# INDEPENDENT REGULATORY REVIEW COMMISSION

# **2016 ANNUAL REPORT**



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Pennsylvania's General Assembly created the Independent Regulatory Review Commission to provide independent oversight of the rulemaking process in Pennsylvania and to establish an ongoing and effective review of agency regulations. The Commission's mission is to review agency regulations in order to determine whether they are in the public interest. By evaluating the conformity of rulemakings with law, and their impact on the public and regulated community, we assist the General Assembly and the Governor in achieving a favorable regulatory balance and ensure the integrity of the regulatory process. This annual report details the Commission's activities in 2016.

In 2016, the Commission reviewed a total of 75 regulations, including 32 proposed and 43 final regulations. More than 4,700 public comments were submitted on pending regulations in 2016. 117 members of the House and Senate submitted comments on these regulations. Standing Committees submitted formal comments on seven rulemakings.

Notable regulations reviewed by the Commission in 2016 include: School Immunizations (Department of Health #3147); Environmental Protection Performance Standards at Oil and Gas Well Sites (Environmental Quality Board #3042); and Implementation of the Alternative Energy Portfolio Standards Act (Public Utility Commission #3061). A full list of the regulations received by the Commission in 2016 is attached.

Copies of all comments filed on these regulations, together with information on all actions taken concerning the regulations, is available on the Commission's website: www.irrc.state.pa.us.

Looking ahead, the Commission will continue its role as an independent oversight body reviewing agency regulations and determining whether the criteria set forth in Pennsylvania's Regulatory Review Act have been satisfied.

# **Proposed Regulations**

The following is an explanation of the action codes for Proposed Regulations:

**NONE** Commission did not submit comments.

**OPEN** Regulation was received in 2016 with Commission action due in 2017.

\* Final-form regulation delivered in 2016.

# Final Regulations

The following is an explanation of the action codes for Final Regulations:

AAT Approved After Tolling – The final regulation was tolled, resubmitted and

approved.

AAW Approved After Withdrawal – The final regulation was withdrawn.

resubmitted and approved.

ABL Approved by Law – The final regulation was deemed to be approved

because the Commission did not submit any comments on the proposed regulation, the regulation was not modified from its proposed form and the designated standing committees did not disapprove the final regulation.

**APP** Approved – The final regulation was approved.

**DIS Disapproved** – The final regulation was disapproved by the Commission

at its public meeting.

N/A Indicates this was a final-omitted regulation and was, therefore, not

published in the Pennsylvania Bulletin for public comment.

**NONE** The Commission did not submit any comments on the proposed

regulation.

**TOL Tolled** – A temporary timeout to stop the running of review timelines.

WAD Withdrawn After Disapproval – After an initial disapproval, the

regulation was withdrawn.

WBL Withdrawn By Law – After an initial disapproval, the Agency did not

resubmit the regulation within 40 days of the disapproval order and

therefore, by law, it was deemed to be withdrawn.

WDN A final regulation submitted but withdrawn prior to Commission action. A

withdrawn final regulation may be resubmitted within two years after the close of the public comment period. A withdrawn final-omitted regulation

may be resubmitted as a new final-omitted regulation at any time.

PROPOSED REGULATIONS					
Date Received	Agency & Regulation #	TITLE	IRRC #	Comments Filed	

#### **Board of Coal Mine Safety**

03/09/16	#7-526	Proximity Detection Systems	#3144	NONE
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Implements existing federal regulations that require underground coal mine operators to equip certain mining machines with proximity detection systems.

#### **Department of Banking and Securities**

06/09/16	#3-54	Securities Regulations Omnibus  Amendment	#3152	08/31/16
1		Amenument		

Updates existing regulations and makes them consistent with the North American Securities Administrators Association model rules and the Securities and Exchange Commission regulations.

#### **Department of Community and Economic Development**

07/20/16 #4-97 Local Earned Income Tax #3156 09/28/16	20/16 #4-9
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Implements Chapter 5 of the Local Tax Enabling Act which was added by Act 32 of 2008.

#### **Department of Education**

#### **State Board of Education**

03/29/16	#6-336	Nonimmunized Children	#3146	06/08/16
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Updates regulations pertaining to nonimmunized children.

#### State Board of Private Licensed Schools

03/14/16	#6-334	Fees	#3145	05/25/16*
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Increases licensure fees, renewal fees and user fees for services provided by the State Board of Private Licensed Schools.

PROPOSED REGULATIONS					
Date Received	Agency & Regulation #	TITLE	IRRC #	Comments Filed	

#### **Department of Environmental Protection**

#### **Environmental Quality Board**

02/11/16	#7-520	Disinfection Requirements Rule	#3136	05/19/16
pdates and clarifie	es safe drinking	water regulations.		
02/17/16	#7-522	Handling and Use of Explosives	#3138	04/27/16
evises current reg	ulations to add	ress the use of explosives for seismic	exploration.	
02/23/16	#7-528	Water Quality Standards; Class A Stream Redesignations	#3140	05/18/16

05/26/16 #7-535	Stream Redesignations (Sobers Run, et al.)	#3150	08/24/16
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Updates and revises water quality standards that are designated uses for surface waters of the Commonwealth.

06/16/16	#7-498	Radiological Health and Radon Certification Fees; Pennsylvania Radon Mitigation System Tag and Fee	#3153	09/29/16
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Increases fees associated with the radioactive materials licensing and radon certification activities regulated by the Department's Radiation Protection Program and adds a requirement for a Pennsylvania Radon Mitigation System Tag.

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07/29/16	#7-495	Environmental Laboratory  Accreditation	#3157	10/19/16

Amends existing regulations pertaining to environmental laboratory accreditation to add accreditation standards, clarify requirements, remove unnecessary or cost-prohibitive requirements and amend the fee structure.

#### **Department of Health**

03/29/16	#10-197	School Immunizations	#3147	06/08/16*

Updates immunization requirements.

PROPOSED REGULATIONS				
Date Received	Agency & Regulation #	TITLE	IRRC #	Comments Filed

#### **Department of Human Services**

10/25/16 #14-540 Home and Community-Based Supports and Licensing	#3160	OPEN
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Amends and updates regulations governing program, operational and fiscal aspects of home and community-based supports for people with an intellectual disability or autism.

#### **Department of State**

# State Board of Examiners in Speech-Language Pathology and Audiology

10/19/16 #16A-6803 Fees; General Revisions #3159 12/28/16	10/19/16	#16A-6803	Fees; General Revisions	#3159	12/28/16
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Implements amendments to the Speech-Language Pathologists and Audiologists Licensure Act, adopts new fee categories and amends certain existing fees.

#### State Board of Occupational Therapy Education and Licensure

02/05/16	#16A-6710	Code of Ethics	#3133	NONE

Adopts the 2015 American Occupational Therapy Association Code of Ethics.

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Ì	02/05/16	#16A-6711	General Revisions	#3134	04/20/16
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Implements the professional liability insurance and continued competency provisions of Act 138 of 2012.

#### **State Board of Physical Therapy**

04/15/16	#16A-6517	Post-Act 38 Revisions	#3148	07/13/16
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Updates and clarifies existing regulations.

	PROF	POSED REGULATION	ONS	
Date Received	Agency & Regulation #	TITLE	IRRC#	Comments Filed

#### **Department of Transportation**

02/17/16	#18-467	Hauling in Excess of Posted Weight Limit	#3139	04/27/16
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Updates existing regulations regarding the use of weight restricted highways by vehicles and combinations having a gross weight in excess of the posted weight limit.

07/11/16	#18-469	Hazardous Material Transportation	#3155	NONE
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Updates existing regulations to make them consistent with federal requirements.

#### **Environmental Hearing Board**

12/06/16 1/10/10 1/20 1/20 1/20 1/20 1/20 1/20 1		12/09/15	#106-12	Practice and Procedure	#3126	02/18/16
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Updates and clarifies the Board's rules of practice and procedure.

#### **Insurance Department**

01/11/16 #11-254 Annual Financial Reporting Requirements	#3129	03/23/16*
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Adds corporate governance-related functions to an audit committee's responsibilities.

01/11/16 #11-29	Tables Approved for Use in Determining Minimum Nonforfeiture Standards and Minimum Standards for Valuation	#.51.511	NONE*
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Adopts new mortality tables for use in determining the minimum reserves that insurers must maintain for annuities and pure endowment contracts.

#### Milk Marketing Board

06/28/16 #47-17 Uniform System of Accounts	#3154	09/07/16
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Deletes milk dealer cost categories that have become outdated, adds new categories and clarifies category descriptions.

PROPOSED REGULATIONS					
Date Received	Agency & Regulation #	TITLE	IRRC#	Comments Filed	

#### Pennsylvania Gaming Control Board

11/23/15 #125-1	Saigon 5 Card; Table Game Rules of Play	#3118	NONE*
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Adds a new table game, Saigon 5 Card, to the complement of games available for play in the Commonwealth.

11/23/15	#125-195	Three Card Prime; Table Game	#3124	02/10/16*
11/20/10	# 120 100	Rules of Play	#0124	02/10/10

Adds a new table game, Three Card Prime, to the complement of games available for play in the Commonwealth.

03/09/16 #125-198 21 Baccarat; Table Game Rules of Play	of #3143	NONE*
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Adds a new table game to the complement of games available to play in the Commonwealth.

# Pennsylvania Liquor Control Board

10/29/15 #54-86	Management Contracts	#3123	01/20/16
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Eliminates the blanket prohibition of a pecuniary interest being held by a management company.

	03/08/16	#54-89	Distributors Accepting Credit Cards from Licensees	#3142	06/01/16
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Authorizes malt or brewed beverage distributors and importing distributors to accept credit cards as payment from licensees.

#### Pennsylvania Minority Business Development Authority

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06/02/16	#4-99	General Provisions	#3151	NONE*
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Amends sections of existing regulations which impede the Pennsylvania Minority Business Development Authority's ability to be responsive and flexible to its target market.

PROPOSED REGULATIONS					
Date	Agency &	TITLE	IRRC #	Comments	
Received	Regulation #	_		Filed	

#### Pennsylvania Public Utility Commission

01/27/16	#57-311	Steam Heat Distribution System Safety Regulations	#3131	04/06/16
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Amends and expands existing steam regulations to facilitate safety inspections of steam distribution facilities.

01/27/16 #5	7-313 Electric Safety	Regulations #3132	04/06/16
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Amends and expands existing regulations to facilitate safety inspections of electric distribution facilities.

02/10/16	#57-312	Reduce Barriers to Entry for Passenger Motor Carriers	#3135	04/27/16
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Eliminates the requirement that an applicant for passenger carrier authority demonstrate that the proposed service is responsive to a public demand or need.

# **State Employees' Retirement Board**

01/06/16 #31-	Member Purchases of Credit for Previous State Service and Re- election of Benefit Option	#3128	NONE*
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Amends existing regulations related to the purchase of previous state service and adds a provision related to reelection of benefit options.

FINAL REGULATIONS					
Date	Agency &	TITLE	IRRC #	Comments	Final
Received	Regulation #			Filed	Action

#### **Board of Finance and Revenue**

01/14/16	#64-5	General Provisions; Tax and	#3091	07/15/15	03/10/16
01/14/10 #64-5	#O+ 0	Other Appeal Proceedings	#0001	07/13/13	APP

Provides for administrative procedures related to the filing, consideration and final resolutions of appeals from decisions of the Department of Revenue.

#### **Department of Community and Economic Development**

08/03/16 08/30/16	1-95 Industrial Housing and Components	#3063	09/24/14	08/30/16 TOL 09/15/16 AAT
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Updates existing regulations to bring them into compliance with statutory amendments and current industry standards, codes and practices.

#### **Department of Education**

#### **State Board of Education**

05/26/16 #6-329	Financial Recovery	#3064	1 09/17/14	06/30/16 APP
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Identifies criteria the Secretary of Education may consider in determining whether to place a school district in financial recovery status.

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05/26/16	#6-333	Strategic Planning	#3149	I N/A	06/30/16 APP

Updates references to strategic plans.

#### **State Board of Private Licensed Schools**

09/07/16 #6-334	Fees	#3145	05/25/16 10/20/16 APP
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Increases licensure fees, renewal fees and user fees for services provided by the State Board of Private Licensed Schools.

FINAL REGULATIONS					
Date	Agency &	TITLE	IRRC #	Comments	Final
Received	Regulation #			Filed	Action

# **Department of Environmental Protection**

# **Environmental Quality Board**

03/03/16 #7-484 Environmental Protection Performance Standards at Oil and Gas Well Sites	#3042	04/14/14	04/21/16 APP
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Sets performance standards for surface activities at oil and gas well sites.

01/14/16		Additional RACT Requirements for Major Sources of NOx and VOCs	#3052	1 07/30/14	03/10/16 APP
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Adopts RACT requirements and emission limitations for certain major stationary sources of NOx and VOC emissions.

05/13/16	#7-486	Administration of the Land	#3057	07/17/14	06/30/16
03/10/10	#7-400	Recycling Program	#0007	07/17/14	APP

Updates the statewide health cleanup standard, corrects errors and omissions, and clarifies certain established program policies.

	Volatile Organic d Emissions from eous Metal Parts pating Processes, ous Plastic Parts ting Processes and ft Surface Coatings	11/12/15	08/18/16 APP
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Adopts Reasonably Available Control Technology requirements and emission limitations for stationary sources of Volatile Organic Compound emissions for miscellaneous metal parts and plastic parts surface coating processes.

FINAL REGULATIONS						
Date Received	Agency & Regulation		IRRC #	Comments Filed	Final Action	
07/15/16	#7-490	Control of Volatile Organic Compound Emissions from Automobile and Light-Duty Truck Assembly Coating Operations and Heavier Vehicle Coating Operations	#3110	11/12/15	08/18/16 APP	

Adds Reasonably Available Control Technology requirements and emission limitations for stationary sources of Volatile Organic Compound emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations.

07/15/16 #7-494	Safe Drinking Water; Revised	#3119	12/30/15	08/18/16
07710710 117 404	Total Coliform Rule	#3119	12/30/13	APP

Amends Pennsylvania's Safe Drinking Water regulations to incorporate federal requirements needed to retain primary enforcement authority for the Revised Total Coliform Rule.

07/15/16 #7-496	Remining Requirements	#3121	12/02/15	08/18/16 APP
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Updates existing regulations to reflect federal regulatory requirements.

#### **Department of Health**

09/16/16	#10-197	School Immunizations	#3147	06/08/16	10/20/16 APP
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Updates immunization requirements.

# **Department of Human Services**

02/11/16 04/14/16 #14-539	Intellectual Disability Terminology Update	#3137	N/A	03/28/16 WDN 05/19/16 APP
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Updates language in 24 chapters of regulation relating to intellectual disabilities.

FINAL REGULATIONS						
Date	Agency &	TITLE	IRRC #	Comments	Final	
Received	Regulation #			Filed	Action	

#### **Department of Labor and Industry**

02/29/16 03/03/16 #12	2-102 Uniform Construction Code	#3141	N/A	03/03/16 TOL 03/31/16 AAT
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Updates the Uniform Construction Code to Adopt Provisions of the International Building Code of 2015 and the American National Standards Institute.

# **Department of State**

### **Bureau of Professional and Occupational Affairs**

08/29/16	#16A-723	Schedule of Civil Penalties -	#3069	10/15/14	10/20/16
00/23/10	# 10/C/20	Massage Therapists	#3009		APP

Amends the schedule of civil penalties for massage therapists.

08/03/16 #16A-65		Schedule of Civil Penalties -			09/14/16
	#16A-6516	Physical Therapists and Physical	#3085	INONE	ABL
		Therapist Assistants			

Establishes civil penalties for failure to complete the required amount of continuing education and for practicing on a lapsed license or certificate.

#### **State Board of Chiropractic**

07/01/16 #16A-4323 Dist	ance Education #3068	10/00/14	08/18/16 DIS 10/07/16 WAD
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Limits a licensee to meeting no more than 50 percent of the continuing education requirement through distance education.

FINAL REGULATIONS					
Date	Agency &	TITLE	IRRC #	Comments	Final
Received	Regulation #			Filed	Action

# State Board of Examiners of Nursing Home Administrators

08/29/16 #16A-6217	Notice Requirements	#3070	INONE	10/19/16 ABL
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Requires licensees to report felony convictions and disciplinary actions taken by other states against licensees and requires licensees to return their licenses to the Board within 30 days of a revocation, suspension or voluntary surrender.

#### **State Board of Medicine**

08/03/16 #16A-4943	Prosthetists, Orthotists,	#3062	09/10/14	09/15/16
100/00/10 #10A-4540	Pedorthists and Orthotic Fitters	#3002	09/10/14	APP

Establishes requirements for the licensure and regulation of the practices of prosthetists, orthotists, pedorthists and orthotic fitters under the Medical Practice Act as amended by Act 90 of 2012.

#### **State Board of Nursing**

09/26/16	#16A-5125	General Revisions	#3080	12/31/14	11/17/16 APP

Amends provisions relating to examination and licensure of registered nurses, practical nurses and dietician-nutritionists.

#### **State Board of Osteopathic Medicine**

12/18/15 #16A-5328	Genetic Counselors	#3043	02/26/14 01/21/16 APP
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Provides for the licensure and regulation of genetic counselors.

FINAL REGULATIONS						
Date	Agency &	TITLE	IRRC#	Comments	Final	
Received	Regulation #			Filed	Action	

#### **State Board of Physical Therapy**

08/03/16 #	#16A-6515	Continuing Education	#3084	01/14/15	09/15/16
00/00/10 7	#10A-0515	Enforcement	#3004	01/14/13	APP

Addresses the failure to complete the required amount of continuing education.

#### **State Real Estate Commission**

	111/17/16
58 N/A	11/1//10
14//	APP
	58 N/A

Amends the Seller Property Disclosure Statement to add sink holes and storm water facilities to the list of subjects requiring disclosure on the property disclosure statement.

#### **Department of Transportation**

07/13/16	#18-460	Mechanical, Electrical and	#3065	09/17/14	08/18/16
07/10/10	#10 400	Electronic Speed-Timing Devices	#5005	03/17/14	APP

Deletes provisions related to outdated speed-timing testing devices and procedures, clarifies language, and includes provisions permitting the use of new technologies approved by the Department.

08/31/16 10/17/16 #18-	Authorizing Appropriately Attired Persons to Direct, Control or Regulate Traffic			09/27/16 WDN 11/17/16 AAW
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Authorizes persons to direct, control and regulate traffic and establishes safety attire standards for those persons.

#### **Insurance Department**

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	11/30/15	#11-253	Requirements for Qualified and	#3115	NONE	01/20/16	
	11/30/15	#11-255	Certified Reinsurers	#3115	einsurers #3115	NONE	ABL

Deletes the requirements that an alien reinsurer be listed on the National Association of Insurance Commissioners "Quarterly Listing of Alien Insurers" to be considered as a qualified reinsurer.

	FINAL REGULATIONS							
Date Received	Agency & Regulation #	TITLE	IRRC #	Comments Filed	Final Action			
09/28/16	#11-254	Annual Financial Reporting Requirements	#3129	03/23/16	11/17/16 APP			

Adds corporate governance-related functions to an audit committee's responsibilities.

05/05/16	#11-255	Tables Approved for Use in Determining Minimum Nonforfeiture Standards and Minimum Standards for Valuation	#3130	NONE	06/08/16 ABL
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Adopts new mortality tables for use in determining the minimum reserves that insurers must maintain for annuities and pure endowment contracts.

#### Pennsylvania Gaming Control Board

06/22/16	2/16 #125-187	Fortune Asia Poker; Table Game	#3092	05/20/15	08/18/16
00/22/10	# 120 TO	Rules of Play	#3032	03/20/13	APP

Amends the rules of play for Asia Poker and adds two additional side wagers to the game.

06/15/16 #125-188	Table Game Rules of Play	#3111	1 09/30/15	07/21/16 APP	
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Adds a new table game, transitions nine temporary table game chapters to permanent regulations, updates surveillance requirements and amends current dealer minimum training requirements.

08/24/16	#125-192	Heads-Up Hold 'Em and High Card Flush; Table Game Rules of Play	#3114	10/14/15	10/20/16 APP	
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Adds two new table games to the complement of table games available for play in the Commonwealth.

08/24/16	#125-196	Saigon 5 Card; Table Game	#3118	NONE	10/19/16
00/2 // 10	"120 100	Rules of Play	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		ABL

Adds a new table game, Saigon 5 Card, to the complement of games available for play in the Commonwealth.

		FINAL REGULAT	TONS		
Date Received	Agency & Regulation		IRRC #	Comments Filed	Final Action
08/24/16	#125-195	Three Card Prime; Table Game	#3124	02/10/16	10/20/16
00/24/10	# 125 155	Rules of Play	110124	02,10,10	APP

Adds a new table game, Three Card Prime, to the complement of games available for play in the Commonwealth.

08/24/16	#125-198	21 Baccarat; Table Game Rules	#3143	NONE	10/19/16
100/24/10	#125 150	of Play	#0170	NONE	ABL

Adds a new table game to the complement of games available to play in the Commonwealth.

#### Pennsylvania Liquor Control Board

04/08/16 #54-85	Limited Wineries	#3117	11/25/15	05/19/16 DIS 07/19/16 WBL
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Amends existing regulations to make them consistent with the Liquor Code.

03/10/16	#54-83	Posting Requirements for Extension	#3095	1 12/23/15	04/21/16 APP

Increases the time period during which an application to extend licensed premises must be posted at the premises from 15 days to 30 days.

#### Pennsylvania Minority Business Development Authority

I I IADL :	09/30/16	#4-99	General Provisions	#3151	NONE	11/16/16 ABL
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Amends sections of existing regulations which impede the Pennsylvania Minority Business Development Authority's ability to be responsive and flexible to its target market.

	FINAL REGULATIONS						
Date	Agency &	TITLE	IRRC#	Comments	Final		
Received	Regulation #			Filed	Action		

# Pennsylvania Public Utility Commission

03/22/16 06/13/16	#E7 204	Implementation of the Alternative Energy Portfolio Standards Act of 2004		10/03/14	05/19/16 DIS 06/30/16 DIS
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Amends existing regulations to comply with Act 35 of 2007 and Act 129 of 2008, and clarifies issues of law, administrative procedure and policy.

01/27/16 #5	57-308	Paper Billing Fees	#3087	05/13/15	03/10/16 APP
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Prohibits tariff provisions that charge customers a fee to receive a paper bill.

05/18/16 #		Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers		08/05/15	06/30/16 APP
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Amends customer information disclosure regulations.

# **Philadelphia Parking Authority**

11/24/15 #126-12	Safety Camera Requirements	#3116	NONE	01/20/16 ABL	]
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Removes the safety camera image transmission requirement.

#### **State Employees' Retirement Board**

06/02/16	Member Purchases of Credit for Previous State Service and Re-	#3128	NONE	07/20/16 ABL
	election of Benefit Option			NOL

Amends existing regulations related to the purchase of previous state service and adds a provision related to reelection of benefit options.