

CHAPTER 407. ADMINISTRATIVE PROCEEDINGS**APPEALS FROM REJECTIONS OF APPLICATIONS**

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Authority

The provisions of this Chapter 407 issued under act of November 22, 1978 (P. L. 1166, No. 274) (71 P. S. §§ 1190.21—1190.32), unless otherwise noted.

Source

The provisions of this Chapter 407 adopted November 13, 1981, effective November 14, 1981, 11 Pa.B. 4040, unless otherwise noted.

APPEALS FROM REJECTIONS OF APPLICATIONS**§ 407.1. Unappealable rejections of applications.**

(a) The rejection of an application by the Executive Director or his designee as being improperly executed, incomplete—lacking required information, attachments, endorsements, clearances, agreements or other documentation—or not within a program category authorized by Federal statutes shall be final. A rejection may not preclude the submission of a corrected application by an applicant.

(b) The rejection of an application by the Executive Director due to a lack of available funds in the relevant State comprehensive plan program category shall be final.

§ 407.2. Appealable rejections of applications.

The rejection of an application by the Executive Director for any of the following reasons may be appealed to the Commission:

- (1) The project is inadequately described in the program narrative portion of the application so that it is not feasible to complete a review and fairly consider the application for funding.
- (2) The application contains fiscal, programmatic, legal or other deficiencies in number or a substantial nature that it appears unlikely they can be rectified prior to the timely consideration of the application for final approval.
- (3) The project is not fundable under the Commission's current funding policies and priorities.

Cross References

This section cited in 37 Pa. Code § 407.3 (relating to rejected applications review procedure).

§ 407.3. Rejected applications review procedure.

(a) The review shall be requested by sending to the Executive Director a written request for Commission review, specifying the factual and legal grounds believed to establish the incorrectness of the rejection. The request for review shall be mailed or delivered to the Office of the Executive Director within 20 days after the date of the rejection notice. This subsection supplements 1 Pa. Code § 31.5 (relating to communications and filings generally).

(b) Upon receipt of a timely request for Commission review, the Executive Director will cause the matter to be placed on the agenda of a subsequent meeting of the Commission for disposition and shall give written notice to the applicant of that action. The notice shall specify the time and place of the Commission meeting at which the appeal shall be considered and shall inform the applicant of its right to appear and be heard in support of its appeal.

(c) If the Commission determines that the rejection was incorrect, the application shall be deemed resubmitted for further processing under current procedures and subject to a new 90-day application consideration period commencing with the date of the Commission determination.

(d) The rejection of an application by the Executive Director under the provisions of § 407.2(1) or (2) (relating to appealable rejections of applications) may not preclude the resubmission of a corrected application by the applicant.

RECONSIDERATION OF DISAPPROVED APPLICATIONS**§ 407.11. Reconsideration permitted.**

The disapproval of an application, in whole or in part, by the Commission may be subject to reconsideration by the Commission.

§ 407.12. Reconsideration procedure.

(a) Reconsideration shall be requested by sending to the Executive Director a written request for Commission reconsideration, specifying the factual and legal grounds believed to establish the incorrectness of the disapproval. A request for reconsideration which fails to provide significant additional factual information or to address any legal issues or which merely restates the need for a project or the qualifications of the applicant or contractor shall be considered insufficient and may be denied in writing by the Executive Director. The request for Commission reconsideration shall be mailed or delivered to the Office of the Executive Director within 20 days after the date of the disapproval letter. This subsection supplements 1 Pa. Code § 31.5 (relating to communications and filings generally).

(b) Upon receipt of a timely and sufficient request for Commission reconsideration, the Executive Director will cause the matter to be placed on the agenda of a subsequent meeting of the Commission for disposition and will give written notice to the applicant of that action. The notice will specify the time and place of the Commission meeting at which the appeal shall be considered and will inform the applicant of its right to appear and be heard in support of its request for reconsideration.

(c) In the case of a request for reconsideration of an application concerning a juvenile justice or delinquency prevention program, where the Juvenile Advisory Committee has not previously reviewed the application, the Executive Director will, before having the matter placed on the Commission's agenda, refer the same to the Juvenile Advisory Committee for its review and recommendation. The scope of the Juvenile Advisory Committee's review shall be limited to the issues raised in the applicant's request for reconsideration. The Juvenile Advisory Committee's review will be completed within 30 days after submission of the matter to it.

(d) In the case of a request for reconsideration of an application concerning a courts program which had been denied funding or which received a conditional approval due, in whole or in part, to the recommendation of the Judicial Planning Committee or its Secretariat, the Executive Director will, before having the matter placed on the Commission's agenda, refer the same to the Judicial Planning Committee for its review and recommendation. The scope of the Judicial Planning Committee's review will be limited to the issues raised in the applicant's request for reconsideration. The Judicial Planning Committee will be allowed 30 days to respond after submission of the matter to it.

EFFECT OF APPLICATION REJECTION**§ 407.21. Effect of application rejection.**

(a) For purposes of applying the provisions of section 402(b)(3)(A) of the Crime Control Act and section 223(a) of the Juvenile Justice Act, the issuance of a notice of rejection of an application shall be deemed a disapproval of the application, effective on the date of mailing of the notice.

(b) Subsection (a) supersedes 1 Pa. Code § 31.14(b) (relating to effective dates of agency orders).

TERMINATION OF FINANCIAL ASSISTANCE**§ 407.31. Applicability of general rules.**

The provisions of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) shall be applicable to proceedings for the termination of financial assistance.

§ 407.32. Initiation of subgrant termination proceedings.

(a) Proceedings to terminate a subgrant for cause prior to the expiration of the project period will be initiated by the Executive Director by serving an order to show cause on the subgrantee. This subsection supplements 1 Pa. Code § 35.14 (relating to orders to show cause).

(b) Where a subgrantee-municipality has contracted with a private, nonprofit entity to perform all or substantially all of the project's activities, a copy of the order to show cause and of other pleadings, motions, orders and notices to be served on the subgrantee will be sent to the entity.

(c) The initiation of termination proceedings shall automatically suspend the payment of subgrant funds to the subgrantee until the time as the Commission takes final action on the termination.

§ 407.33. Hearings.

(a) Following the timely receipt of a subgrantee's answer, a hearing shall be scheduled before a hearing examiner designated by the Executive Director. This subsection supplements 1 Pa. Code § 35.185 (relating to designation of presiding officers).

(b) It will be the burden of the Director of the Bureau of Administration and Finance or the Chief Auditor, as the case may be, to establish by substantial evidence that termination of financial assistance to the subgrantee is warranted.

(c) The hearing examiner will not be bound by technical rules of evidence and all relevant and material evidence of reasonably probative value shall be admissible.

§ 407.34. Posthearing actions.

(a) After the conclusion of the hearing and after receipt of briefs and proposed findings of fact and conclusions of law, if any, the hearing examiner will promptly submit his report and recommendations, together with a proposed final order, to the Executive Director. This subsection supersedes 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared).

(b) The Executive Director will submit the hearing examiner's report, recommendations, and proposed final order to the Commission members for consideration at their next public meeting.

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