expenses as those terms are defined in the act and this section.

(C) Direct or indirect communications.

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

Indirect communication—

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

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

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

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

(v) The term does not include gifts, hospitality, transportation and lodging.

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

Legislation—

(i) Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives, including draft legislation.

(ii) The term includes any other matter, which may become the subject of legislative action by either chamber of the General Assembly.

(iii) The term also includes any bills, resolutions, amendments and nominations pending or proposed by any State official or employee.

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

(i) Legislation.

(ii) Legislative motions.

(iii) A veto by the Governor.

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

(v) Grants, the release of funds from the capital budget, loans and investment of funds.

Lobbying—

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

(ii) The term includes the following:

(A) Direct or indirect communications.

(B) Office expenses.

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

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

Lobbyist—An individual, association, corporation, partnership, business trust or other entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney-at-law while en-

gaged in lobbying. Membership in an association alone is not sufficient to make an association member a lobbyist.

Marketplace transaction— Includes the costs for:

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

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

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

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

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

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

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

Political subdivision—A “political subdivision” as defined in section 1102 of the Ethics Act (relating to definitions).

Principal—

(i) An individual, association, corporation, partnership, business trust or other entity, including a Commonwealth agency or political subdivision on whose behalf a lobbying firm or lobbyist engages in lobbying, or that engages in lobbying on the principal’s own behalf.

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

Reception—

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

(ii) The cost per individual shall be based on the invoiced amount for prospective attendees, irrespective of the actual number of attendees, and may not be greater than \$75 unless the reception takes place in a high-cost locality as classified by the Internal Revenue Service in Publication 1542, in which case the cost per individual may not exceed \$125. On a biennial basis, beginning _____ (Editor’s Note: The blank refers to the effective date of adoption of this proposal.), the Department will have the authority to review these amounts, and subject to the concurrence of the Commission, to increase them if it is deemed appropriate. For purposes of determining the cost per individual herein, the guidelines found in § 55.1(k)(6) (relating to quarterly expense reports) do not apply.

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

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

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

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

Reporting period—Any of the following periods:

(i) January 1 through March 31.

(ii) April 1 through June 30.

(iii) July 1 through September 30.

(iv) October 1 through December 31.

Regulatory Review Act—71 P. S. §§ 745.1—745.14.

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

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

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

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

State official or employee—An individual elected or appointed to a position in State government or employed by State government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

Sua sponte— Being done on one’s own volition.

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

Total resources—

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

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

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

Vendor—

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

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

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

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

§ 51.3. Registration periods and reporting periods.

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

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

§ 51.4. Delinquency.

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

(1) Hard copy filings must be received by 5 p.m. in the office. From 5 p.m. until 12 a.m. midnight, a hard copy filing may be filed with the Department's designee, as noted in the Department's publications or on its website.

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

(b) A failure to timely file a registration statement, a quarterly expense report, a separate expense report, a notice of termination or an amendment to one of these filings constitutes a failure to register or report as required by the act; delinquency continues until the filing is received by the Department in proper form.

(c) A registration statement will not be considered delinquent if the Department receives a registration statement electronically by the due date and the required photograph (in the case of a lobbyist's registration statement) and the filing fee, if due, are received by the Department within 5 Commonwealth business days of the Department's receipt of the original electronic filing, in accordance with § 51.10(b) (relating to electronic filing)

§ 51.5. Deficiency.

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

(1) It does not fully and accurately include and disclose all that is required by the act and this part.

(2) It includes a false statement.

(3) It is illegible.

(4) The filer fails to use the appropriate form prescribed by the Department.

(5) The filer fails to date the registration statement, expense report or notice of termination.

(6) The filer fails to sign the expense report under oath or affirmation as set forth in § 51.9 (relating to signing and designation of certain filings).

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

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

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

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

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

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

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

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

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

§ 51.7. Forms, records and Department publications.

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

(b) Additional sheets of equal size on forms prescribed by the Department may be attached to any hard copy form filed under the act, if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, and notices of termination filed with the Department will remain on file for 4 years and will be available for public inspection at the office of the Department in Harrisburg, Pennsylvania.

nia during business hours on Commonwealth business days. The Department will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost.

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

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

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

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

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

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

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

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

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

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

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

§ 51.8. Amended filings.

(a) Filings under the act may be amended.

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

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

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

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

§ 51.9. Signing and designation of certain filings.

(a) *Signing of certain filings.*

(1) Quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of

knowledge and amendments to these forms filed with the Department must be signed originals bearing the signature of the filer. See § 51.10 (relating to electronic filing) for requirements when filing electronically.

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

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

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

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

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

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

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

(4) A lobbyist who signs a principal's quarterly expense report or amendment, shall do so under an affirmation subject to 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

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

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

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

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

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

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

§ 51.10. Electronic filing.

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

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

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

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

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

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

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

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

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

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

§ 51.11. Enforcement of Commission orders.

The Commission through its staff may take appropriate action to enforce its orders.

§ 51.12. Parent corporations and subsidiaries.

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

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

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

CHAPTER 53. REGISTRATION AND TERMINATION

Sec.

- 53.1. Biennial filing fee.
- 53.2. Principal registration.
- 53.3. Lobbying firm registration.
- 53.4. Lobbyist registration.
- 53.5. Amended registration statements.
- 53.6. Termination.
- 53.7. Public inspection and copying.

§ 53.1. Biennial filing fee.

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

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

(2) The biennial filing fee will be a flat fee for the registration period in which paid. A registrant will not be required to pay more than one biennial filing fee in any given biennial registration period, unless a registrant terminates and attempts to reregister during the same biennial registration period.

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

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

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

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

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

§ 53.2. Principal registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a principal shall register with the Department within 10 days of acting in any capacity as a principal.

(1) Engaging a lobbyist or lobbying firm for purposes including lobbying constitutes acting in the capacity of a principal.

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

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

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

(b) A principal shall register by filing a registration statement with the Department, on a form prescribed by the Department, which discloses at least the following information:

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

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

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

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

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

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

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when the service is required by law.

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

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

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

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

(h) Unless terminated, a registration statement filed under the act is effective from the date of filing through the final day of the registration period then in effect. The principal shall file a new registration statement after that

date, to the extent the principal is required to be registered under the act and this section.

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

§ 53.3. Lobbying firm registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a lobbying firm shall register with the Department within 10 days of acting in any capacity as a lobbying firm.

(1) Accepting an engagement to lobby or accepting a retainer or other compensation for purposes including lobbying constitutes acting in the capacity of a lobbying firm.

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

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

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

(b) A lobbying firm shall register by filing a registration statement with the Department, on a form prescribed by the Department, which discloses at least the following information:

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

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

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

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

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

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when the service is required by law.

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

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

(f) The registration statement must also include a statement that the information on the lobbying firm's statement is true, correct and complete to the best of the

registrant's knowledge, information and belief, and the affirmation is being made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

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

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

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

§ 53.4. Lobbyist registration.

(a) Unless exempt under section 13A06 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Department within 10 days of acting in any capacity as a lobbyist.

(1) Accepting an engagement to lobby or accepting a retainer or other compensation for purposes including lobbying constitutes acting in the capacity of a lobbyist.

(2) Engaging in lobbying constitutes acting in the capacity of a lobbyist.

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

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

(b) A lobbyist shall register by filing a registration statement with the Department on a form prescribed by the Department, which includes and discloses at least the following information:

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

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

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

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

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

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

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

(c) For each address that is to be disclosed on a registration statement, the filer shall include the mailing address and may, at the filer's option, include the street address, if different. If no street address is supplied, the registrant will be deemed to have waived personal service when the service is required by law.

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

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

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

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

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

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

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

§ 53.5. Amended registration statements.

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

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

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

§ 53.6. Termination.

(a) A lobbyist, lobbying firm or a principal may terminate its registration by filing with the Department a completed notice of termination on a form prescribed by the Department.

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

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

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

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

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

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

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

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

§ 53.7. Public inspection and copying.

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

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

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

CHAPTER 55. REPORTING

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

§ 55.1. Quarterly expense reports.

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal, registered lobbying firm or registered lobbyist lobbying on the principal's behalf, together, exceed \$2,500 in a quarterly reporting period. The threshold of \$2,500 includes any retainers or other compensation paid by a principal to a lobbying firm or lobbyist, whether or not the lobbying firm or lobbyist then spends the retainer.

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

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

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

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

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

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

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

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

(1) The names and, when available, the registration numbers of all lobbyists or lobbying firms, by whom the lobbying is conducted on behalf of the principal. If a lobbyist is a lobbying firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal must be included.

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

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

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

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

(3) The total costs of all lobbying for the period. The total must include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to State officials or employees, and other lobbying costs, including retainers or other compensation paid by principals to lobbying firms or lobbyists, whether or not the lobbying firm or lobbyist then spends the retainer. The total amount reported under this paragraph shall be allocated in its entirety among the following categories:

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

(ii) The costs for direct communication.

(iii) The costs for indirect communication.

(iv) Registrants shall use a good faith effort to allocate expenses required to be reported under this subsection to one of the three categories listed herein. A given expense may not be included in more than one category.

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

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

(6) The total costs for gifts, hospitality, transportation and lodging, given to or provided to State officials or employees or their immediate families, except that any cost under this paragraph which is of a value not exceeding \$10 need not be reported under section 13A05(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to more than one State official or employee, the aggregate economic value of which is \$10 or more, that value shall be included in the appropriate totals reported under section 13A05(b)(2) of the act.

(h) A registered principal that attempts or that retains a lobbying firm or lobbyist to attempt to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(3).

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

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

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

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

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

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

(4) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying.

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

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

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

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

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

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

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

(iii) The value of the gift.

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

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

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

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

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

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

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

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

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

(2) The valuation of a complimentary ticket to a fundraiser must be based upon the reasonable amount of the goods or services received by the State official or employee. The valuation may not include a political contribution, which is otherwise reportable as required by law.

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

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

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

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

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

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

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

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

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

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

(2) An individual in a lobbying firm, a lobbyist or any other individual may also sign the quarterly expense report of the principal on behalf of the principal, attesting to the accuracy of the report, with authorization by the principal on its registration statement. The registration statement will designate all individuals who may sign expense reports on behalf of the principal.

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

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

(iii) When an individual signing the principal's quarterly expense report, attesting to the accuracy of the report, is an official or employee of the principal who also serves as one of the principal's registered lobbyists as

indicated on the report, that signatory shall still be required to affirm the accuracy of the report as a lobbyist of the principal, as provided by section 13A05(b)(4) of the act.

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

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

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

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

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

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

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

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

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

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

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

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

clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.

§ 55.2. Records maintenance, retention and availability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The date of the transaction.

(3) The dates and forms of payments.

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

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

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

(f) Contributions of resources which are reportable under section 13A05(b)(5) of the act shall upon receipt be promptly documented by the registered principal through

the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

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

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

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

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

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

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

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

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

§ 55.3. Public inspection and copying.

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

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

§ 55.4. Reliance on documents

(a) *Reliance on manual.* A registrant's establishment and maintenance of records, as well as the filing of quarterly expense reports based on those records, in accordance with any manual or interim guidelines adopted by the Committee shall serve as evidence of the registrant's good faith effort to comply with the act during the time when the manual or guidelines are in effect.

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

CHAPTER 57. EXEMPTION FROM REGISTRATION AND REPORTING

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

§ 57.1. General rule.

(a) Unless specified in § 57.2 (relating to qualifications for exemption), a person, principal, lobbying firm or lobbyist that qualifies for any exemption under § 57.2 will not be required to register or report with respect to any activity covered by the exemption. However, if an

individual does not qualify for an exemption in § 57.2(a), the activity described in the exemption shall be included within the reports otherwise required by the act.

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

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

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

§ 57.2. Qualifications for exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The exemption in section 13A06(12) of the act applies to an individual who is not otherwise required to register and who serves on an advisory board, working group or task force at the request of an agency or the General Assembly. This exemption is limited to the scope of the individual's service on the advisory board, working group or task force.

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

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

(b) *Vendor activities.* The exemption in section 13A06(15) of the act applies to vendor activities under 62 Pa.C.S. §§ 514 and 516 (relating to small procurements; and emergency procurement) and efforts directly related

to responding to publicly advertised invitations to bid and requests for proposals. This exemption also includes the following vendor activities in response to procurement actions initiated by the Commonwealth:

(1) Submission of supplier pricing requests and sealed quotes, bids and proposals in response to a public Request for Quotes (RFQ), Invitation For Bids (IFB) or Request for Proposals (RFP) procurement process.

(2) Submission of questions, participation in a site visit, prebid or preproposal conference, and communications concerning the procurement process between the vendor's and the covered agency's contracting officer designated by the public competitive procurement document (RFQ, IFB or RFP) during an active procurement.

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

(4) Demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract.

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

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

CHAPTER 59. OPINIONS AND ADVICES OF COUNSEL

Sec.	
59.1.	Opinions and advices of counsel.
59.2.	Standing requirements.
59.3.	Prospective conduct to be reviewed.

§ 59.1. Opinions and advices of counsel.

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

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

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

§ 59.2. Standing requirements.

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

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

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

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

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

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

§ 59.3. Prospective conduct to be reviewed.

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

CHAPTER 61. COMPLIANCE AUDITS

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

§ 61.1. Lotteries.

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

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

§ 61.2. Scope of compliance audits.

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

(b) An audit will be limited in time to the previous 2 calendar years. Lobbying activities performed prior to January 1, 2007, will not be audited under the act.

§ 61.3. Audit procedures.

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

(a) At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that the audit subject was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(b) Prior to the initiation of the audit, a review of the subject's reports on file with the Department for a period not to exceed 2 years will be conducted. Lobbying activities performed prior to January 1, 2007, will not be audited under the act.

(c) The audit will be initiated by way of conference between the auditor and the audit subject or the designated representative thereof.

(1) The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and execute all waivers, releases or authorizations to allow the independent auditor to obtain the records.

(2) Registrants shall have an affirmative duty to cooperate fully in any audit of their registration statements or expense reports. If the independent auditor believes that the subject of the audit is delaying the submission of requested records, the independent auditor shall inform the Department in writing.

(d) The audit may include interviews of lobbyists, principals, representatives and employees thereof and other individuals necessary to the completion of the audit.

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

§ 61.4. Audit report.

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

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

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

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

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

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

§ 61.5. Confidentiality.

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

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

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

CHAPTER 63. COMMISSION REFERRALS, INVESTIGATIVE PROCEEDINGS AND NONINVESTIGATIVE PROCEEDINGS

Sec.	
63.1.	Commission referrals..
63.2.	Commission proceedings under section 1307-A of the act.
63.3.	Commission proceedings regarding late or deficient filings.
63.4.	Noninvestigative process for late or deficient filings.
63.5.	Investigative process for late or deficient filings.
63.6.	Administrative penalties for late or deficient filings.
63.7.	Commission decisions as to late or deficient filings.

§ 63.1. Commission referrals.

(a) If the Commission has reason to believe that an intentional violation of the act has been committed, it will

refer all relevant documents and other information to the Office of Attorney General and, if the lobbyist or principal is an attorney-at-law, to the Board.

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

(c) The Commission will refer any alleged violation of section 13A07(d) of the act or section 1307A(f) of the act to the Board if the subject of the alleged violation is an attorney-at-law.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 63.3. Commission proceedings regarding late or deficient filings.

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

(1) Receipt of a complaint.

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

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

(4) Reviews of filings conducted by Commission staff.

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

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

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

(i) The complexity of the matter.

(ii) Whether an investigation is needed to fully review the matter.

(iii) Whether the filer has had prior notice of the requirements of the act.

(iv) Whether the filer has in the past complied with the act.

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

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a registration or report containing a false statement, the Commission through its Executive Director may elect to

proceed in the matter under the noninvestigative procedures of § 63.4 rather than through the investigative procedures of § 63.5.

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

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

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

§ 63.4. Noninvestigative process for late or deficient filings.

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

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

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

(3) The notice of alleged noncompliance will set forth the pertinent factual averments in numbered paragraph form and will state the nature of the alleged noncompliance and the administrative and criminal penalties for failing to register, failing to file a report, or filing a report that contains a false statement or that is incomplete. A notice of alleged noncompliance will also advise of the right to appeal from the notice, to file a written answer to the notice and to request a hearing before the Commission. A notice of alleged noncompliance will set forth the time and manner in which to file an appeal, file a written answer and request a hearing.

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

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

admitted. The notice of alleged noncompliance will include a statement to this effect.

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

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

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

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

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

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

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

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

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

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

(16) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the

Attorney General for investigation and prosecution, and if the person is an attorney-at-law, the Commission will also refer the matter to the Board.

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

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

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

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

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

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

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

§ 63.5. Investigative process for late or deficient filings.

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

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

(2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 13A04 or 13A05 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of commission; and investigations by commission) and, to the extent applicable, the related provisions in §§ 21.1—21.3, 21.5 and 21.21—21.27.

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

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

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

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

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

§ 63.6. Administrative penalties for late or deficient filings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Intentionally failed to register or report as required by the act, as provided in section 13A09A(e)(1) of the act.

(2) As a registrant, filed a report under the act with knowledge that the report contained a false statement or was incomplete, as provided in section 13A09(e)(2) of the act.

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

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

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

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

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

(d) For the limited purpose of the imposition of a prohibition against lobbying for economic consideration, the respondent shall be deemed to have failed to comply after notice of alleged noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order

finding the respondent in noncompliance/violation, or within another time for compliance as specified by the order.

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

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

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

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

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

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

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

(2) The petition will set forth the pertinent factual averments in numbered paragraph form, and will notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition will be docketed to the same number as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition will be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) If a lobbyist or person has been found to be in noncompliance or in violation of the act in a proceeding before the Commission, for which noncompliance or violation the penalty of prohibition against lobbying for economic consideration may be imposed, the finding of noncompliance or violation will be *res judicata*, and the Commission's further determination will be limited to the amount of time, if any, that the lobbyist or person shall be prohibited from lobbying for economic consideration.

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

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

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

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

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

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

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

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

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

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures in

§ 21.29(b) and (d)—(f) (relating to finality; reconsideration), to the extent applicable.

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

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

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

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