

Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 APR - 2 PM 2: 00

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IRRC Number: **2716**

(1) Agency:

Department of State, Bureau of Commissions, Elections and Legislation

(2) Agency Number: 16-42

Identification Number:

(3) Short Title:

Regulations on the Alteration of Local Election Districts

(4) PA Code Cite:

4 Pa. Code § 191.1 *et seq*

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Shauna Graves

(717) 265-7632

210 North Office Building

Harrisburg, PA 17120

Fax: (717) 214-9899

shgraves@state.pa.us

Secondary Contact: Larry Boyle

(717) 787-5280

210 North Office Building

Harrisburg, PA 17120

Fax: (717) 214-9899

llboyle@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

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(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulations provide procedures for election districts when implementing alteration of local election districts and procedures for reporting election results as required under 25 P.S. §§ 2747-2749.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: N/A
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: February 2009
- D. The expected effective date of the final-form regulation: April 2009
- E. The date by which compliance with the final-form regulation will be required: April 2009
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

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

- No formal review schedule has been established. Instead, the Department will be constantly reviewing its regulations and proposing amendments as the need arises.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

- 25 P.S. § 2750 provides that the Secretary may promulgate regulations to administer the subdivision of the act, 25 P.S. §§ 2745-2750.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

- 25 P.S. § 2750 provides that the Secretary may promulgate regulations to administer the subdivision of the act, 25 P.S. §§ 2745-2750. There are no deadlines for these regulations.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

- There is a compelling public interest in efficient and accurate elections. The regulations establish an efficient method for the reporting of alterations to local election districts by the various county boards of elections and provides for the efficient reporting of election data for the local election districts contained within each county. Also, by requiring the timely reporting of alterations to election districts, the regulations help avoid possible confusion among voters who are directly affected by an election district alteration.
- The public will benefit from having an efficient and accurate election.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

- None.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

- Because these regulations expound upon the requirements under the Pennsylvania Election Code, there will be little if any adverse impact associated with these regulations.

(16) 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.

- All county boards of elections will be required to comply with the regulation.

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SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

- The regulations will have a negligible impact upon the county boards of elections because the rulemaking does not require the implementation of new programs or processes.

(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. Explain how the dollar estimates were derived.

- There will be no costs and/or savings to local governments associated with these regulations.

(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. Explain how the dollar estimates were derived.

- The regulations will have a negligible impact upon the Department of State (Department) because the rulemaking does not require the implementation of new programs or processes.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with

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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	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

- As noted in previous responses, there is little extra cost associated with these regulations.
- The benefits of the regulations are that they provide election districts with procedures that will help provide for an efficient and accurate election. Therefore, the benefits of a more efficient and

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accurate election outweigh the minimal or nonexistent costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

- The Department has discussed this subject and drafts of the proposed regulations at annual meetings of the Pennsylvania County Election Official Conference in 2005 and 2006.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

- No other regulatory provisions were considered.

(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 regulations.

- No

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

- Many of the provisions in these regulations are similar to those in other states. The Department compared the regulations with the comparable regulations and statutes of Alaska, Arkansas, Maine, Maryland, Massachusetts, New York, North Dakota, Ohio, Washington, and Wisconsin. In relation to the requirement in the regulations that a report must be filed with the Department at least 45 days before a primary or election, the following states have similar requirements: Ohio by statute provides that no change in the number of precincts or in precinct boundaries shall be made during the 25 days immediately preceding a primary or general election; Alaska has a similar reporting period of 30 days; New York requires that any alteration of election districts must be made on or before February 15, and take effect April 1, which is approximately the same 45 day provision as the regulations; North Dakota requires that the necessary paperwork be filed by April 1 of an even numbered year to be effective for that year's election; Wisconsin allows alteration

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and combination reports to be presented no later than 60 days before each September primary and general election, and no later than 30 days before each other election.

- In relation to the requirement in the regulations that if the a county alters the election district of an elector, the county board of election shall send that elector a new voter registration card, the following states have similar requirements: New York requires that copies of the report be filed and kept open for public inspection and one copy shall be delivered, upon request, to the state board of elections; Maryland requires that the local board shall notify all voters who are affected by the change; Ohio requires that the election authorities shall notify affected registrants by mail; and Washington requires the county auditor to mail to each registrant in the new precinct a notice that his or her precinct has been changed.
- Nothing in these regulations will put Pennsylvania at a competitive disadvantage with other states.

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

- No

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

- No legal, accounting or consulting procedures nor any additional reporting, recordkeeping or other paperwork will be required for the implementation of the rulemaking.

(28) 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.

- None

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

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

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

Department of State, Bureau of Commissions, Elections & Legislation

BY: _____
(DEPUTY ATTORNEY GENERAL)

(AGENCY)

Andrew C. Clark
BY: _____

Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16-42

MAR 30 2009

DATE OF APPROVAL _____

DATE OF ADOPTION: _____

DATE OF APPROVAL _____

BY: Pedro A. Cortés
Pedro A. Cortés

Executive Deputy General Counsel
(Chief Counsel,
Independent Agency)

(Strike inapplicable title)

TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

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

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS & LEGISLATION
4 PA. CODE, CHAPTER 191
ALTERATION OF LOCAL ELECTION DISTRICTS

There were no public comments received pertaining to regulation 16-42 on the alteration of local election districts.

TITLE 4. ADMINISTRATION

PART VIII. BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION

SUBPART F. REDISTRICTING

CHAPTER 191. ALTERATION OF LOCAL ELECTION DISTRICTS

Sec.

191.1. Definitions.

191.2. Procedures for implementing alteration of local election districts.

191.3. Procedures for implementing the outcome of alteration of local election districts.

191.4. Procedures for reporting election results.

Statutory requirements: These regulations will address details of the statutory requirements at sections 537 & 539 of the Pennsylvania Election Code, 25 P.S. §§ 2747 & 2749. The statutory authority to promulgate regulations is section 540 of the Pennsylvania Election Code, 25 P.S. § 2750.

§ 191.1 Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Boundaries—The physical requirements for the resulting election district boundaries as set forth in the Pennsylvania Election Code. The requirements relating to congressional and legislative districts are set forth in section 506 of the Pennsylvania Election Code, 25 P.S. § 2706.

Report—A [report] record, which includes a map and a verbal description, of the boundaries of each resulting district after an election district has been established, abolished, divided, consolidated or altered, which shall be filed by a county board of elections with the Bureau of Commissions, Elections and Legislation (bureau) pursuant to the provisions of the Pennsylvania Election Code relating to alterations of election districts after the period of restriction. [shall include the following:

(1) Maps of:

(i) the resulting district(s) and

(ii) the previous district(s).

(2) Verbal description of:

(i) the resulting district(s) and

(ii) the previous district(s).

(3) a signed court order approving the resulting district(s); and

(4) a description of the reasons for the alteration, including precinct splits, mergers, renaming of districts or boundary changes.]

(b) The definitions of sections 102 and 535 of the Pennsylvania Election Code, 25 P.S. §§ 2602 and 2745, are hereby incorporated by reference.

§ 191.2 Procedures for implementing alteration of local election districts.

(a) Within 30 days of an alteration, the county board of elections shall submit a report, as defined at section 191.1(a), to the bureau either electronically or in paper form.

(b) The report must be submitted to the bureau at least 45 days prior to a primary or an election. If the county board of elections does not submit the report at least 45 days prior to the primary or election, the election district alteration may not be implemented until the next [following] primary or election.

(c) The report shall include the following:

(1) Maps of:

(i) the resulting district(s) and

(ii) the previous district(s).

(2) Verbal description of:

(i) the resulting district(s) and

(ii) the previous district(s).

(3) a signed court order approving the resulting district(s); and

(4) a description of the reasons for the alteration, including precinct splits, mergers, renaming of districts or boundary changes.

§ 191.3 Procedures for implementing the outcome of alteration of local election districts.

(a) The county board of elections or voter registration commission shall enter the outcome of the alteration in the Statewide Uniform Registry of Electors (SURE), only after it has completed all of the procedures outlined in section 191.2.

(b) If a county alters the election district of an elector, the county board of elections shall send that elector a new voter identification card, as provided at 25 Pa.C.S. § 1328(c)(2).

§ 191.4 Procedures for reporting election results

The county board of elections shall report election results for each election district within the county either electronically in the format prescribed by the Secretary of the Commonwealth or on the paper form provided by the Secretary of the Commonwealth.

PREAMBLE

NOTICE OF FINAL RULEMAKING
TITLE 4-ADMINISTRATION
DEPARTMENT OF STATE

(4 Pa. Code Ch. 191)

Alteration of Local Election Districts

The Department of State (Department) adopts Title 4 by adding Chapter 191 (relating to alteration of local election districts). The act of November 24, 1999, P.L. 543 No. 51 (“act”), 25 P.S. §§ 2745-2750 provides for the manner in which a county board of elections may alter election districts and the manner in which a county board of elections shall report election data.

Notice of Proposed Rulemaking was published at 38 Pa.B. 34 (August 23, 2008). Publication was followed by a 30-day public comment period. The Department did not receive any comments from the public. The Department received no comments from the Senate or House Committees as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). On October 22, 2008, the Independent Regulatory Review Commission (IRRC), as part of its review of proposed rulemaking under the Regulatory Review Act, offered comments on the proposed rulemaking as described in detail below with the Department’s response.

Statutory Authority: The act, at 25 P.S. § 2750, provides that regulations may be promulgated to administer 25 P.S. §§ 2745-2750.

Purpose: The purpose of the final-form rulemaking is to establish an efficient method for the reporting of alterations to local election districts by the various county boards of elections and to provide for the efficient reporting of election data for the local election districts contained within each county. By requiring the timely reporting of alterations to election districts, the regulations are intended to minimize confusion among voters who are directly affected by an election district alteration.

Explanation of Chapter 191:

Chapter 191: Alteration of local election districts.

The Department proposes to adopt Chapter 191 to set forth four sections which include general provisions regarding: definitions; procedures for implementing alteration of local election districts; procedures for implementing the outcome of alteration of local election districts; procedures for reporting election districts.

Section 191.1. Definitions.

IRRC commented that the definition of “report” contains the term “report,” and “[s]ection 1.7(e) of the *Pennsylvania Code and Bulletin Style Manual (Style Manual)* states that “[t]he term being defined may not be included as part of the definition.” Therefore, the Department replaced the term “report” with the term “record.” The Department also added clarifying language as to what a “report” should consist of, by stating that it is a “record, which includes a map and a verbal description, of the boundaries of each resulting district after an election has been established, abolished, divided, consolidated or altered...” The Department believes that the new language addresses IRRC’s concern and gives further clarification for the public.

IRRC also commented that subsections (1) through (4) under the definition of “report” contain requirements for the content of the report and that section 1.7(c) of the *Style Manual* “does not permit the inclusion of substantive language in a definition.” To address IRRC’s concern, the Department moved subsections (1) through (4) to section 191.2(c), to clarify what a report should include.

Section 191.2. Procedures for implementing alteration of local election districts.

IRRC commented that subsection (a) requires the county board of elections to submit a report to the bureau and that the final-form regulations should clarify if written or electronic, or both formats, are acceptable to the bureau. To address IRRC’s concern, the Department added the phrase “either electronically or in paper form” to subsection (a) to clarify what format a county board of elections may submit a report to the bureau.

IRRC also commented that in subsection (b), the phrase “...may not be implemented until the *next following* primary or election” is confusing and the Department should remove the word “following.” (Emphasis added). To address IRRC’s concern, the Department removed the word “following” from the phrase in subsection (b).

Section 191.3. Procedures for implementing the outcome of alteration of local election districts.

The Department did not receive any comments on this section and did not make any changes. Therefore, the Department adopted this section as proposed.

Section 191.4. Procedures for reporting election results.

The Department did not receive any comments on this section and did not make any changes. Therefore, the Department adopted this section as proposed.

Fiscal Impact: The rulemaking will have a negligible impact upon the Department and the county boards of elections because the rulemaking does not require the implementation of new programs or processes.

Paperwork Requirements: The paperwork requirements will not be substantially altered as a result of the rulemaking.

Regulatory Review:

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on _____, the Department of State (Department) submitted a copy of this final-form rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House State Government Committees. A copy of this material is available to the public upon request.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC, the Senate and House State Government Committee with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Department considered all comments from IRRC, the Senate and House State Government Committee, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the Senate State Government Committee. On _____, the final-form rulemaking was approved by the House State Government Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Contact Person

Additional information may be obtained by contacting Shauna C. Graves, Assistant Counsel, Pennsylvania Department of State, 301 North Office Building, Harrisburg, PA 17120-0029 or e-mail at shgraves@state.pa.us.

Findings

The Department of State finds that:

- (1) Public notice of the proposed rulemaking was 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 under those sections at 1 Pa.Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

January 27, 2009

- (3) That these amendments to the alteration of local election district regulations are necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

The Department therefore ORDERS:

- (A) That the regulations of the Department, 4 Pa. Code Ch. 191, are amended to read as set forth in Annex A.
- (B) The Department shall submit this order and Annex A to the Office of Attorney General for approval as required by law.
- (C) The Department shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (D) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PEDRO A. CORTÉS,
Secretary of the Commonwealth of Pennsylvania



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

Shauna C. Graves, Assistant Counsel

E-mail: shgraves@state.pa.us

April 2, 2009

The Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisburg 2
333 Market Street
Harrisburg, PA 17101

Re: Final Rulemaking of the Department of State
Alteration of Local Election Districts (16-42)

Dear Chairman Coccodrilli:

Enclosed is a copy of the final regulation of the Department of State, Bureau of Commissions, Elections and Legislation pertaining to the alteration of local election districts.

The Department of State, as always, will be pleased to provide your committee with any assistance it may require during the course of its review of this regulation.

Sincerely,

Shauna C. Graves, Counsel
Bureau of Commissions,
Elections & Legislation

SCG/kmh
Enclosures

cc: Gregory E. Dunalp, Deputy General Counsel, Office of General Counsel
Acting Chief Counsel, Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Chet Harhut, Commissioner, Bureau of Commissions, Elections & Legislation

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

I.D. NUMBER: 16-42
 SUBJECT: ALTERATION OF LOCAL ELECTION DISTRICTS
 AGENCY: DEPARTMENT OF STATE
 BUREAU OF COMMISSIONS, ELECTIONS & LEGISLATION

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4-2-09	<i>Joe Josephs</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
4/2/09	<i>Joe Josephs</i>	MAJORITY CHAIRMAN <u>Josephs</u>
4/2/09	<i>Monica M. Kiddell</i>	SENATE COMMITTEE ON STATE GOVERNMENT
4/2/09	<i>John McIlhinney</i>	MAJORITY CHAIRMAN <u>McIlhinney</u>
4/2/09	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)