

2635

RECEIVED

From: Kaufman, Kim
Sent: Monday, September 15, 2008 9:35 AM
To: Gelnett, Wanda B.
Cc: Schalles, Scott R.
Subject: FW: IRRC #2635 - Date of Delivery of Final-Form Regulation

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INDEPENDENT REGULATORY
REVIEW COMMISSION

For the comment letters

-----Original Message-----

From: James Clark [mailto:JayClark@jamesclarklaw.net]
Sent: Friday, September 12, 2008 8:24 PM
To: Kaufman, Kim
Subject: IRRC #2635 - Date of Delivery of Final-Form Regulation

Dear Mr. Kaufman:

Good afternoon. As a commentator on the above-referenced IRRC matter, I received in yesterday's mail the Responses to Official Public Comments Addendum, dated September 10, 2008.

This Addendum includes a response to concerns raised by the Commission in its comments to the State Board. Specifically, it addresses concerns about the lack of compliance monitoring done by the Secretary of Education since the implementation of the Chapter 16 regulations in 2000. Additionally, the Commission recommended that the regulations include monitoring methods and frequencies.

This is a critical issue for the regulated community. This issue was raised by the House Education Committee and by Senator Williams along with numerous members from the gifted education community.

My purpose in raising the issue in this email is not to debate the policy but to raise a concern about the process.

In my review of the Regulatory Review Act and its regulations, I believe that it would be procedurally improper to include IRRC 2635 on the agenda for this week's Commission meeting.

Under 1 Pa.Code Section 307.2(c)(4), the agency (State Board of Education) must include its response to comments received with the delivery of the final-form regulation to the [Education] committees and the Commission. Under 71 P.S. Section 745.5a(b), these responses are "required material" that must be provided.

Failure to have included all of the responses must have the effect of delaying the delivery date until such time as all items are provided by the agency. In the instant case, the delivery date would, at the earliest, be September 10, 2008. Arguably, the delivery date has still not occurred as the September 10th response to comment was not delivered with the final-form regulation, but subsequent to.

The effect of permitting an agency to stagger the flow of the information and to thereby circumvent this requirement to include all of the required material, even by mistake, means that the committee and the regulated community are not given their full opportunity and right to participate in the regulatory process. As "silly" as it might seem to some, I hope that you will agree that the process by which we develop regulations for our Commonwealth is important.

As previously mentioned, the compliance issue is likely the issue of greatest concern to the regulated community and one of great disagreement over the amendment to the regulation.

As such, if the Commission determines the procedural concerns raised to be potentially valid, I respectfully request that the Commission notify the State Board of Education and the Education Committees that the delivery date is, at the earliest, September 10, 2008 and that IRRC 2536 will be removed from the agenda until such time as the Commission

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determines the appropriate delivery date.

Thank you for consideration of my comments, my concern, and my request to review the procedural issue.

Sincerely,

James R. Clark, Esq.

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