

# **INDEPENDENT REGULATORY REVIEW COMMISSION**

## **2023 ANNUAL REPORT**



**George D. Bedwick, Esq., Chairman**  
**John F. Mizner, Esq., Vice Chairman**  
**John J. Soroko, Esq.**  
**Murray Ufberg, Esq.**  
**Dennis A. Watson, Esq.**

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Pennsylvania's General Assembly created the Independent Regulatory Review Commission to provide independent oversight of the rulemaking process in Pennsylvania and to establish an ongoing and effective review of agency regulations. The Commission's mission is to review agency regulations in order to determine whether they are in the public interest. By evaluating the conformity of rulemakings with law, and their impact on the public and regulated community, we assist the General Assembly and the Governor in achieving a favorable regulatory balance and ensure the integrity of the regulatory process. This annual report details the Commission's activities in 2023.

In 2023, the Commission reviewed a total of 57 rulemakings, including 27 proposed and 30 final regulations. 179 public comments were submitted on pending regulations in 2023. No comments were submitted by legislative standing committees and 9 legislative comments were submitted by individual House and Senate members.

Notable regulations reviewed by the Commission in 2023 include: Control of VOC Emissions from Conventional Oil & Gas Sources (Environmental Quality Board #3363) and updates to child abuse reporting requirements for seven professional licensing boards (Department of State, Bureau of Professional and Occupational Affairs ## 3356, 3357, 3358, 3360, 3369, 3370, and 3389). The Commission also continued its review of existing regulations as requested by six standing committees of the General Assembly at the close of 2022. This project encompasses regulations from 10 different agencies which are being reviewed pursuant to Section 8.1 of the Regulatory Review Act. This ongoing review is being performed contemporaneously with the Commission's existing obligations and is expected to be completed in 2024.

All comments filed on these regulations, together with information on the actions taken on the regulations, are available on the Commission's website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Looking ahead, the Commission will continue its role as an independent oversight body reviewing agency regulations and determining whether the criteria set forth in Pennsylvania's Regulatory Review Act have been satisfied.

# Proposed Regulations

The following is an explanation of the action codes for Proposed Regulations:

- NONE** Commission did not submit comments.
- OPEN** The regulation was received in 2023, with Commission action due in 2024.
- \*** Final-form Regulation delivered in 2023.

# Final Regulations

The following is an explanation of the action codes for Final Regulations:

- ABL** **Approved by Law** — The final regulation was deemed to be approved because the Commission did not submit any comments on the proposed regulation, the regulation was not modified from its proposed form and the designated standing committees did not disapprove the final regulation.
- APP** **Approved** — The final regulation was approved.
- DIS** **Disapproved** — The final regulation was disapproved by the Commission at its public meeting.
- EC** **Emergency Certified** — A regulation certified by the Attorney General or the Governor pursuant to Section 6(d) of Regulatory Review Act as necessary for compliance with a court order or statutory mandate, or to respond to an emergency.
- LAC** **Later Approved with Changes** — After an initial disapproval, the regulation was approved with changes at the Commission's second public meeting.
- OPEN** Regulation was received in 2023 with Commission Action due in 2024.
- N/A** Indicates this was a final-omitted regulation and was, therefore, not published in the *Pennsylvania Bulletin* for public comment.
- NONE** The Commission did not submit any comments on the proposed regulation.
- WDN** **Withdrawn** — A final regulation submitted but withdrawn prior to Commission action. A withdrawn final regulation may be resubmitted within two years after the close of the public comment period. A withdrawn final-omitted regulation may be resubmitted as a new final-omitted regulation at any time.

# Proposed Regulations

## Department of Community and Economic Development

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
09/05/23	#4-100	3382	Inspections and Fees	11/15/23

Changes the inspection cycle for certain factories and manufacturing facilities from annual to biennial and increases insignia of certification fees from \$40 to \$60.

## Department of Environmental Protection

### **Environmental Quality Board**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
09/06/23	#7-577	3383	Triennial Review of Water Quality Standards	12/21/23

Updates and revises water quality criteria as required by the federal Clean Water Act.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
10/17/23	#7-571	3384	Water Quality Standards - Site-Specific Water Quality Criteria	OPEN

Revises the process for requesting, developing and adopting site-specific water quality criteria, deletes the statewide total mercury water quality criterion for Ebaughs Creek, and adds a site-specific dissolved methylmercury water quality criterion for Ebaughs Creek.

## Department of Labor and Industry

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
04/12/23	#12-117	3368	Impairment Rating	06/21/23

Amends existing regulations to replace a repealed provision on impairment ratings and conform to Act 111 of 2018 and recent case law.

## Department of Human Services

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
03/30/23	#14-543	3364	Protective Services for Adults	06/21/23

Identifies mandatory reporters and prescribes penalties for their failure to report suspected abuse, neglect, exploitation, or abandonment; requires consistent and timely investigations of allegations; and when necessary, provides for protective services to mitigate risk to individuals.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
11/09/23	#14-544	3388	Covered Outpatient Drugs	OPEN

Updates the payment methodology for pharmaceutical services, makes technical corrections relating to prescriptive and dispensing authority of certified registered nurse practitioners and midwives, and amends provisions to reflect advances in information technology.

## Department of State

### **Bureau of Professional and Occupational Affairs**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
11/04/22	#16A-66	3361	Consideration of Criminal Convictions	01/18/23

Implements a schedule of criminal convictions that may constitute grounds to refuse to issue, suspend or revoke a license, certificate, registration or permit for each of the 29 professional and occupational licensing boards/commissions, sets forth the process by which boards and commissions will conduct individual assessments, and establishes a uniform fee for processing preliminary determinations pursuant to Act 53 of 2020.

### **State Board of Chiropractic**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
10/26/22	#16A-4322	3360	Child Abuse Reporting Requirements	NONE*

Updates the Board's existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
07/25/23	#16A-4335	3378	Fees	10/05/23

Sets forth graduated fee schedules for application fees and biennial registration fees.

### **State Board of Cosmetology**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
12/04/23	#16A-4518	3391	Practice of Massage Therapy in Cosmetology or Esthetician Salons	OPEN

Allows for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon.

## State Board of Examiners in Speech-Language Pathology and Audiology

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
04/14/23	#16A-6805	3370	Child Abuse Reporting Requirements	NONE*

Updates existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
05/11/23	#16A-6808	3374	Licensure by Endorsement	07/26/23

Provides for licensure by endorsement for applicants from other states, territories and countries.

## State Board of Massage Therapy

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
12/04/23	#16A-726	3392	Practice of Massage Therapy in Cosmetology or Esthetician Salons	OPEN

Allows for the practice of massage therapy within the licensed square footage of a cosmetology or esthetician salon.

## State Board of Medicine

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
11/27/23	#16A-4955	3390	Physicians Assistants	OPEN

Effectuates Act 79 of 2021 relating to the practice of physician assistants in Pennsylvania.

## State Board of Nursing

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
11/28/22	#16A-5143	3362	Licensure by Endorsement and Reactivation	02/08/23

Amends existing regulations to address requirements for reactivation of a license and adds provisions relating to licensure by endorsement, provisional endorsement license, and licensure by endorsement fee.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
08/30/23	#16A-5146	3381	Opioid Prescription and Education and Organ Donation Education	NONE

Updates certified registered nurse practitioner (CRNP) continuing education to add requirements for pain management, identification of addiction, and prescribing/dispensing of opioids, updates current CRNP prescription requirements for controlled substances, and updates continuing education requirements for registered nurses (RNs), RN Volunteer Licensees, and Clinical Nurse Specialists to add organ/tissue donation and recovery process education.

### **State Board of Optometry**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
04/14/23	#16A-5215	3369	Child Abuse Reporting Requirements	NONE*

Updates existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

### **State Board of Podiatry**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
11/13/23	#16A-4412	3389	Child Abuse Reporting Requirements	OPEN

Updates the Board's existing regulations on child abuse reporting to be consistent with amendments to the Child Protective Services Law.

### **Environmental Hearing Board**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
06/06/23	#106-14	3377	Practice and Procedure	08/16/23

Updates the Board's regulations to provide the regulated community, the Department of Environmental Protection (Department) and persons challenging Department actions with more specific guidance on how to represent their interests before the Board and to improve and clarify the rules of practice and procedure before the Board.

### **Insurance Department**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
04/04/23	#11-261	3367	Preparation of Forms	NONE*

Allows for the voluntary collection of demographic data, including questions relating to race and ethnicity when certain criteria are met.

## Office of Attorney General

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
04/28/23	#59-1	3373	Automotive Industry Trade Practices	07/12/23

Improves, enhances and updates the unfair or deceptive acts or practices regulations.

## Pennsylvania Liquor Control Board

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
04/25/23	#54-104	3372	Duties and Rights of Licensees	07/19/23

Amends existing regulations relating to the duties and rights of licensees under Subchapter C pertaining to Amusements and Entertainment.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
05/17/23	#54-103	3375	Hearings by Teleconference	08/09/23

Codifies the Board's and the Office of Administrative Law Judge's existing practices for conducting hearings, including the use of virtual hearings.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
05/23/23	#54-99	3376	Duties and Rights of Licensees	NONE*

Updates existing provisions relating to employees of licensees.

## Pennsylvania Public Utility Commission

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
07/27/22	#57-336	3350	Proposed Water Audit Methodology Regulation 52 Pa. Code 65.20a-- Water Conservation Measures	09/27/23

Establishes water conservation measures as regulatory obligations for all water public utilities; requires reporting of unaccounted for water by Class A, B and C water public utilities and each municipal corporation providing jurisdictional water service; and establishes a water loss audit obligation for Class A public water utilities.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
08/29/22	#57-334	3355	Use of Fully Projected Future Test Year, 52 Pa. Code Chapter 53.51-53.56a	03/02/23

Revisions to add filing requirements for a fully projected future test year (FPFTY), historic test year (HTY), and future test year (FTY) cases.



Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date
11/01/23	#57-340	3387	Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa.Code §§ 58.1—58.18	OPEN

Updates and clarifies the Low-Income Usage Reduction Program regulations.

# Final Regulations

## Department of Conservation and Natural Resources

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
05/17/23	#7B-10	3353	Conservation of Pennsylvania Native Wild Plants	NONE	ABL 07/12/23

Updates Pennsylvania native wild plant species classification lists, including certain scientific names, common names, and reference sources.

## Department of Education

### **State Board of Education**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
08/02/23	#6-341	3379	Intellectual Disability Terminology Update	N/A	APP 09/21/23

Replaces the terms "mentally retarded" and "mental retardation" with the term "intellectual disability."

### **Department of Education**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
08/02/23	#6-342	3380	Intellectual Disability Terminology Update	N/A	APP 09/21/23

Replaces the term "mental retardation" with "intellectual disability" and replaces the term "mentally retarded" with "an individual with an intellectual disability."

## Department of Environmental Protection

### **Environmental Quality Board**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
04/13/23	#7-554	3291	Noncoal Mining Clarifications and Corrections	06/03/21	APP 05/18/23

Updates and clarifies the requirements for mining noncoal minerals in Pennsylvania.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
04/13/23	#7-557	3309	Water Quality Standards; Dunbar Creek et al. Stream Redesignations	NONE	APP 05/18/23

Updates the designated uses for seven streams or stream segments.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
03/21/23	#7-555	3311	Radiation Safety Requirements for Non-Healing Arts Radiation Generating Devices	10/13/21	APP 05/18/23

Updates existing regulations related to non-medical X-ray equipment and addresses operations and emerging technologies in the industrial field to ensure that exposure to radiation from non-medical radiation-producing devices is as low as reasonably possible.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
03/21/23	#7-563	3327	National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance	NONE	ABL 05/17/23

Amends National Pollutant Discharge Elimination System permit schedules of compliance to allow the Department of Environmental Protection to approve permits for municipal combined sewer overflow discharges with compliance schedules beyond the 5-year period currently established in existing regulations, but not longer than the implementation period in the discharger's approved long-term control plan.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
08/10/23	#7-572	3348	Administration of the Land Recycling Program Vanadium MSC Rule	NONE	ABL 09/20/23

Updates the toxicity value for vanadium and the Statewide health standard medium-specific concentrations pertaining to cleanup of soil and groundwater vanadium contamination.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
04/13/23	#7-574	3352	Radiological Health Fees	10/26/22	APP 05/18/23

Increases the annual fees for radiation-producing machine and service provider (vendor) registrations, accelerator licenses, and radioactive material licenses, and increases the hourly rate professional fee associated with certain full cost recovery licenses.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
11/30/22	#7-580	3363	Control of VOC Emissions from Conventional Oil and Natural Gas Sources	EC NONE	APP 04/20/23

Adopts reasonably available control technology (RACT) requirements and RACT emission limitations for conventional oil and natural gas sources of volatile organic compounds.

### Department of Health

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
06/09/23	#10-236	3346	Certified Lifeguards	NONE	ABL 07/12/23

Replaces specific names of lifeguard certifying authorities with the term "organizations."

### Department of Human Services

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
03/24/23 07/27/23	#14-545	3275	Subsidized Child Care Eligibility	01/13/21	DIS 05/18/23 LAC 09/21/23

Aligns eligibility requirements with requirements set forth in the Federal Child Care and Development Block Grant.

### Department of State

#### **State Board of Certified Real Estate Appraisers**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
12/13/23	#16A-7031	3393	Federally Mandated Revisions	N/A	OPEN

Requires certified real estate appraisers to complete continuing education on valuation bias and fair housing laws and regulations as a condition of certification or license renewal and amends appraisal management company (AMC) regulations to prohibit an individual from being an owner or key person of an AMC if their license has been denied, canceled, suspended or revoked, or if they voluntarily surrendered their license for a substantive cause.

#### **State Board of Chiropractic**

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
06/30/23	#16A-4322	3360	Child Abuse Reporting Requirements	NONE	ABL 09/20/23

Updates the Board's existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

## State Board of Examiners in Speech-Language Pathology and Audiology

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
11/06/23	#16A-6805	3370	Child Abuse Reporting Requirements	NONE	ABL 12/06/23

Updates existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

## State Board of Medicine

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
05/22/23	#16A-4956	3332	Acupuncturists and Practitioners of Oriental Medicine	04/13/22	APP 07/13/23

Updates and clarifies existing regulations, addresses changes to the options for demonstrating English language proficiency, and incorporates amendments to the Acupuncture Licensure Act relating to liability insurance and circumstances when diagnosis of a condition by a physician, dentist, or podiatrist must occur.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
03/30/23	#16A-4954	3365	Temporary Graduate Perfusionist	N/A	APP 05/18/23

Conforms the existing regulation to Act 119 of 2016 which deleted the provision that required that a temporary graduate license shall expire immediately upon notice that an individual has failed the required certification examination.

## State Board of Occupational Therapy Education and Licensure

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
05/22/23 06/09/23	#16A-6713	3331	Licensure by Endorsement	04/06/23	WDN 06/02/23 APP 07/13/23

Provides for licensure by endorsement for applicants from other states, territories and countries pursuant to Act 41 of 2019.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
08/01/23	#16A-679	3358	Child Abuse Reporting Requirements	NONE	APP 09/21/23

Updates the Board's existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

## State Board of Optometry

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
05/22/23	#16A-5218	3314	License by Endorsement	11/17/21	APP 07/13/23

Provides for licensure by endorsement for applicants from other states, territories and countries consistent with Act 41 of 2019.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
11/06/23	#16A-5215	3369	Child Abuse Reporting Requirements	NONE	ABL 12/06/23

Updates existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

## State Board of Osteopathic Medicine

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
09/15/23	#16A-5326	3356	Child Abuse Reporting Requirements	NONE	ABL 11/15/23

Updates the Board's existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
03/30/23	#16A-5332	3366	Temporary Graduate Perfusionist License	N/A	APP 05/18/23

Conforms the existing regulation to Act 120 of 2016 which deleted the provision that required that a temporary graduate license shall expire immediately upon notice that an individual has failed the required certification examination.

## State Board of Psychology

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
09/15/23	#16A-6322	3357	Child Abuse Reporting Requirements	NONE	ABL 11/15/23

Updates the Board's existing child abuse reporting regulations to be consistent with amendments to the Child Protective Services Law.

## Insurance Department

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
09/06/23	#11-261	3367	Preparation of Forms	NONE	ABL 11/15/23

Allows for the voluntary collection of demographic data, including questions relating to race and ethnicity when certain criteria are met.

## Pennsylvania Gaming Control Board

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
05/23/23	#125-240	3340	Private Testing and Certification Facilities	06/15/22	APP 07/13/23

Provides standards for the registration of Private Testing and Certification Facilities in the Commonwealth.

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
10/26/23	#125-246	3386	Table Games Side Wager and Variations - Final Regulations	N/A	WDN 11/29/23

Moves table games, variations and side wagers temporary regulations to final status.

## Pennsylvania Liquor Control Board

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
10/10/23	#54-99	3376	Duties and Rights of Licensees	NONE	ABL 11/15/23

Updates existing provisions relating to employees of licensees.

## Pennsylvania Turnpike Commission

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
07/12/23	#60-3	3307	Traffic Regulations	08/18/21	APP 09/21/23

Amends existing regulations to reflect the Commission's conversion to a cashless tolling system.

## State Civil Service Commission

Date Received	Agency & Regulation #	IRRC #	Title	Comments Filed Date	Final Actions
04/12/23	#61-13	3371	Rules of the Civil Service Commission	N/A	APP 05/18/23

Rescinds obsolete regulations related to the administration of classified service employment in Pennsylvania.