

Regulatory Analysis Form

JOINT COMMITTEE ON
DOCUMENTS

(1) Agency

Independent Regulatory Review Commission

(2) Agency Number: 70

Identification Number: 9

JCD Number: 3125

(3) PA Code Cite: 1 Pa Code, Part III, Chapters 301 - 315

(4) Short Title: General Revisions

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Leslie Lewis Johnson, Chief Counsel
(717) 783-5417, ljohnson@irrc.state.pa.us

Secondary Contact: Michelle L. Elliott, Regulatory Analyst
(717) 787-8491, melliott@irrc.state.pa.us

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This regulation will update and clarify definitions, explain when documents are determined to be delivered, describe what information should be included in the preamble, clarify when documents are to be delivered during *sine die*, and provide clarification to existing regulatory review procedures and ensure consistency with the Regulatory Review Act.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 11(a) of the Regulatory Review Act, amended by the Act of June 29, 2012 (No. 76, P.L. 657), 71 P. S. § 745.11(a).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. This proposed regulation is not mandated by any federal or state law or regulation, or court order, and there are no relevant court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This proposal is necessary to clarify definitions, the information that promulgating agencies should include in a preamble, delivery schedules, and the location of the Commission's Right to Know Law policy. Other changes have been made to clarify procedures in response to issues raised by agencies since these regulations were last amended in 2007.

Promulgating agencies, persons subject to their jurisdiction and interested parties will benefit from this regulation. Since the procedures established under this regulation are very detailed, agencies will know exactly what their responsibilities are and what options they have. Members of the agencies' regulated community and commentators will also have a clearer understanding of the agencies' responsibilities and their options for providing for input in the regulatory process.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. There are no federal standards governing the promulgation of Commonwealth agency regulations.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation does not compare with those of other states because it is specific to the rulemaking process in Pennsylvania. However, the overall benefit of the regulation is to promote the public interest, thereby allowing Pennsylvania to be competitive with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. This regulation will not affect any other regulations of a promulgating agency or other state agencies. The Commission has the sole authority to promulgate regulations under the Regulatory Review Act.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Copies of the draft proposed regulation were distributed to the executive directors of the legislative standing committees (i.e., House State Government and Senate Rules & Nominations) and to the Governor's Office of General Counsel. This regulation will be published in the *Pennsylvania Bulletin* with a thirty-day comment period. In addition, it will be added to the Commission's website with an invitation for public comment.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

- State agencies, which are defined in Section 3 of the Regulatory Review Act as "any department, departmental administrative board or commission, independent board or commission, agency or other authority of this Commonwealth ..., but shall not include the Senate or the House of Representatives, the Pennsylvania Fish [and Boat] Commission, the Pennsylvania Game Commission or any court, political subdivision...." 71 P.S. § 745.3.
- Persons subject to the agencies' jurisdiction.
- All interested parties (e.g., commentators).

There is no way to quantify the number of persons or entities who will benefit from these regulations.

Agencies must comply with these procedures in order to promulgate a regulation. The regulated community and interested parties, which may include all forms of businesses, are provided with a detailed set of procedures on the regulatory process, which is intended to increase its transparency and provide further clarification.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

State agencies with rulemaking authority (see item #15 of this RAF) must comply with this regulation. There are approximately 40-50 agencies that could be affected.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no anticipated financial, economic or social impact of this regulation, which is essentially procedural in nature. The expected benefits are to provide further clarity on the rulemaking process to promulgating agencies, commentators, and interested parties.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefits of the regulation are to provide further clarification to the existing regulatory review process. The Commission is unaware of any adverse effects of this regulation and none are anticipated.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This is not expected to result in increased costs to the regulated community (i.e., state agencies), or require legal, accounting or consulting procedures. The regulations clarify a process that is already established.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation will not result in increased costs to local governments, or require any legal, accounting or consulting procedures.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This is not expected to result in increased costs to state government, or require legal, accounting or consulting procedures. The regulation clarifies a process that is already established.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

None.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There is no adverse impact on small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

None; not applicable.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There is no alternative regulatory scheme or less burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

There is no adverse impact on small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The date by which the agency must receive public comments: | November 20, 2015 (or 30 days after publication) |
| B. The date or dates on which public meetings or hearings will be held: | None expected. |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | March 1, 2016 |
| D. The expected effective date of the final-form regulation: | May 1, 2016 (or upon publication) |
| E. The date by which compliance with the final-form regulation will be required: | May 1, 2016 (or upon publication) |
| F. The date by which required permits, licenses or other approvals must be obtained: | None required. |

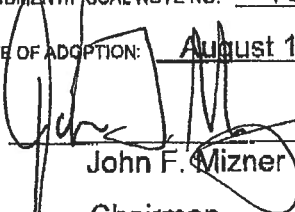
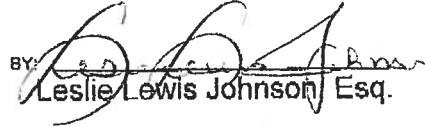
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulation after its implementation.

The Commission will continually assess this regulation and make revisions when needed to address any valid procedural or substantive concerns that may arise. The Commission will also continue to hold educational seminars and workshops for agencies, legislators, interested parties and the public to explain the regulatory review process and to determine if there is a need to provide further regulatory guidance.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center">Independent Regulatory Review Commission (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>70-9</u></p> <p>DATE OF ADOPTION: <u>AUGUST 13, 2015</u></p> <p>BY:  John F. Mizner</p> <p>TITLE: <u>Chairman</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY:  Leslie Lewis Johnson Esq.</p> <p><u>October 9, 2015</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Title 1 Pa. Code
Part III. Independent Regulatory Review Commission

Chapter 301 - General Provisions

Chapter 303 - Meetings of the Commission

Chapter 305 - Procedures for Delivery and Review of Proposed Regulations

Chapter 307 - Procedures for Delivery and Review of Final Regulations

Chapter 309 - Action on Regulations

Chapter 311 - Procedures for Review of Disapproved Final Regulations

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

Chapter 313 - Emergency Certified Regulations

Chapter 315 - Existing Regulations and Published or Unpublished Documents

Independent Regulatory Review Commission
1 Pa. Code, Chapters 301 - 315
Proposed Regulation

Notice is hereby given that the Independent Regulatory Review Commission (Commission) proposes to amend its regulations at 1 Pa. Code Chapters 301 (relating to general provisions), 303 (relating to meetings of the Commission), 305 (relating to procedures for delivery and review of proposed regulations), 307 (relating to procedures for delivery and review of final regulations), 309 (relating to action on regulations), 311 (relating to procedures for review of disapproved final regulations), 311a (relating to delivery of regulations, comments, reports and order before and after the end of the legislative session), and 315 (relating to existing regulations and unpublished documents).

Statutory Authority

This regulation is proposed under the authority contained in section 11 of the Regulatory Review Act, as reenacted by the act of June 30, 1989 (P.L. 73, No. 19), and as amended by the acts of June 25, 1997 (P.L. 252, No. 24), December 6, 2002 (P.L. 1227, No. 148), July 7, 2011 (P.L. 277, No. 60), and June 29, 2012 (P.L. 657, No. 76) (71 P. S. § 745.11(a)).

Purpose

This rulemaking implements the provisions of the Regulatory Review Act (Act) to clarify definitions, when documents are to be delivered to the Commission, and what should be included in agency rulemaking packages, as well as to ensure consistency with the Act and current practice and procedure.

Summary of Amendments

- Revisions to section 301.1 (Definitions) adds consistent citation references for “Act” and “Sunshine Act” and clarifies the definition of “comments” and “transmittal sheet.” It also adds a new definition for “preamble.”
- Sections 301.2 (Regulation files) and 303.1 (Notice of Commission public meetings; participation; minutes) clarifies the retention schedule for regulation files and the location of the Commission’s fee schedule and Right to Know policy.
- Section 301.3 (Determination of date and time of delivery of comments and documents) clarifies that the time of delivery will be determined by when documents are received by the Commission.
- Section 301.6 (Withdrawal of a regulation) provides that a withdrawal notice should be delivered to both the Commission and the committees before the Commission’s public meeting.

- Section 301.9 (Procedure for public hearings) is amended to provide that public hearings may be scheduled for any matter before the Commission, rather than just for regulations that are under review. This is consistent with Section 11 of the Act (71 P. S. § 745.11(c)).
- Section 305.1 (Delivery of proposed regulation), 307.2 (Delivery of a final-form regulation), and 307.3 (Delivery of a final-omitted regulation) add cross-references to clarify the information that should be included in the preamble. Section 305.1 also adds a requirement that instructions for submitting public comments should be included. Section 5 of the Act requires a public comment period (71 P. S. § 745.5(b)).
- Section 307.2 (Delivery of a final-form regulation) clarifies what should be included in the final rulemaking package. Section 5.1 of the Act provides that the agency shall include in the package the names and addresses of commentators who have requested additional information (71 P. S. § 745.5a(a)). Accordingly, this section is amended to state that if no commentator requested additional information, then the agency should specify such.
- Section 307.3a (Formatting the text of a final regulation) takes into consideration that prior to publication in the *Pennsylvania Bulletin*, the Legislative Reference Bureau may have made revisions to the text of a proposed regulation to comply with its editorial policies and procedures. The published text is considered to be the official version of the proposed regulation. Therefore, this section is amended to require an agency to use the official version when preparing and delivering a final-form rulemaking package.

Section 307.3a(f) recognizes that there may be an instance where it is impractical for an agency to use the standard formatting method in a final regulation. In such a case, the agency should contact the Commission to discuss an alternative method that will still allow readers to easily determine the changes that were made from the proposed regulation.

- Section 309.1 (Commission and committee action on a final regulation) corrects a typographical error.
- Section 311.1 (Commission disapproval of a final regulation) replaces “may” with “will” regarding the Commission’s notification to commentators to be consistent with Section 6 of the Act (71 P. S. § 745.6(a)).
- Section 311.4 (Report for a disapproved regulation submitted with revisions) requires an agency to include a Regulatory Analysis Form (RAF) with a revised, previously-disapproved regulation. The RAF will capture any new cost data or other changes that may differ from the previously submitted final-form regulation.
- Sections 311a.1 – 311a.5 and 311a.7 (relating to the delivery of documents before and after the end of the legislative session) clarify that delivery must be made between the 4th Monday in January and the 2nd Monday after publication of the committee

designations in the *Pennsylvania Bulletin*. Section 311a.4 also corrects a typographical error.

- Section 315.1 (Review of an existing regulation) replaces “investigation” with “further review” to be consistent with the language in Section 8.1 of the Act (71 P. S. § 745.8a).
- The headings for Chapter 315 (Existing Regulations and Unpublished Documents) and Section 315.2 (Review of an unpublished document) are amended to accurately reflect the content in both the chapter and the section, respectively.

Persons and Entities Affected

This rulemaking will affect Commonwealth agencies that intend to promulgate regulations by way of the regulatory review process. It also provides clarity for members of the public and other entities that wish to comment on these regulations or otherwise participate in the process.

Fiscal Impact

This rulemaking is not expected to have a fiscal impact on the Commission, the regulated community (i.e., the promulgating agencies), local and state governments, or on the general public. This rulemaking clarifies the requirements of the existing regulatory review process.

Effective Date

This rulemaking will become effective upon publication of the final-form in the *Pennsylvania Code and Bulletin*.

Sunset Provisions

The Commission will make this rulemaking effective upon publication of the final-form after conducting an analysis and evaluation of all comments, suggestions, or objections received. The Commission will not establish a sunset date for these regulations; however, it will continue to closely monitor them for their effectiveness and consistency with the Regulatory Review Act.

Public Comments

Written comments, suggestions or objections will be accepted for 30 days after publication of these proposed regulations in the *Pennsylvania Bulletin*. The Commission invites comments

from the General Assembly, standing committees, executive and independent agencies and all interested parties. Comments should be addressed to:

Leslie Lewis Johnson, Esq.
Chief Counsel
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101
(717) 783-5417
ljohnson@irrc.state.pa.us

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

Contact Persons



This regulation is available on the Commission's website at www.irrc.state.pa.us. Questions may be referred to either Leslie Lewis Johnson, Chief Counsel, or Michelle L. Elliott, Regulatory Analyst, at (717) 783-5417 or by e-mail at ljohnson@irrc.state.pa.us or melliott@irrc.state.pa.us.

Alternative means of providing public comments and alternative formats of the proposed regulation may be made available to persons with disabilities upon request by calling Cheryl Yohn or Stephen F. Hoffman at (717) 783-5417 or by e-mail at cyohn@irrc.state.pa.us or shoffman@irrc.state.pa.us.

Regulatory Review

Under sections 5(a) and 11(a) of the Regulatory Review Act (71 P. S. §§ 745.5(a) and 11(a)), on October ____, 2015, the Commission submitted a copy of this proposed rulemaking and a Regulatory Analysis Form to the Joint Committee on Documents and to the Chairs of the House State Government Committee and the Senate Rules and Executive Nominations Committee. A copy of this material is available to the public upon request and is available on the Commission's website at www.irrc.state.pa.us.

Under section 5(g) of the Regulatory Review Act, the Joint Committee on Documents may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. Prior to final publication of the regulation, the Joint Committee, the General Assembly and the Governor are afforded the



opportunity, pursuant to the procedures detailed in the Act, to review all comments and recommendations received and objections raised.

John F. Mizner
Chair, Independent Regulatory Review Commission

CHAPTER 301. GENERAL PROVISIONS

Sec.

- 301.1. Definitions.
- 301.2. Regulation files.
- 301.3. Determination of date and time of delivery of comments and documents.
- 301.4. Expiration of time period for delivery of regulations or reports.
- 301.5. Expiration of Commission review period.
- 301.6. Delivery of a regulation to a committee other than the committee designated to review the agency's regulation.
- 301.7. Withdrawal of a regulation.
- 301.8. Agency contact person.
- 301.9. Procedure for public hearings.

§ 301.1. Definitions.

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

Act—The Regulatory Review Act. **The act of June 25, 1982, as amended (P.L. 633, No. 181)** (71 P. S. § § 745.1—745.15).

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

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

Comments—Written statements delivered to the **agency or** Commission, supporting, opposing or recommending changes to a final, proposed or existing regulation which is subject to review by the Commission. Comments do not include previously published or copyrighted material.

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

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

Commission—The Independent Regulatory Review Commission.

Committee—As defined in section 3 of the act.

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

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

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

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

Delivery—

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

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

Embargoed material—

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

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

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

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

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

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

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

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

Form letters—Letters which contain verbatim text.

LRB—The Legislative Reference Bureau of the Commonwealth.

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

Preamble—**A document that provides information about a regulation and includes the effective date, statutory authority, purpose and explanation of the regulation, a description of any amendments thereto, fiscal impact, contact person, and details regarding the public comment period.**

Promulgate—As defined in section 3 of the act.

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

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

Regulation—As defined in section 3 of the act.

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

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

Sunshine Act— **The act of October 15, 1998 (P.L. 729, No. 93)** (65 Pa.C.S. § § 701—716).

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

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

Withdrawal—As defined in section 3 of the act.

§ 301.2. Regulation files.

(a) The Commission will retain regulation files [in accordance with] **for no less than the time period set forth in** the following schedule:

(1) *Promulgated regulations.* Four years after the date of promulgation.

(2) *Withdrawn or deemed withdrawn regulations.* Four years after the date of delivery of the proposed or final-omitted regulation to the Commission.

(3) *Final regulations which are not promulgated.* Four years after the date of delivery to the Commission.

(b) Regulation files will include the following materials:

(1) The original regulatory analysis form and the original regulation.

(2) Comments received from the time a proposed or final regulation is delivered until the Commission takes action on the regulation under section 5.1(e), (g)(3) or 7(c.1) of the act (71 P. S. § 745.5a(e), (g)(3) and 7(c.1)), or until the regulation is withdrawn or deemed withdrawn.

(3) Commission comments.

(4) Commission orders.

(c) After the Commission takes final action on a regulation under section 5.1(e), (g)(3) or 7(c.1) of the act or the regulation is withdrawn or deemed withdrawn, the Commission's regulation file will be closed.

(d) Any person may examine or obtain copies of the materials contained in regulation files. The Commission will make regulation files available by doing one or more of the following:

(1) Posting on the Commission's website.

(2) Sending by means of e-mail or First Class Mail upon request.

(3) Allowing inspection in the Commission office during normal business hours upon request.

(e) The Commission may charge reasonable fees for copying, certifying and mailing material contained in a regulation file. Fees **are established in the Commission's Right to Know Law policy, which is available in the Commission's office** and [will be] posted on the website.

§ 301.3. Determination of date and time of delivery of comments and documents.

(a) The Commission will determine the date and time of delivery of comments and documents as follows:

(1) *E-mail*. **The time and date of receipt by the Commission** [A]as indicated on the Commission's computer system.

(2) *Fax*. **The time and date of receipt by the Commission** [A]as indicated on the transmittal report generated by the Commission's facsimile machine.

(3) *Postal or other delivery service*. As indicated on the Commission's time and date stamp.

(4) *Hand delivery*. As indicated on the Commission's time and date stamp.

(b) If the commentator requests confirmation of delivery of hand-carried comments or documents, the commentator shall include an additional copy of the first page. The Commission will stamp the copy with the date and time of delivery and return it to the commentator. If the commentator requests confirmation of a document delivered through the postal or another delivery service, the commentator shall include an additional copy of the first page and a stamped, self-addressed envelope. The Commission will stamp the additional copy with the date and time of delivery and mail it to the commentator.

(c) If the commentator requests confirmation of delivery of e-mailed or faxed comments or documents, the Commission will fax or e-mail confirmation of delivery to the commentator.

(d) The commentator shall have the responsibility to obtain confirmation that comments or documents were delivered prior to the blackout period.

§ 301.4. Expiration of time period for delivery of regulations or reports.

(a) The time period for an agency to deliver a regulation or report to the Commission or a committee will end on the first business day after the expiration day established in the act or this part if the expiration day is one of the following:

(1) A legal holiday.

(2) Declared a holiday by the Office of Administration.

(3) A day on which Commonwealth, Commission or committee offices located in Harrisburg are closed due to emergency circumstances.

(4) A day on which the staff offices of the Commission or Senate or House of Representatives are officially closed.

(5) A Saturday or Sunday.

(b) A part-day holiday is considered a normal business day and not a day that would require the extension of a time period for delivery.

(c) The Commission will stamp the date and time of delivery of a regulation on the transmittal sheet and on the regulatory analysis form.

§ 301.5. Expiration of Commission review period.

(a) The Commission review period will end on the first business day after the expiration day established under the act or this part if the expiration day is one of the following:

(1) A legal holiday.

(2) Declared a holiday by the Office of Administration.

(3) A day on which Commonwealth, Commission or committee offices located in Harrisburg are closed due to emergency circumstances.

(4) A day on which the Commission office is officially closed.

(5) A Saturday or Sunday.

(b) A part-day holiday is considered a normal business day and not a day that would require the extension of a committee or Commission review period.

§ 301.6. Delivery of a regulation to a committee other than the committee designated to review the agency's regulation.

(a) Immediately upon discovery that the agency has delivered a regulation to a committee other than the committee designated to review its regulations, the agency shall deliver the regulation to the designated committee.

(b) With the delivery of a proposed regulation to the designated committee, the agency shall include all comments received since the beginning of the public comment period.

(c) The regulation will not be considered delivered for the purposes of the act and this chapter until it is delivered to the designated committee.

(d) The review period of the Commission will begin as follows:

(1) For proposed regulations, the day after the close of the public comment period under § 305.3 (relating to Commission comments) or the day after delivery to the designated committee, whichever is later.

(2) For final regulations, the day after delivery to the designated committee.

§ 301.7. Withdrawal of a regulation.

(a) If an agency withdraws or is deemed to have withdrawn a regulation, the Commission and the committees will cease their review of the regulation and will not take further action on the regulation.

(b) If the agency withdraws a proposed regulation, but subsequently desires to proceed with promulgation, the agency shall deliver a new proposed regulation in accordance with § 305.1 (relating to delivery of a proposed regulation).

(c) If the agency withdraws a final-form regulation after delivery to the Commission **and the committees and before the Commission's public meeting**, but subsequently desires to proceed with promulgation, the agency may deliver a new final-form regulation in accordance with § 307.2 (relating to delivery of a final-form regulation), within 2 years from the close of the public comment period.

(d) If the agency desires to proceed with promulgation of a withdrawn regulation but does not submit a new final-form regulation within 2 years from the close of the public comment period, the agency shall deliver a new proposed regulation.

§ 301.8. Agency contact person.

An agency may notify the Commission, in writing, of the name, title, address, e-mail address, telephone number and facsimile number of a single agency representative or office designated to receive comments, orders, embargoed material and other documents relating to a regulation, which the Commission delivers by facsimile or e-mail to the agency. If the agency does not designate a representative, the Commission will deliver documents to the agency head.

§ 301.9. Procedure for public hearings.

(a) The Commission may schedule public hearings on **all matters before the commission, including those** that are related to a proposed, a final or an existing regulation under review.

(b) Notice of a public hearing will be published in accordance with the Sunshine Act. The notice will include the date and time of the public hearing, the subject matter of the public hearing and the address where the public hearing will take place.

(c) The chairperson will designate a hearing officer to preside at the public hearing. The hearing officer will be charged with preserving order during the public hearing. The hearing officer may determine the agenda, the order of commentators and the time allotted to each commentator.

(d) When participating at a public hearing, commentators shall bring 10 written copies of their comments and supporting documents to the hearing.

CHAPTER 303. MEETINGS OF THE COMMISSION

Sec.

303.1. Notice of Commission public meetings; participation; minutes.

303.2. Blackout period.

303.3. Quorum.

303.4. Proxy voting.

§ 303.1. Notice of Commission public meetings; participation; minutes.

(a) The Commission will give notice of public meetings in accordance with the Sunshine Act.

(b) The Commission will deliver notice of a public meeting to the committees and agencies whose regulations are on the agenda at least 10-calendar days prior to the meeting date.

(c) Public meetings are conducted in compliance with the Sunshine Act.

(d) The Commission will make minutes of public meetings available by doing one or more of the following:

(1) Posting on the Commission's website.

(2) Sending by means of e-mail or First Class Mail upon request.

(3) Allowing inspection in the Commission office during normal business hours upon request.

(e) The Commission may charge reasonable fees for copying, certifying and mailing minutes. Fees **are established in the Commission's Right to Know Law policy, which is available in the Commission's office and** [will be] posted on the website.

§ 303.2. Blackout period.

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

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

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

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

§ 303.3. Quorum.

(a) For purposes of conducting official business, three Commissioners shall be physically present to constitute a quorum.

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

§ 303.4. Proxy voting.

(a) A Commissioner may vote by proxy on any issue before the Commission, including the approval or disapproval of a regulation, if the following conditions are met:

(1) Except as set forth in subsection (b), the proxy shall be in writing, signed by the Commissioner and addressed to the Chairperson at the Commission's office address.

(2) The Commissioner will deliver the proxy to the Commission, prior to the vote.

(3) The Commissioner will deliver a separate proxy for each vote.

(b) A Commissioner who is participating in a public meeting by telephone may verbally give his proxy to the Chairperson if he is unable to remain for the duration of the meeting.

(c) The Chairperson, another Commissioner or the Executive Director will present the proxy at the public meeting at the time of the Commission vote.

(d) The proxy shall be recorded as the Commissioner's vote.

CHAPTER 305. PROCEDURES FOR DELIVERY AND REVIEW OF PROPOSED REGULATIONS

Sec.

305.1. Delivery of a proposed regulation.

305.1a. Formatting the text of a proposed regulation.

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

305.3. Commission comments.

305.4. [Reserved].

§ 305.1. Delivery of a proposed regulation.

(a) The agency shall deliver a proposed regulation to the LRB, the committees and the Commission on the same date.

(b) The agency shall include the following material with the regulation:

(1) A completed regulatory analysis form.

(2) A face sheet signed by the agency head, the Office of Attorney General and the Office of General Counsel or the chief counsel of an independent agency.

(3) A transmittal sheet signed by the committees.

(4) The preamble, which shall include all information as described in § 301.1.

(5) Instructions for submitting public comments to the agency.

~~(5)~~ (6) The text of the regulation.

§ 305.1a. Formatting the text of a proposed regulation.

- (a) Proposed amendments to an existing regulation shall be illustrated as follows:
 - (1) Brackets to indicate language proposed to be deleted.
 - (2) Underscoring or bolding to indicate new language proposed to be added.
- (b) The formatting described in subsection (a) is not required if the entire regulation is new and is not amending an existing regulation.

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

- (a) From the date of delivery of the proposed regulation until the date the Commission takes final action on the regulation, the agency shall deliver to the Commission and committees copies of the following material relating to the regulation:
 - (1) If a comment indicates that a copy has been sent to the Commission and the agency verifies that the comment was delivered to the Commission, the agency is not required to deliver an additional copy of that comment.
 - (2) Reports from advisory groups which the Commission or a committee has requested.
 - (3) Public notices or announcements regarding solicitation of public comments and information regarding meetings the agency has held or will hold which the Commission or a committee has requested.
 - (4) Transcripts of public hearings which the Commission or a committee has requested.
- (b) The agency shall deliver copies of comments to the Commission and the committees within 5 business days of receipt.
- (c) The agency may deliver one copy of form letters received, and indicate the number of copies of that form letter it has received as of the date of delivery.
- (d) The agency shall inform each commentator of the following:
 - (1) The name, e-mail address, address and phone number of the person in the agency from whom the commentator may request further information on the final-form regulation and the agency's website address.
 - (2) That upon request, the agency will notify the commentator when the final-form regulation, is delivered to the Commission and published on the agency's website.

(3) That upon request, the agency will provide the commentator with either a copy of the final-form regulation or a summary of the changes to the proposed regulation which are incorporated in the final-form regulation. If the agency ascertains that the commentator has Internet access and has been notified when the regulation has been published on the agency's website, delivery may be made through publication of the regulation on the agency's website.

§ 305.3. Commission comments.

(a) Within 30 days after the close of the public comment period, the Commission may deliver Commission comments to the agency and the committees. The Commission will calculate its review period as beginning on the day after the expiration of the public comment period.

(b) An agency may extend or reopen the public comment period by delivering notice to the Commission and the committees, and publishing a notice in the *Pennsylvania Bulletin* that specifies the close of the extended or reopened public comment period.

(c) When an agency extends or reopens the public comment period, the following apply:

(1) If the agency extends or reopens the public comment period before the Commission review period expires, the Commission may have 30 days after the close of the extended or reopened public comment period to deliver Commission comments to the agency and the committees.

(2) If the agency reopens the public comment period after the Commission's review period expires, the Commission may have 30 days after the close of the reopened public comment period to deliver Commission comments to the agency and the committees. The Commission comments, at the Commission's discretion, will either supplement or replace the original Commission comments delivered to the agency and the committees within the time prescribed in subsection (a). If the Commission does not deliver comments within 30 days after the close of the reopened public comment period, the original Commission comments delivered to the agency and the committees in accordance with subsection (a) will remain the official Commission comments.

(3) The 2-year period for promulgation under § 307.1 (relating to two-year period for promulgation) will begin on the day after the extended or reopened public comment period ends.

(d) The agency shall verify receipt of Commission comments in the following manner:

(1) If the Commission comments are hand delivered, by signing the Commission's receipt card.

(2) If the Commission comments are delivered by facsimile, by signing and transmitting by facsimile the cover page to the Commission.

(3) If the Commission comments are e-mailed, by sending a return e-mail to the Commission confirming receipt.

(e) Commission comments will specify the regulatory review criteria that are the basis for the Commission's objections, recommendations, statements or questions.

§ 305.4. [Reserved].

CHAPTER 307. PROCEDURES FOR DELIVERY AND REVIEW OF FINAL REGULATIONS

Sec.

307.1. Two-year period for promulgation.

307.2. Delivery of a final-form regulation.

307.3. Delivery of a final-omitted regulation.

307.3a. Formatting the text of final regulations.

307.4. Amending by withdrawing the regulation or tolling the review period.

307.5. Tolling the review period.

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

§ 307.1. Two-year period for promulgation.

If an agency does not deliver, or withdraws and does not resubmit, a final-form regulation within 2 years of the close of the original, extended or reopened public comment period for the proposed regulation, the agency is deemed to have withdrawn the regulation.

§ 307.2. Delivery of a final-form regulation.

(a) The agency shall deliver a final-form regulation to the committees and the Commission on the same date.

(b) On the same date that the agency submits the regulation to the committees and the Commission, the agency shall send, by first-class or e-mail, a notice of submission and a copy of the text of the final-form regulation or a copy of all changes to the proposed regulation which are incorporated into the final-form regulation, to those commentators who requested information on the final-form regulation.

(c) The agency shall include the following documents with the regulation:

- (1) A completed regulatory analysis form relating to the final-form regulation.
- (2) A face sheet signed by the agency head and the Office of General Counsel or chief counsel of an independent agency.
- (3) A transmittal sheet signed by the committees.
- (4) The agency's response to the comments received. **This response may be included in the preamble or in a separate document submitted with the regulation.**
- (5) The preamble, **which shall include summary of the changes made to the proposed regulation and all information as described in § 301.1.**
- (6) The names and addresses of commentators who requested additional information on the final-form regulation **or a statement that no commentator requested additional information.**
- (7) The text of the final-form regulation.

§ 307.3. Delivery of a final-omitted regulation.

- (a) The agency shall deliver a final-omitted regulation to the committees, the Attorney General and the Commission on the same date.
- (b) The agency shall include the following documents with the regulation:
 - (1) A completed regulatory analysis form.
 - (2) A face sheet signed by the agency head and the Office of General Counsel or chief counsel of an independent agency.
 - (3) A transmittal sheet signed by the committees and the Office of Attorney General.
 - (4) The preamble, **which shall include all information as described in § 301.1.**
 - (5) The text of the final-omitted regulation.

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

(a) When preparing and formatting the text of the final-form regulation, the agency shall use as its source document the proposed regulation as published by the LRB in the Pennsylvania Bulletin.

~~(a)~~**(b)** If the proposed regulation was published in the format prescribed in § 305.1a(a) (relating to formatting the text of a proposed regulation) as an amendment to an existing regulation, amendments in the final-form regulation shall be illustrated as follows:

(1) Strikeout type to indicate language in the existing or proposed regulation which is being deleted.

(2) Capital letters to indicate new language which is being added to the final-form regulation which was not included in the existing or proposed regulation.

~~(b)~~**(c)** If the entire proposed regulation was published in the format set forth in § 305.1a(b) as new, and not an amendment to an existing regulation, amendments in the final-form regulation shall be illustrated as follows:

(1) Brackets to indicate language in the proposed regulation which is being deleted.

(2) Underscoring or bolding to indicate new language which is being added in the final-form regulation.

~~(e)~~**(d)** If the entire final-omitted regulation is new, and not an amendment to an existing regulation, the formatting described in subsections (a) and (b) is not required.

~~(d)~~**(e)** If the final-omitted regulation is an amendment to an existing regulation, amendments in the final-omitted regulation shall be illustrated as follows:

(1) Brackets to indicate language in the existing regulation which is being deleted.

(2) Underscoring or bolding to indicate new language which is being added in the final-omitted regulation.

(f) If there are extenuating circumstances that may prevent an agency from using the requirements of this section, the agency shall contact the Commission to discuss alternative formatting methods.

§ 307.4. Amending by withdrawing the regulation or tolling the review period.

After delivery of a final regulation to the Commission and committees, an agency may revise the regulation only if it does either of the following:

(1) Withdraws the final regulation in compliance with § 301.7 (relating to withdrawal of a regulation) and later submits the regulation with revisions. A revised final-form regulation shall be submitted within the 2-year time period under section 5.1(a) of the act (71 P. S. § 745.5a(a)) and §§ 305.3, 307.1 and 307.2 (relating to Commission comments; two-year period for promulgation; and delivery of a final-form regulation). A revised final-omitted regulation shall be submitted under § 307.3 (relating to delivery of a final-omitted regulation).

(2) Tolls the review period in compliance with section 5.1(g) of the act and § 307.5 (relating to tolling the review period).

§ 307.5. Tolling the review period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 309. ACTION ON REGULATIONS

Sec.

309.1. Commission and committee action on a final regulation.

309.2. Committee disapproval or notification of intent to review/Commission approval of a final regulation.

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

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

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

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

(1) All of the following events occur:

(i) The Commission has not issued comments relating to any portion of the regulation as proposed within the time provided for its review.

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

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

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

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

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

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

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

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

§ 309.2. Committee disapproval or notification of intent to review/Commission approval of a final regulation.

- (a) A committee may notify the Commission and the agency that it has disapproved a regulation or that it intends to review the regulation, in accordance with section 5.1(j.2) of the act (71 P. S. § 745.5a(j.2)).
- (b) If a committee disapproves a regulation, or notifies the Commission and the agency that it intends to review the regulation, the agency may not promulgate the regulation until the time for reporting and adopting a concurrent resolution expires in accordance with section 5.1(j.2) and (j.3) and section 7(d) of the act (71 P. S. § 745.7(d)).

CHAPTER 311. PROCEDURES FOR REVIEW OF DISAPPROVED FINAL REGULATIONS

Sec.

- 311.1. Commission disapproval of a final regulation.
- 311.2. Response by an agency to Commission disapproval.
- 311.3. Report for a disapproved regulation submitted without revisions or modifications.
- 311.4. Report for a disapproved regulation submitted with revisions.
- 311.5. Subsequent review of disapproved regulation.

§ 311.1. Commission disapproval of a final regulation.

- (a) If the Commission disapproves a final regulation, the Commission will issue a disapproval order specifying the regulatory review criteria that the regulation has not met.
- (b) The Commission will deliver its disapproval order to the LRB, the committees, the agency and the Attorney General. eThe Commission [may] **will** notify commentators listed by the agency as having requested information on the final regulation by delivery of the disapproval order or by publication of a legal notice under 45 Pa.C.S. Chapter 3 (relating to Newspaper Advertising Act).
- (c) The Commission’s disapproval order shall continue the bar on the promulgation of the regulation until the review provided under section 7(d) of the act (71 P. S. § 745.7(d)) and this chapter is completed.

§ 311.2. Response by an agency to Commission disapproval.

(a) Upon receipt of the Commission's disapproval order, the agency may select one of the following three options:

(1) To proceed with promulgation of the regulation without revisions, under § 311.3 (relating to report for a disapproved regulation submitted without revisions or modifications).

(2) To revise the regulation in order to respond to the Commission's objections, under § 311.4 (relating to report for a disapproved regulation submitted with revisions).

(3) To withdraw the regulation, under subsection (b).

(b) If the agency does not deliver a report to the Commission and the committees within the time prescribed in section 7(b) or (c) of the act (71 P. S. § 745.7(b) and (c)) and § 311a.7 (relating to delivery of the report for subsequent review of a disapproved regulation), the agency is deemed to have withdrawn the regulation.

§ 311.3. Report for a disapproved regulation submitted without revisions or modifications.

If the agency chooses to proceed with promulgation of the regulation without revision under § 311.2(a)(1) (relating to response by an agency to Commission disapproval), the report must contain the following:

(1) The final regulation.

(2) The Commission's disapproval order.

(3) The agency's response to the Commission's disapproval.

(4) A signed transmittal sheet indicating the report was delivered to the committees on the same date on which it was delivered to the Commission.

§ 311.4. Report for a disapproved regulation submitted with revisions.

If the agency chooses to revise or modify the final regulation under § 311.2(a)(2) (relating to response by an agency to Commission disapproval), the report must contain the following:

(1) A completed regulatory analysis form.

[(1)](2) The revised final regulation, formatted in accordance with § 307.3a (relating to formatting the text of a final regulation).

[(2)](3) The Commission's disapproval order.

[(3)](4) A detailed explanation of how the revisions respond to the Commission's disapproval order.

[(4)](5) A signed transmittal sheet indicating that the report was delivered to the committees on the same day on which it was delivered to the Commission.

§ 311.5. Subsequent review of disapproved regulation.

(a) The Commission may have until its next scheduled meeting which occurs no less than 15 days from receipt of the report to approve or disapprove the report. The Commission will calculate its review period as beginning the day after receipt of the report.

(b) If the Commission does not disapprove the report, the Commission is deemed to have approved the report.

(c) Upon receipt of the Commission's order approving or disapproving the report, or at the expiration of the Commission's review period if the Commission does not act on the report or deliver its order within the time prescribed by section 7(c.1) of the act (71 P. S. § 745.7(c.1)), the committees will have 14 days to review the report in accordance with section 7(d) of the act (71 P. S. § 745.7(d)).

(d) If, by the expiration of the 14-day period, neither committee reports a concurrent resolution, the committees will be deemed to have approved the report.

(e) If the committees and the Commiss[s]ion approve or are deemed to have approved the report, the agency may proceed with promulgation of the revised final regulation.

(f) If a concurrent resolution is reported, the bar on the promulgation of the final regulation shall continue until the review provided under section 7(d) of the act is completed.

(g) If a concurrent resolution is adopted by the House and the Senate and the Governor approves or is deemed to have approved the resolution, or if the Governor's veto of the resolution is overridden, in accordance with section 7(d) of the act the agency shall be permanently barred from promulgating the regulation.

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

Sec.

- 311a.1. Delivery of a proposed regulation after the end of the legislative session.
- 311a.2. Delivery of public comments after the end of the legislative session.
- 311a.3. Delivery of Commission comments after the end of the legislative session.
- 311a.4. Delivery of a final regulation within 20 days before the end of the legislative session.
- 311a.5. Delivery of a final regulation after the end of the legislative session.
- 311a.6. Delivery of notice of intent to toll the review period after the end of the legislative session.
- 311a.7. Delivery of the report for subsequent review of a disapproved regulation.
- 311a.8. Notification of Commission action on or deemed approval of a regulation or report after the end of the legislative session.

§ 311a.1. Delivery of a proposed regulation after the end of the legislative session.

- (a) An agency may deliver a proposed regulation and required material to the Commission and the LRB after the end of the legislative session. The public comment period will begin upon publication of the proposed regulation in the *Pennsylvania Bulletin*. The Commission may submit comments within the time frame set forth in § 305.3 (relating to Commission comments).
- (b) An agency may not deliver the proposed regulation and required material to the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.
- (c) If the agency does not deliver the proposed regulation and required material to the committees **on the fourth Monday in January or** by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, **whichever is later**, the regulation will be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency shall submit a new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act (71 P. S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).
- (d) The agency is not required to redeliver the regulation to the Commission when it delivers the regulation to the committees.
- (e) The agency shall deliver the transmittal sheet signed by the committees to the Commission on the same day that it delivers the regulation to the committees.

(f) The agency may not make any changes in the regulation after delivery to the Commission. If the agency wants to amend the proposed regulation prior to delivery to the committees, the agency shall withdraw the regulation from the Commission and submit a new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act and § 305.1.

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

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

(b) The agency may not deliver public comments to the committees which are received after the end of the legislative session until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the agency does not deliver public comments received after the end of the legislative session to the committees **on the fourth Monday in January or** by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, **whichever is later**, the agency may be in violation of the act and this part, under section 5.2(b)(6) of the act (71 P. S. § 745.5b(b)(6)).

§ 311a.3. Delivery of Commission comments after the end of the legislative session.

(a) The Commission will deliver comments to the agency issued after the end of the legislative session in accordance with section 5(g) of the act (71 P. S. § 745.5(g)).

(b) The Commission may not deliver Commission comments issued after the end of the legislative session to the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) The Commission will deliver Commission comments issued after the end of the legislative session to the committees **on the fourth Monday in January or** by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, **whichever is later**.

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

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

(b) If the end of the legislative session occurs before the committees have had at least 20 days to review the regulation, the agency shall redeliver the final regulation and required material to the Commis[i]sion and committees in the next legislative session.

(c) The agency may not redeliver the final regulation and required material to the Commission and the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(d) If the agency does not redeliver the final regulation **on the fourth Monday in January or** by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, **whichever is later**, the regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency may submit one of the following:

(1) A new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act (71 P. S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).

(2) A new final-form regulation to the Commission and the committees in accordance with section 5.1(a) of the act (71 P. S. § 745.5a(a)) and § 307.2 (relating to delivery of a final-form regulation).

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

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

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

(b) The agency may not deliver the final regulation and required material to the Commission and the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the two-year period for promulgation of a final-form regulation under section 5.1(a) of the act (71 P. S. § 745.5(a)) and § 307.1 (relating to two-year period for promulgation) expires after the end of the legislative session, the agency shall deliver the final-form regulation and required material to the Commission and the committees **on the fourth Monday in January or** by the second Monday after publication of both committee designations in the *Pennsylvania Bulletin*, **whichever is later**. If the agency does not deliver the final-form regulation and required material by this date, the regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency may submit one of the following:

(1) A new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act (71 P. S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).

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

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

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

§ 311a.7. Delivery of the report for subsequent review of a disapproved regulation.

(a) An agency may not deliver its report and required material under section 7(b) or (c) of the act (71 P. S. § 745.7(b) and (c)) and § 311.3 or § 311.4 (relating to report for a disapproved regulation submitted without revisions or modifications; and report for a disapproved regulation submitted with revisions) after the end of the legislative session.

(b) The agency may not deliver its report and required material until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the agency does not deliver its report and required material **on the fourth Monday in January or** by the second Monday after both committee designations have been published in the *Pennsylvania Bulletin*, **whichever is later**, the disapproved final regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency shall submit either a new proposed regulation to the Commission, committees and LRB in accordance with section 5(a) of the act (71 P. S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation), a new final-form regulation to the Commission and the committees in accordance with section 5.1(a) of the act (71 P. S. § 745.5a(a)) and § 307.2 (relating to delivery of a final-form regulation), or a final-omitted regulation to the Commission, the committees and the Attorney General in accordance with section 5.1(c) of the act and § 307.3 (relating to delivery of a final-omitted regulation).

§ 311a.8. Notification of Commission action on or deemed approval of a regulation or report after the end of the legislative session.

- (a) The Commission may not notify the committees of its approval, disapproval or deemed approval of a regulation or report after the end of the legislative session.
- (b) The Commission may not notify the committees of its approval, disapproval or deemed approval of a regulation or report until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.
- (c) If the Commission does not deliver its order disapproving the agency's report to the committees by the second Monday after both committee designations have been published in the *Pennsylvania Bulletin*, the Commission will be deemed to have approved the agency's report and final regulation.

CHAPTER 313. EMERGENCY CERTIFIED REGULATIONS

Sec.

- 313.1. General.
- 313.2. Review of an emergency certified final regulation.

§ 313.1. General.

(a) An agency may deliver a final regulation as an emergency certified regulation, under section 6(d) of the act (71 P. S. § 745.6(d)), in either of the following situations:

(1) The Attorney General certifies that the regulation is required to satisfy the order of a State or Federal court, or to implement the provisions of a Federal statute or regulation.

(2) The Governor certifies that the regulation is required to avoid an emergency which may threaten the public health, safety or welfare, cause a budget deficit or create the need for supplemental or deficiency appropriations of greater than \$1 million.

(b) The agency shall deliver the emergency certified final-form regulation and the certification from the Attorney General or the Governor in accordance with § 307.2 (relating to delivery of a final-form regulation).

(c) The agency shall deliver the emergency certified final-omitted regulation and the certification from the Attorney General or the Governor in accordance with § 307.3 (relating to delivery of a final-omitted regulation).

§ 313.2. Review of an emergency certified final regulation.

(a) An emergency certified final regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*, or on the date specified in the agency's adoption order.

(b) Review of an emergency certified regulation shall be in accordance with the procedures of Chapters 307, 309, 311 and 311a. If the emergency certified regulation is disapproved, the regulation shall be rescinded after 120 days or upon final disapproval under section 7(d) of the act (71 P. S. § 745.7(d)), whichever occurs later.

(c) Except as provided in section 5.1(g) of the act (71 P. S. § 745.5a(g)) and §§ 307.4 and 307.5 (relating to tolling the review period; and procedures for tolling), an agency may not make changes to an emergency certified regulation after the agency delivers the regulation to the Commission and the committees.

CHAPTER 315. EXISTING REGULATIONS AND PUBLISHED OR UNPUBLISHED DOCUMENTS

Sec.

315.1. Review of an existing regulation.

315.2. Review of a published or an unpublished document.

§ 315.1. Review of an existing regulation.

(a) The Commission, on its own 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 3 years, under section 8.1 of the act (71 P. S. § 745.8a). If a committee of the Senate or House of Representatives requests the review, the Commission will assign it high priority.

(b) Upon delivery of a request to review an existing regulation, the Commission will initiate a preliminary review to determine whether further [investigation] **review** is warranted.

(c) If the Commission determines that a[n investigation] **further review** is not warranted, the matter will be closed. The Commission will notify the person or entity requesting the review of the existing regulation that no further action will be taken.

(d) If it is determined that a[n investigation] **further review** is warranted, the Commission will notify the agency of the issues that have been raised and request a written response.

(e) After review of the agency's response and other relevant material, the Commission will issue a report setting forth its findings, conclusions or recommendations.

(f) The Commission will deliver its report to the agency, the committees, the Governor and the Attorney General. The Commission's report may include recommendations for amendment of the statute that provides statutory authority for the regulation.

§ 315.2. Review of a published or an unpublished document.

If the Commission finds that a published or unpublished document should be promulgated as a regulation, the Commission will present its finding to the Joint Committee on Documents. The Joint Committee on Documents shall determine whether the document should be promulgated as a regulation, and may order the agency to promulgate the document as a regulation within 180 days, or to desist from using the document in its business.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 70-9

AGENCY: Independent Regulatory Review Commission

SUBJECT: Practice and Procedures of the Commission

TYPE OF REGULATION:

- Regulation proposed for publication for notice and comment
- Regulation proposed for final publication
- Regulation proposed for final publication with public notice and comment period omitted
- 120-day emergency certification by Attorney General
- 120-day emergency certification by Governor

FILING OF REGULATION

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
<u>10-13-15</u>	<u></u>	HOUSE COMMITTEE ON STATE GOVERNMENT Majority Chairman <u>Metcalf</u>
<u>10/13/15</u>	<u></u>	Minority Chairman <u>Cohen</u>
<u>10-13-15</u>	<u></u>	SENATE COMMITTEE ON RULES & EXECUTIVE NOMINATIONS Majority Chairman <u>Corman</u>
<u>10-13-15</u>	<u></u>	Minority Chairman <u>Costa</u>
<u>10-13-15</u>	<u></u>	JOINT COMMITTEE ON DOCUMENTS
<u>10.13.15</u>	<u></u>	LEGISLATIVE REFERENCE BUREAU