

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 883 Session of 2011

INTRODUCED BY GREENLEAF, ALLOWAY, FONTANA AND EARLL,
APRIL 4, 2011

REFERRED TO JUDICIARY, APRIL 4, 2011

AN ACT

1 Amending Title 2 (Administrative Law and Procedure) of the
2 Pennsylvania Consolidated Statutes, consolidating provisions
3 on administrative procedure and rulemaking; and making
4 related repeals.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 103, 104 and 105 of Title 2 of the
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 103. [Administrative Agency Law.] Short title of title.

10 [(a) General rule.--The provisions of Subchapter A of
11 Chapter 5 (relating to practice and procedure of Commonwealth
12 agencies) and Subchapter A of Chapter 7 (relating to judicial
13 review of Commonwealth agency action) shall be known and may be
14 cited as the "Administrative Agency Law."

15 (b) Rule making references.--Whenever any statute makes
16 reference to the Administrative Agency Law for procedures
17 relating to the promulgation of administrative regulations, such
18 reference shall hereafter be deemed to be a reference to the act
19 of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth

Documents Law."] This title shall be known and may be cited as the Administrative Procedure Code.

§ 104. [Commonwealth Documents Law] (Reserved).

§ 105. [Local Agency Law] (Reserved).

[The provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) and Subchapter B of Chapter 7 (relating to judicial review of local agency action) shall be known and may be cited as the "Local Agency Law."]

Section 2. Chapter 3 of Title 2 is amended to read:

CHAPTER 3

PROMULGATION OF REGULATIONS

[(Reserved)]

Subchapter

A. Commonwealth Documents Law

B. Legal Review

C. Fiscal Review

D. Independent Regulatory Review Commission

SUBCHAPTER A

COMMONWEALTH DOCUMENTS LAW

Sec.

301. Scope of subchapter.

302. Definitions.

303. Notice of proposed rulemaking.

304. Adoption of regulations.

305. Effective date of regulations.

306. Omission of notice of proposed rulemaking.

307. Approval as to legality.

308. Format of regulations and other documents.

309. Deposit of agency text of regulations required.

310. Unfiled regulations invalid.

1 § 301. Scope of subchapter.

2 This subchapter relates to the filing of documents for
3 publication in the Pennsylvania Bulletin and codification in the
4 Pennsylvania Code.

5 § 302. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Adjudication." Any order, decree, decision, determination
10 or ruling by an agency affecting personal or property rights,
11 privileges, immunities, duties, liabilities or obligations of
12 any or all of the parties to the proceeding in which the
13 adjudication is made.

14 "Administrative regulation." Any regulation except a
15 proclamation, executive order, executive directive or other
16 similar document promulgated by the Governor. The term includes
17 a regulation which may be promulgated by an agency only with the
18 approval of the Governor.

19 "Agency." The Governor or any department, departmental
20 administrative board or commission, officer, independent board
21 or commission, authority or other agency of this Commonwealth.
22 The term does not include any of the following:

23 (1) The Senate.

24 (2) The House of Representatives.

25 (3) A court. This paragraph includes an officer or
26 agency of a court.

27 (4) A political subdivision, municipal authority or
28 other local authority. This paragraph includes an officer or
29 agency of a political subdivision or local authority.

30 "Agency text." The text of a document as issued, prescribed

1 or promulgated by the issuing, prescribing or promulgating
2 agency.

3 "Bureau." The Legislative Reference Bureau. The powers
4 conferred under this subchapter upon the bureau shall be
5 exercised by the Director of the Legislative Reference Bureau
6 or, in the Director's absence, by the Assistant Director.

7 "Department." The Department of General Services of the
8 Commonwealth.

9 "Document." Any proclamation, executive order, executive
10 directive or similar instrument promulgated by the Governor and
11 any other order, regulation, rule, statement of policy,
12 adjudication, certificate, license, permit, notice or similar
13 instrument issued, prescribed or promulgated by or under the
14 authority of this Commonwealth. The term includes a home rule
15 charter adopted by the electors of any part of this
16 Commonwealth.

17 "Joint committee." The Joint Committee on Documents.

18 "Official text." The text of a document issued, prescribed
19 or promulgated by an agency as published by authority of this
20 subchapter which has become in the manner provided under this
21 subchapter the only valid and enforceable text of such document.

22 "Regulation." A rule or regulation, or order in the nature
23 of a rule or regulation:

24 (1) promulgated by an agency under statutory authority
25 in the administration of a statute administered by or
26 relating to the agency; or

27 (2) prescribing the practice or procedure before the
28 agency.

29 "Statement of policy." A document, except an adjudication or
30 a regulation, promulgated by an agency which sets forth

substantive or procedural personal or property rights,
privileges, immunities, duties, liabilities or obligations of
the public or any part of the public. The term includes a
document interpreting or implementing a statute enforced or
administered by the agency.

§ 303. Notice of proposed rulemaking.

Except as provided under section 306 (relating to omission of
notice of proposed rulemaking), an agency shall give, in the
manner provided under 45 Pa.C.S. § 725 (relating to additional
contents of Pennsylvania Bulletin), public notice of its
intention to promulgate, amend or repeal any administrative
regulation. Notice includes:

(1) The text of the proposed administrative regulation,
except any portions omitted under 45 Pa.C.S. § 727 (relating
to matter not required to be published), prepared in such a
manner as to indicate the words to be added or deleted from
the presently effective text.

(2) A statement of the statutory or other authority
under which the administrative regulation or change in it is
proposed to be promulgated.

(3) A brief explanation of the proposed administrative
regulation or change in it.

(4) A request for written comment by any interested
person concerning the proposed administrative regulation or
change in it.

(5) Any other statement required by law.

§ 304. Adoption of regulations.

Before taking action upon any administrative regulation or
change in it, the agency shall review and consider written
comments submitted under section 303 (relating to notice of

proposed rulemaking) and may hold public hearings as
appropriate. If the statute or other authority under which a
regulation is proposed to be promulgated, amended or repealed
requires the holding of public hearings or establishes other
procedures in addition to those prescribed under this
subchapter, the agency shall hold public hearings or comply with
such other procedures as are not inconsistent with the
provisions of this subchapter. The agency text of any
administrative regulation or change in it as finally adopted may
contain modifications to the proposed text as published under
section 303 which do not enlarge its original purpose, but
modifications which enlarge the original purpose of a proposal
as published under section 303 shall be republished under
section 303 prior to final adoption by the agency.

§ 305. Effective date of regulations.

Except as otherwise provided by regulations promulgated by
the joint committee, the effective date specified in any
administrative regulation or change in it subject to the
provisions of sections 303 (relating to notice of proposed
rulemaking) and 304 (relating to adoption of regulations) shall
be not less than 30 days after the required notice of proposed
rulemaking has been given unless one of the following paragraphs
applies:

(1) The administrative regulation:

(i) grants or recognizes exemption or relieves
restriction; or

(ii) interprets a self-executing act of Assembly or
administrative regulation.

(2) The agency for good cause finds, and incorporates
the finding and the reasons for the finding in the order

adopting the administrative regulation or change in it, that
the deferral of the effective date of the administrative
regulation or change in it beyond the date specified in the
order is impracticable or contrary to the public interest.

§ 306. Omission of notice of proposed rulemaking.

Except as otherwise provided by regulations promulgated by
the joint committee, an agency may omit or modify the procedures
specified under sections 303 (relating to notice of proposed
rulemaking) and 304 (relating to adoption of regulations) if any
of the following paragraphs apply:

(1) The administrative regulation or change in it
relates to:

(i) military affairs;

(ii) agency organization, management or personnel;

(iii) agency procedure or practice;

(iv) Commonwealth property, loans, grants, benefits
or contracts; or

(v) the interpretation of a self-executing act of
Assembly or administrative regulation.

(2) All persons subject to the administrative regulation
or change in it are named in the rulemaking and are either
personally served with notice of the proposed promulgation,
amendment or repeal or otherwise have actual notice in
accordance with law.

(3) The agency for good cause finds, and incorporates
the finding and a brief statement of the reasons for the
finding in the order adopting the administrative regulation
or change in it, that the procedures specified under sections
303 and 304 are in the circumstances impracticable,
unnecessary or contrary to the public interest.

1 § 307. Approval as to legality.

2 (a) Requirement.--Administrative regulations and changes
3 shall be approved as to legality by the Attorney General before
4 they are deposited with the bureau under section 309 (relating
5 to deposit of agency text of regulations required).

6 (b) Appeal.--

7 (1) If the Attorney General rules illegal all or part of
8 an administrative regulation or change in it promulgated by
9 an agency which is by law independent of the policy
10 supervision and control of the Governor and the agency or a
11 party before the agency supporting the regulation or change
12 in it disagrees with the ruling of the Attorney General, the
13 agency or party may appeal from the determination to
14 Commonwealth Court.

15 (2) In an appeal under paragraph (1), Commonwealth Court
16 may direct the Attorney General to approve the parts of the
17 administrative regulation or change in it ruled illegal which
18 the court finds to be legal.

19 (3) In all other cases the decision of the Attorney
20 General shall be final and shall not be subject to any form
21 of judicial review at the instance of the agency or a
22 supporting party.

23 (c) Other review.--Nothing under this section shall affect
24 the right of a person adversely affected by a regulation or
25 change in it to obtain a determination of the validity thereof
26 in any appropriate proceeding.

27 § 308. Format of regulations and other documents.

28 The agency text of all regulations and other documents
29 required or authorized to be deposited with the bureau under
30 this subchapter shall be prepared in the form and format

prescribed by regulations promulgated by the joint committee.
The regulations shall require that every administrative
regulation or change in it indicate expressly the statutory or
other authority under which it is promulgated.

§ 309. Deposit of agency text of regulations required.

The agency text of all administrative and other regulations
and changes to the regulations, certified by the executive
officer, chair or secretary of the agency, shall be deposited
with the bureau in the manner required under 45 Pa.C.S. § 722(a)
(relating to deposit of documents required).

§ 310. Unfiled regulations invalid.

An administrative regulation or change in it promulgated
after July 1, 1969, shall not be valid for any purpose until
filed by the bureau, as provided under 45 Pa.C.S. § 722(a)
(relating to deposit of documents required).

SUBCHAPTER B

LEGAL REVIEW

Sec.

311. Definitions.

312. General Counsel.

313. Attorney General.

§ 311. Definitions.

The following words and phrases when used in this subchapter
shall have the meanings given to them in this section unless the
context clearly indicates otherwise:

"Commonwealth agency." Any executive agency or independent
agency.

"Executive agency." The Governor and the departments,
boards, commissions, authorities and other officers and agencies
of the Commonwealth government. The term does not include any

court or other officer or agency of the unified judicial system,
the General Assembly and its officers and agencies or any
independent agency.

"Independent agency." The Office of Attorney General; the
Department of the Auditor General, including the Board of
Claims; the Treasury Department; the Pennsylvania Public Utility
Commission; the Pennsylvania Fish and Boat Commission; the
Pennsylvania Game Commission; the Pennsylvania Historical and
Museum Commission; the State Civil Service Commission; the
Pennsylvania Turnpike Commission; the Milk Marketing Board; the
Pennsylvania Liquor Control Board; the Pennsylvania Human
Relations Commission; the Pennsylvania Labor Relations Board;
the Pennsylvania Securities Commission; the State Tax
Equalization Board; Pennsylvania Higher Education Assistance
Agency; the Pennsylvania Commission on Crime and Delinquency;
and the State Ethics Commission.

§ 312. General Counsel.

The General Counsel shall review and approve for form and
legality all proposed regulations of executive agencies before
they are deposited with the Legislative Reference Bureau as
required under section 309 (relating to deposit of agency text
of regulations required).

§ 313. Attorney General.

(a) Review of regulations.--The Attorney General shall
review for form and legality all proposed regulations of
Commonwealth agencies before they are deposited with the
Legislative Reference Bureau as required under section 309
(relating to deposit of agency text of regulations required).

(b) Determination of invalidity.--If the Attorney General
determines that a regulation is in improper form, not

1 statutorily authorized or unconstitutional, within 30 days after
2 submission, the Attorney General shall notify in writing the
3 agency affected, the Office of General Counsel and the General
4 Assembly through the offices of the Secretary of the Senate and
5 the Chief Clerk of the House of Representatives of the reasons
6 for the determination.

7 (c) Response by Commonwealth agency.--

8 (1) The Commonwealth agency may revise a regulation to
9 meet the objections of the Attorney General and submit the
10 revised version for review.

11 (2) If the Commonwealth agency disagrees with the
12 objection, it may promulgate the regulation with or without
13 revisions and shall publish with it a copy of the Attorney
14 General's objections.

15 (d) Response by Attorney General.--The Attorney General may
16 appeal a decision under subsection (c) (2) by filing a petition
17 for review with the Commonwealth Court in the manner as is
18 provided for appeals from final orders of government agencies
19 under 42 Pa.C.S. § 763 (relating to direct appeals from
20 government agencies) and may include in the petition a request
21 for a stay or supersedeas of the implementation of the
22 regulation which, upon a proper showing, shall be granted.

23 (e) Deemed approval.--If a regulation has been submitted to
24 the Attorney General and the Attorney General has not approved
25 it or objected to it within 30 days after submission, the
26 regulation shall be deemed to have been approved.

27 SUBCHAPTER C

28 FISCAL REVIEW

29 Sec.

30 321. Definitions.

1 322. Fiscal notes.

2 § 321. Definitions.

3 The following words and phrases when used in this subchapter
4 shall have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

6 "Office." The Office of the Budget.

7 "Secretary." The Secretary of the Budget.

8 § 322. Fiscal notes.

9 (a) Duty.--The office shall prepare a fiscal note for
10 regulatory actions and administrative procedures of the
11 administrative departments, boards, commissions or authorities
12 receiving money from the Treasury Department. The fiscal note
13 shall state whether the proposed action or procedure causes a
14 loss of revenue or an increase in the cost of programs to the
15 Commonwealth or its political subdivisions.

16 (b) Publication.--A regulatory action or an administrative
17 procedure which requires a fiscal note shall be published in the
18 Pennsylvania Bulletin. The fiscal note shall be published in the
19 Pennsylvania Bulletin at the same time the proposed change is
20 advertised.

21 (c) Contents.--The fiscal note shall provide the following
22 information:

23 (1) The designation of the fund out of which the
24 appropriation providing for expenditures under the action or
25 procedure shall be made.

26 (2) The probable cost for the fiscal year the program is
27 implemented.

28 (3) A projected cost estimate of the program for each of
29 the five succeeding fiscal years.

30 (4) The fiscal history of the program for which

expenditures are to be made.

(5) The probable loss of revenue for the fiscal year of its implementation.

(6) A projected loss of revenue from the program for each of the five succeeding fiscal years.

(7) The line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures.

(8) The recommendation, if any, of the secretary and the reasons therefor.

SUBCHAPTER D

INDEPENDENT REGULATORY REVIEW COMMISSION

Sec.

331. Scope of subchapter.

332. Legislative declarations.

333. Definitions.

334. Composition of commission; membership; compensation; vacancies; removal.

335. Proposed regulations; procedures for review.

335.1. Final-form regulations and final-omitted regulations; procedures for review.

335.2. Criteria for review of regulations.

336. Procedures for disapproval of final-form and final-omitted regulations; emergency-certified regulations.

337. Procedures for subsequent review of disapproved final-form or final-omitted regulations.

337.1. Classification of documents.

338. Changes in final-form and final-omitted regulations.

338.1. Existing regulations.

1 339. Commission staff.

2 340. Subpoena power.

3 341. Regulations; annual reports; hearings and advisory group
4 meetings.

5 342. Clearinghouse.

6 342.1. Gubernatorial review.

7 § 331. Scope of subchapter.

8 This subchapter relates to regulatory review.

9 § 332. Legislative declarations.

10 (a) Findings.--The General Assembly has enacted a large
11 number of statutes and has conferred on boards, commissions,
12 departments and agencies within the executive branch of
13 government the authority to adopt rules and regulations to
14 implement those statutes. The General Assembly has found that
15 this delegation of its authority has resulted in regulations
16 being promulgated without undergoing effective review concerning
17 cost benefits, duplication, inflationary impact and conformity
18 to legislative intent. The General Assembly finds that it must
19 establish a procedure for oversight and review of regulations
20 adopted under this delegation of legislative power in order to
21 curtail excessive regulation and to require the executive branch
22 to justify its exercise of the authority to regulate before
23 imposing hidden costs upon the economy of Pennsylvania.

24 (b) Intent.--It is the intent of this subchapter to:

25 (1) Establish a method for ongoing and effective
26 legislative review and oversight in order to foster executive
27 branch accountability and to provide for primary review by a
28 commission with sufficient authority, expertise, independence
29 and time to perform that function.

30 (2) Provide ultimate review of regulations by the

1 General Assembly.

2 (3) Assist the Governor, the Attorney General and the
3 General Assembly in their supervisory and oversight
4 functions.

5 (4) Encourage, to the greatest extent possible, the
6 resolution of objections to a regulation and the reaching of
7 a consensus among the commission, the standing committees,
8 interested parties and the agency.

9 (c) Right or benefit.--This subchapter is not intended to
10 create a right or benefit, substantive or procedural,
11 enforceable at law by a person against another person or against
12 the Commonwealth, its agencies or its officers.

13 § 333. Definitions.

14 The following words and phrases when used in this subchapter
15 shall have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Agency." Any department, departmental administrative board
18 or commission, independent board or commission, agency or other
19 authority of this Commonwealth. The term shall not include the
20 Senate or the House of Representatives, the Pennsylvania Fish
21 and Boat Commission, the Pennsylvania Game Commission or any
22 court, political subdivision, municipal or local authority.

23 "Commission." The Independent Regulatory Review Commission.

24 "Committee." A standing committee of the Senate or the House
25 of Representatives designated by the President pro tempore of
26 the Senate for the Senate or by the Speaker of the House of
27 Representatives for the House. The designation shall prescribe
28 the jurisdiction of each standing committee over the various
29 State agencies for purposes of this subchapter. The designation
30 shall be transmitted to the Legislative Reference Bureau for

1 publication in the Pennsylvania Bulletin.

2 "Family." A parent, spouse, child, brother or sister.

3 "Final-form regulation." A regulation previously published
4 as a proposed regulation under Subchapter A (relating to
5 commonwealth documents law), which an agency submits to the
6 commission and the committees following the close of the public
7 comment period.

8 "Final-omitted regulation." A regulation which an agency
9 submits to the commission and the committees for which the
10 agency has omitted notice of proposed rulemaking under section
11 306 (relating to omission of notice of proposed rulemaking).

12 "Promulgate." To publish an order adopting a final-form or
13 final-omitted regulation in accordance with Subchapter A
14 (relating to commonwealth documents law).

15 "Proposed regulation." A document intended for promulgation
16 as a regulation which an agency submits to the commission and
17 the committees and for which the agency gives notice of proposed
18 rulemaking and holds a public comment period under Subchapter A
19 (relating to commonwealth documents law).

20 "Regulation."

21 (1) The term shall include:

22 (i) Any rule or regulation or order in the nature of
23 a rule or regulation promulgated by an agency under
24 statutory authority in the administration of any statute
25 administered by or relating to the agency or amending,
26 revising or otherwise altering the terms and provisions
27 of an existing regulation, or prescribing the practice or
28 procedure before the agency.

29 (ii) Actions of the Pennsylvania Liquor Control
30 Board which have an effect on the discount rate for

1 retail licensees.

2 (iii) Notwithstanding paragraph (2), a regulation
3 which may be promulgated by an agency, only with the
4 approval of the Governor.

5 (2) The term shall not include a proclamation, executive
6 order, directive or similar document issued by the Governor.

7 "Withdrawal." Removal of a proposed, final-form or final-
8 omitted regulation by an agency from the review process so that
9 the commission and the committees are prevented from taking
10 further action on the regulation.

11 § 334. Composition of commission; membership; compensation;
12 vacancies; removal.

13 (a) Composition.--The commission shall consist of five
14 members to be known as commissioners. One commissioner shall be
15 appointed by the Governor to serve at the Governor's pleasure,
16 one by the President pro tempore of the Senate, one by the
17 Speaker of the House of Representatives, one by the Minority
18 Leader of the Senate and one by the Minority Leader of the House
19 of Representatives. A member of the General Assembly or any
20 other officer or employee of State government may not serve as a
21 commissioner, but a commissioner may serve on advisory boards
22 and commissions or on other boards and commissions which do not
23 promulgate any rules and regulations which may come before the
24 commission for review under this subchapter.

25 (b) Term.--Each appointment provided for under subsection
26 (a), except for the Governor's appointment, shall be for a term
27 of three years.

28 (c) Vacancy.--An appointment to fill a vacancy for the
29 remainder of the unexpired term shall be made in the same manner
30 as set forth under subsection (a). Upon the expiration of a

commissioner's term of office, the commissioner shall continue to hold office until a successor is appointed.

(d) Compensation.--The commissioner who is elected to serve as the chairperson in accordance with subsection (g) shall receive \$300 per day as compensation for services rendered to the commission. Each of the other commissioners shall receive \$250 per day as compensation for services rendered to the commission. A commissioner shall also be entitled to reimbursement for travel and other necessary expenses incurred as a result of official duties. The expenses incurred by a commissioner or by an employee of the commission shall be paid on the presentation of itemized vouchers for the expenses. The vouchers shall be subject to the approval of the commission.

(e) Removal.--Except as authorized under subsection (f) or (h) and except for the Governor's appointee who shall serve at the Governor's pleasure, a commissioner may not be removed during the commissioner's term of office. The Governor may, with the approval of two-thirds of the members of the Senate, upon clear and convincing evidence of misfeasance or malfeasance in office or neglect of duty, remove a commissioner prior to the expiration of the commissioner's term. The Governor shall provide the commissioner to be removed with a detailed written statement of the reasons for removal.

(f) Suspension.--A commissioner formally charged before a court of record with the commission of a felony or with a misdemeanor under 18 Pa.C.S. Pt. II Art. E (relating to offenses against public administration) shall immediately be suspended as a commissioner until the charge is dismissed or a verdict of acquittal is announced. If a commissioner pleads guilty or nolo contendere or is found guilty of the offense, or receives

1 probation without verdict, disposition in lieu of trial or an
2 accelerated rehabilitative disposition for felony or misdemeanor
3 charges in this Commonwealth or in any other jurisdiction, the
4 commissioner shall immediately be removed from the commission
5 upon announcement of the verdict or disposition by the court or
6 upon the court's acceptance of a plea of guilty or nolo
7 contendere.

8 (f.1) Financial interest.--

9 (1) A commissioner may not participate in deliberations
10 regarding any regulation which significantly affects the
11 operation or activities of any organization in which the
12 commissioner or any member of the commissioner's family owns
13 shares of stock in excess of 5% of the total issue of the
14 stock, has an ownership interest in excess of 5% of the total
15 ownership or serves as an officer, director, trustee, partner
16 or employee. For the purposes of this paragraph, an
17 organization shall not include a nonprofit organization
18 certified under section 501(c)(3) of the Internal Revenue
19 Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) in
20 which the commissioner holds a nonsalaried position.

21 (2) Within 90 days of appointment, and annually
22 thereafter, each commissioner shall disclose all business
23 affiliations and financial interests. The disclosure
24 statement shall be filed with the executive director of the
25 commission and the State Ethics Commission and shall be
26 available for public inspection during business hours of the
27 commission. Each commissioner's disclosure statement shall
28 remain on file as long as the commissioner remains on the
29 commission.

30 (3) If a commissioner has or may have a conflict of

1 interest or feels another commissioner has or may have a
2 conflict of interest in deliberating on a regulation, the
3 commissioner shall, prior to the vote on the regulation,
4 disclose the conflict or potential conflict.

5 (4) The commissioner may request a ruling from the
6 chairperson of the commission upon the question of whether
7 the conflict or potential conflict disqualifies the
8 commissioner from voting on the regulation. A commissioner
9 may challenge the ruling of the chairperson. If a ruling is
10 challenged, the question shall be resolved by majority vote
11 of the commission.

12 (5) The chairperson or a majority of the commissioners
13 may request the State Ethics Commission to provide advice
14 regarding conflicts of interest. If advice is given by the
15 State Ethics Commission, it shall be binding upon the
16 commission.

17 (6) A commissioner commits a misdemeanor of the second
18 degree by knowingly and intentionally violating the
19 provisions of this subsection.

20 (7) The commission or its employees when acting in good
21 faith on an opinion issued to a commissioner by the
22 chairperson or the State Ethics Commission shall not be
23 subject to criminal or civil penalties levied under 65
24 Pa.C.S. Ch. 11 (relating to ethics standards and financial
25 disclosure) for so acting, if the material facts are as
26 stated in the request for an opinion.

27 (8) In addition to the requirements of this subchapter,
28 a commissioner shall be subject to the act of October 4, 1978
29 (P.L.883, No.170), referred to as the Public Official and
30 Employee Ethics Law.

1 (g) Chairperson.--The commission shall elect a chairperson,
2 who shall serve for a term of two years and until a successor is
3 elected. The chairperson shall preside at meetings of the
4 commission and shall execute documents relating to the formal
5 actions of the commission.

6 (h) Meetings.--The commission shall meet before the period
7 for its review of regulations under this subchapter expires and
8 at other times as necessary to transact the business of the
9 commission and ensure an expeditious and orderly review of
10 regulations under this subchapter. Meetings shall be held at
11 times and places set by the chairperson. A meeting may be
12 scheduled by the commission upon the provision of at least ten
13 days' notice to all affected agencies and the committees. A
14 commissioner who does not attend three consecutive meetings
15 without cause may be removed as a commissioner by the authority
16 appointing the commissioner.

17 (i) Quorum.--For purposes of conducting official business, a
18 quorum consists of three commissioners. A commissioner must be
19 physically present to be counted toward the quorum. If the
20 commission is unable to conduct business for lack of a quorum,
21 the deadline for the commission to take action on a regulation
22 in accordance with this subchapter shall be postponed for 30
23 days or until the next meeting at which a quorum is in
24 attendance, whichever occurs first.

25 § 335. Proposed regulations; procedures for review.

26 (a) General rule.--On the same date that an agency submits a
27 proposed regulation to the Legislative Reference Bureau for
28 publication of notice of proposed rulemaking in the Pennsylvania
29 Bulletin as required under Subchapter A (relating to
30 commonwealth documents law), the agency shall submit to the

1 commission and the committees a copy of the proposed regulation
2 and a regulatory analysis form which includes the following:

3 (1) The title of the agency and the names, office
4 addresses and telephone numbers of the agency officials
5 responsible for responding to questions regarding the
6 regulation or for receiving comments relating to the
7 regulation.

8 (1.1) A specific citation to the Federal or State
9 statutory or regulatory authority or the decision of a
10 Federal or State court under which the agency is proposing
11 the regulation, which the regulation is designed to implement
12 or which may mandate or affect compliance with the
13 regulation.

14 (2) A concise and, when possible, nontechnical
15 explanation of the proposed regulation.

16 (3) A statement of the need for the regulation.

17 (4) Estimates of the direct and indirect costs to the
18 Commonwealth, to its political subdivisions and to the
19 private sector. Insofar as the proposed regulation relates to
20 costs to the Commonwealth, the agency may submit in lieu of
21 its own statement the fiscal note prepared by the Office of
22 the Budget under Subchapter C (relating to fiscal review).

23 (5) A statement of legal, accounting or consulting
24 procedures and additional reporting, recordkeeping or other
25 paperwork, including copies of forms or reports, which will
26 be required for implementation of the regulation and an
27 explanation of measures which have been taken to minimize
28 these requirements.

29 (6) (Reserved).

30 (7) A schedule for review of the proposed regulation,

1 including the date by which the agency must receive comments,
2 the date or dates on which public hearings will be held, the
3 expected date of promulgation of the proposed regulation as a
4 final-form regulation, the expected effective date of the
5 final-form regulation, the date by which compliance with the
6 final-form regulation will be required and the date by which
7 required permits, licenses or other approvals must be
8 obtained.

9 (8) (Reserved).

10 (9) An identification of the types of persons,
11 businesses and organizations which would be affected by the
12 regulation.

13 (10) An identification of the financial, economic and
14 social impact of the regulation on individuals, business and
15 labor communities and other public and private organizations
16 and, when practicable, an evaluation of the benefits expected
17 as a result of the regulation.

18 (11) A description of any special provisions which have
19 been developed to meet the particular needs of affected
20 groups and persons, including minorities, the elderly, small
21 businesses and farmers.

22 (12) A description of any alternative regulatory
23 provisions which have been considered and rejected and a
24 statement that the least burdensome acceptable alternative
25 has been selected.

26 (13) A description of the plan developed for evaluating
27 the continuing effectiveness of the regulation after its
28 implementation.

29 (b) Publication of information and public comment period.--

30 (1) The requirements of subsection (a) shall not

1 diminish the requirements of section 303 (relating to notice
2 of proposed rulemaking), but the information required under
3 this section may be included in the Notice of Proposed
4 Rulemaking published in the Pennsylvania Bulletin in lieu of
5 the information required under section 303(2) and (3).

6 (2) The agency shall hold a public comment period which
7 shall commence with the publication of the notice of proposed
8 rulemaking and shall continue for not less than 30 days
9 unless section 305(1) or (2) (relating to effective date of
10 regulations) applies.

11 (c) Copy of comments, reports and other documents to be
12 provided.--

13 (1) From the date of submission of the proposed
14 regulation, the agency shall submit to the commission and the
15 committees, within five business days of receipt, a copy of
16 comments which the agency receives relating to the proposed
17 regulation.

18 (2) The agency shall also, upon request, submit to the
19 commission and the committees copies of reports from advisory
20 groups and other documents received from or disseminated to
21 the public relating to the proposed regulation and public
22 notices or announcements relating to solicitation of public
23 comments or meetings which the agency held or will hold
24 relating to the proposed regulation.

25 (d) Committee response.--The committees may, at any time
26 prior to the submittal of the regulation in final-form, convey
27 to the agency and the commission their comments, recommendations
28 and objections to the proposed regulation and a copy of any
29 staff reports deemed pertinent. The comments, recommendations
30 and objections may refer to the criteria under section 335.2

1 (relating to criteria for review of regulations).

2 (e) (Reserved).

3 (f) Time for submitting proposed regulation to committees.--

4 (1) An agency may not submit a proposed regulation to
5 the committees for review during the period from the end of
6 the legislative session in an even-numbered year to the date
7 by which both committees have been designated in the next
8 succeeding legislative session, but an agency may submit a
9 proposed regulation and the material required under
10 subsection (a) to the commission and the Legislative
11 Reference Bureau during this period in accordance with
12 subsection (a).

13 (2) The public comment period shall commence with the
14 publication of the notice of proposed rulemaking and end on
15 the date designated by the agency under subsection (b).

16 (3) The agency shall submit the proposed regulation and
17 required material to the committees no later than the second
18 Monday after the date by which both committee designations
19 have been published in the Pennsylvania Bulletin.

20 (4) If the agency does not deliver the proposed
21 regulation and all material required under this section in
22 the time prescribed under this subsection, the agency shall
23 be deemed to have withdrawn the proposed regulation.

24 (g) Commission response.--

25 (1) The commission may, within 30 days after the close
26 of the public comment period, convey to the agency and
27 committees any comments, recommendations and objections to
28 the proposed regulation. The comments, recommendations and
29 objections shall specify the regulatory review criterion
30 stated under section 335.2 which the proposed regulation has

1 not met.

2 (2) The following apply:

3 (i) If the commission does not comment on, make
4 recommendations regarding or object to any portion of the
5 proposed regulation within the time provided under this
6 subsection, the commission shall be deemed to have
7 approved that portion of the proposed regulation.

8 (ii) Disapproval of the final-form regulation by the
9 commission shall relate only to comments, recommendations
10 and objections raised by the commission to the proposed
11 regulation to changes which the agency made to the
12 proposed regulation or to recommendations, comments or
13 objections which a committee conveyed to the agency or
14 the commission.

15 § 335.1. Final-form regulations and final-omitted regulations;
16 procedures for review.

17 (a) Duties of agency.--

18 (1) The agency shall review and consider public comments
19 and the comments of the committees and commission under this
20 section.

21 (2) Within five business days of receipt of a public
22 comment, the agency shall notify the commentator of the
23 agency's address and telephone number where the commentator
24 may submit a request for the information concerning the
25 final-form regulation under subsection (b).

26 (3) Upon completion of the agency's review of comments,
27 the agency shall submit to the commission and the committees
28 a copy of its response to the comments received, the names
29 and addresses of commentators who have requested additional
30 information relating to the final-form regulation and the

1 text of the final-form regulation which the agency intends to
2 adopt.

3 (4) If an agency does not submit or withdraws and does
4 not resubmit the final-form regulation within two years of
5 the close of the public comment period but still desires to
6 promulgate the final-form regulation, the agency shall
7 republish the regulation as a proposed regulation with a new
8 public comment period in accordance with Subchapter A
9 (relating to commonwealth documents law).

10 (5) If the agency is prevented from delivering its
11 final-form regulation to the commission and the committees
12 within the time period provided for under this subsection
13 because of the adjournment sine die or expiration of the
14 legislative session in an even-numbered year, the agency
15 shall deliver its final-form regulation in accordance with
16 subsection (f).

17 (b) Notice of submission to commentators.--

18 (1) On the same date that the agency submits the
19 material required under subsection (a) to the commission and
20 the committees, the agency shall send a notice of submission
21 and a copy of the text of the final-form regulation or a copy
22 of all changes to the proposed regulation which are
23 incorporated into the final-form regulation to each
24 commentator who requested this information under subsection
25 (a).

26 (2) The agency is not required to notify each party
27 whose name appears on petitions or membership lists who did
28 not present individual comments on the regulation.

29 (c) Time period for filing.--

30 (1) The agency shall submit final-omitted regulations to

1 the commission and the committees for review under this
2 section on the same date that the agency submits the
3 regulations for review under section 313 (relating to
4 Attorney General). The requirements of section 335 (relating
5 to proposed regulations; procedures for review), except for
6 the requirements for holding a public comment period and for
7 notifying commentators, are applicable to final-omitted
8 regulations.

9 (2) If the agency makes revisions under subsection (g),
10 the agency shall deliver copies of the revisions to the
11 Attorney General on the same date that the agency delivers
12 the revisions to the commission and the committees.

13 (d) (Reserved).

14 (e) Approval and disapproval.--The commission may have until
15 its next scheduled meeting which occurs no less than 30 days
16 after receipt of the final-form or final-omitted regulation to
17 approve or disapprove the final-form or final-omitted
18 regulation. The commission shall notify the agency and the
19 committees of its approval or disapproval. If the commission
20 does not disapprove the final-form or final-omitted regulation
21 within the time allotted under this subsection, the commission
22 shall be deemed to have approved the final-form or final-omitted
23 regulation.

24 (f) Delivery.--An agency may not deliver a final-form or
25 final-omitted regulation to the commission and the committees
26 after the adjournment sine die or expiration of the legislative
27 session in an even-numbered year. The agency may not deliver the
28 final-form or final-omitted regulation until the fourth Monday
29 in January of the next year. On that date, the agency shall
30 resubmit the final-form or final-omitted regulation and required

1 material to the committees and the commission. If either
2 committee has not been designated by the fourth Monday in
3 January, the agency may not deliver the final-form or final-
4 omitted regulation and required material to the committees and
5 the commission until both committees are designated.

6 (g) Changes.--Except as provided under this subsection, the
7 agency may not make any changes to a final-form or final-omitted
8 regulation after the agency submits the final-form or final-
9 omitted regulation to the commission and the committees.

10 (1) Prior to the expiration of the date on which either
11 of the committees takes action on the final-form or final-
12 omitted regulation, under subsection (j.2) or (j.3) or the
13 expiration of the commission's review period prescribed under
14 subsection (e), whichever occurs first, the agency may,
15 unless the commission shall object, toll the time for the
16 commission's and the committees' review of the final-form or
17 final-omitted regulation in order to allow time for the
18 agency to consider revisions to the final-form or final-
19 omitted regulation recommended by the commission or a
20 committee.

21 (2) Tolling under paragraph (1) may last for up to 30
22 days. If within 30 days the agency does not submit revisions
23 to the committees and the commission or does not notify the
24 commission and the committees in writing that it will not
25 submit revisions but wishes the commission and the committees
26 to resume their review, the agency shall be deemed to have
27 withdrawn the final-form or final-omitted regulation.

28 (3) The committees shall have the remainder of the 20-
29 day review period or ten days from the date of receipt of the
30 revised final-form or final-omitted regulation or written

1 notification under paragraph (2), whichever is longer, to
2 take action under subsection (j.2) or (j.3), and the
3 commission may have until its next scheduled meeting which
4 occurs after the expiration of the committee review period,
5 but not less than 15 days after receipt of the revised final-
6 form or final-omitted regulation or written notification
7 under paragraph (2) to review the final-form or final-omitted
8 regulation. If the commission does not disapprove the final-
9 form or final-omitted regulation or a committee does not
10 notify the commission and the agency that it has disapproved
11 the regulation or that it intends to review the regulation
12 under subsection (j.2), within the respective time periods,
13 the regulation shall be deemed approved.

14 (4) The agency may not toll the time for review of any
15 final-form or final-omitted regulation more than one time.

16 (5) The agency may not submit revisions or notification
17 that the regulation will not be revised after the adjournment
18 sine die or the expiration of the legislative session in an
19 even-numbered year. If the committees and the commission are
20 prevented from completing their review under this subsection
21 because of the adjournment sine die or the expiration of the
22 legislative session in an even-numbered year, the agency
23 shall resubmit the final-form or final-omitted regulation and
24 review shall proceed in accordance within subsection (j.3).

25 (h) (Reserved).

26 (i) (Reserved).

27 (j) Comments.--The commission shall accept public comments
28 only up to 48 hours prior to the commission's public meeting
29 unless the comments are submitted at the request of the
30 commission. The commission shall receive comments from the

1 agency or members of the General Assembly until the commission
2 acts on the regulation. The commission shall transmit comments
3 received during the 48-hour period prior to the commission's
4 public meeting to the agency and the committees upon receipt.
5 The commission shall accept additional public comments only
6 after the public meeting has been called to order.

7 (j.1) Time for action.--A committee shall have at least 20
8 days from receipt of the information required under subsection
9 (a) or receipt of the information required under subsection (c)
10 to take action under subsection (j.2). If the committees are
11 prevented from completing their 20-day review because of the
12 adjournment sine die or expiration of the legislative session in
13 an even-numbered year, their review of the final-form or final-
14 omitted regulation shall automatically be suspended until the
15 fourth Monday in January of the next year. On that date, the
16 agency shall resubmit the final-form or final-omitted regulation
17 and required material to the committees and the commission.

18 (1) If either committee has not been designated by the
19 fourth Monday in January, the agency may not deliver the
20 final-form or final-omitted regulation and required material
21 to the commission and the committees until both committees
22 have been designated.

23 (2) If the agency does not deliver the final-form or
24 final-omitted regulation and required material to the
25 commission and the committees by the second Monday after the
26 date by which both committee designations have been published
27 in the Pennsylvania Bulletin, the agency shall be deemed to
28 have withdrawn the regulation.

29 (3) In computing the remaining time for committee
30 review, the number of days in which the committees have had

1 the final-form or the final-omitted regulation under review
2 as of the adjournment sine die or expiration of the prior
3 session shall be subtracted from the 20-day committee review
4 period, but the committee review period in the next
5 succeeding legislative session shall not be less than ten
6 days.

7 (4) The commission shall not act on a regulation until
8 the committee review period has expired. This section shall
9 not apply to emergency-certified regulations adopted under
10 the provisions of section 336(d) (relating to procedures for
11 disapproval of final-form and final-omitted regulations;
12 emergency-certified regulations).

13 (j.2) Notification of approval and disapproval.--At any time
14 during the commission's review period up to 24 hours prior to
15 the opening of the commission's public meeting, a committee may
16 notify the commission and the agency that it has approved or
17 disapproved a final-form or final-omitted regulation or that it
18 intends to review the regulation. If the commission approves a
19 regulation and a committee has not notified the commission and
20 the agency that it has disapproved the regulation or that it
21 intends to review the regulation, the agency may promulgate the
22 regulation. If the commission approves a regulation and a
23 committee has notified the commission and the agency that it has
24 disapproved the regulation or that it intends to review the
25 regulation, the agency may not promulgate the regulation for 14
26 days after the committee has received the commission's approval
27 order. During this 14-day period, the committee may take action
28 on the regulation under section 337(d) (relating to procedures
29 for subsequent review of disapproved final-form or final-omitted
30 regulations). If at the expiration of the 14-day period the

committee has not taken action on the regulation under section
337(d), the agency may promulgate the regulation.

(j.3) Automatic suspension of 14-day review.--If the
committees are prevented from completing their 14-day review
because of adjournment sine die or expiration of the legislative
session in an even-numbered year, their review of the final-form
or final-omitted regulation shall automatically be suspended
until the fourth Monday in January of the next year. On that
date, the agency shall resubmit the final-form or final-omitted
regulation and required material to the committees and the
commission.

(1) If either committee has not been designated by the
fourth Monday in January, the agency may not deliver the
final-form or final-omitted regulation and required material
to the committees and the commission until both committees
are designated.

(2) If the agency does not deliver the final-form or
final-omitted regulation and required material to the
commission and the committees by the second Monday after the
date by which both committee designations have been published
in the Pennsylvania Bulletin, the agency shall be deemed to
have withdrawn the final-form or final-omitted regulation.

(3) In determining the remaining time for committee
review, the number of days in which the committees have had
the final-form or the final-omitted regulation under review
as of the adjournment sine die or expiration of the prior
session shall be subtracted from the 14-day committee review
period, but the committee review period in the next
succeeding legislative session shall not be less than ten
days.

1 (4) An agency may not submit a final-form or final-
2 omitted regulation to the commission or the committees for
3 review during the period from the adjournment sine die or
4 expiration of the legislative session of an even-numbered
5 year to the date by which both committees have been
6 designated in the next succeeding legislative session.

7 (5) This subsection shall not apply to emergency-
8 certified regulations adopted under the provisions of section
9 336(d).

10 (j.4) Disapproval.--If the commission disapproves a final-
11 form or final-omitted regulation, the commission, the committees
12 and the agency will proceed in accordance with section 336.

13 (k) Comment retention.--The commission shall note and shall
14 make a part of the public record all comments which it receives
15 relating to a regulation and shall retain the comments for four
16 years after the promulgation of the regulation.

17 (l) Regulations.--Except for emergency-certified regulations
18 adopted under section 336(d), an agency may not promulgate a
19 regulation until completion of the review provided for under
20 this subchapter.

21 § 335.2. Criteria for review of regulations.

22 (a) Preliminary criteria.--In determining whether a
23 proposed, final-form, final-omitted or existing regulation is in
24 the public interest, the commission shall, first and foremost,
25 determine whether the agency has the statutory authority to
26 promulgate the regulation and whether the regulation conforms to
27 the intention of the General Assembly in the enactment of the
28 statute upon which the regulation is based. In making its
29 determination, the commission shall consider written comments
30 submitted by the committees and current members of the General

1 Assembly, pertinent opinions of Pennsylvania's courts and formal
2 opinions of the Attorney General.

3 (b) General criteria.--Upon a finding that the regulation is
4 consistent with the statutory authority of the agency and with
5 the intention of the General Assembly in the enactment of the
6 statute upon which the regulation is based, the commission shall
7 consider the following in determining whether the regulation is
8 in the public interest:

9 (1) Economic or fiscal impacts of the regulation, which
10 include the following:

11 (i) Direct and indirect costs to the Commonwealth,
12 to its political subdivisions and to the private sector.

13 (ii) Adverse effects on prices of goods and
14 services, productivity or competition.

15 (iii) The nature of required reports, forms or other
16 paperwork and the estimated cost of their preparation by
17 individuals, businesses and organizations in the public
18 and private sectors.

19 (iv) The nature and estimated cost of legal,
20 consulting or accounting services which the public or
21 private sector may incur.

22 (v) The impact on the public interest of exempting
23 or setting lesser standards of compliance for individuals
24 or small businesses when it is lawful, desirable and
25 feasible to do so.

26 (2) The protection of the public health, safety and
27 welfare and the effect on this Commonwealth's natural
28 resources.

29 (3) The clarity, feasibility and reasonableness of the
30 regulation to be determined by considering the following:

1 (i) Possible conflict with or duplication of
2 statutes or existing regulations.

3 (ii) Clarity and lack of ambiguity.

4 (iii) Need for the regulation.

5 (iv) Reasonableness of requirements, implementation
6 procedures and timetables for compliance by the public
7 and private sectors.

8 (4) Whether the regulation represents a policy decision
9 of such a substantial nature that it requires legislative
10 review.

11 (5) Comments, objections or recommendations of a
12 committee.

13 (6) Compliance with the provisions of this subchapter or
14 the regulations of the commission in promulgating the
15 regulation.

16 § 336. Procedures for disapproval of final-form and final-
17 omitted regulations; emergency-certified regulations.

18 (a) Order.--If the commission disapproves a final-form or
19 final-omitted regulation, the commission shall deliver its
20 disapproval order to the Legislative Reference Bureau, the
21 committees and the agency. The commission shall notify
22 commentators who have requested additional information under
23 section 335.1(a) (relating to final-form regulations and final-
24 omitted regulations; procedures for review) of the commission's
25 vote to disapprove. The disapproval order shall specify the
26 regulatory review criteria which the final-form or final-omitted
27 regulation has not met. The agency shall review the commission's
28 order and proceed under section 337(a) (relating to procedures
29 for subsequent review of disapproved final-form or final-omitted
30 regulations).

1 (b) Effect.--The commission's order disapproving a final-
2 form or final-omitted regulation shall bar the agency from
3 promulgating that regulation pending subsequent review under
4 section 337.

5 (c) (Reserved).

6 (d) Prohibition.--

7 (1) The commission may not issue an order barring an
8 agency from promulgating a final-form or final-omitted
9 regulation if the Attorney General certifies that the final-
10 form or final-omitted regulation is required under the decree
11 of any court or to implement the provisions of a statute of
12 the United States or regulations issued thereunder by a
13 Federal agency or if the Governor certifies that the final-
14 form or final-omitted regulation is required to meet an
15 emergency which includes conditions which may threaten the
16 public health, safety or welfare, cause a budget deficit or
17 create the need for supplemental or deficiency appropriations
18 of greater than \$1,000,000. In those cases, the final-form or
19 final-omitted regulation may take effect on the date of
20 publication or on a later date specified in the order
21 adopting the final-form or final-omitted regulation.

22 (2) The commission and the committees shall review the
23 final-form or final-omitted regulation under the procedures
24 provided for under this subchapter. If the final-form or
25 final-omitted regulation is disapproved under those
26 procedures, that regulation shall be rescinded after 120 days
27 or upon final disapproval, whichever occurs later.

28 § 337. Procedures for subsequent review of disapproved final-
29 form or final-omitted regulations.

30 (a) General procedures.--An agency may select one of the

following options for proceeding with a regulation which has
been disapproved by the commission:

(1) To proceed further with the final-form or final-
omitted regulation under subsection (b).

(2) To proceed further with the final-form or final-
omitted regulation under subsection (c).

(3) To withdraw the final-form or final-omitted
regulation.

(b) Report.--

(1) If the agency decides to adopt the final-form or
final-omitted regulation without revisions or further
modifications, the agency shall submit a report to the
committees and the commission within 40 days of the agency's
receipt of the commission's disapproval order. The agency's
report shall contain the final-form or final-omitted
regulation, the commission's disapproval order and the
agency's response and recommendations regarding the final-
form or final-omitted regulation.

(2) If the committees are prevented from receiving the
report because of adjournment sine die or expiration of the
legislative session in an even-numbered year, the agency
shall submit its report to the commission and the committees
on the fourth Monday in January of the next year. If either
committee has not been designated by the fourth Monday in
January, the agency may not deliver the report to the
committees and the commission until both committees are
designated, but the agency shall deliver its report to the
commission and the committees no later than the second Monday
after the date by which both committee designations have been
published in the Pennsylvania Bulletin.

1 (3) If the agency does not deliver the report to the
2 committees and the commission in the time prescribed under
3 this subsection, the agency shall be deemed to have withdrawn
4 the final-form or final-omitted regulation.

5 (c) Modifications before report.--

6 (1) If the agency decides to revise or modify the final-
7 form or final-omitted regulation in order to respond to
8 objections raised by the commission and adopt that regulation
9 with revisions or modifications, the agency shall submit a
10 report to the committees and the commission within 40 days of
11 the agency's receipt of the commission's disapproval order.
12 The agency's report shall contain the revised final-form or
13 final-omitted regulation, the findings of the commission and
14 the agency's response and recommendations regarding the
15 revised final-form or final-omitted regulation.

16 (2) If the committees are prevented from receiving the
17 report because of adjournment sine die or expiration of the
18 legislative session in an even-numbered year, the agency
19 shall submit the report to the commission and the committees
20 on the fourth Monday in January of the next year. If either
21 committee has not been designated by the fourth Monday in
22 January, the agency may not deliver the report to the
23 committees and the commission until both committees are
24 designated, but the agency shall deliver its report to the
25 commission and the committees no later than the second Monday
26 after the date by which both committee designations have been
27 published in the Pennsylvania Bulletin.

28 (3) If the agency does not deliver its report to the
29 commission and the committees in the time prescribed in this
30 subsection, the agency shall be deemed to have withdrawn the

1 final-form or final-omitted regulation.

2 (c.1) Approval or disapproval order.--The commission may
3 have until its next scheduled meeting, which occurs no less than
4 15 days from receipt of the agency's report, to approve or
5 disapprove the agency's report. The commission shall deliver its
6 approval or disapproval order to the committees for
7 consideration by the General Assembly under subsection (d).

8 (1) If the commission is prevented from delivering its
9 order to the committees within the time period provided for
10 under this subsection because of the adjournment sine die or
11 expiration of the legislative session in an even-numbered
12 year, the commission shall deliver its order on the fourth
13 Monday of January of the next year.

14 (2) If either committee has not been designated by the
15 fourth Monday in January, the commission may not deliver its
16 order to the committees until both committees are designated,
17 but the commission shall deliver its order no later than the
18 second Monday after the date by which both committee
19 designations have been published in the Pennsylvania
20 Bulletin.

21 (3) If the commission does not deliver its order
22 disapproving the agency's report and revised final-form or
23 final-omitted regulation in the time prescribed under this
24 subsection, the commission shall be deemed to have approved
25 the agency's report and the revised final-form or final-
26 omitted regulation.

27 (d) Legislative presentation by concurrent resolution.--Upon
28 receipt of the commission's order under subsection (c.1) or at
29 the expiration of the commission's review period if the
30 commission does not act on the regulation or does not deliver

1 its order under subsection (c.1), one or both of the committees
2 may, within 14 calendar days, report to the Senate or House of
3 Representatives a concurrent resolution and notify the agency.
4 During the 14-calendar-day period, the agency may not promulgate
5 the final-form or final-omitted regulation.

6 (1) If, by the expiration of the 14-calendar-day period,
7 neither committee reports a concurrent resolution, the
8 committees shall be deemed to have approved the final-form or
9 final-omitted regulation, and the agency may promulgate that
10 regulation.

11 (2) If either committee reports a concurrent resolution
12 before the expiration of the 14-day period, the Senate and
13 the House of Representatives shall each have 30 calendar days
14 or ten legislative days, whichever is longer, from the date
15 on which the concurrent resolution has been reported, to
16 adopt the concurrent resolution.

17 (3) If the General Assembly adopts the concurrent
18 resolution by majority vote in both the Senate and the House
19 of Representatives, the concurrent resolution shall be
20 presented to the Governor in accordance with section 9 of
21 Article III of the Constitution of Pennsylvania.

22 (4) If the Governor does not return the concurrent
23 resolution to the General Assembly within ten calendar days
24 after it is presented, the Governor shall be deemed to have
25 approved the concurrent resolution.

26 (5) If the Governor vetoes the concurrent resolution,
27 the General Assembly may override that veto by a two-thirds
28 vote in each house. The Senate and the House of
29 Representatives shall each have 30 calendar days or ten
30 legislative days, whichever is longer, to override the veto.

1 (6) If the General Assembly does not adopt the
2 concurrent resolution or override the veto in the time
3 prescribed under this subsection, it shall be deemed to have
4 approved the final-form or final-omitted regulation.

5 (7) Notice as to any final disposition of a concurrent
6 resolution considered in accordance with this section shall
7 be published in the Pennsylvania Bulletin.

8 (8) If the General Assembly adopts the concurrent
9 resolution and the Governor approves or is deemed to have
10 approved the concurrent resolution or if the General Assembly
11 overrides the Governor's veto of the concurrent resolution,
12 the agency shall be barred from promulgating the final-form
13 or final-omitted regulation. The bar on promulgation of the
14 final-form or final-omitted regulation shall continue until
15 that regulation has been approved or deemed approved in
16 accordance with this subsection.

17 (9) If the General Assembly does not adopt the
18 concurrent resolution or if the Governor vetoes the
19 concurrent resolution and the General Assembly does not
20 override the Governor's veto, the agency may promulgate the
21 final-form or final-omitted regulation. The General Assembly
22 may, at its discretion, adopt a concurrent resolution
23 disapproving the final-form or final-omitted regulation to
24 indicate the intent of the General Assembly but permit the
25 agency to promulgate that regulation.

26 § 337.1. Classification of documents.

27 If the commission or a committee finds that a published or
28 unpublished document should be promulgated as a regulation, the
29 commission or committee may present the matter to the Joint
30 Committee on Documents. The Joint Committee on Documents shall

determine whether the document should be promulgated as a regulation and may order an agency either to promulgate the document as a regulation within 180 days or to desist from the use of the document in the business of the agency.

§ 338. Changes in final-form and final-omitted regulations.

(a) General rule.--Except as provided in subsection (b), an agency may not make changes to a final-form or final-omitted regulation after that regulation has been approved or has been deemed approved by the committees or the commission under this subchapter.

(b) Exception.--Subsection (a) shall not apply to changes made at the direction of the Office of Attorney General under its review under section 313 (relating to Attorney General).

§ 338.1. Existing regulations.

The commission, on its motion or at the request of any person or member of the General Assembly, may review an existing regulation which has been in effect for at least three years. If a committee of the Senate or the House of Representatives requests a review of an existing regulation, the commission shall perform the review and shall assign it high priority. The commission may submit recommendations to an agency recommending changes in existing regulations if it finds the existing regulations to be contrary to the public interest under the criteria established under section 335.2 (relating to criteria for review of regulations). The commission may also make recommendations to the General Assembly and the Governor for statutory changes if the commission finds that any existing regulation may be contrary to the public interest.

§ 339. Commission staff.

(a) Executive director and other employees.--The commission

1 shall appoint and fix the compensation of a full-time executive
2 director, who shall be responsible for the general supervision
3 of all the affairs of the commission and for performing any
4 administrative function or duty which the commission may
5 delegate to the executive director. The commission shall appoint
6 and fix the compensation of such other employees as the
7 commission may find necessary for the proper operation of the
8 commission.

9 (b) Chief counsel.--The commission shall appoint and fix the
10 compensation of a full-time chief counsel, who shall not be
11 subject to the supervision of the Attorney General or the
12 General Counsel. The chief counsel shall supervise, coordinate
13 and administer the legal services provided to the commission.

14 § 340. Subpoena power.

15 The commission has the authority to issue subpoenas for the
16 purpose of requiring the attendance of persons and the
17 production of documents relating to any function which the
18 commission or its staff is authorized to perform under this
19 subchapter. The chairperson or the executive director may sign a
20 subpoena. The subpoena may be served in any manner authorized
21 under the laws of this Commonwealth. The commission is
22 authorized to apply to the Commonwealth Court to enforce its
23 subpoenas.

24 § 341. Regulations; annual reports; hearings and advisory group
25 meetings.

26 (a) Regulations.--

27 (1) The commission, in the performance of its functions
28 under this subchapter, has the power to promulgate and
29 enforce regulations necessary to carry out the purposes of
30 this subchapter.

1 (2) Regulations must be promulgated in accordance with
2 the procedures established under Subchapter A (relating to
3 commonwealth documents law).

4 (3) The regulations shall provide for the commission's
5 notification of filings of final-form and final-omitted
6 regulations to parties likely to be affected by the final-
7 form and final-omitted regulations through publication of a
8 notice in the Pennsylvania Bulletin.

9 (4) Prior to the regulations taking effect, the
10 requirements of this subchapter must be satisfied. For the
11 purposes of reviewing the regulations of the commission and
12 otherwise satisfying the requirements of this subchapter, the
13 Joint Committee on Documents shall exercise the rights and
14 perform the functions of the commission and the commission
15 shall exercise the rights and perform the functions of an
16 agency under this subchapter.

17 (b) Annual report.--By April 1, the commission shall file an
18 annual report of its activities for the prior calendar year with
19 the Governor, the Secretary of the Senate and the Chief Clerk of
20 the House of Representatives.

21 (c) Hearings.--The commission may hold public hearings on
22 any matter before the commission and may meet with advisory
23 groups regarding matters before the commission.

24 § 342. Clearinghouse.

25 The commission shall act as a clearinghouse for complaints,
26 comments and other input from members of the General Assembly
27 and from the public regarding existing, proposed, final-form and
28 final-omitted regulations. The commission shall maintain
29 accurate records regarding complaints and comments it receives
30 and shall maintain such records by departmental and subject

matter categories for four years after the date of receipt by the commission. When the commission files its annual report as provided under section 341 (relating to regulations; annual reports; hearings and advisory group meetings), the commission shall include within it a summary of public complaint and comment along with any recommendations the commission may offer for statutory change.

§ 342.1. Gubernatorial review.

The Governor may institute procedures for the review and approval of regulations promulgated by executive agencies prior to their submittal for review under this subchapter, including the establishment of a task force or committee, by executive order. The Governor may also establish procedures for the effective coordination of the review of regulations under Subchapters B (relating to legal review) and C (relating to fiscal review) and section 2203-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 3. Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(ii) is necessary to effectuate the addition of 2 Pa.C.S. Ch. 3 Subch. A.

(ii) The repeal under paragraph (2)(iii) is necessary to effectuate the addition of 2 Pa.C.S. Ch. 3 Subch. B.

(iii) The repeal under paragraph (2)(i) is necessary to effectuate the addition of 2 Pa.C.S. Ch. 3 Subch. C.

(iv) The repeal under paragraph (2)(iv) is necessary to effectuate the addition of 2 Pa.C.S. Ch. 3 Subch. D.

(2) The following acts and parts of acts are repealed:

(i) Section 612 of the act of April 9, 1929

(P.L.177, No.175), known as The Administrative Code of 1929.

(ii) The act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(iii) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(iv) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 4. Continuation is as follows:

(1) The addition of 2 Pa.C.S. Ch. 3 Subch. A is a continuation of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. The following apply:

(i) Except as otherwise provided in 2 Pa.C.S. Ch. 3 Subch. A, all activities initiated under the Commonwealth Documents Law shall continue and remain in full force and effect and may be completed under 2 Pa.C.S. Ch. 3 Subch. A. Orders, regulations, rules and decisions which were made under the Commonwealth Documents Law and which are in effect on the effective date of section 3(2)(ii) of this act shall remain in full force and effect until revoked, vacated or modified under 2 Pa.C.S. Ch. 3 Subch. A. Contracts, obligations and collective bargaining agreements entered into under the Commonwealth Documents Law are not affected nor impaired by the repeal of the Commonwealth Documents Law.

(ii) Except as set forth in subparagraph (iii), any difference in language between 2 Pa.C.S. Ch. 3 Subch. A and the Commonwealth Documents Law is intended only to

1 conform to the style of the Pennsylvania Consolidated
2 Statutes and is not intended to change or affect the
3 legislative intent, judicial construction or
4 administration and implementation of the Commonwealth
5 Documents Law.

6 (iii) (Reserved).

7 (2) The addition of 2 Pa.C.S. Ch. 3 Subch. B is a
8 continuation of sections 204(b) and 301(10) of the act of
9 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
10 Attorneys Act. The following apply:

11 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
12 Subch. B, all activities initiated under sections 204(b)
13 and 301(10) of the Commonwealth Attorneys Act shall
14 continue and remain in full force and effect and may be
15 completed under 2 Pa.C.S. Ch. 3 Subch. B. Orders,
16 regulations, rules and decisions which were made under
17 sections 204(b) and 301(10) of the Commonwealth Attorneys
18 Act and which are in effect on the effective date of
19 section 3(2)(iii) of this act shall remain in full force
20 and effect until revoked, vacated or modified under 2
21 Pa.C.S. Ch. 3 Subch. B. Contracts, obligations and
22 collective bargaining agreements entered into under
23 sections 204(b) and 301(10) of the Commonwealth Attorneys
24 Act are not affected nor impaired by the repeal of
25 sections 204(b) and 301(10) of the Commonwealth Attorneys
26 Act.

27 (ii) Except as set forth in subparagraph (iii), any
28 difference in language between 2 Pa.C.S. Ch. 3 Subch. B
29 and sections 204(b) and 301(10) of the Commonwealth
30 Attorneys Act is intended only to conform to the style of

1 the Pennsylvania Consolidated Statutes and is not
2 intended to change or affect the legislative intent,
3 judicial construction or administration and
4 implementation of sections 204(b) and 301(10) of the
5 Commonwealth Attorneys Act.

6 (iii) Subparagraph (ii) does not apply to the
7 addition of 2 Pa.C.S. § 311.

8 (3) The addition of 2 Pa.C.S. Ch. 3 Subch. C is a
9 continuation of section 612 of the act of April 9, 1929
10 (P.L.177, No.175), known as The Administrative Code of 1929.
11 The following apply:

12 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
13 Subch. C, all activities initiated under section 612 of
14 The Administrative Code of 1929 shall continue and remain
15 in full force and effect and may be completed under 2
16 Pa.C.S. Ch. 3 Subch. C. Orders, regulations, rules and
17 decisions which were made under section 612 of The
18 Administrative Code of 1929 and which are in effect on
19 the effective date of section 3(2)(i) of this act shall
20 remain in full force and effect until revoked, vacated or
21 modified under 2 Pa.C.S. Ch. 3 Subch. C. Contracts,
22 obligations and collective bargaining agreements entered
23 into under section 612 of The Administrative Code of 1929
24 are not affected nor impaired by the repeal of section
25 612 of The Administrative Code of 1929.

26 (ii) Except as set forth in subparagraph (iii), any
27 difference in language between 2 Pa.C.S. Ch. 3 Subch. C
28 and section 612 of The Administrative Code of 1929 is
29 intended only to conform to the style of the Pennsylvania
30 Consolidated Statutes and is not intended to change or

1 affect the legislative intent, judicial construction or
2 administration and implementation of section 612 of The
3 Administrative Code of 1929.

4 (iii) Subparagraph (ii) does not apply to the
5 addition of 2 Pa.C.S. § 321.

6 (4) The addition of 2 Pa.C.S. Ch. 3 Subch. D is a
7 continuation of the act of June 25, 1982 (P.L.633, No.181),
8 known as the Regulatory Review Act. The following apply:

9 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
10 Subch. D, all activities initiated under the Regulatory
11 Review Act shall continue and remain in full force and
12 effect and may be completed under 2 Pa.C.S. Ch. 3 Subch.
13 D. Orders, regulations, rules and decisions which were
14 made under the Regulatory Review Act and which are in
15 effect on the effective date of section 3(iv) of this act
16 shall remain in full force and effect until revoked,
17 vacated or modified under 2 Pa.C.S. Ch. 3 Subch. D.
18 Contracts, obligations and collective bargaining
19 agreements entered into under the Regulatory Review Act
20 are not affected nor impaired by the repeal of the
21 Regulatory Review Act.

22 (ii) Except as set forth in subparagraph (iii), any
23 difference in language between 2 Pa.C.S. Ch. 3 Subch. D
24 and the Regulatory Review Act is intended only to conform
25 to the style of the Pennsylvania Consolidated Statutes
26 and is not intended to change or affect the legislative
27 intent, judicial construction or administration and
28 implementation of the Regulatory Review Act.

29 (iii) (Reserved).

30 Section 5. This act shall take effect in 60 days.