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March 1, 1999

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Gentlemen:

Please accept the following comments and recommendations for improvements to the proposed lobbying disclosure regulations published in the *Pennsylvania Bulletin* on January 30, 1999, 5 Pa.B. 548.

*Scope of the Regulations*

As currently drafted, the regulations appear to require registration and reporting by professionals such as attorneys, accountants and engineers who provide professional services or disseminate professional opinions which are not provided for the purpose of influencing legislative or administrative action, but which may directly or indirectly have a foreseeable effect upon legislative or administrative action. The regulations should be modified to clarify that the provision of professional services not undertaken for the purpose of influencing legislative or administrative action should not be included within the scope of the regulations. Otherwise the regulations will become a trap for the unwary and may impose unnecessary and unreasonable burdens upon individuals not intentionally engaged in lobbying activities. A failure to clearly distinguish between activities undertaken for the purpose of lobbying and activities which only have an incidental effect upon legislative and administrative action could

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also invite challenges to the validity of the Lobbying Disclosure Act and the Commission's regulations.

The regulations currently provide that the term "lobbying" means "an effort to influence legislative or administrative action," and includes "direct or indirect communication." The term "direct communication" is defined to mean "an effort, whether written, oral or by another medium, ... directed to a State official or employee, the purpose *or foreseeable effect of which* is to influence legislative action or administrative action." Similarly, the term "indirect communication" is defined to mean "an effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose *or foreseeable effect of which* is to influence legislative action or administrative action." (Emphasis added.)

As currently drafted, a professional, such as an attorney, accountant or engineer, assisting a client in dealing with state government to obtain permits, licenses or approvals, may be inadvertently engaged in lobbying if communications directed to state officials or to the client may have a foreseeable effect upon legislative or administrative action. In addition, a professional providing advice to a client regarding state laws and regulations, may be inadvertently engaged in lobbying if it is foreseeable that the client or another individual based upon the advice may be encouraged to directly effect legislative or administrative action. Likewise, a professional preparing or distributing advertising or other promotional material or providing education or training which describes problems involved in compliance with existing laws or regulations may be inadvertently engaged in lobbying if recipients may be foreseeably encouraged to directly effect legislative or administrative action. None of these activities should appropriately or legitimately fall within the scope of the Commission's lobbying registration and reporting regulations.

The purpose of the Lobbying Disclosure Act is to require public disclosure of "the identity and the scope of activity of those employed to influence actions of the General Assembly and the Executive Department." The law expressly is "not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." 65 Pa.C.S. § 1302. Professionals not providing advice or services for the purpose of influencing legislative or administrative action should be exempt from the requirements of the law and regulations because such individuals do not receive compensation for lobbying. 65 Pa.C.S. § 1306(3)(i).

To avoid the possibility that the Commission's regulations will inappropriately apply to professional activities not intended to constitute lobbying, the Commission should modify the definition of the term "effort to influence legislative or administrative action." As used in the regulations, the term should not apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, the Commission could clarify the meaning of the exemption provided by § 1306(3)(i) by clarifying that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.

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### *Guidelines and Statements of Policy*

The proposed regulations codify without explanation or clarification statutory provisions which include within the definition of the term "administrative action" an agency's "development or modification of a guideline or a statement of policy." In order to avoid confusion and uncertainty regarding the scope of registration and reporting requirements, the regulations should include definitions of the terms "guideline" and "statement of policy." Individuals subject to potential civil penalties or criminal prosecution for violations of the Commission's regulations should be provided reasonable specificity and certainty regarding the requirements of the regulations and should not be required to guess as to the proper meaning of terms utilized in the law and regulations.

The Joint Documents Committee adopted regulations in 1986 defining the terms "statement of policy," "guideline" and "interpretation." 1 Pa.Code § 1.4, 16 Pa.B. 4648 (November 29, 1986). A statement of policy is any document, other than a regulation or adjudication, "interpreting or implementing a statute enforced by an agency," including "guidelines and interpretations." Guidelines are documents which describe "the policy an agency intends to implement in future rulemakings, adjudications or which will otherwise guide the agency in the exercise of administrative discretion." Interpretations are statements of policy other than guidelines issued by an agency "without reliance upon express or implied rulemaking authority."

Because of the highly inclusive nature of the terms "statement of policy," "guidelines" and "interpretations," the possibility exists that any document promulgated by an agency, other than an adjudication or regulation, might be classified as a statement of policy or guideline. Fortunately, regulations adopted by the Joint Documents Committee reduce the possibility for confusion by requiring publication in the *Pennsylvania Code* and the *Pennsylvania Bulletin* of all statements of policy adopted on or after July 1, 1969 which are permanent or general in nature. 1 Pa.Code §§ 3.1(a)(2), 3.13(a)(3), 3.26(a), 9.302. Limited exceptions to this requirement are provided for documents filed with the Legislative Reference Bureau but not published in full in the *Pennsylvania Code* or *Pennsylvania Bulletin*, provided that a synopsis or index of these documents is published in the *Pennsylvania Bulletin*. 1 Pa.Code §§ 3.13(b) & (c), 3.31, 9.301, 13.5. Statements of policy not properly adopted pursuant to these requirements may be utilized by an agency, but are not effective as applied to members of the general public who do not have actual knowledge concerning the contents of the documents. 1 Pa.Code § 13.1(b).

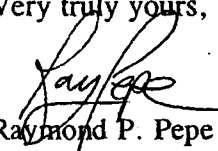
Consistent with regulations adopted by the Joint Committee on Documents, the Commission should define the terms "statement of policy" and "guideline" as used in the regulations as applying only to documents published as final or for comment in the *Pennsylvania Bulletin* and the *Pennsylvania Code*. This approach will provide an objective test to determine the scope of the lobbying registration and reporting requirements and will only exclude documents which are not permanent and general in nature and which are not binding upon members of the general public.

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*Conclusion*

I hope these comments are helpful to the Commission. Please contact me if I can provide any assistance to you. The comments provided above represent solely my personal advice based upon my experience inside and outside of state government. The comments are not intended to represent the recommendations of the law firm of Kirkpatrick & Lockhart LLP or the views of any of our clients.

Very truly yours,



Raymond P. Pepe

cc: Independent Regulatory Review Commission  
Senate Rules and Executive Nominations Committee  
House Judiciary Committee

**Chart #3 Public comments following publication in PA Bulletin**  
 (Note: Bracketed cites were not specifically referenced by commentators, but appear applicable)

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
2/11/99  cc: Sandusky Wyatt Nyce  BUSH  RECEIVED 05 MAY 14 PM 4:15 RECEIVED 05 MAY 14 PM 4:15	Cristina Papson, Deputy Attorney General, Office of Attorney General Review and Advice Section	§31.1, definitions of "Child" and "Immediate Family"	Stepchildren should be included in definitions of "child" and "immediate family."	Do not adopt. The act does not expressly include stepchildren in the definition of "Immediate family." The reference to "like relative-in-law" appears in a different clause than the word "child," and therefore it only modifies "parent, brother, or sister." Additionally, the Statutory Construction Act defines the term "child" as including children by birth or adoption. 1 Pa.C.S. §1991.
		§31.1, definitions of "Negligent conduct" and "Negligent failure to register or report"	Using the words "wanton" and "reckless" in the definitions may cause problems as these terms do not appear in the Act.	Do not adopt as posed, based upon the deletion of these definitions and the addition of definitions of "negligence" and "intentional" in response to a comment from IRRC (see, Chart #6). However, the new definition of "negligence" does not include the words "wanton" or "reckless."
		§§31.10(b), (d), (e)	Unclear whether §31.10 includes penalties of both second degree misdemeanors and third degree misdemeanors pursuant to §§4904(a) and (b) of the Crimes Code. Third degree misdemeanor penalties must be authorized by law.	Adopt. In §§31.10(b),(d),(e), after the words "subject to" delete as follows: [penalty under]
		§43.1	Should contain a statement that nothing in the Act or regs prohibits the A.G. from initiating an investigation or prosecution under the Act and that a referral from the Commission is not necessary to do so.	Adopt. In §43.1 add as follows: " <u>(c)</u> <u>Nothing contained in the Act or</u> <u>regulations promulgated thereunder</u> <u>shall prohibit the Office of Attorney</u> <u>General from initiating an investigation</u> <u>or prosecution under the Act pursuant</u> <u>to its authority by law, and the Office</u> <u>of Attorney General need not await a</u> <u>referral from the Commission before</u> <u>initiating such an investigation or</u> <u>prosecution."</u>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§43.3(e)]	It should be specified that a civil penalty by the Commission does not preclude a criminal prosecution.	Adopt. In §43.3(e), which is to be relabelled §43.6, add as follows: <u>"(d) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the Act."</u>
		Chapter 45	Regs should specify what action will be taken by the Commission in the event that a lobbyist/principal is convicted in criminal proceedings - suggest a conviction would have a <i>res judicata</i> effect whereby the Commission should simply determine the appropriate period, if any, that lobbying would be prohibited.	Adopt. In §45.2 add as follows: <u>"(c) In the event that a lobbyist or principal is convicted in a criminal proceeding for a violation of the Act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be res judicata, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying."</u>
2/25/99	Franklin L. Kury, Reed Smith Shaw & McClay	§31.1, definition of "Indirect communications"	Add "the term does not include communications between attorneys and their clients."	Adopt the following change. In §35.1(g)(3), add the following as subparagraph (iv): <u>"The contents of privileged communications, such as those between attorney and client or doctor and patient."</u>
		§35.1(g)(3)(iii) and §35.2(a)(3)	Delete the phrase, "Except as provided by the Act or these regulations."	Adopt the following changes.  §35.1(g)(3)(iii) shall be changed as follows: "[Except as provided by the act or this part, t] <u>I</u> he specific contents of <u>any</u> [ particular] communication[, ] or the identity of those with whom the communications take place[, need not be reported]." See, related changes on Chart #6. The second sentence of §35.2(a)(3) shall be changed as follows: "[Except as provided by the act or this part, t] <u>I</u> he specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded <u>or maintained</u> ."

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§37.1	<p>Add:</p> <p>(m) An attorney while engaged in communications with a client and a client while engaged in communication with an attorney.</p> <p>(n) An attorney while engaged in litigation or proceedings before a state administrative agency in which the agency is represented by counsel.</p>	Do not adopt. The Regs follow the Act.
3/1/99	Vince Phillips, Phillips Associates	§31.4	Registration/reporting periods should be on a calendar-year basis.	
		§33.1	<p>1. The \$100 filing fee may be considered an infringement upon the freedom to express a viewpoint.</p> <p>2. The language is unclear. Is a principal required to pay one fee regardless of the number of lobbyists it employs? Does a contract lobbyist pay one fee, or one for each client? Consider adding: A lobbyist pays one \$100 fee regardless of the number of clients. A principal pays one \$100 fee regardless of the number of lobbyists employed.</p> <p>3. Lobbying by a principal on its own behalf means that it is acting as both principal and lobbyist. Charging the owner of the principal <u>twice</u> — both as a principal and as a lobbyist — should be reviewed.</p>	<p>1. Do not adopt. The Regs follow the Act.</p> <p>2. Modify, and adopt the following change. In §33.1(a)(2) add the following as a new final sentence: "<u>In no event shall a registrant be required to pay more than one biennial filing fee in any given biennial registration period.</u>"</p> <p>3. The concern is alleviated by #2 above.</p>
		§33.2(b)(4)	Requires that principals list the number of dues-paying members. However, membership categories and numbers of members within an association may fluctuate within a year. The word "approximate" should be inserted before "numbers."	Do not adopt. The Regs follow the Act.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§33.5	The termination process is too complex and infringes upon freedom of speech. Consider adding the following: a) A lobbyist or principal may terminate registration by notifying the Commission in writing that lobbying will cease on a particular date. The communication must include all principals being lobbied for and all lobbyists being utilized; and b) The Commission will confirm receipt of this communication and write back reminding the lobbyist or principal that all reports need to be current by the date of the next due quarterly filing report and that, whether registered or not, the lobbyist and principal must understand their legal responsibilities to retain records, be subject to potential auditing, etc.	Do not adopt. The termination process needs to be spelled out for clarity. As for the final suggestions, those filers who wish to do so may check with the Commission to confirm the receipt of their filings. Filers are presumed to know of their responsibilities.
		Chapter 35	The statute calls for reporting of "single aggregate good faith estimates," but the need to document specific costs may not be overlooked in the Commission's audits. Lobbyists are concerned that an audit would flag technical violations of the reporting requirements for which they would be punished. Insert the word "approximately" wherever feasible.	Do not adopt. The Regs follow the statute.
		§37.2, and possibly §33.1	Lobbyists who are under the threshold and therefore are not required to register may desire to register to gain "legal recognition." Perhaps the regulation could allow voluntary registration for those not required to register, and also give them an exemption from the fee and the reporting requirements.	Do not adopt. While the statute would not preclude voluntary registration, it provides no exemptions for registrants as to paying the biennial filing fee or reporting.



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§§39.2(b); 39.3	<p>1. Commission should look at the issue of third-party requests being considered unauthorized. There may be third party requests, such as from the media, which need clarification.</p> <p>2. Regs should acknowledge that written opinions may be requested by a lobbyist, principal, or state official/employee and that a lobbyist/principal who acts in good faith on a written advice or opinion shall not be held liable for a violation.</p> <p>3. Requestors should be allowed to ask about current conduct.</p>	<p>1. Do not adopt. The Regs follow the statutory requirements for standing (see, §1308(c) of the Act).</p> <p>2. Adopt. Add the following sentence at the end of §39.1: <u>"A principal, lobbyist, or State official or employee who acts in good faith based upon a written advice or opinion of the Commission issued to him shall not be held liable for a related violation of the act."</u></p> <p>3. Do not adopt. As is the case with the Ethics Act, the statutory defense afforded by an advice or opinion is inherently as to prospective conduct only. See, §1308(c) of the Act). "Current conduct" is conduct which is already taking place and is not prospective in nature.</p>
		§§41.2(d), (e)	Examination of related records in course of audit: the scope of the Commission's review of related records should be limited to those records relating to the principal/lobbyist being audited.	
		§41.2(f)	The scope of an audit should be limited to one year prior rather than four, which is too heavy-handed. In the event of an enforcement action, the Commission can examine any records deemed necessary.	Do not adopt. The act envisions a four-year period. §1308(f) of the act directs that completed registration statements, expense reports, termination notices and termination reports must be retained in the Commission files for four years.
		§41.4(c)(1)	Service of the audit report via mailing does not constitute sufficient protection for the recipient - should be sent by registered mail or overnight mail to enable it to be tracked.	Do not adopt. Service by mail is a legally approved method.
		§§41.4(c)(2), (d)	There is no mention of recourse for the lobbyist/principal besides setting forth his/her/their position on the audit report.	Adopt the following change. In §41.4(d), after the words, "Audit reports" insert <u>"and any related responses"</u>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§43.3	<ol style="list-style-type: none"> <li>1. Regs should allow for the Commission to resolve a situation informally where possible.</li> <li>2. Complaints may be filed publicly with no gag order on talking to the press. The Commission should not allow itself to be used as a political pawn by any special interest. Add a prohibition on parties with regard to commenting on the matter, at least until concluded.</li> <li>3. Add a penalty for filing a complaint with malicious intent.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt any change. The Regs already include one such process in Chapter 43.</li> <li>2. Do not adopt. The Regs may not expand upon the statutory requirements as to confidentiality.</li> <li>3. Do not adopt. The Regs may not expand upon the statute by legislating such a penalty.</li> </ol>
		Chapter 45	<ol style="list-style-type: none"> <li>1. State clearly that the burden of proof rests with the Commission to establish wrongdoing.</li> <li>2. There should be a "clear preponderance of evidence" before prohibition is imposed.</li> <li>3. Does a lobbyist/principal found guilty of wrongdoing have more recourse than to request reconsideration?</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt any change. The burden of proof is already upon the Commission.</li> <li>2. Do not adopt. (See other comments below, proposing the even higher standard of clear and convincing evidence.</li> <li>3. No change has been proposed and no change need be adopted. Any recourse is as provided by law.</li> </ol>
3/1/99	Bruce E. Lammel, Esq., USX Corporation	[Chapters 33, 35]	Allow a parent corporation to register and report for all of its direct and indirect subsidiaries and affiliates as long as all such lobbying contacts and expenses are reported by such parent corporation.	<p>Adopt the following change. As noted in a later comment (see, Chart #6), delete the existing §31.14 (severability) in its entirety. In its place, put a new §31.14, designated "Parent corporations and subsidiaries" providing:</p> <p><u>(a) Subject to the requirements of paragraph (b), a parent corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.</u></p> <p><u>(b) Where registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly</u></p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
				<u>expense reports, notices of termination, termination reports, and separate termination reports shall disclose with particularity all of the required information as to the parent corporation and the subsidiaries.</u>
		Cites §37.1(1) [but seems to apply to §37.1(12)]	Make it clear that the exemption provided by the Act (§1306(3)) and the Draft Regulations [§37.1(1)] excuses principals from reporting exempted employees as lobbyists under the quarterly reporting requirements.	Do not adopt. The comment proposes a change which would be contrary to the statute, which requires the principal to report, <u>inter alia</u> , "the names of <i>all</i> lobbyists by whom the lobbying is conducted . . . ." See, 65 Pa.C.S. §1305(b)(1)(Emphasis added). The fact that certain employees may themselves be exempt from registering/reporting does not alter the fact that they are lobbyists and must be included in the principal's reports.
		[§31.4]	The quarterly reporting periods should end on a calendar quarter. Alternatively, allow companies to either: 1) use their most recently closed calendar quarter as a proxy for the period to be reported, or 2) report the most recently closed calendar quarter in place of the period to be reported.	
		§35.1(g)(1)	Either exempt publicly-held companies from the reporting requirement for contributions of more than 10% of a principal's total resources, or define the term "resources" so that USX is not required to report its shareholders, its lenders/bondholders, or its customers.	Adopt the following change. At the end of §35.1(g)(1), add the following sentence: " <u>Total resources shall not include the purchase, transfer, or ownership of stock in a publicly held corporation.</u> "

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.1(g)(2)	<p>Limit the quarterly reporting requirement by adding the underlined language below: "(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted, so that if a lobbyist is a firm, association, corporation, partnership, business trust, or business entity, its name (<u>if it engages in lobbying on behalf of others, who are not affiliates</u>) and the name(s) of the individual(s) who lobby on behalf of the principal shall be included."</p> <p>This language is intended to clarify that USX, for example, would not report itself as a lobbyist unless it lobbied on behalf of others who were affiliates of USX. USX contends that lobbying on its own behalf does not make it a lobbyist.</p>	<p>Adopt the following changes. Rewrite §33.2(a)(2) as follows: "Lobbying by a principal on the principal's own behalf constitutes acting [both] in the capacity of a principal [and in the capacity of a lobbyist]." Rewrite §33.2(a)(2)(i) as follows: "[Unless exempt under section 1306 of the act, a ] A principal that [so] <u>is required to register and that engages in lobbying on its own behalf [shall] need only register with the Commission [both] as a principal [and as a lobbyist].</u></p>
3/1/99	R. David Tive, Pennsylvania Association for Government Relations	§41.1	With re: to provision that no lobbyist or principal shall be subject to an audit more than once in every two-year season <i>except for cause</i> , "cause" needs to be defined.	
		§§41.2(d), (e)	"Relevant records" needs to be defined.	Do not adopt. If the Committee keeps the pertinent provisions, the term does not need to be defined.
		§§43.2, 43.3	The grounds for opening a proceeding dealing with specific prohibited activities are too vague. It seems that proceedings can be opened for any reason.	Adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.
		§43.3(b)(4)	1. Informal information is not defined.	1. Adopt the following changes. In §43.3(b)(4), after the words, "information received," delete the words, "informally or from an audit or related audit conducted under Chapter 41" and replace them with "under Subsection (a)"

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			<p>2. The idea of a non-investigative process is "horrifying and offensive." Propose: rewrite the Regs to have only an investigative process.</p> <p>3. The Commission may have no actual evidence, only "informal information," but may still send official correspondence in the form of a "notice of noncompliance" indicating that the registrant is in violation.</p> <p>4. The Commission must then prove his/her guilt, but the standard of proof is not specified.</p> <p>Proposed solution: Chapters 41 and 43 should be rewritten to parallel Chapter 21 of Title 51 of the Pa. Code.</p>	<p>2. Do not adopt. The non-investigative process is based upon §1309 of the act. It provides an opportunity for a registrant to "fix" a problem before more formal proceedings are instituted. Matters which are not "fixed" proceed under a process which satisfies due process requirements, with the Investigative Division bearing the burden of proving any violation.</p> <p>3. Do not make any changes. The term "notice of noncompliance" is directly from the statute. See, §1309(a) of the act.</p> <p>4. Adopt the following changes.</p> <p>In §43.2, add the following as a new subparagraph: "<u>(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p> <p>In what was §43.3(c)(15)--to be renumbered to be §43.4(o) pursuant to an IRRIC comment (see, Chart #6)--add the following sentence at the end: "<u>At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p> <p>In what was §43.3(d)(3)--to be renumbered to be §43.5(c) pursuant to an IRRIC comment (see, Chart #6)--add the following sentence at the end: "<u>At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p>

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				<p>In what was §43.3(e)--to be renumbered to be §43.6 pursuant to an IRRC comment (see, Chart #6)--change the wording at the end as follows: ". . . the Commission may, upon the [majority] vote of <u>at least four of</u> its members present, levy one or more civil penalties as provided for in this [sub)section."</p> <p>In §45.2(b)(13), add on the following sentence at the end: "<u>A prohibition against lobbying may only be imposed by a vote of at least four members of the Commission present at a meeting.</u>"</p>
		[No cite: there is no Wrongful Use of Act provision in the Act, so there is none in the Regs]	Unlike the Ethics Act process, lobbyists and principals are not given the right to ask the Commission to investigate frivolous/harassing complaints.	Do not adopt any changes. The Regs may not expand upon the statute by legislating a "wrongful use of act" provision.
		Throughout the Regs	Wherever the Regs refer to following the Ethics Act, remove the qualifier, "to the extent possible."	Do not adopt. The qualifier is necessary due to some language within the Ethics Act Regulations that would apply to the Ethics Act but not the Lobbying Disclosure Act.
		§§31.8(e)(1), 35.2	"Lobbying activity" should be defined.	Do not adopt. Because the term "lobbying" is defined, the term "lobbying activity" need not be.
		§§31.5, 31.6	"Delinquency" and "deficiency" need to be more clearly defined, or use the term "noncompliance."	Do not adopt. The meaning of the terms is clear. The Regs use both terms to clarify ways in which noncompliance may result.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§31.1, definition of "Association"	The definition of "association" should also include unincorporated associations.	Do not adopt any changes. Because the act does not define the term, the Statutory Construction Act's use of the definition set forth in the Associations Code was followed. That definition is adequately broad.
		§31.1, definition of "Child"	Should include stepchildren.	Do not adopt. See, this Chart at 1, first comment of Cristina Papson, Deputy Attorney General, Office of Attorney General Review and Advice Section.
		§31.1, definition of "Effort to influence legislative action or administrative action"	The definition of "effort to influence legislative action or administrative action" should not contain an exemption for the provision of purely technical data to a state official or employee, or to a legislative or administrative body, in response to a request for the information, as it could provide a loophole.	Adopt. Delete from the definition as follows: "[The term as used in the act does not apply to the provision of purely technical data to a State official or employe or to a legislative or administrative body, at his, her or its request.]"
		§31.1, definition of "Service" (of official papers)	Official papers which require a response should be sent by certified mail, and the date of service should be considered to be the date received and signed for.	Do not adopt. Service by mail is a legally approved method.
		[§31.11]	The Regulations should include a statement limiting access to, and the distribution of, the electronic signatures. The Regulations should also indicate what legal action could be taken against an individual who provides an electronic signature to anyone who is not authorized to have it.	Do not adopt. The Regs may not legislate penalties, and other laws would appear to apply to such situations. §31.11 provides as much protection as the Regs can provide.
		§35.2(h)	Access to registrants' files should be limited to only those items directly related to lobbying reports, and only after the agency makes a specific request and for cause.	Do not adopt any changes as to this particular comment. However, certain other comments may involve these issues.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§§33.5(i); 35.1(e)]	In order to avoid double reporting of expenses by principals and lobbyists which could arise through their different characterizations of an expense, include language which states that a lobbyist is responsible for reporting only his/her out-of-pocket expenses, not those which are paid either directly or indirectly by the principal, and that anything not paid for by the principal would need to be reported by the lobbyist.	Do not adopt any changes. The Regs follow the act.
		§§33.2(b)(3); 35.1(g)(2)	Delete the requirement for principals to include the names and addresses of unregistered individuals in their registration statements and reports.	Do not adopt. The Regs follow the act ( <u>See</u> , §1304(b)(1)(vi) of the act, requiring disclosure of <i>each individual</i> who will be lobbying, and §1305(b)(1) requiring the listing of the names of <i>all</i> lobbyists by whom the lobbying is conducted).
		§§33.3(a), (f)	Clearly state that the lobbyist, not the firm, needs to register and report.	Do not adopt. The Regs follow the act ( <u>see</u> , §1303 of the act which defines the terms "principal" and "lobbyist" to include firms and other forms of business entities; §§1304 and 1305 which do not limit their requirements to individuals as opposed to firms; and §1306 which does not exempt firms from these requirements, but to the contrary, includes one exemption at (6) for certain employees of corporations where such employees' lobbying-related expenses are included <i>in the corporation's reports</i> under §1305.
		§33.1	It should be made clear that lobbying firms are not required to pay the annual fee but may pay it on behalf of the registered lobbyists they employ.	Do not adopt. Regs follow the act. Lobbying firms are required to pay the annual fee to the extent they are not exempt ( <u>see</u> , authority cited in block immediately above). As for firms paying the fees of their employees, neither the act nor the Regs would preclude such.



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§33.5	<p>1. The section is too complex and should be rewritten to more closely mirror the Act's simple language and requirements.</p> <p>2. Subparagraph (h) should not require the lobbyist to sign the principal's termination report.</p> <p>3. Subparagraphs (d) and (e) say the same thing, and shouldn't say what they say at all. It should be possible to withdraw or cancel a termination statement that has not yet been approved by the Commission.</p>	<p>1. Do not adopt. <u>See</u>, this Chart at 4, first block, as to fourth comment of Vince Phillips, Phillips Associates.</p> <p>2. Do not adopt as stated because the act itself requires such (<u>see</u>, §1305(b)(4) of the act). However, the problem of what to do when the required signature is not available is dealt with as to a comment by IRRRC (<u>see</u>, Chart #6).</p> <p>3. Do not adopt. The Regs follow the act, which provides: (1) that a registration may be terminated <i>by filing the notice</i> (such that the termination is complete upon such filing), and (2) that "No lobbying may occur after the filing of notice <i>unless</i> the lobbying is pursuant to a <i>separate registration statement which is filed with the commission and which, at the time of the lobbying, has not been terminated.</i>" 65 Pa.C.S. §1304(e) (Emphasis added). To satisfy the above statutory requirements, notices of termination may not be withdrawn, and their related registration statements may not be revived or otherwise made effective again.</p> <p>However, to accomodate the possible need for filings after normal business hours, make the following changes in §31.5(a): "A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission [by 5 p.m.] on the date due <u>as follows</u>.</p> <p><u>(1) Hard copy filings must be received by 5 p.m.</u></p> <p><u>(2) Faxed or electronic filings may be filed until 11:59 p.m.</u></p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.1(i)(5)	Costs for offices that are owned by the registrants, such as mortgages, construction and maintenance, should be required to be reported in the same manner as costs for offices that are rented.	Do not adopt any changes. Such costs would be properly reported under the existing wording of the Regs.
3/2/99	Edith G. Laver, Esquire, Bethlehem Steel Corporation		Supports the comments of USX Corporation.	The notations as to the comments of USX Corporation are incorporated herein by reference as if fully set forth.
3/2/99	Pennsylvania Society of Association Executives	§31.1, definitions of "Direct communication" and "Indirect communication"	The regulations do not provide sufficient guidance for determining direct and indirect communication. They need to be more specific.	Do not adopt. The Regs track the act.
		Chapter 35	<ol style="list-style-type: none"> <li>1. The quarterly expense reporting requirements are "broad [in] scope and short [on] specifics." Regs say that any reasonable accounting method may be used. A full cost accounting system will be required.</li> <li>2. Additional guidance is needed on the types of activities that are included as lobbying expenditures. Other terms such as "research time" are too vague.</li> <li>3. The regulations should provide more specific procedures for determining methods for reporting ancillary expenses, such as offices, equipment, supplies, capital costs, depreciation, and apportionment of use.</li> <li>4. Determining how to allocate office space and equipment for lobbying purposes needs more guidance and clarification in the Regs.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt. The comment is general and in the nature of an opinion.</li> <li>2. Do not adopt. The statutory and regulatory definitions are sufficient.</li> <li>3. Do not adopt. The Regs strike a balance of being true to the statute while providing necessary flexibility to accommodate various methods of accounting/bookkeeping.</li> <li>4. Do not adopt. The Regs provide a necessary flexibility to accommodate various methods of accounting.</li> </ol>
		§35.1(j)	Cross-referenced provisions of the Ethics Act should be spelled out rather than merely cited.	Do not adopt. A citation to existing procedures is proper. However, in response to a comment from IRRC (see, Chart #6), such citations are made more specific.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§ 35.2	There should be standardized forms and a uniform record-keeping process for lobbyists/principals.	Do not adopt any changes. The Regs would allow the Commission in its discretion to promulgate standardized forms for record-keeping, but would not force registrants to use them (see, §35.2(a)(1)). To force a single method of record-keeping upon <i>all</i> registrants may create hardships.
		[§§31.11, 31.12]	The Commission should have a process for confirming the receipt of electronic filings, faxes, and photos/information that must be mailed.	Do not adopt. Filers are able to contact the Commission at its toll-free number to confirm filings.
		§ 33.5	A notice of termination should be capable of being withdrawn.	Do not adopt. See, this Chart at 13, item 3, comment of R. David Tive, Pennsylvania Association for Government Relations.
		§ 35.1(i)(2)	Personnel costs related to positions other than lobbying that are exempt under section 1306 must nevertheless be included in the personnel calculation. Since Section 1306(6) does not explicitly include associations, the broader exemption in section 1306(3)(iii) should apply.	Do not adopt any changes. The Regs may not amend the act. The exemptions are as set forth in the statute.
		§ 35.1(i)	The term "furtherance of lobbying" needs clarification.	Do not adopt. The term "lobbying" is defined, and consequently the meaning of the term "in furtherance of lobbying" is clear.
		§ 35.1(i)(2)	Clarify the term "monitoring."	Do not adopt. The meaning of the term is clear.
		[§35.1(i)(4)]	<ol style="list-style-type: none"> <li>1. The inclusion of "research time spent in preparation for lobbying" and "any other time consumed in furtherance of lobbying" exceeds the legislative language of the Act.</li> <li>2. These terms are also overly broad.</li> </ol>	1 & 2. Do not adopt any changes. The Regs are fully supported by the statutory language at §1305(b)(2)(i).

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.2(b)(1)	The Commission lacks statutory authority to require that non-lobbying records be retained for inspection or audit.	Do not adopt. The Regs provide that a registrant may keep records of all lobbying activity separate from records of non-lobbying activity, but if the registrant chooses to integrate the records, such may not defeat the statute's authorization for gaining access to the records of the lobbying activity.
3/2/99	Raymond P. Pepe, Esquire	[§31.1, definition of "Effort to influence legislative action or administrative action"; or, alternatively, §37.1(3)]	Modify the term "effort to influence legislative or administrative action" so as not to apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, clarify the exemption of §1306(3)(i) so that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.	Do not adopt any changes. The proposed changes could alter statutory provisions. Moreover, the apparent concern is without basis in the act. The concern seems to be whether a lawyer who, in the course of giving professional advice to his client, counsels that client to seek legislative change, is, as a result of that advice, a "lobbyist." Under such a scenario, if there were any principal, it would be the client himself. The lawyer's communications to his own client would not make the lawyer a lobbyist, because the statutory definition of "lobbyist" does not apply to "lobbying" the principal himself.
		§31.1, definitions	To clarify the meaning of the term "administrative action," define the terms "statement of policy" and "guideline" as applying only to documents published as final or for comment in the <i>Pennsylvania Bulletin</i> and the <i>Pennsylvania Code</i> . This would provide an objective test and would be consistent with regulations adopted by the Joint Documents Committee.	Adopt the following change. In §31.1, in the definition of "Administrative action," subparagraph (i), after the words, "statement of policy" insert " <u>as defined in 1 Pa. Code §1.4</u> " in front of the semi-colon.
3/2/99	Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives	[§31.4]	The timetable for filing quarterly expense reports should commence on January 1, rather than December 1, so that lobbyists/principals will file their quarterly expense reports for Dec. before the FIS's of incumbents running for re-election are due.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§31.1, definitions of "Gift" and "Effort to influence legislative action or administrative action; §35.1]	It should be made clear that constituent services are not to be regarded as reportable items or gifts.	<p>Adopt. Make the following changes.</p> <p>In the definition of "Anything of value," insert the following after subparagraph (i)(P) as the new subparagraph (ii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p> <p>Renummer the remaining paragraph to be (iii) instead of (ii).</p> <p>In the definition of "Effort to influence legislative action or administrative action," insert the following as the new final sentence: <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p> <p>In the definition of "Gift," insert the following after subparagraph (ii) as the new subparagraph (iii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p>
		[§35.1(k)]	The regulation for calculating gifts/hospitality/travel benefits should be revised to protect a Member against an unfair and inaccurate equal proration of imputed benefits.	
		[§41.1(c)]	Delete the provision for "for-cause" audits.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§§35.2(c)(4), (h)(2)]	With regard to access to a registrant's computerized/electronic records, place safeguards preventing intrusion into information governing communications between legislators and registrants on sensitive legislative issues, absent a showing of legally sufficient cause to access such information.	<p>Adopt the following changes.</p> <p>In §35.2(b), add the following sentence at the end: "<u>A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.</u>"</p> <p>In §35.2(c)(4), make the following changes: "Computerized/electronic records shall be maintained to enable the Commission or [the] Office of Attorney General to access <u>in readable form</u> all of the [recorded] information <u>reasonably necessary to substantiate the registration statements or reports.</u> [Passwords or other privacy/security measures shall be memorialized and maintained to enable the Commission or the Office of Attorney General to fully access, identify and use them.]</p> <p>In §35.2(h)(2), make the following changes: "[For c] Computerized/electronic records [, the information required to access the recorded information, such as any passwords or other privacy/security measures, ] shall be provided [together with the records] <u>in readable form.</u>"</p>
		[§§43.2; 43.3(c)(15); 43.3(d)(2); 43.3(e)]	Reflect the legislative intent by employing a four-member majority to determine violations which could lead to penalties by utilizing the "clear and convincing proof" standard as applied under the Ethics Act.	Adopt as set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
		§31.1, definition of "Effort to influence legislative or administrative action"	Regs should exempt legislator-initiated requests to registrants for legislative and constituent-related information from the definition of "efforts to influence legislative or administrative action," rather than simply exempting "purely technical data."	Do not adopt based upon the deletion of the exemption for "purely technical data" as set forth in this Chart at 11, comment of R. David Tive, Pennsylvania Association for Government Relations.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
3/2/99	Honorable H. William DeWeese, Democratic Leader, House of Representatives	§31.1, definitions	<p>1. The definition of "Lobbying," is unclear as to whether the term includes <i>only</i> expenditures made to provide gifts, entertainment, meals, transportation or lodging to a State official or employee in an effort to influence legislative or administrative action, or whether it also includes such expenditures made for the purpose of <i>advancing the lobbyist's interest</i>, including maintaining goodwill with legislators. If the latter, a lobbyist/principal may feel compelled to include the costs for responding to a member's requests for help for a constituent, thereby creating the impression that the lobbyist made a large expenditure on the member's behalf.</p> <p>2. The definition of "Effort to influence legislative or administrative action" excludes the provision of purely technical data, but what constitutes "purely technical data" is unclear.</p> <p>3. The definitions of "Gift" and "Anything of value" are too broad. Suggest that the definitions include a provision exempting from reporting the cost or value of the services of professionals and other staff involved in responding to assist a member's constituents, made at the request of the member.</p>	<p>1. Adopt the changes set forth in this Chart at 17, second comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p> <p>2. Adopt the change of deleting the exemption for "purely technical data" as set forth in this Chart at 11, comment of R. David Tive, Pennsylvania Association for Government Relations.</p> <p>3. Adopt the changes set forth in this Chart at 17, second comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
		[§31.4]	The quarterly reporting periods should begin in January and end in December. This will allow members running for re-election to review the reports and ensure that discrepancies are clarified before the FIS's are filed. Otherwise, discrepancies will not be resolved before the elections. Discrepancies could also trigger an audit.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.1(k)(6)	Lobbyists/principals are given options for calculating the value of gift(s), lodging/transportation/hospitality. Problems may arise, e.g., where a member invites others. Recipients may be surprised by the amounts allocated to them. Suggest that 1) require interim notification by a lobbyist/principal to a member that the expenditures to that member are at a certain dollar level, such as \$200, and approaching the threshold level; and 2) eliminate the option of calculating and attributing the benefit in order to maintain consistency among the reports of the benefits provided.	
		§41.1(c)	There is no statutory basis for "for cause" audits and no definition in the Regs for what constitutes "cause." Applying the provision could be subjective and involve violations of due process and equal protection. Suggestion: delete the reference to "for cause audits" and clause (c) in its entirety, <i>or</i> , if the purpose of clause (c) is to protect against multiple random audits, add a clause which clarifies that no lobbyist shall be subject to a random audit more than once in a biennial period.	
		§§43.3(a)	This Section should be consistent with the requirements of the Ethics Act for requiring the filing of a verified complaint to commence an investigation. Delete clause (4) and clarify in (5) that information must be "credible."	As set forth in this Chart at 8, under the third comment of R. David Tive, Pennsylvania Association for Government Relations, adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.
		§43.3(e) [and 45.2(13)]	Set forth the Ethics Act requirements regarding finding violations by the affirmative vote of at least four members based upon "clear and convincing proof."	Adopt as set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§§43.3(b), (c)	SEC proceedings under §1304 or 1305 of the Act can be commenced through non-investigative procedures that are vaguely defined. By not requiring a preliminary inquiry or investigation, the process allows the Commission to presume noncompliance, and, only if respondent does not cure, must it consider whether an actual violation has occurred. Suggestions: 1) delete the provisions regarding the "non-investigative procedures" or clarify the term to indicate that it refers only to the notice of noncompliance; and 2) apply the requirements of a four-member affirmative vote and clear and convincing proof standard for the non-investigative or noncompliance procedures.	<ol style="list-style-type: none"> <li>1. Do not adopt the first suggestion, based upon changes in response to IIRC comments (see, Chart #6).</li> <li>2. Adopt the changes set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.</li> </ol>
3/2/99	George Ellis, Pennsylvania Coal Association	§§35.1(g)(3)(iii), 35.2(a)(3)	The Commission has no authority under the Act to obtain information about the contents of communications or the identity of communicants. Delete the phrase, "except as provided by the Act or these Regulations" from both provisions.	Adopt the changes set forth in this Chart at 2, second comment of Franklin L. Kury, Reed Smith Shaw & McClay.
		§35.2(c)(4)	Delete this entire section. Full access to computerized and electronic records is not authorized by the Act.	Do not adopt this comment. However, the changes in this Chart at 18, first block, responding to the fifth comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives, address the concern.
		§31.1, definition of "Indirect communication"	The definition of "indirect communication" should include limits.	Do not adopt. The Regs track the statutory definition of the term.
		Chapter 35	Rewrite to clarify and simplify the reporting and bookkeeping obligations in compliance with Section 1305.	Do not adopt this particular comment, which is not specific.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		Chapter 35	Regulations go far beyond what is needed to make a "good faith estimate."	Do not adopt. The Regs track the act.
		§§35.1(g)(5), (7)	As is done in §35.1(i)(1), add that any reasonable accounting method may be used to make the "good faith estimates" for "direct communication" and "indirect communication."	<p>Adopt the following changes.</p> <p>In §35.1(g)(5), add the following sentence at the end: "<u>In calculating this good faith estimate, any reasonable accounting method may be used.</u>"</p> <p>In §35.1(g)(7), add the following sentence at the end: "<u>In calculating this good faith estimate, any reasonable accounting method may be used.</u>"</p>
		[§35.2]	Revise Regs to require only that documentation which is mandated by the Act for the purpose of producing "good faith estimates." Anything beyond that exceeds legislative authority.	Do not adopt any changes. The Regs track the act.
		§§35.1(i)(5)	This Section is expansive, shows no limit, and exceeds what is needed to make a "good faith estimate."	Do not adopt any changes. The Regs track the act.
3/2/99	Jonathan C. Waller, Sun Company, Inc.		Supports comments of USX.	<p>The notations as to the comments of USX Corporation are incorporated herein by reference as if fully set forth.</p> <p>Do not adopt. The comment proposes a change which would be contrary to the statute. If such an employee engages in lobbying as defined by the act, he must register and report as required by the act unless one of the statutory exemptions applies. Moreover, the fact that such an employee may himself be exempt from registering/reporting does not alter the fact that he is a lobbyist and must be included in the principal's reports. The act requires the principal to report, <u>inter alia,</u> the names of <i>all</i> lobbyists</p>
		§37.1(5)	It is unclear whether the expenditure of a portion of time by an executive, whose compensation does not include any time for lobbying activities, will require registration because of the size of his salary. It should be made clear that such an executive would be exempt under §37.1(3) and his/her compensation would not be reportable. The intent of this section is to exempt a person who is a lobbyist for a company in several jurisdictions, but does not spend more than \$2,500 of his or her time on lobbying in PA.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[Chapter 33]	Registration by a parent corporation on behalf of its subsidiary corporations would make these Regs more manageable.	<p>by whom the lobbying is conducted . . . See, 65 Pa.C.S. §1305(b)(1)(Emphasis added). Similarly, the statute would require that the lobbying-related expenses reported by the principal include amounts expended as to such an employee. See, e.g., §1305(b)(2)(i) which states: "If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a good faith prorated estimate based on the value of the time devoted to lobbying."</p> <p>Adopt the changes set forth in this Chart at 6-7, in response to the first comment of Bruce E. Lammel, Esq., USX Corporation.</p>
3/3/99	Philip J. Murren, Esquire, Ball, Skelly, Murren & Connell (on behalf of Pennsylvania Catholic Conference)	[§31.1, definition of "Principal" and "Lobbyist"; and Chapter 33]	<p>1. Clarify that individuals employed by a membership association are required to register as lobbyists only on behalf of the entity which employs them, that is, the association itself, rather than being required to register on behalf of each of the members of the association.</p> <p>2. Clarify whether an association itself is considered a "lobbyist," requiring it to register on behalf of each of its members.</p>	<p>1. Adopt the following change. In §33.3(f), add the following as a new final sentence: "A lobbyist registering on behalf of an association shall not be required to register on behalf of each individual member of that association, except as to such members of the association whom the lobbyist represents in an individual capacity."</p> <p>2. Do not adopt any changes.</p>
		[§37.1(11)]	Objection to allowing a government agency to limit the scope of exemption from registration/reporting by judging it against the agency's view of what constitutes "the free exercise of religion." In order to be consistent with constitutional prescriptions, the standard of interpretation must be subjective on the part of the church representative (that is, what he in good faith believes	Do not adopt any changes. The Regs follow the act. The proposed subjective standard would alter the act. Moreover, it would still require the enforcing agency to examine the underlying merits to determine whether there was such a "good faith" belief.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
			to be for the purpose of protecting the free exercise of religion) rather than the agency.	

COMMONWEALTH OF PENNSYLVANIA

DATE: March 30, 1999

SUBJECT: Lobbying Disclosure Proposed Rulemaking (63-06)

ORIGINAL: 1997

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TO: Robert E. Nyce, Executive Director  
IRRC  
Honorable Joseph F. Loeper, Chairman  
Senate Rules and Executive Nominations Committee  
Honorable Thomas P. Gannon, Chairman  
House Judiciary Committee

FROM: Vincent J. Dopko, Chief Counsel  
State Ethics Commission

For your information, I am enclosing photocopies of a faxed transmission received March 29, 1999 from a Committee Member (Office of Attorney General), which proposes language as to prior submitted commentary.

VJD/rmh

Enclosure

cc: Members, Lobbying Disclosure Committee

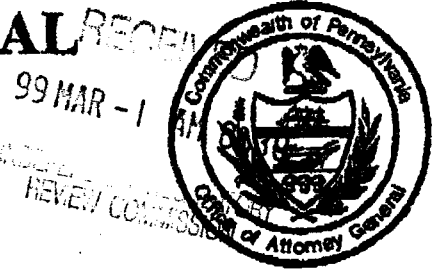
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## Commonwealth of Pennsylvania

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Date: April 30, 1999

From: Vincent J. Dopko,  
Chief Counsel, State Ethics Commission

To: Participants, Meetings among Staff of  
Senate Rules and Executive Nominations Committee,  
House Judiciary Committee, and IRRC

Re: Charts as to Possible Resolutions of Comments on  
Lobbying Disclosure Regulations

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Enclosed please find the following charts reflecting our discussions from 4/5/99-4/8/99 regarding possible resolutions for most of the comments on the Lobbying Disclosure Regulations:

Chart #3--Public comments following publication in PA Bulletin;  
Chart #4--Comments of the House Judiciary Committee;  
Chart #5--Comments of the Senate Rules and Executive Nominations Committee; and  
Chart #6--Comments of the Independent Regulatory Review Commission.

The final column on each chart is the "Possible Resolution of Comment" column. Where a matter has been deferred, the column is either left blank or a notation as to the deferral has been made.

Please review these charts very carefully, so that at our next meeting, we can correct any errors. There were instances where, because of multiple changes in response to different commentators, the notes were difficult to reconcile.

The following are concerns that came to light as we worked on the charts:

1. Chart #3, page 8, first block: The language that was originally proposed for re-writing §33.2(a)(2)(i) was as follows: "Unless exempt under section 1306 of the act, a principal that so engages in lobbying on its own behalf [shall] need only register with the Commission [both] as a principal [and as a lobbyist]." The problem with this language is that it erroneously suggests that those who *are* exempt must register as both. That, of course, is not what is intended. We have used other language which is more clear.
2. Chart #3, page 18, first block: In the revisions to §35.2(c)(4), we felt it was necessary to add the words "registration statements or" in front of "reports."
3. Chart #6, page 7 as to §31.10, items 2&3, and on the same page, as to §31.11, item 2A, our attempts to combine the subparagraphs as originally contemplated were unsuccessful.

We are currently making the appropriate changes to the proposed Regulations as published, which will be available for your review prior to our meeting.

It is anticipated that the SEC staff will be ready to meet with you late next week. We will be in touch to schedule that meeting.

**Chart #3 Public comments following publication in PA Bulletin**

(Note: Bracketed cites were not specifically referenced by commentators, but appear applicable)

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
2/11/99	Cristina Papson, Deputy Attorney General, Office of Attorney General Review and Advice Section	§31.1, definitions of "Child" and "Immediate Family"	Stepchildren should be included in definitions of "child" and "immediate family."	Do not adopt. The act does not expressly include stepchildren in the definition of "Immediate family." The reference to "like relative-in-law" appears in a different clause than the word "child," and therefore it only modifies "parent, brother, or sister." Additionally, the Statutory Construction Act defines the term "child" as including children by birth or adoption. 1 Pa.C.S. §1991.
		§31.1, definitions of "Negligent conduct" and "Negligent failure to register or report"	Using the words "wanton" and "reckless" in the definitions may cause problems as these terms do not appear in the Act.	Do not adopt as posed, based upon the deletion of these definitions and the addition of definitions of "negligence" and "intentional" in response to a comment from IRRC (see, Chart #6). However, the new definition of "negligence" does not include the words "wanton" or "reckless."
		§§31.10(b), (d), (e)	Unclear whether §31.10 includes penalties of both second degree misdemeanors and third degree misdemeanors pursuant to §§4904(a) and (b) of the Crimes Code. Third degree misdemeanor penalties must be authorized by law.	Adopt. In §§31.10(b),(d),(e), after the words "subject to" delete as follows: [penalty under]
		§43.1	Should contain a statement that nothing in the Act or regs prohibits the A.G. from initiating an investigation or prosecution under the Act and that a referral from the Commission is not necessary to do so.	Adopt. In §43.1 add as follows: " <u>(c) Nothing contained in the Act or regulations promulgated thereunder shall prohibit the Office of Attorney General from initiating an investigation or prosecution under the Act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.</u> "



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§43.3(e)]	It should be specified that a civil penalty by the Commission does not preclude a criminal prosecution.	Adopt. In §43.3(e), which is to be relabelled §43.6, add as follows: " <u>(d) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the Act.</u> "
		Chapter 45	Regs should specify what action will be taken by the Commission in the event that a lobbyist/principal is convicted in criminal proceedings - suggest a conviction would have a <i>res judicata</i> effect whereby the Commission should simply determine the appropriate period, if any, that lobbying would be prohibited.	Adopt. In §45.2 add as follows: " <u>(c) In the event that a lobbyist or principal is convicted in a criminal proceeding for a violation of the Act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be res judicata, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.</u> "
2/25/99	Franklin L. Kury, Reed Smith Shaw & McClay	§31.1, definition of "indirect communications"	Add "the term does not include communications between attorneys and their clients."	Modify, and adopt the following change. In §35.1(g)(3)(iii), add the following as a new final sentence: " <u>The requirements for reporting do not include privileged communications, such as those between attorney and client or doctor and patient.</u> "
		§35.1(g)(3)(iii) and §35.2(a)(3)	Delete the phrase, "Except as provided by the Act or these regulations."	Modify, and adopt the following changes. The first sentence of §35.1(g)(3)(iii) shall be changed as follows: "[Except as provided by the act or this part, t] The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be reported <u>on the quarterly expense report.</u> " The second sentence of §35.2(a)(3) shall be changed as follows: "[Except as provided by the act or this part, t] The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded <u>or maintained.</u> "

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§37.1	<p>Add:</p> <p>(m) An attorney while engaged in communications with a client and a client while engaged in communication with an attorney.</p> <p>(n) An attorney while engaged in litigation or proceedings before a state administrative agency in which the agency is represented by counsel.</p>	Do not adopt. The Regs follow the Act.
3/1/99	Vince Phillips, Phillips Associates	§31.4	Registration/reporting periods should be on a calendar-year basis.	
		§33.1	<p>1. The \$100 filing fee may be considered an infringement upon the freedom to express a viewpoint.</p> <p>2. The language is unclear. Is a principal required to pay one fee regardless of the number of lobbyists it employs? Does a contract lobbyist pay one fee, or one for each client? Consider adding: A lobbyist pays one \$100 fee regardless of the number of clients. A principal pays one \$100 fee regardless of the number of lobbyists employed.</p> <p>3. Lobbying by a principal on its own behalf means that it is acting as both principal and lobbyist. Charging the owner of the principal <u>twice</u> — both as a principal and as a lobbyist — should be reviewed.</p>	<p>1. Do not adopt. The Regs follow the Act.</p> <p>2. Modify, and adopt the following change. In §33.1(a)(2) add the following as a new final sentence: "<u>In no event shall a registrant be required to pay more than one biennial filing fee in any given biennial registration period.</u>"</p> <p>3. The concern is alleviated by #2 above.</p>
		§33.2(b)(4)	Requires that principals list the number of dues-paying members. However, membership categories and numbers of members within an association may fluctuate within a year. The word "approximate" should be inserted before "numbers."	Do not adopt. The Regs follow the Act.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§33.5	The termination process is too complex and infringes upon freedom of speech. Consider adding the following: a) A lobbyist or principal may terminate registration by notifying the Commission in writing that lobbying will cease on a particular date. The communication must include all principals being lobbied for and all lobbyists being utilized; and b) The Commission will confirm receipt of this communication and write back reminding the lobbyist or principal that all reports need to be current by the date of the next due quarterly filing report and that, whether registered or not, the lobbyist and principal must understand their legal responsibilities to retain records, be subject to potential auditing, etc.	Do not adopt. The termination process needs to be spelled out for clarity. As for the final suggestions, those filers who wish to do so may check with the Commission to confirm the receipt of their filings. Filers are presumed to know of their responsibilities.
		Chapter 35	The statute calls for reporting of "single aggregate good faith estimates," but the need to document specific costs may not be overlooked in the Commission's audits. Lobbyists are concerned that an audit would flag technical violations of the reporting requirements for which they would be punished. Insert the word "approximately" wherever feasible.	Do not adopt. The Regs follow the statute.
		§37.2, and possibly §33.1	Lobbyists who are under the threshold and therefore are not required to register may desire to register to gain "legal recognition." Perhaps the regulation could allow voluntary registration for those not required to register, and also give them an exemption from the fee and the reporting requirements.	Do not adopt. While the statute would not preclude voluntary registration, it provides no exemptions for registrants as to paying the biennial filing fee or reporting.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§§39.2(b); 39.3	<p>1. Commission should look at the issue of third-party requests being considered unauthorized. There may be third party requests, such as from the media, which need clarification.</p> <p>2. Regs should acknowledge that written opinions may be requested by a lobbyist, principal, or state official/employee and that a lobbyist/principal who acts in good faith on a written advice or opinion shall not be held liable for a violation.</p> <p>3. Requestors should be allowed to ask about current conduct.</p>	<p>1. Do not adopt. The Regs follow the statutory requirements for standing (see, §1308(c) of the Act).</p> <p>2. Adopt. Add the following sentence at the end of §39.1: "<u>A principal, lobbyist, or State official or employee who acts in good faith based upon a written advice or opinion of the Commission issued to him shall not be held liable for a related violation of the act.</u>"</p> <p>3. Do not adopt. As is the case with the Ethics Act, the statutory defense afforded by an advice or opinion is inherently as to prospective conduct only. See, §1308(c) of the Act). "Current conduct" is conduct which is already taking place and is not prospective in nature.</p>
		§§41.2(d), (e)	Examination of related records in course of audit: the scope of the Commission's review of related records should be limited to those records relating to the principal/lobbyist being audited.	
		§41.2(f)	The scope of an audit should be limited to one year prior rather than four, which is too heavy-handed. In the event of an enforcement action, the Commission can examine any records deemed necessary.	Do not adopt. The act envisions a four-year period. §1308(f) of the act directs that completed registration statements, expense reports, termination notices and termination reports must be retained in the Commission files for four years.
		§41.4(c)(1)	Service of the audit report via mailing does not constitute sufficient protection for the recipient - should be sent by registered mail or overnight mail to enable it to be tracked.	Do not adopt. Service by mail is a legally approved method.
		§§41.4(c)(2), (d)	There is no mention of recourse for the lobbyist/principal besides setting forth his/her/their position on the audit report.	Adopt the following change. In §41.4(d), after the words, "Audit reports" insert " <u>and any related responses</u> "

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		543.3	<ol style="list-style-type: none"> <li>1. Regs should allow for the Commission to resolve a situation informally where possible.</li> <li>2. Complaints may be filed publicly with no gag order on talking to the press. The Commission should not allow itself to be used as a political pawn by any special interest. Add a prohibition on parties with regard to commenting on the matter, at least until concluded.</li> <li>3. Add a penalty for filing a complaint with malicious intent.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt any change. The Regs already include one such process in Chapter 43.</li> <li>2. Do not adopt. The Regs may not expand upon the statutory requirements as to confidentiality.</li> <li>3. Do not adopt. The Regs may not expand upon the statute by legislating such a penalty.</li> </ol>
		Chapter 45	<ol style="list-style-type: none"> <li>1. State clearly that the burden of proof rests with the Commission to establish wrongdoing.</li> <li>2. There should be a "clear preponderance of evidence" before prohibition is imposed.</li> <li>3. Does a lobbyist/principal found guilty of wrongdoing have more recourse than to request reconsideration?</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt any change. The burden of proof is already upon the Commission.</li> <li>2. Do not adopt. (See other comments below, proposing the even higher standard of clear and convincing evidence.</li> <li>3. No change has been proposed and no change need be adopted. Any recourse is as provided by law.</li> </ol>
3/1/99	Bruce E. Lammel, Esq., USX Corporation	[Chapters 33, 35]	Allow a parent corporation to register and report for all of its direct and indirect subsidiaries and affiliates as long as all such lobbying contacts and expenses are reported by such parent corporation.	<p>Adopt the following change. As noted in a later comment (see, Chart #6), it is recommended that the existing §31.14 (relating to severability clause) be deleted in its entirety. In its place, put a new §31.14 as follows:</p> <p><b><u>" §31.14. Parents and subsidiaries.</u></b>  <u>(a) Subject to the requirements of subparagraph (b), a corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.</u>  <u>(b) Where registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly</u></p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
				<u>expense reports, notices of termination, termination reports, and separate termination reports shall disclose with particularity all of the required information as to the parent and the subsidiaries.</u>
		Cites §37.1(1) [but seems to apply to §37.1(12)]	Make it clear that the exemption provided by the Act (§1306(3)) and the Draft Regulations [§37.1(1)] excuses principals from reporting exempted employees as lobbyists under the quarterly reporting requirements.	Do not adopt. The comment proposes a change which would be contrary to the statute, which requires the principal to report, <u>inter alia,</u> "the names of <i>all</i> lobbyists by whom the lobbying is conducted . . ." See, 65 Pa.C.S. §1305(b)(1)(Emphasis added). The fact that certain employees may themselves be exempt from registering/reporting does not alter the fact that they are lobbyists and must be included in the principal's reports.
		[§31.4]	The quarterly reporting periods should end on a calendar quarter. Alternatively, allow companies to either: 1) use their most recently closed calendar quarter as a proxy for the period to be reported, or 2) report the most recently closed calendar quarter in place of the period to be reported.	
		§35.1(g)(1)	Either exempt publicly-held companies from the reporting requirement for contributions of more than 10% of a principal's total resources, or define the term "resources" so that USX is not required to report its shareholders, its lenders/bondholders, or its customers.	Adopt the following change at the end of §35.1(g)(1): " <u>although "total resources" shall not include the purchase, transfer, or ownership of stock in a publicly held corporation.</u> "

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.1(g)(2)	<p>Limit the quarterly reporting requirement by adding the underlined language below: "(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted, so that if a lobbyist is a firm, association, corporation, partnership, business trust, or business entity, its name (if it engages in lobbying on behalf of others, who are not affiliates) and the name(s) of the individual(s) who lobby on behalf of the principal shall be included."</p> <p>This language is intended to clarify that USX, for example, would not report itself as a lobbyist unless it lobbied on behalf of others who were affiliates of USX. USX contends that lobbying on its own behalf does not make it a lobbyist.</p>	<p>Adopt the following changes. Rewrite §33.2(a)(2) as follows: "Lobbying by a principal on the principal's own behalf constitutes acting [both] in the capacity of a principal [and in the capacity of a lobbyist]." Rewrite §33.2(a)(2)(i) as follows: "[Unless exempt under section 1306 of the act, a ] A principal that [so] is required to register and that engages in lobbying on its own behalf [shall] need only register with the Commission [both] as a principal [and as a lobbyist]."</p>
3/1/99	R. David Tive, Pennsylvania Association for Government Relations	§41.1	With re: to provision that no lobbyist or principal shall be subject to an audit more than once in every two-year season <i>except for cause</i> , "cause" needs to be defined.	
		§41.2(d), (e)	"Relevant records" needs to be defined.	Do not adopt. If the Committee keeps the pertinent provisions, the term does not need to be defined.
		§43.2, 43.3	The grounds for opening a proceeding dealing with specific prohibited activities are too vague. It seems that proceedings can be opened for any reason.	Adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.
		§43.3(b)(4)	1. Informal information is not defined.	1. Adopt the following changes. In §43.3(b)(4), after the words, "Information received," delete the words, "informally or from an audit or related audit conducted under Chapter 41" and replace them with "under Subsection (a)"

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
			<p>2. The idea of a non-investigative process is "horrifying and offensive." Propose: rewrite the Regs to have only an investigative process.</p> <p>3. The Commission may have no actual evidence, only "informal information," but may still send official correspondence in the form of a "notice of noncompliance" indicating that the registrant is in violation.</p> <p>4. The Commission must then prove his/her guilt, but the standard of proof is not specified.</p> <p>Proposed solution: Chapters 41 and 43 should be rewritten to parallel Chapter 21 of Title 51 of the Pa. Code.</p>	<p>2. Do not adopt. The non-investigative process is based upon §1309 of the act. It provides an opportunity for a registrant to "fix" a problem before more formal proceedings are instituted. Matters which are not "fixed" proceed under a process which satisfies due process requirements, with the Investigative Division bearing the burden of proving any violation.</p> <p>3. Do not make any changes. The term "notice of noncompliance" is directly from the statute. See, §1309(a) of the act.</p> <p>4. Adopt the following changes.</p> <p>In §43.2, add the following as a new subparagraph: "<u>(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p> <p>In what was §43.3(c)(15)--to be renumbered to be §43.4(q) pursuant to an IRRC comment (see, Chart #6)--add the following sentence at the end: "<u>At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p> <p>In what was §43.3(d)(3)--to be renumbered to be §43.5(c) pursuant to an IRRC comment (see, Chart #6)--add the following sentence at the end: "<u>At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p>



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
				<p>In what was §43.3(e)--to be renumbered to be §43.6 pursuant to an IRRC comment (see, Chart #6)--change the wording at the end as follows: ". . . the Commission may, upon the [majority] vote of <u>at least four</u> of its members present, levy one or more civil penalties as provided for in this [subsection] <u>section.</u>"</p> <p>In §45.2(b)(13), add on the following sentence at the end: "<u>A prohibition against lobbying may only be imposed by a vote of at least four members of the Commission present at a meeting.</u>"</p>
		[No cite: there is no Wrongful Use of Act provision in the Act, so there is none in the Regs]	Unlike the Ethics Act process, lobbyists and principals are not given the right to ask the Commission to investigate frivolous/harassing complaints.	Do not adopt any changes. The Regs may not expand upon the statute by legislating a "wrongful use of act" provision.
		Throughout the Regs	Wherever the Regs refer to following the Ethics Act, remove the qualifier, "to the extent possible."	Do not adopt. The qualifier is necessary due to some language within the Ethics Act Regulations that would apply to the Ethics Act but not the Lobbying Disclosure Act.
		§§31.8(e)(1), 35.2	"Lobbying activity" should be defined.	Do not adopt. Because the term "lobbying" is defined, the term "lobbying activity" need not be.
		§§31.5, 31.6	"Delinquency" and "deficiency" need to be more clearly defined, or use the term "noncompliance."	Do not adopt. The meaning of the terms is clear. The Regs use both terms to clarify ways in which noncompliance may result.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§31.1, definition of "Association"	The definition of "association" should also include unincorporated associations.	Do not adopt any changes. Because the act does not define the term, the Statutory Construction Act's use of the definition set forth in the Associations Code was followed. That definition is adequately broad.
		§31.1, definition of "Child"	Should include stepchildren.	Do not adopt. See, this Chart at 1, first comment of Cristina Papson, Deputy Attorney General, Office of Attorney General Review and Advice Section.
		§31.1, definition of "Effort to influence legislative action or administrative action"	The definition of "effort to influence legislative action or administrative action" should not contain an exemption for the provision of purely technical data to a state official or employee, or to a legislative or administrative body, in response to a request for the information, as it could provide a loophole.	Adopt. Delete from the definition as follows: "[The term as used in the act does not apply to the provision of purely technical data to a State official or employe or to a legislative or administrative body, at his, her or its request.]"
		§31.1, definition of "Service" (of official papers)	Official papers which require a response should be sent by certified mail, and the date of service should be considered to be the date received and signed for.	Do not adopt. Service by mail is a legally approved method.
		[§31.11]	The Regulations should include a statement limiting access to, and the distribution of, the electronic signatures. The Regulations should also indicate what legal action could be taken against an individual who provides an electronic signature to anyone who is not authorized to have it.	Do not adopt. The Regs may not legislate penalties, and other laws would appear to apply to such situations. §31.11 provides as much protection as the Regs can provide.
		§35.2(h)	Access to registrants' files should be limited to only those items directly related to lobbying reports, and only after the agency makes a specific request and for cause.	Do not adopt any changes as to this particular comment. However, certain other comments may involve these issues.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§§33.5(i); 35.1(e)]	In order to avoid double reporting of expenses by principals and lobbyists which could arise through their different characterizations of an expense, include language which states that a lobbyist is responsible for reporting only his/her out-of-pocket expenses, not those which are paid either directly or indirectly by the principal, and that anything not paid for by the principal would need to be reported by the lobbyist.	Do not adopt any changes. The Regs follow the act.
		§§33.2(b)(3); 35.1(g)(2)	Delete the requirement for principals to include the names and addresses of unregistered individuals in their registration statements and reports.	Do not adopt. The Regs follow the act ( <u>See</u> , §1304(b)(1)(vi) of the act, requiring disclosure of <i>each individual</i> who will be lobbying, and §1305(b)(1) requiring the listing of the names of <i>all</i> lobbyists by whom the lobbying is conducted).
		§§33.3(a), (f)	Clearly state that the lobbyist, not the firm, needs to register and report.	Do not adopt. The Regs follow the act ( <u>see</u> , §1303 of the act which defines the terms "principal" and "lobbyist" to include firms and other forms of business entities; §§1304 and 1305 which do not limit their requirements to individuals as opposed to firms; and §1306 which does not exempt firms from these requirements, but to the contrary, includes one exemption at (6) for certain employees of corporations where such employees' lobbying-related expenses are included <i>in the corporation's reports</i> under §1305.
		§33.1	It should be made clear that lobbying firms are not required to pay the annual fee but may pay it on behalf of the registered lobbyists they employ.	Do not adopt. Regs follow the act. Lobbying firms are required to pay the annual fee to the extent they are not exempt ( <u>see</u> , authority cited in block immediately above). As for firms paying the fees of their employees, neither the act nor the Regs would preclude such.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		533.5	<p>1. The section is too complex and should be rewritten to more closely mirror the Act's simple language and requirements.</p> <p>2. Subparagraph (h) should not require the lobbyist to sign the principal's termination report.</p> <p>3. Subparagraphs (d) and (e) say the same thing, and shouldn't say what they say at all. It should be possible to withdraw or cancel a termination statement that has not yet been approved by the Commission.</p>	<p>1. Do not adopt. <i>See</i>, this Chart at 4, first block, as to fourth comment of Vince Phillips, Phillips Associates.</p> <p>2. Do not adopt as stated because the act itself requires such (<i>see</i>, §1305(b)(4) of the act). However, the problem of what to do when the required signature is not available is dealt with as to a comment by IRRRC (<i>see</i>, Chart #6).</p> <p>3. Do not adopt. The Regs follow the act, which provides: (1) that a registration may be terminated <i>by filing the notice</i> (such that the termination is complete upon such filing), and (2) that "No lobbying may occur after the filing of notice <i>unless</i> the lobbying is pursuant to a <i>separate registration statement which is filed with the commission and which, at the time of the lobbying, has not been terminated.</i>" 65 Pa.C.S. §1304(e) (Emphasis added). To satisfy the above statutory requirements, notices of termination may not be withdrawn, and their related registration statements may not be revived or otherwise made effective again.</p> <p>However, to accomodate the possible need for filings after normal business hours, make the following changes in §31.5(a): "A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission [by 5 p.m.] on the date due <u>as follows.</u></p> <p><u>(1) Hard copy filings must be received by 5 p.m.</u></p> <p><u>(2) Faxed or electronic fillings may be filed until 11:59 p.m.</u></p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.1(i)(5)	Costs for offices that are owned by the registrants, such as mortgages, construction and maintenance, should be required to be reported in the same manner as costs for offices that are rented.	Do not adopt any changes. Such costs would be properly reported under the existing wording of the Regs.
3/2/99	Edith G. Laver, Esquire, Bethlehem Steel Corporation		Supports the comments of USX Corporation.	The notations as to the comments of USX Corporation are incorporated herein by reference as if fully set forth.
3/2/99	Pennsylvania Society of Association Executives	§31.1, definitions of "Direct communication" and "Indirect communication"	The regulations do not provide sufficient guidance for determining direct and indirect communication. They need to be more specific.	Do not adopt. The Regs track the act.
		Chapter 35	<ol style="list-style-type: none"> <li>1. The quarterly expense reporting requirements are "broad [in] scope and short [on] specifics." Regs say that any reasonable accounting method may be used. A full cost accounting system will be required.</li> <li>2. Additional guidance is needed on the types of activities that are included as lobbying expenditures. Other terms such as "research time" are too vague.</li> <li>3. The regulations should provide more specific procedures for determining methods for reporting ancillary expenses, such as offices, equipment, supplies, capital costs, depreciation, and apportionment of use.</li> <li>4. Determining how to allocate office space and equipment for lobbying purposes needs more guidance and clarification in the Regs.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt. The comment is general and in the nature of an opinion.</li> <li>2. Do not adopt. The statutory and regulatory definitions are sufficient.</li> <li>3. Do not adopt. The Regs strike a balance of being true to the statute while providing necessary flexibility to accommodate various methods of accounting/bookkeeping.</li> <li>4. Do not adopt. The Regs provide a necessary flexibility to accommodate various methods of accounting.</li> </ol>
		§35.1(j)	Cross-referenced provisions of the Ethics Act should be spelled out rather than merely cited.	Do not adopt. A citation to existing procedures is proper. However, in response to a comment from IRRC (see, Chart #6), such citations are made more specific.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.2	There should be standardized forms and a uniform record-keeping process for lobbyists/principals.	Do not adopt any changes. The Regs would allow the Commission in its discretion to promulgate standardized forms for record-keeping, but would not force registrants to use them (see, §35.2(a)(1)). To force a single method of record-keeping upon <i>all</i> registrants may create hardships.
		[§§31.11, 31.12]	The Commission should have a process for confirming the receipt of electronic filings, faxes, and photos/information that must be mailed.	Do not adopt. Filers are able to contact the Commission at its toll-free number to confirm filings.
		§33.5	A notice of termination should be capable of being withdrawn.	Do not adopt. <u>See</u> , this Chart at 13, item 3, comment of R. David Tive, Pennsylvania Association for Government Relations.
		§35.1(i)(2)	Personnel costs related to positions other than lobbying that are exempt under section 1306 must nevertheless be included in the personnel calculation. Since Section 1306(6) does not explicitly include associations, the broader exemption in section 1306(3)(iii) should apply.	Do not adopt any changes. The Regs may not amend the act. The exemptions are as set forth in the statute.
		§35.1(i)	The term "furtherance of lobbying" needs clarification.	Do not adopt. The term "lobbying" is defined, and consequently the meaning of the term "in furtherance of lobbying" is clear.
		§35.1(i)(2)	Clarify the term "monitoring."	Do not adopt. The meaning of the term is clear.
		[§35.1(i)(4)]	1. The inclusion of "research time spent in preparation for lobbying" and "any other time consumed in furtherance of lobbying" exceeds the legislative language of the Act. 2. These terms are also overly broad.	1 & 2. Do not adopt any changes. The Regs are fully supported by the statutory language at §1305(b)(2)(i).

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.2(b)(1)	The Commission lacks statutory authority to require that non-lobbying records be retained for inspection or audit.	Do not adopt. The Regs provide that a registrant may keep records of all lobbying activity separate from records of non-lobbying activity, but if the registrant chooses to integrate the records, such may not defeat the statute's authorization for gaining access to the records of the lobbying activity.
3/2/99	Raymond P. Pepe, Esquire	[§31.1, definition of "Effort to influence legislative action or administrative action"; or, alternatively, §37.1(3)]	Modify the term "effort to influence legislative or administrative action" so as not to apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, clarify the exemption of §1306(3)(i) so that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.	Do not adopt any changes. The proposed changes could alter statutory provisions. Moreover, the apparent concern is without basis in the act. The concern seems to be whether a lawyer who, in the course of giving professional advice to his client, counsels that client to seek legislative change, is, as a result of that advice, a "lobbyist." Under such a scenario, if there were any principal, it would be the client himself. The lawyer's communications to his own client would not make the lawyer a lobbyist, because the statutory definition of "lobbyist" does not apply to "lobbying" the principal himself.
		§31.1, definitions	To clarify the meaning of the term "administrative action," define the terms "statement of policy" and "guideline" as applying only to documents published as final or for comment in the <i>Pennsylvania Bulletin</i> and the <i>Pennsylvania Code</i> . This would provide an objective test and would be consistent with regulations adopted by the Joint Documents Committee.	Adopt the following change. In §31.1, in the definition of "Administrative action," subparagraph (l), after the words, "statement of policy" insert " <u>as defined in 1 Pa. Code §1.4</u> " in front of the semi-colon.
3/2/99	Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives	[§31.4]	The timetable for filing quarterly expense reports should commence on January 1, rather than December 1, so that lobbyists/principals will file their quarterly expense reports for Dec. before the FIS's of incumbents running for re-election are due.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§31.1, definitions of "Gift" and "Effort to influence legislative action or administrative action; §35.1]	It should be made clear that constituent services are not to be regarded as reportable items or gifts.	<p>Adopt. Make the following changes.</p> <p>In the definition of "Anything of value," insert the following after subparagraph (I)(P) as the new subparagraph (ii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or State official or employee made within the scope of such office or employment."</u> Renumber the remaining paragraph to be (iii) instead of (ii).</p> <p>In the definition of "Effort to influence legislative action or administrative action," insert the following as the new final sentence: <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or State official or employee made within the scope of such office or employment."</u></p> <p>In the definition of "Gift," insert the following after subparagraph (ii) as the new subparagraph (iii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or State official or employee made within the scope of such office or employment."</u></p>
		[§35.1(k)]	The regulation for calculating gifts/hospitality/travel benefits should be revised to protect a Member against an unfair and inaccurate equal proration of imputed benefits.	
		[§41.1(c)]	Delete the provision for "for-cause" audits.	



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§ 35.2(c)(4), (h)(2)]	With regard to access to a registrant's computerized/electronic records, place safeguards preventing intrusion into information governing communications between legislators and registrants on sensitive legislative issues, absent a showing of legally sufficient cause to access such information.	<p>Adopt the following changes.</p> <p>In § 35.2(b), add the following sentence at the end: "<u>A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.</u>"</p> <p>In § 35.2(c)(4), make the following changes: "Computerized/electronic records shall be maintained to enable the Commission or [the] Office of Attorney General to access <u>in readable form</u> all of the [recorded] information <u>reasonably necessary to substantiate the registration statements or reports.</u> [Passwords or other privacy/security measures shall be memorialized and maintained to enable the Commission or the Office of Attorney General to fully access, identify and use them.]</p> <p>In § 35.2(h)(2), make the following changes: "[For c] Computerized/electronic records [, the information required to access the recorded information, such as any passwords or other privacy/security measures, ] shall be provided [together with the records] <u>in readable form.</u>"</p>
		[§ 43.2; 43.3(c)(15); 43.3(d)(2); 43.3(e)]	Reflect the legislative intent by employing a four-member majority to determine violations which could lead to penalties by utilizing the "clear and convincing proof" standard as applied under the Ethics Act.	Adopt as set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
		§ 31.1, definition of "Effort to influence legislative or administrative action"	Regs should exempt legislator-initiated requests to registrants for legislative and constituent-related information from the definition of "efforts to influence legislative or administrative action," rather than simply exempting "purely technical data."	Do not adopt based upon the deletion of the exemption for "purely technical data" as set forth in this Chart at 11, comment of R. David Tive, Pennsylvania Association for Government Relations.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
3/2/99	Honorable H. William DeWeese, Democratic Leader, House of Representatives	§31.1, definitions	<p>1. The definition of "Lobbying," is unclear as to whether the term includes <i>only</i> expenditures made to provide gifts, entertainment, meals, transportation or lodging to a State official or employee in an effort to influence legislative or administrative action, or whether it also includes such expenditures made for the purpose of <i>advancing the lobbyist's interest</i>, including maintaining goodwill with legislators. If the latter, a lobbyist/principal may feel compelled to include the costs for responding to a member's requests for help for a constituent, thereby creating the impression that the lobbyist made a large expenditure on the member's behalf.</p> <p>2. The definition of "Effort to influence legislative or administrative action" excludes the provision of purely technical data, but what constitutes "purely technical data" is unclear.</p> <p>3. The definitions of "Gift" and "Anything of value" are too broad. Suggest that the definitions include a provision exempting from reporting the cost or value of the services of professionals and other staff involved in responding to assist a member's constituents, made at the request of the member.</p>	<p>1. Adopt the changes set forth in this Chart at 17, second comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p> <p>2. Adopt the change of deleting the exemption for "purely technical data" as set forth in this Chart at 11, comment of R. David Tive, Pennsylvania Association for Government Relations.</p> <p>3. Adopt the changes set forth in this Chart at 17, second comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
		[§31.4]	The quarterly reporting periods should begin in January and end in December. This will allow members running for re-election to review the reports and ensure that discrepancies are clarified before the FIS's are filed. Otherwise, discrepancies will not be resolved before the elections. Discrepancies could also trigger an audit.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.1(k)(6)	Lobbyists/principals are given options for calculating the value of gift(s), lodging/transportation/hospitality. Problems may arise, e.g., where a member invites others. Recipients may be surprised by the amounts allocated to them. Suggest that 1) require interim notification by a lobbyist/principal to a member that the expenditures to that member are at a certain dollar level, such as \$200, and approaching the threshold level; and 2) eliminate the option of calculating and attributing the benefit in order to maintain consistency among the reports of the benefits provided.	
		§41.1(c)	There is no statutory basis for "for cause" audits and no definition in the Regs for what constitutes "cause." Applying the provision could be subjective and involve violations of due process and equal protection. Suggestion: delete the reference to "for cause audits" and clause (c) in its entirety, or, if the purpose of clause (c) is to protect against multiple random audits, add a clause which clarifies that no lobbyist shall be subject to a random audit more than once in a biennial period.	
		§§43.3(a)	This Section should be consistent with the requirements of the Ethics Act for requiring the filing of a verified complaint to commence an investigation. Delete clause (4) and clarify in (5) that information must be "credible."	As set forth in this Chart at 8, under the third comment of R. David Tive, Pennsylvania Association for Government Relations, adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.
		§43.3(e) [and 45.2(13)]	Set forth the Ethics Act requirements regarding finding violations by the affirmative vote of at least four members based upon "clear and convincing proof."	Adopt as set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§§43.3(b), (c)	SEC proceedings under §1304 or 1305 of the Act can be commenced through non-investigative procedures that are vaguely defined. By not requiring a preliminary inquiry or investigation, the process allows the Commission to presume noncompliance, and, only if respondent does not cure, must it consider whether an actual violation has occurred. Suggestions: 1) delete the provisions regarding the "non-investigative procedures" or clarify the term to indicate that it refers only to the notice of noncompliance; and 2) apply the requirements of a four-member affirmative vote and clear and convincing proof standard for the non-investigative or noncompliance procedures.	<p>1. Do not adopt the first suggestion, based upon changes in response to IRRC comments (<u>see</u>, Chart #6).</p> <p>2. Adopt the changes set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.</p>
3/2/99	George Ellis, Pennsylvania Coal Association	§§35.1(g)(3)(iii), 35.2(a)(3)	The Commission has no authority under the Act to obtain information about the contents of communications or the identity of communicants. Delete the phrase, "except as provided by the Act or these Regulations" from both provisions.	Adopt the changes set forth in this Chart at 2, second comment of Franklin L. Kury, Reed Smith Shaw & McClay.
		§35.2(c)(4)	Delete this entire section. Full access to computerized and electronic records is not authorized by the Act.	Do not adopt this comment. However, the changes in this Chart at 18, first block, responding to the fifth comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives, address the concern.
		§31.1, definition of "Indirect communication"	The definition of "indirect communication" should include limits.	Do not adopt. The Regs track the statutory definition of the term.
		Chapter 35	Rewrite to clarify and simplify the reporting and bookkeeping obligations in compliance with Section 1305.	Do not adopt this particular comment, which is not specific.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		Chapter 35	Regulations go far beyond what is needed to make a "good faith estimate."	Do not adopt. The Regs track the act.
		§§35.1(g)(5), (7)	As is done in §35.1(i)(1), add that any reasonable accounting method may be used to make the "good faith estimates" for "direct communication" and "indirect communication."	Adopt the following changes.  In §35.1(g)(5), add the following sentence at the end: " <u>In calculating this good faith estimate, any reasonable accounting method may be used.</u> "  In §35.1(g)(7), add the following sentence at the end: " <u>In calculating this good faith estimate, any reasonable accounting method may be used.</u> "
		[§35.2]	Revise Regs to require only that documentation which is mandated by the Act for the purpose of producing "good faith estimates." Anything beyond that exceeds legislative authority.	Do not adopt any changes. The Regs track the act.
		§§35.1(i)(5)	This Section is expansive, shows no limit, and exceeds what is needed to make a "good faith estimate."	Do not adopt any changes. The Regs track the act.
3/2/99	Jonathan C. Waller, Sun Company, Inc.		Supports comments of USX.	The notations as to the comments of USX Corporation are incorporated herein by reference as if fully set forth.
		§37.1(5)	It is unclear whether the expenditure of a portion of time by an executive, whose compensation does not include any time for lobbying activities, will require registration because of the size of his salary. It should be made clear that such an executive would be exempt under §37.1(3) and his/her compensation would not be reportable. The intent of this section is to exempt a person who is a lobbyist for a company in several jurisdictions, but does not spend more than \$2,500 of his or her time on lobbying in PA.	Do not adopt. The comment proposes a change which would be contrary to the statute. If such an employee engages in lobbying as defined by the act, he must register and report as required by the act unless one of the statutory exemptions applies. Moreover, the fact that such an employee may himself be exempt from registering/reporting does not alter the fact that he is a lobbyist and must be included in the principal's reports. The act requires the principal to report, <u>inter alia,</u> the names of <i>all</i> lobbyists

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				<p>by whom the lobbying is conducted . . . .” See, 65 Pa.C.S. §1305(b)(1)(Emphasis added). Similarly, the statute would require that the lobbying-related expenses reported by the principal include amounts expended as to such an employee. See, e.g., §1305(b)(2)(i) which states: “If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a good faith prorated estimate based on the value of the time devoted to lobbying.”</p>
		[Chapter 33]	Registration by a parent corporation on behalf of its subsidiary corporations would make these Regs more manageable.	Adopt the changes set forth in this Chart at 6-7, in response to the first comment of Bruce E. Lammel, Esq., USX Corporation.
3/3/99	Philip J. Murren, Esquire, Ball, Skelly, Murren & Connell (on behalf of Pennsylvania Catholic Conference)	[§31.1, definition of “Principal” and “Lobbyist”; and Chapter 33]	<p>1. Clarify that individuals employed by a membership association are required to register as lobbyists only on behalf of the entity which employs them, that is, the association itself, rather than being required to register on behalf of each of the members of the association.</p> <p>2. Clarify whether an association itself is considered a “lobbyist,” requiring it to register on behalf of each of its members.</p>	1 & 2. Do not adopt any changes. The statute and the Regs are clear, particularly in light of the changes in this Chart at 8, in response to the last comment of Bruce E. Lammel, Esq., USX Corporation.
		[§37.1(11)]	Objection to allowing a government agency to limit the scope of exemption from registration/reporting by judging it against the agency’s view of what constitutes “the free exercise of religion.” In order to be consistent with constitutional prescriptions, the standard of interpretation must be subjective on the part of the church representative (that is, what he in good faith believes	Do not adopt any changes. The Regs follow the act. The proposed subjective standard would alter the act. Moreover, it would still require the enforcing agency to examine the underlying merits to determine whether there was such a “good faith” belief.

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			to be for the purpose of protecting the free exercise of religion) rather than the agency.	

Chart #4 Comments of the House Judiciary Committee  
 (Note: Bracketed cites were not specifically referenced by commentators, but appear applicable)

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
3/17/99	Hon. Thomas P. Gannon, Chair, and Hon. Kevin Blaum, Democratic Chair, House Judiciary Committee		Incorporates by reference written comments from H. William DeWeese, Phillip J. Murren, and Raymond P. Pepe, which comments can be found contained in Chart #3, and from Franklin L. Kury, as set forth below (see also, Kury comments on Chart #3).	The notations as to the said comments are incorporated herein by reference as if fully set forth.
		§31.4	The proposed regulations establish timetables for the filing of quarterly expense reports that are at variance with the standard usage for this term and which are inconsistent with the clear statutory intent of the Lobbyist Disclosure Act. The quarterly reporting period should run concurrently with the calendar year, beginning in January and ending in December.	
		§31.1, definitions of "Lobbying" and "Gift"	Ambiguities in the proposed definitions of "lobbying" and "gift" could lead to an erroneous interpretation that lobbyist/principal responses to legislator inquiries on behalf of constituents is reportable on the lobbyist/principal expense report and as a gift on the public official ethics statement. The Regulations should codify legislative intent by expressly exempting from reporting the cost or value of the services of professionals and other staff involved in responding to members' inquiries on behalf of constituents. Moreover, the Regulations should also clarify that such responses to constituent inquiries do not come within the definition of "gift" or "thing of value."	Adopt the changes set forth on Chart #3 at 17, under the related comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		§31.1, definition of "Effort to influence legislative action or administrative action"	The proposed Regulations should be modified to assure that legislative and constituent related information provided by a lobbyist/principal to a legislator, at the latter's request or insistence, does not come within the definition of an effort to influence legislative or administrative action. The definition should be amended to include, "any legislative and constituent related information" rather than merely "purely technical" data.	Do not adopt based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
Clarifying Comment of 3/22/99		[§35.1(k)(6)]	<p>The Act does not give lobbyists/principals the right to pro-rate costs. Legislators will be falsely perceived as reaching the disclosure threshold when they have not.</p> <p><b>Suggestion:</b> The Regs should a) require or, at the very least, encourage lobbyists/principals to provide interim notification to members and to other public officials/employees that the expenditures attributable to that official are at a certain dollar level and may be approaching the reporting threshold; and b) eliminate the option of dividing the total expenditure by the number of officials.</p> <p><b>Clarification:</b> Regs should require that of the two options presented, the same accounting method be consistently applied to all officials present at a single event. Also the most appropriate and practical method should be used.</p>	
		§41.1(c)	The proposed audit procedures allow "for cause" audits but the term is devoid of any statutory basis and is inconsistent with clear legislative intent. The reference to "for cause" audits should be deleted.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		[§43.3(a)]	The proposed Regs need to be clarified in order to assure that Commission proceedings are based upon sufficient cause. Delete category #4 since other criteria grant the Commission ample authority to conduct any and all necessary investigations. Amend category #5 to require that any investigation initiated by the executive director be based upon verified information.	As set forth in Chart #3 at 8, under the third comment of R. David Tive, Pennsylvania Association for Government Relations, adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.
		§43.3(e)	The proposed Regs should clarify that civil penalties for negligent failure to register or for inaccurate reporting be imposed by vote of a majority of the entire SEC membership based upon a standard of clear and convincing evidence. To promote consistency, the Ethics Act requirements regarding findings of violations by the affirmative vote of at least four members and clear and convincing proof should be included under the lobbying regulations and these standards should apply to any noncompliance proceedings which could result in penalties, as well as to investigative proceedings.	Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
		[§37.1(11)]	The proposed Regs should clarify the Regs with regard to their effect upon religious organizations.	
		[§33.5(g); 35.1]	The reporting requirements imposed on lobbyists require subjective judgments, will be difficult to satisfy with precision, and could lead to unnecessary paperwork, inefficient	

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			<p>resource management, and perhaps even punitive enforcement.</p> <p>(A) Reporting on accrual basis as opposed to cash basis may not be consistent with the accounting practices of many principals and lobbyists.</p> <p>(B) Categories for reporting may overlap.</p> <p>(C) Some expenses and general overhead are inherently difficult to attribute between lobbying and non-lobbying activities.</p> <p>(D) Access to a registrant's computerized/electronic records should be subject to safeguards which will prevent intrusion into "information governing communications between legislators and registrants on sensitive legislative issues absent a showing of legally sufficient cause to access such information."</p> <p>If these issues exceed authority of Committee in promulgating regulations, the House Judiciary Committee would still like comments on their merit.</p>	<p>A. Adopt the changes set forth in response to a related comment from IRRC, Chart #6 at 9, third block, item 1.</p> <p>B. Do not adopt any changes. The Regs follow the Act. Based upon the Act, there will necessarily be some overlapping of categories.</p> <p>C. Do not adopt any changes. The Regs follow the Act and afford the greatest possible latitude at §35.2(b).</p> <p>D. Adopt the changes set forth in Chart #3 at 18, as to a related comment from Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
	<p>(Franklin L. Kury, Esq., incorporated letter of March 5, 1999; <u>see also</u>, incorporated testimony below and comments on Chart #3 at 2)</p>	<p>[§31.1, definition of "indirect communications"; §35.1(g)(3)(iii) and §35.2(a)(3); and §37.1]</p>	<p>The Legislature and the Ethics Commission can regulate the conduct of those who lobby in their dealings with government officials, but they have no authority to regulate communications and dealings between lawyers and their clients, which is within the exclusive jurisdiction of the Supreme Court.</p>	<p>Adopt the changes set forth in Chart #3 at 2 as to related comments from this same commentator.</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	<p>Incorporated transcript of 2/25/99 hearing of House Judiciary Committee</p> <p>(R. David Tive, Pennsylvania Association for Government Relations)</p>	<p>§§31.8(e)(1), 35.2</p> <p>[§31.11]</p>	<p>Same comments as on Chart #3 at 6-9.</p> <p>On comment requesting definition of "lobbying activity," recognizes that there is no need to report the persons contacted, but does not understand what <i>is</i> to be reported.</p> <p>Expands on comment involving limiting access to registrants' digital signatures by suggesting that all employees of the SEC who have access to such signatures be required to maintain strict confidentiality.</p>	<p>The notations as to the said comments are incorporated herein by reference as if fully set forth.</p> <p>No changes are needed as to the commentator's lack of understanding as to what is to be reported.</p> <p>No changes are needed on the issue of confidentiality by SEC employees.</p>
	(Rep. Mark Cohen)	§31.1, definitions	<ol style="list-style-type: none"> <li>1. The definitions of "gift," lobbying," and "hospitality" are interrelated and should be clearly consistent when read together.</li> <li>2. The definition of hospitality should be alphabetized under "H" and not be "buried" under "transportation and lodging or hospitality received in connection with public office or employment" under "T."</li> <li>3. A. The definition of "lobbying" should exclude the words "entertainment" and "meal" and use the word "hospitality" instead.</li> </ol>	<ol style="list-style-type: none"> <li>1. This part of the comment is general and in the nature of an observation. Do not adopt any changes as to Item 1 specifically.</li> <li>2. Adopt the following changes. In the definition of "Transportation and lodging or hospitality received in connection with public office or employment," delete everything after the first sentence. Add the term "Hospitality" as a defined term in §31.1, alphabetized under "H," and define it with the wording deleted from the definition of "Transportation and lodging or hospitality received in connection with public office or employment," as set forth above.</li> <li>3. A. Do not adopt. The Regs follow the statutory definition.</li> </ol>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			<p>B. Additionally, the definition of "lobbying" should be amended to include: "an effort to influence legislative action or administrative action by one who personally meets or otherwise engages in conversation with one or more legislative or administrative employees in a reporting period." This would eliminate large numbers of support personnel from the reporting requirements and make the information received more relevant to the public.</p> <p>4. The definition of "gift" is too broad, and could be read to include constituent services, testimony before a committee, the text of a bill enacted in another state, the results of a public opinion poll, or the text of a study. The definition of "gift" should be modified to include: "anything which is received for the personal and nongovernmental use of the recipient without consideration of equal or greater value."</p> <p>5. A. The term "effort to influence legislative action or administrative action" should be merged with the definition of "lobbying."</p> <p>B. Additionally, the second sentence of the definition pertaining to the provision of "purely technical data" is puzzling, serves no apparent purpose, and should be deleted.</p>	<p>3. B. Do not adopt. The Regs follow the statutory definition.</p> <p>4. Adopt the following change. In the definition of "gift" in §31.1, add the following as a new subparagraph at the end:</p> <p><u>(iv) The term does not include information received by a legislator or other state official or employee within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein.</u></p> <p>5. A. Do not adopt. The definition of "lobbying" is statutory, and the Regs follow that definition.</p> <p>5. B. Adopt the changes as set forth in Chart #3 at 11, as to a related comment of R. David Tive, Pennsylvania Association for Government Relations.</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			6. Although the definition of "indirect communication" is statutory, the term "regularly published" should be deleted from the last sentence, or the definition should be "severely modified" through regulation. The SEC should not be investigating publishing schedules. Furthermore, periodic newsletters primarily designed for and distributed to members of organizations should be deleted from the definition.	6. Do not adopt. The definition of "indirect communication" is statutory, and the Regs follow that definition.
		§35.1(g)(6)	This Section pertaining to quarterly expense reports should exclude the words "entertainment," "meals," and "receptions" and use the word "hospitality" instead.	Do not adopt. This provision tracks Section 1305(b)(2)(iii) of the Act.
		§35.1(j)	Section lacks clarity. Relevant portion should read: ". . . anything of value which, due to the cumulative amount for the current calendar year, must be included."	Do not adopt. The language tracks the Act. There is no lack of clarity in light of subparagraph (1).
		§35.1(j)(1)	Remove ambiguity by inserting the word "calendar" in front of the word "year."	Adopt. Make the change as follows: "For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per <u>calendar</u> year."
		[§§35.1(j)(2),(3)]; §35.1(k)(6)(ii)	1. Lobbyists should not be given the option of accumulating and attributing values of certain gifts, transportation, meals, and hospitality to one individual when more than one individual benefits from them.	1. Do not adopt. Although the concern is noted, the Regs as proposed should be adequate to resolve it.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			<p>2. Although presumed purpose of allowing the cost of a meal for multiple persons to be divided by the number of persons is reasonable, surplus wording in §35.1(k)(6)(ii) allows the argument that a dinner for ten could be attributed to the leader of the group.</p> <p>Suggests that §35.1(k)(6)(ii) be clarified by striking all language after the word "recipients" on line 2, or alternatively, placing such language in a separate sentence.</p>	<p>2. Do not adopt. Although the concern is noted, the Regs as proposed should be adequate to resolve it.</p>
		§31.4	<p>The reporting dates for lobbyists should be consistent with the reporting dates for public officials, to avoid disparities between statements of financial interests and quarterly expense reports. Quarterly expense reports should be filed based upon calendar year quarters.</p>	
		§§43.3(b),(c)	<p>If there are to be any proceedings conducted without investigations, the circumstances for such proceedings should be clearly and narrowly defined in order to avoid litigation over due process and equal protection of the laws. Absent careful delineation of the circumstances for noninvestigative procedures, all noninvestigative procedures should be removed from the regulations, and all actions should proceed through investigative procedures.</p>	<p>Do not adopt any changes in response to this particular comment. These same issues are raised in greater detail in other comments and should be dealt with as noted in the responses to same as set forth in Charts #3-6. (See, e.g., Chart #3 at 9 as to related comment of R. David Tive, Pennsylvania Association for Government Relations).</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		Cites §§41.2(c), 41.3(c), but appears to apply to §§41.2(c), (d), (e), and 41.3(3)	<p>1. The audit procedures need to be more tightly defined. Sweeping language as to "all other individuals necessary to the completion of the audit" and "any other relevant information" should be deleted.</p> <p>2. Any items beyond those required under §35.2 to be maintained by registrants should be narrowly targeted and clearly defined, if necessary at all.</p> <p>3. Audit interviews should be limited to those who prepare relevant documents and any other clearly and narrowly defined persons.</p>	
		[Chapter 43]	<p>1. Regs should make clear that Ethics Act standards under Sections 1107 and 1108 of the Ethics Act--including a formal complaint or motion of the Executive Director to initiate proceedings, full investigative process, findings report, and violations found by four members based upon clear and convincing proof-- apply to the Lobbyist Disclosure Act. To allow the punishment levied by investigative processes to be levied under noninvestigative processes will result in due process and equal protection challenges.</p> <p>2. §43.3(e) should be clarified to require four members of the seven-member SEC to find a violation by a standard of clear and convincing proof.</p>	<p>1. Do not adopt any changes in response to this particular comment. These same issues are raised in greater detail in other comments and should be dealt with as noted in the responses to same as set forth in Charts #3-6.</p> <p>2. Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.</p>



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			<p>3. To avoid equal protection and due process challenges, lobbyists must be accorded the same rights as public officials. All sections dealing with investigations of lobbyists should make clear that lobbyists have the same rights as public officials.</p>	<p>Do not adopt any changes in response to this particular comment.</p>
		§41.1(c)	<p>1. The language could be read as indirectly authorizing an unlimited number of undefined for-cause audits. The language should be written to say that no lobbyist or principal shall be subject to a random audit more than once in any biennial registration period.</p> <p>2. If there is a need to create a new category of for-cause audits, that need should be clearly and narrowly defined in a separate section from the lottery audits.</p>	
	(Travis J. Tu, Assistant Executive Director of the ACLU)		<p>For many of the smaller nonprofit organizations in Pa, compliance with these regulations will be a significant burden.</p>	<p>Not applicable. The true target of this comment (in the nature of a general observation) is the statute.</p>
			<p>These Regs will unreasonably hinder access to the legislative process for grassroots and nonprofit organizations, which may choose to withhold their expertise for fear of reaching the threshold and becoming subject to the regulations, the reporting requirements, and the punishments for noncompliance.</p>	<p>Not applicable. The true target of this comment (in the nature of a general observation) is the statute.</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		§31.1, definitions	The definitions of "indirect communication" and "anything of value" are ambiguous. The Regs not only fail to narrow the definition of "indirect communication" provided in the statute, but they create even greater confusion by not limiting what shall be considered under the law as "anything of value." This makes nonprofit organizations vulnerable to inadvertently meeting the expenditure threshold.	Do not adopt. The definition of "indirect communication" tracks the statutory definition. The definition of "anything of value" is not ambiguous. It is not the function of Regulations to "narrow" statutory definitions. The Regulations are not a vehicle for amending the Act.
		[§35.2]	<p>1. The requirement to maintain electronic records in a manner to enable the SEC or Attorney General access is ambiguous, and necessitates greater technical support and computerized security measures that may be difficult to finance.</p> <p>2. The requirement potentially infringes on rights of privacy and attorney-client privilege.</p>	<p>1. Do not adopt any changes in response to this particular comment, which seems to misconstrue the Regulations as requiring that computerized/electronic records be kept. The Regulations do not require that computerized/electronic records be kept; that is, other forms of records are acceptable.</p> <p>2. Adopt the changes set forth in Chart #3 at 2, as to related comments by Franklin L. Kury, Reed Smith Shaw &amp; McClay, and at 18, as to related comments by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
		Various Sections of the Lobbying Disclosure Act, which may carry over into the Regs	The ACLU acknowledges that some of its objections are to the statute itself. This chart does not detail all of those issues, but one example is the statute's religious exemption at Section 1306, which the ACLU contends unfairly favors religious groups.	Do not adopt any changes. Although the Regs may carry over such themes, the true target of such objections is the statute, which the Regs cannot alter. The Regs are not a vehicle for amending the statute.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	(Jean Becker, Common Cause)	§31.1, definitions	<p>1. A. In the definition of "anything of value," part (i)(C), after the word "conveyance," where it appears for the second time, add the words, "present or future."</p> <p>B. In the same definition, in (i)(K), add the words, "and recreation." This modification is necessary to make it more consistent with the definition of "transportation and lodging or hospitality received in connection with public office or employment."</p> <p>2. The term "de minimis" should be defined. Alternatively, it should be deleted every place it occurs and specific thresholds should be used to replace it. For example, propose that under the definition of "transportation and lodging or hospitality received in connection with public office or employment," a reasonable threshold could be ten dollars.</p>	<p>1. A. Do not adopt. No change is needed.</p> <p>1. B. Adopt. In the definition of "anything of value" in (i)(K) add the words "and recreation" as follows: "Entertainment <u>and recreation</u> not extended . . . ."</p> <p>2. Adopt the following changes. In §31.1, add the term "de minimis" as a defined term with the definition being the following: "<u>The term is defined as at 65 Pa.C.S. §1102.</u>"</p>
		§35.1(k)(2)	Delete existing language and replace with the following: "The valuation of a complimentary ticket to any type of fund-raising event shall be based upon the full value of the ticket."	Do not adopt. The language in the proposed Regs reflects the legislative intent and is more clear.
	(Franklin Kury, Esq.-- <u>see also</u> incorporated letter of March 5, 1999 above and comments on Chart #3 at 2))	[§31.1, definition of "indirect communications"; §35.1(g)(3)(iii) and §35.2(a)(3); and §37.1]	The Regulations as drafted, and possibly the Act, conflict with: (1) the inherent and exclusive jurisdiction of the Supreme Court of PA to supervise the conduct of attorneys who are its officers; and (2) the attorney's obligation to his clients	The notations as to the comments of this same commentator in Chart #3 at 2-3 are incorporated herein by reference as if set forth fully. Do not expand further upon the changes noted at 2 of Chart #3.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			with regard to confidentiality. Proposes the same changes that are set forth under Kury on Chart #3 at 2. Expands upon the proposed changes, presumably as to the definition of "indirect communications" (§31.1), by agreeing with a suggestion to reword "the section" so that it equally protects the privacy of lawyer or nonlawyer lobbyists.	
		[§§41.2, 41.3]	Clear boundary lines should be established as to the "relevant information" reviewed in audits.	
	(David Sheppard, Pennsylvania Society of Association Executives; <u>see also</u> , PSAE comments on Chart #3 at 10 )		(In addition to generally noting the burdens upon associations in complying with more requirements, this testimony focuses upon the following items.)	Not applicable.
		§31.1, definitions	The definition of "lobbying" and the need for clarification.	Do not adopt any changes. The Regs track the statutory definition.
		Chapter 35	<ol style="list-style-type: none"> <li>1. The need for more guidance as to reporting.</li> <li>2. The need for more guidance as to record retention and maintenance.</li> </ol>	1 & 2. Do not adopt any changes as to these particular comments, which are very general and offer no practical suggestions.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
3/19/99	Incorporated letter of 3/18/99 of Leslie Anne Miller, President, PA Bar Association	§31.1, definition of "effort to influence legislative action or administrative action" [or §37.1(3)]	The law is "not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." 65 Pa.C.S. §1302. To avoid that possibility, this definition should be modified so that the term does not apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, clarify the meaning of the exemption of §1306(3)(i) of the Act by clarifying that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.	Do not adopt. The Regs are not a vehicle for amending the statute, which is what the effect of the proposed changes would be.
3/19/99	Incorporated letter of March 15, 1999 of Frederick C. Brown, F.C. Brown and Associates	The Lobbying Disclosure Act itself, which may carry over into the Regs.	Supports the comments of PAGR and PSAE ( <u>see</u> , Chart #3).  The impact of the new definition of lobbying on the "sales tax on lobbying services" has not been addressed by the Act, and correspondingly, the Regs. The new definition of lobbying can lead to double taxation.	The notations as to the comments of PAGR and PSAE as set forth on Chart #3 are incorporated herein by reference as if fully set forth.  Do not adopt any changes. The Regs are not a vehicle for amending the Act.

Chart #5 Comments of the Senate Rules and Executive Nominations Committee  
 (Note: Bracketed cites were not specifically referenced by commentators, but appear applicable)

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
3/22/99	§31.1, Definition of "principal"	In the definition of "principal," eliminate the phrase "in and of itself." Add language to clarify that a member of an association may be a principal but is not automatically a principal solely because he or she is a member of an association.	
	§31.1, Definition of "indirect communication"	Revisit the definition of "indirect communication" to add further qualifying language. The primary focus of this definition seems to be a desire to cover substantive communication which is paid for and/or distributed by a lobbyist or principal and which is a direct effort to influence legislative action or administrative action. The definition should be refined so that it clearly doesn't encompass every "whisper-down-the-lane" type of communication.	Do not adopt. The definition is statutory.
	§31.1, Definition of "Service (of official papers)"; §43.3(c)(3)	Change "date of mailing" to "postmarked date." In §43.3(c)(3), change "mailing date" to "postmarked date."	Do not adopt any changes. The Commission meters its mail. Additionally, the mailing date is noted on the face of all pertinent documents.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	Eliminate the second sentence, which excludes purely technical data, because it is not clear what constitutes "purely technical data."	Adopt the change set forth on Chart #3 at 11, under the related comment of R. David Tive, Pennsylvania Association for Government Relations.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§31.2(c)	Review of §32.1(c) raised the concern that some of Pennsylvania's many elected officials may be unaware of the new definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment." We ask the Commission to consider amending the Ethics Act Regulations to include these new definitions or, at a minimum, publish the new definitions in the Pennsylvania Bulletin. We also urge the Commission to highlight this change on the appropriate forms and in the appropriate instructions.	No changes to the Lobbying Disclosure Regulations are proposed.
	§31.11 (Electronic filing)	Add language stating that an Ethics Commission employee may be subject to punishment up to and including termination for the improper use of information filed electronically, including digital signatures.	Do not adopt. <u>See</u> , notation in Chart #3 at 11, as to a similar comment by R. David Tive, Pennsylvania Association for Government Relations.
	§31.4 (Registration periods and reporting periods)	Section 1304 of Act 93 clearly requires that the registration periods coincide to the terms of members of the House of Representatives. Since the language is not similarly clear in terms of the reporting requirements, we ask that this issue be marked for further discussion.	
	Chapters 33 and 35	Consider adding language that would allow a parent corporation to register and report for all of its direct affiliates and subsidiaries as long as all such lobbying contacts and expenses are reported by the parent corporation.	Adopt the changes set forth in Chart #3 at 6-7, as to the first comment of Bruce E. Lammell, Esq., USX Corporation.
	§33.3 (Lobbyist registration)	Clarify that an entity does not need to pay the \$100 registration fee for the firm in addition to paying the fee for each of its lobbyists.	Do not adopt. <u>See</u> , notation in Chart #3 at 12, as to a similar comment by R. David Tive, Pennsylvania Association for Government Relations.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§33.5 (Termination)	Add language stating that if a lobbyist or principal is unwilling to or refuses to "sign off" on a termination report, a termination report may be filed solely with the signature of the lobbyist or principal filing such report. In such cases, perhaps the lobbyist or principal filing the report should be required to provide a certified mail receipt as proof that the other party has been notified of the termination.	Do not adopt as stated because the act itself requires such ( <i>see</i> , §1305(b)(4) of the act). However, the problem of what to do when the required signature is not available is dealt with as to a comment by IRRIC ( <i>see</i> , Chart #6).
	§35.1(g)(1)	Consider adding language to clarify that publicly-held corporations do not need to report the identity of their major shareholders. This information already is reported under a separate Act and does not fall under the intent of Act 93.	Adopt the change set forth in Chart #3 at 7, as to the next-to-last comment of Bruce E. Lammell, Esq., USX Corporation.
	§ §35(g)(3)(iii) and 35.2(a)(3)	In § 35.1(g)(3)(iii) and 35.2(a)(3), dealing with the contents of quarterly expense reports and records maintenance, respectively, eliminate "except as provided by the Act or these regulations."	Adopt the changes set forth in Chart #3 at 2, as to the second comment of Franklin L. Kury, Reed Smith Shaw & McClay.
	§35.1(i)(5)	Determine whether it is appropriate for the amounts of rental value, electric utilities and similar expenses to also be calculated as good-faith estimates.	The statute provides for the reported <i>totals</i> to be good faith estimates. However, adopt the following changes at the beginning of §35.1(i)(5): "[Reportable costs for o]ffice[s] expenses [, equipment and supplies] shall include, . . . ."
	§35.1(k)(1)	The time allowed for the return of an unused gift or hospitality item should be reduced to 10 days. We ask the Commission to consider how this provision may relate to gifts and hospitality items which are received less than 10 days before the end of a reporting period and returned after the end of that reporting period.	



Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§39.3 (Prospective conduct to be reviewed)	<p>In §39.3, clarify that questions may be brought to the Commission at any time and that such questions may deal with topics related to past conduct, although the advice or opinion from the Commission may only be relevant to future conduct.</p>	<p>Do not adopt. However, adopt the following changes.</p> <p>Rewrite §39.1 as follows: <u>"The Commission shall provide advices of counsel and opinions in accordance with the procedures set forth in Section 1107 of the Ethics Act and Chapter 13 of Part I (relating to State Ethics Commission) [provisions relating to opinions and advices of counsel will govern to the extent applicable]."</u></p> <p>In §39.2(b), replace "may" with "will."</p> <p>In §39.3, replace "may" with "will."</p>
		<p>Also in §39.3, add language explicitly giving lobbyists and principals the right to request a special hearing before the Commission to appeal advice which has been received from Commission counsel, mirroring the current practice of the Commission under the Ethics Act regulations.</p>	<p>The concern is alleviated by the changes in the block immediately above.</p>
	§41.1(c)	<p>Eliminate the phrase, "unless for cause" and insert "random" before the word "audit." The intent of this clause appears to be to protect lobbyists and principals from the possibility of more than one random audit in a given registration period. Clarifying that §41.1(c) deals only with random audits should remove any confusion related to what constitutes "cause." Other sections of the statute and regulations spell out the Commission's right to conduct an audit as part of an investigation.</p>	
	§41.4 (Audit Report)	<p>In §41.4, require that the Commission send the audit report via certified mail.</p>	<p>Do not adopt. Service by ordinary mail is a legally approved method.</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	Chapter 43 (Investigations, Hearings and Referrals)	In addition to comments relating to specific provisions in Chapter 43, reexamine how the Regulations under the Ethics Act, 51 Pa.Code Ch. 21 can be mirrored in Chapter 43 of these regulations to the fullest extent possible under Act 93. The Chapter 21 regulations were the subject of a lengthy review process with input and participation from many interested sources. The success of this process is evidenced by the effective implementation of Chapter 21 over the past 6 years.	Adopt the changes set forth in Chart #6, in response to similar commentary from IRRIC.
	§43.3(a)(4)	Eliminate §43.3(a)(4). This provision is unnecessary because of the provision included in §43.3(a)(5), which allows the Executive Director of the Ethics Commission to initiate proceedings based on his own motion.	Adopt as set forth in Chart #3 at 8, as to the third comment of R. David Tive, Pennsylvania Association for Government Relations.
	§43.3(b)(4)	In §43.3(b)(4), eliminate the words "informally or." If §43.3(a)(4) is eliminated as requested in the above item, these words should also be eliminated.	Adopt the change set forth in Chart #3 at 8, as to the fourth comment, Item 1, of R. David Tive, Pennsylvania Association for Government Relations.
	§§43.3(c) and 43.3(d)	In both §43.3(c) and §43.3(d), clarify in the regulations that a second "non-compliance" letter will be sent prior to the Commission filing a petition for civil penalties, mirroring the current practice of the Commission when dealing with Financial Interest Statement discrepancies.	Do not adopt. In issuing a second notice letter, the Commission is doing more than is required by the Ethics Act. Additionally, although such is the current practice of the Commission, to make that practice part of the Regulations would result in disregard for the first notice letter.
	§43.3(e)	In §43.3(e), require the Commission to file service of petition for civil penalties in accordance with the Pennsylvania Rules of Civil Procedure.	Do not adopt. The requirement for filing a proof of service is adequately covered in 1 Pa. Code.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§§43.3(e) and 45.2(b)(13)	In §§43.3(e) and 45.2(b)(13), modify the language so that the regulations read, "upon the majority vote of all of its members, . . ." Add language stating that a "clear and convincing evidence" standard shall be used by the Commission in determining whether to levy civil penalties or prohibit a lobbyist or principal from lobbying.	Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
	[§35.1(g)(3)(iii) and §35.2(a)(3)]	Add language exempting records, but not expenses, related to privileged conversations, such as those between an attorney and a client, from being turned over to the Commission. We ask the Committee to consider how lobbyist-related expenses should be handled in this context.	Adopt the changes set forth in Chart #1 at 2, as to the first and second comments of Franklin L. Kury, Reed Smith Shaw & McClay.
	§35.1(k)(6)	With regard to §35.1(k)(6), dealing with reporting the value of gifts, transportation, lodging or hospitality, the flexibility allowed in the proposed regulations is in the best interest of those affected by these regulations. Eliminating this flexibility may create an overly cumbersome accounting requirement.	Supports the current Regulation.
	§43.3(c)	With regard to §43.3(c), dealing with noninvestigative procedures, although much clarification is needed, support is noted for the concept of a procedure to resolve simple and unintentional issues of noncompliance.	With regard to clarifying §43.3(c), adopt the changes set forth in Chart #6 in response to similar commentary from IRRC.

Chart #6 Comments of the Independent Regulatory Review Commission

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
4/1/99	<p>§31.1, Definitions of:                      "Administrative action"; "Affiliated political action committee";                      "Agency";                      "Commission";                      "Compensation";                      "Direct communication";                      "Economic consideration";                      "Fund"; "Gift";                      "Immediate family";                      "Indirect communication";                      "Legislation";                      "Legislative action";                      "Lobbying";                      "Lobbyist"; "Principal";                      "Registrant";                      "Regulation"; and                      "State official or employe"</p>	<p>The Regulation includes a number of definitions which have been excerpted verbatim from Section 1303 of the Lobbying Disclosure Act (Act). Other statutory definitions have been modified in the Regulation. Rather than repeat definitions in the Regulation, or change the legislative intent in defining certain terms, it would be more appropriate to just include a citation to Section 1303 of the Act after each of the statutorily defined terms listed at the left.</p>	
	<p>§31.1, Definition of "Anything of value"</p>	<p>1. Streamline the definition--In (i), all of the language prior to "anything of any nature . . ." should be deleted. Also delete (ii), which does not add anything to the definition.</p> <p>2. Amend the definition to exclude services provided to the public and constituents.</p>	<p>1. Adopt the following change. Strike only the first sentence of (i), as follows:</p> <p>(i) [The term includes, by necessity, the terms "thing of value" and "things of value."] For the limited purpose of . . .</p> <p>Do not make any other deletions.</p> <p>2. Adopt the changes set forth in Chart #3 at 17 as to a related comment by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§31.1, Definition of "Audit"	Referencing "training and other areas relating to lobbying activities" in the definition creates: (1)the erroneous impression that a certain standard for "training" is mandated under the Act; and (2)confusion as to what the Commission would be auditing with respect to "training" and what other areas related to lobbying the Commission would include. This phrase should be deleted or revised to narrow its scope.	Change the definition as follows:  <i>Audit</i> --A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping [,] and reporting [, training and other areas relating to lobbying activities].  <u>See, also</u> , changes to §41.2(a) at 13 of this Chart.
	§31.1, Definition of "Child"	Agree with Office of Attorney General that stepchildren should be included.	Do not adopt. <u>See</u> , Chart #3 at 1 as to related comment by OAG.
	§31.1, Definition of "Day or date"	Because the Committee intends to use the terms as they are commonly used, there is no need to define them. This definition should be deleted.	Adopt. Strike the term "Day or date" and its definition from §31.1.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	The first sentence is good. The second sentence raises questions concerning the scope and intent of the exclusion for "purely technical data." Suggest the second sentence be revised as follows: "The term does not apply to services provided to the public or the provision of information to a state official, employe, legislator, agency or legislative body at the request of a state official, employe, legislator, agency or legislative body."	Do not adopt, based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
	§31.1, Definition of "Employee"	Suggest using the existing definition from the Tax Reform Code at 72 P.S. §7301(g) which provides a simple and familiar standard: " 'Employee' means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax."  If the proposed definition is retained, make two changes: (1) delete the phrase, "For the limited purpose of determining exemption under Section	Rewrite the definition by keeping only the first 1 ½ lines (through the comma) and adding the language proposed by IRRIC, as follows:  <i>Employee</i> --[(i)] For the limited purpose of determining exemption under section 1306(6) of the act, [the term . . . independent contractors] " <u>Employee</u> " means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		1306(6) of the act," in (i) (the definition should apply to the entire Regulation so that confusion is not created as to when a different meaning would apply); and (2) also delete the phrase, "In determining exemption under Section 1306(6) of the act."	Do not make any other changes, in that the definition <i>is</i> intended to be for the limited purpose of determining exemption under Section 1306(6) of the Act.
	§31.1, Definition of "Engaging in lobbying"	The plain meaning of this phrase is clear. Delete the definition.	Adopt. Strike the term "Engaging in lobbying" and its definition from §31.1.
	§31.1, Definitions needed for "Guideline" and "Statement of Policy"	These terms, which are part of the statutory definition of "Administrative action," should be defined. Suggest cross-referencing the existing definitions of these terms in the Regulations of the Joint Committee on Documents, at 1 Pa. Code §1.4.	Make the following change in (i) of the definition of "administrative action":  (i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy <u>as defined in 1 Pa. Code §1.4</u> ; or approval or rejection of a regulation.
	§31.1, Definition of "Immediate family"	Recommend that "stepparent" be added to this definition.	Do not adopt. A stepparent is not a "like relative-in-law."
	§31.1, Definition of "Lobbyist"	1. Since the term is statutorily defined, the definition should be replaced with a citation to Section 1303 of the Act.  2. Do the third and fourth sentences need to be included as proposed? With regard to the third sentence, if the term "de minimis" is intended to reflect the \$2500 compensation exemption in §1306(3)(II) of the Act, the sentence should be revised to so reflect <i>or</i> these provisions should be placed in Chapter 37 which addresses exceptions. If the intent is to relieve the lobbyist of the responsibility for accumulating income received over the length of the biennium, the definition lacks statutory authority and is contrary to the legislative intent.	

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	<p>§31.1, Definitions of "Negligent conduct"; "Negligent failure to register or report"; and "Negligent violation"</p>	<p>Instead of these long and somewhat confusing definitions, include a definition of "negligent or negligence" and a definition of "intentional."</p>	<p>Adopt the following changes.</p> <p>Strike the definitions of "Negligent failure to register or report" and "Negligent violation."</p> <p>Change the term "Negligent conduct" to "Negligence" and redefine it as follows:</p> <p><i>Negligence</i> [t conduct]--Conduct, whether of action or omission, which violates or fails to comply with the act, and which is occasioned by a failure to exercise such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of [section 1304, 1305 or 1307 of ]the act [(relating to prohibited activities)], and is characterized by inadvertence, thoughtlessness, inattention, or the like. [Negligent conduct is to be distinguished from willful, wanton or reckless conduct, which would fall within the ambit of intentional conduct.]</p> <p>Add the term "intentional" as a defined term and define it as follows:</p> <p><u><i>Intentional</i>--The term has the meaning set forth in 18 Pa.C.S. §302(b).</u></p>
	<p>§31.1, Definition of "Principal"</p>	<p>This definition departs from the statutory definition. The Committee should just reference the Act.</p> <p>If the Committee elects not to use a reference, suggest that the phrase, "in and of itself operate" be replaced with "alone is not sufficient" or similar language to clarify Committee's intent.</p>	<p>Adopt the following changes to (ii) of the definition of "principal" and to the final sentence of the definition of "lobbyist":</p> <p>"Membership in an association [does not in and of itself operate] <u>alone is not sufficient</u> to make an association member . . . ."</p>

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	§31.1, Definition of "Service (of official papers)"	The definition should be modified to cross-reference the definition of "service" in §11.1 of the existing Ethics Act Regulations or be revised to mirror that definition. All references to "mailing date" in the Regulations should be changed to "postmark date."	Do not adopt any changes. The Commission meters its mail. The mailing date is noted on the face of all pertinent documents.
	§31.1, Definition of "Transportation and lodging or hospitality received in connection with public office or employment"	<p>1. The language in the first sentence of the definition doesn't really define anything and would be better placed in Chapter 35.</p> <p>2. The rest of the definition should be kept in Definitions, but under the heading of "hospitality."</p> <p>3. In (iv), there are two concerns: (1) As discussed above with regard to the definition of "lobbyist," the term "de minimis" should not be used; and (2) The second sentence contains substantive requirements that would be more appropriately placed in Chapter 35. Therefore, this sentence should be deleted and the language incorporated into Chapter 35.</p>	<p>1. Do not adopt. The sentence is particularly meaningful as to the phrase "received in connection with public office or employment."</p> <p>2. Adopt the changes set forth in Chart #4 at 5, second block, item 2, as to a related comment by Rep. Mark Cohen.</p> <p>3.</p>
	§31.1, Definition of "Travel expenses"	Since the application of this definition is limited to § 37.1(3), this definition should be deleted and the substance should be incorporated into § 37.1(3).	<p>Adopt. Delete the term "Travel expenses" and its definition from §31.1. Revise §37.1(3) as follows:</p> <p>(3) An individual who does not receive any compensation for lobbying, other than travel expenses. <u>For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), the term "travel expenses" means reasonable expenses for transportation, meals, beverages and lodging.</u></p>



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	§31.2 (Ethics Act Regulations in Part I)	<p>1. Subsection (a) should be deleted because opinions, advices, and investigations are addressed in Chapters 39 and 43.</p> <p>2. Subsections (c) and (d) should be deleted; they are unnecessary and redundant.</p>	<p>1. Adopt the following changes. Delete Subsections (a) and (b) from §31.2. Re-letter (c) and (d) accordingly.</p> <p>2. Do not adopt. They highlight the fact that certain provisions carry over to the Ethics Act.</p>
	§31.4 (Registration periods and reporting periods)	Although the proposed quarters have some advantages, they will impose unnecessary burdens on reporters and may also create problems as to notice to public officials/employees filing Statements of Financial Interests under the Ethics Act. Calendar year quarters should be used.	
	§§31.5 and 31.6	The Act does not use the terms "delinquent" or "deficient." Additionally, the Regulations are silent as to what the Commission will do when it receives an incomplete or inaccurate filing. §19.3 of the Ethics Act Regulations addresses late and deficient filings. To avoid confusion, these two sections should be revised or combined to parallel §19.3.	Do not adopt any changes. These Sections explain the various ways in which noncompliance may result.
	§31.9 (Amended filings)	Chapters 33 and 35 contain more detailed provisions governing amended filings. Therefore, this section is redundant, and should be deleted.	<p>Adopt the following changes.</p> <p>Delete Subsection (b).</p> <p>Keep Subsections (a) and (c) as they are.</p> <p>Re-letter Subparagraph (d) to be the new Subparagraph (b) and revise it as follows:</p> <p><b>([d]b) Amended [R]registration statements [may be amended and] shall conform to the additional requirements detailed in §33.4 (relating to amended registration statements).</b></p>

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	§31.10 (Filings to be originals signed under oath or affirmation)	<p>1. In Subsection (a), the word "forms" should be inserted between the words "these" and "filed" in the first sentence. Also, paragraph (1) essentially repeats the requirement stated in (a), and therefore, it should be deleted.</p> <p>2. If the affirmation requirements for registration and report filings are the same, subsections (b) and (c) should be combined to avoid confusion and reduce redundancy.</p> <p>3. Since the affirmation requirements for lobbyists signing a principal's quarterly report or attaching a statement to the report are the same, subsections (d) and (e) should be combined to avoid confusion and reduce redundancy.</p> <p>4. Even if the subsections are not combined, remove "penalty under" from Subsections (b), (d), and (e), as suggested by the Office of Attorney General.</p>	<p>1. Adopt the following change. Insert the word "forms" between the words "these" and "filed" in the first sentence. Do not delete paragraph (1) as it is designed to remind the filer of the criteria for signed originals.</p> <p>2 &amp; 3. The requirements for (c) are different and cannot be combined. Moreover, although (b), (d), and (e) deal with the same affirmation requirements, attempts to combine them were unsuccessful. The items in (b) are forms, and are easily listed, but (d) and (e) are dealing with actions-- signing a form, and attaching a statement to a form--and cannot be placed in a listing of filings as was originally contemplated. Therefore, do not adopt any changes.</p> <p>4. Adopt as set forth in Chart #1 at 1, as to the third comment of Cristina Papsen, Deputy Attorney General, Office of Attorney General Review and Advice Section.</p>
	§31.11 (Electronic filing)	<p>1. Suggest that the Committee delete this section and do a separate rulemaking on electronic filing after the system has been developed and tested.</p> <p>2. However, if the Section is retained:</p> <p style="padding-left: 20px;">A. Unless there is a compelling need for separate paragraphs, Subparagraphs (3)(i)-(iv) should be combined.</p> <p style="padding-left: 20px;">B. In Subsection (b)(4), language should be added to indicate that the Commission will notify an applicant</p>	<p>1. Do not adopt. It is anticipated that electronic filing will be available when the Act becomes effective.</p> <p>2. A. Attempts to combine the subparagraphs as originally contemplated were unsuccessful for the same reasons set forth above as to §31.10. Therefore, do not adopt any changes.</p> <p>2. B. Do not adopt. It is contemplated that defective electronic filings simply will not go through, and that the filer will be aware of that fact.</p>

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		<p>when it receives a defective electronic filing and that the notice will list the deficiencies.</p> <p>C. Add a new subsection providing that the information related to obtaining an electronic signature will be confidential.</p>	<p>C. No changes are needed on the issue of confidentiality.</p>
	§ 31.12 (Faxed filings)	<p>For clarity, Subsection (b) should be reformatted using the same structure as Subsection (a) and should include a provision similar to Subsection (a)(2).</p>	<p>Do not adopt. The filings in Subsection (b) do not require the payment of a filing fee or the submission of a photograph.</p>
	§ 31.14 (Severability clause)	<p>Delete this Section. Paragraph (a) is unnecessary and will result in confusion. Paragraph (b) merely restates the obvious and is likewise unnecessary.</p>	<p>Adopt. Delete the existing §31.14 and replace it with a new §31.14, as set forth in Chart #3 at 6 as to the first comment of Bruce E. Lammel, Esq. USX Corporation.</p>
	§ 33.1	<p>Subsection (a)(3) should be revised to clarify that a lobbyist must only pay one \$100 fee regardless of the number of registrations filed.</p>	<p>Adopt the change set forth in Chart #3 at 3, third block, item 2, as to a related comment by Vince Phillips, Phillips Associates.</p>
	§ 33.2 (Principal registration)	<p>1. In Subsection (a), Paragraphs (1) and (2) essentially repeat the definition of "principal." Absent justification for their inclusion, they should be deleted.</p> <p>2. Subsections (a)(2) and (a)(2)(i) appear to be redundant and should be combined.</p> <p>3. Suggest the Committee consider adding a new subsection to allow corporations the option of doing consolidated registrations for themselves and their subsidiaries. If this suggestion is adopted, the Committee should establish a standard for a consolidated grouping, such as meeting the eligibility standards of the IRS for filing a consolidated corporate tax return. The Regulations should</p>	<p>1. Do not adopt. These paragraphs clarify "acting in any capacity as a principal." Based upon other changes made in Chart #3 at 8, as to the final comment of Bruce E. Lammel, Esq., USX Corporation, paragraph (2) clarifies that a principal that lobbies on its own behalf need not also register as a lobbyist.</p> <p>2. Do not adopt. The subparagraphs address how registration is to be done. Logically, they should be broken down. Moreover, if (i) would be combined with (2), presumably (ii) would also have to be combined, resulting in a very lengthy provision.</p> <p>3. Adopt the changes set forth in Chart #3 at 6-7 as to the first comment of Bruce E. Lammel, Esq., USX Corporation.</p>

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		<p>also clarify, either in this Chapter or Chapter 35, that corporations which elect to do a consolidated registration must apply the reporting requirements to aggregate expenditures of the corporation and the subsidiaries. This would mean that an exemption from registration or reporting could not be claimed unless the total expenditures of the corporation and its subsidiaries fell below the established limits.</p>	
	<p>§33.5 (Termination)</p>	<p>The Regulations should address what a principal should do in the event a lobbyist cannot sign, or refuses to sign, the termination report. Suggest that the principal should be required to attach a statement indicating why the lobbyist cannot sign, or that the lobbyist has refused to sign, as appropriate, and, in the event of refusal to sign, to provide proof that a copy of the termination report has been given to the lobbyist.</p>	<p>Adopt the following changes to §33.5. Re-letter Subsections (j) and (k) to be (k) and (l) respectively. Add the following as the new subsection (j):</p> <p><u>(j) In the event the principal is unable to secure the signature of the lobbyist as to a termination report or amended termination report, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature.</u></p>
	<p>§35.1 (Quarterly expense reports)</p>	<p>1. A consistent method of reporting should be used. However, the use of the accrual system is unreasonable, because it is the opposite of how most individuals keep their financial records and is contrary to how corporations are required to report for their employees. Therefore, Subsection (c) should be revised to require registrants to use a cash basis for reporting.</p> <p>2. The first sentence of Subsection (d) repeats requirements contained in Subsections (a) and (b), and should be deleted.</p>	<p>1. Adopt the following changes to §35.1(c):</p> <p>(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under sections 1304 and 1305 of the act (relating to registration; and reporting), [compensation, costs and expenses . . . when actual payments are made] <u>books and records shall be kept on the same basis the registrant uses for federal tax purposes, and for those registrants who do not file tax returns, on a cash basis.</u></p> <p>2. Adopt the following changes in</p>

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		<p>3. The second sentence of Subsection (f) is unrelated to what forms must be used and repeats the requirements contained in Subsection (g). Therefore, it should be deleted.</p> <p>4. Subsection (g)(2) is unnecessarily long. To improve its readability, a period should be placed after "conducted," and "so that," should be deleted. A new sentence should be started with "If."</p> <p>5. Subsection (g)(3) is somewhat confusing and should be revised as follows:</p> <p>... designated "other." The following shall not be reported:</p> <p>(i) A listing indicating which lobbyists are lobbying on which matters.</p> <p>(ii) The specific bill numbers for which the lobbying is being done.</p> <p>(iii) The specific contents of any communication or the identity of those with whom the communications take place.</p> <p>6. In Subsection (i)(4)(ii), the phrase "as defined by the act" is redundant and should be deleted.</p> <p>7. In Subsections (i)(3) and (4)(iii), it is not clear what is meant by "in furtherance of lobbying." Unless there is a distinction the Committee is trying to draw, the "in furtherance of" language should be deleted.</p>	<p>Subsection (d):</p> <p>(d) [The duty to file a quarterly expense report or statement of failure to meet the reporting threshold is preliminarily placed upon the registered principal.] The [deadline for a] principal [to] <u>shall</u> file a quarterly expense report or statement of failure to meet the reporting threshold [shall be] on or before the 30th day after the quarterly reporting period ends.</p> <p>3. Adopt. Strike the second sentence of (f).</p> <p>4. Adopt. Make the changes as follows:</p> <p>(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted[,], [so that i] [if a lobbyist is a . . . shall be included.</p> <p>5. Adopt the following changes to Subsection (g)(3):</p> <p>(3) The general subject matter . . . designated "other." <u>The following need not be reported:</u></p> <p>(I) A [correlation as to] <u>listing indicating</u> which lobbyists are lobbying on which matters [or issues is not required].</p> <p>(ii) [With regard to legislative action,] <u>The specific bill numbers [are not required to be included] for which the lobbying is being done.</u></p> <p>(iii) [Except as provided by the act or this part, t] <u>The specific contents of any [particular] communication[,], or the identity of those with whom the communications take place [, need not be reported].</u></p>

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		<p>8. In Subsection (j)(3), the phrase "amount of the payment" should be replaced with the phrase "value of the transportation, lodging and hospitality" to be consistent with the other references to these items elsewhere in the regulation.</p> <p>9. In Subsection (k)(6), some flexibility in valuation methods is needed to deal with entertainment provided to groups. However, the following should be added as a new Subparagraph (iii) to address situations where using an average would not reflect the value of the real benefit received: "Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.</p> <p>10. Subsection (m) does not address what a principal should do in the event a lobbyist cannot sign, or refuses to sign, the report. The same language recommended in comments above as to Section 33.5 should be added to this subsection.</p>	<p>6. Adopt the following change to §35.1(i)(4)(ii):</p> <p>(ii) Time spent in direct communication or indirect communication [as defined by the act].</p> <p>7. Do not adopt. The phrase serves as a qualifier.</p> <p>8. Adopt the following change to Subsection (j)(3)(iii):</p> <p>(iii) The [amount of the payment] <u>value of the transportation, lodging or hospitality.</u></p> <p>9.</p> <p>10. Add the following as the new second sentence of §35.1(m):</p> <p><u>In the event the principal is unable to secure the signature of the lobbyist, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature.</u></p>
	<p>§35.2 (Records maintenance, retention and availability)</p>	<p>The language in Subsection (c)(4) requiring "access to all of the recorded information" has created some confusion. To clarify that the only information that must be provided is that which is relevant to the audit, the</p>	<p>Adopt the changes set forth in Chart #3 at 2, as to related comments by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>

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		<p>following language should be substituted for the proposed language in Subsection (c)(4):</p> <p>(4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access all of the information reasonably necessary to substantiate the reports.</p> <p>Also, the second sentence of the proposed section is not necessary.</p> <p>Instead, a provision should be added to Chapter 41 which would require the subject of an audit to provide its computerized/electronic records in a format that could be read by the Commission or Office of Attorney General.</p>	
	§37.1 (Qualifications for exemption)	The second sentence in Subsection (12) is unnecessary, restates the obvious, may cause confusion, and is misplaced in a list of exemptions. Delete it.	Adopt. Strike the second sentence in Subsection (12).
	§37.2 (Exempt status)	This Section is unnecessarily long and repetitive. There is no need to have separate subsections for principals and lobbyists. Recommend that the word "principal" in Paragraph (a) and Subparagraphs (a)(1) and (2) be replaced with the word "registrant" and that Subparagraphs b(1)-(4) be deleted.	<p>Revise §37.2 as follows:</p> <p>[(a)] As long as a <u>principal or lobbyist</u> qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the principal or lobbyist is not required . . . \$500.</p> <p>[(1)a] Upon losing exempt status, a principal <u>or lobbyist</u> is immediately . . . act.</p> <p>[(2)b] A principal <u>or lobbyist</u> is not required to retroactively file/<u>sign</u></p>

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			<p>reports for quarterly . . . status.</p> <p>[(b) As long as a lobbyist qualifies for exemption . . . the act.</p> <p>(1) The exemption . . . reports.</p> <p>(2) The exemption . . . principals.</p> <p>(3) Upon losing . . . of the act.]</p> <p>[(4)c] A lobbyist is not required to retroactively sign . . . exempt status.</p>
	Chapter 39 (Opinions and Advices of Counsel)	<p>1. In §39.2, the word "may" should be replaced with the word "will" to more clearly indicate that the Commission will not consider third-party requests.</p> <p>2. § 39.3 is unnecessary and should be deleted, because it is covered in Chapter 13.</p>	<p>1. In §39.2(b), change the word "may" to "will."</p> <p>2. Do not delete § 39.3. However, in § 39.3, change the word "may" to "will."</p>
	§41.1 (Lotteries)	With regard to the reference to audits "for cause" in §41.1(c), the Act provides only for random audits. The circumstances for performing that type of audit and the scope of the audit should be clearly spelled out in Chapter 43.	
	§§41.2 (Number and scope of compliance audits)	1. With regard to paragraph (a), as set forth in the comments regarding the definition of "audit," a question is noted as to the Commission's authority to review training and other areas. Training and other areas besides recordkeeping and reporting are beyond the permissible scope of an audit.	<p>1. Change §41.2(a) as follows:</p> <p>(a) The purpose of conducting the audits shall be to ensure compliance with the act [and to review methods of recordkeeping, reporting, training and other areas relating to lobbying activities].</p>



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		<p>2. It is recommended that paragraphs (d) and (e) be deleted. It is questioned whether the Commission has the statutory authority for these provisions, especially in light of the statutory authorization only for random audits and the strict controls under which investigations may be initiated. Additionally, it is the responsibility of the registrant being audited to produce sufficient records to support his filings.</p>	<p>2.</p>
	<p>§41.4 (Audit report)</p>	<p>With regard to Paragraph (b), clarification is requested as to what would be included in the reference to "other practices."</p>	<p>Do not adopt any changes.</p>
	<p>Chapter 43 (Investigations, Hearings and Referrals)</p>	<p>1. Chapter 43 should be reorganized and rewritten to parallel Chapter 21 to the maximum extent possible.</p> <p>2. §43.2 should be rewritten to encompass the informal procedures used to handle late or deficient filing of reports, and should be closely modeled after §19.3 of the Commission's Regulations.</p> <p>3. §43.3 should be rewritten to encompass Commission proceedings under Sections 1304, 1305, and 1307 of the Act. As written, it is too long and cumbersome. It is recommended that it be divided into several sections, similar to the following Chapter 21 provisions:</p> <p>Section 21.1. Complaints Section 21.2. Initiation of investigation by the Commission Section 21.3. Preliminary inquiries Section 21.5. Conduct of Investigations</p>	<p>1. <u>See</u>, changes below.</p> <p>2. Do not adopt substantive changes to the procedures. The initial draft of the Regulations <i>did</i> track the process for informal civil penalty proceedings in the Ethics Act Regs, but was changed as the result of criticisms regarding the burden of proof issue.</p> <p>3. Adopt the following changes to facilitate readability:</p> <p>Change the heading of §43.3 as follows: " §43.3. <u>Late or deficient filings</u>--Commission proceedings under section 1304 or 1305 of the act."</p> <p>Change §43.3(c) to be the new §43.4 designated as follows: " <u>§43.4. Noninvestigative process for late or deficient filings.</u>" Also, re-letter and renumber the the subparagraphs under old (c) appropriately.</p> <p>Change §43.3(d) to be the new §43.5 designated as follows: " <u>§43.5. Investigative process for late or deficient filings.</u>" Also, re-letter and</p>

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		<p>Section 21.21. General  Section 21.22. Discovery  Section 21.23. Scope of hearing  Section 21.24. Hearing officer  Section 21.25. Conduct of the hearing  Section 21.26. Motions  Section 21.27. Briefs  Section 21.28. Decision  Section 21.29. Finality; reconsideration  Section 21.30. Effect of order</p> <p>The comments below pertain to the Sections in Chapter 43 as proposed.</p>	<p>renumber the the subparagraphs under old (d) appropriately.</p> <p>Change §43.3(e) to be the new §43.6 designated as follows: "<u>§43.6. Civil penalties for late or deficient filings.</u>" Also, re-letter and renumber the the subparagraphs under old (e) appropriately.</p> <p>Change §43.3(f) to be the new §43.7 designated as follows: "<u>§43.7. Commission decisions as to late or deficient filings.</u>"</p>
	§43.1	Paragraph (b) in §43.1 should be deleted, as it is redundant.	Do not adopt. The provision is not redundant, because it addresses actual findings by the Commission--i.e., as the result of a hearing--that a failure to register or report is intentional.
	§43.2	<p>1. Subsection (a), which provides for a preliminary inquiry upon receipt of a complaint, should cross reference Section 21.1 (relating to complaints).</p> <p>2. Likewise, Subsection (b) should reference Section 21.3 (relating to preliminary inquiries).</p> <p>3. With regard to Subparagraphs (d)(1) and (2), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to participate, and why such request would have to be delayed for 7 days beyond the Respondent's deadline?</p>	<p>1. Adopt the following change in Subsection (a): "Upon receipt of a complaint <u>as defined in this Part</u>, the Commission . . . (relating to prohibited activities)."</p> <p>2. Adopt the following change in Subsection (c): "Preliminary inquiries will be conducted [under] <u>in accordance with</u> the procedures for preliminary inquiries set forth within <u>§21.3 of Part I</u> . . . to the extent applicable."</p> <p>3. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is</p>

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			received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.
	543.3	<p>1. With regard to Paragraph (a), it is not clear what is contemplated by "Commission proceedings." Preliminary inquiries, investigations and hearings all qualify as proceedings.</p> <p>2. Subparagraphs (a)(4) and (5) are inconsistent with the Act. It is recommended that Subparagraph (a)(4) be deleted and that Subparagraph (a)(5) be revised to limit the information upon which the Executive Director's motion may be based to that which leads to a reasonable belief that a violation has been committed.</p> <p>3. With regard to Paragraphs (b) and (c), if the term "noninvestigative procedure" is intended to reference an informal procedure similar to that outlined in Section 19.3 of the Commission's Regulations, it would be more appropriately placed under a revised Section 43.2, which would relate to late or deficient filings. If it is intended to reference a preliminary inquiry, it is recommended that it be placed in a separate section similar to Section 21.3. However, if it is intended to authorize the Commission to initiate formal disciplinary proceedings without a prior investigation, a question is noted as to the statutory authority for the provision. Section 1108(e) of the</p>	<p>1. Do not adopt any changes as to this particular comment. The subsequent Sections detail the procedures.</p> <p>2. As set forth in Chart #3 at 8, under the third comment of R. David Tive, Pennsylvania Association for Government Relations, adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.</p> <p>3. The noninvestigative procedure <i>is</i> intended to be similar to that outlined in §19.3 of the Ethics Act Regulations. The statutory authority for it is Section 1309 of the Lobbying Disclosure Act. The restructuring would be accomplished by breaking down and relabelling the pertinent Sections and Subsections as set forth in this chart at 14-15.</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>Ethics Act requires the Commission to complete an investigation before issuing a rule to show cause.</p> <p>4. Subparagraph (c)(3) references both "notice recipient" and "respondent." If they are one and the same, the term, "respondent" should be used consistently, since it is a defined term.</p> <p>5. With regard to Subparagraphs (c)(9) and (10) and (d)(2)(i) and (ii), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for an additional seven days.</p> <p>6. Subsection (e) is without statutory authority. Section 1108(g) of the Ethics Act provides "At least four members of the commission present at a meeting must find a violation by clear and convincing proof." Based upon the recommendation that the procedural provisions in Chapter 43 be modeled after those in Chapter 21, it is recommended that Paragraph (e) be deleted.</p>	<p>4. Do not adopt. The terms are <i>not</i> the same. A notice recipient does not become a Respondent unless and until process such as a Petition for Civil Penalties is filed against him.</p> <p>5. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.</p> <p>6. Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.</p>
	§45.1	<p>1. Section 1309(e) of the Act, which authorizes the Commission to impose a prohibition against lobbying, is limited to intentional violations. Thus, Subparagraphs (a)(4), (b), and (c) should be deleted, as they reference negligent violations.</p>	<p>Do not adopt. Another Section, specifically Section 1309(d) of the Act, authorizes the Commission to impose the prohibition against lobbying where there is noncompliance, an opportunity for hearing, and a subsequent failure to comply. Thus, the prohibition is not limited to intentional violations. The accuracy of this interpretation is</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>2. In subparagraph (d)(1), the applicable sections of Chapter 21 pertaining to hearings should be cross-referenced.</p>	<p>confirmed by Subsection (e)(4) which provides that no criminal prosecution or conviction is required for the imposition of the prohibition. Intentional violations would be found as the result of criminal prosecutions/convictions.</p> <p>2. Adopt the following changes to Subparagraph (d)(1):</p> <p>(1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) <u>and, to the extent applicable, Chapter 21 of Part I.</u></p>
	545.2	<p>1. With regard to Subparagraphs (b)(7) and (8), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for an additional seven days.</p> <p>2. Agreement is noted as to the recommendation of the Office of Attorney General with regard to limiting the Commission's determination, where a lobbyist or principal has been convicted, to the amount of time the lobbyist or principal would be prohibited from lobbying. There would be no need for the Commission to relitigate these matters. It is recommended that the Committee add the Office of Attorney General's suggested language as a new Subsection (c) or as a new Section 45.3.</p>	<p>1. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.</p> <p>2. Adopt the changes set forth on Chart #3 at 2, as to the final comment of Cristina Papson, Deputy Attorney General, Office of Attorney General, Review and Advice Section.</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	General	<p>1. Section 1302(b) of the Act provides, in part: "This chapter is not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." To give effect to this provision, the Committee should consider inserting a separate section exempting communications for which the attorney-client privilege is claimed from the disclosure requirements.</p> <p>2. Where the Regulations refer to forms that are to be developed by the Commission for use by registrants, the term "approved" should be used consistently, rather than "promulgated by," "provided by," or "prescribed by." In addition, the Regulations should clarify whether the Commission will permit filings on forms which are substantially equivalent to the forms obtained from the Commission (<u>See</u>, 1 Pa. Code §13.42).</p> <p>3. General references to Part I provide little guidance and should be replaced with specific references to the applicable sections of the Commission's Regulations.</p> <p>4. The phrase "to the extent applicable" should be deleted from references to provisions in Part I. If there is another specific statutory or regulatory provision which would supercede the appropriate provision in Part I, the Regulation should include a citation to that authority.</p>	<p>1. Adopt the changes set forth in Chart #3 at 2 as to the first two comments by Franklin L. Kury, Reed Smith Shaw &amp; McClay.</p> <p>2. Change the wording to consistently use "prescribed by." Since only SEC forms may be used, do not use "approved by"; that wording would erroneously suggest that forms created by others could be used.</p> <p>3. Replace general references to Part I with specific references to the extent possible.</p> <p>4. Do not adopt. The phrase "to the extent applicable" is essential because certain wording in the Ethics Act Regs would be peculiar to the Ethics Act.</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>5. The phrase, "disclosure reports" should be defined to include all filings required under the Act or amended filings. By including amended filings in the definition of "disclosure reports," repetitive references to "separate amended quarterly expense reports" can be eliminated.</p>	<p>Do not adopt. Not all filings are disclosure reports.</p>



STATE ETHICS COMMISSION  
308 FINANCE BUILDING  
HARRISBURG, PENNSYLVANIA 17120

DISCONTINUED  
99 JUN 23 AM 11:16

June 23, 1999

Honorable Thomas J. Ridge, Governor of Pennsylvania  
225 Main Capitol  
Harrisburg, PA 17120

Senate Rules and Executive Nominations Committee  
Honorable F. Joseph Loeper, Majority Leader, Chairman  
Senate Box 203026  
The State Capitol  
Harrisburg, PA 17120-3026

House Judiciary Committee  
Honorable Thomas P. Gannon, Chairman  
House Box 202020  
The State Capitol  
Harrisburg, PA 17120-2020

Independent Regulatory Review Commission  
Honorable John R. McGinley, Jr., Chairman  
333 Market Street  
14th Floor  
Harrisburg, PA 17101

*(By hand-delivery to all addressees)*

Re: Regulation #63-06  
Lobbying Disclosure Committee

Original: 1997  
Bush  
cc: Nyce  
Wyatte  
Sandusky  
McGinley  
Cocodrilli  
Bush  
Harbison  
Mizner

Dear Governor Ridge, Members of the above Standing Committees, and Members of IRRC:

Notice is hereby given in accordance with the Regulatory Review Act, 71 P.S. §745.7(a), that in light of the disapproval of the above referenced final-form regulation by the Independent Regulatory Review Commission (IRRC) on June 17, 1999, the Lobbying Disclosure Committee has selected the option of proceeding further with the final-form regulation pursuant to 71 P.S. §745.7(c), that is, submitting the regulation with revisions or modifications that respond to objections raised by IRRC.

Sincerely,

Austin M. Lee, Chair  
Lobbying Disclosure Committee

AML/rmh  
cc: Members, Lobbying Disclosure Committee



RECEIVED  
99 JUN 23 AM 11:16  
INDEPENDENT REGULATORY REVIEW COMMISSION

TRANSMITTAL SHEET FOR  
NOTICE PURSUANT TO SECTION 7(a)  
OF THE REGULATORY REVIEW ACT

DEPARTMENT: Ethics Commission ID NUMBER: 63-6  
SUBJECT: Lobbying Disclosure Committee  
PA CODE CITE: 51 Pa. Code

\*\*\*\*\*

Type of Notice:

- Notice of agency determination to proceed with final-form regulation without revision pursuant to Section 7(a) of the Regulatory Review Act.
- Notice of agency determination to revise final-form regulation and to proceed with regulation as revised pursuant to Section 7(c) of the Regulatory Review Act.
- Notice that final-form regulation will be withdrawn.

\*\*\*\*\*

Filing of Notice:

<u>DATE</u>	<u>SIGNATURE</u>	<u>AGENCY</u>
<u>6/23/99</u>	<u>S. Morris</u>	Governor's Office (333 Market St.)
<u>6/23/99</u>	<u>Judy Pedesse</u>	House Committee
<u>6/23/99</u>	<u>D. Ventzler</u>	Senate Committee
<u>6/23/99</u>	<u>Gregory</u>	Independent Regulatory Review Commission



STATE ETHICS COMMISSION  
308 FINANCE BUILDING  
HARRISBURG, PENNSYLVANIA 17120

Original: 1997  
Bush  
cc: Nyce  
Wyatte  
Sandusky

June 11, 1999

Honorable David J. Brightbill, Majority Whip  
Vice-Chairman, Senate Rules and Executive Nominations Committee  
Senate Sub-Committee on Lobbying Disclosure  
337 Main Capitol Building  
Harrisburg, PA 17120-3048

Honorable Robert J. Mellow, Minority Leader  
Senate Sub-Committee on Lobbying Disclosure  
Room 535 Main Capitol  
Harrisburg, PA 17120-3022

Honorable Charles D. Lemmond, Jr.  
Senate Sub-Committee on Lobbying Disclosure  
Senate Post Office  
The State Capitol  
Harrisburg, PA 17120-0030

Dear Sirs:

Chair Daneen Reese has asked me to respond to your June 9, 1999 letter given my capacity as her designee to the Lobbying Disclosure Committee and Chair thereof. I have reviewed your letter very carefully.

Your first point regarding the religious exemption involves the correction of a typographical error made by the *Pennsylvania Bulletin* when it was working on the proposed Regulations. The Committee approved the final-form Regulations knowing that certain typographical errors had been corrected.

Similarly, any errors in the citation to the Election Code (your third point) would have been made by the *Pennsylvania Bulletin* when it inserted that definition. Such errors, like consistency of spelling and technical, nonsubstantive adjustments to phraseology (your seventh point) are easily remedied by the *Pennsylvania Bulletin*.

Some of the other points suggest minor changes that could be considered for future revisions, but which do not evidence a compelling need for immediate change, at this late stage of the process.

99 JUN 14 AM 8:59  
17120-0030

Brightbill, Mellow, Lemmond  
June 11, 1999  
Page 2

Issues that have been raised for the first time, such as filings with the Capitol Police, or stripping a complainant of the protection of confidentiality afforded by statute, present major legal concerns, only one of which is that such issues have not been subject to the legislatively mandated rulemaking process. Further, as to the concept of off-site, non-Commission filing locations, I would expect that such would raise concerns for the regulated industry and the public as to whether forms might be handled incorrectly or even be lost.

Finally, as to the remaining issues involving the tracking of the statutory definition of "indirect communication" in the Regulations, and random and related audits, these issues have been exhaustively considered and debated by staff and the Committee. The final-form regulations reflect the decision of the Committee.

It seems to me that at this juncture, we are at a crossroads--we may either proceed with these Regulations that are the culmination of tremendous efforts by all concerned, or we may pull the Regulations back knowing that there will be *no* Regulations in place by the August 1, 1999 effective date. It is my view that we must go forward. Of course, no regulations are perfect, and these Regulations will need revision in the future. Nevertheless, it is my opinion that there are no substantive flaws which would warrant pulling back the Regulations.

Sincerely,



Austin M. Lee  
Lobbying Disclosure Committee Chair

cc: Honorable Daneen E. Reese  
Members, Lobbying Disclosure Committee  
Independent Regulatory Review Commission

USX Corporation  
Law Department  
600 Grant Street  
Pittsburgh, PA 15219-4776  
412 433 2967  
Fax: 412 433 2811

Bruce E. Lammel  
Attorney - Corporate

RECEIVED BY  
LEGAL DIVISION

February 26, 1999

MAR 01 1999

Regulations Committee, Acting pursuant to the Pennsylvania Lobbying  
Disclosure Act, Act 93 of 1998 (the "Act")

c/o John J. Contino  
Executive Director, State Ethics Commission  
309 Finance Building  
Harrisburg, PA 17108-1470

ORIGINAL: 1997  
BUSH  
COPIES: Sandusky  
Legal

Ladies and Gentlemen:

Please accept and consider the following comments made on behalf of USX Corporation ("USX") respecting the draft Lobbying Disclosure Regulations dated January 13, 1999 (the "Draft Regulations"):

**Comment No. 1**

**Proposal**

Allow a parent corporation to register and report pursuant to the Act for all of its subsidiaries and affiliates (both direct and indirect) as long as all such lobbying contacts and expenses are reported by such parent corporation.

**Discussion**

USX has hundreds of subsidiaries and affiliates for which USX consolidates the accounting and reporting. Because it is not practical for all of its subsidiaries and affiliates to register and report and because lobbying activities are often undertaken on behalf of several of these entities with the same contact, please allow that a parent corporation may so register and report for all of its subsidiaries and affiliates.

**Comment No. 2**

**Proposal**

Make clear in the regulations that the exemption provided by the Act (Section 1306(6)), and the Draft Regulations (Section 37.1(I)), excuses principals from reporting exempted employees as lobbyists under the quarterly reporting requirements (Section 1305(b)(1) of the Act and Section 35.1(g)(2) of the Draft Regulations).

**Discussion**

Even though we believe full-time employees, such as our Chief Executive Officer ("CEO"), would not be required to register or report under the Act (see Section 37.2(b) of the Draft Regulations and Section 1306(6) of the Act), the Draft Regulations might be construed to require USX, as a principal, to report our



CEO, assuming the circumstances outlined in the following paragraph apply, as a lobbyist in its filing pursuant to Section 35.1(g)(2).

For example, USX Corporation's 1998 Annual Proxy Statement reports our CEO's 1997 salary and bonus<sup>1</sup> to be \$2,401,250. Assuming a 2,000 hour work-year, such executive's compensation rate would equate to approximately \$1,200 per hour. If *de minimis* compensation is intended to mean amounts less than \$2,500 per quarter, our CEO might be considered to be a lobbyist (for the principal's reporting purposes) under the Draft Regulations if he contacted one or more covered officials for about two hours in any quarter or spoke at one two-hour plus meeting in any quarter, which meeting indirectly advocated a change to legislation or administrative rules or urged USX employees or stockholders to support or oppose a political issue. This appears to be a rather harsh result and, particularly in the case of indirect lobbying activity, makes compliance for a large corporation difficult as any number of USX's executives might trip the *de minimis* compensation threshold.

The intent of the Act, as stated in Section 1302, demands that the identity of those "employed to influence" government be publicly and regularly disclosed. USX does employ lobbyists to influence the actions of the General Assembly and the Executive Department and those individuals are properly the target of Section 1305(b)(1) of the Act. However, USX employs many executives and other employees to run its businesses and, while these individuals may find themselves lobbying from time to time, as that term is broadly defined in the Act, we do not believe such individuals were intended to be the target of Section 1305(b)(1).

We submit that the exemption provided by the Act (Section 1306(6)), and the Draft Regulations (Section 37.1(l)), excuses principals from reporting exempted employees as lobbyists under the quarterly reporting requirements (Section 1305(b)(1) of the Act and Section 35.1(g)(2) of the Draft Regulations) and ask that the regulations make this point clear.

### **Comment No. 3**

#### **Proposal**

Make the quarterly reporting periods end on a calendar quarter.

#### **Discussion**

Most companies close their books on a calendar quarter basis and requiring companies to report periods other than those already calculated places an unnecessary burden on such companies. In the alternative, please allow (1) that companies may use their most recently closed calendar quarter as a proxy

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<sup>1</sup> We realize that the regulations require compensation to include benefits as well as salary and bonus; however, the inclusion of benefit numbers here would only underline the point being illustrated.



for the period to be reported or (2) that companies may report the most recently closed calendar quarter in place of the period to be reported.

**Comment No. 4**

**Proposal**

Exempt publicly held companies from the reporting requirements of Section 35.1(g)(1) or define the term "resources" in this Section so that USX is not required to report its shareholders (already of public record for interests exceeding five percent), its lenders/bondholders or its customers.

**Discussion**

We expect that the intent of this Section is to require the reporting of foreign interests contributing money for lobbying in Pennsylvania. Further, we expect this may be a greater concern with respect to privately held companies and wholly owned subsidiaries where the ownership interest may not be understood. Public companies, on the other hand, already disclose (or their shareholders are required to disclose) much of this information.

If USX would enter into a private placement of its debt or a public offering of its stock, we do not believe this type of information would be relevant to Pennsylvania lobbying activity, particularly, with respect to a stock offering, if, after such offering, no one shareholder would own more than 20 percent of USX's common stock. Further, USX, being publicly held, only knows the holders of its stock if they are registered directly or if they report as required pursuant to Sections 13(d) or 13(g) of the Securities Exchange Act of 1934 which require shareholders to report interests in publicly held companies exceeding five percent.

We do not believe publicly held companies should have to comply with Section 35.1(g)(1) because (a) in order to comply with respect to shareholder information, such companies would have to rely on information which is already public and is not necessarily otherwise known to them and (b) we do not see how other information with respect to "resources" would be relevant in light of the fact that, no matter how resources are obtained, USX owes its primary duty to its shareholders. Again, because large shareholders are already known to the public, we do not believe this section should be aimed at public companies.

**Comment No. 5**

**Proposal**

Limit the quarterly reporting requirement pursuant to Section 35.1(g)(2) to read as follows:



(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted, so that if a lobbyist is a firm, association, corporation, partnership, business trust, or business entity, its name (if it engages in lobbying on behalf of others, who are not affiliates) and the name(s) of the individual(s) who lobby on behalf of the principal shall be included.

*(Underlined language added.)*

**Discussion**

The added language is intended to clarify that USX, for example, would not report itself as a lobbyist unless it lobbied on behalf of others who were not affiliates of USX. We would argue that any lobbying by USX on its own behalf does not make it a lobbyist; rather, such activity only fulfills USX's obligation/duty to its shareholders.

We appreciate the opportunity to comment on the Draft Regulations. I am available to discuss these, or any other, changes to these regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce E. Lammel'. The signature is fluid and cursive.

Bruce E. Lammel  
Attorney - Corporate

Date: May 5, 1999

From: Vincent J. Dopko,  
Chief Counsel, State Ethics Commission

93 MAY -5 PM 4: 19

INDEPENDENT REGULATORY  
REVIEW COMMISSION

To: Participants, Meetings among Staff of  
Senate Rules and Executive Nominations Committee,  
House Judiciary Committee, and IRRC

ORIGINAL: 1997  
BUSH  
Original Copies to:  
Nyce  
Wyatte ✓  
Sandusky

Re: Charts and Revisions as to Possible Resolutions of  
Comments on Lobbying Disclosure Regulations

Enclosed please find the possible revisions to the published proposed Regs, reflecting our discussions from 4/5/99-4/8/99 as to the comments on the Lobbying Disclosure Regulations.

Also enclosed are corrective pages for the Charts which you received on April 30, 1999, as follows:

1. Chart #3--Public comments following publication in PA Bulletin--

Pg. 2: Correcting final block to make it work with IRRC changes, Chart #6, page 10.

Pg. 6: Correcting final block as to spelling of "filing" and to be true to technical requirements for underlining and bracketing.

Pg. 9: In item 4, correcting the cited paragraph of §43.4 to be (o), not (q).

Pg. 10: At the top, underlining the word "of" and fixing the bracketing to be "[sub]section" instead of "[subsection]section."

Pg. 13: Next-to-last line, correcting the spelling of "filings."

Pg. 16: Third block--changing (I) to (i)--(the computer keeps changing those automatically).

Pg. 17: Same change as above (in second paragraph of first block) and also adding the word "other" in front of "State official or employee" in all three places, since legislators *are* within the definition of "State official or employee."

Chart #4--Comments of the House Judiciary Committee--No changes.

Chart #5--Comments of the Senate Rules and Executive Nominations Committee--

Pg. 4: First block, adding the words "the first sentence of" after "Rewrite."

Chart #6--Comments of the Independent Regulatory Review Commission--

Pg. 2: Final block--moving the bracket to be in front of "means."

Pg. 6: Final block--Technical changes to be true to the way the bracketing and underlining worked out.



Pg. 8: Final block--Correcting the spelling of "adopt."

Pg. 10: In item 2, underlining "on or before" as to (d); and, in item 5, changing "(I)" to "(i)."

Pg. 12: Final block--in first part, underlining "or lobbyist"; in new subparagraph (b), deleting "or lobbyist" and "/sign" because (c) takes care of lobbyists, and that was the way the changes were supposed to be.

Pg. 14: Final block--deleting the extra "the" in the next-to-last paragraph of Item 3.

Please review the revisions very carefully, so that at our next meeting, we can correct any errors. There were instances where, because of multiple changes in response to different commentators, the notes were difficult to reconcile.

The following are concerns that came to light as we worked on the enclosed:

1. §§33.5(g)(3) and (5)(i) and (ii) need to be changed in light of the changes to §35.1(c).
2. §§35.1(e) and (n)--In the introductory language, second sentence, (n) basically repeats (e). Was the second sentence supposed to be stricken?

Also, are any related changes needed in §33.5(h) relating to separate termination reports?

3. We fixed a few "typos" in the Pa. Bulletin, as follows:
  - A. §37.1(11)--The word "which" in the second line was supposed to be "where."
  - B. §43.5(a)--We added the word "inquiries" after the word, "preliminary."
  - C. §§43.6(c)(5) and 45.2(b)(14)(iv)--We added the words "Office of" in front of "Attorney General."
  - D. §45.1(b)--We added the words, "both of" in front of "the following" to show that both conditions must be met.

The SEC staff is ready to meet with you. From speaking with a few of you already, it is apparent that Monday, May 10, 1999 is the first date which may be available for our meeting. Please check your schedules, and we will be in touch to confirm that date and to set a time.

Annex A

TITLE 51. PUBLIC OFFICERS

PART II. LOBBYING DISCLOSURE COMMITTEE

CHAPTER 31. GENERAL PROVISIONS

- Sec.
- 31.1. Definitions.
  - 31.2. Ethics Act regulations in Part I.
  - 31.3. Filing deadlines to fall on Commonwealth working days.
  - 31.4. Registration periods and reporting periods.
  - 31.5. Delinquency.
  - 31.6. Deficiency.
  - 31.7. Biennial review of exemption threshold and reporting threshold.
  - 31.8. Forms, records and Commission publications.
  - 31.9. Amended filings.
  - 31.10. Filings to be originals signed under oath or affirmation.
  - 31.11. Electronic filing.
  - 31.12. Faxed filings.
  - 31.13. Enforcement of Commission orders.
  - 31.14. [Severability clause] Parents and subsidiaries.

§ 31.1. Definitions.

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

*Act*-The Lobbying Disclosure Act, 65 Pa.C.S. Chapter 13.

*Administrative action*-The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy as defined in 1 Pa. Code §1.4; or approval or rejection of a regulation.

(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

(iii) The Governor's approval or veto of legislation.

(iv) The nomination or appointment of an individual as an officer or employe of the Commonwealth.

(v) The proposal, consideration, promulgation or rescission of an executive order.

*Affiliated political action committee*-A "political action committee" as defined in section 1621(1) of the Election Code (25 P. S. § 3241), which has a chairperson, a treasurer or another officer who is a principal, an employe of a principal, a lobbyist or an employe of a lobbyist. If an employe of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

*Agency*-A State agency, board, commission, authority or department.

*Anything of value*-

(i) [The term includes, by necessity, the terms "thing of value" and "things of value."] For the limited purpose of reporting gifts, transportation, lodging or hospitality under section 1304 or 1305 of the act (relating to registration; and reporting), or under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests), these terms mean anything of any nature whatsoever which is not or would not ordinarily be obtainable in the marketplace without consideration, including, but not limited to:

(A) A pecuniary or negotiable item such as money; a bank bill or note; a stock, bond, note or other investment interest in an entity; a promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money.

(B) A discount or rebate not extended to the public generally.

(C) A conveyance, or a contract, agreement, promise, or other obligation for a conveyance.

(D) A deposit, distribution, payment, pledge, or transfer of money, or a contract, agreement, promise or other obligation for these.

(E) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan.

(F) A forgiveness of indebtedness, or a contract, agreement, promise or other obligation for a forgiveness of indebtedness.

(G) Personalty or an interest in personalty, such as works of art, antiques or collectibles.

(H) Real property or an interest in real property.

(I) A service not extended free of charge to the general public.

(J) The use of real property, personal property or services belonging to other persons or entities.

(K) Entertainment and recreation not extended free of charge to the general public, or the payment of fees or charges incident thereto.

(M) A complimentary ticket/pass, or the purchase of a ticket/pass, to an event such as a reception, rally, fund-raiser, sporting event, theater, opera, concert, exhibition, or the like.

(N) Food, beverage or lodging.

(O) Rewards or prizes from any contest, event or drawing not open to the general public.

(P) An automobile or other means of transportation not extended free of charge to the general public.

(ii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.

(iii) For the purpose of reporting the amount of gifts, transportation, lodging and hospitality, see § 35.1(k) (relating to quarterly expense reports).

Association—An "association" as defined in the Associations Code in 15 Pa.C.S. § 102 (relating to definitions). The term includes a corporation, a partnership, a

limited liability company, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general).

*Audit*-A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping[, and reporting[, training and other areas relating to lobbying activities].

*Candidate's political committee*-A "candidate's political committee" as defined in the Election Code. The words "candidate's political committee" mean any political committee formed on behalf of a specified candidate and authorized by the candidate.

*Child*-The term includes adopted and biological children.

*Commission*-The State Ethics Commission of the Commonwealth.

*Compensation*-Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

*Complaint*-A complaint on a form [promulgated]prescribed by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints under §§11.1 (Definitions, "Sworn complaint") and 21.1 of Part I (relating to State Ethics Commission).

*[Day or date*-In the absence of qualifying language such as "business" or "Commonwealth working," the term "day" or "date" shall mean a calendar day.]

*De minimis*-The term is defined as at 65 Pa.C.S. §1102.

*Docket (noun)*-The official listing of entries to the record of a matter before the Commission.

*Docket (verb)*-The initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the docket of a matter before the Commission.

*Direct communication*-An effort, whether written, oral or by another medium, made by a lobbyist or principal, directed to a State official or employe, the purpose or foreseeable effect of which is to influence legislative action or administrative action.

*Economic consideration*-Anything of value offered or received.

*Effort to influence legislative action or administrative action*-An effort to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action. [The term as used in the act does not apply to the provision of purely technical data to a State official or employe or to a legislative or administrative body, at his, her or its request.] The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employe made within the scope of such office or employment.

*Election Code*-25 P. S. §§ 2600-4051.

*Employe*-

[(i)] For the limited purpose of determining exemption under section 1306(6) of the act, the term [means an individual who is in the service of another individual or entity, when the individual or entity for whom services are performed has the following:

(A) The right to control or direct the individual who performs the services.

(B) The right to discharge the individual providing services.

(ii) Other factors characteristic of an employer-employee relationship, but not necessary in every case, are:

(A) The controlling of the hours of employment.

(B) The furnishing of equipment and a place to work to the individual who performs the services.

(C) The furnishing of benefits to the individual who performs the services, which benefits are provided to others considered to be employes of the individual or entity for which the services are provided.

(D) The withholding of taxes from compensation paid to the individual who performs the services.

(iii) In determining exemption under section 1306(6) of the act, the term "employee" does not include independent contractors] "Employee" means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

*Engaging a lobbyist*-Engaging means making an arrangement, and "engagement" means an arrangement, whereby a lobbyist is employed or otherwise hired or retained to lobby on behalf of a principal for economic consideration.

*[Engaging in lobbying*-Performing an act which constitutes lobbying as defined by the act and this part.]

*Ethics Act*-The Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101-1113.

*Fax-Facsimile Transmission.*

*Filed*-Registration statements, reports, and other official statements or papers are filed on the date they are physically received at the Commission office whether filed electronically or delivered by United States mail, express carrier, hand delivery or by fax. See § 31.12 (relating to faxed filings) for additional requirements when filing by fax.

*Fund*-The Lobbying Disclosure Fund established in section 1310(b) of the act (relating to filing fees; fund established; regulations).

*Gift*-Anything which is received without consideration of equal or greater value.

(i) The term does not include a political contribution which is otherwise reported as required by law or a commercially reasonable loan made in the ordinary course of business.

(ii) For the purpose of categorizing a reportable item under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act, the term does not include "transportation and lodging or hospitality received in connection with public office or employment" as defined in this section, which is otherwise reported as required by law.

(iii) The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment.

(iv) The term does not include information received by a legislator or other state official or employee within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein.

Hospitality-Hospitality includes:

(i) Meals.

(ii) Beverages.

(iii) Recreation and entertainment.

(iv) Hospitality composed of promotional items, certificates, mementos or tokens, which are of a de minimis economic value. For purposes of reporting under section 1305 of the act, promotional items, certificates, mementos or tokens, which are of a de minimis economic value need not be reported under section 1305(b)(3) of the act, but shall be included in the appropriate totals reported under section 1305(b)(2) of the act.

*Immediate family*-An individual's spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law or sister-in-law.

*Indirect communication*-An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. The term includes, but is not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

*Investigative Division*-The Investigative Division of the Commission.

*Intentional*-The term has the meaning set forth in 18 Pa.C.S. §302(b).

*Legislation*-Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives. The term includes any other matter which may become the subject of action by either chamber of the General Assembly.

*Legislative action*-An action taken by a State official or employe involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation; legislative motions; overriding or sustaining a veto by the Governor; or confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.

*Lobbying*-An effort to influence legislative action or administrative action. The term includes the following:

(i) Providing any gift, entertainment, meal, transportation or lodging to a State official or employe for the purpose of advancing the interest of the lobbyist or principal.

(ii) Direct or indirect communication.

**Lobbyist**-An individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney who engages in lobbying. The term does not include an individual who receives economic consideration which is de minimis. Membership in an association [does not in and of itself operate] alone is not sufficient to make an association member a lobbyist.

**Negligence [t conduct]**-Conduct, whether of action or omission, which violates or fails to comply with the act, and which is occasioned by a failure to exercise such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of [section 1304, 1305 or 1307 of] the act [(relating to prohibited activities)], and is characterized by inadvertence, thoughtlessness, inattention, or the like. [Negligent conduct is to be distinguished from willful, wanton or reckless conduct, which would fall within the ambit of intentional conduct.]

**Negligent failure to register or report**-A negligent failure to register or report as required by the act is occasioned by a failure to exercise care such as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of section 1304 or 1305 of the act, and is characterized by inadvertence, thoughtlessness, inattention, or the like. A negligent failure to register or report is to be distinguished from a willful, wanton or reckless failure, which would fall within the ambit of intent. See, §§ 31.5 and 31.6 (relating to delinquency; and deficiency).

**Negligent violation**-A negligent violation of the act is one occasioned by or accompanied with negligent conduct.]

**Principal-**

(i) An individual, firm, association, corporation, partnership, business trust or business entity on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or that engages in lobbying on the principal's own behalf.

(ii) Membership in an association [does not in and of itself operate] alone is not sufficient to make an association member a principal.

**Registrant**-A registered lobbyist or a registered principal.

**Regulatory Review Act**-71 P. S. §§ 745.1-745.14.

**Regulation**-Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute administered by or relating to the agency, or prescribing the practice or procedure before the agency.

**Respondent**-The subject of an audit, complaint, notice of noncompliance, investigation or formal proceeding before the Commission.

**Service (of official papers)**-Official papers are deemed served by the Commission, or by a Division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand delivered or transmitted by fax.

**Staff**-The Executive Director, the Chief Counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

**State official or employe**-An individual elected or appointed to a position in State Government or employed by State Government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

*Transportation and lodging or hospitality received in connection with public office or employment*—Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employe or State official or employe as those terms are defined under the Ethics Act or the act, respectively. [Hospitality includes:

(i) Meals.

(ii) Beverages.

(iii) Recreation and entertainment.

(iv) Hospitality composed of promotional items, certificates, mementos or tokens, which are of a de minimis economic value. For purposes of reporting under section 1305 of the act, promotional items, certificates, mementos or tokens, which are of a de minimis economic value need not be reported under section 1305(b)(3) of the act, but shall be included in the appropriate totals reported under section 1305(b)(2) of the act.]

[*Travel expenses*—For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), travel expenses are defined as reasonable expenses for transportation, meals, beverages and lodging.]

#### **§ 31.2. Ethics Act regulations in Part I.**

[(a) When a comparable process relating to advices, opinions, investigations or other procedure is involved, Part I (relating to State Ethics Commission) will be followed to the extent it is applicable.

(b) To the extent sections of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) are superseded by Part I, they are likewise superseded by this part.]

[(c)a] The definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment" in § 31.1 (relating to definitions) apply to administration of the act and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

[(d)b] Section 35.1(k) (relating to quarterly expense reports) applies to reporting the amount of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act (relating to registration; and reporting) or under section 1105(b)(6) or (7) of the Ethics Act.

#### **§ 31.3. Filing deadlines to fall on Commonwealth working days.**

When the deadline for filing a registration statement, report, answer, brief or other official paper with the Commission falls on a weekend or holiday, or on another day that Commission offices are closed or close early, the deadline for the filing shall be extended to the following Commonwealth working day.

#### **§ 31.4. Registration periods and reporting periods.**

(a) Registration under section 1304 of the act (relating to registration) shall be within biennial registration periods that coincide with the terms of the members of the House of Representatives (December 1 of each even-numbered year to November 30 of the following even-numbered year), except that the first registration period shall commence August 1, 1999, and continue through November 30, 2000.



(b) Reporting under section 1305 of the act (relating to reporting) shall be quarterly within each year of the biennial registration period, specifically, for December through February; March through May; June through August; and September through November, except that the first quarterly reporting period shall commence August 1, 1999, and shall continue through November 30, 1999.

**§ 31.5. Delinquency.**

(a) A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission [by 5 p.m.] on the date due as follows.

(1) Hard copy filings must be received by 5 p.m.

(2) Faxed or electronic filings may be filed until 11:59 p.m.

(b) A failure to timely file a registration statement constitutes a failure to register as required by the act.

(c) A failure to timely file a report constitutes a failure to report as required by the act.

(d) A delinquent registration statement or report continues to be delinquent until received in proper form as required by the act and this part.

**§ 31.6. Deficiency.**

(a) A registration statement, report or notice of termination required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

(1) It does not fully and accurately include and disclose all that is required by the act and this part.

(2) It includes a false statement.

(3) It is illegible.

(4) The filer fails to use the appropriate form prescribed by the Commission.

(5) The filer fails to date the registration statement, report or notice of termination.

(6) The filer fails to sign the registration statement, report or notice of termination under oath or affirmation as set forth in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

**§ 31.7. Biennial review of exemption threshold and reporting threshold.**

(a) On a biennial basis commencing in January 2002, the Commission will review the threshold for reporting under section 1305(d) of the act (relating to reporting) and the threshold for exemption under section 1306(3)(ii)-(iv) of the act (relating to exemption from registration and reporting), using, to the extent applicable, the procedures within §19.5 of Part I (relating to State Ethics Commission) for reviewing the threshold dollar amounts in section 1105(b) of the Ethics Act (relating to statement of financial interests).

(b) The Commission may increase the exemption threshold and reporting threshold amounts to rates deemed reasonable for assuring appropriate disclosure. Changes to the thresholds made under this section will become effective as determined by the Commission.

(c) The Commission will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2002, and every 2 years thereafter, as necessary.

**§ 31.8. Forms, records and Commission publications.**

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports or separate termination reports under the act may be obtained by contacting the Commission at: State Ethics Commission, Post Office Box 11470, Harrisburg, Pennsylvania 17108-1470, (717) 783-1610 or (800) 932-0936, or by visiting any Commission office during business hours on Commonwealth working days. Forms are also available at the Commission's web address: <http://www.ethics.state.pa.us>

(b) Additional sheets of equal size may be attached to any hard copy form filed under the act, if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports and separate termination reports filed with the Commission shall remain on file for 4 years and shall be available for public inspection at the office of the Commission in Harrisburg, Pennsylvania during business hours on Commonwealth working days. The Commission will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost.

(d) Payments to the Commission for charges under subsection (c) shall be deposited into the Fund established by section 1310(b) of the act (relating to filing fees; fund established; regulations).

(e) Under section 1308 of the act (relating to administration and enforcement), the Commission will prepare and publish the following:

(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which shall identify affiliated political action committees and lobbyists.

(3) An annual listing of lobbyists, which shall identify affiliated political action committees and principals.

(4) A biennial directory of all registered lobbyists, which shall include photographs.

(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

(ii) Copies of the directory will be made available to the public at a price not to exceed the actual cost of production.

(iii) Revenue received by the Commission from sales of this directory will be deposited into the Fund established by section 1310(b) of the act.

(5) One or all of the items in paragraphs (1)-(3) may, at the discretion of the Commission, be supplemented or be combined in a single publication or combined with the annual report prepared and published by the Commission under the Ethics Act.

**§ 31.9. Amended filings.**

(a) Filings under the act may be amended.

(b) [The filer of an amended form shall check the appropriate block on the form to indicate that it is an amended form] Amended registration statements shall conform to the additional requirements detailed in §33.4 (relating to amended registration statements).

(c) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

[(d) Registration statements may be amended and shall conform to the additional requirements detailed in § 33.4 (relating to amended registration statements).]

**§ 31.10. Filings to be originals signed under oath or affirmation.**

(a) Registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports, separate termination reports and amendments to these forms filed with the Commission shall be signed originals bearing the signature of the filer. See, §§ 31.11 and 31.12 (relating to electronic filing; and faxed filings) for requirements when filing electronically or by fax.

(1) A document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink.

(2) A principal who is an individual shall sign his own filings.

(3) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(4) A lobbyist who is an individual shall sign his own filings.

(5) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(6) The signature shall appear on the line indicated on the form as [promulgated]prescribed by the Commission.

(b) Registration statements, notices of termination and amendments to these filed under the act shall include an affirmation subject to [penalty under] 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities) that the information provided

therein is true and correct to the best of the filer's knowledge, information and belief.

(c) Quarterly expense reports, separate quarterly expense reports, termination reports, separate termination reports and amendments to these, filed under the act, shall be filed under oath or affirmation.

(d) A lobbyist who signs a principal's quarterly expense report, termination report or amendment to these, shall do so under an affirmation subject to [penalty under] 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report or amendment to these, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to [penalty under] 18 Pa.C.S. § 4904 that the information provided in the Statement is true and correct to the best of the lobbyist's knowledge, information and belief.

#### **§ 31.11. Electronic filing.**

(a) Electronic filing shall be available when notice of its availability is announced in the *Pennsylvania Bulletin* by the Commission.

(b) Upon the availability of electronic filing, forms that are required to be filed under the act may be filed electronically. The use of a digital signature assigned by the Commission shall have the same force and effect as a manual signature upon acceptance by the filer. The digital signature assigned shall be: unique to the person to whom it is assigned; capable of verification; under the sole control and authority of the person to whom it is assigned; and linked to the data in a manner so that if the data are changed, the digital signature is invalidated.

(1) A digital signature shall be assigned to a lobbyist or principal that submits to the Commission, in proper form as required by this section, an application to file electronically.

(2) The application to file electronically shall be on a form prescribed by the Commission.

(3) In submitting an application to file electronically, the applicant shall agree to all of the following:

(i) For any registration statement, notice of termination or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under affirmation as set forth in § 31.10(b) (relating to filings to be originals signed under oath or affirmation).

(ii) For any quarterly expense report, separate quarterly expense report, termination report, separate termination report or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under oath or affirmation as set forth in § 31.10(c).

(iii) The use of the digital signature assigned to the applicant to "sign" a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(d).

(iv) The use of the digital signature assigned to the applicant to attach a statement to a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(e).

(4) An application to file electronically may be rejected if the application is illegible, incomplete or unsigned.

(c) A registration statement or amendment that is submitted to the Commission electronically is filed on the date the Commission receives the document electronically if the Commission receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter.

(1) If the Commission does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the document electronically, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

#### **§ 31.12. Faxed filings.**

(a) A registration statement or amendment sent by fax is filed on the date the Commission receives the faxed copy if the Commission receives the signed original, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter. A registration statement or amendment shall be deemed to be a signed original if it is filed electronically under § 31.11 (relating to electronic filing) or if it bears an original manual signature in ink.

(1) If the Commission does not receive the signed original, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the faxed copy, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

(b) A quarterly expense report, separate quarterly expense report, lobbyist's statement of limitations of knowledge, notice of termination, termination report, separate termination report or amendment to these sent by fax transmission is filed on the date the Commission receives the faxed copy if the Commission receives the signed original within 5 business days thereafter. The document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink. If the Commission does not receive the signed original within 5 business days from the date of receiving the faxed copy, the document is filed on the date the Commission receives the signed original.

#### **§ 31.13. Enforcement of Commission orders.**

The Commission through its staff may take appropriate action to enforce its orders.

#### **§ 31.14. ~~[Severability clause]~~Parents and subsidiaries.**

(a) ~~[General rule. Generally, the provisions of this part are severable. Subject to the exception in subsection (b), if any provision of this part is held invalid, or if the application of a provision of this part to a person or circumstance is held invalid, the invalidity will not affect other provisions or applications of this part which can be given effect without the invalid provision or application]~~Subject to the requirements of subparagraph (b), a corporation and its subsidiaries may register and

report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.

(b) [Exception. If the act becomes void as a whole, this part shall be void as a whole]Where registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly expense reports, notices of termination, termination reports, and separate termination reports shall disclose with particularity all of the required information as to the parent and the subsidiaries.

#### CHAPTER 33. REGISTRATION AND TERMINATION

Sec.  
33.1. Biennial filing fee.  
33.2. Principal registration.  
33.3. Lobbyist registration.  
33.4. Amended registration statements.  
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##### § 33.1. Biennial filing fee.

(a) Under section 1310(a) of the act (relating to filing fees; fund established; regulations), a principal or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Commission.

(1) The biennial filing fee shall be tendered to the Commission with the filing of the principal's or lobbyist's first registration statement in each registration period.

(2) The biennial filing fee shall be a flat fee for the registration period in which paid. In no event shall a registrant be required to pay more than one biennial filing fee in any given biennial registration period.

(3) A separate biennial filing fee shall be paid for each principal or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the fee. A principal also acting as a lobbyist shall pay no more than one fee in a registration period.

(4) The biennial filing fee is nonrefundable and nontransferrable.

(5) Filing fees shall expire at the end of each registration period, regardless of when paid.

(b) The failure to pay a biennial filing fee as required by the act and this section shall constitute a failure to register as required by the act.

(c) Money received from biennial filing fees shall be deposited in the Fund established by section 1310(b) of the act.

##### § 33.2. Principal registration.

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a principal shall register with the Commission within 10 days of acting in any capacity as a principal.

(1) Engaging a lobbyist for lobbying purposes constitutes acting in the capacity of a principal.

(2) Lobbying by a principal on the principal's own behalf constitutes acting [both] in the capacity of a principal [and in the capacity of a lobbyist].

(i) [Unless exempt under section 1306 of the act, a] A principal that [so] is required to register and that engages in lobbying on its own behalf [shall] need only register with the Commission [both] as a principal [and as a lobbyist].

(ii) Unless exempt under section 1306 of the act, members or employes of a principal who engage in lobbying on behalf of the principal shall register as lobbyists with the Commission under § 33.3 (relating to lobbyist registration).

(b) A principal shall register by filing a registration statement with the Commission, on a form [promulgated] prescribed by the Commission, which shall disclose the following information:

(1) The name, permanent address, daytime telephone number, and name and nature of business of the principal.

(2) The name, registration number and acronyms of "affiliated political action committees" as defined in section 1303 of the act (relating to definitions), as to the principal or the principal's employes, or both.

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf, whether as an individual or as a member, employe, or agent of a firm, association, corporation, partnership, business trust or business entity.

(4) If the principal is an organization or association, the number of its dues-paying members in the past calendar year.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the street address and, if different, the mailing address. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the principal's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the principal has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and sections 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) A principal will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(g) Unless terminated, [E]ach registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The principal shall file new registration statements after that date, to the extent the principal is required to be registered under the act and this section.

### § 33.3. Lobbyist registration.

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Commission within 10 days of acting in any capacity as a lobbyist.

(1) Accepting an engagement to lobby constitutes acting in the capacity of a lobbyist.

(2) Engaging in lobbying constitutes acting in the capacity of a lobbyist.

(3) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist, it and each of its members or employees that engage in lobbying on behalf of the principal shall register with the Commission, unless exempt under section 1306 of the act.

(b) A lobbyist shall register by filing a "registration statement" with the Commission on a form [promulgated]prescribed by the Commission which shall include and disclose the following information:

(1) The name, permanent business address and daytime telephone number of the lobbyist.

(2) A passport-sized (approximately 2 inches x 2 inches) photograph of the lobbyist which photograph shall be of reasonable clarity and shall have been taken within 2 years of the date of registration, except that if the lobbyist is not an individual, a photograph is not required.

(3) The name, permanent business address and daytime telephone number of the principal the lobbyist represents.

(4) The name, registration number and acronyms of "affiliated political action committees," as defined in section 1303 of the act (relating to definitions) as to the lobbyist or the lobbyist's employees, or both.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the street address and, if different, the mailing address. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the lobbyist's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the lobbyist has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) Lobbyists required to be registered under the act shall file a separate registration statement for each principal represented.

(g) A lobbyist will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(h) Unless terminated, [E]ach registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The lobbyist shall file new registration statements after that date, to the extent the lobbyist is required to be registered under the act and this section.

#### § 33.4. Amended registration statements.

(a) A principal required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Commission within 14 days after the change occurs, except that if the change is solely as to the number of dues-paying members in the



past calendar year, the amended registration statement shall be filed with the Commission within 14 days of the end of the year in which the change occurs.

(b) A lobbyist required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the lobbyist's registration statement.

(1) The amended registration statement shall be filed with the Commission within 14 days after the change occurs.

(2) A change to the identity or name of the principal represented shall require a new registration statement.

(c) The filing of amended registration statements shall be subject to the additional requirements detailed in § 31.9 (relating to amended filings).

### § 33.5. Termination.

(a) A lobbyist or a principal may terminate registration by filing a completed notice of termination with the Commission.

(1) The notice of termination shall be on a form prescribed by the Commission.

(2) A lobbyist may file notices of termination solely as to registration statements which the lobbyist has filed.

(3) A principal may file notices of termination solely as to registration statements which the principal has filed.

(b) A separate notice of termination shall be required for each registration statement.

(c) A notice of termination shall identify the applicable registration statement by the date filed, the name and address of the principal, and the names and addresses of the lobbyists.

(d) A notice of termination may be amended, but cannot be withdrawn.

(e) A registration statement cannot be revived or otherwise made effective after a notice of termination as to the registration statement has been filed.

(f) No lobbying may occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Commission and which, at the time of the lobbying, has not been terminated.

(g) A lobbyist or principal filing a notice of termination shall, within 30 days thereafter, file a termination report with the Commission.

(1) Termination reports shall be filed on the quarterly expense report form [promulgated] prescribed by the Commission. The filer shall check the appropriate block on the form to indicate that it is a termination report.

(2) A termination report shall identify the applicable notice of termination by the date filed, the name and address of the principal, and the names and addresses of the lobbyists.

(3) For purposes of determining whether the reporting threshold has been met, expenses shall be accounted for in the period in which incurred, regardless of when paid.

(4) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are \$500 or less, the termination report may substantively be limited to a statement to that effect, by checking the appropriate block on the form.

(5) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are in excess of \$500, a termination report by the principal shall include all information required by section 1305(b)(1)-(3), (5) and (7) of the act (relating to reporting), and a termination report by a lobbyist shall include all information required by section 1305(b)(2) and (3) of the act, through the final day of lobbying activity.

(i) Compensation, costs and expenses shall be accounted for in the period in which earned or incurred, regardless of when paid.

(ii) An item previously reported as earned or incurred need not be reported again when actual payments are made.

(6) The filer of the termination report shall give written notice to each public official or employe of the public official's or employe's inclusion in the termination report within 7 days of the submission of the termination report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(h) A lobbyist required to be registered under the act shall sign the termination reports and amended termination reports submitted by the principal represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge.

(1) A lobbyist may attach a statement to the report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall describe the limitations and the reasons for the limitations with specificity.

(i) A lobbyist required to be registered under the act shall file a separate termination report or a separate amended termination report if, during the period covered by the principal's termination report or amended termination report, the lobbyist engaged in lobbying on behalf of the principal which was not contained in the report.

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) The lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(2) The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed.

(3) Separate reports shall be filed on a form [promulgated]prescribed by the Commission.

(4) A separate termination report or separate amended termination report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate termination report or separate amended termination report shall include all information required by section 1305(b) (2), (3) and (7) of the act.

(6) A separate termination report or separate amended termination report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate termination report or separate amended termination report shall promptly serve it upon the principal.

(8) A lobbyist filing a separate termination report or separate amended termination report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b) (6) and (7) of the Ethics Act.

(j) In the event the principal is unable to secure the signature of the lobbyist as to a termination report or amended termination report, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature.

(k) After a reasonable review of the termination report, the Commission will issue to the lobbyist or principal who filed the notice of termination a letter stating that the registrant has terminated registration. The letter shall be issued within 90 days after the Commission's receipt of the notice of termination except that the filing of a defective or delinquent termination report shall automatically and correspondingly extend the Commission's deadline for issuing the letter.

[[k]] The filing of a notice of termination or a termination report, or the issuance of a Commission letter stating that the registrant has terminated registration, does not affect the Commission's authority to conduct audits, investigations, hearings or other proceedings under the act and this part.

## CHAPTER 35. REPORTING

Sec.

35.1. Quarterly expense reports.

35.2. Records maintenance, retention and availability.

### § 35.1. Quarterly expense reports.

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, exceed \$500 in a quarterly reporting period.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, are \$500 or less, a statement to that effect shall be filed with the Commission by checking the appropriate block on the quarterly expense report form.

(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under sections 1304 and 1305 of the act (relating to registration; and reporting), [compensation, costs and expenses shall be accounted for in the period in which earned or incurred, regardless of when paid. An item previously reported as earned or incurred need not be reported again when actual payments are

made] books and records shall be kept on the same basis the registrant uses for federal tax purposes, and for those registrants who do not file tax returns, on a cash basis.

(d) [The duty to file a quarterly expense report or statement of failure to meet the reporting threshold is preliminarily placed upon the registered principal.] The [deadline for a] principal [to] shall file a quarterly expense report or statement of failure to meet the reporting threshold [shall be] on or before the 30th day after the quarterly reporting period ends.

(e) Pursuant to subparagraph (n), [A] a lobbyist required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if the principal fails to file in accordance with subparagraph (d) or if, during the reporting period, the lobbyist engaged in lobbying which was not contained in the report filed by the principal represented by the lobbyist. The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed or due.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists and amendments to these shall be filed on forms [promulgated] prescribed by the Commission. [Those required to report shall make a good faith effort to include each reportable item in the appropriate category.]

(g) A quarterly expense report of a principal required to be registered under the act shall include the following information:

(1) The name, permanent business address and daytime telephone number of any individual, firm, association, corporation, partnership, business trust or business entity which contributed more than 10% of the total resources received by the principal during the reporting period, although "total resources" shall not include the purchase, transfer, or ownership of stock in a publicly held corporation.

(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted[,], [so that i] If a lobbyist is a firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included.

(3) The general subject matter or issue being lobbied, which shall be indicated by checking the appropriate block on the form or completing the category designated "other." The following need not be reported:

(i) A [correlation as to] listing indicating which lobbyists are lobbying on which matters [or issues is not required].

(ii) [With regard to legislative action,] The specific bill numbers [are not required to be included] for which the lobbying is being done.

(iii) [Except as provided by the act or this part, t] The specific contents of any [particular] communication[,], or the identity of those with whom the communications take place[,], need not be reported]. The requirements for reporting do not include privileged communications, such as those between attorney and client or doctor and patient.

(4) A single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, to be calculated as prescribed by subsection (i).

(5) A single aggregate good faith estimate of the total amount spent for direct communication. In calculating this good faith estimate, any reasonable accounting method may be used.

(6) The total costs for gifts, entertainment, meals, transportation, lodging and receptions, given to or provided to State officials or employees or their immediate families.

(7) A single aggregate good faith estimate of the total amount spent for indirect communication. In calculating this good faith estimate, any reasonable accounting method may be used.

(8) The information required to be disclosed by section 1305(b)(3) of the act, as detailed by subsections (j) and (k).

(h) A registered principal or registered lobbyist that attempts to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(4)-(7).

(i) The single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying shall include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

(1) In calculating the single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, any reasonable accounting method may be used.

(2) Reportable personnel costs include costs for lobbying staff, research and monitoring staff, consultants, lawyers, lobbyists, publications and public relations staff, and technical staff, as well as clerical and administrative support staff who engage in lobbying but who are exempt from reporting under section 1306(6) of the act (relating to exemption from registration and reporting).

(3) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying.

(4) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a good faith prorated estimate based on the value of the time devoted to lobbying. The time devoted to lobbying shall include:

(i) Research time spent in preparation for lobbying.

(ii) Time spent in direct communication or indirect communication [as defined by the act].

(iii) Other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed.

(5) [Reportable costs for o]Office[s] expenses[, equipment and supplies] shall include, but not be limited to: the rental value of the physical facilities of an office during the period of time used for lobbying, together with additional charges for utilities, telephone usage, fax, insurance, services, furnishings, computers, printers, systems, copiers, fax machines, office supplies, postage and other costs related to the physical facilities and operation of an office during the period of time used for lobbying.

(j) A quarterly expense report shall also identify, by name, position and each occurrence, the State officials or employees, or both, who received from a principal or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per calendar year.

(2) The reporting of the provision of a gift to a State official or employe shall identify:

(i) The name and position of the State official or employe.

(ii) The name and address of the source of the gift.

(iii) The amount of the gift.

(iv) The circumstances of the gift, including the nature of the gift.

(3) The reporting of the provision of transportation/lodging/hospitality to a State official or employe in connection with public office or employment shall identify the following:

(i) The name and position of the State official or employe.

(ii) The name and address of the source of the payment.

(iii) The [amount of the payment]value of the transportation, lodging or hospitality.

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act:

(1) Gifts and hospitality items that are returned unused to the donor within 30 days of the date of receipt need not be reported.

(2) The valuation of a complimentary ticket to a fundraiser shall be based upon the reasonable amount of the goods or services received by the donee.

(3) The value of gifts, transportation, lodging or hospitality shall equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality shall equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality, but shall include a detailed explanation of the specific method used.

(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.

(1) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b) (6) and (7) of the Ethics Act.

(m) A lobbyist required to be registered under the act shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge. In the event the principal is unable to secure the signature of the lobbyist, the principal shall attach an affidavit to such report, setting forth the attempts made and the reasons for the inability to obtain the lobbyist's signature.

(1) A lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall be on a form prescribed by the Commission and shall describe the limitations and the reasons for the limitations with specificity.

(n) Where a lobbyist is required to file a separate report pursuant to subparagraph (e), the following shall apply. A lobbyist required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if, during the period covered by the principal's quarterly expense report or amended quarterly expense report, the lobbyist engaged in lobbying which was not contained in the report.

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) All lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be under oath or affirmation).

(2) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the date the principal's related report was filed.

(3) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form [promulgated] prescribed by the Commission.

(4) A separate quarterly expense report or separate amended quarterly expense report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate quarterly expense report or separate amended quarterly expense report shall include all information required by section 1305(b) (2), (3) and (7) of the act.

(6) A separate quarterly expense report or separate amended quarterly expense report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall promptly serve it upon the principal.

(8) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each public official or employe

of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

**§ 35.2. Records maintenance, retention and availability.**

(a) A registrant shall maintain records of all lobbying activity.

(1) The Commission may [promulgate]prescribe standardized forms for the records, in which case the forms [promulgated]prescribed by the Commission may be used by all principals and lobbyists required to be registered under the act.

(2) Records of lobbying activity shall be maintained in sufficient detail to enable the registrant to fully comply with the act and this part.

(3) The records shall identify the general subject matter or issue being lobbied. [Except as provided by the act or this part, t]The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity. A registrant may keep records related to registering and reporting under the act separate from other records relating to lobbying.

(1) Records which integrate both lobbying and non-lobbying activities shall be retained and made available for inspection or audit under this section and Chapter 41 (relating to compliance audits).

(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method, but the method used shall be described in detail in the records maintained as to the expenditure.

(c) A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under section 1304 or 1305 of the act (relating to registration; and reporting) for 4 years from the date of filing of the subject report.

(1) The documents shall include, but not be limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars, and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form.

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the Commission or [the] Office of Attorney General to access in readable form all of the [recorded] information reasonably necessary to substantiate the registration statements or reports. [Passwords or other privacy/security measures shall be memorialized and maintained to enable the Commission or the Office of Attorney General to fully access, identify and use them.]

(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit shall be as complete and detailed as is reasonably



possible, and shall include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry, or other written or electronic form of record to document the expenditure, which record shall include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures shall reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

(2) The date of the transaction.

(3) The dates and forms of payments.

(4) The full name and official position of each State official or employe who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.

(5) The number of immediate family members of a State official or employe, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 1305(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 1305(b)(5) of the act shall reflect for each reportable item, the following information:

(1) The full names of the donor and donee.

(2) The amount or value and date of the contribution.

(3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.

(4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General or the Commission, all documents reasonably necessary to substantiate reports made under section 1305 of the act shall be made available for inspection and copying within 30 days.

(1) Either the Office of Attorney General or the Commission may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

(2) [For c]Computerized/electronic records[, the information required to access the recorded information, such as any passwords or other privacy/security measures,] shall be provided [together with the records]in readable form.

## CHAPTER 37. EXEMPTION FROM REGISTRATION AND REPORTING

Sec.

37.1. Qualifications for exemption.

37.2. Exempt status.

### § 37.1. Qualifications for exemption.

The following individuals and activities shall be exempt from registration under section 1304 of the act (relating to registration) and reporting under section 1305 of the act (relating to reporting):

- (1) An individual whose lobbying activities are limited to preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding.
- (2) An individual who is an employe of an entity engaged in the business of publishing, broadcasting or televising while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.
- (3) An individual who does not receive any compensation for lobbying, other than travel expenses. For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), the term "travel expenses" means reasonable expenses for transportation, meals, beverages and lodging.
- (4) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.
- (5) An individual who engages in lobbying on behalf of the individual's employer when the lobbying activity represents less than the equivalent of \$2,500 of the employe's time during any reporting period, based on an hourly proration of the employe's compensation.
- (6) A principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.
- (7) An elected State officer acting in an official capacity.
- (8) A State executive officer appointed by the Governor acting in an official capacity.
- (9) An elected or appointed official or employe of a political subdivision acting in an official capacity.
- (10) An employe of the Commonwealth or an employe or official of an independent agency of the Commonwealth acting in an official capacity.
- (11) An individual representing a bona fide church of which the individual is a member [which] where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.
- (12) An employe, who is not a registered lobbyist, of a corporation which is registered as a principal under section 1304 of the act; has one or more registered lobbyists; and includes in its reports under section 1305 of the act all of the employe's expenses related to lobbying. [The failure of the registered principal to include the employe's lobbying-related expenses in its reports under section 1305 of the act will cause the employe to lose the employe's exempt status unless the employe is otherwise exempt under this section.]

**§ 37.2. Exempt status.**

[(a)] As long as a principal or lobbyist qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the principal or lobbyist is not required to register or report under the act, even if total lobbying expenses for a quarterly reporting period exceed \$500.

[(1)a] Upon losing exempt status, a principal or lobbyist is immediately subject to the registration and reporting requirements of the act.

[(2)b] A principal is not required to retroactively file reports for quarterly reporting periods prior to the loss of exempt status.

[(b) As long as a lobbyist qualifies for exemption under section 1306 of the act, the lobbyist is not required to register or report under the act.

(1) The exemption from reporting includes exemption from filing separate quarterly expense reports or separate termination reports.

(2) The exemption from reporting includes exemption from signing reports filed by principals.

(3) Upon losing exempt status, a lobbyist is immediately subject to the registration and reporting requirements of the act.]

[(4)c] A lobbyist is not required to retroactively sign or file reports for quarterly reporting periods prior to the loss of exempt status.

**CHAPTER 39. OPINIONS AND ADVICES OF COUNSEL**

Sec.

39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.

39.2. Standing requirements.

39.3. Prospective conduct to be reviewed.

**§ 39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.**

The Commission shall provide advices of counsel and opinions in accordance with the procedures set forth in Section 1107 of the Ethics Act and Chapter 13 of Part I (relating to State Ethics Commission) [provisions relating to opinions and advices of counsel will govern to the extent applicable]. A principal, lobbyist, or State official or employee who acts in good faith based upon a written advice or opinion of the Commission issued to him shall not be held liable for a related violation of the act.

**§ 39.2. Standing requirements.**

(a) An advice or opinion may be requested by a lobbyist, principal, State official or employe, or by his authorized representative, as to his own conduct.

(b) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and [may]will not be entertained.

**§ 39.3. Prospective conduct to be reviewed.**

An advice or opinion [may]will only be issued as to prospective-future-conduct.

**CHAPTER 41. COMPLIANCE AUDITS**

- Sec.  
41.1. Lotteries.  
41.2. Number and scope of compliance audits.  
41.3. Audit procedures.  
41.4. Audit report.  
41.5. Confidentiality.

**§ 41.1. Lotteries.**

(a) Each year, the Commission will initiate, by lottery, random audits of registration statements and disclosure reports required to be filed under the act.

(b) The Commission may hold up to four lotteries per year. The number of lotteries held in a given year will be a matter within the Commission's discretion.

(c) Unless for cause, no lobbyist or principal will be subject to an audit more than once in any biennial registration period.

**§ 41.2. Number and scope of compliance audits.**

(a) The purpose of conducting the audits shall be to ensure compliance with the act [and to review methods of recordkeeping, reporting, training and other areas relating to lobbying activities].

(b) Each year, the number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings. The number of audits conducted in a given year will depend upon various factors, including the complexity, results and time required to complete the audits.

(c) An audit shall include registration statements and disclosure reports, as well as other relevant information to verify, explain, clarify, support or contravene the registration statements and disclosure reports.

(d) When the records of a principal are audited, the relevant records of any other registrant may also be examined as part of that audit.

(e) When the records of a lobbyist are audited, the relevant records of any other registrant may also be examined as part of that audit.

(f) An audit shall be limited in time to the previous 4 calendar years, except that lobbying activities performed prior to August 1, 1999, will not be audited under the act.

**§ 41.3. Audit procedures.**

The following general procedures will be employed by the Commission for audits conducted under section 1308(g) of the act (relating to administration and enforcement):

(1) At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that it was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(2) Prior to the initiation of the audit, a review of the subject's reports on file with the Commission for a period not to exceed 4 years will be conducted.

(3) The audit will be initiated by way of conference with the audit subject or in the case of a firm, the designated representative thereof.

(i) The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.

(ii) The audit may include independent verification of some or all of the information reported.

(A) The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and shall execute all waivers, releases or authorizations to allow the Commission to obtain the records.

(B) Registrants shall have an affirmative duty to cooperate fully in any audit of themselves or another registrant.

(iii) The audit may include interviews of lobbyists, principals, representatives and employes thereof and other individuals necessary to the completion of the audit.

(4) A post audit conference will be conducted with the subject of the audit, or in the case of an entity, with the designated representative thereof.

(5) Post audit preparation of a report describes the result of the audit.

#### **§ 41.4. Audit report.**

(a) The Division of the Commission that is responsible for performing compliance audits will, at the conclusion of each audit, prepare an audit report which will include findings.

(b) An audit report may include recommendations as to recordkeeping, reporting and other practices arising from the audit.

(c) Upon completion, an audit report will be served upon the principal or lobbyist that is the subject of the audit.

(1) Service of the audit report shall be complete upon mailing.

(2) Within 30 days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth the subject's position as to the audit report.

(d) Audit reports and any related responses shall be submitted to the Executive Director of the Commission for review, and may form the basis for further proceedings under the act or the Ethics Act.

#### **§ 41.5. Confidentiality.**

An audit report and findings will be confidential, except that the Commission will include the relevant portion of an audit as part of its findings of fact in a Commission order which results from an investigation arising out of an audit.

### **CHAPTER 43. INVESTIGATIONS, HEARINGS AND REFERRALS**

Sec.	
43.1.	Intentional violations.
43.2.	Commission proceedings under section 1307 of the act.
43.3.	<u>Late or deficient filings</u> -Commission proceedings under section 1304 or 1305 of the act.
43.4.	<u>Noninvestigative process for late or deficient filings.</u>
43.5.	<u>Investigative process for late or deficient filings.</u>
43.6.	<u>Civil Penalties for late or deficient filings.</u>
43.7.	<u>Commission decisions as to late or deficient filings.</u>

**§ 43.1. Intentional violations.**

(a) If the Commission after investigation believes an intentional violation of the act has been committed, it will refer all relevant documents and other information to the Office of Attorney General.

(b) Under section 1309(b) of the act (relating to penalties) and § 43.[3(c)(16)]4(p) (relating to Commission proceedings under section 1304 or 1305 of the act), if the Commission finds that a failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

(c) Nothing contained in the act or regulations promulgated thereunder shall prohibit the Office of Attorney General from initiating an investigation or prosecution under the act pursuant to its authority by law, and the Office of Attorney General need not await a referral from the Commission before initiating such an investigation or prosecution.

**§ 43.2. Commission proceedings under section 1307 of the act.**

(a) Upon receipt of a complaint as defined in this Part, the Commission, through its Executive Director, will conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act (relating to prohibited activities).

(b) Upon the own motion of the Executive Director of the Commission, the Commission, through its Executive Director, may conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act.

(c) Preliminary inquiries will be conducted [under] in accordance with the procedures for preliminary inquiries set forth within §21.3 of Part I (relating to State Ethics Commission), to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1307 of the act by a lobbyist or principal, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in §§21.1-21.3, 21.5, and 21.21-21.27 of Part I.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(2) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(e) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1307 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, the related provisions in §§21.28-21.30 of Part I.

(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

**§ 43.3. Late or deficient filings-Commission proceedings under section 1304 or 1305 of the act.**

(a) Commission proceedings under section 1304 or 1305 of the act (relating to registration; and reporting) may be initiated based upon one or more of the following:

(1) Receipt of a complaint.

(2) An audit or related audit conducted by the Commission under Chapter 41 (relating to compliance audits).

(3) Reviews of filings conducted by Commission staff.

[(4) Information received that does not satisfy the criteria for a formal complaint.]

(5) The own motion of the Executive Director of the Commission, which may be based upon information received, including but not limited to, audits or related audits conducted under Chapter 41.

(b) The Commission, through its Executive Director, will initiate proceedings involving section 1304 or 1305 of the act under either the noninvestigative procedures set forth in [subsection (c)]\$43.4 or under the investigative procedures in [subsection (d)]\$43.5.

(1) In each case, the Executive Director of the Commission will elect which process will be followed, which election may be based upon factors, including but not limited to, the following:

(i) The complexity of the matter.

(ii) Whether an investigation is needed to fully review the matter.

(iii) Whether the filer has had prior notice of the requirements of the act.

(iv) Whether the filer has in the past complied with the act.

(2) The election of the process to be followed will not be controlled by the manner in which the alleged negligent violation or noncompliance comes to the attention of the Commission.

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a report containing a false statement, the Commission through its Executive Director may elect to proceed in the matter under the noninvestigative procedures of [subsection (c)]\$43.4 rather than through the investigative procedures of [subsection (d)]\$43.5.

(i) A complainant will be notified of the Executive Director's election of the process to be followed.

(ii) A complainant will also be notified of the final resolution of the matter.

(4) Information received [informally or from an audit or related audit conducted under Chapter 41]under subsection (a) may form the basis for proceedings under either the noninvestigative procedures of [subsection (c)]\$43.4, or, upon the own motion of the Executive Director, the investigative procedures of [subsection (d)]\$43.5.

[(c)]\$43.4. Noninvestigative process for late or deficient filings.

The noninvestigative process for matters under section 1304 or 1305 of the act will include the following procedures:

[[1]a] The Executive Director of the Commission will issue a notice of noncompliance to the lobbyist, principal or individual that has failed to register or report as required by the act. A notice of noncompliance may encompass multiple failures to comply with the act.

[[2]b] The notice of noncompliance will state the nature of the alleged noncompliance and the civil and criminal penalties for failing to register, failing to file a report

or filing a report containing a false statement. A notice of noncompliance will also advise of the right to a hearing before the Commission and the time and manner in which to request a hearing.

[[3]g) The notice recipient shall have 20 days from the mailing date of the notice of noncompliance in which to cure the noncompliance. If the noncompliance is not cured within that time, the Investigative Division may file with the Commission a petition for civil penalties, which petition shall be served upon the respondent by the Investigative Division.

[[4]d) The petition for civil penalties shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter.

[[5]e) An answer to the petition for civil penalties shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

[[6]f) An answer to the petition for civil penalties shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

[[7]g) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition for civil penalties.

[[8]h) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition for civil penalties upon the respondent.

[[i]1) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

[[ii]2) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

[[9]1) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

[[10]j) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

[[11]k) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

[[12]1) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged, or information not within paragraph [[11]k).

[[13]m) A hearing under section 1309 of the act (relating to penalties) will be public and will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethic Commission). The Investigative Division bears the burden of proof.



[[14]n) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under §21.27 of Part I to the extent applicable.

[[15]o) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission will determine, based upon the record before it, whether the respondent was required to register or report under the act; whether the failure to register or report was negligent; and if the failure was negligent, the amount of the civil penalty to be imposed. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

[[16]p) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

[[17]q) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

[[18]r) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the procedures set forth in Part I to the extent applicable.

[[19]s) The official record of the case before the Commission will be publicly available.

[[20]t) The files of the Investigative Division will not be publicly available.

[(d)] §43.5. Investigative process for late or deficient filings.

The investigative process for matters under section 1304 or 1305 of the act (relating to registration; and reporting) shall include the following procedures.

[[1]a) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of section 1304 or 1305 of the act. Preliminary inquiries will be conducted under the procedures for preliminary inquiries in §21.3 of Part I, to the extent applicable.

[[2]b) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, the related provisions of §21.1-21.3, 21.5, and 21.21-21.27 of Part I.

[[i]1) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

[[ii]2) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

[[3]c) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions [of]in §21.28-21.30 of Part I. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

[(e)] §43.6. Civil penalties for late or deficient filings.

Following a noninvestigative process under [subsection (c)]§43.4, or an investigative process under [subsection (d)]§43.5, if the Commission finds negligent failures to

register or report as required by the act, the Commission may, upon the [majority] vote of at least four of its members present, levy one or more civil penalties as provided for in this [sub]section.

([1]a) Each negligent failure to register or report as required by the act is punishable by a civil penalty of up to \$50 per day for each day the registration statement or report is delinquent or deficient.

([2]b) A civil penalty shall be calculated from the first day the registration statement or report is delinquent or deficient, through the date a complete and accurate registration statement or report is filed or the Commission decides the matter, whichever first occurs.

([3]c) In determining whether to impose a civil penalty that is less than \$50-per-day, the Commission may consider factors including the following:

([i]1) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the delinquency, deficiency or falsehood.

([i]2) Whether the respondent has raised any justifiable excuse such as, for example, the following:

([A]i) The unavailability of records due to loss, theft or destruction through no fault of the respondent.

([B]ii) Incapacitating physical or mental illness, hospitalization, accident involvement, or death of a person required to register or report, a person whose participation is essential to the filing, or a member of the immediate family of the persons.

([iii]3) Whether the record establishes that the matter involved the first instance that the respondent was subject to the registration/reporting requirements of the act.

([iv]4) Whether Commission records indicate that the Commission has previously notified the respondent, in writing, of other delinquent, deficient, or false registration statements or reports.

([v]5) Whether proceedings have previously been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

([vi]6) Whether there are any other factors which should be considered as aggravating or mitigating factors in the case.

(d) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the act.

[(f)] §43.7. Commission decisions as to late or deficient filings.

The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

#### CHAPTER 45. PROHIBITION AGAINST LOBBYING AS A SANCTION

Sec.

45.1. Basis for prohibition against lobbying.

45.2. Procedures for imposing prohibition against lobbying.

§ 45.1. Basis for prohibition against lobbying.

(a) Under section 1309 of the act (relating to penalties), the Commission may prohibit a lobbyist or principal from lobbying for up to 5 years when the lobbyist or principal has done one or more of the following:

- (1) Intentionally failed to register or report as required by the act.
- (2) Filed a report under the act with knowledge that the report contained a false statement.
- (3) Otherwise intentionally violated the act.
- (4) Failed to comply with section 1304, 1305 or 1307 of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested.

(b) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have been notified of noncompliance when served with both of the following:

- (1) A findings report, notice of noncompliance or other form of process which meets the requirements of section 1309(a) of the act.
- (2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(c) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have failed to comply after notice of noncompliance if the respondent has not satisfied the requirements of the act within 30 days of the issuance of a Commission order or court order finding the respondent in noncompliance/violation, or within another time for compliance as specified by the order.

(d) The prohibition against lobbying will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

(1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, Chapter 21 of Part I.

(2) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible.

#### **§ 45.2. Procedures for imposing prohibition against lobbying.**

(a) Giving consideration to the factors set forth in subsection (b) (14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying.

(b) The procedures for the imposition of a prohibition against lobbying shall be as follows:

(1) The proceedings shall be initiated with the Commission through the filing of a petition by the Investigative Division, which petition shall be served upon the respondent by the Investigative Division.

(2) The petition shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the

failure to comply with a Commission order, the petition shall be docketed to the same number as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition shall be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(5) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition seeking the prohibition.

(6) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(8) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under §21.27 of Part I, to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying is to be imposed against the respondent. A prohibition against lobbying may only be imposed by a vote of at least four members of the Commission present at a meeting.

(14) In determining whether and for how long a prohibition against lobbying is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Office of Attorney General.

(v) Whether there are other factors which should be considered as aggravating or mitigating factors in the case.

(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the [related provisions of] procedures set forth in Part I, to the extent applicable.

(17) The official record of the case before the Commission will be publicly available.

(18) The files of the Investigative Division will not be publicly available.

(c) In the event that a lobbyist or principal is convicted in a criminal proceeding for a violation of the act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be res judicata, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§43.3(e)]	It should be specified that a civil penalty by the Commission does not preclude a criminal prosecution.	Adopt. In §43.3(e), which is to be relabelled §43.6, add as follows: " <u>(d) The imposition of a civil penalty by the Commission shall not preclude a criminal prosecution for intentional violation of the Act.</u> "
		Chapter 45	Regs should specify what action will be taken by the Commission in the event that a lobbyist/principal is convicted in criminal proceedings - suggest a conviction would have a <i>res judicata</i> effect whereby the Commission should simply determine the appropriate period, if any, that lobbying would be prohibited.	Adopt. In §45.2 add as follows: " <u>(c) In the event that a lobbyist or principal is convicted in a criminal proceeding for a violation of the Act for which the penalty of prohibition of lobbying may be imposed, such conviction shall be res judicata, and the Commission's determination shall be limited to the amount of time, if any, that the lobbyist or principal shall be prohibited from lobbying.</u> "
2/25/99	Franklin L. Kury, Reed Smith Shaw & McClay	§31.1, definition of "indirect communications"	Add "the term does not include communications between attorneys and their clients."	Modify, and adopt the following change. In §35.1(g)(3)(iii), add the following as a new final sentence: " <u>The requirements for reporting do not include privileged communications, such as those between attorney and client or doctor and patient.</u> "
		§35.1(g)(3)(iii) and §35.2(a)(3)	Delete the phrase, "Except as provided by the Act or these regulations."	Modify, and adopt the following changes. The first sentence of §35.1(g)(3)(iii) shall be changed as follows: "[Except as provided by the act or this part, t] <u>The specific contents of any [ particular] communication[,], or the identity of those with whom the communications take place[, need not be reported].</u> " See, related changes on Chart #6 at 10, Item 5. The second sentence of §35.2(a)(3) shall be changed as follows: "[Except as provided by the act or this part, t] <u>The specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded or maintained.</u> "

Chart #3

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§43.3	<p>1. Regs should allow for the Commission to resolve a situation informally where possible.</p> <p>2. Complaints may be filed publicly with no gag order on talking to the press. The Commission should not allow itself to be used as a political pawn by any special interest. Add a prohibition on parties with regard to commenting on the matter, at least until concluded.</p> <p>3. Add a penalty for filing a complaint with malicious intent.</p>	<p>1. Do not adopt any change. The Regs already include one such process in Chapter 43.</p> <p>2. Do not adopt. The Regs may not expand upon the statutory requirements as to confidentiality.</p> <p>3. Do not adopt. The Regs may not expand upon the statute by legislating such a penalty.</p>
		Chapter 45	<p>1. State clearly that the burden of proof rests with the Commission to establish wrongdoing.</p> <p>2. There should be a "clear preponderance of evidence" before prohibition is imposed.</p> <p>3. Does a lobbyist/principal found guilty of wrongdoing have more recourse than to request reconsideration?</p>	<p>1. Do not adopt any change. The burden of proof is already upon the Commission.</p> <p>2. Do not adopt. (See other comments below, proposing the even higher standard of clear and convincing evidence.</p> <p>3. No change has been proposed and no change need be adopted. Any recourse is as provided by law.</p>
3/1/99	Bruce E. Lammel, Esq., USX Corporation	[Chapters 33, 35]	Allow a parent corporation to register and report for all of its direct and indirect subsidiaries and affiliates as long as all such lobbying contacts and expenses are reported by such parent corporation.	<p>Adopt the following change. As noted in a later comment (see, Chart #6), it is recommended that the existing §31.14 (relating to severability clause) be deleted in its entirety. In its place, put a new §31.14, designated "Parents and subsidiaries" providing:</p> <p><u>(a) Subject to the requirements of subparagraph (b), a corporation and its subsidiaries may register and report under the act on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.</u></p> <p><u>(b) Where registration and reporting is on a consolidated basis, the registration statements, quarterly expense reports, separate quarterly</u></p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
			<p>2. The idea of a non-investigative process is "horrifying and offensive." Propose: rewrite the Regs to have only an investigative process.</p> <p>3. The Commission may have no actual evidence, only "informal information," but may still send official correspondence in the form of a "notice of noncompliance" indicating that the registrant is in violation.</p> <p>4. The Commission must then prove his/her guilt, but the standard of proof is not specified.</p> <p>Proposed solution: Chapters 41 and 43 should be rewritten to parallel Chapter 21 of Title 51 of the Pa. Code.</p>	<p>2. Do not adopt. The non-investigative process is based upon §1309 of the act. It provides an opportunity for a registrant to "fix" a problem before more formal proceedings are instituted. Matters which are not "fixed" proceed under a process which satisfies due process requirements, with the Investigative Division bearing the burden of proving any violation.</p> <p>3. Do not make any changes. The term "notice of noncompliance" is directly from the statute. See, §1309(a) of the act.</p> <p>4. Adopt the following changes.</p> <p>In §43.2, add the following as a new subparagraph: "<u>(f) At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p> <p>In what was §43.3(c)(15)--to be renumbered to be §43.4(o) pursuant to an IRRC comment (see, Chart #6)--add the following sentence at the end: "<u>At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p> <p>In what was §43.3(d)(3)--to be renumbered to be §43.5(c) pursuant to an IRRC comment (see, Chart #6)--add the following sentence at the end: "<u>At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.</u>"</p>



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
				<p>In what was §43.3(e)--to be renumbered to be §43.6 pursuant to an IRRC comment (see, Chart #6)--change the wording at the end as follows: ". . . the Commission may, upon the [majority] vote of <u>at least four of its members present</u>, levy one or more civil penalties as provided for in this [sub]section."</p> <p>In §45.2(b)(13), add on the following sentence at the end: "<u>A prohibition against lobbying may only be imposed by a vote of at least four members of the Commission present at a meeting.</u>"</p>
		[No cite: there is no Wrongful Use of Act provision in the Act, so there is none in the Regs]	Unlike the Ethics Act process, lobbyists and principals are not given the right to ask the Commission to investigate frivolous/harassing complaints.	Do not adopt any changes. The Regs may not expand upon the statute by legislating a "wrongful use of act" provision.
		Throughout the Regs	Wherever the Regs refer to following the Ethics Act, remove the qualifier, "to the extent possible."	Do not adopt. The qualifier is necessary due to some language within the Ethics Act Regulations that would apply to the Ethics Act but not the Lobbying Disclosure Act.
		§§31.8(e)(1), 35.2	"Lobbying activity" should be defined.	Do not adopt. Because the term "lobbying" is defined, the term "lobbying activity" need not be.
		§§31.5, 31.6	"Delinquency" and "deficiency" need to be more clearly defined, or use the term "noncompliance."	Do not adopt. The meaning of the terms is clear. The Regs use both terms to clarify ways in which noncompliance may result.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§33.5	<p>1. The section is too complex and should be rewritten to more closely mirror the Act's simple language and requirements.</p> <p>2. Subparagraph (h) should not require the lobbyist to sign the principal's termination report.</p> <p>3. Subparagraphs (d) and (e) say the same thing, and shouldn't say what they say at all. It should be possible to withdraw or cancel a termination statement that has not yet been approved by the Commission.</p>	<p>1. Do not adopt. <u>See</u>, this Chart at 4, first block, as to fourth comment of Vince Phillips, Phillips Associates.</p> <p>2. Do not adopt as stated because the act itself requires such (<u>see</u>, §1305(b)(4) of the act). However, the problem of what to do when the required signature is not available is dealt with as to a comment by IRRC (<u>see</u>, Chart #6).</p> <p>3. Do not adopt. The Regs follow the act, which provides: (1) that a registration may be terminated <i>by filing the notice</i> (such that the termination is complete upon such filing), and (2) that "No lobbying may occur after the filing of notice <i>unless</i> the lobbying is pursuant to a <i>separate registration statement which is filed with the commission and which, at the time of the lobbying, has not been terminated.</i>" 65 Pa.C.S. §1304(e) (Emphasis added). To satisfy the above statutory requirements, notices of termination may not be withdrawn, and their related registration statements may not be revived or otherwise made effective again.</p> <p>However, to accommodate the possible need for filings after normal business hours, make the following changes in §31.5(a): "A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission [by 5 p.m.] on the date due <u>as follows</u>.</p> <p><u>(1) Hard copy filings must be received by 5 p.m.</u></p> <p><u>(2) Faxed or electronic filings may be filed until 11:59 p.m.</u></p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		§35.2(b)(1)	The Commission lacks statutory authority to require that non-lobbying records be retained for inspection or audit.	Do not adopt. The Regs provide that a registrant may keep records of all lobbying activity separate from records of non-lobbying activity, but if the registrant chooses to integrate the records, such may not defeat the statute's authorization for gaining access to the records of the lobbying activity.
3/2/99	Raymond P. Pepe, Esquire	[§31.1, definition of "Effort to influence legislative action or administrative action"; or, alternatively, §37.1(3)]	Modify the term "effort to influence legislative or administrative action" so as not to apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, clarify the exemption of §1306(3)(i) so that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.	Do not adopt any changes. The proposed changes could alter statutory provisions. Moreover, the apparent concern is without basis in the act. The concern seems to be whether a lawyer who, in the course of giving professional advice to his client, counsels that client to seek legislative change, is, as a result of that advice, a "lobbyist." Under such a scenario, if there were any principal, it would be the client himself. The lawyer's communications to his own client would not make the lawyer a lobbyist, because the statutory definition of "lobbyist" does not apply to "lobbying" the principal himself.
		§31.1, definitions	To clarify the meaning of the term "administrative action," define the terms "statement of policy" and "guideline" as applying only to documents published as final or for comment in the <i>Pennsylvania Bulletin</i> and the <i>Pennsylvania Code</i> . This would provide an objective test and would be consistent with regulations adopted by the Joint Documents Committee.	Adopt the following change. In §31.1, in the definition of "Administrative action," subparagraph (i), after the words, "statement of policy" insert " <u>as defined in 1 Pa. Code §1.4</u> " in front of the semi-colon.
3/2/99	Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives	[§31.4]	The timetable for filing quarterly expense reports should commence on January 1, rather than December 1, so that lobbyists/principals will file their quarterly expense reports for Dec. before the FIS's of incumbents running for re-election are due.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible resolution of Comment
		[§31.1, definitions of "Gift" and "Effort to influence legislative action or administrative action; §35.1]	It should be made clear that constituent services are not to be regarded as reportable items or gifts.	<p>Adopt. Make the following changes.</p> <p>In the definition of "Anything of value," insert the following after subparagraph (i)(P) as the new subparagraph (ii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p> <p>Renummer the remaining paragraph to be (iii) instead of (ii).</p> <p>In the definition of "Effort to influence legislative action or administrative action," insert the following as the new final sentence: <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p> <p>In the definition of "Gift," insert the following after subparagraph (ii) as the new subparagraph (iii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p>
		[§35.1(k)]	The regulation for calculating gifts/hospitality/travel benefits should be revised to protect a Member against an unfair and inaccurate equal proration of imputed benefits.	
		[§41.1(c)]	Delete the provision for "for-cause" audits.	

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§39.3 (Prospective conduct to be reviewed)	<p>In §39.3, clarify that questions may be brought to the Commission at any time and that such questions may deal with topics related to past conduct, although the advice or opinion from the Commission may only be relevant to future conduct.</p>	<p>Do not adopt. However, adopt the following changes.</p> <p>Rewrite the first sentence of §39.1 as follows: <u>"The Commission shall provide advices of counsel and opinions in accordance with the procedures set forth in Section 1107 of the Ethics Act and Chapter 13 of Part I (relating to State Ethics Commission) [provisions relating to opinions and advices of counsel will govern to the extent applicable]."</u></p> <p>In §39.2(b), replace "may" with "will."</p> <p>In §39.3, replace "may" with "will."</p>
		<p>Also in §39.3, add language explicitly giving lobbyists and principals the right to request a special hearing before the Commission to appeal advice which has been received from Commission counsel, mirroring the current practice of the Commission under the Ethics Act regulations.</p>	<p>The concern is alleviated by the changes in the block immediately above.</p>
	§41.1(c)	<p>Eliminate the phrase, "unless for cause" and insert "random" before the word "audit." The intent of this clause appears to be to protect lobbyists and principals from the possibility of more than one random audit in a given registration period. Clarifying that §41.1(c) deals only with random audits should remove any confusion related to what constitutes "cause." Other sections of the statute and regulations spell out the Commission's right to conduct an audit as part of an investigation.</p>	
	§41.4 (Audit Report)	<p>In §41.4, require that the Commission send the audit report via certified mail.</p>	<p>Do not adopt. Service by ordinary mail is a legally approved method.</p>

*Chart #5*

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§31.1, Definition of "Audit"	Referencing "training and other areas relating to lobbying activities" in the definition creates: (1) the erroneous impression that a certain standard for "training" is mandated under the Act; and (2) confusion as to what the Commission would be auditing with respect to "training" and what other areas related to lobbying the Commission would include. This phrase should be deleted or revised to narrow its scope.	Change the definition as follows:  <i>Audit</i> --A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping [,] <u>and</u> reporting [, training and other areas relating to lobbying activities].  <u>See, also</u> , changes to §41.2(a) at 13 of this Chart.
	§31.1, Definition of "Child"	Agree with Office of Attorney General that stepchildren should be included.	Do not adopt. <u>See</u> , Chart #3 at 1 as to related comment by OAG.
	§31.1, Definition of "Day or date"	Because the Committee intends to use the terms as they are commonly used, there is no need to define them. This definition should be deleted.	Adopt. Strike the term "Day or date" and its definition from §31.1.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	The first sentence is good. The second sentence raises questions concerning the scope and intent of the exclusion for "purely technical data." Suggest the second sentence be revised as follows: "The term does not apply to services provided to the public or the provision of information to a state official, employe, legislator, agency or legislative body at the request of a state official, employe, legislator, agency or legislative body."	Do not adopt, based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
Chart #6	§31.1, Definition of "Employee"	Suggest using the existing definition from the Tax Reform Code at 72 P.S. §7301(g) which provides a simple and familiar standard: " 'Employee' means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax."  If the proposed definition is retained, make two changes: (1) delete the phrase, "For the limited purpose of determining exemption under Section	Rewrite the definition by keeping only the first 1 ½ lines (through the comma) and adding the language proposed by IRRC, as follows:  <i>Employee</i> --[(i)] For the limited purpose of determining exemption under section 1306(6) of the act, the term [means . . . independent contractors] " <u>Employee</u> " means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§31.2 (Ethics Act Regulations in Part I)	<p>1. Subsection (a) should be deleted because opinions, advices, and investigations are addressed in Chapters 39 and 43.</p> <p>2. Subsections (c) and (d) should be deleted; they are unnecessary and redundant.</p>	<p>1. Adopt the following changes. Delete Subsections (a) and (b) from §31.2. Re-letter (c) and (d) accordingly.</p> <p>2. Do not adopt. They highlight the fact that certain provisions carry over to the Ethics Act.</p>
	§31.4 (Registration periods and reporting periods)	Although the proposed quarters have some advantages, they will impose unnecessary burdens on reporters and may also create problems as to notice to public officials/employees filing Statements of Financial Interests under the Ethics Act. Calendar year quarters should be used.	
	§§31.5 and 31.6	The Act does not use the terms "delinquent" or "deficient." Additionally, the Regulations are silent as to what the Commission will do when it receives an incomplete or inaccurate filing. §19.3 of the Ethics Act Regulations addresses late and deficient filings. To avoid confusion, these two sections should be revised or combined to parallel §19.3.	Do not adopt any changes. These Sections explain the various ways in which noncompliance may result.
	§31.9 (Amended filings)	Chapters 33 and 35 contain more detailed provisions governing amended filings. Therefore, this section is redundant, and should be deleted.	<p>Adopt the following changes.</p> <p>Delete Subsections (b) and (d).</p> <p>Keep Subsections (a) and (c) as they are.</p> <p>Make the substance of old (d) the new Subparagraph (b) as follows:</p> <p>(b) Amended registration statements shall conform to the additional requirements detailed in §33.4 (relating to amended registration statements).</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>when it receives a defective electronic filing and that the notice will list the deficiencies.</p> <p>C. Add a new subsection providing that the information related to obtaining an electronic signature will be confidential.</p>	<p>C. No changes are needed on the issue of confidentiality.</p>
	§31.12 (Faxed filings)	<p>For clarity, Subsection (b) should be reformatted using the same structure as Subsection (a) and should include a provision similar to Subsection (a)(2).</p>	<p>Do not adopt. The filings in Subsection (b) do not require the payment of a filing fee or the submission of a photograph.</p>
	§31.14 (Severability clause)	<p>Delete this Section. Paragraph (a) is unnecessary and will result in confusion. Paragraph (b) merely restates the obvious and is likewise unnecessary.</p>	<p>Adopt. Delete the existing §31.14 and replace it with a new §31.14, as set forth in Chart #3 at 6 as to the first comment of Bruce E. Lammel, Esq. USX Corporation.</p>
	§33.1	<p>Subsection (a)(3) should be revised to clarify that a lobbyist must only pay one \$100 fee regardless of the number of registrations filed.</p>	<p>Adopt the change set forth in Chart #3 at 3, third block, item 2, as to a related comment by Vince Phillips, Phillips Associates.</p>
	§33.2 (Principal registration)	<ol style="list-style-type: none"> <li>1. In Subsection (a), Paragraphs (1) and (2) essentially repeat the definition of "principal." Absent justification for their inclusion, they should be deleted.</li> <li>2. Subsections (a)(2) and (a)(2)(i) appear to be redundant and should be combined.</li> <li>3. Suggest the Committee consider adding a new subsection to allow corporations the option of doing consolidated registrations for themselves and their subsidiaries. If this suggestion is adopted, the Committee should establish a standard for a consolidated grouping, such as meeting the eligibility standards of the IRS for filing a consolidated corporate tax return. The Regulations should</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt. These paragraphs clarify "acting in any capacity as a principal." Based upon other changes made in Chart #3 at 8, as to the final comment of Bruce E. Lammel, Esq., USX Corporation, paragraph (2) clarifies that a principal that lobbies on its own behalf need not also register as a lobbyist.</li> <li>2. Do not adopt. The subparagraphs address how registration is to be done. Logically, they should be broken down. Moreover, if (i) would be combined with (2), presumably (ii) would also have to be combined, resulting in a very lengthy provision.</li> <li>3. Adopt the changes set forth in Chart #3 at 6-7 as to the first comment of Bruce E. Lammel, Esq., USX Corporation.</li> </ol>



Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>3. The second sentence of Subsection (f) is unrelated to what forms must be used and repeats the requirements contained in Subsection (g). Therefore, it should be deleted.</p> <p>4. Subsection (g)(2) is unnecessarily long. To improve its readability, a period should be placed after "conducted," and "so that," should be deleted. A new sentence should be started with "If."</p> <p>5. Subsection (g)(3) is somewhat confusing and should be revised as follows:</p> <p>... designated "other." The following shall not be reported:</p> <p>(i) A listing indicating which lobbyists are lobbying on which matters.</p> <p>(ii) The specific bill numbers for which the lobbying is being done.</p> <p>(iii) The specific contents of any communication or the identity of those with whom the communications take place.</p> <p>6. In Subsection (i)(4)(ii), the phrase "as defined by the act" is redundant and should be deleted.</p> <p>7. In Subsections (i)(3) and (4)(iii), it is not clear what is meant by "in furtherance of lobbying." Unless there is a distinction the Committee is trying to draw, the "in furtherance of" language should be deleted.</p>	<p>Subsection (d):</p> <p>(d) [The duty to file a quarterly expense report or statement of failure to meet the reporting threshold is preliminarily placed upon the registered principal.] The [deadline for a] principal [to] <u>shall</u> file a quarterly expense report or statement of failure to meet the reporting threshold [shall be] <u>on or before</u> the 30th day after the quarterly reporting period ends.</p> <p>3. Adopt. Strike the second sentence of (f).</p> <p>4. Adopt. Make the changes as follows:</p> <p>(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted[,], [so that i] If a lobbyist is a ... shall be included.</p> <p>5. Adopt the following changes to Subsection (g)(3):</p> <p>(3) The general subject matter ... designated "other." <u>The following need not be reported:</u></p> <p>(i) A [correlation as to] <u>listing indicating</u> which lobbyists are lobbying on which matters [or issues is not required].</p> <p>(ii) [With regard to legislative action,] <u>The specific bill numbers [are not required to be included] for which the lobbying is being done.</u></p> <p>(iii) [Except as provided by the act or this part, t] <u>The specific contents of any [particular] communication[,], or the identity of those with whom the communications take place [, need not be reported].</u></p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>following language should be substituted for the proposed language in Subsection (c)(4):</p> <p>(4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access all of the information reasonably necessary to substantiate the reports.</p> <p>Also, the second sentence of the proposed section is not necessary.</p> <p>Instead, a provision should be added to Chapter 41 which would require the subject of an audit to provide its computerized/electronic records in a format that could be read by the Commission or Office of Attorney General.</p>	
	§37.1 (Qualifications for exemption)	The second sentence in Subsection (12) is unnecessary, restates the obvious, may cause confusion, and is misplaced in a list of exemptions. Delete it.	Adopt. Strike the second sentence in Subsection (12).
	§37.2 (Exempt status)	This Section is unnecessarily long and repetitive. There is no need to have separate subsections for principals and lobbyists. Recommend that the word "principal" in Paragraph (a) and Subparagraphs (a)(1) and (2) be replaced with the word "registrant" and that Subparagraphs b(1)-(4) be deleted.	<p>Revise §37.2 as follows:</p> <p>[(a)] As long as a <u>principal or lobbyist</u> qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the <u>principal or lobbyist</u> is not required . . . \$500.</p> <p>[(1)a] Upon losing exempt status, a <u>principal or lobbyist</u> is immediately . . . act.</p> <p>[(2)b] A principal is not required to retroactively file</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		<p>2. It is recommended that paragraphs (d) and (e) be deleted. It is questioned whether the Commission has the statutory authority for these provisions, especially in light of the statutory authorization only for random audits and the strict controls under which investigations may be initiated. Additionally, it is the responsibility of the registrant being audited to produce sufficient records to support his filings.</p>	<p>2.</p>
	<p>§41.4 (Audit report)</p>	<p>With regard to Paragraph (b), clarification is requested as to what would be included in the reference to "other practices."</p>	<p>Do not adopt any changes.</p>
	<p>Chapter 43 (Investigations, Hearings and Referrals)</p>	<p>1. Chapter 43 should be reorganized and rewritten to parallel Chapter 21 to the maximum extent possible.</p> <p>2. §43.2 should be rewritten to encompass the informal procedures used to handle late or deficient filing of reports, and should be closely modeled after §19.3 of the Commission's Regulations.</p> <p>3. §43.3 should be rewritten to encompass Commission proceedings under Sections 1304, 1305, and 1307 of the Act. As written, it is too long and cumbersome. It is recommended that it be divided into several sections, similar to the following Chapter 21 provisions:</p> <p>Section 21.1. Complaints Section 21.2. Initiation of investigation by the Commission Section 21.3. Preliminary inquiries Section 21.5. Conduct of Investigations</p>	<p>1. <u>See</u>, changes below.</p> <p>2. Do not adopt substantive changes to the procedures. The initial draft of the Regulations <i>did</i> track the process for informal civil penalty proceedings in the Ethics Act Regs, but was changed as the result of criticisms regarding the burden of proof issue.</p> <p>3. Adopt the following changes to facilitate readability:</p> <p>Change the heading of §43.3 as follows: "<u>§43.3. Late or deficient filings</u>--Commission proceedings under section 1304 or 1305 of the act."</p> <p>Change §43.3(c) to be the new §43.4 designated as follows: "<u>§43.4. Noninvestigative process for late or deficient filings.</u>" Also, re-letter and renumber the subparagraphs under old (c) appropriately.</p> <p>Change §43.3(d) to be the new §43.5 designated as follows: "<u>§43.5. Investigative process for late or deficient filings.</u>" Also, re-letter and</p>



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March 2, 1999

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Mr. John Contino, Executive Director  
State Ethics Commission  
Regulations Committee, Acting Pursuant  
to the Pennsylvania Lobbying Disclosure Act,  
Act 93 of 1998  
309 Finance Building  
Harrisburg, Pennsylvania 17108-1470

Dear Mr. Contino:

Sunoco has reviewed the comments recently submitted by USX with respect to the draft Lobbying Disclosure Regulations dated January 13, 1999 and supports those comments. In addition, Sunoco would add the following thoughts on the draft regulations:

Sunoco does have individuals whose responsibilities include lobbying. From an administrative standpoint, it is not burdensome to account for their expenses and remuneration. There are executives in the Company whose responsibilities do not include lobbying. However, it is clear that these executives have an interest in any legislation or regulations that has an impact on their business. While their compensation does not include any time for lobbying activities, they may exercise their obligations to our shareholders and participate in the legislative or administrative process. We believe they should be able to exercise that right without concern that their activities may create a compliance problem.

Citizens, including corporations, should have the right to present facts as well as arguments for or against particular legislation or regulations. Indeed, the proposed regulations make this right clear (Section 37.1(1)). Further, Section 37.1(3) affirms that an individual, whose compensation does not include lobbying, will not have to register. However, the provisions of Section 37.1(5) of the proposed regulations make it unclear whether the expenditure of a portion of an executive's time will require registration of the executive because of the size of his or her salary. The regulations should make it clear that such an executive would be exempt under Section 37.1(3) and his or her compensation would not be reportable.

Mr. John Contino  
March 2, 1999  
Page 2

We believe the real intent of Section 37.1(5) should be to exempt a person who is a lobbyist for the Company in several jurisdictions, but does not spend more than \$2,500 of his or her time on lobbying in Pennsylvania.

We also believe that registration by a parent corporation on behalf of its subsidiary corporations would make these regulations more manageable.

We appreciate the opportunity to comment on these proposed regulations.

Very truly yours,



Jonathan C. Waller

## COMMENTS ON LOBBYING DISCLOSURE REGULATION

Submitted by: Vince Phillips, CAE  
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### Chapter 31. General Provisions.

#### 31.4. Registration periods and reporting periods.

This section sets forth periods starting with December after the end of the previous session of the General Assembly. The law uses the phrase "coincident with the terms of the members of the House of Representatives" (1304 [A]). Even though the old session ends on November 30, the new session does not officially begin until January. As such the two-year term of the new session could be considered as beginning in January with reporting periods of March, June, September, and of course December. In addition, there is a desire to have the reporting cycle to go with the ebb and flow of lobbying activity. December is a month to take care of unfinished business with the old session. Why not allow lobbyists the chance to close out their books rather than mixing December's old business with that connected with the new session?

### Chapter 33. Registration and Termination.

#### 33.1. Biennial filing fee.

There are several issues connected with the filing fee. First, philosophically, although appreciating that the Commission's hands are tied, i.e. this is a legal mandate, the charging of a \$100 filing fee may be considered as an infringement by charging for the freedom to express a viewpoint on an issue.

More pragmatically, the language is unclear in (3) as to what fees a lobbyist must pay. Clearly, each principal must pay a fee if it lobbies or contracts a lobbyist. Each lobbyist must also pay a fee. What is unclear is whether or not a principal only pays one fee, regardless of the number of lobbyists it employs. Similarly, a contract lobbyist representing several clients pays what? \$100 or \$100 for each client? I have run this paragraph past two attorneys, each of which interprets the regulation differently.

The simplest approach is to say categorically that a lobbyist pays \$100 fee regardless of the number of clients. A principal pays \$100 regardless of the number of lobbyists employed. The \$100 should be regarded as similar to a licensing fee. For insurance agents, receiving or renewing a Certificate of Qualification (which enables them to sell insurance) costs \$36.00 for two years. An agent can represent one company or fifty, but still pays \$36.00 for the license.

Under insurance law, agents must be appointed by a company to legally represent it. The insurer pays the Commonwealth an \$18 appointment fee every two years. The agent's \$36.00 enables him or her to sell for ("lobby") for an unlimited number of insurers ("principals"). The license fee is for the function of selling insurance. Under the lobbying law, the rationale should be the same. Paying \$100 and registering gives a person a license to formally lobby. He or she should not have to double-pay for what is the same authorization.

Perhaps this is what the Commission meant, but there is a lack of certainty out there now in the regulated community.

There is also duplicative cost in charging \$100 for the lobbyist to register (John Doe) and another \$100 to register as the principal for whom he or she lobbies (John Doe Associates). It is redundant. Please consider adding a sentence that payment of \$100 by a lobbyist shall constitute payment for the principal if he or she is the owner of that concern. It is understood through 33.2 (b) that a lobbying by a principal on its own behalf means that it is acting as both principal and lobbyist. Charging the owner of the principal twice should be reviewed.

### 33.2. Principal registration.

(4) requires that the principal list the number of dues-paying members in compliance with Section 1304 (B)(2). Since membership categories may vary within an association and numbers of members may fluctuate within a year, literal compliance may give the Commission more information than it needs. Please insert the word 'approximate' before numbers.

### 33.5. Termination.

My reaction was that this process appears more complex than it needs to be. Again, there is a philosophic freedom of speech issue where a person who does not want to lobby anymore must do all this paperwork just to stop his or her advocacy.

Still, given the law's mandate for a termination process, please consider the following possible language.

(a) A lobbyist or principal may terminate registration by notifying the Commission in writing that lobbying will cease on a particular date. The communication must include all principals being lobbied for and all lobbyists being utilized.

(b) The Commission will confirm receipt of this communication and write back reminding the lobbyist or principal that all reports need to be current by the date of the next due quarterly filing report and that, whether registered or not, the lobbyist and principal must understand their legal responsibilities to retain records, be subject to potential auditing, etc.

The Commission might make the best use of staff resources by letting the system manage itself as much as possible instead of a complex, burdensome system, which makes egress from lobbying an involved process.

## Chapter 35. Reporting.

The all-inclusive nature of the reporting requirements may be subsumed in the phrase 'single aggregate good-faith estimate' but the need to document specific costs may not be overlooked in the Commission's audits. That is the reporting nightmare in the infamous subsection 'eye' of the law. Lobbyists felt that technical violations would be flagged by the audit and they would be punished. In order to counteract this fear of the Ethics Commission, the regulation should insert the word 'approximate' wherever feasible. ...approximate portion of the equipment, utilities, etc.

The purpose of reporting is to report workably so that the net effect with audits is not paranoia but an understanding that the Commission is not seeking nit-picking violations but rather is seeking wholesale compliance.

## Chapter 37. Exemption From Registration and Reporting

### 37.2 Exempt status.

(Also possible reference to 33.1 Biennial filing fee.)

If a purpose of this law is to identify who lobbies (as well as how lobbying resources are spent), there may be a loophole where lobbyists under the threshold will want to register to gain legal recognition, yet will not because of the \$200 cost involved (\$100 for them and \$100 for the principal). Perhaps the regulation could allow this registration and provide an exempt ion from the fee. Once my association was a day late in filing papers with the Secretary of Senate. When it went into a legislator's office, the staffperson said, 'Why should I see you? You are not registered.' A smaller lobbying effort should not run the risk of exclusion because it was too small to appear. For them, the \$100 might be a significant barrier.

They might also be exempted from the reporting requirements since they don't hit the threshold, but at least they are in the system.

## Chapter 39. Opinions and Advices of Counsel.

In subsection 39.2 (b), third-party requests are considered unauthorized. The intent was probably to maximize the efficiency of Commission staff as well as proving to be a bar against frivolous or antagonistic attacks against a lobbyist/principal. Although not opposing the above, one wonders if there may ever be a third party request of the Commission which needs clarification. Let us suppose that the uncharted area is some facet of electronic lobbying. If the media asks if a particular practice is reported properly, what will the Commission say? Will the answer from the press officer be equated to valid advice and counsel, or will the press officer say that the Commission cannot answer the question because it has not been formally asked by a lobbyist/principal for him or herself. I am not advocating a specific recommendation but suggest that the Commission at least look at this issue.



Missing in the regulation is acknowledgement of Section 1308. Administration and Enforcement. (C) Advice and Opinions., which assures that opinions may be requested of the Commission by a lobbyist, principal, or state official/employee and that the lobbyist/principal who acts in good faith based on the written advice or opinion shall not be held liable for a violation.

This appears to contradict 39.3. which limits advice or opinion to prospective – future- conduct. The law makes no such distinction between current and future. Preferably, a lobbyist/principal should be able to query the Commission as to what he or she is doing and to say, “Is this right? If not, let me correct it so that I won’t get in trouble by the next report.” The limited scope of 39.3 will work against compliance, not enhance it. Another consequence may be an increase in the number of formal complaints since the regulation does not allow an outside party to get an opinion. Since they can’t determine appropriateness, they may file a complaint.

Another issue within 39.3 as a follow-up to the above paragraph is the need to clarify the right of a lobbyist/principal to request a written opinion since the section does not say that a verbal opinion is binding.

## Chapter 41. Compliance Audits

### 41.2. Number and Scope

( d) (e) General Observation Although few would quarrel with the Commission’s need for access to needed documents, the proposal does not limit the scope of the inquiry. What is to prevent the Commission from examining all of a principals’s records even if the audit applies to one lobbyist (out of many) hired to serve a specific purpose. Similarly, what would prevent the Commission from looking at all records of a lobbyist when only the records relating to a particular principal are needed. There needs to be a safety valve allowing a lobbyist or principal from being forced to open their entire operation and utilizing valuable staff resources unless a need is shown or at least permitting that the audit be placed on hold until the Commission can hear the lobbyist/ principal’s appeal.

( f) The auditing of up to four years back seems to be at odds with the rationale that audits are needed to monitor current compliance versus being an enforcement hammer. Particularly initially, since many will be unfamiliar with how the Commission wants them to comply, an audit will be seen as the heavy hand of government instead of a way to monitor the system and hopefully correct mistakes informally instead of through enforcement. An alternative would be to limit backward audits to the past year. In the event of an enforcement action, the Commission certainly has the power to examine any records deemed necessary. In addition, there does not appear to be legislative language supporting the four years. (1308. [G] Audits.)

#### 41.4. Audit Report

( 1) Service of the audit report completed via mailing does not constitute sufficient protection for the recipient. Given the gravity of an audit, the Commission should have a higher standard than simply dropping an audit report in the mail. Sending by registered mail or via overnight mail so that tracking exists is a more thorough option. This protects the Commission too in that tracking will document attempted delivery or refusal to accept the report.

Section 41.4 is silent on the recourse a lobbyist/principal has after ( c)(2) filing a statement setting forth the subject's position on the audit report. The Commission may use the audit as the basis of 'further proceedings' in (d), but the lobbyist/principal seems to have no other option but to file a reaction and know that the Commission has the final say. There may be a due process question here.

#### Chapter 43. Investigations, Hearings, and Referrals.

##### 43.3 Commission proceedings.

What is missing is the authority of the Commission to informally discuss a complaint when it appears that the violation may be technical or simply an oversight. Especially in the law's early days, there will be confusion. Inadvertent violations will occur. It should be in the best interest of all parties including the Commission to resolve a situation informally where possible. If not, stating the Commission's authority to issue a cease and desist letter or for the lobbyist to sign an agreement that he or she admits no intentional wrongdoing, but agrees with the Commission to take appropriate remedial steps.

Another criticism of this section is that complaints may be filed publicly with no gag order on talking to the press. An accused party might be tried in the media at the time (in a hot legislative issue) when his or her credibility is most important. The Commission should not allow itself to be used as a political pawn by any special interest. As such, it could adopt a prohibition on the parties for commenting at least until the Commission renders a finding of fact or refers a complaint to the Attorney General. A welcome addition to this section might be a penalty to someone who is found to have filed a complaint with malicious intent.

#### Chapter 45. Prohibition Against Lobbying as a Sanction.

Although the regulation takes great pains to provide process to the lobbyist faced with sanction and is far better than the December 1998 draft, there are still problems.

First, a person is innocent until proven guilty. The regulation should clearly state that the burden of proof rests with the Commission to demonstrate wrongdoing. An example is the consideration of verbal falsehoods uttered by the lobbyist as grounds for a prohibition on lobbying. There should be a clear preponderance of evidence rather than 'he said, she-said' before someone is stripped of their profession. While I know the Commission will take great pains to adjudicate fairly, a greater comfort level would be achieved by the above suggestion.

**Once wrongdoing has been determined by the Commission, should the lobbyist have legal recourse besides that of asking the Commission to reconsider? What recourse has he or she? Is there a standard within administrative law that governs an individual after a regulatory agency finds in guilty or does it truly have the final say?**

**Chart #4 Comments of the House Judiciary Committee**  
 (Note: Bracketed cites were not specifically referenced by commentators, but appear applicable)

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
Original: 1997 Bush cc: Sandusky Wyattte Nyce	Hon. Thomas P. Gannon, Chair, and Hon. Kevin Blaum, Democratic Chair, House Judiciary Committee		Incorporates by reference written comments from H. William DeWeese, Phillip J. Murren, and Raymond P. Pepe, which comments can be found contained in Chart #3, and from Franklin L. Kury, as set forth below (see also, Kury comments on Chart #3).	The notations as to the said comments are incorporated herein by reference as if fully set forth.
		§31.4	The proposed regulations establish timetables for the filing of quarterly expense reports that are at variance with the standard usage for this term and which are inconsistent with the clear statutory intent of the Lobbyist Disclosure Act. The quarterly reporting period should run concurrently with the calendar year, beginning in January and ending in December.	
		§31.1, definitions of "Lobbying" and "Gift"	Ambiguities in the proposed definitions of "lobbying" and "gift" could lead to an erroneous interpretation that lobbyist/principal responses to legislator inquiries on behalf of constituents is reportable on the lobbyist/principal expense report and as a gift on the public official ethics statement. The Regulations should codify legislative intent by expressly exempting from reporting the cost or value of the services of professionals and other staff involved in responding to members' inquiries on behalf of constituents. Moreover, the Regulations should also clarify that such responses to constituent inquiries do not come within the definition of "gift" or "thing of value."	Adopt the changes set forth on Chart #3 at 17, under the related comment of Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.

Original: 1997

Bush

cc: Sandusky  
 Wyattte  
 Nyce

11/11/95  
 11/11/95  
 11/11/95

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		§31.1, definition of "Effort to influence legislative action or administrative action"	The proposed Regulations should be modified to assure that legislative and constituent related information provided by a lobbyist/principal to a legislator, at the latter's request or insistence, does not come within the definition of an effort to influence legislative or administrative action. The definition should be amended to include, "any legislative and constituent related information" rather than merely "purely technical" data.	Do not adopt based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
Clarifying Comment of 3/22/99		[§35.1(k)(6)]	<p>The Act does not give lobbyists/principals the right to prorate costs. Legislators will be falsely perceived as reaching the disclosure threshold when they have not.</p> <p><u>Suggestion:</u> The Regs should a) require or, at the very least, encourage lobbyists/principals to provide interim notification to members and to other public officials/employees that the expenditures attributable to that official are at a certain dollar level and may be approaching the reporting threshold; and b) eliminate the option of dividing the total expenditure by the number of officials.</p> <p><u>Clarification:</u> Regs should require that of the two options presented, the same accounting method be consistently applied to all officials present at a single event. Also the most appropriate and practical method should be used.</p>	
		§41.1(c)	The proposed audit procedures allow "for cause" audits but the term is devoid of any statutory basis and is inconsistent with clear legislative intent. The reference to "for cause" audits should be deleted.	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		[§43.3(a)]	The proposed Regs need to be clarified in order to assure that Commission proceedings are based upon sufficient cause. Delete category #4 since other criteria grant the Commission ample authority to conduct any and all necessary investigations. Amend category #5 to require that any investigation initiated by the executive director be based upon verified information.	As set forth in Chart #3 at 8, under the third comment of R. David Tive, Pennsylvania Association for Government Relations, adopt the following change. In §43.3(a), delete subparagraph (4) in its entirety. Issue as to subparagraph (5) is deferred.
		§43.3(e)	The proposed Regs should clarify that civil penalties for negligent failure to register or for inaccurate reporting be imposed by vote of a majority of the entire SEC membership based upon a standard of clear and convincing evidence. To promote consistency, the Ethics Act requirements regarding findings of violations by the affirmative vote of at least four members and clear and convincing proof should be included under the lobbying regulations and these standards should apply to any noncompliance proceedings which could result in penalties, as well as to investigative proceedings.	Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
		[§37.1(11)]	The proposed Regs should clarify the Regs with regard to their effect upon religious organizations.	
		[§§33.5(g); 35.1]	The reporting requirements imposed on lobbyists require subjective judgments, will be difficult to satisfy with precision, and could lead to unnecessary paperwork, inefficient	

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			<p>resource management, and perhaps even punitive enforcement.</p> <p>(A) Reporting on accrual basis as opposed to cash basis may not be consistent with the accounting practices of many principals and lobbyists.</p> <p>(B) Categories for reporting may overlap.</p> <p>(C) Some expenses and general overhead are inherently difficult to attribute between lobbying and non-lobbying activities.</p> <p>(D) Access to a registrant's computerized/electronic records should be subject to safeguards which will prevent intrusion into "information governing communications between legislators and registrants on sensitive legislative issues absent a showing of legally sufficient cause to access such information."</p> <p>If these issues exceed authority of Committee in promulgating regulations, the House Judiciary Committee would still like comments on their merit.</p>	<p>A. Adopt the changes set forth in response to a related comment from IRRC, Chart #6.</p> <p>B. Do not adopt any changes. The Regs follow the Act. Based upon the Act, there will necessarily be some overlapping of categories.</p> <p>C. Do not adopt any changes. The Regs follow the Act and afford the greatest possible latitude at §35.2(b).</p> <p>D. Adopt the changes set forth in Chart #3 at 18, as to a related comment from Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
	<p>(Franklin L. Kury, Esq., incorporated letter of March 5, 1999; see also, incorporated testimony below and comments on Chart #3 at 2)</p>	<p>[§31.1, definition of "indirect communications"; §35.1(g)(3)(iii) and §35.2(a)(3); and §37.1]</p>	<p>The Legislature and the Ethics Commission can regulate the conduct of those who lobby in their dealings with government officials, but they have no authority to regulate communications and dealings between lawyers and their clients, which is within the exclusive jurisdiction of the Supreme Court.</p>	<p>Adopt the changes set forth in Chart #3 at 2 as to related comments from this same commentator.</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	<p>Incorporated transcript of 2/25/99 hearing of House Judiciary Committee</p> <p>(R. David Tive, Pennsylvania Association for Government Relations)</p>	<p>§§31.8(e)(1), 35.2</p> <p>[§31.11]</p>	<p>Same comments as on Chart #3 at 6-9.</p> <p>On comment requesting definition of "lobbying activity," recognizes that there is no need to report the persons contacted, but does not understand what <i>is</i> to be reported.</p> <p>Expands on comment involving limiting access to registrants' digital signatures by suggesting that all employees of the SEC who have access to such signatures be required to maintain strict confidentiality.</p>	<p>The notations as to the said comments are incorporated herein by reference as if fully set forth.</p> <p>No changes are needed as to the commentator's lack of understanding as to what is to be reported.</p> <p>No changes are needed on the issue of confidentiality by SEC employees.</p>
	(Rep. Mark Cohen)	§31.1, definitions	<ol style="list-style-type: none"> <li>1. The definitions of "gift," lobbying," and "hospitality" are interrelated and should be clearly consistent when read together.</li> <li>2. The definition of hospitality should be alphabetized under "H" and not be "buried" under "transportation and lodging or hospitality received in connection with public office or employment" under "T."</li> <li>3. A. The definition of "lobbying" should exclude the words "entertainment" and "meal" and use the word "hospitality" instead.</li> </ol>	<ol style="list-style-type: none"> <li>1. This part of the comment is general and in the nature of an observation. Do not adopt any changes as to Item 1 specifically.</li> <li>2. Adopt the following changes. In the definition of "Transportation and lodging or hospitality received in connection with public office or employment," delete everything after the first sentence. Add the term "Hospitality" as a defined term in §31.1, alphabetized under "H," and define it with the wording deleted from the definition of "Transportation and lodging or hospitality received in connection with public office or employment," as set forth above.</li> <li>3. A. Do not adopt. The Regs follow the statutory definition.</li> </ol>



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			<p>B. Additionally, the definition of "lobbying" should be amended to include: "an effort to influence legislative action or administrative action by one who personally meets or otherwise engages in conversation with one or more legislative or administrative employees in a reporting period." This would eliminate large numbers of support personnel from the reporting requirements and make the information received more relevant to the public.</p> <p>4. The definition of "gift" is too broad, and could be read to include constituent services, testimony before a committee, the text of a bill enacted in another state, the results of a public opinion poll, or the text of a study. The definition of "gift" should be modified to include: "anything which is received for the personal and nongovernmental use of the recipient without consideration of equal or greater value."</p> <p>5. A. The term "effort to influence legislative action or administrative action" should be merged with the definition of "lobbying."</p> <p>B. Additionally, the second sentence of the definition pertaining to the provision of "purely technical data" is puzzling, serves no apparent purpose, and should be deleted.</p>	<p>3. B. Do not adopt. The Regs follow the statutory definition.</p> <p>4. Adopt the following change. In the definition of "gift" in §31.1, add the following as a new subparagraph at the end:</p> <p><u>(iv) The term does not include information received by a legislator or other state official or employee within the scope of such office or employment, except to the extent that such has a fair market value beyond the actual information contained therein.</u></p> <p>5. A. Do not adopt. The definition of "lobbying" is statutory, and the Regs follow that definition.</p> <p>5. B. Adopt the changes as set forth in Chart #3 at 11, as to a related comment of R. David Tive, Pennsylvania Association for Government Relations.</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			6. Although the definition of "indirect communication" is statutory, the term "regularly published" should be deleted from the last sentence, or the definition should be "severely modified" through regulation. The SEC should not be investigating publishing schedules. Furthermore, periodic newsletters primarily designed for and distributed to members of organizations should be deleted from the definition.	6. Do not adopt. The definition of "indirect communication" is statutory, and the Regs follow that definition.
		§35.1(g)(6)	This Section pertaining to quarterly expense reports should exclude the words "entertainment," "meals," and "receptions" and use the word "hospitality" instead.	Do not adopt. This provision tracks Section 1305(b)(2)(iii) of the Act.
		§35.1(j)	Section lacks clarity. Relevant portion should read: ". . . anything of value which, due to the cumulative amount for the current calendar year, must be included."	Do not adopt. The language tracks the Act. There is no lack of clarity in light of subparagraph (1).
		§35.1(j)(1)	Remove ambiguity by inserting the word "calendar" in front of the word "year."	Adopt. Make the change as follows: "For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per <u>calendar</u> year."
		[§§35.1(j)(2),(3)]; §35.1(k)(6)(ii)	1. Lobbyists should not be given the option of accumulating and attributing values of certain gifts, transportation, meals, and hospitality to one individual when more than one individual benefits from them.	1. Do not adopt. Although the concern is noted, the Regs as proposed should be adequate to resolve it.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			<p>2. Although presumed purpose of allowing the cost of a meal for multiple persons to be divided by the number of persons is reasonable, surplus wording in §35.1(k)(6)(ii) allows the argument that a dinner for ten could be attributed to the leader of the group.</p> <p>Suggests that §35.1(k)(6)(ii) be clarified by striking all language after the word "recipients" on line 2, or alternatively, placing such language in a separate sentence.</p>	<p>2. Do not adopt. Although the concern is noted, the Regs as proposed should be adequate to resolve it.</p>
		§31.4	<p>The reporting dates for lobbyists should be consistent with the reporting dates for public officials, to avoid disparities between statements of financial interests and quarterly expense reports. Quarterly expense reports should be filed based upon calendar year quarters.</p>	
		§§43.3(b),(c)	<p>If there are to be any proceedings conducted without investigations, the circumstances for such proceedings should be clearly and narrowly defined in order to avoid litigation over due process and equal protection of the laws. Absent careful delineation of the circumstances for noninvestigative procedures, all noninvestigative procedures should be removed from the regulations, and all actions should proceed through investigative procedures.</p>	<p>Do not adopt any changes in response to this particular comment. These same issues are raised in greater detail in other comments and should be dealt with as noted in the responses to same as set forth in Charts #3-6. (See, e.g., Chart #3 at 9 as to related comment of R. David Tive, Pennsylvania Association for Government Relations).</p>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		Cites §§41.2(c), 41.3(c), but appears to apply to §§41.2(c), (d), (e), and 41.3(3)	<ol style="list-style-type: none"> <li>1. The audit procedures need to be more tightly defined. Sweeping language as to "all other individuals necessary to the completion of the audit" and "any other relevant information" should be deleted.</li> <li>2. Any items beyond those required under §35.2 to be maintained by registrants should be narrowly targeted and clearly defined, if necessary at all.</li> <li>3. Audit interviews should be limited to those who prepare relevant documents and any other clearly and narrowly defined persons.</li> </ol>	
		[Chapter 43]	<ol style="list-style-type: none"> <li>1. Regs should make clear that Ethics Act standards under Sections 1107 and 1108 of the Ethics Act—including a formal complaint or motion of the Executive Director to initiate proceedings, full investigative process, findings report, and violations found by four members based upon clear and convincing proof-- apply to the Lobbyist Disclosure Act. To allow the punishment levied by investigative processes to be levied under noninvestigative processes will result in due process and equal protection challenges.</li> <li>2. §43.3(e) should be clarified to require four members of the seven-member SEC to find a violation by a standard of clear and convincing proof.</li> </ol>	<ol style="list-style-type: none"> <li>1. Do not adopt any changes in response to this particular comment. These same issues are raised in greater detail in other comments and should be dealt with as noted in the responses to same as set forth in Charts #3-6.</li> <li>2. Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.</li> </ol>

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			3. To avoid equal protection and due process challenges, lobbyists must be accorded the same rights as public officials. All sections dealing with investigations of lobbyists should make clear that lobbyists have the same rights as public officials.	Do not adopt any changes in response to this particular comment.
		§41.1(c)	<p>1. The language could be read as indirectly authorizing an unlimited number of undefined for-cause audits. The language should be written to say that no lobbyist or principal shall be subject to a random audit more than once in any biennial registration period.</p> <p>2. If there is a need to create a new category of for-cause audits, that need should be clearly and narrowly defined in a separate section from the lottery audits.</p>	
	(Travis J. Tu, Assistant Executive Director of the ACLU)		For many of the smaller nonprofit organizations in Pa, compliance with these regulations will be a significant burden.	Not applicable. The true target of this comment (in the nature of a general observation) is the statute.
			These Regs will unreasonably hinder access to the legislative process for grassroots and nonprofit organizations, which may choose to withhold their expertise for fear of reaching the threshold and becoming subject to the regulations, the reporting requirements, and the punishments for noncompliance.	Not applicable. The true target of this comment (in the nature of a general observation) is the statute.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
		§31.1, definitions	The definitions of "indirect communication" and "anything of value" are ambiguous. The Regs not only fail to narrow the definition of "indirect communication" provided in the statute, but they create even greater confusion by not limiting what shall be considered under the law as "anything of value." This makes nonprofit organizations vulnerable to inadvertently meeting the expenditure threshold.	Do not adopt. The definition of "indirect communication" tracks the statutory definition. The definition of "anything of value" is not ambiguous. It is not the function of Regulations to "narrow" statutory definitions. The Regulations are not a vehicle for amending the Act.
		[§35.2]	<p>1. The requirement to maintain electronic records in a manner to enable the SEC or Attorney General access is ambiguous, and necessitates greater technical support and computerized security measures that may be difficult to finance.</p> <p>2. The requirement potentially infringes on rights of privacy and attorney-client privilege.</p>	<p>1. Do not adopt any changes in response to this particular comment, which seems to misconstrue the Regulations as requiring that computerized/electronic records be kept. The Regulations do not require that computerized/electronic records be kept; that is, other forms of records are acceptable.</p> <p>2. Adopt the changes set forth in Chart #3 at 2, as to related comments by Franklin L. Kury, Reed Smith Shaw &amp; McClay, and at 18, as to related comments by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
		Various Sections of the Lobbying Disclosure Act, which may carry over into the Regs	The ACLU acknowledges that some of its objections are to the statute itself. This chart does not detail all of those issues, but one example is the statute's religious exemption at Section 1306, which the ACLU contends unfairly favors religious groups.	Do not adopt any changes. Although the Regs may carry over such themes, the true target of such objections is the statute, which the Regs cannot alter. The Regs are not a vehicle for amending the statute.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	(Jean Becker, Common Cause)	§31.1, definitions	<p>1. A. In the definition of "anything of value," part (i)(C), after the word "conveyance," where it appears for the second time, add the words, "present or future."</p> <p>B. In the same definition, in (i)(K), add the words, "and recreation." This modification is necessary to make it more consistent with the definition of "transportation and lodging or hospitality received in connection with public office or employment."</p> <p>2. The term "de minimis" should be defined. Alternatively, it should be deleted every place it occurs and specific thresholds should be used to replace it. For example, propose that under the definition of "transportation and lodging or hospitality received in connection with public office or employment," a reasonable threshold could be ten dollars.</p>	<p>1. A. Do not adopt. No change is needed.</p> <p>1. B. Adopt. In the definition of "anything of value" in (i)(K) add the words "and recreation" as follows: "Entertainment and recreation not extended . . . ."</p> <p>2. Adopt the following changes. In §31.1, add the term "de minimis" as a defined term with the definition being the following: "Insignificant."</p>
		§35.1(k)(2)	Delete existing language and replace with the following: "The valuation of a complimentary ticket to any type of fund-raising event shall be based upon the full value of the ticket."	Do not adopt. The language in the proposed Regs reflects the legislative intent and is more clear.
	(Franklin Kury, Esq.--see also, incorporated letter of March 5, 1999 above and comments on Chart #3 at 2)	[§31.1, definition of "indirect communications"; §35.1(g)(3)(iii) and §35.2(a)(3); and §37.1]	The Regulations as drafted, and possibly the Act, conflict with: (1) the inherent and exclusive jurisdiction of the Supreme Court of PA to supervise the conduct of attorneys who are its officers; and (2) the attorney's obligation to his clients	The notations as to the comments of this same commentator in Chart #3 at 2-3 are incorporated herein by reference as if set forth fully. Do not expand further upon the changes noted at 2 of Chart #3.

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
			with regard to confidentiality. Proposes the same changes that are set forth under Kury on Chart #3 at 2. Expands upon the proposed changes, presumably as to the definition of "indirect communications" (§31.1), by agreeing with a suggestion to reword "the section" so that it equally protects the privacy of lawyer or nonlawyer lobbyists.	
		[§§41.2, 41.3]	Clear boundary lines should be established as to the "relevant information" reviewed in audits.	
	(David Sheppard, Pennsylvania Society of Association Executives; <u>see also</u> , PSAE comments on Chart #3 at 10 )		(In addition to generally noting the burdens upon associations in complying with more requirements, this testimony focuses upon the following items.)	Not applicable.
		§31.1, definitions	The definition of "lobbying" and the need for clarification.	Do not adopt any changes. The Regs track the statutory definition.
		Chapter 35	<ol style="list-style-type: none"> <li>1. The need for more guidance as to reporting.</li> <li>2. The need for more guidance as to record retention and maintenance.</li> </ol>	1 & 2. Do not adopt any changes as to these particular comments, which are very general and offer no practical suggestions.



Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
3/19/99	Incorporated letter of 3/18/99 of Leslie Anne Miller, President, PA Bar Association	§31.1, definition of "effort to influence legislative action or administrative action" [or §37.1(3)]	The law is "not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." 65 Pa.C.S. §1302. To avoid that possibility, this definition should be modified so that the term does not apply to "professional services or activities not undertaken for the purpose of influencing legislative or administrative action, even if the services may foreseeably have an incidental effect upon legislative or administrative action." Alternatively, clarify the meaning of the exemption of §1306(3)(i) of the Act by clarifying that the acceptance of compensation for other professional services shall not be deemed to constitute the acceptance of compensation for lobbying.	Do not adopt. The Regs are not a vehicle for amending the statute, which is what the effect of the proposed changes would be.
3/19/99	Incorporated letter of March 15, 1999 of Frederick C. Brown, F.C. Brown and Associates	The Lobbying Disclosure Act itself, which may carry over into the Regs.	<p>Supports the comments of PAGR and PSAE (<u>see</u>, Chart #3).</p> <p>The impact of the new definition of lobbying on the "sales tax on lobbying services" has not been addressed by the Act, and correspondingly, the Regs. The new definition of lobbying can lead to double taxation.</p>	<p>The notations as to the comments of PAGR and PSAE as set forth on Chart #3 are incorporated herein by reference as if fully set forth.</p> <p>Do not adopt any changes. The Regs are not a vehicle for amending the Act.</p>

**Chart #5 Comments of the Senate Rules and Executive Nominations Committee**  
 (Note: Bracketed cites were not specifically referenced by commentators, but appear applicable)

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
3/22/99	§31.1, Definition of "principal"	In the definition of "principal," eliminate the phrase "in and of itself." Add language to clarify that a member of an association may be a principal but is not automatically a principal solely because he or she is a member of an association.	
	§31.1, Definition of "indirect communication"	Revisit the definition of "indirect communication" to add further qualifying language. The primary focus of this definition seems to be a desire to cover substantive communication which is paid for and/or distributed by a lobbyist or principal and which is a direct effort to influence legislative action or administrative action. The definition should be refined so that it clearly doesn't encompass every "whisper-down-the-lane" type of communication.	Do not adopt. The definition is statutory.
	§31.1, Definition of "Service (of official papers)"; §43.3(c)(3)	Change "date of mailing" to "postmarked date." In §43.3(c)(3), change "mailing date" to "postmarked date."	Do not adopt any changes. The Commission meters its mail. Additionally, the mailing date is noted on the face of all pertinent documents.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	Eliminate the second sentence, which excludes purely technical data, because it is not clear what constitutes "purely technical data."	Adopt the change set forth on Chart #3 at 11, under the related comment of R. David Tive, Pennsylvania Association for Government Relations.

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 SENATE COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§31.2(c)	Review of §32.1(c) raised the concern that some of Pennsylvania's many elected officials may be unaware of the new definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment." We ask the Commission to consider amending the Ethics Act Regulations to include these new definitions or, at a minimum, publish the new definitions in the Pennsylvania Bulletin. We also urge the Commission to highlight this change on the appropriate forms and in the appropriate instructions.	No changes to the Lobbying Disclosure Regulations are proposed.
	§31.11 (Electronic filing)	Add language stating that an Ethics Commission employee may be subject to punishment up to and including termination for the improper use of information filed electronically, including digital signatures.	Do not adopt. <u>See</u> , notation in Chart #3 at 11, as to a similar comment by R. David Tive, Pennsylvania Association for Government Relations.
	§31.4 (Registration periods and reporting periods)	Section 1304 of Act 93 clearly requires that the registration periods coincide to the terms of members of the House of Representatives. Since the language is not similarly clear in terms of the reporting requirements, we ask that this issue be marked for further discussion.	
	Chapters 33 and 35	Consider adding language that would allow a parent corporation to register and report for all of its direct affiliates and subsidiaries as long as all such lobbying contacts and expenses are reported by the parent corporation.	Adopt the changes set forth in Chart #3 at 6-7, as to the first comment of Bruce E. Lammel, Esq., USX Corporation.
	§33.3 (Lobbyist registration)	Clarify that an entity does not need to pay the \$100 registration fee for the firm in addition to paying the fee for each of its lobbyists.	Do not adopt. <u>See</u> , notation in Chart #3 at 12, as to a similar comment by R. David Tive, Pennsylvania Association for Government Relations.

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	§33.5 (Termination)	Add language stating that if a lobbyist or principal is unwilling to or refuses to "sign off" on a termination report, a termination report may be filed solely with the signature of the lobbyist or principal filing such report. In such cases, perhaps the lobbyist or principal filing the report should be required to provide a certified mail receipt as proof that the other party has been notified of the termination.	Do not adopt as stated because the act itself requires such ( <u>see</u> , §1305(b)(4) of the act). However, the problem of what to do when the required signature is not available is dealt with as to a comment by IRRC ( <u>see</u> , Chart #6).
	§35.1(g)(1)	Consider adding language to clarify that publicly-held corporations do not need to report the identity of their major shareholders. This information already is reported under a separate Act and does not fall under the intent of Act 93.	Adopt the change set forth in Chart #3 at 7, as to the next-to-last comment of Bruce E. Lammel, Esq., USX Corporation.
	§ §35(g)(3)(iii) and 35.2(a)(3)	In § §35.1(g)(3)(iii) and 35.2(a)(3), dealing with the contents of quarterly expense reports and records maintenance, respectively, eliminate "except as provided by the Act or these regulations."	Adopt the changes set forth in Chart #3 at 2, as to the second comment of Franklin L. Kury, Reed Smith Shaw & McClay.
	§35.1(i)(5)	Determine whether it is appropriate for the amounts of rental value, electric utilities and similar expenses to also be calculated as good-faith estimates.	The statute provides for the reported <i>totals</i> to be good faith estimates. However, adopt the following changes at the beginning of §35.1(i)(5): "[Reportable costs for o] <u>Office[s]</u> expenses [, equipment and supplies] shall include, . . . ."
	§35.1(k)(1)	The time allowed for the return of an unused gift or hospitality item should be reduced to 10 days. We ask the Commission to consider how this provision may relate to gifts and hospitality items which are received less than 10 days before the end of a reporting period and returned after the end of that reporting period.	

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§39.3 (Prospective conduct to be reviewed)	<p>In §39.3, clarify that questions may be brought to the Commission at any time and that such questions may deal with topics related to past conduct, although the advice or opinion from the Commission may only be relevant to future conduct.</p>	<p>Do not adopt. However, adopt the following changes.</p> <p>Rewrite the first sentence of §39.1 as follows: <u>"The Commission shall provide advices of counsel and opinions in accordance with the procedures set forth in Section 1107 of the Ethics Act and Chapter 13 of Part I (relating to State Ethics Commission) [provisions relating to opinions and advices of counsel will govern to the extent applicable]."</u></p> <p>In §39.2(b), replace "may" with "will."</p> <p>In §39.3, replace "may" with "will."</p>
		<p>Also in §39.3, add language explicitly giving lobbyists and principals the right to request a special hearing before the Commission to appeal advice which has been received from Commission counsel, mirroring the current practice of the Commission under the Ethics Act regulations.</p>	<p>The concern is alleviated by the changes in the block immediately above.</p>
	§41.1(c)	<p>Eliminate the phrase, "unless for cause" and insert "random" before the word "audit." The intent of this clause appears to be to protect lobbyists and principals from the possibility of more than one random audit in a given registration period. Clarifying that §41.1(c) deals only with random audits should remove any confusion related to what constitutes "cause." Other sections of the statute and regulations spell out the Commission's right to conduct an audit as part of an investigation.</p>	
	§41.4 (Audit Report)	<p>In §41.4, require that the Commission send the audit report via certified mail.</p>	<p>Do not adopt. Service by ordinary mail is a legally approved method.</p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	Chapter 43 (Investigations, Hearings and Referrals)	In addition to comments relating to specific provisions in Chapter 43, reexamine how the Regulations under the Ethics Act, 51 Pa.Code Ch. 21 can be mirrored in Chapter 43 of these regulations to the fullest extent possible under Act 93. The Chapter 21 regulations were the subject of a lengthy review process with input and participation from many interested sources. The success of this process is evidenced by the effective implementation of Chapter 21 over the past 6 years.	Adopt the changes set forth in Chart #6, in response to similar commentary from IRRC.
	§43.3(a)(4)	Eliminate §43.3(a)(4). This provision is unnecessary because of the provision included in §43.3(a)(5), which allows the Executive Director of the Ethics Commission to initiate proceedings based on his own motion.	Adopt as set forth in Chart #3 at 8, as to the third comment of R. David Tive, Pennsylvania Association for Government Relations.
	§43.3(b)(4)	In §43.3(b)(4), eliminate the words "informally or." If §43.3(a)(4) is eliminated as requested in the above item, these words should also be eliminated.	Adopt the change set forth in Chart #3 at 8, as to the fourth comment, Item 1, of R. David Tive, Pennsylvania Association for Government Relations.
	§§43.3(c) and 43.3(d)	In both §43.3(c) and §43.3(d), clarify in the regulations that a second "non-compliance" letter will be sent prior to the Commission filing a petition for civil penalties, mirroring the current practice of the Commission when dealing with Financial Interest Statement discrepancies.	Do not adopt. In issuing a second notice letter, the Commission is doing more than is required by the Ethics Act. Additionally, although such is the current practice of the Commission, to make that practice part of the Regulations would result in disregard for the first notice letter.
	§43.3(e)	In §43.3(e), require the Commission to file service of petition for civil penalties in accordance with the Pennsylvania Rules of Civil Procedure.	Do not adopt. The requirement for filing a proof of service is adequately covered in 1 Pa. Code.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Possible Resolution of Comment
	§§43.3(e) and 45.2(b)(13)	In §§43.3(e) and 45.2(b)(13), modify the language so that the regulations read, "upon the majority vote of all of its members, . . ." Add language stating that a "clear and convincing evidence" standard shall be used by the Commission in determining whether to levy civil penalties or prohibit a lobbyist or principal from lobbying.	Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
	[§35.1(g)(3)(iii) and §35.2(a)(3)]	Add language exempting records, but not expenses, related to privileged conversations, such as those between an attorney and a client, from being turned over to the Commission. We ask the Committee to consider how lobbyist-related expenses should be handled in this context.	Adopt the changes set forth in Chart #1 at 2, as to the first and second comments of Franklin L. Kury, Reed Smith Shaw & McClay.
	§35.1(k)(6)	With regard to §35.1(k)(6), dealing with reporting the value of gifts, transportation, lodging or hospitality, the flexibility allowed in the proposed regulations is in the best interest of those affected by these regulations. Eliminating this flexibility may create an overly cumbersome accounting requirement.	Supports the current Regulation.
	§43.3(c)	With regard to §43.3(c), dealing with noninvestigative procedures, although much clarification is needed, support is noted for the concept of a procedure to resolve simple and unintentional issues of noncompliance.	With regard to clarifying §43.3(c), adopt the changes set forth in Chart #6 in response to similar commentary from IRRC.

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# Bethlehem Steel Corporation

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March 2, 1999

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Regulations Committee, Acting pursuant to the Pennsylvania Lobbying  
Disclosure Act, Act 93 of 1998  
c/o John J. Contino  
Executive Director, State Ethics Commission  
309 Finance Building  
Harrisburg, PA 17108-1470

Re: Draft Lobbying Disclosure Regulations dated January 13, 1999 -- Comments of  
USX

Gentlemen:

Bethlehem Steel Corporation supports the comments made on behalf of USX  
respecting the Draft Lobbying Disclosure Regulations.

Yours very truly,

Edith G. Laver  
General Attorney

cc: David J. Myers, Director, State & Local Government Affairs