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March 2, 1999

PHILIP J. MURREN  
RICHARD E. CONNELL  
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COUNSEL TO THE FIRM  
WILLIAM BENTLEY BALL  
JOSEPH GORDON SKELLY

John J. Contino  
Executive Director  
State Ethics Commission  
PO Box 11470  
Room 309, Finance Building  
Harrisburg, PA 17108-1470

Re: Lobbying Disclosure Regulations

Dear Mr. Contino:

We represent the Pennsylvania Catholic Conference, an unincorporated association comprised of the eight Latin Rite and two Byzantine Rite Catholic Dioceses located in Pennsylvania. The Pennsylvania Catholic Conference employs individuals who engage in lobbying on the Conference's behalf.

On December 18, 1998, we had written to you detailing certain questions which had arisen from our analysis of Act 1998-93. Since that time, we have attended the initial public hearing conducted by the Lobbying Disclosure Committee, and have had a detailed conversation with a member of the committee regarding the legislative intent of the act and regarding the proposed regulations.

Our principal concern with the Act and the regulations is that it be made absolutely clear that individuals employed by a membership association (such as the Pennsylvania Catholic Conference) are required to register as lobbyists only on behalf of the entity which employs them, i.e., the association itself, and not on behalf of each of the members of the association.

The proposed regulations published at 29 Pa. Bulletin 548, et seq. (January 30, 1999) do seem to make an attempt at clarification on this point when, in the definition of "principal" it is stated: "Membership in an association does not in and of itself operate to make an association member a principal."

There is, however, no explanation of why the qualifying language "in and of itself" is included in the above-quoted statement, or what exceptions or limitations are intended to be reserved by its inclusion.

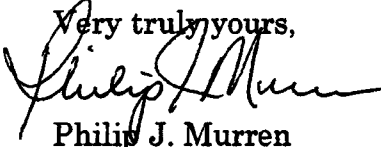
In addition, the proposed regulations include the following statement in the definition of the term "lobbyist": "Membership in an association does not in and of itself operate to make an association member a lobbyist." What we have been concerned about is whether the association itself will be considered a "lobbyist" which must register on behalf of each and every one of the members of the association. The quoted statement does not seem to alleviate that concern.

A third concern of ours relates to the exemption from registration and reporting in §1306(5) of the Act for individuals who represent a church "solely for the purpose of protecting the constitutional right to free exercise of religion." In our letter of December 18, 1998, we had expressed a constitutionally-based objection to allowing a government agency (enforcing the Act) to limit the scope of this exemption by judging it against the agency's own view of what constitutes "the free exercise of religion".

We continue to believe that the standard of interpretation applied to this exemption, in order to be consistent with constitutional prescriptions, must be a subjective one, *i.e.* where the lobbying communication is one which the church representative, in good faith, believes to be for the purpose of protecting the free exercise of religion, the exemption would be triggered.

We understand that the Lobbying Disclosure Committee is required by the Act to prepare and publish a manual setting forth guidelines for accounting and reporting. We would certainly hope that the manual could be more explicit in clarifying the committee's position on the above three points.

We remain available to meet with representatives of the committee at any time to discuss our continuing concerns about the Act and the proposed regulations.

Very truly yours,  
  
Philip J. Murren

PJM/bjd

cc: Dr. Robert J. O'Hara, Jr.  
Brian J. Preski, Esq.

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

PHILIP J. MURREN  
RICHARD E. CONNELL  
MAURA K. QUINLAN  
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March 2, 1999

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Executive Director  
State Ethics Commission  
PO Box 11470  
Room 309, Finance Building  
Harrisburg, PA 17108-1470

RECEIVED BY  
**LEGAL DIVISION**

MAR 03 1999

ORIGINAL: 1997  
BUSH  
COPIES: Sandusky  
Legal

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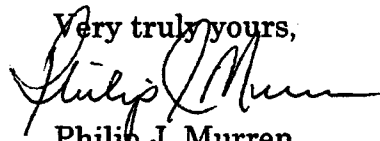
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Very truly yours,  
  
Philip J. Murren

PJM/bjd

cc: Dr. Robert J. O'Hara, Jr.  
Brian J. Preski, Esq.

DATE: March 3, 1999

SUBJECT: Lobbying Disclosure Proposed Rulemaking (63-06)

TO: Robert E. Nyce, Executive Director ORIGINAL: 1997  
 IRRC BUSH  
 Honorable Joseph F. Loeper, Chairman COPIES: Sandusky  
 Senate Rules and Executive Nominations Committee Legal  
 Honorable Thomas P. Gannon, Chairman  
 House Judiciary Committee

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

For your information, I am enclosing photocopies of the following comments as to the proposed Lobbying Disclosure Regulations (63-06), which comments were received *after* the deadline for the submission of public comments.

<u>Commentator</u>	<u>Received at State Ethics Commission</u>
Philip J. Murren, Esquire Ball, Skelly, Murren & Connell	March 3, 1999

VJD/mlj

Enclosure

cc: Members, Lobbying Disclosure Committee

RECEIVED  
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 STATE ETHICS COMMISSION  
 REVIEW COMMISSION

Original: 1997  
Bush  
cc: Sandusky  
Wyatte  
Nyce

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Annex A

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TITLE 51. PUBLIC OFFICERS

REGULATORY REVIEW COMMISSION

PART II. LOBBYING DISCLOSURE COMMITTEE

CHAPTER 31. GENERAL PROVISIONS

- Sec.  
31.1. Definitions.  
31.2. Application to 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} Parent corporations 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*-Insignificant.

*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 employees 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.]

*Political subdivision*-A "political subdivision" as defined in the Ethics Act at 65 Pa.C.S. §1102.

*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. Application to 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]Parent corporations 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 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.

(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 corporation 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.  
33.5. Termination.

#### § 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) A [L]lobbyist[s] required to be registered under the act shall file a separate registration statement for each principal represented. 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.

(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 as set forth in §35.1(c) [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) If the principal fails to file a termination report, or [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, a lobbyist required to be registered under the act shall file a separate termination report or a separate amended termination 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) If 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. Such affidavit shall be on a form prescribed by the Commission.

(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. For those registrants who do not file tax returns, books and records shall be kept 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. "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].



(iv) The contents of 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 employes 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 employes, 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. Such affidavit shall be on a form prescribed by the Commission.

(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 employe 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. Late or deficient filings-Commission proceedings under section 1304 or 1305 of the act.
- 43.4. Noninvestigative process for late or deficient filings.
- 43.5. Investigative process for late or deficient filings.
- 43.6. Civil Penalties for late or deficient filings.
- 43.7. Commission decisions as to late or deficient filings.

**§ 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 Section 31.1, 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) c] 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) i] 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]l] 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 §21.29(b), (d), (e), and (f) of 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.

([ii]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 §21.29(b), (d), (e), and (f) of 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.

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CHAPTER 31. GENERAL PROVISIONS

INDEPENDENT REGULATORY  
REVIEW COMMISSION

- Sec.
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FORTHCOMING

Bush	✓
Nyce	✓
Sandusky	✓
Wyatte	✓
Gelnett	✓

§ 31.1. Definitions.

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

*Act*--The Lobbying Disclosure Act, 65 Pa.C.S. §1301 et seq.

*Administrative action*--Any of the following:

- (1) An agency's:
  - (i) proposal, consideration, promulgation or rescission of a regulation;
  - (ii) development or modification of a guideline or a statement of policy; or
  - (iii) approval or rejection of a regulation.
- (2) The review, revision, approval or disapproval of a regulation under the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act.
- (3) The Governor's approval or veto of legislation.
- (4) The nomination or appointment of an individual as an officer or employee of the Commonwealth.
- (5) The proposal, consideration, promulgation or rescission of an executive order.

*Affiliated political action committee*--A "political action committee" as defined in Section 1621(l) of the Pennsylvania Election Code, which has a chairman, a treasurer or another officer who is a principal, an employee of a principal, a lobbyist or an employee of a lobbyist: Provided, if an employee 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, such political action committee shall not be considered an affiliated political action committee for the purposes of this definition.

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

*Anything of value*--The term "anything of value" includes, by necessity, the terms "thing of value" and "things of value." For the limited purpose of reporting gift(s), transportation, lodging, or hospitality under Section 1304 or Section 1305 of the Act, or under Section 1105(b)(6) or Section 1105(b)(7) of the Ethics Act, 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:

- (1) 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;
- (2) A discount or rebate not extended to the public generally;
- (3) A conveyance, or a contract, agreement, promise, or other obligation for a conveyance;
- (4) A deposit, distribution, payment, pledge, or transfer of money, or a contract, agreement, promise, or other obligation for such;
- (5) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan;
- (6) A forgiveness of indebtedness, or a contract, agreement, promise, or other obligation for a forgiveness of indebtedness;
- (7) Personalty or an interest in personalty, such as work(s) of art, antique(s), or collectible(s);
- (8) Real property or an interest in real property;
- (9) A service not extended free of charge to the general public;
- (10) The use of real property, personal property, or service(s) belonging to other person(s) or entity(ies);
- (11) Entertainment not extended free of charge to the general public, or the payment of fee(s) or charge(s) incident thereto;
- (12) 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;
- (13) Food, beverage, or lodging;
- (14) Reward(s) or prize(s) from any contest, event, or drawing not open to the general public;
- (15) An automobile or other means of transportation not extended free of charge to the general public.

For the purpose of reporting the amount of gifts, transportation, lodging, or hospitality, see, Section 35.1(k).

*Association*--An "association" as defined in the Association Code at 15 Pa.C.S. §102. An "association" is: 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 statement(s) and/or disclosure report(s) and related information to determine compliance with the Act and to review methods of record keeping, reporting, training, and other areas relating to lobbying activities.

*Candidate's political committee*--A "Candidate's Political Committee" as defined in the Act of June 3, 1937, P.L.1333, as amended, known as the Pennsylvania Election Code. The words "candidate's political committee" shall mean any political committee formed on behalf of a specified candidate and authorized by said candidate.

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

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

*Commonwealth*--The Commonwealth of Pennsylvania.

*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 by the Commission, or the equivalent of such form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints under the Ethics Act Regulations at 51 Pa. Code.

*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.

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

*(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 any other medium, made by a lobbyist or principal, directed to a State official or employee, 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*--Any effort to initiate, support, promote, modify, oppose, delay, or advance any 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 employee or to a legislative or administrative body, at his, her, or its request.

*Employee*--For the limited purpose of determining exemption under Section 1306(6) of the Act, the term shall mean an individual who is in the service of another individual or entity, where the individual or entity for whom services are performed has: (1) the right to control or direct the individual who performs the services; and (2) the right to discharge the individual providing services. Other factors characteristic of an employer-employee relationship, but not necessary in every case, are: (1) the controlling of the hours of employment; (2) the furnishing of equipment and a place to work to the individual who performs the services; (3) the furnishing of benefits to the individual who performs the services, which benefits are provided to others considered to be employees of the individual or entity for which the services are provided; and (4) the withholding of taxes from compensation paid to the individual who performs the services. In determining exemption under Section 1306(6) of the Act, the term “employee” shall not include independent contractors.

*Engage(ing) a lobbyist*--Engage(ing) means make(ing) any arrangement, and “engagement” means any arrangement, whereby a lobbyist is employed or otherwise hired or retained to lobby on behalf of a principal for economic consideration.

*Engage(ing) in lobbying*--perform(ing) any act which constitutes lobbying as defined by the Act and these Regulations.

*Ethics Act*--the Public Official and Employee Ethics Act, 65 Pa.C.S. §1101 et seq.

*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 Facsimile Transmission (FAX). See Section 31.12 (relating to faxed filings) for additional requirements when filing by Facsimile Transmission (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.

- (1) The term shall 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.
- (2) For the purpose of categorizing a reportable item under Section 1304 or Section 1305 of the Act, or under Section 1105(b)(6) or Section 1105(b)(7) of the Ethics Act, the term shall not include

“transportation and lodging or hospitality received in connection with public office or employment” as defined below, which is otherwise reported as required by law.

*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 any other 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.

*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 employee 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:

- (1) providing any gift, entertainment, meal, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist or principal; and
- (2) direct or indirect communication.

*Lobbyist*--Any 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 to make an association member a lobbyist.

*Negligent 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, Section 1305, or Section 1307 of the Act, 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 such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of Section 1304 or Section 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, Section 31.5 (relating to delinquency) and Section 31.6 (relating to deficiency).

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

*Principal*--Any individual, firm, association, corporation, partnership, business trust or business entity:

- (1) on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or
- (2) that engages in lobbying on the principal's own behalf.

Membership in an association does not in and of itself operate to make an association member a principal.

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

*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 employee*--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 employee or state official or employee as those terms are defined under the Ethics Act or the Act, respectively. Hospitality includes:

- (1) meals;
- (2) beverages;
- (3) recreation and entertainment; and
- (4) 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, such 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, travel expenses are defined as reasonable expenses for transportation, meals, beverages, and lodging.

#### **§ 31.2. Ethics Act Regulations.**

(a) Where a comparable process relating to advices, opinions, investigations or other procedure is involved, the Ethics Act Regulations at 51 Pa. Code will be followed to the extent they are applicable.

(b) To the extent sections of 1 Pa. Code are superseded by such Ethics Act Regulations, they are likewise

superseded by these Regulations.

(c) The definitions of "gift" and "transportation and lodging or hospitality received in connection with public office or employment" set forth in Section 31.1 of these Regulations shall apply to administration of the Act and Sections 1105(b)(6) and (7) of the Ethics Act.

(d) Section 35.1(k) of these Regulations shall apply to reporting the amount of gift(s) or transportation, lodging, or hospitality to be disclosed pursuant to Sections 1304 or 1305 of the Act, or pursuant to Sections 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 any other day that Commission offices are closed or close early, the deadline for such 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 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 shall continue through November 30, 2000.

(b) Reporting under Section 1305 of the Act 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 Section 1305 of the Act is delinquent if not received by the Commission by 5:00 p.m. on the date due.

(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 these Regulations.

**§ 31.6. Deficiency.**

(a) A registration statement, report, or notice of termination required to be filed under Section 1304 or Section 1305 of the Act is deficient if:

- (1) It does not fully and accurately include and disclose all that is required by the Act and these Regulations;
- (2) It includes false statement(s);
- (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; or

(6) The filer fails to sign the registration statement, report, or notice of termination under oath or affirmation as set forth in Section 31.10 of these Regulations.

(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 these Regulations.

**§ 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 and the threshold for exemption under Sections 1306(3)(ii) through (iv) of the Act, using, to the extent applicable, the procedures within the Ethics Act Regulations at 51 Pa. Code for reviewing the threshold dollar amounts in Section 1105(b) of the Ethics Act.

(b) The Commission may increase the exemption threshold and reporting threshold amounts to rates deemed reasonable for assuring appropriate disclosure. Any changes to the thresholds made pursuant to this Section shall become effective at such time as directed by the Commission.

(c) The Commission shall publish any such adjusted threshold amounts in the Pennsylvania Bulletin by June 1, 2002, and every two (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 pursuant to 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 four (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 shall 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) immediately above shall be deposited into the Fund established by Section 1310(b) of the Act.

(e) Pursuant to Section 1308 of the Act, the Commission shall prepare and publish the following:

(1) An annual report of lobbying activities in the 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; and
- (4) A biennial directory of all registered lobbyists, which shall include photographs.
  - (i) The directory shall be produced and distributed on or before May 1 of each odd-numbered year.
  - (ii) Copies of the directory shall be made available to the public at a price not to exceed the actual cost of production.
  - (iii) All revenue received by the Commission from sales of this directory shall be deposited into the Lobbying Disclosure Fund established by Section 1310(b) of the Act.
- (5) Any or all of the items in subsections (1)-(3) above 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 pursuant to 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.
- (c) Amended filings shall 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 at Section 33.4 of these Regulations, below.

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

(a) All 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 such filed with the Commission must be signed originals bearing the signature of the filer. See, Section 31.11 (relating to electronic filing) and Section 31.12 (relating to faxed filings) for requirements when filing electronically or by Facsimile Transmission (FAX).

- (1) A document shall be deemed to be a signed original if it is filed electronically pursuant to Section 31.11 of these Regulations or if it bears an original manual signature in ink.
- (2) A principal who is an individual must sign his or her own filings.
- (3) Filings by a principal that is a firm, association, corporation, partnership, business trust, or business entity must 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 must sign his or her own filings.
- (5) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust, or business entity must 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 by the Commission.

(b) Registration statements, notices of termination, and amendments to such filed pursuant to the Act shall include an affirmation subject to penalty under 18 Pa.C.S. §4904 (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 such, filed pursuant to 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 such, shall do so under an affirmation subject to penalty under 18 Pa.C.S. §4904 (unsworn falsifications to authorities) 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 such, 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 (unsworn falsifications to authorities) that the information provided in such 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 at such time as notice of its availability is announced in the Pennsylvania Bulletin by the State Ethics Commission.

(b) Upon the availability of electronic filing, forms that are required to be filed pursuant to the Act may be filed electronically. The use of a digital signature assigned by the State Ethics 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 such a manner 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 these Regulations, 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 such that the applicant files with the Commission electronically, the digital signature assigned to such applicant shall constitute his/her/its signature under affirmation as set forth in Section 31.10(b) of these Regulations.

(ii) For any quarterly expense report, separate quarterly expense report, termination report, separate termination report, or amendment to such that the applicant files with the Commission electronically, the digital signature assigned to such applicant shall constitute his/her/its signature under oath or affirmation as set forth in Section 31.10(c) of these Regulations.

(iii) The use of the digital signature assigned to such applicant to "sign" a quarterly expense report, termination report, or amendment to such filed by another shall constitute his/her/its affirmation as set forth in Section 31.10(d) of these Regulations.

(iv) The use of the digital signature assigned to such applicant to attach a statement to a quarterly expense report, termination report, or amendment to such filed by another shall constitute his/her/its affirmation as set forth in Section 31.10(e) of these Regulations.

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

(c) A registration statement or amendment to such 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 five (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 five (5) business days from the date

of receiving the document electronically, the registration statement or amendment to such is filed on the date the Commission receives all such required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the Act and these Regulations shall constitute a failure to register as required by the Act.

**§ 31.12. Faxed filings.**

(a) A registration statement or amendment to such sent by FAX transmission 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 five (5) business days thereafter (A registration statement or amendment to such shall be deemed to be a signed original if it is filed electronically pursuant to Section 31.11 of these Regulations 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 five (5) business days from the date of receiving the faxed copy, the registration statement or amendment to such is filed on the date the Commission receives all such required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the Act and these Regulations shall constitute 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 such sent by FAX transmission is filed on the date the Commission receives the faxed copy if the Commission receives the signed original within five (5) business days thereafter (Such a document shall be deemed to be a signed original if it is filed electronically pursuant to Section 31.11 of these Regulations or if it bears an original manual signature in ink). If the Commission does not receive the signed original within five (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 any of its orders.

**§ 31.14. Severability clause.**

(a) General rule.-- Generally, the provisions of these Regulations as set forth in Chapters 31, 33, 35, 37, 39, 41, 43, and 45 are severable. Subject to the exception in subsection (b) below, if any provision of the said Chapters is held invalid, or if the application of any provision of the said Chapters to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these Regulations which can be given effect without the invalid provision or application.

(b) Exception.--If the Act becomes void as a whole, these Regulations shall be void as a whole.

**CHAPTER 33. REGISTRATION AND TERMINATION**

Sec.

- 33.1. Biennial filing fee.
- 33.2. Principal registration.
- 33.3. Lobbyist registration.
- 33.4. Amended registration statements.
- 33.5. Termination.

**§ 33.1. Biennial filing fee.**

(a) Pursuant to Section 1310(a) of the Act, 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.
- (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 such a fee. A principal also acting as a lobbyist shall pay no more than one fee in any registration period.
- (4) The biennial filing fee shall be non-refundable and non-transferrable.
- (5) All 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 these Regulations shall constitute a failure to register as required by the Act.

(c) All 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) General rule.--Unless exempt under Section 1306 of the Act, a principal must register with the Commission within ten (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 principal that so engages in lobbying on its own behalf must register with the Commission both as a principal and as a lobbyist.
  - (ii) Unless exempt under Section 1306 of the Act, member(s) or employee(s) of a principal who engage in lobbying on behalf of the principal must register as lobbyist(s) with the Commission under Section 33.3 of these Regulations.

(b) A principal shall register by filing a "registration statement" with the Commission, on a form promulgated 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, as to the principal and/or the principal's employees.
- (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, employee, or agent of a firm, association, corporation, partnership, business trust, or business entity; and
- (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 his/her/its 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 address(es) 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 and Sections 1105(b)(6) and 1105(b)(7) of the Ethics Act.

(f) A principal shall not be considered registered until the completed registration statement, in proper form as required by the Act and these Regulations, is received by the Commission.

(g) Each registration statement filed pursuant to 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 statement(s) after that date, to the extent the principal is required to be registered under the Act and these Regulations.

### **§ 33.3. Lobbyist registration.**

(a) General rule.--Unless exempt under Section 1306 of the Act, a lobbyist must register with the Commission within ten (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) Where a firm, association, corporation, partnership, business trust, or business entity is engaged as a lobbyist, it and each of its member(s) or employee(s) that engage in lobbying on behalf of the principal must 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 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 in. x 2 in.) photograph of the lobbyist which photograph shall be of reasonable clarity and shall have been taken within two (2) years of the date of registration, except that if the lobbyist is not an individual, a photograph shall not be required;
- (3) The name, permanent business address and daytime telephone number of the principal the lobbyist represents; and
- (4) The name, registration number and acronyms of "affiliated political action committees," as defined in Section 1303 of the Act as to the lobbyist and/or the lobbyist's employees.

(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 his/her/its 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 address(es) 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 and Sections 1105(b)(6) and 1105(b)(7) of the Ethics Act.

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

(g) A lobbyist shall not be considered registered until the completed registration statement, in proper form as required by the Act and these Regulations, is received by the Commission.

(h) Each registration statement filed pursuant to 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 statement(s) after that date, to the extent the lobbyist is required to be registered under the Act and these Regulations.

#### **§ 33.4. Amended registration statements.**

(a) A principal required to be registered under the Act must file an amended registration statement whenever there is a change of/in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Commission within fourteen (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 fourteen (14) days of the end of the year in which the change occurs.

(b) A lobbyist required to be registered under the Act must file an amended registration statement whenever there is a change of/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 fourteen (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 at Section 31.9 of these Regulations, above.

#### **§ 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 notice(s) of termination solely as to registration statement(s) which the lobbyist has filed.

(3) A principal may file notice(s) of termination solely as to registration statement(s) 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(es) of the principal, and the name(s) and address(es) of the lobbyist(s).

(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 such registration statement has been filed.

(f) No lobbying may occur after the filing of a notice of termination unless the lobbying is pursuant to 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 thirty (30) days thereafter, file a termination report with the Commission.

(1) Termination reports shall be filed on the quarterly expense report form promulgated 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(es) of the principal, and the name(s) and address(es) of the lobbyist(s).

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

(4) If the total lobbying expenses of the registered principal and/or registered lobbyist(s) lobbying on the principal's behalf 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 and/or registered lobbyist(s) lobbying on the principal's behalf from the end of the previous quarterly reporting period through the final day of lobbying are in excess of \$500, any termination report by the principal shall include all information required by Sections 1305(b)(1), (2), (3), (5), and (7) of the Act, and any termination report by a lobbyist shall include all information required by Sections 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(s) 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 payment(s) are made.

(6) The filer of the termination report must give written notice to each public official or employee of his or her inclusion in the termination report within seven days of the submission of the termination report to the Commission. Such notice shall include the information which will enable the public official or employee to comply with Sections 1105(b)(6) and (7) of the Ethics Act.

(h) A lobbyist required to be registered under the Act must sign the termination reports and amended termination reports submitted by the principal(s) represented to attest to the validity and accuracy of such 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 such limitations and the reasons for same with specificity.

(i) A lobbyist required to be registered under the Act must 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 such report(s).

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

(i) The joint filing of a separate report shall not excuse the various lobbyists involved from the duty to fully comply with the requirements of the Act and these Regulations as to such separate reports.

(ii) All lobbyists joining in a joint report must sign the report as provided in Section 31.10 of these Regulations.

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

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

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

(5) A separate termination report or separate amended termination report shall include all information required by Sections 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 same.

(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 must give written notice to each public official or employee of his or her inclusion in such report within seven (7) days of the submission of such report to the Commission. Such notice shall include the information which will enable the public official or employee to comply with Section 1105(b)(6) and Section 1105(b)(7) of the Ethics Act.

(j) After a reasonable review of the termination report, the Commission shall issue to the lobbyist or principal who filed the notice of termination a letter stating that the registrant has terminated registration. Such letter shall be issued within ninety (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 such 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, shall not affect the Commission's authority to conduct audits, investigations, hearings, or other proceedings pursuant to the Act and these Regulations.

## 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 below when the total lobbying expenses of a registered principal or registered lobbyist(s) lobbying on the principal's behalf 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(s) lobbying on the principal's behalf 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 by Section 1304 and Section 1305 of the Act, compensation, costs, and expenses shall be accounted for in the period(s) in which earned or incurred, regardless of when paid. An item previously reported as earned or incurred need not be reported again when actual payment(s) are made.

(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 file a quarterly expense report or statement of failure to meet the reporting threshold shall be the thirtieth (30th) day after the quarterly reporting period ends.

(e) A lobbyist required to be registered under the Act must file a separate quarterly expense report or a separate amended quarterly expense report 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 any separate report shall be the thirtieth (30th) day after the date the principal's related report was filed.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense



reports by lobbyists, and amendments to such shall be filed on form(s) promulgated 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 must 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 ten percent (10%) of the total resources received by the principal during the reporting period;
- (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 and the name(s) of the individual(s) 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";
  - (i) A correlation as to which lobbyist(s) are lobbying on which matter(s) or issue(s) shall not be required;
  - (ii) With regard to legislative action, specific bill number(s) are not required to be included;
  - (iii) Except as provided by the Act or these Regulations, the specific contents of a particular communication, or the identity of those with whom such communications take place, need not be reported.
- (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) below;
- (5) A single aggregate good faith estimate of the total amount spent for direct communication;
- (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; and
- (8) All information required to be disclosed by Section 1305(b)(3) of the Act, as detailed by subsections (j) and (k) below.

(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 subsections (g)(4), (5), (6), and (7) above.

(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.
- (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: research time spent in preparation for lobbying; time spent in direct communication or indirect communication as defined by the Act; and any other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed.
- (5) Reportable costs for offices, equipment, and supplies shall include, but shall 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, facsimile transmissions, 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 must also identify, by name, position and each occurrence, all State officials and/or employees 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) of the Ethics Act (pertaining to gifts) or Section 1105(b)(7) of the Ethics Act (pertaining to transportation and lodging or hospitality received in connection with public office or employment) as implemented by Section 1105(d).

(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 year.

(2) The reporting of the provision of any gift to a State official or employee shall identify: the name and position of the State official or employee; the name and address of the source of the gift; the amount of the gift; and 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 employee in connection with public office or employment shall identify: the name and position of the State official or employee; the name and address of the source of the payment; and the amount of the payment.

(k) For purposes of reporting the value of gift(s) or transportation, lodging, or hospitality to be disclosed pursuant to Section 1304 or Section 1305 of the Act, or pursuant to Section 1105(b)(6) or Section 1105(b)(7) of the Ethics Act:

(1) Gift(s) and hospitality item(s) that are returned unused to the donor within thirty (30) days of the date of receipt need not be reported.

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

(3) The value of gift(s), transportation, lodging, or hospitality shall equal the cost(s) to the registrant if the item(s) or service(s) to be valued were in fact obtained by the registrant in marketplace transaction(s).

(4) When subsection (3) above is not applicable, the value of the gift(s), transportation, lodging, or hospitality shall equal the fair market value(s) as determined by the replacement cost(s), that is, the cost(s) of purchasing the same or similar item(s) or service(s) in marketplace transaction(s).

(5) When subsections (3) and (4) above are not applicable, the registrant may use any reasonable method to determine the value of gift(s), 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 gift(s), transportation, lodging, or hospitality provided to a particular individual by either:

(i) Calculating the actual benefit provided to that individual; or

(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 gift(s), transportation, lodging, or hospitality provided to that particular individual.

(l) The filer of the quarterly expense report or amended quarterly expense report must give written notice to each public official or employee of his or her inclusion in such report within seven (7) days of the submission of such report to the Commission. Such notice shall include the information which will enable the public official or employee to comply with Section 1105(b)(6) and Section 1105(b)(7) of the Ethics Act.

(m) A lobbyist required to be registered under the Act must sign the quarterly expense reports or amended quarterly expense reports submitted by the principal(s) represented to attest to the validity and accuracy of such reports to the best of the lobbyist's knowledge.

- (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 such limitations and the reasons for same with specificity.

(n) A lobbyist required to be registered under the Act must 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 such report(s).

- (1) Where more than one lobbyist would be required to file such a separate report, they shall have the option of filing such report(s) jointly.
  - (i) The joint filing of a separate report shall not excuse the various lobbyists involved from the duty to fully comply with the requirements of the Act and these Regulations as to such separate reports.
  - (ii) All lobbyists joining in a joint report must sign the report as provided in Section 31.10 of these Regulations.
- (2) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the thirtieth (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 by the Commission.
- (4) A separate quarterly expense report or separate amended quarterly expense report shall contain the identity of the principal for whom such lobbying was performed.
- (5) A separate quarterly expense report or separate amended quarterly expense report shall include all information required by Sections 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 same.
- (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 must give written notice to each public official or employee of his or her inclusion in such report within seven (7) days of the submission of such report to the Commission. Such notice shall include the information which will enable the public official or employee to comply with Section 1105(b)(6) and Section 1105(b)(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, in its discretion, promulgate standardized forms for such records, in which case such forms promulgated 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 these Regulations.
- (3) Such records shall identify the general subject matter or issue being lobbied. Except as provided by the Act or these Regulations, the specific contents of a particular communication, or the identity

of those with whom such communications take place, need not be recorded.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity.

(1) All records which integrate both lobbying and non-lobbying activities shall be retained and made available for inspection or audit pursuant to this Section and Chapter 41 of these Regulations.

(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 such expenditure.

(c) A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under Section 1304 or Section 1305 of the Act for four (4) years from the date of filing of the subject report.

(1) Such documents shall include, but shall not be limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, canceled 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 pursuant to this Section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained in such a manner as to enable the Commission or the Office of Attorney General to access all of the recorded information. Any password(s) or other privacy/security measure(s) shall be memorialized and maintained in such a manner as to enable the Commission or the Office of Attorney General to fully access, identify, and use them.

(5) Affidavits may be used where 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 reason(s) for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent such are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of such an expenditure promptly prepare a written voucher, journal entry, or other written or electronic form of record to document such 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 date(s) and form(s) of payment(s);

(4) The full name and official position of each state official or employee 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 employee, who were beneficiaries, and the amount of the expenditures reasonably attributable to them; and

(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) All 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 non-monetary contribution, a description of the goods, services, or other form(s) of resource(s) provided; and
- (4) Any 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 the 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 thirty (30) days.

- (1) Either the Office of the Attorney General or the Commission may extend this thirty-day deadline in connection with its own request(s), where there are established circumstances compelling an extended deadline.
- (2) For computerized/electronic records, all information required to access the recorded information, such as any password(s) or other privacy/security measure(s), shall be provided together with the records.

## **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 (relating to registration) and reporting under Section 1305 (relating to reporting):

- (a) An individual whose lobbying activities are limited to preparing testimony and testifying before a committee of the Legislature or participating in an agency administrative proceeding;
- (b) An individual who is an employee 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;
- (c) An individual who does not receive any compensation for lobbying, other than travel expenses;
- (d) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period;
- (e) An individual who engages in lobbying on behalf of the individual's employer where the lobbying activity represents less than the equivalent of \$2,500 of the employee's time during any reporting period, based on an hourly proration of the employee's compensation;
- (f) A principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period;
- (g) An elected State officer acting in an official capacity;
- (h) A State executive officer appointed by the Governor acting in an official capacity;
- (i) An elected or appointed official or employee of a political subdivision acting in an official capacity;
- (j) An employee of the Commonwealth or an employee or official of an independent agency of the

Commonwealth acting in an official capacity;

(k) An individual representing a bona fide church of which the individual is a member where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion; and

(l) An employee, who is not a registered lobbyist, of a corporation which is registered as a principal under Section 1304; has one or more registered lobbyists; and includes in its reports under Section 1305 all of the employee's expenses related to lobbying. The failure of such registered principal to include the employee's lobbying-related expenses in its reports under Section 1305 of the Act will cause such employee to lose his or her exempt status unless he or she is otherwise exempt under a separate subsection above.

### **§ 37.2. Exempt status.**

(a) As long as a principal qualifies for exemption under Section 1306 of the Act, the principal is not required to register or report under the Act, even if total lobbying expenses for a quarterly reporting period exceed \$500.

(1) Upon losing exempt status, a principal is immediately subject to the registration and reporting requirements of the Act.

(2) 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) 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 as to opinions and advices of counsel.

39.2. Standing requirements.

39.3. Prospective conduct to be reviewed.

### **§ 39.1. Ethics Act Regulations as to opinions and advices of counsel .**

The Ethics Act Regulations at 51 Pa. Code relating to opinions and advices of counsel will govern to the extent applicable.

### **§ 39.2. Standing requirements.**

(a) An advice or opinion may be requested by a lobbyist, principal, State official or employee, or by the authorized representative of same, as to his/her/its 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 shall not be entertained.

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

An advice or opinion may 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 shall initiate, by lottery, random audits of registration statements and disclosure reports required to be filed pursuant to the Act.

(b) The Commission may hold up to four (4) lotteries per year. The number of lotteries held in any given year shall be a matter within the Commission's discretion.

(c) Unless for cause, no lobbyist or principal shall 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 such audits shall be to ensure compliance with the Act and to review methods of record keeping, reporting, training, and other areas relating to lobbying activities.

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

(c) An audit shall include registration statements and disclosure reports, as well as other relevant information to verify, explain, clarify, support, or contravene such 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 four (4) calendar years, except that no lobbying activities performed prior to August 1, 1999 shall be audited pursuant to the provisions of the Act.

**§ 41.3. Audit procedures.**

The following general procedures shall be employed by the Commission for audits conducted pursuant to Section 1308(g) of the Act:

(a) At least thirty (30) days prior to the initiation of the audit, each audit subject will be advised by letter that

they were 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. Said letter shall contain a request for documents deemed necessary for conduct of the audit.

(b) 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 four (4) years shall be conducted.

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

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

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

(i) 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 such records.

(ii) All registrants shall have an affirmative duty to cooperate fully in any audit of themselves or any other registrant.

(3) The audit may include interviews of lobbyists, principals, representatives and/or employees thereof and all other individuals necessary to the completion of the audit.

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

(e) 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 shall, at the conclusion of each audit, prepare an audit report which shall include findings.

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

(c) Upon completion, an audit report shall 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 thirty (30) days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth his/her/its position as to the audit report.

(d) All audit reports 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 shall be confidential, except that the Commission shall include the relevant portion of any 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. Commission proceedings under Section 1304 or Section 1305 of the Act.

**§ 43.1. Intentional violations.**

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

(b) Pursuant to Section 1309(b) of the Act and Section 43.3(c)(16) of these Regulations, if the Commission finds that a failure to register or report was intentional, it shall refer the matter to the Attorney General for investigation and prosecution.

**§ 43.2. Commission proceedings under Section 1307 of the Act.**

(a) Upon receipt of a complaint, the Commission, through its Executive Director, shall conduct a preliminary inquiry into any alleged negligent violation of Section 1307 of the Act.

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

(c) Preliminary inquiries shall be conducted pursuant to the procedures for preliminary inquiries set forth within the Ethics Act Regulations at 51 Pa. Code, to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violation(s) 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 Ethics Act Regulations at 51 Pa. Code.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional seven (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 in order to make a final determination.

(e) The Commission shall decide cases, issue orders, and rule upon requests for reconsideration concerning alleged negligent violation(s) of Section 1307 of the Act, in accordance with Sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related Ethics Act Regulations at 51 Pa. Code.

**§ 43.3. Commission proceedings under Section 1304 or Section 1305 of the Act.**

(a) Commission proceedings under Section 1304 or Section 1305 of the Act may be initiated based upon any of the following:

- (1) Receipt of a complaint;
- (2) Any audit or related audit conducted by the Commission under Chapter 41 of these Regulations;
- (3) Reviews of filings conducted by Commission staff;
- (4) Information received that does not satisfy the criteria for a formal complaint; or
- (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 of these Regulations.

(b) The Commission, through its Executive Director, shall initiate proceedings involving Section 1304 or Section 1305 of the Act under either the noninvestigative procedures set forth in subsection (c) immediately below or under the investigative procedures set forth in subsection (d) below.

- (1) In each case, the Executive Director of the Commission shall elect which process shall 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; and
  - (iv) Whether the filer has in the past complied with the Act.
- (2) The election of the process to be followed shall 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) immediately below rather than through the investigative procedures of subsection (d) below.
  - (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 of these Regulations may form the basis for proceedings under either the noninvestigative procedures of subsection (c) immediately below, or, upon the own motion of the Executive Director, the investigative procedures of subsection (d) below.

(c) The noninvestigative process for matters under Section 1304 or Section 1305 of the Act shall include the following procedures.

- (1) The Executive Director of the Commission shall 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) The notice of noncompliance shall 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 shall also advise of the right to a hearing before the Commission and the time and manner in which to request a hearing.
- (3) The notice recipient shall have twenty (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 penalty(ies), which petition shall be served upon the respondent by the Investigative Division.
- (4) The petition for civil penalty(ies) 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) Any answer to the petition for civil penalty(ies) must be filed (received at the Commission) within thirty (30) days of service of the petition upon the respondent.
- (6) An answer to the petition for civil penalty(ies) shall specifically admit or deny each of the allegations made in such 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) Failure to file an answer within the thirty (30) day period or the filing of general denial(s) will be deemed an admission of the averments of the petition for civil penalty(ies).
- (8) Any request by the respondent for a hearing must be in writing and must be received at the Commission within thirty (30) days of service of the petition for civil penalty(ies) upon the respondent.
  - (i) A request for a hearing may be set forth within an answer to such petition or it may be submitted separately.

- (ii) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, such that a final order may be entered against the respondent without a hearing.
  - (9) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional seven (7) days beyond the respondent's deadline in which to submit a written request for a hearing.
  - (10) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve any contested facts in order to make a final determination.
  - (11) 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) Access to evidence does not include any original complaint or the name of a complainant, information which is otherwise privileged, or information not within subsection (11) immediately above.
  - (13) Any hearing under Section 1309 of the Act shall be public and shall be conducted by the Commission in accordance with Sections 1107(14) and 1108(e) of the Ethics Act, and to the extent applicable, the related Ethics Act Regulations at 51 Pa. Code. The Investigative Division bears the burden of proof.
  - (14) 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 the Ethics Act Regulations at 51 Pa. Code, to the extent applicable.
  - (15) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission shall 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.
  - (16) If the Commission finds that the failure to register or report was intentional, it shall refer the matter to the Attorney General for investigation and prosecution.
  - (17) The determination of the Commission shall be in the form of a final order with findings and reasons for the adjudication.
  - (18) Requests for reconsideration may be submitted to the Commission. The Commission shall consider and rule upon requests for reconsideration pursuant to the related Ethics Act Regulations at 51 Pa. Code, to the extent applicable.
  - (19) The official record of the case before the Commission will be publicly available.
  - (20) The files of the Investigative Division shall not be publicly available.
- (d) The investigative process for matters under Section 1304 or Section 1305 of the Act shall include the following procedures.
- (1) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of Section 1304 or Section 1305 of the Act. Preliminary inquiries shall be conducted pursuant to the procedures for preliminary inquiries set forth within the Ethics Act Regulations at 51 Pa. Code, to the extent applicable.
  - (2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violation(s) of Section 1304 or Section 1305 of the Act, in accordance with Sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related Ethics Act Regulations at 51 Pa. Code.
    - (i) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional seven (7) days beyond the respondent's deadline in which to submit a written request for a hearing.
    - (ii) The Commission may *sua sponte* schedule a hearing if it is determined that a hearing is needed to resolve any contested facts in order to make a final determination.
  - (3) The Commission shall decide cases, issue orders, and rule upon requests for reconsideration concerning alleged negligent violation(s) of Section 1304 or Section 1305 of the Act, in accordance with Sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related Ethics Act

Regulations at 51 Pa. Code.

(e) Following a noninvestigative process under subsection (c), or an investigative process under subsection (d), if the Commission finds negligent failure(s) to register or report as required by the Act, the Commission may, upon the majority vote of its members present, levy one or more civil penalties as provided for in this subsection.

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

(i) Whether the respondent contacted the Commission and/or took any meaningful measures to attempt to remedy the delinquency, deficiency, or falsehood;

(ii) Whether the respondent has raised any justifiable excuse such as, for example: (1) the unavailability of records due to loss, theft, or destruction through no fault of the respondent; or (2) 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 such filing, or a member of the immediate family of such persons.

(iii) 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) 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) Whether proceedings have previously been initiated against the respondent under the Act, either by the Commission or by the Attorney General.

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

(f) The determination of the Commission shall 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) Pursuant to Section 1309 of the Act, the Commission may prohibit a lobbyist or principal from lobbying for up to five (5) years where the lobbyist or principal has:

(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; or

(4) Failed to comply with Section 1304, Section 1305, or Section 1307 of the Act 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:

- (1) A findings report, notice of noncompliance, or other form of process which meets the requirements of Section 1309(a) of the Act; and
- (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 thirty (30) days of the issuance of a Commission order or court order finding the respondent in noncompliance/violation, or within such other time for compliance as may be specified by such order.

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

- (1) A hearing, if requested, shall be conducted by the Commission in accordance with Sections 1107(14) and 1108(e) of the Ethics Act.
- (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) below, 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) Any answer to the petition must be filed (received at the Commission) within thirty (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 such 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 thirty (30) day period or the filing of general denial(s) will be deemed an admission of the averments of the petition seeking the prohibition.
- (6) Any request by the respondent for a hearing must be in writing and must be received at the Commission within thirty (30) days of service of the petition upon the respondent.
  - (i) A request for a hearing may be set forth within an answer to such petition or it may be submitted separately.
  - (ii) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, such 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 shall have an additional seven (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 any contested facts in order 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 any original complaint or the name of a complainant, information which is otherwise privileged, or information not within subsection (9) immediately above.
- (11) Any hearing under this chapter shall be public and shall be conducted by the Commission in accordance with Sections 1107(14) and 1108(e) of the Ethics Act, and to the extent applicable, the related Ethics Act Regulations at 51 Pa. Code. 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 the Ethics Act Regulations, to the extent applicable.
- (13) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission shall determine, based upon the record before it, whether and for how long a prohibition against lobbying is to be imposed against the respondent.
- (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 and/or took any meaningful measures to attempt to remedy the violation or failure to comply;
  - (ii) Whether the respondent has raised any 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 any other proceedings have at any time been initiated against the respondent under the Act, either by the Commission or by the Attorney General;
  - (v) Whether there are any other factors which should be considered as aggravating or mitigating factors in the case.
- (15) The determination of the Commission shall 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 shall consider and rule upon requests for reconsideration pursuant to the related Ethics Act Regulations at 51 Pa. Code, 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 shall not be publicly available.

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March 15, 1999

Representative Tom Gannon  
House of Representatives  
49 East Wing, Main Capitol Building  
Harrisburg, Pennsylvania 17120

ORIGINAL: 1997  
BUSH  
COPIES: Sandusky  
Wyatte

Dear Representative Gannon:

I am writing to voice my opposition and concern to the proposed regulations to implement Act 93 of 1998.

Although I am a member of the Pennsylvania Association for Government Relations and the Pennsylvania Society of Association Executives and both organizations have submitted specific and detailed comments regarding the proposed regulations, I feel it necessary to formally associate myself with the concerns and comments expressed in writing and in testimony by their spokesmen.

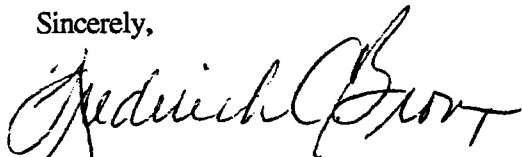
One aspect of the Act 93, and correspondingly the regulations, that has not been addressed, is the impact the new definition of lobbying has on the "sales tax on lobbying services" passed by the General Assembly and signed into law by Governor Casey, in 1991. The sales tax on lobbying services was applied to the definition of lobbying in the old, Lobby Registration and Regulation Act of 1961. As you are aware, the definition of "Lobbying" now encompasses "winning and dining, lobbying or "direct communications", as well as, "indirect communications," ie. speaking to my clients. While I certainly agree that "hospitality" is an activity that should be reported, I do not consider it as "lobbying" per se. I believe the new definition lobbying can lead to double taxation for those that seek reimbursement for those hospitality expenses.

I cannot explain to you how profoundly this will impact my own business and the impact on those who chose to exercise their fundamental rights under the Constitution.

I look forward to hearing from and working with you and others concerned with establishing a fair and workable Lobby Registration law.

If you have any questions please contact me.

Sincerely,



Frederick C. Brown