
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 301 Session of
2015

INTRODUCED BY GREENLEAF, SCHWANK AND VULAKOVICH,
JANUARY 21, 2015

REFERRED TO JUDICIARY, JANUARY 21, 2015

AN ACT

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

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

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

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

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

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

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

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

4 § 105. Local Agency Law.

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

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

10 CHAPTER 3

11 PROMULGATION OF REGULATIONS

12 [(Reserved)]

13 Subchapter

14 A. Commonwealth Documents Law

15 B. Legal Review

16 C. Fiscal Review

17 D. Independent Regulatory Review Commission

18 SUBCHAPTER A

19 COMMONWEALTH DOCUMENTS LAW

20 Sec.

21 301. Scope of subchapter.

22 302. Definitions.

23 303. Notice of proposed rulemaking.

24 304. Adoption of regulations.

25 305. Effective date of regulations.

26 306. Omission of notice of proposed rulemaking.

27 307. Approval as to legality.

28 308. Format of regulations and other documents.

29 309. Deposit of agency text of regulations required.

30 310. Unfiled regulations invalid.

1 § 301. Scope of subchapter.

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

5 § 302. Definitions.

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

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

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

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

23 (1) The Senate.

24 (2) The House of Representatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 § 303. Notice of proposed rulemaking.

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

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

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

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

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

26 (5) Any other statement required by law.

27 § 304. Adoption of regulations.

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

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

15 § 305. Effective date of regulations.

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

24 (1) The administrative regulation:

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

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

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

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

5 § 306. Omission of notice of proposed rulemaking.

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

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

13 (i) military affairs;

14 (ii) agency organization, management or personnel;

15 (iii) agency procedure or practice;

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

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

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

25 (3) The agency for good cause finds, and incorporates
26 the finding and a brief statement of the reasons for the
27 finding in the order adopting the administrative regulation
28 or change in it, that the procedures specified under sections
29 303 and 304 are in the circumstances impracticable,
30 unnecessary or contrary to the public interest.

1 § 307. Approval as to legality.

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

6 (b) Appeal.--

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

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

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

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

27 § 308. Format of regulations and other documents.

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

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

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

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

11 § 310. Unfiled regulations invalid.

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

16 SUBCHAPTER B

17 LEGAL REVIEW

18 Sec.

19 311. Definitions.

20 312. General Counsel.

21 313. Attorney General.

22 § 311. Definitions.

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

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

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

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

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

17 § 312. General Counsel.

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

23 § 313. Attorney General.

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

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

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

7 (c) Response by Commonwealth agency.--

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

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

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

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

27 SUBCHAPTER C

28 FISCAL REVIEW

29 Sec.

30 321. Definitions.

1 322. Fiscal notes.

2 § 321. Definitions.

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

6 "Office." The Office of the Budget.

7 "Secretary." The Secretary of the Budget.

8 § 322. Fiscal notes.

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

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

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

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

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

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

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

1 expenditures are to be made.

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

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

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

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

12 SUBCHAPTER D

13 INDEPENDENT REGULATORY REVIEW COMMISSION

14 Sec.

15 331. Scope of subchapter.

16 332. Legislative declarations.

17 333. Definitions.

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

20 335. Proposed regulations; procedures for review.

21 335.1. Final-form regulations and final-omitted regulations;
22 procedures for review.

23 335.2. Criteria for review of regulations.

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

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

28 337.1. Classification of documents.

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

30 338.1. Existing regulations.

1 339. Commission staff.

2 340. Subpoena power.

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

5 342. Clearinghouse.

6 342.1. Gubernatorial review.

7 § 331. Scope of subchapter.

8 This subchapter relates to regulatory review.

9 § 332. Legislative declarations.

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

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

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

30 (2) Provide ultimate review of regulations by the

1 General Assembly.

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

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

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

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

15 (2) Small businesses bear a disproportionate share of
16 regulatory costs and burdens.

17 (3) Fundamental changes that are needed in the
18 regulatory and enforcement culture of agencies to make them
19 more responsive to small businesses can be made without
20 compromising the statutory missions of the agencies.

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

26 (5) Uniform regulatory and reporting requirements can
27 impose unnecessary and disproportionately burdensome demands,
28 including legal, accounting and consulting costs upon small
29 businesses with limited resources.

30 (6) The failure to recognize differences in the scale

1 and resources of regulated businesses can adversely affect
2 competition in the marketplace, discourage innovation and
3 restrict improvements in productivity.

4 (7) Unnecessary regulations create entry barriers in
5 many industries and discourage potential entrepreneurs from
6 introducing beneficial products and processes.

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

12 (9) Alternative regulatory approaches which do not
13 conflict with the stated objective of applicable statutes may
14 be available to minimize the significant economic impact of
15 rules on small businesses.

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

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

26 § 333. Definitions.

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

30 "Acceptable data." Empirical, replicable and testable data

1 as evidenced in supporting documentation, statistics, reports,
2 studies or research.

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

9 "Commission." The Independent Regulatory Review Commission.

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

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

20 "Final-form regulation." A regulation previously published
21 as a proposed regulation under Subchapter A (relating to
22 Commonwealth documents law), which an agency submits to the
23 commission and the committees following the close of the public
24 comment period.

25 "Final-omitted regulation." A regulation which an agency
26 submits to the commission and the committees for which the
27 agency has omitted notice of proposed rulemaking under section
28 306 (relating to omission of notice of proposed rulemaking).

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

1 "Proposed regulation." A document intended for promulgation
2 as a regulation which an agency submits to the commission and
3 the committees and for which the agency gives notice of proposed
4 rulemaking and holds a public comment period under Subchapter A.

5 "Regulation."

6 (1) The term shall include:

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

14 (ii) Actions of the Pennsylvania Liquor Control
15 Board which have an effect on the discount rate for
16 retail licensees.

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

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

22 "Small business." As defined in accordance with the size
23 standards described by the United States Small Business
24 Administration's Small Business Size Regulations under 13 CFR
25 Ch. 1 Pt. 121 (relating to Small Business Size Regulations).

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

30 § 334. Composition of commission; membership; compensation;

1 vacancies; removal.

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

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

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

22 (d) Compensation.--The commissioner who is elected to serve
23 as the chairperson in accordance with subsection (g) shall
24 receive \$300 per day as compensation for services rendered to
25 the commission. Each of the other commissioners shall receive
26 \$250 per day as compensation for services rendered to the
27 commission. A commissioner shall also be entitled to
28 reimbursement for travel and other necessary expenses incurred
29 as a result of official duties. The expenses incurred by a
30 commissioner or by an employee of the commission shall be paid

1 on the presentation of itemized vouchers for the expenses. The
2 vouchers shall be subject to the approval of the commission.

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

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

27 (f.1) Financial interest.--

28 (1) A commissioner may not participate in deliberations
29 regarding any regulation which significantly affects the
30 operation or activities of any organization in which the

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

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

19 (3) If a commissioner has or may have a conflict of
20 interest or feels another commissioner has or may have a
21 conflict of interest in deliberating on a regulation, the
22 commissioner shall, prior to the vote on the regulation,
23 disclose the conflict or potential conflict.

24 (4) The commissioner may request a ruling from the
25 chairperson of the commission upon the question of whether
26 the conflict or potential conflict disqualifies the
27 commissioner from voting on the regulation. A commissioner
28 may challenge the ruling of the chairperson. If a ruling is
29 challenged, the question shall be resolved by majority vote
30 of the commission.

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

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

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

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

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

23 (h) Meetings.--The commission shall meet before the period
24 for its review of regulations under this subchapter expires and
25 at other times as necessary to transact the business of the
26 commission and ensure an expeditious and orderly review of
27 regulations under this subchapter. Meetings shall be held at
28 times and places set by the chairperson. A meeting may be
29 scheduled by the commission upon the provision of at least 10
30 days' notice to all affected agencies and the committees. A

1 commissioner who does not attend three consecutive meetings
2 without cause may be removed as a commissioner by the authority
3 appointing the commissioner.

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

12 § 335. Proposed regulations; procedures for review.

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

20 (1) The title of the agency and the names, office
21 addresses and telephone numbers of the agency officials
22 responsible for responding to questions regarding the
23 regulation or for receiving comments relating to the
24 regulation.

25 (1.1) A specific citation to the Federal or State
26 statutory or regulatory authority or the decision of a
27 Federal or State court under which the agency is proposing
28 the regulation, which the regulation is designed to implement
29 or which may mandate or affect compliance with the
30 regulation.

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

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

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

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

16 (6) (Reserved).

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

26 (8) (Reserved).

27 (9) An identification of the types of persons, small
28 businesses, businesses and organizations which would be
29 affected by the regulation.

30 (10) An identification of the financial, economic and

1 social impact of the regulation on individuals, small
2 businesses, business and labor communities and other public
3 and private organizations and, when practicable, an
4 evaluation of the benefits expected as a result of the
5 regulation.

6 (10.1) For any proposed regulation that may have an
7 adverse impact on small businesses, an economic impact
8 statement that includes the following:

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

11 (ii) The projected reporting, recordkeeping and
12 other administrative costs required for compliance with
13 the proposed regulation, including the type of
14 professional skills necessary for preparation of the
15 report or record.

16 (iii) A statement of the probable effect on impacted
17 small businesses.

18 (iv) A description of any less intrusive or less
19 costly alternative methods of achieving the purpose of
20 the proposed regulation.

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

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

29 (12.1) A regulatory flexibility analysis in which the
30 agency shall, if consistent with health, safety,

1 environmental and economic welfare, consider utilizing
2 regulatory methods that will accomplish the objectives of
3 applicable statutes while minimizing adverse impact on small
4 businesses. The agency shall consider, without limitation,
5 each of the following methods of reducing the impact of the
6 proposed regulation on small businesses:

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

9 (ii) the establishment of less stringent schedules
10 or deadlines for compliance or reporting requirements for
11 small businesses;

12 (iii) the consolidation or simplification of
13 compliance or reporting requirements for small
14 businesses;

15 (iv) the establishment of performance standards for
16 small businesses to replace design or operational
17 standards required in the proposed regulation; and

18 (v) the exemption of small businesses from all or
19 any part of the requirements contained in the proposed
20 regulation.

21 (13) A description of the plan developed for evaluating
22 the continuing effectiveness of the regulation after its
23 implementation.

24 (14) A description of any data upon which a regulation
25 is based with a detailed explanation of how the data was
26 obtained and why the data is acceptable data. An agency
27 advocating that any data is acceptable data shall have the
28 burden of proving that the data is acceptable.

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

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

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

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

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

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

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

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

1 (relating to criteria for review of regulations).

2 (e) (Reserved).

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

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

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

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

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

24 (g) Commission response.--

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

1 not met.

2 (2) The following apply:

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

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

15 (h) Comments.--The commission shall provide comments to the
16 agency if the required submissions under subsection (a) (9),
17 (10), (10.1) and (12.1) demonstrate an adverse impact on small
18 businesses.

19 § 335.1. Final-form regulations and final-omitted regulations;
20 procedures for review.

21 (a) Duties of agency.--

22 (1) The agency shall review and consider public comments
23 and the comments of the committees and commission under this
24 section.

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

30 (3) Upon completion of the agency's review of comments,

1 the agency shall submit to the commission and the committees
2 a copy of its response to the comments received, the names
3 and addresses of commentators who have requested additional
4 information relating to the final-form regulation and the
5 text of the final-form regulation which the agency intends to
6 adopt.

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

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

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

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

30 (2) The agency is not required to notify each party

1 whose name appears on petitions or membership lists who did
2 not present individual comments on the regulation.

3 (c) Time period for filing.--

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

13 (2) If the agency makes revisions under subsection (g),
14 the agency shall deliver copies of the revisions to the
15 Attorney General on the same date that the agency delivers
16 the revisions to the commission and the committees.

17 (d) (Reserved).

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

28 (f) Delivery.--An agency may not deliver a final-form or
29 final-omitted regulation to the commission and the committees
30 after the adjournment sine die or expiration of the legislative

1 session in an even-numbered year. The agency may not deliver the
2 final-form or final-omitted regulation until the fourth Monday
3 in January of the next year. On that date, the agency shall
4 resubmit the final-form or final-omitted regulation and required
5 material to the committees and the commission. If either
6 committee has not been designated by the fourth Monday in
7 January, the agency may not deliver the final-form or final-
8 omitted regulation and required material to the committees and
9 the commission until both committees are designated.

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

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

25 (2) Tolling under paragraph (1) may last for up to 30
26 days. If within 30 days the agency does not submit revisions
27 to the committees and the commission or does not notify the
28 commission and the committees in writing that it will not
29 submit revisions but wishes the commission and the committees
30 to resume their review, the agency shall be deemed to have

1 withdrawn the final-form or final-omitted regulation.

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

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

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

29 (h) (Reserved).

30 (i) (Reserved).

1 (j) Comments.--The commission shall accept public comments
2 only up to 48 hours prior to the commission's public meeting
3 unless the comments are submitted at the request of the
4 commission. The commission shall receive comments from the
5 agency or members of the General Assembly until the commission
6 acts on the regulation. The commission shall transmit comments
7 received during the 48-hour period prior to the commission's
8 public meeting to the agency and the committees upon receipt.
9 The commission shall accept additional public comments only
10 after the public meeting has been called to order.

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

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

27 (2) If the agency does not deliver the final-form or
28 final-omitted regulation and required material to the
29 commission and the committees by the second Monday after the
30 date by which both committee designations have been published

1 in the Pennsylvania Bulletin, the agency shall be deemed to
2 have withdrawn the regulation.

3 (3) In computing the remaining time for committee
4 review, the number of days in which the committees have had
5 the final-form or the final-omitted regulation under review
6 as of the adjournment sine die or expiration of the prior
7 session shall be subtracted from the 20-day committee review
8 period, but the committee review period in the next
9 succeeding legislative session shall not be less than 10
10 days.

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

17 (j.2) Notification of approval and disapproval.--At any time
18 during the commission's review period up to 24 hours prior to
19 the opening of the commission's public meeting, a committee may
20 notify the commission and the agency that it has approved or
21 disapproved a final-form or final-omitted regulation or that it
22 intends to review the regulation. If the commission approves a
23 regulation and a committee has not notified the commission and
24 the agency that it has disapproved the regulation or that it
25 intends to review the regulation, the agency may promulgate the
26 regulation. If the commission approves a regulation and a
27 committee has notified the commission and the agency that it has
28 disapproved the regulation or that it intends to review the
29 regulation, the agency may not promulgate the regulation for 14
30 days after the committee has received the commission's approval

1 order. During this 14-day period, the committee may take action
2 on the regulation under section 337(d) (relating to procedures
3 for subsequent review of disapproved final-form or final-omitted
4 regulations). If at the expiration of the 14-day period the
5 committee has not taken action on the regulation under section
6 337(d), the agency may promulgate the regulation.

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

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

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

27 (3) In determining the remaining time for committee
28 review, the number of days in which the committees have had
29 the final-form or the final-omitted regulation under review
30 as of the adjournment sine die or expiration of the prior

1 session shall be subtracted from the 14-day committee review
2 period, but the committee review period in the next
3 succeeding legislative session shall not be less than 10
4 days.

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

11 (5) This subsection shall not apply to emergency-
12 certified regulations adopted under the provisions of section
13 336(d).

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

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

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

25 § 335.2. Criteria for review of regulations.

26 (a) Preliminary criteria.--In determining whether a
27 proposed, final-form, final-omitted or existing regulation is in
28 the public interest, the commission shall, first and foremost,
29 determine whether the agency has the statutory authority to
30 promulgate the regulation and whether the regulation conforms to

1 the intention of the General Assembly in the enactment of the
2 statute upon which the regulation is based. In making its
3 determination, the commission shall consider written comments
4 submitted by the committees and current members of the General
5 Assembly, pertinent opinions of Pennsylvania's courts and formal
6 opinions of the Attorney General.

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

13 (1) Economic or fiscal impacts of the regulation, which
14 include the following:

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

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

19 (iii) The nature of required reports, forms or other
20 paperwork and the estimated cost of their preparation by
21 individuals, businesses and organizations in the public
22 and private sectors.

23 (iv) The nature and estimated cost of legal,
24 consulting or accounting services which the public or
25 private sector may incur.

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

30 (2) The protection of the public health, safety and

1 welfare and the effect on this Commonwealth's natural
2 resources.

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

5 (i) Possible conflict with or duplication of
6 statutes or existing regulations.

7 (ii) Clarity and lack of ambiguity.

8 (iii) Need for the regulation.

9 (iv) Reasonableness of requirements, implementation
10 procedures and timetables for compliance by the public
11 and private sectors.

12 (v) Whether acceptable data is the basis of the
13 regulation.

14 (4) Whether the regulation represents a policy decision
15 of such a substantial nature that it requires legislative
16 review.

17 (5) Comments, objections or recommendations of a
18 committee.

19 (6) Compliance with the provisions of this subchapter or
20 the regulations of the commission in promulgating the
21 regulation.

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

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

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

29 (a) Order.--If the commission disapproves a final-form or
30 final-omitted regulation, the commission shall deliver its

1 disapproval order to the Legislative Reference Bureau, the
2 committees and the agency. The commission shall notify
3 commentators who have requested additional information under
4 section 335.1(a) (relating to final-form regulations and final-
5 omitted regulations; procedures for review) of the commission's
6 vote to disapprove. The disapproval order shall specify the
7 regulatory review criteria which the final-form or final-omitted
8 regulation has not met. The agency shall review the commission's
9 order and proceed under section 337(a) (relating to procedures
10 for subsequent review of disapproved final-form or final-omitted
11 regulations).

12 (b) Effect.--The commission's order disapproving a final-
13 form or final-omitted regulation shall bar the agency from
14 promulgating that regulation pending subsequent review under
15 section 337.

16 (c) (Reserved).

17 (d) Prohibition.--

18 (1) The commission may not issue an order barring an
19 agency from promulgating a final-form or final-omitted
20 regulation if the Attorney General certifies that the final-
21 form or final-omitted regulation is required under the decree
22 of any court or to implement the provisions of a statute of
23 the United States or regulations issued thereunder by a
24 Federal agency or if the Governor certifies that the final-
25 form or final-omitted regulation is required to meet an
26 emergency which includes conditions which may threaten the
27 public health, safety or welfare, cause a budget deficit or
28 create the need for supplemental or deficiency appropriations
29 of greater than \$1,000,000. In those cases, the final-form or
30 final-omitted regulation may take effect on the date of

1 publication or on a later date specified in the order
2 adopting the final-form or final-omitted regulation.

3 (2) The commission and the committees shall review the
4 final-form or final-omitted regulation under the procedures
5 provided for under this subchapter. If the final-form or
6 final-omitted regulation is disapproved under those
7 procedures, that regulation shall be rescinded after 120 days
8 or upon final disapproval, whichever occurs later.

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

11 (a) General procedures.--An agency may select one of the
12 following options for proceeding with a regulation which has
13 been disapproved by the commission:

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

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

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

20 (b) Report.--

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

30 (2) If the committees are prevented from receiving the

1 report because of adjournment sine die or expiration of the
2 legislative session in an even-numbered year, the agency
3 shall submit its report to the commission and the committees
4 on the fourth Monday in January of the next year. If either
5 committee has not been designated by the fourth Monday in
6 January, the agency may not deliver the report to the
7 committees and the commission until both committees are
8 designated, but the agency shall deliver its report to the
9 commission and the committees no later than the second Monday
10 after the date by which both committee designations have been
11 published in the Pennsylvania Bulletin.

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

16 (c) Modifications before report.--

17 (1) If the agency decides to revise or modify the final-
18 form or final-omitted regulation in order to respond to
19 objections raised by the commission and adopt that regulation
20 with revisions or modifications, the agency shall submit a
21 report to the committees and the commission within 40 days of
22 the agency's receipt of the commission's disapproval order.
23 The agency's report shall contain the revised final-form or
24 final-omitted regulation, the findings of the commission and
25 the agency's response and recommendations regarding the
26 revised final-form or final-omitted regulation.

27 (2) If the committees are prevented from receiving the
28 report because of adjournment sine die or expiration of the
29 legislative session in an even-numbered year, the agency
30 shall submit the report to the commission and the committees

1 on the fourth Monday in January of the next year. If either
2 committee has not been designated by the fourth Monday in
3 January, the agency may not deliver the report to the
4 committees and the commission until both committees are
5 designated, but the agency shall deliver its report to the
6 commission and the committees no later than the second Monday
7 after the date by which both committee designations have been
8 published in the Pennsylvania Bulletin.

9 (3) If the agency does not deliver its report to the
10 commission and the committees in the time prescribed in this
11 subsection, the agency shall be deemed to have withdrawn the
12 final-form or final-omitted regulation.

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

19 (1) If the commission is prevented from delivering its
20 order to the committees within the time period provided for
21 under this subsection because of the adjournment sine die or
22 expiration of the legislative session in an even-numbered
23 year, the commission shall deliver its order on the fourth
24 Monday of January of the next year.

25 (2) If either committee has not been designated by the
26 fourth Monday in January, the commission may not deliver its
27 order to the committees until both committees are designated,
28 but the commission shall deliver its order no later than the
29 second Monday after the date by which both committee
30 designations have been published in the Pennsylvania

1 Bulletin.

2 (3) If the commission does not deliver its order
3 disapproving the agency's report and revised final-form or
4 final-omitted regulation in the time prescribed under this
5 subsection, the commission shall be deemed to have approved
6 the agency's report and the revised final-form or final-
7 omitted regulation.

8 (d) Legislative presentation by concurrent resolution.--Upon
9 receipt of the commission's order under subsection (c.1) or at
10 the expiration of the commission's review period if the
11 commission does not act on the regulation or does not deliver
12 its order under subsection (c.1), one or both of the committees
13 may, within 14 calendar days, report to the Senate or House of
14 Representatives a concurrent resolution and notify the agency.
15 During the 14-calendar-day period, the agency may not promulgate
16 the final-form or final-omitted regulation.

17 (1) If, by the expiration of the 14-calendar-day period,
18 neither committee reports a concurrent resolution, the
19 committees shall be deemed to have approved the final-form or
20 final-omitted regulation, and the agency may promulgate that
21 regulation.

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

28 (3) If the General Assembly adopts the concurrent
29 resolution by majority vote in both the Senate and the House
30 of Representatives, the concurrent resolution shall be

1 presented to the Governor in accordance with section 9 of
2 Article III of the Constitution of Pennsylvania.

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

7 (5) If the Governor vetoes the concurrent resolution,
8 the General Assembly may override that veto by a two-thirds
9 vote in each house. The Senate and the House of
10 Representatives shall each have 30 calendar days or 10
11 legislative days, whichever is longer, to override the veto.

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

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

19 (8) If the General Assembly adopts the concurrent
20 resolution and the Governor approves or is deemed to have
21 approved the concurrent resolution or if the General Assembly
22 overrides the Governor's veto of the concurrent resolution,
23 the agency shall be barred from promulgating the final-form
24 or final-omitted regulation. The bar on promulgation of the
25 final-form or final-omitted regulation shall continue until
26 that regulation has been approved or deemed approved in
27 accordance with this subsection.

28 (9) If the General Assembly does not adopt the
29 concurrent resolution or if the Governor vetoes the
30 concurrent resolution and the General Assembly does not

1 override the Governor's veto, the agency may promulgate the
2 final-form or final-omitted regulation. The General Assembly
3 may, at its discretion, adopt a concurrent resolution
4 disapproving the final-form or final-omitted regulation to
5 indicate the intent of the General Assembly but permit the
6 agency to promulgate that regulation.

7 § 337.1. Classification of documents.

8 If the commission or a committee finds that a published or
9 unpublished document should be promulgated as a regulation, the
10 commission or committee may present the matter to the Joint
11 Committee on Documents. The Joint Committee on Documents shall
12 determine whether the document should be promulgated as a
13 regulation and may order an agency either to promulgate the
14 document as a regulation within 180 days or to desist from the
15 use of the document in the business of the agency.

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

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

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

25 § 338.1. Existing regulations.

26 The commission, on its motion or at the request of any person
27 or member of the General Assembly, may review an existing
28 regulation which has been in effect for at least three years. If
29 a committee of the Senate or the House of Representatives
30 requests a review of an existing regulation, the commission

1 shall perform the review and shall assign it high priority. The
2 commission may submit recommendations to an agency recommending
3 changes in existing regulations if it finds the existing
4 regulations to be contrary to the public interest under the
5 criteria established under section 335.2 (relating to criteria
6 for review of regulations). The commission may also make
7 recommendations to the General Assembly and the Governor for
8 statutory changes if the commission finds that any existing
9 regulation may be contrary to the public interest.

10 § 339. Commission staff.

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

20 (b) Chief counsel.--The commission shall appoint and fix the
21 compensation of a full-time chief counsel, who shall not be
22 subject to the supervision of the Attorney General or the
23 General Counsel. The chief counsel shall supervise, coordinate
24 and administer the legal services provided to the commission.

25 § 340. Subpoena power.

26 The commission has the authority to issue subpoenas for the
27 purpose of requiring the attendance of persons and the
28 production of documents relating to any function which the
29 commission or its staff is authorized to perform under this
30 subchapter. The chairperson or the executive director may sign a

1 subpoena. The subpoena may be served in any manner authorized
2 under the laws of this Commonwealth. The commission is
3 authorized to apply to the Commonwealth Court to enforce its
4 subpoenas.

5 § 341. Regulations; annual reports; hearings and advisory group
6 meetings.

7 (a) Regulations.--

8 (1) The commission, in the performance of its functions
9 under this subchapter, has the power to promulgate and
10 enforce regulations necessary to carry out the purposes of
11 this subchapter.

12 (2) Regulations must be promulgated in accordance with
13 the procedures established under Subchapter A (relating to
14 Commonwealth documents law).

15 (3) The regulations shall provide for the commission's
16 notification of filings of final-form and final-omitted
17 regulations to parties likely to be affected by the final-
18 form and final-omitted regulations through publication of a
19 notice in the Pennsylvania Bulletin.

20 (4) Prior to the regulations taking effect, the
21 requirements of this subchapter must be satisfied. For the
22 purposes of reviewing the regulations of the commission and
23 otherwise satisfying the requirements of this subchapter, the
24 Joint Committee on Documents shall exercise the rights and
25 perform the functions of the commission and the commission
26 shall exercise the rights and perform the functions of an
27 agency under this subchapter.

28 (b) Annual report.--By April 1, the commission shall file an
29 annual report of its activities for the prior calendar year with
30 the Governor, the Secretary of the Senate and the Chief Clerk of

1 the House of Representatives.

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

5 § 342. Clearinghouse.

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

19 § 342.1. Gubernatorial review.

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

29 Section 3. Repeals are as follows:

30 (1) The General Assembly declares as follows:

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

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

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

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

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

11 (i) Section 612 of the act of April 9, 1929
12 (P.L.177, No.175), known as The Administrative Code of
13 1929.

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

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

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

21 Section 4. Continuation is as follows:

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

26 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
27 Subch. A, all activities initiated under the Commonwealth
28 Documents Law shall continue and remain in full force and
29 effect and may be completed under 2 Pa.C.S. Ch. 3 Subch.
30 A. Orders, regulations, rules and decisions which were

1 made under the Commonwealth Documents Law and which are
2 in effect on the effective date of section 3(2)(ii) of
3 this act shall remain in full force and effect until
4 revoked, vacated or modified under 2 Pa.C.S. Ch. 3 Subch.
5 A. Contracts, obligations and collective bargaining
6 agreements entered into under the Commonwealth Documents
7 Law are not affected nor impaired by the repeal of the
8 Commonwealth Documents Law.

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

17 (iii) (Reserved).

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

22 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
23 Subch. B, all activities initiated under sections 204(b)
24 and 301(10) of the Commonwealth Attorneys Act shall
25 continue and remain in full force and effect and may be
26 completed under 2 Pa.C.S. Ch. 3 Subch. B. Orders,
27 regulations, rules and decisions which were made under
28 sections 204(b) and 301(10) of the Commonwealth Attorneys
29 Act and which are in effect on the effective date of
30 section 3(2)(iii) of this act shall remain in full force

1 and effect until revoked, vacated or modified under 2
2 Pa.C.S. Ch. 3 Subch. B. Contracts, obligations and
3 collective bargaining agreements entered into under
4 sections 204(b) and 301(10) of the Commonwealth Attorneys
5 Act are not affected nor impaired by the repeal of
6 sections 204(b) and 301(10) of the Commonwealth Attorneys
7 Act.

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

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

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

23 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
24 Subch. C, all activities initiated under section 612 of
25 The Administrative Code of 1929 shall continue and remain
26 in full force and effect and may be completed under 2
27 Pa.C.S. Ch. 3 Subch. C. Orders, regulations, rules and
28 decisions which were made under section 612 of The
29 Administrative Code of 1929 and which are in effect on
30 the effective date of section 3(2)(i) of this act shall

1 remain in full force and effect until revoked, vacated or
2 modified under 2 Pa.C.S. Ch. 3 Subch. C. Contracts,
3 obligations and collective bargaining agreements entered
4 into under section 612 of The Administrative Code of 1929
5 are not affected nor impaired by the repeal of section
6 612 of The Administrative Code of 1929.

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

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

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

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

1 are not affected nor impaired by the repeal of the
2 Regulatory Review Act.

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

10 (iii) (Reserved).

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