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COMMONWEALTH OF PENNSYLVANIA



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January 27, 2016

David Sumner
Executive Director
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Sumner,

The Independent Regulatory Review Commission (Commission) submitted a proposed rulemaking to the Joint Committee on Documents (Joint Committee) on October 13, 2015. Section 11(a) of the Regulatory Review Act, as amended June 6, 1997 (P.L.252, 275, No.24), 71 P.S. § 745.11(a) (2012), provides: "For the purposes of reviewing the regulations of the commission and otherwise satisfying the requirements of this act, the Joint Committee on Documents shall exercise the rights and perform the functions of the commission, and the commission shall exercise the rights and perform the functions of an agency under this act."

Pursuant to section 5(b) of the Regulatory Review Act, as amended December 6, 2002 (P.L.1227, 1229, No.148), 71 P.S. § 745.5(b) (2015 P.P.), there is a 30-day public comment period, which ended on December 28, 2015. Pursuant to section 5(g) of the Regulatory Review Act, *id.* (P.L.1230-31), 71 P.S. § 745.5(g) (2015 P.P.), the Joint Committee is submitting the enclosed comments on this proposed rulemaking.

Sincerely,

Vincent C. DeLiberato, Jr.
Chairperson, Joint Committee on Documents
Director, Legislative Reference Bureau

VDL/lc
Enclosure

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IRRC

Comments of the Joint Committee on Documents
Independent Regulatory Review Commission #70-9

General Revisions

January 27, 2016

Section 11(a) of the Regulatory Review Act, as amended June 6, 1997 (P.L.252, 275, No.24), 71 P.S. § 745.11(a) (2012), directs the Joint Committee on Documents (Committee) to perform the functions of the Independent Regulatory Review Commission (IRRC) for review of the proposed rulemaking published at 45 Pa.B. 6818 (November 28, 2015). The Committee submits for IRRC's consideration the following comments on the proposed rulemaking pursuant to section 5(g) of the Regulatory Review Act, as amended December 6, 2002 (P.L.1227, 1229, No.148), 71 P.S. § 745.5(g) (2015 P.P.). These comments are based on criteria in section 5.2 of the Regulatory Review Act, as amended July 7, 2011 (P.L.277-78, No.59), and June 29, 2012 (P.L. 657, 660-61, No.76), 71 P.S. § 745.5b (2015 P.P.). Section 5.1(a) of the Regulatory Review Act, as amended December 6, 2002 (P.L.1227, 1229, No.148), 71 P.S. § 745.5a(a), directs IRRC to review and consider these comments.

Public Commentators

1. Section 301.1. Definitions.—Clarity.

Completed regulatory analysis form

A public commentator suggested adding a definition for “completed regulatory analysis form” to § 301.1 (relating to definitions). If the Commission decides to add this definition, the Committee suggests refining the term “sufficient detail” in the definition. The term “sufficient detail” is subjective and ambiguous.

Preamble

A public commentator suggested that additional language be included in this definition regarding the right to request additional information. The Committee disagrees with the comment.

2. Section 305.1. Delivery of a proposed regulation.—Clarity.

Subsection (b)(1)

A public commentator offered proposed text regarding a completed regulatory analysis form. The Committee disagrees with the suggestion as the regulatory analysis form is a statutory requirement.

Proposed subsection (b)(5)

The preamble to a proposed rulemaking provides instructions for submitting public comments. A public commentator stated that the proposed paragraph “implies that this information should be set forth in a separate document.” It is suggested that this requirement should be included in the definition of “preamble” in § 301.1. The Committee agrees.

3. Section 305.3. Commission comments.

A public commentator suggested adding requirements for an advance notice of proposed rulemaking. The Committee disagrees with the suggestion as the proposed change expands upon the Commission’s statutory authority.

4. Section 307.2. Delivery of a final-form regulation.—Clarity.

A public commentator offered proposed text to subsection (c)(1) regarding a completed regulatory analysis form. The Committee does not have an opinion on the suggestion.

Comments of the Joint Committee on Documents

1. Section 301.1. Definitions.—Clarity.

Preamble

The required information in a preamble varies based on the type of rulemaking, that is, proposed, final-form or final-omitted. The Committee suggests adding subparagraphs to this definition to specifically address the required components of the preamble to each type of rulemaking. The proposed text in § 307.2(c)(5) (relating to delivery of a final-form regulation) could be moved to this suggested structure.

The proposed definition refers to a preamble as “A document that provides...” implying that the preamble is separate from the rulemaking. The Committee suggests revising this to “The portion of a rulemaking document...” to avoid confusion.

Transmittal sheet

The proposed amendment to this definition clarifies that the Attorney General signs the transmittal sheet for proposed and final-omitted rulemakings. The Committee suggests adding “...and the LRB **(for proposed regulations)**” as the Legislative Reference Bureau only signs the transmittal sheet for proposed rulemakings.

2. Section 305.1. Delivery of a proposed regulation.—Clarity.

Proposed subsection (b)(6)

As currently written, this paragraph does not clearly state that the proposed amendments are to be submitted. The Committee suggests adding “...text of the **proposed** regulation” to be consistent with §§ 307.2(c)(7) and 307.3(b)(4) (relating to delivery of a final-form regulation; and delivery of a final-omitted regulation).

3. Section 307.2. Delivery of a final-form regulation.—Clarity.

Subsection (c)(4)

The Committee suggests moving the “response to comments” requirement to the definition of “preamble” in § 301.1. This would require an agency to address comments in a final-form rulemaking, either in detail or by notice of a comment and response document.