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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 1, 1999

Austin M. Lee, Chair
Lobbying Disclosure Committee
State Ethics Commission
309 Finance Building
Harrisburg, PA 17108-1470

Re: IRRC Regulation #63-6 (#1997)
Lobbying Disclosure Committee
Lobbying Disclosure

Dear Mr. Lee:

Enclosed are our Comments on your proposed regulation #63-6. They are also available on our website at http://www.irrc.state.pa.us.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Richard M. Sandusky at 783-5430 or Mary Wyatte at 783-5433.

Sincerely,

Robert E. Nyce
Executive Director

REN:wbg
Enclosure
cc: Mark Corrigan, Secretary of the Senate
Ted Mazia, Chief Clerk of the House
Michael Fisher, Attorney General
Kim Pizzingrilli, Acting Secretary
Robert Casey, Jr., Auditor General
Paul Tufano, Office of General Counsel
John J. Contino
Vincent J. Dopko
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

LOBBYING DISCLOSURE COMMITTEE REGULATION NO. 63-6

LOBBYING DISCLOSURE

APRIL 1, 1999

We have reviewed this proposed regulation from the Lobbying Disclosure Committee (Committee) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria we must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, legislative intent, economic impact, reasonableness, need and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 31.1. Definitions. – Legislative Intent, Reasonableness, Economic Impact, Need and Clarity

The regulation includes a number of definitions which have been excerpted verbatim from Section 1303 of the Lobbying Disclosure Act (Act) (relating to definitions). Other statutory definitions have been modified in the regulation. Rather than repeat definitions in the regulation, or change the legislative intent in defining certain terms, it would be more appropriate to just include a citation to Section 1303 after each of the following statutorily defined terms: administrative action; affiliated political action committee; agency; Commission; compensation; direct communication; economic consideration; Fund; gift; immediate family; indirect communication; legislation; legislative action; lobbying; lobbyist; principal; registrant; regulation; and state official or employe.

Anything of value

The proposed definition contains unnecessary language which does not define the term. To streamline language in (i), all of the language prior to "anything of any nature..." should be deleted. Similarly, the language in (ii) does not add anything to the definition. Therefore, it should also be deleted.

A number of commentators have questioned whether "anything of value" would include services provided to members of the public at the request of a state official or employe, or to constituents at the request of a legislator. Since these services are not provided directly to the state official, employe or legislator, they do not satisfy the terms of the definition. The intent of the Act is to require reporting only of "anything of value" given to state officials, employes or legislators. Therefore, the definition of "anything of value" should be amended to exclude services provided to the public and constituents.

Audit

The definition of audit includes the phrase "training and other areas relating to lobbying activities." This phrase extends the scope of the audits beyond that prescribed by Section 1308(g) of the Act, which limits audits to registration statements and quarterly reports "to ensure compliance with the act."

We understand that the intent of this language is to allow the State Ethics Commission (Commission) to assist and educate registrants with respect to facilitating compliance with the reporting requirements. However, referencing "training and other areas relating to lobbying activities" in the definition creates two problems. First, it may create the erroneous impression that a certain standard for "training" is mandated under the Act. Second, it is not clear what the Commission would be auditing with respect to "training" and what other areas related to lobbying the Commission would include in its review. Therefore, this phrase should be deleted or revised to narrow its scope.

Child

The Office of Attorney General recommended stepchildren also be included in this definition. We agree with that recommendation.

Day or date

Because the Committee intends to use the terms "day and date" as they are commonly used, there is no need to define these terms. Therefore, this definition should be deleted.

Effort to influence legislative action or administrative action

This definition is intended to clarify a phrase that is the key to the statutory definition of "lobbying." The first sentence does this well. However, the second sentence raises questions concerning the scope and intent of the exclusion for "purely technical data."

This definition attempts to distinguish between actions intended to influence legislation or administrative action and actions triggered by an informational request from a legislator, state official or employe. Lobbying activities fall under the reporting requirements, while informational requests do not. To more clearly delineate this distinction, the second sentence should be revised to read as follows:

> The term does not apply to services provided to the public or the provision of information to a state official, employe, legislator, agency or legislative body at the request of a state official, employe, legislator, agency or legislative body.

Employee

The definition of "employe" is intended to aid in the implementation of the exemption contained in Section 1306(6) of the Act. We agree that defining this term will help clarify who is exempt. However, instead of developing a new definition of this term, we suggest that the Committee use the existing definition of "employe" found in the Tax Reform Code at 72 P.S.

Section 7301(g). This definition provides a simple standard that is familiar to those who prepare financial reports. It states:

> 'Employe' means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

If the proposed definition is retained, two changes should be made. First, the phrase "For the limited purpose of determining exemption under Section 1306(6) of the act," in (i) should be deleted. The definition should apply to the entire regulation so that confusion is not created as to when a different meaning would apply. Similarly, the phrase "In determining exemption under Section 1306(6) of the act," should also be deleted.

Engaging in lobbying

This definition does not provide additional detail to existing definitions. Since the plain meaning of this phrase is clear, there is no need for this definition. Therefore, it should be deleted.

Guideline and Statement of Policy

Neither of these terms are defined in the proposed regulations or in the Act. However they are included in the statutory definition of "administrative action." Therefore, attempts to influence guidelines and statements of policy would fall under the definition of lobbying.

To avoid any confusion, the regulation should define these terms. These definitions should simply cross-reference the existing definitions of these terms contained in the regulations of the Joint Committee on Documents, at 1 Pa. Code Section 1.4.

Immediate Family

Similar to the recommendation made to amend the definition of child, we recommend that "stepparent" be added to this definition.

Lobbyist

The first two sentences of this definition repeat the definition contained in the Act. The last two sentences are intended to clarify what would not constitute lobbying. As noted above, a cross-reference to a statutory definition is more efficient. Therefore, this definition should be replaced with a citation to Section 1303 of the Act.

We question why the last two sentences need to be included in the definition as proposed. If the term "de minimis," as used in the third sentence, is intended to reflect the $2500 compensation exemption in Section 1306(3)(II) of the Act, the sentence should be revised to reflect this intent. Accordingly, the $2500 amount or a citation to Section 1306(3)(II) should be incorporated in the definition. However, a better alternative to including these substantive provisions in this definition would be to place them in Chapter 37, which specifically addresses exceptions.

If, however, the intent is to relieve a lobbyist of the responsibility for accumulating income received over the length of the biennium, the definition lacks statutory authority and is contrary to legislative intent. The Act requires anyone who receives, in the aggregate, more than $2500 in compensation in any reporting period, to register and file reports. Therefore, any compensation received, no matter how small, must be accumulated so that the individual can determine if cumulative compensation received during the reporting period exceeds the exemption ceiling.

Negligent conduct/Negligent failure to register or report/Negligent violation

All three of these terms have been defined to reflect the division of enforcement responsibilities in the Act. The Act provides that violations due to negligence are to be investigated by the Commission and intentional violations are to be referred to the Office of Attorney General. Instead of creating these long and somewhat confusing definitions, the regulation should include a definition of "negligent or negligence" and a definition of "intentional." As noted in the comments from the Office of Attorney General, this would further distinguish between noncompliance that results from negligence, as opposed to noncompliance that results from willful, wanton or reckless conduct or failure to act.

Principal

The definition of this term has also departed from the statutory definition. As stated above, the Committee should just reference the Act.

However if the Committee elects not to use a reference, we have one clarity concern with the proposed definition. Some commentators have questioned the use of the phrase "in and of itself" in (ii). The intent of this language is to clarify that membership in an association alone is not sufficient to make a member a principal. We suggest that the phrase "in and of itself operate" be replaced with "alone is not sufficient" or similar language to clarify the Committee's intent.

Service (of official papers)

The proposed regulations define service as "the date of mailing if delivered by United States mail...." By contrast, the existing regulations of the Commission use the "the date of the United States postmark...". There is no reason to substitute the mailing date for the postmark date in these regulations, thereby creating a dual standard.

The postmark date is easier to verify. In addition, the Commission presently uses the postmark date as the standard for delivery. Therefore, the definition of "service (of official papers)" should be modified to simply cross-reference the definition of service in Section 11.1 of the existing Commission regulations or be revised to mirror that definition. Similarly, all references to mailing date in the regulations should be changed to postmark date.

Transportation and lodging or hospitality received in connection with public office or employment

The language in the first sentence of this definition doesn't really define anything and would be better placed in Chapter 35. The balance of the definition should be kept in Definitions, but under the heading of "hospitality" since that is what the items listed are.

In (iv) there are two concerns. First, as discussed above with respect to the definition of "lobbyist," the term "de minimis" should not be used. Second, the second sentence contains substantive requirements that would be more appropriately placed in Chapter 35. Therefore, this sentence should be deleted and the language incorporated into the provisions in Chapter 35.

Travel Expenses

This definition is intended to define the scope of the exemption in Section 1306(3)(i) of the Act. This exemption is included in the regulations in Section 37.1(3). Since the application of this definition is limited to just Section 37.1(3), this definition should be deleted and the substance of the definition should be incorporated into Section 37.1(3).

2. Section 31.2. Ethics Act regulations in Part I. - Need and Clarity

Subsection (a) should be deleted because opinions, advices, and investigations are addressed in Chapters 39 and 43. Subsection (c) and (d) should be deleted; they are unnecessary and redundant.

3. Section 31.4. Registration periods and reporting periods. – Economic Impact, Reasonableness and Clarity

In Subsection (b), the Committee is establishing quarterly reporting periods. The quarters would run from December through February, and in three months periods thereafter. The one exception would be the first reporting period that would begin on August 1, 1999, and run through November 30, 1999.

The Committee has proposed using these quarters, as opposed to the more traditional calendar quarters, so that quarterly reports and the biennial registration periods will be uniform. This will make administration of the Act easier for the Commission.

Using the proposed quarters does have some advantages, but it will also impose some unnecessary burdens on reporters and may create some problems for public officials and employes. First, using a December through February cycle, as opposed to a January through March cycle, will impose an additional reporting burden on registrants. Most registrants keep their fiscal records on a calendar year basis. They will have to alter their systems to track expenditures for the proposed quarters as opposed to calendar quarters. This alteration will be costly.

Second, the Act requires registrants to provide written notice to public officials and employees who are given anything of value that the registrants have included in their quarterly reports. This notice is intended to aid public officials and employes when they complete their

Statement of Financial Interests. With a December through February system, they may not receive notice concerning expenditures that occurred in December till the end of March or early April. With a January through March system, the December information would be provided at the end of January or early in February. This would provide the information to the public official or employee much sooner.

For these reasons, the Committee should revise this subsection to use calendar quarters which start with January. Additionally, the provision related to the first reporting period should be revised to end on December 31, 1999, instead of November 30, 1999.

4. Section 31.5. Delinquency; Section 31.6. Deficiency. - Clarity

Section 31.5 is intended to define timely filing requirements and clarify that if registrations or reports are not filed on time, the individual is not in compliance with the Act. If there is a failure to file, the individual will be considered "delinquent" until the proper filings have been made. In Section 31.6, the term "deficiency" is used to categorize filings which are incomplete or contain inaccurate information. Deficient filings will also constitute failure to comply with the Act.

The Act, however, does not use the terms "delinquent" or "deficient", and commentators have raised questions as to how a delinquency or deficiency would be dealt with in terms of enforcement. Additionally, the regulations are silent as to what the Commission will do when it receives an incomplete or inaccurate filing.

Section 19.3 of the Commission's regulations addresses late and deficient filings. To avoid confusion, these two sections should be revised or combined to parallel Section 19.3.

5. Section 31.9. Amended Filings. - Need

This section contains general information on amending filings. However, Chapters 33 and 35 contain more detailed provisions governing amended filings. Therefore, this section is redundant, and should be deleted.

6. Section 31.10. Filings to be originals signed under oath or affirmation. - Clarity

In Subsection (a), the word "forms" should be inserted between the words "these" and "filed" in the first sentence. Also, Paragraph (1) essentially repeats the requirement stated in (a). Therefore, it should be deleted.

Subsections (b) and (c) specify the affirmation requirements for registration and report filings respectively. If the affirmation requirements are the same, these two subsections should be combined to avoid confusion and reduce redundancy.

Subsections (d) and (e) specify the affirmation requirements for lobbyists signing a principal's quarterly report or attaching a statement to the report. Since the affirmation requirements are the same, these two subsections should also be combined to avoid confusion and reduce redundancy.

The Office of Attorney General has suggested removing "penalty under" from Subsections (b), (d), and (e). We concur even if the subsections are not combined.

7. Section 31.11. Electronic filing. – Need and Clarity

This section establishes the rules that will govern electronic filing. However, the electronic filing system does not yet exist. The Commission intends to publish a notice in the *Pennsylvania Bulletin*, when the system becomes available.

We agree electronic filing should be promoted. However, we question why is the Commission proposing regulations for a system that has yet to be created. It is more reasonable to delete this section from this rulemaking and do a separate rulemaking on electronic filing after the system has been developed and tested.

If this section is retained in the final-form rulemaking, the following three concerns should be addressed.

First, Subparagraphs (3)(i) – (iv) all address essentially the same issue, i.e. that the electronic signature shall constitute the applicant's signature under oath or affirmation. Unless there is a compelling need for separate paragraphs, they should be combined.

Second, in Subsection (b)(4), additional language should be added to indicate that the Commission will notify an applicant when it receives a defective electronic filing and that the notice will list the deficiencies.

Finally a new subsection should be added to this section providing that the information related to obtaining an electronic signature will be confidential.

8. Section 31.12. Faxed filings. - Clarity

For clarity, Subsection (b) should be reformatted using the same structure as Subsection (a) and should include a provision similar to Subsection (a)(2).

9. Section 31.14. Severability clause. – Legislative Intent, Need and Clarity

For two reasons, paragraph (a) of this section should be deleted. First, there is no need for the regulations to contain a separate and distinct severability clause from the one that is contained in Section 1311 of the Act. A second and more important reason is that, as written, it will only result in confusion. Paragraph (a) does not clearly convey the legislative intent, set forth in section 1311(b) of the act, that if any part of the Act is held invalid on the basis of the improper regulation of the practice of law, the remaining provisions are void.

Paragraph (b) merely restates the obvious and is unnecessary.

10. Section 33.1. Biennial filing fee. – Economic Impact and Clarity

Subsection (a)(3) should be revised to clarify that a lobbyist must only pay one $100 fee regardless of the number of registrations filed.

11. Section 33.2. Principal registration. – Reasonableness, Need, Economic Impact and Clarity

In Subsection (a), Paragraphs (1) and (2) in essence repeat the definition of a principal that is contained in the Act and in the regulations. They do not add any additional guidance concerning who must register as a principal. Therefore, absent justification for their inclusion, they should be deleted.

Subsections (a)(2) and (a)(2)(i) appear to be redundant; they should be combined.

A number of commentators have suggested allowing a corporation to register as a principal for both itself and its subsidiaries. Since the Act does not require separate registrations for subsidiaries, the Committee may wish to consider adding a new subsection to this section that would allow corporations the option of doing a consolidated registration. This would ease the recordkeeping burden and could result in more complete reporting. However, if the Committee does adopt this suggestion, it should establish a standard for a consolidated grouping. One possibility would be to limit the availability of this option to corporations and subsidiaries which meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return.

The regulations should also clarify, either in this chapter or Chapter 35, that corporations that elect to do a consolidated registration must apply the reporting requirements to aggregate expenditures of the corporation and the subsidiaries. This would mean that an exemption from registration or reporting could not be claimed unless the total expenditures of the corporation and its subsidiaries fell below the established limits.

12. Section 33.5. Termination. – Reasonableness and Clarity

Subsection (h) requires lobbyists to sign the termination reports submitted by principals, which is consistent with the requirements of the Act. However, neither the regulations nor the Act address what a principal should do in the event a lobbyist cannot or refuses to sign the termination report.

To address these situations, the Committee should add provisions to outline a principal's responsibilities if one of these situations occurs. Where a lobbyist cannot sign, the principal should be required to attach a statement to the termination report which explains why the lobbyist cannot sign the report. This could be used when the lobbyist has died or relocated and the principal does not know how to reach the lobbyist.

Where the lobbyist refuses to sign, the principal should be required to attach a statement, indicating that the lobbyist has refused to sign, and proof that a copy of the termination report has been given to the lobbyist. This will allow a principal to meet his or her obligations where a lobbyist elects to be uncooperative. At the same time, it will still insure that the lobbyist has an opportunity to file a statement of limitations of knowledge about the report or a separate termination report.

13. Section 35.1. Quarterly reports. – Reasonableness, Economic Impact and Clarity

Subsection (c)

Subsection (c) requires expenses to be reported when earned or incurred, rather than when paid. This is the opposite of how most individuals keep their financial records and is contrary to how corporations are required to report for their employees.

We agree the registrants should use a consistent methodology so that expenses aren't shifted between periods to frustrate the purpose of the reports. However, requiring all registrants to use an accrual methodology will force many registrants to augment their financial record keeping systems. This will entail a substantial cost to registrants. Therefore, the use of an accrual system is unreasonable.

Instead, the regulations section should be revised to require registrants to use a cash basis for reporting. This would make the reporting requirements consistent with the employe earnings reporting requirements of the Internal Revenue Service, thereby eliminating the need for registrants to keep two sets of books.

Subsection (d)

The first sentence of Subsection (d) is a restatement of the principal's obligation to file an expense report. Since it repeats requirements contained in Subsections (a) and (b), it should be deleted.

Subsection (f)

The second sentence in Subsection (f) is unrelated to what forms must be used and repeats the requirements contained in Subsection (g). Therefore, it should be deleted from this subsection.

Subsection (g)

Subsection (g)(2) is unnecessarily long. To improve its readability, a period should be placed after "conducted," and "so that," should be deleted. A new sentence should be started with "If."

Subsection (g)(3) is somewhat confusing. It should be revised as follows:

...designated "other." The following shall not be reported:

(i) A listing indicating which lobbyists are lobbying on which matters.

(ii) The specific bill numbers for which the lobbying is being done.

(iii) The specific contents of any communication or the identity of those with whom the communications take place.

Subsection (i)

Subsection (i)(4)(ii) requires the time devoted to lobbying to include time "spent in direct and indirect communication as defined by the act." Since these terms are defined in the regulation, as well as the Act, the phrase "as defined by the act" is redundant and should be deleted.

In Subsection (i)(3) and (4)(iii), it is not clear what is meant by "in furtherance of lobbying." Unless there is a distinction the Committee is trying to draw, the "in furtherance of" language should be deleted.

Subsection (j)

In Subsection (j)(3), the phrase "amount of the payment" should be replaced with the phrase "value of the transportation, lodging and hospitality" to be consistent with the other references to these items elsewhere in the regulation.

Subsection (k)

Subsection (k)(6) affords registrants two options to calculate the value of gifts, transportation, lodging or hospitality provided to individuals. It can be based on the actual value of the benefit provided, or where a group is involved, the average value can be used.

We agree that some flexibility is needed when dealing with entertainment provided to groups. In many cases, using an average figure may be the most appropriate measure. However, there will be group situations where the benefit provided to the members of the group is not uniform. In these cases, using an average would not reflect the value of the real benefit received.

To address this situation, a new Subparagraph (iii) should be added using the following or similar language:

> Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

Subsection (m)

Subsection (m) outlines the requirements for lobbyists to sign principals' quarterly expense reports. However this subsection does not address what a principal should do in the event a lobbyist cannot or refuses to sign the termination report. To address this concern, the same language recommended in our comments pertaining to Section 33.5 should be added to this subsection.

14. Section 35.2. Records maintenance, retention and availability. – Clarity

A number of commentators have expressed concern over the degree of access they would be required to provide to their computerized records. Specifically, the language in Subsection

(c)(4) requiring "access to all of the recorded information" has created some confusion. To clarify that the only information that must be provided is that which is relevant to the audit, the following language should be substituted for the proposed language in Subsection (c)(4):

> (4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access all of the information reasonably necessary to substantiate the reports.

The second sentence is not necessary in this section. Instead, a provision should be added to Chapter 41 which would require the subject of an audit to provide its computerized/electronic records in a format that could be read by the Commission or Office of Attorney General.

15. Section 37.1. Qualifications for exemption. - Clarity

Section 37.1 implements Section 1306 of the Act (relating to exemption from registration and reporting). Subsections (1) – (12) list the exemptions established under Section 1306. In addition to the exemption for an employee of a principal who meets certain conditions, Subsection (12) contains the following statement:

> 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.

This statement is problematic for two reasons. First, the sentence is unnecessary, as it merely restates the obvious. Second, to the extent it purports to be an enforceable provision, it is misplaced in a list of exemptions. Moreover, since an employee would not sign a disclosure report, he would have no way of knowing if the principal listed his lobbying related expenses. As this provision serves no purpose and may be confusing, we recommend that it be deleted.

16. Section 37.2 Exempt status. - Clarity

Section 37.2, which indicates that an exempt registrant is not required to register or report, is unnecessarily long and repetitive. There is no need to have a separate subsection for principals and another one for lobbyists. Therefore, we recommend that the word "principal" in Paragraph (a) and Subparagraphs (a) (1) and (2) be replaced with the word "registrant," and that Subparagraphs b(1) – (4) be deleted.

17. Chapter 39. Opinions and Advices of Counsel. – Clarity

In Section 39.2, the word "may" should be replaced with the word "will" to more clearly indicate that the Commission will not consider third-party requests. Section 39.3 is unnecessary and should be deleted, because it is covered in Chapter 13.

18. Section 41.1. Lotteries. – Statutory Authority

Section 41.1(c) references audits "for cause." We question the Commission's statutory authority to conduct audits for cause, as the Act provides only for random audits. We understand that the intent of the provision is to allow the Commission to do an audit as opposed to a full-blown investigation upon receipt of information that a registrant may have violated the Act. However, the circumstances for performing that type of audit and the scope of the audit should be clearly spelled out in Chapter 43.

19. Section 41.2. Number and scope of compliance audits. – Statutory Authority and Clarity

Paragraph (a) provides that an audit may be conducted for the purpose of reviewing "recordkeeping, reporting, **training and other areas** relating to lobbying activities" (emphasis added). As noted in our comments on the definition of "audit," we question the Commission's authority to review training and other areas. The purpose of an audit is to assure compliance with the Act. Therefore, training and other areas besides recordkeeping and reporting are beyond the permissible scope of an audit.

Paragraph (d) would permit the Commission to audit the records of any other registrant when the records of a principal are audited. Paragraph (e) would permit the Commission to examine the relevant records of any other registrant when the records of a lobbyist are audited. We question the Commission's statutory authority for these provisions, especially in light of both the statutory authorization only for random audits, as well as the strict controls under which investigations may be initiated. Furthermore, it is the responsibility of the registrant being audited to produce sufficient records to support his filings. Therefore, we recommend that these paragraphs be deleted.

20. Section 41.4. Audit report. – Clarity

Paragraph (b) provides that an audit report may include recommendations as to recordkeeping, reporting "and other practices" arising from the audit. We request clarification of what would be included in the reference to "other practices."

21. Chapter 43. Investigations, Hearings and Referrals. – Statutory Authority, Legislative Intent and Clarity.

Several commentators have suggested that Chapter 43 should be closely modeled after Chapter 21 of the Commission's regulations, which pertain to the content, filing and handling of complaints, preliminary inquiries, the initiation and conduct of investigations, and hearings. Section 1308(h) of the Act provides that Commission investigations and hearings concerning negligence should proceed in accordance with Sections 1107 and 1108 of the Act. For the most part, Chapter 21 has been designed to implement those statutory provisions. Therefore, we agree with commentators that Chapter 43 should be reorganized and rewritten to parallel Chapter 21 to the maximum extent possible.

Section 43.2 should be rewritten to encompass the informal procedures used to handle late or deficient filings of reports. This section should be closely modeled after Section 19.3 of the Commission's regulations.

Section 43.3 should be rewritten to encompass Commission proceedings under Sections 1304, 1305 and 1307 of the Act. As written, it is entirely too long and cumbersome. We recommend that it be divided into several sections, similar to the following Chapter 21 provisions:

Section 21.1. Complaints
Section 21.2. Initiation of investigation by the Commission
Section 21.3. Preliminary inquiries
Section 21.5. Conduct of investigations
Section 21.21. General
Section 21.22. Discovery
Section 21.23. Scope of hearing
Section 21.24. Hearing officer
Section 21.25. Conduct of the hearing
Section 21.26. Motions
Section 21.27. Briefs
Section 21.28. Decision
Section 21.29. Finality; reconsideration
Section 21.30. Effect of order

Our comments below pertain to the Sections in Chapter 43 as they are presently drafted.

22. Section 43.1. Intentional violations. - Clarity

Paragraph (b) in Section 43.1 should be deleted, as it is redundant.

23. Section 43.2. Commission proceedings under section 1307 of the act. - Clarity

Subsection (a), which provides for a preliminary inquiry upon receipt of a complaint, should cross reference Section 21.1 (relating to complaints). Likewise, Subsection (b) should reference Section 21.3 (relating to preliminary inquiries).

Subparagraphs (d)(1) and (2) would authorize either the Investigative Division or the Commission to schedule a hearing if the respondent does not request one before the deadline. We question the circumstances under which the Investigative Division or the Commission would require a hearing if the respondent does not elect to have one and does not plan to participate. If there is a valid reason for the Investigation Division to request a hearing, why should this request be delayed for seven days beyond the respondent's deadline?

24. Section 43.3. Commission proceedings under section 1304 or 1305 of the act. - Clarity

Several subsections of Section 43.3 are problematic. Section 43.3(a) provides that "Commission proceedings" under Section 1304 or 1305 of the Act (relating to registration and reporting) may be initiated on the basis of any one of the following:

1. Receipt of a complaint;
2. An audit;
3. Commission review of filings;
4. Information received through means other than a formal complaint; or
5. The motion of the Commission's executive director based on information received.

This section presents two problems. First, it is not clear what is contemplated by "Commission proceedings." Preliminary inquiries, investigations and hearings all qualify as proceedings.

Second, Subparagraphs (4) and (5) are inconsistent with the Act. Paragraph (h) of Section 1308 (relating to administration and enforcement) authorizes the Commission to initiate an investigation and hold a hearing concerning negligent conduct by a lobbyist or principal under Sections 1107 and 1108 of the Act. These provisions authorize the Commission to initiate proceedings on its own motion or upon receipt of a formal, sworn complaint.

To resolve this issue, we recommend that Subparagraph (4) be deleted. Also, Subparagraph (5) should be revised to limit the information upon which the Executive Director's motion may be based to that which leads to a reasonable belief that a violation has been committed (See Section 1107(12) of the Act).

Paragraphs (b) and (c) reference a "noninvestigative procedure." If this term is intended to reference an informal procedure similar to that outlined in Section 19.3 of the Commission's regulations, it would be more appropriately placed under a revised Section 43.2, which would relate to late or deficient filings. If it is intended to reference a preliminary inquiry, we recommend it be placed in a separate section similar to Section 21.3. However, if it is intended to authorize the Commission to initiate formal disciplinary proceedings without a prior investigation, we question the statutory authority for the provision. Section 1108(e) requires the Commission to complete an investigation before issuing a rule to show cause to a respondent.

In addition to our larger concerns expressed above, we have several questions regarding individual subsections. Subparagraph (c)(3) references both "notice recipient" and "respondent." If they are one and the same, the term "respondent" should be used consistently, since it is a defined term.

Subparagraphs (c)(9) and (10) and (d)(2)(i) and (ii) would authorize either the Investigative Division or the Commission to schedule a hearing if the respondent does not request one before the deadline. As previously noted, we question the circumstances under which the Investigative Division or the Commission would require a hearing if the respondent

does not elect to have one and does not plan to participate, and why it must delay its request for an additional seven days.

Subsection (e) is without statutory authority. Section 1108(g) of the Act provides "At least four members of the commission present at a meeting must find a violation by clear and convincing proof." We note that the standard of proof and the requirements for Commission disciplinary action are explicitly laid out in Section 1108(g) and are not repeated in Chapter 21. Based on our recommendation that the procedural provisions in Chapter 43 be modeled after those in Chapter 21, we recommend that Paragraph (e) be deleted.

25. Section 45.1. Basis for prohibition against lobbying. - Statutory Authority and Clarity

This section implements Section 1309(e)(4) of the Act, which authorizes the Commission to "prohibit a lobbyist from lobbying for up to five years for doing an act which constitutes an offense under **this subsection**" (emphasis added). Because Subsection (e) is limited to intentional violations, the Commission's statutory authority to impose the five-year prohibition is likewise limited. Therefore, Subparagraphs (a)(4), (b) and (c) should be deleted, as they reference negligent violations.

In subparagraph (d) (1), the applicable sections of Chapter 21 pertaining to hearings should be cross-referenced.

26. Section 45.2. Procedures for imposing prohibition against lobbying. - Need and Clarity

Subparagraphs (b)(7) and (8) authorize either the Investigative Division or the Commission to schedule a hearing if the respondent does not request one before the deadline. As previously noted, we question the circumstances under which the Investigative Division or the Commission would require a hearing if the respondent does not elect to have and does not plan to participate in a hearing, and why its request must be delayed for an additional seven days.

The Office of Attorney General has recommended additional language which would limit the Commission's determination, where a lobbyist or principal has been convicted, to the amount of time the lobbyist or principal would be prohibited from lobbying. We agree that in this case there would be no need for the Commission to relitigate these matters. Therefore, we recommend that the Commission add the Office of Attorney General's suggested language as a new Subsection (c) or as a new Section 45.3

27. General - Clarity

Several commentators noted that the regulations may unlawfully extend the Commission's jurisdiction over the practice of law. We note that Section 1302(b) of the Act provides, in part: "This chapter is not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." To give effect to this provision, the Committee should consider inserting a separate section exempting communications for which the attorney-client privilege is claimed from the disclosure requirements.

Several sections refer interchangeably to forms "promulgated by" the Commission, "provided by" the Commission, or "prescribed by" the Commission. It is our understanding that the Committee intends to have the Commission develop forms for registrants to use. Since these forms will not be promulgated as regulations, the term "approved" should be used consistently throughout the regulation wherever forms are referenced. In addition, the regulation should clarify whether the Commission will permit filings on forms which are substantially equivalent to the forms obtained from the Commission (See 1 Pa. Code § 13.42).

Several sections of the regulation contain cross-references to Part I, and use the phrase "to the extent applicable." This language presents two problems. First, these general references provide little guidance to registrants as to what specific requirements they must meet. Therefore, the general references to Part I should be replaced with specific references to the applicable sections of the Commission's regulations.

Second, the phrase "to the extent applicable" should be deleted. If there is another specific statutory or regulatory provision which would supercede the appropriate provision in Part I, the regulation should include a citation to that authority.

Several sections of the regulation refer to "disclosure reports." This phrase is also used in the Act. To avoid confusion, this term should be defined to include all filings required under the Act or amended filings. By including amended filings in the definition of "disclosure reports," repetitive references to "separate amended quarterly expense reports" can be eliminated.