

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Lobbying Disclosure Committee (LDC) (through the State Ethics Commission (SEC))		03/25 PM 4:23 Bush IRRC Number: 1997
(2) I.D. Number (Governor's Office Use) 63-06		
(3) Short Title Lobbying Regulation and Disclosure		
(4) PA Code Cite 51 Pa. Code , Part II, §31.1 <u>et seq.</u>	(5) Agency Contacts & Telephone Numbers (717) 783-1610 Primary Contact: John J. Contino, Executive Director State Ethics Commission Secondary Contact: Vincent J. Dopko, Chief Counsel State Ethics Commission	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulations are procedural in nature and are designed to implement the Lobbying Disclosure Act, Act 93 of 1998, Chapter 13, 65 Pa. C.S. section 1301 <u>et seq.</u> , which relates to prohibited activities and registration and reporting requirements for lobbyists and principals.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The Lobbying Disclosure Act, Act 93 of 1998, Chapter 13, 65 Pa. C.S. Section 1301 <u>et seq.</u> See, specifically, 65 Pa. C.S. Sections 1305(b)(3)(iii) and 1310(c). There are no relevant court decisions.		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Lobbying Disclosure Act, Act 93 of 1998, Chapter 13, 65 Pa. C.S. Section 1301 et seq. See, specifically, 65 Pa. C.S. Sections 1305(b)(3)(iii) and 1310(c).

Deadlines: The statute imposes a deadline for submitting the initial proposed regulations to IRRC (see, 65 Pa. C.S. Section 1310(c)).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations implement the requirements and restrictions of the Lobbying Disclosure Act.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

See, 65 Pa. C.S. Section 1302(a).

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Lobbyists, principals, and the general public will all benefit from the regulations. Additionally, some persons who are required to file Statements of Financial Interests under the Public Official and Employee Ethics Act, Act 93 of 1998, Chapter 11, 65 Pa. C.S. Section 1101 et seq., will also benefit from certain notices they will receive pursuant to the Lobbying Disclosure Act and these regulations.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Unknown.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Lobbyists and principals (number is unknown).

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Lobbying Disclosure Committee received input from the following individuals/entities, through written submissions and/or testimony provided at a public hearing on December 30, 1998: (1) Ball, Skelly, Murren and Connell, Counsel to the Pennsylvania Catholic Conference; (2) Common Cause, PA; (3) Morgan Plant of Morgan Plant and Associates; (4) The American Civil Liberties Union of PA; (5) The Pennsylvania Association for Government Relations; (6) Representative Tom Michlovic, 35th Legislative District; and (7) Representative Mark B. Cohen, 202nd Legislative District. Thereafter, following publication in the PA Bulletin, comments were received, reviewed, and ruled upon as set forth in "The Lobbying Disclosure Committee's Comment and Response Document for Final Form*"

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Unknown, in that this is new legislation (The Lobbying Disclosure Act, Act 93 of 1998, Chapter 13, 65 Pa. C.S. Section 1301 et seq.).

*Regulation (63-06)," which is incorporated herein by reference.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This Section does not appear to be applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Unknown, in that this is new legislation (The Lobbying Disclosure Act, Act 93 of 1998, Chapter 13, 65 Pa. C.S. Section 1301 et seq.).

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Unknown	-----	-----	-----	-----	-----
Local Government	N/A	-----	-----	-----	-----	-----
State Government	Unknown	-----	-----	-----	-----	-----
Total Savings						
COSTS:						
Regulated Community	Unknown	-----	-----	-----	-----	-----
Local Government	N/A	-----	-----	-----	-----	-----
State Government	See Below*					
Total Costs						
REVENUE LOSSES:						
Regulated Community	Unknown	-----	-----	-----	-----	-----
Local Government	N/A	-----	-----	-----	-----	-----
State Government	See Below*					
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

*\$165,000 was appropriated to the SEC by Act 93 of 1998 for October 16, 1998 through June 30, 1999.

The SEC's budget for fiscal year 1999-2000 for administering and enforcing the Lobbying Disclosure Act (over and above its budget under the Ethics Act) is \$280,275.

- (1) For fiscal year 2001-2002: A 5.2% increase over the prior fiscal year.
- (2) For fiscal year 2002-2003: A 5.7% increase over the prior fiscal year.
- (3) For fiscal year 2003-2004: A 5.7% increase over the prior fiscal year.
- (4) For fiscal year 2004-2005: A 5.7% increase over the prior fiscal year.
- (5) For fiscal year 2005-2006: A 5.7% increase over the prior fiscal year.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

No history. New program under Act 93 of 1998.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The regulations are required by the Lobbying Disclosure Act, to implement what is required by the Lobbying Disclosure Act. The benefit of regulations is that the statutory requirements are met.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives. The regulations implement what is required by the Lobbying Disclosure Act.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The regulatory approach has been chosen based upon legal considerations. The regulations have been drafted to be true to the statute and to provide certainty and fairness to those regulated. The changes which have been made have been based upon those same considerations. Furthermore, the changes which have been made would not significantly affect any associated costs.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The regulations are necessarily tailored to the Pennsylvania statute.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulations of approximately 27 other states have been reviewed. The proposed regulations compare favorably with those regulations which are comprehensive and thorough.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The regulations will affect reporting under Sections 1105(b)(6) and 1105(b)(7) of the Public Official and Employee Ethics Act. See, 65 Pa. C.S. Section 1305(b)(3)(iii).

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

A public hearing was held on December 30, 1998 to receive input.

A public meeting was held on January 13, 1999 to vote on the proposed regulations.

A public meeting was held on May 19, 1999 to review and to adopt the final-form regulations.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. The regulations implement the requirements of the Lobbying Disclosure Act. The Act and these regulations require the completion of "registration statements" by lobbyists and principals who are required to register under the Lobbying Disclosure Act. "Quarterly Expense Reports" must be filed, primarily by registered principals. Separate Quarterly Expense Reports must be filed by registered lobbyists when a principal's report fails to disclose required information. Notices of termination may be filed by registered lobbyists or registered principals. Where a notice of termination is filed, a (please see attached page)

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

(1) Effective date: August 1, 1999.

(2) Compliance required: commencing with the effective date.

(31) Provide the schedule for continual review of the regulation.

The LDC has continuing authority to promulgate regulations necessary to carry out the Lobbying Disclosure Act.

A specific schedule for review has not been set.

Attachment to question #28 (continuing):

"termination report" must also be filed. Again, a separate termination report must be filed by a registered lobbyist when a registered principal's termination report is deficient. Lobbyists are generally required to sign the reports filed by principals, to which they may attach statements of the limitations of their knowledge.

The Act and regulations require record-keeping by registered lobbyists and principals.

The forms are still in the developmental stage.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

RECEIVED
99 MAY 26 PM 4: 23

REVIEW COLLECTION

1997

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Ethics Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 63-06

DATE OF ADOPTION: 5/19/99

BY: _____

TITLE: Austin M. Lee
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Lobbying Disclosure Committee Chair

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY: _____

5/19/99

DATE OF APPROVAL

(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

LOBBYING DISCLOSURE COMMITTEE

[51 PA. CODE CHS. 31, 33, 35, 37,

39, 41, 43 AND 45]

Lobbying Disclosure

The Lobbying Disclosure Committee (Committee) statutorily created to promulgate regulations necessary to carry out 65 Pa.C.S. Chapter 13 (act) (relating to Lobbying Disclosure Act), comprised of the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Chairperson of the State Ethics Commission, the Attorney General, the Secretary of the Commonwealth, the Auditor General and the General Counsel, or their designees, adds Chapters 31-45 under the authority of 65 Pa.C.S. §§ 1305(b)(3)(iii) and 1310(c) (relating to reporting; and filing fees; fund established; regulations).

Purpose

The regulations implement the act and also impact upon the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. § 1105(b)(6) and (7) (relating to statements of financial interests).

The regulations are generally procedural in nature and implement the requirements of the act concerning: definitions; registration and reporting by principals and lobbyists; the maintenance of records of lobbying activity; the issuance of opinions and advices of counsel; compliance audits; investigations and hearings; referrals; the imposition of civil penalties; and the imposition of prohibitions against lobbying as a sanction.

The regulations have been drafted to be thorough and comprehensive, and to be easily understood by the regulated community and the general public.

Fiscal Impact and Paperwork Requirements

Since the regulations are under a new act, the fiscal impact cannot be discerned. Paperwork will be as dictated by the act.

Summary of Public Comments and Changes

The regulations were published as proposed in the *Pennsylvania Bulletin* on January 30, 1999, with an invitation to submit written comments within 30 days.

Comments were received from the public; the House Judiciary Committee; the Senate Rules and Executive Nominations Committee; and the Independent Regulatory Review Commission (IRRC). A summary of the comments, the Lobbying Disclosure Committee's responses to those comments, and related changes to the proposed regulations are set forth in "The Lobbying Disclosure Committee's Comment and Response Document for Final Form Regulation (63-06)" which is incorporated herein by reference.

All comments were considered by the Committee, and at a public meeting on May 19, 1999, there was review and a vote by the Committee to then adopt the final-form regulations and to submit them to IRRC, the aforesaid Standing Committees, and the Office of Attorney General for approval.

The final-form regulations reflect numerous and substantial changes to the proposed regulations. The following are some of the more noteworthy changes: the use of calendar year quarters for reporting; the clarification that the contents of communications and the identity of those with whom the communications take place need not be reported, recorded, or maintained; the inclusion of a provision allowing a

parent corporation and its subsidiaries to register and report on a consolidated basis if they meet the eligibility standards of the Internal Revenue Service for filing a consolidated corporate tax return; clarifications as to the burden of proof and the number of Commission members required for the Commission to find a violation, impose a civil penalty, or impose a prohibition against lobbying; clarifications as to certain definitions; clarifications as to access to computerized/electronic records; the maintenance of books and records on the same basis used by the registrant for federal tax purposes, or, for those who do not file tax returns, on a cash basis; the clarification of what a principal must do when unable to secure a lobbyist's signature for a report; and the inclusion of an additional valuation method that may be used where more than one individual is benefitted incident to an occasion or transaction.

With regard to the latter point, the regulations recognize several different valuation methods as acceptable. Depending upon the method chosen, the valuation will likely vary. Moreover, the fact that a registrant chooses a given method for valuing an item under the Lobbying Disclosure Act does not compel the recipient to use the same method for valuing it when reporting it under the Public Official and Employee Ethics Act. Thus, variations between the respective reports are to be expected and do not necessarily indicate that either report is erroneous.

Effective Date

The regulations will take effect upon final publication in the *Pennsylvania Bulletin* or August 1, 1999, whichever is later.

Sunset Date

The effectiveness of these regulations will be reviewed by the Committee periodically. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 1999, the Committee submitted a copy of the proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and Senate Committee on Rules and Executive Nominations. In addition to submitting the proposed regulations, the Committee provided IRRC and the Standing Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

In compliance with section 5.1(a) of the Regulatory Review Act, the Committee submitted a copy of the final-form regulation to IRRC and the aforesaid Standing Committees on May 26, 1999. In addition the Committee provided IRRC and the Standing Committees with information pertaining to commentators and a copy of a detailed Regulatory Analysis Form prepared by the Committee. A copy of this material is available to the public upon request.

In preparing this final-form regulation, the Committee has considered all comments received from IRRC, the said Standing Committees, and the public.

This final-form regulation was (deemed) approved by the Senate Committee on Rules and Executive Nominations on _____ and (deemed) approved by the House Judiciary Committee on _____. IRRC met on _____ and approved the regulation in accordance with Section 5.1(e) of the Regulatory Review Act.

Contact Person

Questions regarding these regulations may be submitted to: John J. Contino, Executive Director, or Vincent J. Dopko, Chief Counsel, State Ethics Commission, P. O. Box 11470, Room 309, Finance Building, Harrisburg, PA 17108-1470 (717) 783-1610.

Findings

The Committee finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202), and the regulations thereunder, 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Lobbying Disclosure Committee, acting under the Lobbying Disclosure Act, orders that:

(1) Chapters 31-45, designated "Part II," be added to the regulations at 51 Pa. Code, as set forth in Annex A.

(2) The Chief Counsel of the State Ethics Commission shall submit this Order and Annex A to the Office of Attorney General for approval as required by law.

(3) The Chief Counsel of the State Ethics Commission shall submit this Order, Annex A and a Regulatory Analysis Form to IRRC, the Senate Committee on Rules and Executive Nominations, and the House Judiciary Committee for their review and action as required by law.

(4) The Chair of the Lobbying Disclosure Committee shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(5) This Order shall take effect upon publication in the *Pennsylvania Bulletin* or August 1, 1999, whichever is later.

By the Lobbying Disclosure Committee,

AUSTIN M. LEE,
Chair

Annex A

TITLE 51. PUBLIC OFFICERS

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 employee made within the scope of such office or employment.

Election Code-25 P. S. §§ 2600-4051.

Employee-

[(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.

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) 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) 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 calendar year [of the biennial registration period], specifically, for [~~December~~]January through [~~February~~;] March; April through [~~May~~;] June; July through [~~August~~; and] September; and October through [~~November~~]December, except that the first quarterly reporting period shall commence August 1, 1999, and shall continue through [~~November 30~~]September 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. A registrant shall not 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]each 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]obbyist[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, except that any cost under this subparagraph which is of a de minimis economic value need not be reported under section 1305(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to numerous state officials or employes, the aggregate economic value of which is not de minimis, such value shall be included in the appropriate totals reported under section 1305(b)(2) of the act.

(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 (g)(6), (j) and (k).

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

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

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

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

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

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

(i) Research time spent in preparation for lobbying.

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

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

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

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

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

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

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

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

(iii) The amount of the gift.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting

figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.

(iii) 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.

(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]a) 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]b) 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]c) 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 and necessary expenses for transportation, meals, beverages and lodging.

([4]d) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

([5]e) 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]f) A principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

([7]g) An elected State officer acting in an official capacity.

([8]h) A State executive officer appointed by the Governor acting in an official capacity.

([9]i) An elected or appointed official or employe of a political subdivision acting in an official capacity.

([10]j) An employe of the Commonwealth or an employe or official of an independent agency of the Commonwealth acting in an official capacity.

([11]k) 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]l) An employe, who is not a registered lobbyist, of a corporation which is registered as a principal under section 1304 of the act; has one or more registered lobbyists; and includes in its reports under section 1305 of the act all of the employe's expenses related to lobbying. [The failure of the registered principal to include the employe's lobbying-related expenses in its reports under section 1305 of the act will cause the employe to lose the employe's exempt status unless the employe is otherwise exempt under this section.]

§ 37.2. Exempt status.

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

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

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

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

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

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

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

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

CHAPTER 39. OPINIONS AND ADVICES OF COUNSEL

Sec.

- 39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.
- 39.2. Standing requirements.
- 39.3. Prospective conduct to be reviewed.

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

The Commission shall provide advices of counsel and opinions in accordance with the procedures set forth in Section 1107 of the Ethics Act and Chapter 13 of Part I (relating to State Ethics Commission) [provisions relating to opinions and advices of

counsel will govern to the extent applicable]. A principal, lobbyist, or State official or employee who acts in good faith based upon a written advice or opinion of the Commission issued to him shall not be held liable for a related violation of the act.

§ 39.2. Standing requirements.

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

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

§ 39.3. Prospective conduct to be reviewed.

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

CHAPTER 41. COMPLIANCE AUDITS

Sec.

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

§ 41.1. Lotteries.

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

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

(c) [Unless for cause, n]No lobbyist or principal will be subject to a[n] random audit more than once in any [biennial registration]twelve-month 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]a) 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]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 4 years will be conducted.

([3]c) 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]1) The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.

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

([A]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 the records.

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

([iii]3) The audit may include interviews of lobbyists, principals, representatives and employes thereof and other individuals necessary to the completion of the audit.

([4]d) 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]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 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]4] The own motion of the Executive Director of the Commission, which [may be] is based upon [information received, including but not limited to, audits or related audits conducted under Chapter 41] a reasonable belief that a violation of the act may have occurred.

(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]l) 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)] S43.5. 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 SS21.3 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 SS21.1-21.3, 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 SS21.28-21.30 of Part I. At least four members of the Commission present at a meeting must find a violation by clear and convincing proof.

[(e)] S43.6. Civil penalties for late or deficient filings.

Following a noninvestigative process under [subsection (c)]S43.4, or an investigative process under [subsection (d)]S43.5, 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) If 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.

[Pa B. Doc. No 99-156 . Filed for public inspection January 29 , 1999, 9:00 a.m.]

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Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Committee Decision
		[§31.1, definitions of "Gift" and "Effort to influence legislative action or administrative action; §35.1]	It should be made clear that constituent services are not to be regarded as reportable items or gifts.	<p>Adopt. Make the following changes.</p> <p>In the definition of "Anything of value," insert the following after subparagraph (i)(P) as the new subparagraph (ii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p> <p>Renumber the remaining paragraph to be (iii) instead of (ii).</p> <p>In the definition of "Effort to influence legislative action or administrative action," insert the following as the new final sentence: <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p> <p>In the definition of "Gift," insert the following after subparagraph (ii) as the new subparagraph (iii): <u>"The term does not include services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee made within the scope of such office or employment."</u></p>
		[§35.1(k)]	The regulation for calculating gifts/hospitality/travel benefits should be revised to protect a Member against an unfair and inaccurate equal proration of imputed benefits.	Do not adopt any changes as to this particular comment. Adopt the changes set forth on Chart #6 as to the cited Paragraph.
		[§41.1(c)]	Delete the provision for "for-cause" audits.	Adopt the changes set forth in this Chart at 8, as to the first comment by R. David Tive, Pennsylvania Association for Government Relations.

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

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

Date Comment Received	Source(s) of Comment(s)	Section(s) of Regs Primarily at Issue	Description of Comment	Committee Decision
		§35.1(k)(6)	Lobbyists/principals are given options for calculating the value of gift(s), lodging/transportation/hospitality. Problems may arise, e.g., where a member invites others. Recipients may be surprised by the amounts allocated to them. Suggest that 1) require interim notification by a lobbyist/principal to a member that the expenditures to that member are at a certain dollar level, such as \$200, and approaching the threshold level; and 2) eliminate the option of calculating and attributing the benefit in order to maintain consistency among the reports of the benefits provided.	Do not adopt.
		§41.1(c)	There is no statutory basis for "for cause" audits and no definition in the Regs for what constitutes "cause." Applying the provision could be subjective and involve violations of due process and equal protection. Suggestion: delete the reference to "for cause audits" and clause (c) in its entirety, <i>or</i> , if the purpose of clause (c) is to protect against multiple random audits, add a clause which clarifies that no lobbyist shall be subject to a random audit more than once in a biennial period.	Adopt the changes set forth in this Chart at 8, as to the first comment of R. David Tive, Pennsylvania Association for Government Relations.
		§§43.3(a)	This Section should be consistent with the requirements of the Ethics Act for requiring the filing of a verified complaint to commence an investigation. Delete clause (4) and clarify in (5) that information must be "credible."	Adopt the changes set forth in this Chart at 8, as to the third comment of R. David Tive, Pennsylvania Association for Government Relations.
		§43.3(e) [and 45.2(13)]	Set forth the Ethics Act requirements regarding finding violations by the affirmative vote of at least four members based upon "clear and convincing proof."	Adopt as set forth in this Chart at 9-10, fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.

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

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

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

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

Chart #4 Comments of the House Judiciary Committee

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

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

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		§31.1, definition of "Effort to influence legislative action or administrative action"	The proposed Regulations should be modified to assure that legislative and constituent related information provided by a lobbyist/principal to a legislator, at the latter's request or insistence, does not come within the definition of an effort to influence legislative or administrative action. The definition should be amended to include, "any legislative and constituent related information" rather than merely "purely technical" data.	Do not adopt based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
Clarifying Comment of 3/22/99		[§35.1(k)(6)]	<p>The Act does not give lobbyists/principals the right to prorate costs. Legislators will be falsely perceived as reaching the disclosure threshold when they have not.</p> <p><u>Suggestion:</u> The Regs should a) require or, at the very least, encourage lobbyists/principals to provide interim notification to members and to other public officials/employees that the expenditures attributable to that official are at a certain dollar level and may be approaching the reporting threshold; and b) eliminate the option of dividing the total expenditure by the number of officials.</p> <p><u>Clarification:</u> Regs should require that of the two options presented, the same accounting method be consistently applied to all officials present at a single event. Also the most appropriate and practical method should be used.</p>	Do not adopt.
		§41.1(c)	The proposed audit procedures allow "for cause" audits but the term is devoid of any statutory basis and is inconsistent with clear legislative intent. The reference to "for cause" audits should be deleted.	Adopt the changes set forth in Chart #3 at 8, as to the first comment of R. David Tive, Pennsylvania Association for Government Relations.

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		[§43.3(a)]	The proposed Regs need to be clarified in order to assure that Commission proceedings are based upon sufficient cause. Delete category #4 since other criteria grant the Commission ample authority to conduct any and all necessary investigations. Amend category #5 to require that any investigation initiated by the executive director be based upon verified information.	Adopt the changes set forth in Chart #3 at 8, as to the third comment of R. David Tive, Pennsylvania Association for Government Relations.
		§43.3(e)	The proposed Regs should clarify that civil penalties for negligent failure to register or for inaccurate reporting be imposed by vote of a majority of the entire SEC membership based upon a standard of clear and convincing evidence. To promote consistency, the Ethics Act requirements regarding findings of violations by the affirmative vote of at least four members and clear and convincing proof should be included under the lobbying regulations and these standards should apply to any noncompliance proceedings which could result in penalties, as well as to investigative proceedings.	Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.
		[§37.1(11)]	The proposed Regs should clarify the Regs with regard to their effect upon religious organizations.	Do not adopt.
		[§§33.5(g); 35.1]	The reporting requirements imposed on lobbyists require subjective judgments, will be difficult to satisfy with precision, and could lead to unnecessary paperwork, inefficient	

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

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

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

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

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

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

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			<p>3. To avoid equal protection and due process challenges, lobbyists must be accorded the same rights as public officials. All sections dealing with investigations of lobbyists should make clear that lobbyists have the same rights as public officials.</p>	<p>3. Do not adopt any changes in response to this particular comment.</p>
		§41.1(c)	<p>1. The language could be read as indirectly authorizing an unlimited number of undefined for-cause audits. The language should be written to say that no lobbyist or principal shall be subject to a random audit more than once in any biennial registration period.</p> <p>2. If there is a need to create a new category of for-cause audits, that need should be clearly and narrowly defined in a separate section from the lottery audits.</p>	<p>1&2. Adopt the changes set forth in Chart #3 at 8, as to the first comment of R. David Tive, Pennsylvania Association for Government Relations.</p>
	(Travis J. Tu, Assistant Executive Director of the ACLU)		<p>For many of the smaller nonprofit organizations in Pa, compliance with these regulations will be a significant burden.</p>	<p>Not applicable. The true target of this comment (in the nature of a general observation) is the statute.</p>
			<p>These Regs will unreasonably hinder access to the legislative process for grassroots and nonprofit organizations, which may choose to withhold their expertise for fear of reaching the threshold and becoming subject to the regulations, the reporting requirements, and the punishments for noncompliance.</p>	<p>Not applicable. The true target of this comment (in the nature of a general observation) is the statute.</p>

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

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

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

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

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

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Committee Decision
3/22/99	§31.1, Definition of "principal"	In the definition of "principal," eliminate the phrase "in and of itself." Add language to clarify that a member of an association may be a principal but is not automatically a principal solely because he or she is a member of an association.	This comment is resolved by the changes adopted in Chart #6, as to a related comment by IRRC.
	§31.1, Definition of "indirect communication"	Revisit the definition of "indirect communication" to add further qualifying language. The primary focus of this definition seems to be a desire to cover substantive communication which is paid for and/or distributed by a lobbyist or principal and which is a direct effort to influence legislative action or administrative action. The definition should be refined so that it clearly doesn't encompass every "whisper-down-the-lane" type of communication.	Do not adopt. The definition is statutory.
	§31.1, Definition of "Service (of official papers)"; §43.3(c)(3)	Change "date of mailing" to "postmarked date." In §43.3(c)(3), change "mailing date" to "postmarked date."	Do not adopt any changes. The Commission meters its mail. Additionally, the mailing date is noted on the face of all pertinent documents.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	Eliminate the second sentence, which excludes purely technical data, because it is not clear what constitutes "purely technical data."	Adopt the change set forth on Chart #3 at 11, under the related comment of R. David Tive, Pennsylvania Association for Government Relations.

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

Date Comment Received	Section(s) of Regs. Primarily at Issue	Description of Comment	Committee Decision
	§33.5 (Termination)	Add language stating that if a lobbyist or principal is unwilling to or refuses to "sign off" on a termination report, a termination report may be filed solely with the signature of the lobbyist or principal filing such report. In such cases, perhaps the lobbyist or principal filing the report should be required to provide a certified mail receipt as proof that the other party has been notified of the termination.	Do not adopt as stated because the act itself requires such (<u>see</u> , §1305(b)(4) of the act). However, the problem of what to do when the required signature is not available is dealt with as to a comment by IRRC (<u>see</u> , Chart #6).
	§35.1(g)(1)	Consider adding language to clarify that publicly-held corporations do not need to report the identity of their major shareholders. This information already is reported under a separate Act and does not fall under the intent of Act 93.	Adopt the change set forth in Chart #3 at 7, as to the next-to-last comment of Bruce E. Lammel, Esq., USX Corporation.
	§ §35(g)(3)(iii) and 35.2(a)(3)	In § 35.1(g)(3)(iii) and 35.2(a)(3), dealing with the contents of quarterly expense reports and records maintenance, respectively, eliminate "except as provided by the Act or these regulations."	Adopt the changes set forth in Chart #3 at 2, as to the second comment of Franklin L. Kury, Reed Smith Shaw & McClay.
	§35.1(i)(5)	Determine whether it is appropriate for the amounts of rental value, electric utilities and similar expenses to also be calculated as good-faith estimates.	The statute provides for the reported <i>totals</i> to be good faith estimates. However, adopt the following changes at the beginning of §35.1(i)(5): "[Reportable costs for o] Office[s] expenses [, equipment and supplies] shall include,"
	§35.1(k)(1)	The time allowed for the return of an unused gift or hospitality item should be reduced to 10 days. We ask the Commission to consider how this provision may relate to gifts and hospitality items which are received less than 10 days before the end of a reporting period and returned after the end of that reporting period.	No changes were adopted.

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Committee Decision
	§39.3 (Prospective conduct to be reviewed)	<p>In §39.3, clarify that questions may be brought to the Commission at any time and that such questions may deal with topics related to past conduct, although the advice or opinion from the Commission may only be relevant to future conduct.</p>	<p>Do not adopt. However, adopt the following changes.</p> <p>Rewrite the first sentence of §39.1 as follows: <u>"The Commission shall provide advices of counsel and opinions in accordance with the procedures set forth in Section 1107 of the Ethics Act and Chapter 13 of Part I (relating to State Ethics Commission) [provisions relating to opinions and advices of counsel will govern to the extent applicable]."</u></p> <p>In §39.2(b), replace "may" with "will."</p> <p>In §39.3, replace "may" with "will."</p>
		<p>Also in §39.3, add language explicitly giving lobbyists and principals the right to request a special hearing before the Commission to appeal advice which has been received from Commission counsel, mirroring the current practice of the Commission under the Ethics Act regulations.</p>	<p>The concern is alleviated by the changes in the block immediately above.</p>
	§41.1(c)	<p>Eliminate the phrase, "unless for cause" and insert "random" before the word "audit." The intent of this clause appears to be to protect lobbyists and principals from the possibility of more than one random audit in a given registration period. Clarifying that §41.1(c) deals only with random audits should remove any confusion related to what constitutes "cause." Other sections of the statute and regulations spell out the Commission's right to conduct an audit as part of an investigation.</p>	<p>Adopt the changes set forth in Chart #3 at 8, as to the first comment of R. David Tive, Pennsylvania Association for Government Relations.</p>
	§41.4 (Audit Report)	<p>In §41.4, require that the Commission send the audit report via certified mail.</p>	<p>Do not adopt. Service by ordinary mail is a legally approved method.</p>

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

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

Chart #6 Comments of the Independent Regulatory Review Commission

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

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Committee Decision
	§31.1, Definition of "Audit"	Referencing "training and other areas relating to lobbying activities" in the definition creates: (1) the erroneous impression that a certain standard for "training" is mandated under the Act; and (2) confusion as to what the Commission would be auditing with respect to "training" and what other areas related to lobbying the Commission would include. This phrase should be deleted or revised to narrow its scope.	Change the definition as follows: <i>Audit</i> --A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping [,] and reporting [, training and other areas relating to lobbying activities]. <u>See, also</u> , changes to §41.2(a) at 14 of this Chart.
	§31.1, Definition of "Child"	Agree with Office of Attorney General that stepchildren should be included.	Do not adopt. <u>See</u> , Chart #3 at 1 as to related comment by OAG.
	§31.1, Definition of "Day or date"	Because the Committee intends to use the terms as they are commonly used, there is no need to define them. This definition should be deleted.	Adopt. Strike the term "Day or date" and its definition from §31.1.
	§31.1, Definition of "Effort to influence legislative action or administrative action"	The first sentence is good. The second sentence raises questions concerning the scope and intent of the exclusion for "purely technical data." Suggest the second sentence be revised as follows: "The term does not apply to services provided to the public or the provision of information to a state official, employe, legislator, agency or legislative body at the request of a state official, employe, legislator, agency or legislative body."	Do not adopt, based upon the deletion of the exemption for "purely technical data" as set forth in Chart #3 at 11, as to a comment of R. David Tive, Pennsylvania Association for Government Relations.
	§31.1, Definition of "Employee"	Suggest using the existing definition from the Tax Reform Code at 72 P.S. §7301(g) which provides a simple and familiar standard: " 'Employee' means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax." If the proposed definition is retained, make two changes: (1) delete the phrase, "For the limited purpose of determining exemption under Section	Rewrite the definition by keeping only the first 1 ½ lines (through the comma) and adding the language proposed by IRRC, as follows: <i>Employe</i> --[(i)] For the limited purpose of determining exemption under section 1306(6) of the act, the term [means . . . independent contractors] " <u>Employe</u> " means an individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

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

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

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	§31.1, Definition of "Service (of official papers)"	The definition should be modified to cross-reference the definition of "service" in §11.1 of the existing Ethics Act Regulations or be revised to mirror that definition. All references to "mailing date" in the Regulations should be changed to "postmark date."	Do not adopt any changes. The Commission meters its mail. The mailing date is noted on the face of all pertinent documents.
	§31.1, Definition of "Transportation and lodging or hospitality received in connection with public office or employment"	<p>1. The language in the first sentence of the definition doesn't really define anything and would be better placed in Chapter 35.</p> <p>2. The rest of the definition should be kept in Definitions, but under the heading of "hospitality."</p> <p>3. In (iv), there are two concerns: (1) As discussed above with regard to the definition of "lobbyist," the term "de minimis" should not be used; and (2) The second sentence contains substantive requirements that would be more appropriately placed in Chapter 35. Therefore, this sentence should be deleted and the language incorporated into Chapter 35.</p>	<p>1. Do not adopt. The sentence is particularly meaningful as to the phrase "received in connection with public office or employment."</p> <p>2&3. Adopt the changes set forth in Chart #4 at 5, second block, item 2, as to a related comment by Rep. Mark Cohen. Also adopt the following changes.</p> <p>Revise §35.1(g)(6) as follows: "<u>The total cost . . . families, except that any cost under this subparagraph which is of a de minimis economic value need not be reported under section 1305(b)(3) of the act. If the same or similar gift, hospitality or transportation or lodging is provided to numerous state officials or employees, the aggregate economic value of which is not de minimis, such value shall be included in the appropriate totals reported under section 1305(b)(2) of the act.</u>"</p> <p>Revise §35.1(g)(8) as follows: "The information . . . by subsections (g)(6), (j) and (k)."</p>
	§31.1, Definition of "Travel expenses"	Since the application of this definition is limited to § 37.1(3), this definition should be deleted and the substance should be incorporated into § 37.1(3).	<p>Adopt. Delete the term "Travel expenses" and its definition from §31.1. Revise §37.1(3), relabelled §37.1(c), as follows:</p> <p>([3]c) An individual who does not receive any compensation for lobbying, other than travel expenses. <u>For the</u></p>

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			<p><u>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 and necessary expenses for transportation, meals, beverages and lodging.</u></p>
	<p>§31.2 (Ethics Act Regulations in Part I)</p>	<p>1. Subsection (a) should be deleted because opinions, advices, and investigations are addressed in Chapters 39 and 43.</p> <p>2. Subsections (c) and (d) should be deleted; they are unnecessary and redundant.</p>	<p>1. Adopt the following changes. Delete Subsections (a) and (b) from §31.2. Re-letter (c) and (d) accordingly. Rename the Section, "Application to Ethics Act Regulations."</p> <p>2. Do not adopt. They highlight the fact that certain provisions carry over to the Ethics Act.</p>
	<p>§31.4 (Registration periods and reporting periods)</p>	<p>Although the proposed quarters have some advantages, they will impose unnecessary burdens on reporters and may also create problems as to notice to public officials/employees filing Statements of Financial Interests under the Ethics Act. Calendar year quarters should be used.</p>	<p>Adopt the change set forth in Chart #3 at 3, as to a related comment by Vince Phillips, Phillips Associates.</p>
	<p>§§31.5 and 31.6</p>	<p>The Act does not use the terms "delinquent" or "deficient." Additionally, the Regulations are silent as to what the Commission will do when it receives an incomplete or inaccurate filing. §19.3 of the Ethics Act Regulations addresses late and deficient filings. To avoid confusion, these two sections should be revised or combined to parallel §19.3.</p>	<p>Do not adopt any changes. These Sections explain the various ways in which noncompliance may result.</p>
	<p>§31.9 (Amended filings)</p>	<p>Chapters 33 and 35 contain more detailed provisions governing amended filings. Therefore, this section is redundant, and should be deleted.</p>	<p>Adopt the following changes.</p> <p>Delete Subsections (b) and (d). Keep Subsections (a) and (c) as they are.</p> <p>Make the substance of old (d) the new</p>

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			<p>Subparagraph (b) as follows:</p> <p>(b) Amended registration statements shall conform to the additional requirements detailed in §33.4 (relating to amended registration statements).</p>
	<p>§31.10 (Filings to be originals signed under oath or affirmation)</p>	<p>1. In Subsection (a), the word "forms" should be inserted between the words "these" and "filed" in the first sentence. Also, paragraph (1) essentially repeats the requirement stated in (a), and therefore, it should be deleted.</p> <p>2. If the affirmation requirements for registration and report filings are the same, subsections (b) and (c) should be combined to avoid confusion and reduce redundancy.</p> <p>3. Since the affirmation requirements for lobbyists signing a principal's quarterly report or attaching a statement to the report are the same, subsections (d) and (e) should be combined to avoid confusion and reduce redundancy.</p> <p>4. Even if the subsections are not combined, remove "penalty under" from Subsections (b), (d), and (e), as suggested by the Office of Attorney General.</p>	<p>1. Adopt the following change. Insert the word "forms" between the words "these" and "filed" in the first sentence. Do not delete paragraph (1) as it is designed to remind the filer of the criteria for signed originals.</p> <p>2 & 3. The requirements for (c) are different and cannot be combined. Moreover, although (b), (d), and (e) deal with the same affirmation requirements, attempts to combine them were unsuccessful. The items in (b) are forms, and are easily listed, but (d) and (e) are dealing with actions--signing a form, and attaching a statement to a form--and cannot be placed in a listing of filings as was originally contemplated. Therefore, do not adopt any changes.</p> <p>4. Adopt as set forth in Chart #3 at 1, as to the third comment of Cristina Papson, Deputy Attorney General, Office of Attorney General Review and Advice Section.</p>
	<p>§31.11 (Electronic filing)</p>	<p>1. Suggest that the Committee delete this section and do a separate rulemaking on electronic filing after the system has been developed and tested.</p> <p>2. However, if the Section is retained:</p>	<p>1. Do not adopt. It is anticipated that electronic filing will be available when the Act becomes effective.</p>

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		<p>A. Unless there is a compelling need for separate paragraphs, Subparagraphs (3)(i)-(iv) should be combined.</p> <p>B. In Subsection (b)(4), 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.</p> <p>C. Add a new subsection providing that the information related to obtaining an electronic signature will be confidential.</p>	<p>2. A. Attempts to combine the subparagraphs as originally contemplated were unsuccessful for the same reasons set forth above as to §31.10. Therefore, do not adopt any changes.</p> <p>2. B. Do not adopt. It is contemplated that defective electronic filings simply will not go through, and that the filer will be aware of that fact.</p> <p>2. C. No changes are needed on the issue of confidentiality.</p>
	§31.12 (Faxed filings)	For clarity, Subsection (b) should be reformatted using the same structure as Subsection (a) and should include a provision similar to Subsection (a)(2).	Do not adopt. The filings in Subsection (b) do not require the payment of a filing fee or the submission of a photograph.
	§31.14 (Severability clause)	Delete this Section. Paragraph (a) is unnecessary and will result in confusion. Paragraph (b) merely restates the obvious and is likewise unnecessary.	Adopt. Delete the existing §31.14 and replace it with a new §31.14, as set forth in Chart #3 at 6-7 as to the first comment of Bruce E. Lammel, Esq. USX Corporation.
	§33.1	Subsection (a)(3) should be revised to clarify that a lobbyist must only pay one \$100 fee regardless of the number of registrations filed.	Adopt the change set forth in Chart #3 at 3, third block, item 2, as to a related comment by Vince Phillips, Phillips Associates.
	§33.2 (Principal registration)	1. In Subsection (a), Paragraphs (1) and (2) essentially repeat the definition of "principal." Absent justification for their inclusion, they should be deleted.	1. Do not adopt. These paragraphs clarify "acting in any capacity as a principal." Based upon other changes made in Chart #3 at 8, as to the final comment of Bruce E. Lammel, Esq., USX Corporation, paragraph (2) clarifies that a principal that lobbies on its own behalf need not also register as a lobbyist.

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		<p>2. Subsections (a)(2) and (a)(2)(i) appear to be redundant and should be combined.</p> <p>3. Suggest the Committee consider adding a new subsection to allow corporations the option of doing consolidated registrations for themselves and their subsidiaries. If this suggestion is adopted, the Committee should establish a standard for a consolidated grouping, such as meeting the eligibility standards of the IRS for filing a consolidated corporate tax return. The Regulations should also clarify, either in this Chapter or Chapter 35, that corporations which elect to do a consolidated registration must apply the reporting requirements to aggregate expenditures of the corporation and the subsidiaries. This would mean that an exemption from registration or reporting could not be claimed unless the total expenditures of the corporation and its subsidiaries fell below the established limits.</p>	<p>2. Do not adopt. The subparagraphs address how registration is to be done. Logically, they should be broken down. Moreover, if (i) would be combined with (2), presumably (ii) would also have to be combined, resulting in a very lengthy provision.</p> <p>3. Adopt the changes set forth in Chart #3 at 6-7 as to the first comment of Bruce E. Lammel, Esq., USX Corporation.</p>
	§33.5 (Termination)	The Regulations should address what a principal should do in the event a lobbyist cannot sign, or refuses to sign, the termination report. Suggest that the principal should be required to attach a statement indicating why the lobbyist cannot sign, or that the lobbyist has refused to sign, as appropriate, and, in the event of refusal to sign, to provide proof that a copy of the termination report has been given to the lobbyist.	<p>Adopt the following changes to §33.5. Re-letter (j) to be (k) and (k) to be (l). Add the following as the new (j):</p> <p><u>(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.</u></p>

Date Comment Received	Section(s) of Regs Primarily at Issue	Description of Comment	Committee Decision
	§35.1 (Quarterly expense reports)	<p>1. A consistent method of reporting should be used. However, the use of the accrual system is unreasonable, because it is the opposite of how most individuals keep their financial records and is contrary to how corporations are required to report for their employees. Therefore, Subsection (c) should be revised to require registrants to use a cash basis for reporting.</p> <p>2. The first sentence of Subsection (d) repeats requirements contained in Subsections (a) and (b), and should be deleted.</p> <p>3. The second sentence of Subsection (f) is unrelated to what forms must be used and repeats the requirements contained in Subsection (g). Therefore, it should be deleted.</p> <p>4. Subsection (g)(2) is unnecessarily long. To improve its readability, a period should be placed after "conducted," and "so that," should be deleted. A new sentence should be started with "If."</p> <p>5. Subsection (g)(3) is somewhat confusing and should be revised as follows:</p> <p>... designated "other." The following shall not be reported:</p> <p>(i) A listing indicating which lobbyists are lobbying on which matters.</p> <p>(ii) The specific bill numbers for which the lobbying is being done.</p> <p>(iii) The specific contents of any communication or the identity of those with whom the communications take place.</p>	<p>1. A. Adopt the following changes to §35.1(c):</p> <p>(c) For purposes . . . of the act (relating to registration; and reporting), [compensation, costs and expenses . . . when actual payments are made] <u>books and records shall be kept on the same basis the registrant uses for federal tax purposes. For those registrants who do not file tax returns, books and records shall be kept on a cash basis.</u></p> <p>B. In §33.5(g)(3) delete "in the period . . . paid" and replace it with "as set forth in §35.1(c)"</p> <p>C. Delete (i) and (ii) in §33.5(g)(5).</p> <p>2. Adopt the following changes in Subsection (d):</p> <p>(d) [The duty to file a quarterly expense report or statement of failure to meet the reporting threshold is preliminarily placed upon the registered principal.] The [deadline for a] principal [to] <u>shall</u> file a quarterly expense report or statement of failure to meet the reporting threshold [shall be] <u>on or before</u> the 30th day after the quarterly reporting period ends.</p> <p>3. Adopt. Strike the second sentence of (f).</p> <p>4. Adopt. Make the changes as follows:</p> <p>(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted[,] [so that i] If a lobbyist is a . . . shall be included.</p> <p>5. Adopt the following changes to Subsection (g)(3):</p>

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		<p>6. In Subsection (i)(4)(ii), the phrase "as defined by the act" is redundant and should be deleted.</p> <p>7. In Subsections (i)(3) and (4)(iii), it is not clear what is meant by "in furtherance of lobbying." Unless there is a distinction the Committee is trying to draw, the "in furtherance of" language should be deleted.</p> <p>8. In Subsection (j)(3), the phrase "amount of the payment" should be replaced with the phrase "value of the transportation, lodging and hospitality" to be consistent with the other references to these items elsewhere in the regulation.</p> <p>9. In Subsection (k)(6), some flexibility in valuation methods is needed to deal with entertainment provided to groups. However, the following should be added as a new Subparagraph (iii) to address situations where using an average would not reflect the value of the real benefit received: "Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.</p> <p>10. Subsection (m) does not address what a principal should do in the event a lobbyist cannot sign, or refuses to sign, the report. The same language recommended in comments above as to Section 33.5 should be added to this subsection.</p>	<p>(3) The general subject matter . . . designated "other." <u>The following need not be reported:</u></p> <p>(i) A [correlation as to] <u>listing indicating</u> which lobbyists are lobbying on which matters [or issues is not required].</p> <p>(ii) [With regard to legislative action,] <u>The specific bill numbers [are not required to be included] for which the lobbying is being done.</u></p> <p>(iii) [Except as provided by the act or this part, t] <u>The specific contents of any [particular] communication[,] or the identity of those with whom the communications take place [, need not be reported].</u></p> <p>6. Adopt the following change to §35.1(i)(4)(ii):</p> <p>(ii) Time spent in direct communication or indirect communication [as defined by the act].</p> <p>7. Do not adopt. The phrase serves as a qualifier.</p> <p>8. Adopt the following change to Subsection (j)(3)(iii):</p> <p>(iii) <u>The [amount of the payment] value of the transportation, lodging or hospitality.</u></p> <p>9. Adopt.</p> <p>10. Add the following as the new second sentence of §35.1(m):</p> <p><u>In the event the principal is unable to secure the signature of the lobbyist, the principal shall attach an affidavit to such report, setting forth the attempts</u></p>

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			<p><u>made and the reasons for the inability to obtain the lobbyist's signature. Such affidavit shall be on a form prescribed by the Commission.</u></p>
	<p>§35.2 (Records maintenance, retention and availability)</p>	<p>The language in Subsection (c)(4) requiring "access to all of the recorded information" has created some confusion. To clarify that the only information that must be provided is that which is relevant to the audit, the following language should be substituted for the proposed language in Subsection (c)(4):</p> <p>(4) Computerized/electronic records shall be maintained to enable the Commission or Office of Attorney General to access all of the information reasonably necessary to substantiate the reports.</p> <p>Also, the second sentence of the proposed section is not necessary. Instead, a provision should be added to Chapter 41 which would require the subject of an audit to provide its computerized/electronic records in a format that could be read by the Commission or Office of Attorney General.</p>	<p>Adopt the changes set forth in Chart #3 at 18, as to related comments by Edward C. Hussie, Chief Counsel to the Majority Leader, House of Representatives.</p>
	<p>§37.1 (Qualifications for exemption)</p>	<p>The second sentence in Subsection (12) is unnecessary, restates the obvious, may cause confusion, and is misplaced in a list of exemptions. Delete it.</p>	<p>Adopt. Strike the second sentence in Subsection (12).</p>

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	§37.2 (Exempt status)	This Section is unnecessarily long and repetitive. There is no need to have separate subsections for principals and lobbyists. Recommend that the word "principal" in Paragraph (a) and Subparagraphs (a)(1) and (2) be replaced with the word "registrant" and that Subparagraphs b(1)-(4) be deleted.	<p>Revise §37.2 as follows:</p> <p>[(a)] As long as a 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 . . . \$500.</p> <p>[(1)a] Upon losing exempt status, a principal or lobbyist is immediately . . . act.</p> <p>[(2)b] A principal is not required to retroactively file reports for quarterly . . . status.</p> <p>[(b) As long as a lobbyist qualifies for exemption . . . the act.</p> <p>(1) The exemption . . . reports.</p> <p>(2) The exemption . . . principals.</p> <p>(3) Upon losing . . . of the act.]</p> <p>[(4)c] A lobbyist is not required to retroactively sign . . . exempt status.</p>
	Chapter 39 (Opinions and Advices of Counsel)	<p>1. In §39.2, the word "may" should be replaced with the word "will" to more clearly indicate that the Commission will not consider third-party requests.</p> <p>2. § 39.3 is unnecessary and should be deleted, because it is covered in Chapter 13.</p>	<p>1. In §39.2(b), change the word "may" to "will."</p> <p>2. Do not delete § 39.3. However, in § 39.3, change the word "may" to "will."</p>
	§41.1 (Lotteries)	With regard to the reference to audits "for cause" in §41.1(c), the Act provides only for random audits. The circumstances for performing that	Adopt the changes set forth in Chart #3 at 8, as to the first comment of R. David Tive, Pennsylvania Association for Government Relations.

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		type of audit and the scope of the audit should be clearly spelled out in Chapter 43.	
	§541.2 (Number and scope of compliance audits)	<p>1. With regard to paragraph (a), as set forth in the comments regarding the definition of "audit," a question is noted as to the Commission's authority to review training and other areas. Training and other areas besides recordkeeping and reporting are beyond the permissible scope of an audit.</p> <p>2. It is recommended that paragraphs (d) and (e) be deleted. It is questioned whether the Commission has the statutory authority for these provisions, especially in light of the statutory authorization only for random audits and the strict controls under which investigations may be initiated. Additionally, it is the responsibility of the registrant being audited to produce sufficient records to support his filings.</p>	<p>1. Change 541.2(a) as follows:</p> <p>(a) The purpose of conducting the audits shall be to ensure compliance with the act [and to review methods of recordkeeping, reporting, training and other areas relating to lobbying activities].</p> <p>2. Do not adopt any changes.</p>
	§41.4 (Audit report)	With regard to Paragraph (b), clarification is requested as to what would be included in the reference to "other practices."	Do not adopt any changes.
	Chapter 43 (Investigations, Hearings and Referrals)	<p>1. Chapter 43 should be reorganized and rewritten to parallel Chapter 21 to the maximum extent possible.</p> <p>2. §43.2 should be rewritten to encompass the informal procedures used to handle late or deficient filing of reports, and should be closely modeled after §19.3 of the Commission's Regulations.</p>	<p>1. <u>See</u>, changes below.</p> <p>2. Do not adopt substantive changes to the procedures. The initial draft of the Regulations <i>did</i> track the process for informal civil penalty proceedings in the Ethics Act Regs, but was changed as the result of criticisms regarding the burden of proof issue.</p>

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		<p>3. §43.3 should be rewritten to encompass Commission proceedings under Sections 1304, 1305, and 1307 of the Act. As written, it is too long and cumbersome. It is recommended that it be divided into several sections, similar to the following Chapter 21 provisions:</p> <p>Section 21.1. Complaints Section 21.2. Initiation of investigation by the Commission Section 21.3. Preliminary inquiries Section 21.5. Conduct of Investigations Section 21.21. General Section 21.22. Discovery Section 21.23. Scope of hearing Section 21.24. Hearing officer Section 21.25. Conduct of the hearing Section 21.26. Motions Section 21.27. Briefs Section 21.28. Decision Section 21.29. Finality; reconsideration Section 21.30. Effect of order</p> <p>The comments below pertain to the Sections in Chapter 43 as proposed.</p>	<p>3. Adopt the following changes to facilitate readability:</p> <p>Change the heading of §43.3 as follows: " §43.3. <u>Late or deficient filings</u>--Commission proceedings under section 1304 or 1305 of the act."</p> <p>Change §43.3(c) to be the new §43.4 designated as follows: " §43.4. <u>Noninvestigative process for late or deficient filings.</u>" Also, re-letter and renumber the subparagraphs under old (c) appropriately.</p> <p>Change §43.3(d) to be the new §43.5 designated as follows: " §43.5. <u>Investigative process for late or deficient filings.</u>" Also, re-letter and renumber the the subparagraphs under old (d) appropriately.</p> <p>Change §43.3(e) to be the new §43.6 designated as follows: " §43.6. <u>Civil penalties for late or deficient filings.</u>" Also, re-letter and renumber the subparagraphs under old (e) appropriately.</p> <p>Change §43.3(f) to be the new §43.7 designated as follows: " §43.7. <u>Commission decisions as to late or deficient filings.</u>"</p>
	§43.1	Paragraph (b) in §43.1 should be deleted, as it is redundant.	Do not adopt. The provision is not redundant, because it addresses actual findings by the Commission--i.e., as the result of a hearing--that a failure to register or report is intentional.
	§43.2	1. Subsection (a), which provides for a preliminary inquiry upon receipt of a complaint, should cross reference Section 21.1 (relating to complaints).	1. Adopt the following change in Subsection (a): "Upon receipt of a complaint <u>as defined in §31.1</u> , the Commission . . . (relating to prohibited

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		<p>2. Likewise, Subsection (b) should reference Section 21.3 (relating to preliminary inquiries).</p> <p>3. With regard to Subparagraphs (d)(1) and (2), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for 7 days beyond the Respondent's deadline.</p>	<p>activities)."</p> <p>2. Adopt the following change in Subsection (c): "Preliminary inquiries will be conducted [under] <u>in accordance with</u> the procedures for preliminary inquiries set forth within <u>§21.3 of Part I . . .</u> to the extent applicable."</p> <p>3. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.</p>
	§43.3	<p>1. With regard to Paragraph (a), it is not clear what is contemplated by "Commission proceedings." Preliminary inquiries, investigations and hearings all qualify as proceedings.</p> <p>2. Subparagraphs (a)(4) and (5) are inconsistent with the Act. It is recommended that Subparagraph (a)(4) be deleted and that Subparagraph (a)(5) be revised to limit the information upon which the Executive Director's motion may be based to that which leads to a reasonable belief that a violation has been committed.</p> <p>3. With regard to Paragraphs (b) and (c), if the term "noninvestigative procedure" is intended to reference an</p>	<p>1. Do not adopt any changes as to this particular comment. The subsequent Sections detail the procedures.</p> <p>2. Adopt the changes set forth in Chart #3 at 8, as to the third comment of R. David Tive, Pennsylvania Association for Government Relations.</p> <p>3. The noninvestigative procedure <i>is</i> intended to be similar to that outlined in §19.3 of the Ethics Act Regulations. The statutory authority for it is Section 1309 of the Lobbying Disclosure Act. The restructuring would be accomplished by breaking down and relabelling the pertinent Sections and Subsections as set forth in this chart at 14-15.</p>

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		<p>informal procedure similar to that outlined in Section 19.3 of the Commission's Regulations, it would be more appropriately placed under a revised Section 43.2, which would relate to late or deficient filings. If it is intended to reference a preliminary inquiry, it is recommended that it be placed in a separate section similar to Section 21.3. However, if it is intended to authorize the Commission to initiate formal disciplinary proceedings without a prior investigation, a question is noted as to the statutory authority for the provision. Section 1108(e) of the Ethics Act requires the Commission to complete an investigation before issuing a rule to show cause.</p> <p>4. Subparagraph (c)(3) references both "notice recipient" and "respondent." If they are one and the same, the term, "respondent" should be used consistently, since it is a defined term.</p> <p>5. With regard to Subparagraphs (c)(9) and (10) and (d)(2)(i) and (ii), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to participate, and why such request would have to be delayed for an additional seven days.</p> <p>6. Subsection (e) is without statutory authority. Section 1108(g) of the Ethics Act provides "At least four members of the commission present at a meeting must find a violation by clear and convincing proof." Based</p>	<p>4. Do not adopt. The terms are <i>not</i> the same. A notice recipient does not become a Respondent unless and until process such as a Petition for Civil Penalties is filed against him.</p> <p>5. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.</p> <p>6. Adopt the changes set forth in Chart #3 at 9-10, as to the fourth comment, item 4, of R. David Tive, Pennsylvania Association for Government Relations.</p>

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		upon the recommendation that the procedural provisions in Chapter 43 be modeled after those in Chapter 21, it is recommended that Paragraph (e) be deleted.	
	§45.1	<p>1. Section 1309(e) of the Act, which authorizes the Commission to impose a prohibition against lobbying, is limited to intentional violations. Thus, Subparagraphs (a)(4), (b), and (c) should be deleted, as they reference negligent violations.</p> <p>2. In subparagraph (d)(1), the applicable sections of Chapter 21 pertaining to hearings should be cross-referenced.</p>	<p>Do not adopt. Another Section, specifically Section 1309(d) of the Act, authorizes the Commission to impose the prohibition against lobbying where there is noncompliance, an opportunity for hearing, and a subsequent failure to comply. Thus, the prohibition is not limited to intentional violations. The accuracy of this interpretation is confirmed by Subsection (e)(4) which provides that no criminal prosecution or conviction is required for the imposition of the prohibition. Intentional violations would be found as the result of criminal prosecutions/convictions.</p> <p>2. Adopt the following changes to Subparagraph (d)(1):</p> <p>(1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) <u>and, to the extent applicable, Chapter 21 of Part I.</u></p>
	§45.2	1. With regard to Subparagraphs (b)(7) and (8), a question is noted as to the circumstances under which the Investigative Division or the Commission would require a hearing if the Respondent would not elect to have one and would not plan to	1. No changes are needed. The answer to the question is that material factual issues may not be resolved by the pleadings. If the Respondent does not request a hearing, the Investigative Division or Commission must have that opportunity so that those matters can

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		<p>participate, and why such request would have to be delayed for an additional seven days.</p> <p>2. Agreement is noted as to the recommendation of the Office of Attorney General with regard to limiting the Commission's determination, where a lobbyist or principal has been convicted, to the amount of time the lobbyist or principal would be prohibited from lobbying. There would be no need for the Commission to relitigate these matters. It is recommended that the Committee add the Office of Attorney General's suggested language as a new Subsection (c) or as a new Section 45.3.</p>	<p>be resolved. The timeframe of 7 days after the Respondent's Answer is received is necessary because if there is a request for hearing by the Respondent, it is usually in the Answer. Thus, until the Answer is received, it is not known whether the Respondent will request a hearing.</p> <p>2. Adopt the changes set forth on Chart #3 at 2, as to the final comment of Cristina Papson, Deputy Attorney General, Office of Attorney General, Review and Advice Section.</p>
	General	<p>1. Section 1302(b) of the Act provides, in part: "This chapter is not intended to govern professional activities which do not include lobbying and which are properly the subject of regulation by the judicial branch of government or by any government agency." To give effect to this provision, the Committee should consider inserting a separate section exempting communications for which the attorney-client privilege is claimed from the disclosure requirements.</p> <p>2. Where the Regulations refer to forms that are to be developed by the Commission for use by registrants, the term "approved" should be used consistently, rather than "promulgated by," "provided by," or "prescribed by." In addition, the Regulations should clarify whether the Commission will permit filings on forms which are substantially equivalent to the</p>	<p>1. Adopt the changes set forth in Chart #3 at 2 as to the first two comments by Franklin L. Kury, Reed Smith Shaw & McClay.</p> <p>2. Change the wording to consistently use "prescribed by." Since only SEC forms may be used, do not use "approved by"; that wording would erroneously suggest that forms created by others could be used.</p>

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		<p>forms obtained from the Commission (<u>See</u>, 1 Pa. Code §13.42).</p> <p>3. General references to Part I provide little guidance and should be replaced with specific references to the applicable sections of the Commission's Regulations.</p> <p>4. The phrase "to the extent applicable" should be deleted from references to provisions in Part I. If there is another specific statutory or regulatory provision which would supercede the appropriate provision in Part I, the Regulation should include a citation to that authority.</p> <p>5. The phrase, "disclosure reports" should be defined to include all filings required under the Act or amended filings. By including amended filings in the definition of "disclosure reports," repetitive references to "separate amended quarterly expense reports" can be eliminated.</p>	<p>3. Replace general references to Part I with specific references to the extent possible.</p> <p>4. Do not adopt. The phrase "to the extent applicable" is essential because certain wording in the Ethics Act Regs would be peculiar to the Ethics Act.</p> <p>5. Do not adopt. Not all filings are disclosure reports.</p>

**LISTING OF NAMES AND ADDRESSES
OF COMMENTATORS AS TO
LOBBYING DISCLOSURE PROPOSED RULEMAKING (63-06)
WHO HAVE REQUESTED ADDITIONAL INFORMATION
RELATING TO THE FINAL-FORM REGULATION
AND THE TEXT OF THE FINAL-FORM REGULATION**

Only one commentator as to Lobbying Disclosure Proposed Rulemaking 63-06 requested additional information relating to the final-form regulation and the text of the final-form regulation, specifically:

Bruce E. Lammel, Esquire
USX Corporation, Law Department
600 Grant Street
Pittsburgh, PA 15219-4776

In accordance with 71 P.S. §745.5a, on the date of submission of the final-form regulations and related materials to IRRC, the House Judiciary Committee, and the Senate Rules and Executive Nominations Committee, the aforesaid commentator is being provided, by first class mail, with the following: (1) Notice of the submission of the final-form regulations; (2) a copy of the preamble as submitted; and (3) a copy of the final-form regulations, as submitted.

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 63-06

99 MAY 26 PM 4: 23

SUBJECT: Lobbying Regulation and Disclosure

AGENCY: ~~DEPARTMENT OF~~ State Ethics Commission

RECEIVED
REGISTRATION

TYPE OF REGULATION

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

5/26/99 J. Pedersen

HOUSE COMMITTEE ON Judiciary

5/26/99 D. Stentz

SENATE COMMITTEE ON Rules & Executive Nominations

5/26/99 Kim C. Bremer

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

January 5, 1999