

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 865 Session of
2021

INTRODUCED BY KEEFER, COX, ZIMMERMAN, RYAN, GROVE, MOUL,
MILLARD, RADER, PICKETT, ROTHMAN, SAYLOR AND GLEIM,
MARCH 11, 2021

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 11, 2021

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.

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

1 of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth
2 Documents Law."] Short title of title.

3 This title shall be known and may be cited as the
4 Administrative Procedure Code.

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

6 § 105. Local Agency Law.

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

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

12 CHAPTER 3

13 PROMULGATION OF REGULATIONS

14 [(Reserved)]

15 Subchapter

16 A. Commonwealth Documents Law

17 B. Legal Review

18 C. Fiscal Review

19 D. Independent Regulatory Review Commission

20 SUBCHAPTER A

21 COMMONWEALTH DOCUMENTS LAW

22 Sec.

23 301. Scope of subchapter.

24 302. Definitions.

25 303. Notice of proposed rulemaking.

26 304. Adoption of regulations.

27 305. Effective date of regulations.

28 306. Omission of notice of proposed rulemaking.

29 307. Approval as to legality.

30 308. Format of regulations and other documents.

1 309. Deposit of agency text of regulations required.

2 310. Unfiled regulations invalid.

3 § 301. Scope of subchapter.

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

7 § 302. Definitions.

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

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

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

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

25 (1) The Senate.

26 (2) The House of Representatives.

27 (3) A court. This paragraph includes an officer or
28 agency of a court.

29 (4) A political subdivision, municipal authority or
30 other local authority. This paragraph includes an officer or

1 agency of a political subdivision or local authority.
2 "Agency text." The text of a document as issued, prescribed
3 or promulgated by the issuing, prescribing or promulgating
4 agency.

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

9 "Department." The Department of General Services of the
10 Commonwealth.

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

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

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

24 "Regulation." A rule or regulation, or order in the nature
25 of a rule or regulation:

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

29 (2) prescribing the practice or procedure before the
30 agency.

1 "Statement of policy." A document, except an adjudication or
2 a regulation, promulgated by an agency which sets forth
3 substantive or procedural personal or property rights,
4 privileges, immunities, duties, liabilities or obligations of
5 the public or any part of the public. The term includes a
6 document interpreting or implementing a statute enforced or
7 administered by the agency.

8 § 303. Notice of proposed rulemaking.

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

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

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

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

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

28 (5) Any other statement required by law.

29 § 304. Adoption of regulations.

30 Before taking action upon any administrative regulation or

1 change in it, the agency shall review and consider written
2 comments submitted under section 303 (relating to notice of
3 proposed rulemaking) and may hold public hearings as
4 appropriate. If the statute or other authority under which a
5 regulation is proposed to be promulgated, amended or repealed
6 requires the holding of public hearings or establishes other
7 procedures in addition to those prescribed under this
8 subchapter, the agency shall hold public hearings or comply with
9 such other procedures as are not inconsistent with the
10 provisions of this subchapter. The agency text of any
11 administrative regulation or change in it as finally adopted may
12 contain modifications to the proposed text as published under
13 section 303 which do not enlarge the text's original purpose,
14 but modifications which enlarge the original purpose of a
15 proposal as published under section 303 shall be republished
16 under section 303 prior to final adoption by the agency.
17 § 305. Effective date of regulations.

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

- 26 (1) The administrative regulation:
27 (i) grants or recognizes exemption or relieves
28 restriction; or
29 (ii) interprets a self-executing act of Assembly or
30 administrative regulation.

1 (2) The agency for good cause finds, and incorporates
2 the finding and the reasons for the finding in the order
3 adopting the administrative regulation or change in it, that
4 the deferral of the effective date of the administrative
5 regulation or change in it beyond the date specified in the
6 order is impracticable or contrary to the public interest.

7 § 306. Omission of notice of proposed rulemaking.

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

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

15 (i) military affairs;

16 (ii) agency organization, management or personnel;

17 (iii) agency procedure or practice;

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

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

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

27 (3) The agency for good cause finds, and incorporates
28 the finding and a brief statement of the reasons for the
29 finding in the order adopting the administrative regulation
30 or change in it, that the procedures specified under sections

1 303 and 304 are in the circumstances impracticable,
2 unnecessary or contrary to the public interest.

3 § 307. Approval as to legality.

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

8 (b) Appeal.--

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

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

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

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

29 § 308. Format of regulations and other documents.

30 The agency text of all regulations and other documents

1 required or authorized to be deposited with the bureau under
2 this subchapter shall be prepared in the form and format
3 prescribed by regulations promulgated by the joint committee.
4 The regulations shall require that every administrative
5 regulation or change in it indicate expressly the statutory or
6 other authority under which it is promulgated.

7 § 309. Deposit of agency text of regulations required.

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

13 § 310. Unfiled regulations invalid.

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

18 SUBCHAPTER B

19 LEGAL REVIEW

20 Sec.

21 311. Definitions.

22 312. General Counsel.

23 313. Attorney General.

24 § 311. Definitions.

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

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

30 "Executive agency." The Governor and the departments,

1 boards, commissions, authorities and other officers and agencies
2 of the Commonwealth government. The term does not include any
3 court or other officer or agency of the unified judicial system,
4 the General Assembly and its officers and agencies or any
5 independent agency.

6 "Independent agency." The Office of Attorney General; the
7 Department of the Auditor General, including the Board of
8 Claims; the Treasury Department; the Pennsylvania Public Utility
9 Commission; the Pennsylvania Fish and Boat Commission; the
10 Pennsylvania Game Commission; the Pennsylvania Historical and
11 Museum Commission; the State Civil Service Commission; the
12 Pennsylvania Turnpike Commission; the Milk Marketing Board; the
13 Pennsylvania Liquor Control Board; the Pennsylvania Human
14 Relations Commission; the Pennsylvania Labor Relations Board;
15 the Pennsylvania Securities Commission; the State Tax
16 Equalization Board; the Pennsylvania Higher Education Assistance
17 Agency; the Pennsylvania Commission on Crime and Delinquency;
18 and the State Ethics Commission.

19 § 312. General Counsel.

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

25 § 313. Attorney General.

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

1 (b) Determination of invalidity.--If the Attorney General
2 determines that a regulation is in improper form, not
3 statutorily authorized or unconstitutional, within 30 days after
4 submission, the Attorney General shall notify in writing the
5 agency affected, the Office of General Counsel and the General
6 Assembly through the offices of the Secretary of the Senate and
7 the Chief Clerk of the House of Representatives of the reasons
8 for the determination.

9 (c) Response by Commonwealth agency.--

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

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

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

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

29 SUBCHAPTER C

30 FISCAL REVIEW

1 Sec.

2 321. Definitions.

3 322. Fiscal notes.

4 § 321. Definitions.

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

8 "Office." The Office of the Budget.

9 "Secretary." The Secretary of the Budget.

10 § 322. Fiscal notes.

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

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

23 (c) Contents.--The fiscal note shall provide the following
24 information:

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

28 (2) The probable cost for the fiscal year the program is
29 implemented.

30 (3) A projected cost estimate of the program for each of

1 the five succeeding fiscal years.

2 (4) The fiscal history of the program for which
3 expenditures are to be made.

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

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

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

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

14 SUBCHAPTER D

15 INDEPENDENT REGULATORY REVIEW COMMISSION

16 Sec.

17 331. Scope of subchapter.

18 332. Legislative declarations.

19 333. Definitions.

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

22 335. Proposed regulations; procedures for review.

23 335.1. Final-form regulations and final-omitted regulations;
24 procedures for review.

25 335.2. Criteria for review of regulations.

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

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

1 337.1. Classification of documents.

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

4 338.1. Existing regulations.

5 339. Commission staff.

6 340. Subpoena power.

7 341. Regulations; annual reports; hearings and advisory group
8 meetings.

9 342. Clearinghouse.

10 342.1. Gubernatorial review.

11 § 331. Scope of subchapter.

12 This subchapter relates to regulatory review.

13 § 332. Legislative declarations.

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

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

29 (1) Establish a method for ongoing and effective
30 legislative review and oversight in order to foster executive

1 branch accountability and to provide for primary review by a
2 commission with sufficient authority, expertise, independence
3 and time to perform that function.

4 (2) Provide ultimate review of regulations by the
5 General Assembly.

6 (3) Assist the Governor, the Attorney General and the
7 General Assembly in their supervisory and oversight
8 functions.

9 (4) Encourage, to the greatest extent possible, the
10 resolution of objections to a regulation and the reaching of
11 a consensus among the commission, the committees, interested
12 parties and the agency.

13 (c) Additional intent.--This subchapter is intended to
14 improve State rulemaking by creating procedures to analyze the
15 availability of more flexible regulatory approaches for small
16 businesses in accordance with the following findings:

17 (1) A vibrant and growing small business sector is
18 critical to creating jobs in a dynamic economy.

19 (2) Small businesses bear a disproportionate share of
20 regulatory costs and burdens.

21 (3) Fundamental changes that are needed in the
22 regulatory and enforcement culture of agencies to make them
23 more responsive to small businesses can be made without
24 compromising the statutory missions of the agencies.

25 (4) When adopting regulations to protect the health,
26 safety and economic welfare of the Commonwealth, agencies
27 should seek to achieve statutory goals as effectively and
28 efficiently as possible without imposing unnecessary burdens
29 on small businesses.

30 (5) Uniform regulatory and reporting requirements can

1 impose unnecessary and disproportionately burdensome demands,
2 including legal, accounting and consulting costs upon small
3 businesses with limited resources.

4 (6) The failure to recognize differences in the scale
5 and resources of regulated businesses can adversely affect
6 competition in the marketplace, discourage innovation and
7 restrict improvements in productivity.

8 (7) Unnecessary regulations create entry barriers in
9 many industries and discourage potential entrepreneurs from
10 introducing beneficial products and processes.

11 (8) The practice of treating all regulated businesses
12 similarly may lead to inefficient use of regulatory agency
13 resources, enforcement problems and, in some cases, to
14 actions inconsistent with the legislative intent of health,
15 safety, environmental and economic welfare legislation.

16 (9) Alternative regulatory approaches which do not
17 conflict with the stated objective of applicable statutes may
18 be available to minimize the significant economic impact of
19 rules on small businesses.

20 (10) The process by which State regulations are
21 developed and adopted should be reformed to require agencies
22 to solicit the ideas and comments of small businesses, to
23 examine the impact of proposed and existing rules on such
24 businesses and to review the continued need for existing
25 rules.

26 (d) Right or benefit.--This subchapter is not intended to
27 create a right or benefit, substantive or procedural,
28 enforceable at law by a person against another person or against
29 the Commonwealth, its agencies or its officers.

30 § 333. Definitions.

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

4 "Acceptable data." Empirical, replicable and testable data
5 as evidenced in supporting documentation, statistics, reports,
6 studies or research.

7 "Agency." Any department, departmental administrative board
8 or commission, independent board or commission, agency or other
9 authority of this Commonwealth. The term shall not include the
10 Senate or the House of Representatives, the Pennsylvania Fish
11 and Boat Commission, the Pennsylvania Game Commission or any
12 court, political subdivision or municipal or local authority.

13 "Commission." The Independent Regulatory Review Commission.

14 "Committee." A standing committee of the Senate designated
15 by the President pro tempore of the Senate or a standing
16 committee of the House of Representatives as designated by the
17 Speaker of the House of Representatives. The designation shall
18 prescribe the jurisdiction of each standing committee over the
19 various State agencies for purposes of this subchapter. The
20 designation shall be transmitted to the Legislative Reference
21 Bureau for publication in the Pennsylvania Bulletin.

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

23 "Final-form regulation." A regulation previously published
24 as a proposed regulation under Subchapter A (relating to
25 Commonwealth Documents Law), which an agency submits to the
26 commission and the committees following the close of the public
27 comment period.

28 "Final-omitted regulation." A regulation which an agency
29 submits to the commission and the committees for which the
30 agency has omitted notice of proposed rulemaking under section

1 306 (relating to omission of notice of proposed rulemaking).

2 "Promulgate." To publish an order adopting a final-form
3 regulation or final-omitted regulation in accordance with
4 Subchapter A.

5 "Proposed regulation." A document intended for promulgation
6 as a regulation which an agency submits to the commission and
7 the committees and for which the agency gives notice of proposed
8 rulemaking and holds a public comment period under Subchapter A.

9 "Regulation."

10 (1) The term shall include:

11 (i) Any rule or regulation or order in the nature of
12 a rule or regulation promulgated by an agency under
13 statutory authority in the administration of any statute
14 administered by or relating to the agency or amending,
15 revising or otherwise altering the terms and provisions
16 of an existing regulation, or prescribing the practice or
17 procedure before the agency.

18 (ii) Actions of the Pennsylvania Liquor Control
19 Board which have an effect on the discount rate for
20 retail licensees.

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

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

26 "Small business." As defined in accordance with the size
27 standards described by the United States Small Business
28 Administration's Small Business Size Regulations under 13 CFR
29 Ch. 1 Pt. 121 (relating to small business size regulations).

30 "Withdrawal." Removal of a proposed regulation, final-form

1 regulation or final-omitted regulation by an agency from the
2 review process so that the commission and the committees are
3 prevented from taking further action on the regulation.

4 § 334. Composition of commission; membership; compensation;
5 vacancies; removal.

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

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

21 (c) Vacancy.--An appointment to fill a vacancy for the
22 remainder of the unexpired term shall be made in the same manner
23 as set forth under subsection (a). Upon the expiration of a
24 commissioner's term of office, the commissioner shall continue
25 to hold office until a successor is appointed.

26 (d) Compensation.--The commissioner who is elected to serve
27 as the chairperson in accordance with subsection (g) shall
28 receive \$300 per day as compensation for services rendered to
29 the commission. Each of the other commissioners shall receive
30 \$250 per day as compensation for services rendered to the

1 commission. A commissioner shall also be entitled to
2 reimbursement for travel and other necessary expenses incurred
3 as a result of official duties. The expenses incurred by a
4 commissioner or by an employee of the commission shall be paid
5 on the presentation of itemized vouchers for the expenses. The
6 vouchers shall be subject to the approval of the commission.

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

17 (f) Suspension.--A commissioner formally charged before a
18 court of record with the commission of a felony or with a
19 misdemeanor under 18 Pa.C.S. Pt. II Article E (relating to
20 offenses against public administration) shall immediately be
21 suspended as a commissioner until the charge is dismissed or a
22 verdict of acquittal is announced. If a commissioner pleads
23 guilty or nolo contendere or is found guilty of the offense, or
24 receives probation without verdict, disposition in lieu of trial
25 or an accelerated rehabilitative disposition for felony or
26 misdemeanor charges in this Commonwealth or in any other
27 jurisdiction, the commissioner shall immediately be removed from
28 the commission upon announcement of the verdict or disposition
29 by the court or upon the court's acceptance of a plea of guilty
30 or nolo contendere.

1 (f.1) Financial interest.--

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

14 (2) Within 90 days of appointment, and annually
15 thereafter, each commissioner shall disclose all business
16 affiliations and financial interests. The disclosure
17 statement shall be filed with the executive director of the
18 commission and the State Ethics Commission and shall be
19 available for public inspection during business hours of the
20 commission. Each commissioner's disclosure statement shall
21 remain on file as long as the commissioner remains on the
22 commission.

23 (3) If a commissioner has or may have a conflict of
24 interest or feels another commissioner has or may have a
25 conflict of interest in deliberating on a regulation, the
26 commissioner shall, prior to the vote on the regulation,
27 disclose the conflict or potential conflict.

28 (4) The commissioner may request a ruling from the
29 chairperson of the commission upon the question of whether
30 the conflict or potential conflict disqualifies the

1 commissioner from voting on the regulation. A commissioner
2 may challenge the ruling of the chairperson. If a ruling is
3 challenged, the question shall be resolved by majority vote
4 of the commission.

5 (5) The chairperson or a majority of the commissioners
6 may request the State Ethics Commission to provide advice
7 regarding conflicts of interest. If advice is given by the
8 State Ethics Commission, it shall be binding upon the
9 commission.

10 (6) A commissioner commits a misdemeanor of the second
11 degree by knowingly and intentionally violating the
12 provisions of this subsection.

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

20 (8) In addition to the requirements of this subchapter,
21 a commissioner shall be subject to 65 Pa.C.S. Ch. 11.

22 (g) Chairperson.--The commission shall elect a chairperson,
23 who shall serve for a term of two years and until a successor is
24 elected. The chairperson shall preside at meetings of the
25 commission and shall execute documents relating to the formal
26 actions of the commission.

27 (h) Meetings.--The commission shall meet before the period
28 for its review of regulations under this subchapter expires and
29 at other times as necessary to transact the business of the
30 commission and ensure an expeditious and orderly review of

1 regulations under this subchapter. Meetings shall be held at
2 times and places set by the chairperson. A meeting may be
3 scheduled by the commission upon the provision of at least 10
4 days' notice to all affected agencies and the committees. A
5 commissioner who does not attend three consecutive meetings
6 without cause may be removed as a commissioner by the authority
7 appointing the commissioner.

8 (i) Quorum.--For purposes of conducting official business, a
9 quorum consists of three commissioners. A commissioner must be
10 physically present to be counted toward the quorum. If the
11 commission is unable to conduct business for lack of a quorum,
12 the deadline for the commission to take action on a regulation
13 in accordance with this subchapter shall be postponed for 30
14 days or until the next meeting at which a quorum is in
15 attendance, whichever occurs first.

16 § 335. Proposed regulations; procedures for review.

17 (a) General rule.--On the same date that an agency submits a
18 proposed regulation to the Legislative Reference Bureau for
19 publication of notice of proposed rulemaking in the Pennsylvania
20 Bulletin as required under Subchapter A (relating to
21 Commonwealth Documents Law), the agency shall submit to the
22 commission and the committees a copy of the proposed regulation
23 and a regulatory analysis form which includes the following:

24 (1) The title of the agency and the names, office
25 addresses and telephone numbers of the agency officials
26 responsible for responding to questions regarding the
27 regulation or for receiving comments relating to the
28 regulation.

29 (1.1) A specific citation to the Federal or State
30 statutory or regulatory authority or the decision of a

1 Federal or State court under which the agency is proposing
2 the regulation, which the regulation is designed to implement
3 or which may mandate or affect compliance with the
4 regulation.

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

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

8 (4) Estimates of the direct and indirect costs to the
9 Commonwealth, to its political subdivisions and to the
10 private sector. Insofar as the proposed regulation relates to
11 costs to the Commonwealth, the agency may submit in lieu of
12 its own statement the fiscal note prepared by the Office of
13 the Budget under Subchapter C (relating to fiscal review).

14 (5) A statement of legal, accounting or consulting
15 procedures and additional reporting, recordkeeping or other
16 paperwork, including copies of forms or reports, which will
17 be required for implementation of the regulation and an
18 explanation of measures which have been taken to minimize
19 these requirements.

20 (6) (Reserved).

21 (7) A schedule for review of the proposed regulation,
22 including the date by which the agency must receive comments,
23 the date or dates on which public hearings will be held, the
24 expected date of promulgation of the proposed regulation as a
25 final-form regulation, the expected effective date of the
26 final-form regulation, the date by which compliance with the
27 final-form regulation will be required and the date by which
28 required permits, licenses or other approvals must be
29 obtained.

30 (8) (Reserved).

1 (9) An identification of the types of persons, small
2 businesses, businesses and organizations which would be
3 affected by the regulation.

4 (10) An identification of the financial, economic and
5 social impact of the regulation on individuals, small
6 businesses, business and labor communities and other public
7 and private organizations and, when practicable, an
8 evaluation of the benefits expected as a result of the
9 regulation.

10 (10.1) For any proposed regulation that may have an
11 adverse impact on small businesses, an economic impact
12 statement that includes the following:

13 (i) An identification and estimate of the number of
14 the small businesses subject to the proposed regulation.

15 (ii) The projected reporting, recordkeeping and
16 other administrative costs required for compliance with
17 the proposed regulation, including the type of
18 professional skills necessary for preparation of the
19 report or record.

20 (iii) A statement of the probable effect on impacted
21 small businesses.

22 (iv) A description of any less intrusive or less
23 costly alternative methods of achieving the purpose of
24 the proposed regulation.

25 (11) A description of any special provisions which have
26 been developed to meet the particular needs of affected
27 groups and persons, including minorities, the elderly, small
28 businesses and farmers.

29 (12) A description of any alternative regulatory
30 provisions which have been considered and rejected and a

1 statement that the least burdensome acceptable alternative
2 has been selected.

3 (12.1) A regulatory flexibility analysis in which the
4 agency shall, if consistent with health, safety,
5 environmental and economic welfare, consider utilizing
6 regulatory methods that will accomplish the objectives of
7 applicable statutes while minimizing adverse impact on small
8 businesses. The agency shall consider, without limitation,
9 each of the following methods of reducing the impact of the
10 proposed regulation on small businesses:

11 (i) the establishment of less stringent compliance
12 or reporting requirements for small businesses;

13 (ii) the establishment of less stringent schedules
14 or deadlines for compliance or reporting requirements for
15 small businesses;

16 (iii) the consolidation or simplification of
17 compliance or reporting requirements for small
18 businesses;

19 (iv) the establishment of performance standards for
20 small businesses to replace design or operational
21 standards required in the proposed regulation; and

22 (v) the exemption of small businesses from all or
23 any part of the requirements contained in the proposed
24 regulation.

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

28 (14) A description of any data upon which a regulation
29 is based with a detailed explanation of how the data was
30 obtained and why the data is acceptable data. An agency

1 advocating that any data is acceptable data shall have the
2 burden of proving that the data is acceptable.

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

4 (1) The requirements of subsection (a) shall not
5 diminish the requirements of section 303 (relating to notice
6 of proposed rulemaking), but the information required under
7 this section may be included in the Notice of Proposed
8 Rulemaking published in the Pennsylvania Bulletin in lieu of
9 the information required under section 303(2) and (3).

10 (2) The agency shall hold a public comment period which
11 shall commence with the publication of the Notice of Proposed
12 Rulemaking in the Pennsylvania Bulletin and shall continue
13 for not less than 30 days unless section 305(1) or (2)
14 (relating to effective date of regulations) applies.

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

17 (1) From the date of submission of the proposed
18 regulation, the agency shall submit to the commission and the
19 committees, within five business days of receipt, a copy of
20 comments which the agency receives relating to the proposed
21 regulation.

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

29 (d) Committee response.--The committees may, at any time
30 prior to the submittal of the final-form regulation, convey to

1 the agency and the commission their comments, recommendations
2 and objections to the proposed regulation and a copy of any
3 staff reports deemed pertinent. The comments, recommendations
4 and objections may refer to the criteria under section 335.2
5 (relating to criteria for review of regulations).

6 (e) (Reserved).

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

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

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

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

24 (4) If the agency does not deliver the proposed
25 regulation and all material required under this section in
26 the time prescribed under this subsection, the agency shall
27 be deemed to have withdrawn the proposed regulation.

28 (g) Commission response.--

29 (1) The commission may, within 30 days after the close
30 of the public comment period, convey to the agency and

1 committees any comments, recommendations and objections to
2 the proposed regulation. The comments, recommendations and
3 objections shall specify the regulatory review criteria
4 stated under section 335.2 which the proposed regulation has
5 not met.

6 (2) The following apply:

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

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

19 (h) Comments.--The commission shall provide comments to the
20 agency if the required submissions under subsection (a) (9),
21 (10), (10.1) and (12.1) demonstrate an adverse impact on small
22 businesses.

23 § 335.1. Final-form regulations and final-omitted regulations;
24 procedures for review.

25 (a) Duties of agency.--

26 (1) The agency shall review and consider public comments
27 and the comments of the committees and commission under this
28 section.

29 (2) Within five business days of receipt of a public
30 comment, the agency shall notify the commentator of the

1 agency's address and telephone number where the commentator
2 may submit a request for the information concerning the
3 final-form regulation under subsection (b).

4 (3) Upon completion of the agency's review of comments,
5 the agency shall submit to the commission and the committees
6 a copy of its response to the comments received, the names
7 and addresses of commentators who have requested additional
8 information relating to the final-form regulation and the
9 text of the final-form regulation which the agency intends to
10 adopt.

11 (4) If an agency does not submit or withdraws and does
12 not resubmit the final-form regulation within two years of
13 the close of the public comment period but still desires to
14 promulgate the final-form regulation, the agency shall
15 republish the regulation as a proposed regulation with a new
16 public comment period in accordance with Subchapter A
17 (relating to Commonwealth Documents Law).

18 (5) If the agency is prevented from delivering its
19 final-form regulation to the commission and the committees
20 within the time period provided for under this subsection
21 because of the adjournment sine die or expiration of the
22 legislative session in an even-numbered year, the agency
23 shall deliver its final-form regulation in accordance with
24 subsection (f).

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

26 (1) On the same date that the agency submits the
27 material required under subsection (a) to the commission and
28 the committees, the agency shall send a notice of submission
29 and a copy of the text of the final-form regulation or a copy
30 of all changes to the proposed regulation which are

1 incorporated into the final-form regulation to each
2 commentator who requested this information under subsection
3 (a).

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

7 (c) Time period for filing.--

8 (1) The agency shall submit final-omitted regulations to
9 the commission and the committees for review under this
10 section on the same date that the agency submits the
11 regulations for review under section 313 (relating to
12 Attorney General). The requirements of section 335 (relating
13 to proposed regulations; procedures for review), except for
14 the requirements for holding a public comment period and for
15 notifying commentators, are applicable to final-omitted
16 regulations.

17 (2) If the agency makes revisions under subsection (g),
18 the agency shall deliver copies of the revisions to the
19 Attorney General on the same date that the agency delivers
20 the revisions to the commission and the committees.

21 (d) (Reserved).

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

1 final-form regulation or final-omitted regulation.

2 (f) Delivery.--An agency may not deliver a final-form
3 regulation or final-omitted regulation to the commission and the
4 committees after the adjournment sine die or expiration of the
5 legislative session in an even-numbered year. The agency may not
6 deliver the final-form regulation or final-omitted regulation
7 until the fourth Monday in January of the next year. On that
8 date, the agency shall resubmit the final-form regulation or
9 final-omitted regulation and required material to the committees
10 and the commission. If either committee has not been designated
11 by the fourth Monday in January, the agency may not deliver the
12 final-form regulation or final-omitted regulation and required
13 material to the committees and the commission until both
14 committees are designated.

15 (g) Changes.--Except as provided under this subsection, the
16 agency may not make any changes to a final-form regulation or
17 final-omitted regulation after the agency submits the final-form
18 regulation or final-omitted regulation to the commission and the
19 committees. The following apply:

20 (1) Prior to the expiration of the date on which either
21 of the committees takes action on the final-form regulation
22 or final-omitted regulation, under subsection (j.2) or (j.3)
23 or the expiration of the commission's review period
24 prescribed under subsection (e), whichever occurs first, the
25 agency may, unless the commission shall object, toll the time
26 for the commission's and the committees' review of the final-
27 form regulation or final-omitted regulation in order to allow
28 time for the agency to consider revisions to the final-form
29 regulation or final-omitted regulation recommended by the
30 commission or a committee.

1 (2) Tolling under paragraph (1) may last for up to 30
2 days. If within 30 days the agency does not submit revisions
3 to the committees and the commission or does not notify the
4 commission and the committees in writing that it will not
5 submit revisions but wishes the commission and the committees
6 to resume their review, the agency shall be deemed to have
7 withdrawn the final-form regulation or final-omitted
8 regulation.

9 (3) The committees shall have the remainder of the 20-
10 day review period or 10 days from the date of receipt of the
11 revised final-form regulation or final-omitted regulation or
12 written notification under paragraph (2), whichever is
13 longer, to take action under subsection (j.2) or (j.3), and
14 the commission may have until its next scheduled meeting
15 which occurs after the expiration of the committee review
16 period, but not less than 15 days after receipt of the
17 revised final-form regulation or final-omitted regulation or
18 written notification under paragraph (2) to review the final-
19 form regulation or final-omitted regulation. If the
20 commission does not disapprove the final-form regulation or
21 final-omitted regulation or a committee does not notify the
22 commission and the agency that it has disapproved the
23 regulation or that it intends to review the regulation under
24 subsection (j.2), within the respective time periods, the
25 regulation shall be deemed approved.

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

29 (5) The agency may not submit revisions or notification
30 that the regulation will not be revised after the adjournment

1 sine die or the expiration of the legislative session in an
2 even-numbered year. If the committees and the commission are
3 prevented from completing their review under this subsection
4 because of the adjournment sine die or the expiration of the
5 legislative session in an even-numbered year, the agency
6 shall resubmit the final-form regulation or final-omitted
7 regulation and review shall proceed in accordance within
8 subsection (j.3).

9 (h) (Reserved).

10 (i) (Reserved).

11 (j) Comments.--The commission shall accept public comments
12 only up to 48 hours prior to the commission's public meeting
13 unless the comments are submitted at the request of the
14 commission. The commission shall receive comments from the
15 agency or members of the General Assembly until the commission
16 acts on the regulation. The commission shall transmit comments
17 received during the 48-hour period prior to the commission's
18 public meeting to the agency and the committees upon receipt.
19 The commission shall accept additional public comments only
20 after the public meeting has been called to order.

21 (j.1) Time for action.--A committee shall have at least 20
22 days from receipt of the information required under subsection
23 (a) or receipt of the information required under subsection (c)
24 to take action under subsection (j.2). If the committees are
25 prevented from completing their 20-day review because of the
26 adjournment sine die or expiration of the legislative session in
27 an even-numbered year, their review of the final-form regulation
28 or final-omitted regulation shall automatically be suspended
29 until the fourth Monday in January of the next year. On that
30 date, the agency shall resubmit the final-form regulation or

1 final-omitted regulation and required material to the committees
2 and the commission. The following apply:

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

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

14 (3) In computing the remaining time for committee
15 review, the number of days in which the committees have had
16 the final-form regulation or final-omitted regulation under
17 review as of the adjournment sine die or expiration of the
18 prior session shall be subtracted from the 20-day committee
19 review period, but the committee review period in the next
20 succeeding legislative session shall not be less than 10
21 days.

22 (4) The commission shall not act on a regulation until
23 the committee review period has expired. This section shall
24 not apply to emergency-certified regulations adopted under
25 the provisions of section 336(d) (relating to procedures for
26 disapproval of final-form regulations and final-omitted
27 regulations; emergency-certified regulations).

28 (j.2) Notification of approval and disapproval.--At any time
29 during the commission's review period up to 24 hours prior to
30 the opening of the commission's public meeting, a committee may

1 notify the commission and the agency that it has approved or
2 disapproved a final-form regulation or final-omitted regulation
3 or that it intends to review the regulation. If the commission
4 approves a regulation and a committee has not notified the
5 commission and the agency that it has disapproved the regulation
6 or that it intends to review the regulation, the agency may
7 promulgate the regulation. If the commission approves a
8 regulation and a committee has notified the commission and the
9 agency that it has disapproved the regulation or that it intends
10 to review the regulation, the agency may not promulgate the
11 regulation for 14 days after the committee has received the
12 commission's approval order. During the 14-day period, the
13 committee may take action on the regulation under section 337(d)
14 (relating to procedures for subsequent review of disapproved
15 final-form regulations or final-omitted regulations). If at the
16 expiration of the 14-day period the committee has not taken
17 action on the regulation under section 337(d), the agency may
18 promulgate the regulation.

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

28 (1) If either committee has not been designated by the
29 fourth Monday in January, the agency may not deliver the
30 final-form regulation or final-omitted regulation and

1 required material to the committees and the commission until
2 both committees are designated.

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

10 (3) In determining the remaining time for committee
11 review, the number of days in which the committees have had
12 the final-form regulation or the final-omitted regulation
13 under review as of the adjournment sine die or expiration of
14 the prior session shall be subtracted from the 14-day
15 committee review period, but the committee review period in
16 the next succeeding legislative session shall not be less
17 than 10 days.

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

24 (5) This subsection shall not apply to emergency-
25 certified regulations adopted under the provisions of section
26 336(d).

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

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

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

9 § 335.2. Criteria for review of regulations.

10 (a) Preliminary criteria.--In determining whether a proposed
11 regulation, final-form regulation, final-omitted regulation or
12 existing regulation is in the public interest, the commission
13 shall, first and foremost, determine whether the agency has the
14 statutory authority to promulgate the regulation and whether the
15 regulation conforms to the intention of the General Assembly in
16 the enactment of the statute upon which the regulation is based.
17 In making its determination, the commission shall consider
18 written comments submitted by the committees and current members
19 of the General Assembly, pertinent opinions of Pennsylvania's
20 courts and formal opinions of the Attorney General.

21 (b) General criteria.--Upon a finding that the regulation is
22 consistent with the statutory authority of the agency and with
23 the intention of the General Assembly in the enactment of the
24 statute upon which the regulation is based, the commission shall
25 consider the following in determining whether the regulation is
26 in the public interest:

27 (1) Economic or fiscal impacts of the regulation, which
28 include the following:

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

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

3 (iii) The nature of required reports, forms or other
4 paperwork and the estimated cost of their preparation by
5 individuals, businesses and organizations in the public
6 and private sectors.

7 (iv) The nature and estimated cost of legal,
8 consulting or accounting services which the public or
9 private sector may incur.

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

14 (2) The protection of the public health, safety and
15 welfare and the effect on this Commonwealth's natural
16 resources.

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

19 (i) Possible conflict with or duplication of
20 statutes or existing regulations.

21 (ii) Clarity and lack of ambiguity.

22 (iii) Need for the regulation.

23 (iv) Reasonableness of requirements, implementation
24 procedures and timetables for compliance by the public
25 and private sectors.

26 (v) Whether acceptable data is the basis of the
27 regulation.

28 (4) Whether the regulation represents a policy decision
29 of such a substantial nature that it requires legislative
30 review.

1 (5) Comments, objections or recommendations of a
2 committee.

3 (6) Compliance with the provisions of this subchapter or
4 the regulations of the commission in promulgating the
5 regulation.

6 (7) Whether the regulation is supported by acceptable
7 data.

8 (8) Whether a less costly or less intrusive alternative
9 method of achieving the goal of the regulation has been
10 considered for regulations impacting small business.

11 § 336. Procedures for disapproval of final-form regulations and
12 final-omitted regulations; emergency-certified
13 regulations.

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

28 (b) Effect.--The commission's order disapproving a final-
29 form regulation or final-omitted regulation shall bar the agency
30 from promulgating that regulation pending subsequent review

1 under section 337.

2 (c) (Reserved).

3 (d) Prohibition.--

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

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

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

29 (a) General procedures.--An agency may select one of the
30 following options for proceeding with a regulation which has

1 been disapproved by the commission:

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

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

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

8 (b) Report.--

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

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

30 (3) If the agency does not deliver the report to the

1 committees and the commission in the time prescribed under
2 this subsection, the agency shall be deemed to have withdrawn
3 the final-form regulation or final-omitted regulation.

4 (c) Modifications before report.--

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

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

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

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

28 (d) Legislative presentation by concurrent resolution.--Upon
29 receipt of the commission's order under subsection (c.1) or at
30 the expiration of the commission's review period if the

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

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

13 (2) If either committee reports a concurrent resolution
14 before the expiration of the 14-day period, the Senate and
15 the House of Representatives shall each have 30 calendar days
16 or 10 legislative days, whichever is longer, from the date on
17 which the concurrent resolution has been reported, to adopt
18 the concurrent resolution.

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

24 (4) If the Governor does not return the concurrent
25 resolution to the General Assembly within 10 calendar days
26 after it is presented, the Governor shall be deemed to have
27 approved the concurrent resolution.

28 (5) If the Governor vetoes the concurrent resolution,
29 the General Assembly may override that veto by a two-thirds
30 vote in each house. The Senate and the House of

1 Representatives shall each have 30 calendar days or 10
2 legislative days, whichever is longer, to override the veto.

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

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

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

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

30 § 337.1. Classification of documents.

1 If the commission or a committee finds that a published or
2 unpublished document should be promulgated as a regulation, the
3 commission or committee may present the matter to the Joint
4 Committee on Documents. The Joint Committee on Documents shall
5 determine whether the document should be promulgated as a
6 regulation and may order an agency either to promulgate the
7 document as a regulation within 180 days or to desist from the
8 use of the document in the business of the agency.

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

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

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

19 § 338.1. Existing regulations.

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

1 recommendations to the General Assembly and the Governor for
2 statutory changes if the commission finds that any existing
3 regulation may be contrary to the public interest.

4 § 339. Commission staff.

5 (a) Executive director and other employees.--The commission
6 shall appoint and fix the compensation of a full-time executive
7 director, who shall be responsible for the general supervision
8 of all the affairs of the commission and for performing any
9 administrative function or duty which the commission may
10 delegate to the executive director. The commission shall appoint
11 and fix the compensation of such other employees as the
12 commission may find necessary for the proper operation of the
13 commission.

14 (b) Chief counsel.--The commission shall appoint and fix the
15 compensation of a full-time chief counsel, who shall not be
16 subject to the supervision of the Attorney General or the
17 General Counsel. The chief counsel shall supervise, coordinate
18 and administer the legal services provided to the commission.

19 § 340. Subpoena power.

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

29 § 341. Regulations; annual reports; hearings and advisory group
30 meetings.

1 (a) Regulations.--

2 (1) The commission, in the performance of its functions
3 under this subchapter, has the power to promulgate and
4 enforce regulations necessary to carry out the purposes of
5 this subchapter.

6 (2) Regulations must be promulgated in accordance with
7 the procedures established under Subchapter A (relating to
8 Commonwealth Documents Law).

9 (3) The regulations shall provide for the commission's
10 notification of filings of final-form regulations and final-
11 omitted regulations to parties likely to be affected by the
12 final-form regulations and final-omitted regulations through
13 publication of a notice in the Pennsylvania Bulletin.

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

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

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

29 § 342. Clearinghouse.

30 The commission shall act as a clearinghouse for complaints,

1 comments and other input from members of the General Assembly
2 and from the public regarding existing regulations, proposed
3 regulations, final-form regulations and final-omitted
4 regulations. The commission shall maintain accurate records
5 regarding complaints and comments it receives and shall maintain
6 such records by departmental and subject matter categories for
7 four years after the date of receipt by the commission. When the
8 commission files its annual report as provided under section 341
9 (relating to regulations; annual reports; hearings and advisory
10 group meetings), the commission shall include within it a
11 summary of public complaint and comment along with any
12 recommendations the commission may offer for statutory change.
13 § 342.1. Gubernatorial review.

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

23 Section 3. Repeals are as follows:

24 (1) The General Assembly declares as follows:

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

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

30 (iii) The repeal under paragraph (2)(i) is necessary

1 to effectuate the addition of 2 Pa.C.S. Ch. 3 Subch. C.

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

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

5 (i) Section 612 of the act of April 9, 1929
6 (P.L.177, No.175), known as The Administrative Code of
7 1929.

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

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

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

15 Section 4. Continuation is as follows:

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

20 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
21 Subch. A, all activities initiated under the Commonwealth
22 Documents Law shall continue and remain in full force and
23 effect and may be completed under 2 Pa.C.S. Ch. 3 Subch.
24 A. Orders, regulations, rules and decisions which were
25 made under the Commonwealth Documents Law and which are
26 in effect on the effective date of section 3(2)(ii) of
27 this act shall remain in full force and effect until
28 revoked, vacated or modified under 2 Pa.C.S. Ch. 3 Subch.
29 A. Contracts, obligations and collective bargaining
30 agreements entered into under the Commonwealth Documents

1 Law are not affected nor impaired by the repeal of the
2 Commonwealth Documents Law.

3 (ii) Except as set forth in subparagraph (iii), any
4 difference in language between 2 Pa.C.S. Ch. 3 Subch. A
5 and the Commonwealth Documents Law is intended only to
6 conform to the style of the Pennsylvania Consolidated
7 Statutes and is not intended to change or affect the
8 legislative intent, judicial construction or
9 administration and implementation of the Commonwealth
10 Documents Law.

11 (iii) (Reserved).

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

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

1 Act.

2 (ii) Except as set forth in subparagraph (iii), any
3 difference in language between 2 Pa.C.S. Ch. 3 Subch. B
4 and sections 204(b) and 301(10) of the Commonwealth
5 Attorneys Act is intended only to conform to the style of
6 the Pennsylvania Consolidated Statutes and is not
7 intended to change or affect the legislative intent,
8 judicial construction or administration and
9 implementation of sections 204(b) and 301(10) of the
10 Commonwealth Attorneys Act.

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

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

17 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
18 Subch. C, all activities initiated under section 612 of
19 The Administrative Code of 1929 shall continue and remain
20 in full force and effect and may be completed under 2
21 Pa.C.S. Ch. 3 Subch. C. Orders, regulations, rules and
22 decisions which were made under section 612 of The
23 Administrative Code of 1929 and which are in effect on
24 the effective date of section 3(2)(i) of this act shall
25 remain in full force and effect until revoked, vacated or
26 modified under 2 Pa.C.S. Ch. 3 Subch. C. Contracts,
27 obligations and collective bargaining agreements entered
28 into under section 612 of The Administrative Code of 1929
29 are not affected nor impaired by the repeal of section
30 612 of The Administrative Code of 1929.

1 (ii) Except as set forth in subparagraph (iii), any
2 difference in language between 2 Pa.C.S. Ch. 3 Subch. C
3 and section 612 of The Administrative Code of 1929 is
4 intended only to conform to the style of the Pennsylvania
5 Consolidated Statutes and is not intended to change or
6 affect the legislative intent, judicial construction or
7 administration and implementation of section 612 of The
8 Administrative Code of 1929.

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

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

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

27 (ii) Except as set forth in subparagraph (iii), any
28 difference in language between 2 Pa.C.S. Ch. 3 Subch. D
29 and the Regulatory Review Act is intended only to conform
30 to the style of the Pennsylvania Consolidated Statutes

1 and is not intended to change or affect the legislative
2 intent, judicial construction or administration and
3 implementation of the Regulatory Review Act.

4 (iii) (Reserved).

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