

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1487 Session of
2023

INTRODUCED BY KEEFER, ROWE AND LEADBETER, JUNE 22, 2023

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 22, 2023

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 repeals.

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

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

9 § 103. [Administrative Agency Law.

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

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

1 Documents Law.] Short title of title.

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

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

5 § 105. Local Agency Law.

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

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

11 CHAPTER 3

12 PROMULGATION OF REGULATIONS

13 [(Reserved)]

14 Section 3. Chapter 3 of Title 2 is amended by adding
15 subchapters to read:

16 SUBCHAPTER A

17 COMMONWEALTH DOCUMENTS LAW

18 Sec.

19 301. Scope of subchapter.

20 302. Definitions.

21 303. Notice of proposed rulemaking.

22 304. Adoption of regulations.

23 305. Effective date of regulations.

24 306. Omission of notice of proposed rulemaking.

25 307. Approval as to legality.

26 308. Format of regulations and other documents.

27 309. Deposit of agency text of regulations required.

28 310. Unfiled regulations invalid.

29 § 301. Scope of subchapter.

30 This subchapter relates to the filing of documents for

1 publication in the Pennsylvania Bulletin and codification in the
2 Pennsylvania Code.

3 § 302. Definitions.

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

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

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

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

21 (1) The Senate.

22 (2) The House of Representatives.

23 (3) A court. This paragraph includes an officer or
24 agency of a court.

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

28 "Agency text." The text of a document as issued, prescribed
29 or promulgated by the issuing, prescribing or promulgating
30 agency.

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

5 "Department." The Department of General Services of the
6 Commonwealth.

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

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

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

20 "Regulation." A rule or regulation, or order in the nature
21 of a rule or regulation:

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

25 (2) prescribing the practice or procedure before the
26 agency.

27 "Statement of policy." A document, except an adjudication or
28 a regulation, promulgated by an agency which sets forth
29 substantive or procedural personal or property rights,
30 privileges, immunities, duties, liabilities or obligations of

1 the public or any part of the public. The term includes a
2 document interpreting or implementing a statute enforced or
3 administered by the agency.

4 § 303. Notice of proposed rulemaking.

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

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

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

20 (3) A brief explanation of the proposed administrative
21 regulation or change.

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

25 (5) Any other statement required by law.

26 § 304. Adoption of regulations.

27 Before taking action upon any administrative regulation or
28 change, the agency shall review and consider written comments
29 submitted under section 303 (relating to notice of proposed
30 rulemaking) and may hold public hearings as appropriate. If the

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

14 § 305. Effective date of regulations.

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

22 (1) The administrative regulation:

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

25 (ii) interprets a self-executing act of the General
26 Assembly or administrative regulation.

27 (2) The agency for good cause finds, and incorporates
28 the finding and the reasons for the finding in the order
29 adopting the administrative regulation or change, that the
30 deferral of the effective date of the administrative

1 regulation or change beyond the date specified in the order
2 is impracticable or contrary to the public interest.

3 § 306. Omission of notice of proposed rulemaking.

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

9 (1) The administrative regulation or change relates to:

10 (i) military affairs;

11 (ii) agency organization, management or personnel;

12 (iii) agency procedure or practice;

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

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

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

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

28 § 307. Approval as to legality.

29 (a) Requirement.--Administrative regulations and changes
30 shall be approved as to legality by the Attorney General before

1 they are deposited with the bureau under section 309 (relating
2 to deposit of agency text of regulations required).

3 (b) Appeal.--

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

11 (2) In an appeal under paragraph (1), Commonwealth Court
12 may direct the Attorney General to approve the parts of the
13 administrative regulation or change to the regulation ruled
14 illegal which the court finds to be legal.

15 (3) In all other cases the decision of the Attorney
16 General shall be final and shall not be subject to any form
17 of judicial review at the instance of the agency or a
18 supporting party.

19 (c) Other review.--Nothing under this section shall affect
20 the right of a person adversely affected by a regulation or
21 change to the regulation to obtain a determination of the
22 validity thereof in any appropriate proceeding.

23 § 308. Format of regulations and other documents.

24 The agency text of all regulations and other documents
25 required or authorized to be deposited with the bureau under
26 this subchapter shall be prepared in the form and format
27 prescribed by regulations promulgated by the joint committee.
28 The regulations shall require that every administrative
29 regulation or change to indicate expressly the statutory or
30 other authority under which the regulation is promulgated.

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

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

7 § 310. Unfiled regulations invalid.

8 An administrative regulation or change promulgated after July
9 1, 1969, shall not be valid for any purpose until filed by the
10 bureau, as provided under 45 Pa.C.S. § 722(a) (relating to
11 deposit of documents required).

12 SUBCHAPTER B

13 LEGAL REVIEW

14 Sec.

15 311. Definitions.

16 312. General Counsel.

17 313. Attorney General.

18 § 311. Definitions.

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

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

24 "Executive agency." The Governor and the departments,
25 boards, commissions, authorities and other officers and agencies
26 of the Commonwealth. The term does not include any court or
27 other officer or agency of the unified judicial system, the
28 General Assembly and the General Assembly's officers and
29 agencies or any independent agency.

30 "Independent agency." The following:

- 1 (1) the Office of Attorney General;
- 2 (2) the Department of the Auditor General, including the
- 3 Board of Claims;
- 4 (3) the Treasury Department;
- 5 (4) the Pennsylvania Public Utility Commission;
- 6 (5) the Pennsylvania Fish and Boat Commission;
- 7 (6) the Pennsylvania Game Commission;
- 8 (7) the Pennsylvania Historical and Museum Commission;
- 9 (8) the State Civil Service Commission;
- 10 (9) the Pennsylvania Turnpike Commission;
- 11 (10) the Milk Marketing Board;
- 12 (11) the Pennsylvania Liquor Control Board;
- 13 (12) the Pennsylvania Human Relations Commission;
- 14 (13) the Pennsylvania Labor Relations Board;
- 15 (14) the Banking and Securities Commission;
- 16 (15) the State Tax Equalization Board;
- 17 (16) the Pennsylvania Higher Education Assistance
- 18 Agency;
- 19 (17) the Pennsylvania Commission on Crime and
- 20 Delinquency; and
- 21 (18) the State Ethics Commission.

22 § 312. General Counsel.

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

28 § 313. Attorney General.

29 (a) Review of regulations.--The Attorney General shall
30 review for form and legality all proposed regulations of

1 Commonwealth agencies before the regulations are deposited with
2 the Legislative Reference Bureau as required under section 309
3 (relating to deposit of agency text of regulations required).

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

12 (c) Response by Commonwealth agency.--

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

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

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

28 (e) Deemed approval.--If a regulation has been submitted to
29 the Attorney General and the Attorney General has not approved
30 it or objected to it within 30 days after submission, the

1 regulation shall be deemed to have been approved.

2 SUBCHAPTER C

3 FISCAL REVIEW

4 Sec.

5 321. Definitions.

6 322. Fiscal notes.

7 § 321. Definitions.

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

11 "Office." The Office of the Budget.

12 "Secretary." The Secretary of the Budget.

13 § 322. Fiscal notes.

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

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

26 (c) Contents.--The fiscal note shall provide the following
27 information:

28 (1) The designation of the fund out of which the
29 appropriation providing for expenditures under the action or
30 procedure shall be made.

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

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

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

7 (5) The probable loss of revenue for the fiscal year of
8 the program's implementation.

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

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

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

17 SUBCHAPTER D

18 INDEPENDENT REGULATORY REVIEW COMMISSION

19 Sec.

20 331. Scope of subchapter.

21 332. Legislative declarations.

22 333. Definitions.

23 334. Composition of commission, membership, compensation,
24 vacancies and removal.

25 335. Proposed regulations and procedures for review.

26 336. Final-form regulations and final-omitted regulations and
27 procedures for review.

28 337. Criteria for review of regulations.

29 338. Procedures for disapproval of final-form regulations and
30 final-omitted regulations and emergency-certified

1 regulations.

2 339. Procedures for subsequent review of disapproved final-form
3 regulations or final-omitted regulations.

4 340. Classification of documents.

5 341. Changes in final-form regulations and final-omitted
6 regulations.

7 342. Existing regulations.

8 343. Commission staff.

9 344. Subpoena power.

10 345. Regulations, annual reports, hearings and advisory group
11 meetings.

12 346. Clearinghouse.

13 347. Gubernatorial review.

14 § 331. Scope of subchapter.

15 This subchapter relates to regulatory review.

16 § 332. Legislative declarations.

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

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

2 (1) Establish a method for ongoing and effective
3 legislative review and oversight in order to foster executive
4 branch accountability and to provide for primary review by a
5 commission with sufficient authority, expertise, independence
6 and time to perform that function.

7 (2) Provide ultimate review of regulations by the
8 General Assembly.

9 (3) Assist the Governor, the Attorney General and the
10 General Assembly in supervisory and oversight functions.

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

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

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

21 (2) Small businesses bear a disproportionate share of
22 regulatory costs and burdens.

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

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

1 on small businesses.

2 (5) Uniform regulatory and reporting requirements can
3 impose unnecessary and disproportionately burdensome demands,
4 including legal, accounting and consulting costs, upon small
5 businesses with limited resources.

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

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

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

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

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

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

1 § 333. Definitions.

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

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

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

14 "Commission." The Independent Regulatory Review Commission.

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

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

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

30 "Final-omitted regulation." A regulation which an agency

1 submits to the commission and the committees for which the
2 agency has omitted notice of proposed rulemaking under section
3 306 (relating to omission of notice of proposed rulemaking).

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

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

11 "Regulation."

12 (1) The term shall include:

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

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

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

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

28 "Small business." As defined in accordance with the size
29 standards described by the United States Small Business
30 Administration's Small Business Size Regulations under 13 CFR

1 Ch. 1 Pt. 121 (relating to small business size regulations).

2 "Withdraw" or "withdrawn." Removal of a proposed regulation,
3 final-form regulation or final-omitted regulation by an agency
4 from the review process so that the commission and the
5 committees are prevented from taking further action on the
6 regulation.

7 § 334. Composition of commission, membership, compensation,
8 vacancies and removal.

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

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

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

29 (d) Compensation.--The commissioner who is elected to serve
30 as the chairperson in accordance with subsection (h) shall

1 receive \$300 per day as compensation for services rendered to
2 the commission. Each of the other commissioners shall receive
3 \$250 per day as compensation for services rendered to the
4 commission. A commissioner shall also be entitled to
5 reimbursement for travel and other necessary expenses incurred
6 as a result of official duties. The expenses incurred by a
7 commissioner or by an employee of the commission shall be paid
8 on the presentation of itemized vouchers for the expenses. The
9 vouchers shall be subject to the approval of the commission.

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

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

1 the commission upon announcement of the verdict or disposition
2 by the court or upon the court's acceptance of a plea of guilty
3 or nolo contendere.

4 (g) Financial interest.--

5 (1) A commissioner may not participate in deliberations
6 regarding any regulation which significantly affects the
7 operation or activities of any organization in which the
8 commissioner or any member of the commissioner's family owns
9 shares of stock in excess of 5% of the total issue of the
10 stock, has an ownership interest in excess of 5% of the total
11 ownership or serves as an officer, director, trustee, partner
12 or employee. For the purposes of this paragraph, an
13 organization shall not include a nonprofit organization
14 certified under 26 U.S.C. § 501(c)(3) (relating to exemption
15 from tax on corporations, certain trusts, etc.) in which the
16 commissioner holds a nonsalaried position.

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

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

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

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

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

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

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

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

30 (i) Meetings.--The commission shall meet before the period

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

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

19 § 335. Proposed regulations and procedures for review.

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

28 (1) The title of the agency and the names, office
29 addresses and telephone numbers of the agency officials
30 responsible for responding to questions regarding the

1 proposed regulation or for receiving comments relating to the
2 proposed regulation.

3 (2) A specific citation to the Federal or State
4 statutory or regulatory authority or the decision of a
5 Federal or State court under which the agency is proposing
6 the regulation that is designed to implement or effect
7 compliance with the proposed regulation.

8 (3) A concise and, when possible, nontechnical
9 explanation of the proposed regulation.

10 (4) A statement of the need for the proposed regulation.

11 (5) Estimates of the direct and indirect costs to the
12 Commonwealth, its political subdivisions and the private
13 sector of the proposed regulation. Insofar as the proposed
14 regulation relates to costs to the Commonwealth, the agency
15 may submit in lieu of a statement the fiscal note prepared by
16 the Office of the Budget under Subchapter C (relating to
17 fiscal review).

18 (6) A statement of legal, accounting or consulting
19 procedures and additional reporting, recordkeeping or other
20 paperwork, including copies of forms or reports, which will
21 be required for implementation of the proposed regulation and
22 an explanation of measures which have been taken to minimize
23 these requirements.

24 (7) (Reserved).

25 (8) A schedule for review of the proposed regulation,
26 including the date by which the agency must receive comments,
27 the date or dates on which public hearings will be held, the
28 expected date of promulgation of the proposed regulation as a
29 final-form regulation, the expected effective date of the
30 final-form regulation, the date by which compliance with the

1 final-form regulation will be required and the date by which
2 required permits, licenses or other approvals must be
3 obtained.

4 (9) (Reserved).

5 (10) An identification of the types of persons, small
6 businesses, businesses and organizations which would be
7 affected by the proposed regulation.

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

14 (12) For any proposed regulation that may have an
15 adverse impact on small businesses, an economic impact
16 statement that includes the following:

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

19 (ii) The projected reporting, recordkeeping and
20 other administrative costs required for compliance with
21 the proposed regulation, including the type of
22 professional skills necessary for preparation of the
23 report or record.

24 (iii) A statement of the probable effect on impacted
25 small businesses.

26 (iv) A description of any less intrusive or less
27 costly alternative methods of achieving the purpose of
28 the proposed regulation.

29 (13) A description of any special provisions which have
30 been developed to meet the particular needs of affected

1 groups and persons, including minorities, the elderly, small
2 businesses and farmers.

3 (14) A description of any alternative regulatory
4 provisions which have been considered and rejected and a
5 statement that the least burdensome acceptable alternative
6 has been selected.

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

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

17 (ii) the establishment of less stringent schedules
18 or deadlines for compliance or reporting requirements for
19 small businesses;

20 (iii) the consolidation or simplification of
21 compliance or reporting requirements for small
22 businesses;

23 (iv) the establishment of performance standards for
24 small businesses to replace design or operational
25 standards required in the proposed regulation; and

26 (v) the exemption of small businesses from all or
27 any part of the requirements contained in the proposed
28 regulation.

29 (16) A description of the plan developed for evaluating
30 the continuing effectiveness of the proposed regulation after

1 implementation.

2 (17) A description of any data upon which a proposed
3 regulation is based with a detailed explanation of how the
4 data was obtained and why the data is acceptable data. An
5 agency advocating that any data is acceptable data shall have
6 the burden of proving that the data is acceptable.

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

8 (1) The requirements of subsection (a) shall not
9 diminish the requirements of section 303 (relating to notice
10 of proposed rulemaking), but the information required under
11 this section may be included in the notice of proposed
12 rulemaking published in the next issue of the Pennsylvania
13 Bulletin in lieu of the information required under section
14 303(2) and (3).

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

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

22 (1) From the date of submission of the proposed
23 regulation, the agency shall submit to the commission and the
24 committees, within five business days of receipt, a copy of
25 comments which the agency receives relating to the proposed
26 regulation.

27 (2) The agency shall also, upon request, submit to the
28 commission and the committees copies of reports from advisory
29 groups and other documents received from or disseminated to
30 the public relating to the proposed regulation and public

1 notices or announcements relating to solicitation of public
2 comments or meetings which the agency held or will hold
3 relating to the proposed regulation.

4 (d) Committee response.--The committees may, at any time
5 prior to the submittal of the final-form regulation, convey to
6 the agency and the commission the committee's comments,
7 recommendations and objections to the proposed regulation and a
8 copy of any staff reports deemed pertinent. The comments,
9 recommendations and objections may refer to the criteria under
10 section 337 (relating to criteria for review of regulations).

11 (e) (Reserved).

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

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

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

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

29 (4) If the agency does not deliver the proposed
30 regulation and all material required under this section in

1 the time prescribed under this subsection, the agency shall
2 be deemed to have withdrawn the proposed regulation.

3 (g) Commission response.--

4 (1) The commission may, within 30 days after the close
5 of the public comment period, convey to the agency and
6 committees any comments, recommendations and objections to
7 the proposed regulation. The comments, recommendations and
8 objections shall specify the regulatory review criteria
9 stated under section 337 which the proposed regulation has
10 not met.

11 (2) The following apply:

12 (i) If the commission does not comment on, make
13 recommendations regarding or object to any portion of the
14 proposed regulation within the time provided under this
15 subsection, the commission shall be deemed to have
16 approved that portion of the proposed regulation.

17 (ii) Disapproval of the final-form regulation by the
18 commission shall relate only to comments, recommendations
19 and objections raised by the commission to the proposed
20 regulation to changes which the agency made to the
21 proposed regulation or to recommendations, comments or
22 objections which a committee conveyed to the agency or
23 the commission.

24 (h) Comments.--The commission shall provide comments to the
25 agency if the required submissions under subsection (a) (10),
26 (11), (12) and (15) demonstrate an adverse impact on small
27 businesses.

28 § 336. Final-form regulations and final-omitted regulations and
29 procedures for review.

30 (a) Duties of agency.--

1 (1) The agency shall review and consider public comments
2 and the comments of the committees and commission under this
3 section.

4 (2) Within five business days of receipt of a public
5 comment, the agency shall notify the commentator of the
6 agency's address and telephone number where the commentator
7 may submit a request for the information concerning the
8 final-form regulation under subsection (b).

9 (3) Upon completion of the agency's review of comments,
10 the agency shall submit to the commission and the committees
11 a copy of the agency's response to the comments received, the
12 names and addresses of commentators who have requested
13 additional information relating to the final-form regulation
14 and the text of the final-form regulation which the agency
15 intends to adopt.

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

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

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

1 (1) On the same date that the agency submits the
2 material required under subsection (a) to the commission and
3 the committees, the agency shall send a notice of submission
4 and a copy of the text of the final-form regulation or a copy
5 of all changes to the proposed regulation which are
6 incorporated into the final-form regulation to each
7 commentator who requested this information under subsection
8 (a).

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

12 (c) Time period for filing.--

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

22 (2) If the agency makes revisions under subsection (g),
23 the agency shall deliver copies of the revisions to the
24 Attorney General on the same date that the agency delivers
25 the revisions to the commission and the committees.

26 (d) (Reserved).

27 (e) Approval and disapproval.--The commission may have until
28 its next scheduled meeting which occurs no less than 30 days
29 after receipt of the final-form regulation or final-omitted
30 regulation to approve or disapprove the final-form regulation or

1 final-omitted regulation. The commission shall notify the agency
2 and the committees of its approval or disapproval. If the
3 commission does not disapprove the final-form regulation or
4 final-omitted regulation within the time allotted under this
5 subsection, the commission shall be deemed to have approved the
6 final-form regulation or final-omitted regulation.

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

20 (g) Revisions.--Except as provided under this subsection,
21 the agency may not make any changes to a final-form regulation
22 or final-omitted regulation after the agency submits the final-
23 form regulation or final-omitted regulation to the commission
24 and the committees. The following apply:

25 (1) Prior to the expiration of the date on which either
26 of the committees takes action on the final-form regulation
27 or final-omitted regulation, under subsection (l) or (m), or
28 the expiration of the commission's review period prescribed
29 under subsection (e), whichever occurs first, the agency may,
30 unless the commission shall object, toll the time for the

1 commission's and the committees' review of the final-form
2 regulation or final-omitted regulation in order to allow time
3 for the agency to consider revisions to the final-form
4 regulation or final-omitted regulation recommended by the
5 commission or a committee.

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

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

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

4 (5) The agency may not submit revisions or notification
5 that the regulation will not be revised after the adjournment
6 sine die or the expiration of the legislative session in an
7 even-numbered year. If the committees and the commission are
8 prevented from completing their review under this subsection
9 because of the adjournment sine die or the expiration of the
10 legislative session in an even-numbered year, the agency
11 shall resubmit the final-form regulation or final-omitted
12 regulation and review shall proceed in accordance within
13 subsection (m).

14 (h) (Reserved).

15 (i) (Reserved).

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

26 (k) Time for action.--A committee shall have at least 20
27 days from receipt of the information required under subsection
28 (a) or receipt of the information required under subsection (c)
29 to take action under subsection (l). If the committees are
30 prevented from completing their 20-day review because of the

1 adjournment sine die or expiration of the legislative session in
2 an even-numbered year, the committee's review of the final-form
3 regulation or final-omitted regulation shall automatically be
4 suspended until the fourth Monday in January of the next year.
5 On that date, the agency shall resubmit the final-form
6 regulation or final-omitted regulation and required material to
7 the committees and the commission. The following apply:

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

13 (2) If the agency does not deliver the final-form
14 regulation or final-omitted regulation and required material
15 to the commission and the committees by the second Monday
16 after the date by which both committee designations have been
17 published in the next available issue of the Pennsylvania
18 Bulletin, the agency shall be deemed to have withdrawn the
19 regulation.

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

28 (4) The commission shall not act on a regulation until
29 the committee review period has expired. This section shall
30 not apply to emergency-certified regulations adopted under

1 the provisions of section 338 (relating to procedures for
2 disapproval of final-form regulations and final-omitted
3 regulations and emergency-certified regulations).

4 (l) Notification of approval and disapproval.--At any time
5 during the commission's review period up to 24 hours prior to
6 the opening of the commission's public meeting, a committee may
7 notify the commission and the agency that the committee has
8 approved or disapproved a final-form regulation or final-omitted
9 regulation or that the committee intends to review the
10 regulation. If the commission approves a regulation and a
11 committee has not notified the commission and the agency that
12 the committee has disapproved the regulation or that the
13 committee intends to review the regulation, the agency may
14 promulgate the regulation. If the commission approves a
15 regulation and a committee has notified the commission and the
16 agency that the committee has disapproved the regulation or that
17 the committee intends to review the regulation, the agency may
18 not promulgate the regulation for 14 days after the committee
19 has received the commission's approval order. During the 14-day
20 period, the committee may take action on the regulation under
21 section 338. If at the expiration of the 14-day period the
22 committee has not taken action on the regulation under section
23 339 (relating to procedures for subsequent review of disapproved
24 final-form regulations or final-omitted regulations), the agency
25 may promulgate the regulation.

26 (m) Automatic suspension of 14-day review.--If the
27 committees are prevented from completing a 14-day review because
28 of adjournment sine die or expiration of the legislative session
29 in an even-numbered year, the committees' review of the final-
30 form regulation or final-omitted regulation shall automatically

1 be suspended until the fourth Monday in January of the next
2 year. On that date, the agency shall resubmit the final-form
3 regulation or final-omitted regulation and required material to
4 the committees and the commission. The following shall apply:

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

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

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

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

1 (5) This subsection shall not apply to emergency-
2 certified regulations adopted under the provisions of section
3 338.

4 (n) Disapproval.--If the commission disapproves a final-form
5 regulation or final-omitted regulation, the commission, the
6 committees and the agency will proceed in accordance with
7 section 338.

8 (o) Comment retention.--The commission shall note and shall
9 make a part of the public record all comments which the
10 commission receives relating to a regulation and shall retain
11 the comments for four years after the promulgation of the
12 regulation.

13 (p) Regulations.--Except for emergency-certified regulations
14 adopted under section 338(d), an agency may not promulgate a
15 regulation until completion of the review provided for under
16 this subchapter.

17 § 337. Criteria for review of regulations.

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

29 (b) General criteria.--Upon a finding that the regulation is
30 consistent with the statutory authority of the agency and with

1 the intention of the General Assembly in the enactment of the
2 statute upon which the regulation is based, the commission shall
3 consider the following in determining whether the regulation is
4 in the public interest:

5 (1) Economic or fiscal impacts of the regulation, which
6 include the following:

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

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

11 (iii) The nature of required reports, forms or other
12 paperwork and the estimated cost of preparation by
13 individuals, businesses and organizations in the public
14 and private sectors.

15 (iv) The nature and estimated cost of legal,
16 consulting or accounting services which the public or
17 private sector may incur.

18 (v) The impact on the public interest of exempting
19 or setting lesser standards of compliance for individuals
20 or small businesses when lawful, desirable and feasible
21 to do so.

22 (2) The protection of the public health, safety and
23 welfare and the effect on this Commonwealth's natural
24 resources.

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

27 (i) Possible conflict with or duplication of
28 statutes or existing regulations.

29 (ii) Clarity and lack of ambiguity.

30 (iii) Need for the regulation.

1 (iv) Reasonableness of requirements, implementation
2 procedures and timetables for compliance by the public
3 and private sectors.

4 (v) Whether acceptable data is the basis of the
5 regulation.

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

9 (5) Comments, objections or recommendations of a
10 committee.

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

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

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

19 § 338. Procedures for disapproval of final-form regulations and
20 final-omitted regulations and emergency-certified
21 regulations.

22 (a) Order.--If the commission disapproves a final-form
23 regulation or final-omitted regulation, the commission shall
24 deliver a disapproval order to the Legislative Reference Bureau,
25 the committees and the agency. The commission shall notify
26 commentators who have requested additional information under
27 section 336 (relating to final-form regulations and final-
28 omitted regulations and procedures for review) of the
29 commission's vote to disapprove. The disapproval order shall
30 specify the regulatory review criteria which the final-form

1 regulation or final-omitted regulation has not met. The agency
2 shall review the commission's order and proceed under section
3 339 (relating to procedures for subsequent review of disapproved
4 final-form regulations or final-omitted regulations).

5 (b) Effect.--The commission's order disapproving a final-
6 form regulation or final-omitted regulation shall bar the agency
7 from promulgating that regulation pending subsequent review
8 under section 339.

9 (c) (Reserved).

10 (d) Prohibition.--

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

27 (2) The commission and the committees shall review the
28 final-form regulation or final-omitted regulation under the
29 procedures provided for under this subchapter. If the final-
30 form regulation or final-omitted regulation is disapproved

1 under those procedures, that regulation shall be rescinded
2 after 120 days or upon final disapproval, whichever occurs
3 later.

4 § 339. Procedures for subsequent review of disapproved final-
5 form regulations or final-omitted regulations.

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

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

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

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

15 (b) Report.--

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

25 (2) If the committees are prevented from receiving the
26 agency's report under paragraph (1) because of adjournment
27 sine die or expiration of the legislative session in an even-
28 numbered year, the agency shall submit the report to the
29 commission and the committees on the fourth Monday in January
30 of the next year. If either committee has not been designated

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

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

12 (c) Modifications before report.--

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

24 (2) If the committees are prevented from receiving the
25 report because of adjournment sine die or expiration of the
26 legislative session in an even-numbered year, the agency
27 shall submit the agency's report under paragraph (1) to the
28 commission and the committees on the fourth Monday in January
29 of the next year. If either committee has not been designated
30 by the fourth Monday in January, the agency may not deliver

1 the report to the committees and the commission until both
2 committees are designated, but the agency shall deliver the
3 report to the commission and the committees no later than the
4 second Monday after the date by which both committee
5 designations have been published in the Pennsylvania
6 Bulletin.

7 (3) If the agency does not deliver the agency's report
8 under paragraph (1) to the commission and the committees in
9 the time prescribed in this subsection, the agency shall be
10 deemed to have withdrawn the final-form regulation or final-
11 omitted regulation.

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

19 (1) If the commission is prevented from delivering an
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 the 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 an
27 order to the committees until both committees are designated,
28 but the commission shall deliver the 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 an order
3 disapproving the agency's report and revised final-form
4 regulation or final-omitted regulation in the time prescribed
5 under this subsection, the commission shall be deemed to have
6 approved the agency's report and the revised final-form
7 regulation or final-omitted regulation.

8 (e) Legislative presentation by concurrent resolution.--Upon
9 receipt of the commission's order under subsection (d) or at the
10 expiration of the commission's review period if the commission
11 does not act on the regulation or does not deliver its order
12 under subsection (d), one or both of the committees may, within
13 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 regulation or final-omitted regulation. The
17 following apply:

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

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

29 (3) If the General Assembly adopts the concurrent
30 resolution by majority vote in both the Senate and the House

1 of Representatives, the concurrent resolution shall be
2 presented to the Governor in accordance with section 9 of
3 Article III of the Constitution of Pennsylvania.

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

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

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

18 (7) Notice as to any final disposition of a concurrent
19 resolution considered in accordance with this section shall
20 be transmitted to the Legislative Reference Bureau for
21 publication in the next available issue of the Pennsylvania
22 Bulletin.

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

1 approved or deemed approved in accordance with this
2 subsection.

3 (9) If the General Assembly does not adopt the
4 concurrent resolution or if the Governor vetoes the
5 concurrent resolution and the General Assembly does not
6 override the Governor's veto, the agency may promulgate the
7 final-form regulation or final-omitted regulation. The
8 General Assembly may, at the General Assembly's discretion,
9 adopt a concurrent resolution disapproving the final-form
10 regulation or final-omitted regulation to indicate the intent
11 of the General Assembly but permit the agency to promulgate
12 that regulation.

13 § 340. Classification of documents.

14 If the commission or a committee finds that a published or
15 unpublished document should be promulgated as a regulation, the
16 commission or committee may present the matter to the Joint
17 Committee on Documents. The Joint Committee on Documents shall
18 determine whether the document should be promulgated as a
19 regulation and may order an agency either to promulgate the
20 document as a regulation within 180 days or to desist from the
21 use of the document in the business of the agency.

22 § 341. Changes in final-form regulations and final-omitted
23 regulations.

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

29 (b) Exception.--Subsection (a) shall not apply to changes
30 made at the direction of the Office of Attorney General under

1 its review under section 313 (relating to Attorney General).
2 § 342. Existing regulations.

3 The commission, on the commission's motion of or at the
4 request of any person or member of the General Assembly, may
5 review an existing regulation which has been in effect for at
6 least three years. If a committee of the Senate or the House of
7 Representatives requests a review of an existing regulation, the
8 commission shall perform the review and shall assign the review
9 high priority. The commission may submit recommendations to an
10 agency recommending changes in existing regulations if the
11 commission finds the existing regulations to be contrary to the
12 public interest under the criteria established under section 337
13 (relating to criteria for review of regulations). The commission
14 may also make recommendations to the General Assembly and the
15 Governor for statutory changes if the commission finds that any
16 existing regulation may be contrary to the public interest.

17 § 343. Commission staff.

18 (a) Executive director and other employees.--The commission
19 shall appoint and fix the compensation of a full-time executive
20 director, who shall be responsible for the general supervision
21 of all the affairs of the commission and for performing any
22 administrative function or duty which the commission may
23 delegate to the executive director. The commission shall appoint
24 and fix the compensation of the other employees as the
25 commission may find necessary for the proper operation of the
26 commission.

27 (b) Chief counsel.--The commission shall appoint and fix the
28 compensation of a full-time chief counsel, who shall not be
29 subject to the supervision of the Attorney General or the
30 General Counsel. The chief counsel shall supervise, coordinate

1 and administer the legal services provided to the commission.

2 § 344. Subpoena power.

3 The commission has the authority to issue subpoenas for the
4 purpose of requiring the attendance of persons and the
5 production of documents relating to any function which the
6 commission or the commission's staff is authorized to perform
7 under this subchapter. The chairperson or the executive director
8 may sign a subpoena. The subpoena may be served in any manner
9 authorized under the laws of this Commonwealth. The commission
10 is authorized to apply to Commonwealth Court to enforce the
11 commission's subpoenas.

12 § 345. Regulations, annual reports, hearings and advisory group
13 meetings.

14 (a) Regulations.--

15 (1) The commission, in the performance of the
16 commission's functions under this subchapter, has the power
17 to promulgate and enforce regulations necessary to carry out
18 the purposes of this subchapter.

19 (2) Regulations must be promulgated in accordance with
20 the procedures established under Subchapter A (relating to
21 Commonwealth Documents Law).

22 (3) The regulations shall provide for the commission's
23 notification of filings of final-form regulations and final-
24 omitted regulations to parties likely to be affected by the
25 final-form regulations and final-omitted regulations through
26 transmittal of the notification of filings to the Legislative
27 Reference Bureau for publication in the next available issue
28 of the Pennsylvania Bulletin.

29 (4) Prior to the regulations taking effect, the
30 requirements of this subchapter must be satisfied. For the

1 purposes of reviewing the regulations of the commission and
2 otherwise satisfying the requirements of this subchapter, the
3 Joint Committee on Documents shall exercise the rights and
4 perform the functions of the commission and the commission
5 shall exercise the rights and perform the functions of an
6 agency under this subchapter.

7 (b) Annual report.--By April 1, the commission shall file an
8 annual report of the commission's activities for the prior
9 calendar year with the Governor, the Secretary of the Senate and
10 the Chief Clerk of the House of Representatives.

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

14 § 346. Clearinghouse.

15 The commission shall act as a clearinghouse for complaints,
16 comments and other input from members of the General Assembly
17 and from the public regarding existing regulations, proposed
18 regulations, final-form regulations and final-omitted
19 regulations. The commission shall maintain accurate records
20 regarding complaints and comments the commission received and
21 shall maintain the records by departmental and subject matter
22 categories for four years after the date of receipt by the
23 commission. When the commission files an annual report as
24 provided under section 345 (relating to regulations, annual
25 reports, hearings and advisory group meetings), the commission
26 shall include within the report a summary of public complaints
27 and comments along with any recommendations the commission may
28 offer for statutory change.

29 § 347. Gubernatorial review.

30 The Governor may institute procedures for the review and

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

9 Section 4. Repeals are as follows:

10 (1) The General Assembly declares as follows:

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

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

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

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

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

21 (i) Section 612 of the act of April 9, 1929
22 (P.L.177, No.175), known as The Administrative Code of
23 1929.

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

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

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

1 Section 5. Continuation is as follows:

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

6 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
7 Subch. A, all activities initiated under the Commonwealth
8 Documents Law shall continue and remain in full force and
9 effect and may be completed under 2 Pa.C.S. Ch. 3 Subch.
10 A. Orders, regulations, rules and decisions which were
11 made under the Commonwealth Documents Law and which are
12 in effect on the effective date of section 4(2)(ii) of
13 this act shall remain in full force and effect until
14 revoked, vacated or modified under 2 Pa.C.S. Ch. 3 Subch.
15 A. Contracts, obligations and collective bargaining
16 agreements entered into under the Commonwealth Documents
17 Law are not affected nor impaired by the repeal of the
18 Commonwealth Documents Law.

19 (ii) Except as set forth in subparagraph (iii), any
20 difference in language between 2 Pa.C.S. Ch. 3 Subch. A
21 and the Commonwealth Documents Law is intended only to
22 conform to the style of the Pennsylvania Consolidated
23 Statutes and is not intended to change or affect the
24 legislative intent, judicial construction or
25 administration and implementation of the Commonwealth
26 Documents Law.

27 (iii) (Reserved).

28 (2) The addition of 2 Pa.C.S. Ch. 3 Subch. B is a
29 continuation of sections 204(b) and 301(10) of the act of
30 October 15, 1980 (P.L.950, No.164), known as the Commonwealth

1 Attorneys Act. The following apply:

2 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
3 Subch. B, all activities initiated under sections 204(b)
4 and 301(10) of the Commonwealth Attorneys Act shall
5 continue and remain in full force and effect and may be
6 completed under 2 Pa.C.S. Ch. 3 Subch. B. Orders,
7 regulations, rules and decisions which were made under
8 sections 204(b) and 301(10) of the Commonwealth Attorneys
9 Act and which are in effect on the effective date of
10 section 4(2)(iii) of this act shall remain in full force
11 and effect until revoked, vacated or modified under 2
12 Pa.C.S. Ch. 3 Subch. B. Contracts, obligations and
13 collective bargaining agreements entered into under
14 sections 204(b) and 301(10) of the Commonwealth Attorneys
15 Act are not affected nor impaired by the repeal of
16 sections 204(b) and 301(10) of the Commonwealth Attorneys
17 Act.

18 (ii) Except as set forth in subparagraph (iii), any
19 difference in language between 2 Pa.C.S. Ch. 3 Subch. B
20 and sections 204(b) and 301(10) of the Commonwealth
21 Attorneys Act is intended only to conform to the style of
22 the Pennsylvania Consolidated Statutes and is not
23 intended to change or affect the legislative intent,
24 judicial construction or administration and
25 implementation of sections 204(b) and 301(10) of the
26 Commonwealth Attorneys Act.

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

29 (3) The addition of 2 Pa.C.S. Ch. 3 Subch. C is a
30 continuation of section 612 of the act of April 9, 1929

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

2 The following apply:

3 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3
4 Subch. C, all activities initiated under section 612 of
5 The Administrative Code of 1929 shall continue and remain
6 in full force and effect and may be completed under 2
7 Pa.C.S. Ch. 3 Subch. C. Orders, regulations, rules and
8 decisions which were made under section 612 of The
9 Administrative Code of 1929 and which are in effect on
10 the effective date of section 4(2)(i) of this act shall
11 remain in full force and effect until revoked, vacated or
12 modified under 2 Pa.C.S. Ch. 3 Subch. C. Contracts,
13 obligations and collective bargaining agreements entered
14 into under section 612 of The Administrative Code of 1929
15 are not affected nor impaired by the repeal of section
16 612 of The Administrative Code of 1929.

17 (ii) Except as set forth in subparagraph (iii), any
18 difference in language between 2 Pa.C.S. Ch. 3 Subch. C
19 and section 612 of The Administrative Code of 1929 is
20 intended only to conform to the style of the Pennsylvania
21 Consolidated Statutes and is not intended to change or
22 affect the legislative intent, judicial construction or
23 administration and implementation of section 612 of The
24 Administrative Code of 1929.

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

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

30 (i) Except as otherwise provided in 2 Pa.C.S. Ch. 3

1 Subch. D, all activities initiated under the Regulatory
2 Review Act shall continue and remain in full force and
3 effect and may be completed under 2 Pa.C.S. Ch. 3 Subch.
4 D. Orders, regulations, rules and decisions which were
5 made under the Regulatory Review Act and which are in
6 effect on the effective date of section 4(2)(iv) of this
7 act shall remain in full force and effect until revoked,
8 vacated or modified under 2 Pa.C.S. Ch. 3 Subch. D.
9 Contracts, obligations and collective bargaining
10 agreements entered into under the Regulatory Review Act
11 are not affected nor impaired by the repeal of the
12 Regulatory Review Act.

13 (ii) Except as set forth in subparagraph (iii), any
14 difference in language between 2 Pa.C.S. Ch. 3 Subch. D
15 and the Regulatory Review Act is intended only to conform
16 to the style of the Pennsylvania Consolidated Statutes
17 and is not intended to change or affect the legislative
18 intent, judicial construction or administration and
19 implementation of the Regulatory Review Act.

20 (iii) (Reserved).

21 Section 6. This act shall take effect in 60 days.