

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Department of General Services and Department of Agriculture		007-009-5 AR10:02 IRRC Number: 2478
(2) I.D. Number (Governor's Office Use) 008-009		
(3) Short Title Title 70 – Weights, Measures and Standards General Provisions; Device Type Approval; State Metrology Laboratory		
(4) PA Code Cite 70 Pa. Code Chapters 2, 10 and 110	(5) Agency Contacts & Telephone Numbers Primary Contact: Mary Benefield Seiverling, Department of General Services, (717) 772-2749 Secondary Contact: Dwight-Jared Smith, Department of Agriculture, (717) 787-8744	
(6) Type of Rule Making (Check One) <input type="checkbox"/> Proposed Rule Making <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rule Making 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 regulation defines the State Metrology Laboratory (Laboratory), provides regulatory authority to charge fees for each service which the Act authorizes that fees be charged and establishes a schedule of fees that the Department of General Services will charge for metrology laboratory calibration, type evaluation and other services performed by the Laboratory.		

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

Act of Dec. 18, 1996 , P.L. 1028, No. 155, 3 Pa.C.S. §§ 4110, 4178 and 4190 (the Act).

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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, section 4178 of the Act provides that the Department of General Services shall charge and collect fees for metrology laboratory calibration, type evaluation, and any other testing services, and shall establish the fees by regulation. The law does not set any deadline for action.

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

The regulation will allow the Commonwealth to shift the cost of performing these testing services from taxpayers to the parties who are receiving the services.

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

Failure to adopt regulations will prevent the Commonwealth from charging and collecting for these services.

(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 Commonwealth will benefit from the additional revenue that the fees will generate.

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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.)

Persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices will be charged fees according to the proposed fee schedule for services previously provided free of charge. Historically, the Laboratory provides approximately 740 services including services to approximately 400 private persons, who would be charged fees under the proposed rulemaking. Based upon available data, the annual expense to each private person should average less than \$265 under the proposed fee schedule.

(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.)

Persons engaged in the business of selling, installing, servicing and repairing various types of commercial weighing and measuring devices must be registered under the Act and the accuracy of their field standards must be certified annually.

(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 proposed fee schedule is based upon a survey of similar fees charged by approximately 14 other states conducted by the DGS Bureau of Purchases. In addition to publication in the Pennsylvania Bulletin, notice of the proposed regulations appeared in several trade association publications. No comments were received from the affected population.

(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.

The estimate of fees that would be charged annually to the regulated community is \$105,000.00. The estimated annual fees for each user average \$262.50 (\$105,000/400).

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.

There are no new costs or savings to local governments associated with compliance with the proposed regulation.

(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.

There would be no new costs to state government. The estimated annual revenue to state government from the fees is \$105,000.00.

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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						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue	\$0	\$0	\$0	\$0	\$0	\$0

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

We estimated that Laboratory spent 1400 hours in 2002 performing services on commercial equipment for which the Laboratory will be able to charge. If we multiply 1400 hours by \$75.00, we anticipate revenue of \$105,000 a year.

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.

This merely effectuates the legislative mandate to charge users of this service.

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

N/A

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

N/A

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

No.

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

The proposed fees are comparable to the fees charged in most of the states surveyed and should not put Pennsylvania at a competitive disadvantage.

(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.

The Department of General Services will provide information on its website.

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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.

The only paperwork requirements will be those imposed on DGS to record the services performed, issue invoices, and collect amounts invoiced.

(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?

The rulemaking will take effect upon publication in the Pennsylvania Bulletin as final-form rulemaking.

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

Fees will be reviewed annually and the regulation will be revised as needed.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

2478

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

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

☒ Check if applicable
Copy not approved. Objections attached.

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

DGS & Dept. of Agriculture

Mary B. Sewell
(AGENCY) Counsel

DOCUMENT/FISCAL NOTE NO. 008-009DATE OF ADOPTION July 8, 2005

BY *Dennis C. Wolff*
DENNIS C WOLFF

TITLE
SECRETARY
Pennsylvania Department of Agriculture

DATE OF ADOPTION July 12, 2005

BY *James P. Creedon*
JAMES P. CREEDON

TITLE
~~ACTING~~ SECRETARY
Department of General Services

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

BY *David T. Devries*
DAVID T. DEVRIES
8.3.05

DATE OF APPROVAL
EXECUTIVE
(Deputy General Counsel)
(Chief Counsel - Independent Agency)
~~(Strike inapplicable title)~~

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

Notice of Final-Form Rulemaking

**Department of General Services
Department of Agriculture**

**Title 70 -- WEIGHTS, MEASURES AND STANDARDS
70 Pa. Code Chapters 2, 10 and 110**

General Provisions; Device Type Approval; State Metrology Laboratory

FINAL RULEMAKING

DEPARTMENT OF GENERAL SERVICES DEPARTMENT OF AGRICULTURE

GENERAL PROVISIONS, DEVICE TYPE APPROVAL AND STATE METROLOGY LABORATORY [70 PA. CODE CHAPTERS 2, 10 and 110]

The Department of General Services (DGS) and the Department of Agriculture (PDA) adopt fees for testing services performed by the State Metrology Laboratory by: (1) amending PDA's current regulations in §§ 2.1 and 10.10 (relating to definitions; and fees) and (2) establishing Part V (relating to State Metrology Laboratory), administered by DGS, to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is made under the authority of 3 Pa.C.S. §§ 4101-4194, (relating to Consolidated Weights and Measures Act) (act). Section 4178 of the act requires that DGS establish, by regulation, fees for metrology laboratory calibration, type evaluation and other testing services. Section 4190 of the act (relating to rules and regulations) provides PDA authority to regulate as necessary to implement the act.

Purpose of the Regulation

The final-form rulemaking fulfills the statutory requirement that DGS establish, charge and collect the fees described in section 4178 of the act. Currently, the State Metrology Laboratory (Laboratory) provides these services without charge. The final-form rulemaking is necessary to comply with the act. Adoption of the final-form rulemaking will ensure that taxpayer dollars are not used to pay for testing by the Laboratory when user fees are statutorily authorized and required. The final-form rulemaking: (1) adds definitions in § 2.1; (2) amends § 10.10 to clarify that DGS shall charge fees for metrology testing as required by the act; and (3) establishes Part V – in which DGS adopts procedures and sets fees to for Laboratory testing services.

Notice of proposed rulemaking was published at 35 Pa.B. 2631 (April 30, 2005). Publication was followed by a 30-day public comment period during which DGS did not receive any comments. The Senate State Government Committee, the House State Government Committee, the Senate Agriculture & Rural Affairs Committee, and the House Agriculture & Rural Affairs Committee had no comments. On June 30, 2005, the Independent Regulatory Review Commission (IRRC) submitted two comments to the proposed rulemaking.

Comments and Responses

IRRC recommended that the regulation include language recognizing that state agencies are statutorily exempt from payment of the fees. This recommendation has been implemented in the

final-form regulation. Subsection 110.2(b) has been amended to more closely parallel the statute by stating that Commonwealth agencies are exempt from the fees. IRRC also recommended that the regulation explicitly provide that the fee deposit is nonrefundable. Subsection 110.2(d) was amended to reflect that the deposit is nonrefundable.

Fiscal Impact

Commonwealth: The estimated annual revenue to the Commonwealth (DGS) from the final-form regulation is approximately \$105,000. The final-form regulation should not result in additional costs to the Commonwealth.

Public Sector: No other government entity will incur any costs or realize any savings.

General Public: The final-form rulemaking will impose no costs and have no fiscal impact upon the general public.

Affected Businesses: The affected businesses, which use Laboratory services, will have to pay the fees set in the final-form regulation. The anticipated average fee per user is estimated to be \$262.50.

Paperwork Requirements

The final-form rulemaking will result in an increase in paperwork for the Laboratory, which will be required to issue invoices, collect payments and transmit payments to the State Treasury. Under section 4193(c) of the act (relating to disposition of funds), the Treasury Department will have an increase in paperwork to reflect the receipt of the fees from DGS and to credit the fees collected to the general government appropriations of DGS for the operation and maintenance of the Laboratory.

Effective Date

This final-form rulemaking will take effect upon publication in the *Pennsylvania Bulletin* as final-form regulation.

Additional Information

Individuals who need information about the final-form rulemaking should contact Mary Benefield Seiverling, Assistant Chief Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125, (717) 787-5599.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 20, 2005, the Department of General Services and the Department of Agriculture submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC). On that same date the Department of Agriculture submitted a copy of the proposed rulemaking to the

Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee and the Department of General Services submitted a copy of the proposed rulemaking to the Chairpersons of the House Committee on State Government and the Senate Committee on State Government. IRRC provided the Committees with a copy of its comments.

In preparing this final-form rulemaking the Departments have considered all comments received from IRRC. No other comments were received.

This final-form rulemaking was approved by the House State Government Committee on _____, approved by the Senate State Government Committee on _____, approved by the House Agriculture and Rural Affairs Committee on _____, and approved by the Senate Agriculture and Rural Affairs Committee on _____. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form regulation.

Findings

The Department of General Services and the Department of Agriculture find:

- (1) Public notice of intention to adopt this final-form rulemaking 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) The final-form rulemaking adopted by this order is necessary and appropriate for the performance of the Departments' duties under the Administrative Code of 1929.

Order

The Department of General Services and the Department of Agriculture, acting under the authorizing statutes, order that:

- (a) The regulations relating to Weights, Measures and Standards are amended by adding definitions to § 2.1, amending § 10.10 to clarify that DGS will charge fees for services, and adopting a new Part V, in which DGS adopts procedures and sets fees for Laboratory testing services as set forth in Annex A of this Order.
- (b) The Secretaries of the Department of General Services and the Department of Agriculture shall submit this order and Annex A to the Office of Attorney General for approval as to legality and form as required by law.
- (c) The Secretaries of the Department of General Services and the Department of Agriculture shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES P. CREEDON
Secretary, Department of General Services

DENNIS C WOLFF
Secretary, Department of Agriculture

Annex A

TITLE 70. WEIGHTS, MEASURES AND STANDARDS

PART I. WEIGHMASTERS

* * * * *

CHAPTER 2. GENERAL PROVISIONS

§ 2.1 Definitions.

* * * * *

ASTM—The American Society of Testing and Measurement.

* * * * *

OIML—The International Organization of Legal Metrology.

* * * * *

State Metrology Laboratory—The Pennsylvania Standards Laboratory within the Department of General Services, having custody of the State standards of weight and measure and of other standards and equipment provided for by the act.

CHAPTER 10. DEVICE TYPE APPROVAL

* * * * *

§ 10.10. Fees.

[(a) *Fees.*] The State Metrology Laboratory [may] shall charge [an applicant] a fee for conducting tests that may be required for device type approval under this chapter, and for metrology laboratory calibration, type evaluation and any other testing services it performs under

authority of the act. These fees shall be as set forth in § 110.2 (relating to State Metrology Laboratory fee schedule).

[(b) *Exemption.* A city or county which is required to procure standards of weights and measures and additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.]

* * * * *

PART V. STATE METROLOGY LABORATORY

CHAPTER 110. GENERAL PROVISIONS

§ 110.1. Metrology Services

(a) The State Metrology Laboratory provides testing services including calibration to ASTM, NIST and OIML standards.

(b) Requests for testing services must be made by appointment. No standards or equipment will be accepted for testing without appointment.

(c) Units submitted for testing or calibration must be cleaned before submission.

§110.2. State Metrology Laboratory fee schedule

(a) *General.* The State Metrology Laboratory shall charge a fee for any testing services it provides under authority of the act. These services include actual metrology laboratory calibration, type evaluation and any other services identified in subsection (c).

(b) *Exemptions.*

(1) AGENCIES OF THIS COMMONWEALTH SHALL BE EXEMPT FROM
HAVING TO PAY ANY OF THE FEES ESTABLISHED IN THIS SECTION.

(2) A city or county which is required to procure standards of weights and measures and additional equipment in accordance with section 4123 of the act (relating to city and county standards and equipment) to enforce the act is exempt from having to pay fees with respect to the calibration, evaluation or other testing of those standards and that equipment.

(c) Schedule of Fees. The State Metrology Laboratory shall charge the following fees for the indicated testing services:

<u>General type of test</u>	<u>Description</u>	<u>Fee</u>
<u>Precision mass</u>	<u>Up to ASTM E 617 Class 2 or best calibration but not to a specific class to and including 30 kg. or 50 lb.</u>	<u>\$30.00 per weight</u>
<u>Precision mass</u>	<u>ASTM E617 Class 3 and 4 and OIML Class F1 and F2 to and including 30 kg. or 50 lb.</u>	<u>\$12.00 per weight</u>
<u>Ordinary mass</u>	<u>NIST Class F and ASTM E617 Classes 5, 6, 7 and OIML Class M1, M2 and M3 to and including 5 kg. or 10 lb.</u>	<u>\$2.00 per weight (without adjustment)</u> <u>\$10.00 per weight (with adjustment)</u>
<u>Ordinary mass</u>	<u>NIST Class F and ASTM E617 Classes 5, 6 and 7 from 10 kg. or 20 lb. to 50 kg. or 100 lb.</u>	<u>\$5.00 per weight (without adjustment)</u> <u>\$10.00 per weight (with adjustment)</u>
<u>Ordinary mass</u>	<u>NIST Class F and ASTM E617 Classes 5, 6 and 7 from 100 kg. or 200 lb. to 2500 kg. or 5500 lb.</u>	<u>\$15.00 per weight (without adjustment)</u> <u>\$25.00 per weight (with adjustment)</u>
<u>Ordinary mass</u>	<u>Weight Carts</u>	<u>\$50.00 per cart</u>

<u>Volume transfer</u>	<u>5 gallon/20 liter test measures</u>	<u>\$15.00 per measure (includes adjustment)</u>
<u>Volume transfer</u>	<u>10 gallon to 50 gallon</u>	<u>\$50.00 per prover (includes adjustment)</u>
<u>Volume transfer</u>	<u>51 to 100 gallon</u>	<u>\$150.00 per prover (includes adjustment)</u>
<u>Volume transfer</u>	<u>Greater than 100 gallon</u>	<u>\$150.00 plus \$50.00 per each additional 100 gallons or fractions thereof</u>
<u>Gravimetric Calibrations</u>	<u>Metal Test Measures to 5 gallon or 20 liters or 1 cubic foot</u>	<u>\$35.00 per item</u>
<u>Length Calibrations</u>	<u>Metal Tapes or Rules</u>	<u>\$15.00 per point tested</u>
<u>Timing Devices</u>	<u>Stopwatches</u>	<u>\$30.00</u>
<u>Wheel Load Weighers</u>		<u>\$6.00 per scale</u>
<u>Special Tests</u>		<u>\$75.00 per man-hour</u>

(d) Payment of Fees. A NONREFUNDABLE deposit for the estimated fee must be submitted when the testing request is made. Fees are payable at the time the metrology service is provided, regardless of whether the item tested is certified or approved.



**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DEPARTMENT OF GENERAL SERVICES**

Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
PHONE: (717) 787-5599
FAX: (717) 787-9138

August 5, 2005

The Honorable Kim Kauffman
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

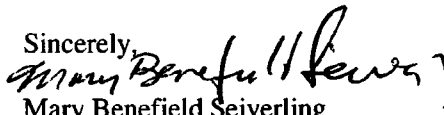
**Re: NOTICE OF FINAL FORM RULEMAKING Document 008-009
Department of General Services/Department of Agriculture
70 Pa. Code Chapters 2, 10 and 110
Weights, Measures and Standards
General Provisions; Device Type Approval; State Metrology Laboratory**

Dear Mr. Kauffman:

Enclosed is a final-form regulation that will enable the Department of General Services to comply with the General Assembly's mandate to charge the public user fees for metrology services. This regulation was published as proposed rulemaking at 35 Pa.B. 2631 (April 30, 2005). Currently, the State Metrology Laboratory does not charge the public for its services. The final-form rulemaking fulfills the statutory requirement under section 4178 of the Consolidated Weights and Measures Act, 3 Pa.C.S. §§ 4101-4194, that DGS establish, charge and collect fees for metrology laboratory calibration, type evaluation and other testing services.

This final-form regulation, which amends the *Pennsylvania Code*, Title 70, Chapters 2 and 10 and establishes Part V (relating to the State Metrology Laboratory), is submitted for review by your Commission pursuant to the Regulatory Review Act. The Department of General Services will provide your Commission with any assistance required to facilitate a thorough review of this proposal.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committee as well as the House and Senate State Government Committees.

Sincerely,

Mary Benefield Seiverling
Assistant Chief Counsel

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 8-009

SUBJECT: Weights, Measures and Standards: General Provisions; Device Type Approval;
State Metrology Laboratory

AGENCY: DEPARTMENT OF GENERAL SERVICES & DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

Proposed Regulation

X 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

2478

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

Eileen Krick 8/5/05

HOUSE COMMITTEE ON STATE GOVERNMENT

Rachel J. Mang 8/05/05

8/5/05 Susan D. Klack

SENATE COMMITTEE ON STATE GOVERNMENT

8/5/05 L. Sander

8/5/05 Stephen J. Lipman

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

August 3, 2005

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 8-009

SUBJECT: Weights, Measures and Standards: General Provisions; Device Type Approval;
State Metrology Laboratory

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Delivery of Tolled Regulation

a. With Revisions

b. Without Revisions

#2478

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION


8/5 

HOUSE COMMITTEE ON AGRICULTURE & RURAL
AFFAIRS

8/15/05 

8-5-05 C. Boyer

SENATE COMMITTEE ON AGRICULTURE & RURAL
AFFAIRS

8-5-05 

8/5/05 

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

August 3, 2005