

Regulatory Analysis Form

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REVIEW COMMISSION



(1) Agency

State Ethics Commission

(2) I.D. Number (Use Task Force No.)

63-07

IRRC Number: 2128

(3) Short Title

SEC

(4) PA Code Cite

51 Pa. Code Section 11.1 et seq.

(5) Agency Contacts & Telephone Numbers (717) 783-1610

Primary Contact: John J. Contino, Esq., Executive Director

Secondary Contact: Vincent J. Dopko, Chief Counsel

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

1. Add general and cross references to the Lobbying Disclosure Regulations which will conform to the references in those Regulations.

2. Amend the reporting thresholds for Statements of Financial Interests (SFI's) so that the Regulations will conform to higher reporting thresholds as they now appear in the Public Official and Employee Ethics Act, 65 Pa.C.S. §1105(b).

3. Add a section as to confidentiality which will incorporate the eight existing statutory exceptions to confidentiality and add two additional exceptions in conformity with judicial case law.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Public Official and Employee Ethics Act, 65 Pa.C.S. §1101 et seq. Easton Publishing Company d/b/a Express Times v. John Contino, et al., Civil Order 00-CV-983, U.S. District Court for Eastern District of Pennsylvania.

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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.

No.

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

1. The SFI reporting thresholds need to be amended to conform to the thresholds as they now exist by statute in the Public Official and Employee Ethics Act, 65 Pa.C.S. §1105(b).
2. Two exceptions to confidentiality need to be added to conform to judicial case law.
3. References to the Lobbying Disclosure Regulations are added to correspond to the references in those Regulations.

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

None.

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

The individuals subject to the Public Official and Employee Ethics Law will benefit.

1. There should be less confusion as to reporting thresholds for SFI's and as to confidentiality application and exceptions by amending the regulations to conform with statutory and decisional law.
2. The references will not provide any detriment but will provide a benefit with corresponding references to the Lobbying Disclosure Regulations.

Regulatory Analysis Form

(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.)

None.

(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.)

Public officials, public employees, candidates, and third parties who have involvement with the foregoing individuals.

(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.

None. Since the regulations are procedural and conform to the requirements of decisional law, no such steps were taken.

(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.

None. There are no costs associated with the regulations.

Regulatory Analysis Form

(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.

None.

(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.

None.

Regulatory Analysis Form

(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						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

None.

Regulatory Analysis Form

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

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.

There are no cost considerations. There will be benefits.

1. There should be less confusion as to reporting thresholds for SFI's and as to confidentiality application and exceptions by amending the regulations to conform with statutory and decisional law.
2. The references will not provide any detriment but will provide a benefit with corresponding references to the Lobbying Disclosure Regulations.

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

None. These changes are required to conform the regulations with statutory and decisional law.

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

None.

Regulatory Analysis Form

(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.

N/A.

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

N/A.

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

No.

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

No. Since the regulations are procedural and conform to the requirements of decisional law, no such steps will be taken.

Regulatory Analysis Form

(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.

No.

(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.

The regulations and the Ethics Act affect all public officials/employees equally; therefore no special needs of any group of persons exist which would have to be specifically addressed.

(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?

Summer, 2001.

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

The agency will constantly oversee how the administrative procedure is developing and operating under the regulations and will make changes as necessary to maintain efficient operation.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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LEGISLATIVE
REVIEW COMMISSION



2128

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. 63-7

DATE OF ADOPTION: April 16, 2001

BY:

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY:

April 16, 2001
DATE OF APPROVAL

~~(Deputy General Counsel)~~
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

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

STATE ETHICS COMMISSION

[51 Pa. Code Chs. 13, 17 and 21]

Procedure

The State Ethics Commission (SEC) amends 51 Pa. Code as set forth in Annex A. The amendments are promulgated pursuant to the authority of 65 Pa.C.S. §§1101-1113 (relating to the Public Official and Employee Ethics Act) (act).

Notice of proposed rulemaking was published at 30 Pa.B. 3467, 3468 (July 8, 2000), with an invitation to submit written commentary within 30 days.

Purpose

These regulations are made in accordance with section 1107(1) of the act (65 Pa.C.S. §1107(1)) which directs the SEC to promulgate rules and regulations necessary to carry out the provisions of the act.

The regulations implement the act which directs the SEC to administer the Ethics Act to public officials, public employees, candidates for public office and other persons involved in an official capacity with the foregoing persons.

The regulations are promulgated to address three specific matters of concern. First, amendments are promulgated to insert general or cross references to Chapters 31 and 35 (relating to general provisions; and reporting) (lobbying disclosure regulations) to correspond with references appearing in that part. Second, the reporting thresholds in Chapter 17 are promulgated to conform with the existing statutory thresholds in section 1105(b) of the act (relating to statements of financial interests). Third, a new section on confidentiality is promulgated to be added to Chapter 21 which includes the eight statutory exceptions to confidentiality plus two additional exceptions. The two additional exceptions are promulgated under section 1108(k)(9) of the act (relating to investigations by commission) which authorizes the Commission to promulgate other exceptions to confidentiality as it may direct by regulation.

Summary

The regulations insert cross references to the Lobbying Disclosure Regulations to correspond with references appearing in the Lobbying Regulations; amend the reporting thresholds to conform with the existing statutory thresholds in section 1105(b) of the Ethics Law, 65 Pa.C.S. §1105(b);

and add a new section on confidentiality which includes the existing eight statutory exceptions to confidentiality plus two new additional exceptions.

Comments and Responses

Written comments and suggestions were received from the Executive Director of Pennsylvania State Association of Township Supervisors (PSATS) who proposed that the exceptions to confidentiality should be further defined and clarified.

A meeting on the commentary took place on December 18, 2001, attended by staff of the standing committees, IRRC and staff of the SEC. The two exceptions to confidentiality were redrafted to narrow the scope of their application. The commentary was considered by the members of the SEC in a public meeting on February 27, 2001, wherein the SEC considered and accepted the modifications.

Affected Parties

These regulations will affect public officials, public employees, candidates and third parties who have involvement with the foregoing individuals.

Fiscal Impact and Paperwork Requirements

These regulations have no fiscal impact upon the Commonwealth.

Effective Date

The regulations will take effect upon final publication in the Pennsylvania Bulletin.

Sunset Date

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

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the SEC submitted a copy of the notice of proposed rulemaking, published 30 Pa.B. 3467 (July 8, 2000), to IRRC and the Chairpersons of the House Judiciary Committee and the Senate Committee on Rules and Executive Nominations for review and comment. The SEC received commentary from counsels for the Senate Majority Caucus and Senate Democratic Leader and then from IRRC.

On April 16, 2001, the SEC submitted to IRRRC the final form regulations 63-07 which were considered at a public meeting of IRRRC on _____ 2001. Approval as to form and legality was sought from the Office of Attorney General on _____ 2001.

Contact Person

The contact persons responsible for information on the SEC's process for adoption of the regulations are John J. Contino, Executive Director, or Vincent J. Dopko, Chief Counsel, 309 Finance Building, P.O. Box 11470, Harrisburg, PA 17108-1470, (717) 783-1610.

Order

The SEC finds that the regulations are necessary and appropriate for the administration and enforcement of 65 Pa.C.S. §§1101-1113. Acting under the authority of the Ethics Law, the SEC orders that:

(1) The regulations of the SEC, 51 Pa. Code, Chapters 13, 17 and 21, are amended to read as set forth in Annex A.

(2) The Executive Director of the SEC shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(3) The Executive Director of the SEC shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the Pennsylvania Bulletin.

Daneen E. Reese
Chair

Annex A

TITLE 51. PUBLIC OFFICERS

PART I. STATE ETHICS COMMISSION

CHAPTER 13. OPINIONS AND ADVICES OF COUNSEL.

* * *

§13.5. Public access.

* * *

(d) A digest and index of Commission opinions may be published and disseminated annually.

Cross References

This Chapter cited in 51 Pa. Code §39.1 (relating to Ethics Act regulations in Part 1 as to opinions and advices of counsel).

CHAPTER 17. STATEMENTS OF FINANCIAL INTERESTS, CONTENT.

* * *

§17.3. Creditors.

(a) Each creditor to whom is owed in excess of \$~~50~~6500 or the amount as adjusted under section 1105(d) of the act (65 Pa.C.S. §~~4~~1105(d)) and §19.5 (relating to statements of financial interests reporting—threshold adjustments) shall be reported.

* * *

§17.4. Income.

(a) The name and address of a direct or indirect source of income, including employers, in the aggregate of \$1,~~0~~300 or more or the amount as adjusted under section 1105(d) of the act (65 Pa.C.S. §~~4~~1105(d)) and §19.5 (relating to statements of financial interests reporting—threshold adjustments) shall be reported unless the disclosure would require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.

* * *

§17.5. Gifts.

(a) The name and address of the source of a gift valued in the aggregate at \$2~~0~~50 or more or the amount as adjusted under section 1105(d) of the act (65 Pa.C.S. §~~4~~1105(d)) and §19.5 (relating to statements of financial interests reporting—threshold adjustments) shall be reported.

* * *

§17.6. Expense reimbursement.

(a) The name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where the actual expenses for transportation and lodging or hospitality exceed \$~~650~~0, or the amount as adjusted under section 1105(d) of the act (65 Pa.C.S. §~~4~~1105(d)) and §19.5 (relating to statements of financial interests reporting—threshold

adjustments), in the course of a single occurrence shall be reported.

* * *

§17.11. Application of Lobbying Disclosure regulations.

See, Lobbying Disclosure regulations, Chapters 31 and 35, as to the differentiation between “gift” and “transportation and lodging or hospitality received in connection with public office or employment” and the determination of such amounts for reporting.

CHAPTER 21. INVESTIGATIONS.

GENERAL

- Sec.
21.1. Complaints.
21.2. Initiation of investigation by the Commission.
21.3. Preliminary inquiries.
21.4. Frivolous complaints; complaints without probable cause, disclosure of complaints.
21.5. Conduct of investigations.
21.6. Confidentiality.

* * *

§21.6. Confidentiality.

(a) As a general rule, no person shall disclose or acknowledge, to any other person, any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the commission. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this chapter or Section 1108 of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1108, when the matters pertain to any of the following:

(1) final orders of the commission as provided in 65 Pa.C.S. §1108(h);

(2) hearings conducted in public pursuant to 65 Pa.C.S. §1108(g);

(3) or the purpose of seeking advice of legal counsel;

(4) filing an appeal from a commission order;

(5) communicating with the commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the commission;

(6) consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;

(7) testifying under oath before a governmental body or a similar body of the United States of America;

(8) any information, records or proceedings relating to a complaint, preliminary

inquiry, investigation, hearing or petition for reconsideration which the person is the subject of;


(9) the publication or broadcast of information legally obtained by the news media regarding a confidential Commission proceeding;
or

(10) the divulgence by individuals who are interviewees or witnesses as to confidential Commission proceedings regarding information that was already in their possession or the disclosure of their own statements.

DATE: April 16, 2001

SUBJECT: Comment and Response Document for Regulation 63-7

TO: Independent Regulatory Review Commission

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

The State Ethics Commission (SEC) promulgated proposed rulemaking which appeared in the Pennsylvania Bulletin, Volume 30, No. 28, on July 8, 2000.

The proposed regulations: (1) insert cross references to the Lobbying Disclosure Regulations to correspond with references appearing in the Lobbying Regulations; (2) amend the reporting thresholds to conform with the existing statutory thresholds in section 1105(b) of the Ethics Law, 65 Pa.C.S. §1105(b); and (3) add a new section on confidentiality which includes the existing eight statutory exceptions to confidentiality plus two new additional exceptions.

The SEC received commentary as to the proposed rulemaking from three sources: Pennsylvania State Association of Township Supervisors (PSATS), Senate Counsel, and the Independent Regulatory Review Commission (IRRC).

A meeting on the commentary took place on December 18, 2000, attended by staff of the standing committees, IRRC and staff of the SEC. A tentative resolution of the comments was reached for presentation and consideration by the Commission whereby the proposed regulations were modified by narrowing the scope of the exceptions to confidentiality:

- (9) the publication or broadcast of information legally obtained by the news media regarding a confidential Commission proceeding; or
- (10) the divulgence by individuals who are interviewees or witnesses as to confidential Commission proceedings regarding information that was already in their possession or the disclosure of their own statements.

The commentary was considered and accepted by the members of the SEC in a public meeting on February 27, 2001.

VJD/se



STATE ETHICS COMMISSION
309 FINANCE BUILDING
P.O. BOX 11470
HARRISBURG, PA 17108-1470
(717) 783-1610
1-800-932-0936

April 16, 2001

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
Commonwealth of Pennsylvania
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: State Ethics Commission Final Rulemaking, 63-07

Dear Mr. Nyce:

Enclosed please find for the review/approval of the Independent Regulatory Review commission the following enclosures as to the final rulemaking of the State Ethics Commission:

1. Final Form Regulations (Annex A)
2. Comment and Response Document
3. Preamble
4. Regulatory Analysis Form
5. Face Sheet
6. Transmittal Sheet

The final form regulation and Preamble have been sent on this date to R. Keith Hite, Executive Director of the Pennsylvania State Association of Township Supervisors (PSATS) from whom we received the one and only public comment as to the above regulation.

Should you have any questions as to the above or if I may be of any assistance, please do not hesitate to contact me at 3-1610.

Very truly yours,

A handwritten signature in black ink, appearing to read "Vincent J. Dopko".

Vincent J. Dopko
Chief Counsel

VJD/se

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER #63-7

AGENCY State Ethics Commission

Type of Regulation

- Proposed regulation.
- Final regulation with notice of proposed rulemaking omitted.
- Final regulation.
- 120-day emergency certification of the Attorney General.
- 120-day emergency certification of the Governor.

Filing of Regulation

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
4/16/01	Sandra J. Haysler	House Committee on _____
4/16/01	Pat M. H.	House Judiciary Committee
4/16/01	Sandy Ruff	Senate Committee on _____
4-16-01	Barbara Shully	Rules and Executive Nomination
4/16/01	Steph F. Hoffman	Independent Regulatory Review Commission
4-16	Mary Mummert	Attorney General
		Legislative Reference Bureau

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