

PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 86]

Surface and Underground Coal Mining; Advance Notice of Final Rulemaking

The Department of Environmental Protection (Department) is soliciting comments on changes it recommends to be made to the proposed Surface and Underground Coal Mining regulations in 25 Pa. Code, Chapter 86, which were published as proposed rulemaking at 28 Pa. B. 941 (February 14, 1998). Numerous changes to the regulatory language in § 86.1 and §§ 86.101—86.130 are being proposed to provide clarity and to enhance the consistency with the language used in Federal regulations. Sections 86.102(9), 86.103(e) and 86.129 are being changed because they were found to be more stringent than Federal requirements.

In response to comments received during the official public comment period on the proposed rulemaking and following the Department's review of other related information, the Department has prepared a draft of final regulations for public comment. The draft final regulation contains significant changes in two major areas:

§ 86.101. Definitions. In the definition of "surface mining operations," the reference to activities related to underground coal mining that affect the land surface has been deleted to clarify that surface mining operations do not include any surface effects of underground mining resulting from activities that were conducted beneath the land surface. This change will make the definition consistent with the equivalent Federal legal interpretation and also consistent with the interpretation provided in the Federal proposed rulemaking on section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § 1272(e)).

§ 86.126. Procedures: decision. Subsection (b) has been changed to delete the term "regulatory" and add paragraphs (1) and (2) to clarify Environmental Quality Board action on decisions.

While there is no legal requirement to provide an opportunity to comment upon the Department's recommendations for final rulemaking, the Department believes further discussion would serve the public interest in this instance.

A copy of the draft final regulations is available from the Bureau of Mining and Reclamation at (717) 787-4761. Written comments on the draft final regulations must be received by March 2, 1999. No telefax comments will be accepted. Comments or requests for copies should be addressed or delivered to David C. Hogeman, Bureau of Mining and Reclamation, Rachel Carson State Office Building, 400 Market Street, 5th Floor, Harrisburg, PA 17101-2301. The draft final regulations are also available electronically through the DEP Web site (<http://www.dep.state.pa.us>). Comments may be transmitted electronically to Hogeman.David@a1.dep.state.pa.us, and must also be received by March 2, 1999. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowl-

edgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 99-155. Filed for public inspection January 29, 1999, 9:00 a.m.]

LOBBYING DISCLOSURE COMMITTEE

[51 PA. CODE CHS. 31, 33, 35, 37, 39, 41, 43 AND 45]

Lobbying Disclosure

The Lobbying Disclosure Committee (Committee) statutorily created to promulgate regulations necessary to carry out 65 Pa.C.S. Chapter 13 (act) (relating to Lobbying Disclosure Act), comprised of the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Chairperson of the State Ethics Commission, the Attorney General, the Secretary of the Commonwealth, the Auditor General and the General Counsel, or their designees, adds Chapters 31—45 under the authority of 65 Pa.C.S. §§ 1305(b)(3)(iii) and 1310(c) (relating to reporting; and filing fees; fund established; regulations).

Purpose

The proposed regulations implement the act and also impact upon the Public Official and Employee Ethics Act (Ethics Act), 65 Pa.C.S. § 1105(b)(6) and (7) (relating to statement of financial interests).

The proposed regulations are generally procedural in nature and implement the requirements of the act concerning: definitions; registration and reporting by principals and lobbyists; the maintenance of records of lobbying activity; the issuance of opinions and advices of counsel; compliance audits; investigations and hearings; referrals; the imposition of civil penalties; and the imposition of prohibitions against lobbying as a sanction.

In several sections, the proposed regulations establish that if a comparable process relating to advices, opinions, investigations or other procedure is involved, the Ethics Act regulations in Part I (relating to State Ethics Commission) will be followed to the extent that they are applicable. The proposed regulations note that to the extent sections of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) are superseded by Part II, they are likewise superseded by the proposed regulations.

The proposed regulations have been drafted to be thorough and comprehensive, and to be easily understood by the regulated community and the general public.

Fiscal Impact and Paperwork Requirements

Since the regulations are proposed under a new act, the fiscal impact cannot be discerned. Paperwork will be as dictated by the act.

Effective Date

The proposed regulations will take effect upon final publication in the *Pennsylvania Bulletin* or August 1, 1999, whichever is later.

Sunset Date

The effectiveness of these proposed regulations will be reviewed by the Committee periodically. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 20, 1999, the Committee submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and Senate Committee on Rules and Executive Nominations. In addition to submitting the proposed regulations, the Committee has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations it will notify the Committee within 10 days of the close of the Legislative Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised prior to final publication of the regulations, by the Committee, the General Assembly and the Governor.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to John J. Contino, Executive Director, or Vincent J. Dopko, Chief Counsel, State Ethics Commission, P. O. Box 11470, Room 309, Finance Building, Harrisburg, PA 17108-1470 (717) 783-1610 within 30 days following publication in the *Pennsylvania Bulletin*.

AUSTIN M. LEE,
Chair

Fiscal Note: 63-6. (1) General Fund; (2) Implementing Year 1998-99 is \$165,000; (3) 1st Succeeding Year 1999-00 is \$225,000; 2nd Succeeding Year 2000-01 is \$231,750; 3rd Succeeding Year 2001-02 is \$238,750; 4th Succeeding Year 2002-03 is \$245,863; 5th Succeeding Year 2003-04 is \$253,393; (4) 1997-98 \$82.533 Million New Program Not Applicable; 1996-97 \$58.785 Million New Program Not Applicable; 1995-96 \$50.059 Million New Program Not Applicable; (7) State Ethics Commission; (8) recommends adoption. Fees and revenues deposited in the Lobbying Disclosure Fund should offset to some extent the cost of running this program.

Annex A

TITLE 51. PUBLIC OFFICERS

PART II. LOBBYING DISCLOSURE COMMITTEE

CHAPTER 31. GENERAL PROVISIONS

Sec.	
31.1.	Definitions.
31.2.	Ethics Act regulations in Part I.
31.3.	Filing deadlines to fall on Commonwealth working days.
31.4.	Registration periods and reporting periods.
31.5.	Delinquency.
31.6.	Deficiency.
31.7.	Biennial review of exemption threshold and reporting threshold.
31.8.	Forms, records and Commission publications.
31.9.	Amended filings.
31.10.	Filings to be originals signed under oath or affirmation.
31.11.	Electronic filing.
31.12.	Faxed filings.
31.13.	Enforcement of Commission orders.
31.14.	Severability clause.

§ 31.1. Definitions.

The following words and terms when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act—The Lobbying Disclosure Act, 65 Pa.C.S. Chapter 13.

Administrative action—The term includes one or more of the following:

(i) An agency's proposal, consideration, promulgation or rescission of a regulation; development or modification of a guideline or a statement of policy; or approval or rejection of a regulation.

(ii) The review, revision, approval or disapproval of a regulation under the Regulatory Review Act.

(iii) The Governor's approval or veto of legislation.

(iv) The nomination or appointment of an individual as an officer or employe of the Commonwealth.

(v) The proposal, consideration, promulgation or rescission of an executive order.

Affiliated political action committee—A "political action committee" as defined in section 1621(l) of the Election Code (25 P.S. § 3241), which has a chairperson, a treasurer or another officer who is a principal, an employe of a principal, a lobbyist or an employe of a lobbyist. If an employe of a registrant serves as the officer of a political action committee in what is clearly a personal capacity, and the goals and mission of that political action committee clearly have no relationship to the goals and mission of the registrant, the political action committee will not be considered an affiliated political action committee.

Agency—A State agency, board, commission, authority or department.

Anything of value—

(i) The term includes, by necessity, the terms "thing of value" and "things of value." For the limited purpose of reporting gifts, transportation, lodging or hospitality under section 1304 or 1305 of the act (relating to registration; and reporting), or under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests), these terms mean anything of any nature whatsoever which is not or would not ordinarily be obtainable in the marketplace without consideration, including, but not limited to:

(A) A pecuniary or negotiable item such as money; a bank bill or note; a stock, bond, note or other investment interest in an entity; a promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money.

(B) A discount or rebate not extended to the public generally.

(C) A conveyance, or a contract, agreement, promise, or other obligation for a conveyance.

(D) A deposit, distribution, payment, pledge, or transfer of money, or a contract, agreement, promise or other obligation for these.

(E) An advance or loan, or a contract, agreement, promise, or other obligation for an advance or loan.

(F) A forgiveness of indebtedness, or a contract, agreement, promise or other obligation for a forgiveness of indebtedness.

(G) Personalty or an interest in personalty, such as works of art, antiques or collectibles.

(H) Real property or an interest in real property.

(I) A service not extended free of charge to the general public.

(J) The use of real property, personal property or services belonging to other persons or entities.

(K) Entertainment not extended free of charge to the general public, or the payment of fees or charges incident thereto.

(M) A complimentary ticket/pass, or the purchase of a ticket/pass, to an event such as a reception, rally, fundraiser, sporting event, theater, opera, concert, exhibition, or the like.

(N) Food, beverage or lodging.

(O) Rewards or prizes from any contest, event or drawing not open to the general public.

(P) An automobile or other means of transportation not extended free of charge to the general public.

(ii) For the purpose of reporting the amount of gifts, transportation, lodging and hospitality, see § 35.1(k) (relating to quarterly expense reports).

Association—An “association” as defined in the Associations Code in 15 Pa.C.S. § 102 (relating to definitions). The term includes a corporation, a partnership, a limited liability company, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans’ court division in general).

Audit—A review of registration statements or disclosure reports, or both, and related information to determine compliance with the act and to review methods of recordkeeping, reporting, training and other areas relating to lobbying activities.

Candidate’s political committee—A “candidate’s political committee” as defined in the Election Code. The words “candidate’s political committee” mean any political committee formed on behalf of a specified candidate and authorized by the candidate.

Child—The term includes adopted and biological children.

Commission—The State Ethics Commission of the Commonwealth.

Compensation—Anything of value, including benefits, received or to be received from a principal by one acting as a lobbyist.

Complaint—A complaint on a form promulgated by the Commission, or the equivalent of the form, which is signed and sworn under penalty of perjury and which otherwise meets, to the extent applicable, the criteria for complaints under Part I (relating to State Ethics Commission).

Day or date—In the absence of qualifying language such as “business” or “Commonwealth working,” the term “day” or “date” shall mean a calendar day.

Docket (noun)—The official listing of entries to the record of a matter before the Commission.

Docket (verb)—The initial, official assignment of a file number to a matter before the Commission; or the entry of an item on the docket of a matter before the Commission.

Direct communication—An effort, whether written, oral or by another medium, made by a lobbyist or principal, directed to a State official or employe, the purpose or foreseeable effect of which is to influence legislative action or administrative action.

Economic consideration—Anything of value offered or received.

Effort to influence legislative action or administrative action—An effort to initiate, support, promote, modify, oppose, delay or advance a legislative action or administrative action. The term as used in the act does not apply to the provision of purely technical data to a State official or employe or to a legislative or administrative body, at his, her or its request.

Election Code—25 P. S. §§ 2600—4051.

Employe—

(i) For the limited purpose of determining exemption under section 1306(6) of the act, the term means an individual who is in the service of another individual or entity, when the individual or entity for whom services are performed has the following:

(A) The right to control or direct the individual who performs the services.

(B) The right to discharge the individual providing services.

(ii) Other factors characteristic of an employer-employee relationship, but not necessary in every case, are:

(A) The controlling of the hours of employment.

(B) The furnishing of equipment and a place to work to the individual who performs the services.

(C) The furnishing of benefits to the individual who performs the services, which benefits are provided to others considered to be employes of the individual or entity for which the services are provided.

(D) The withholding of taxes from compensation paid to the individual who performs the services.

(iii) In determining exemption under section 1306(6) of the act, the term “employe” does not include independent contractors.

Engaging a lobbyist—Engaging means making an arrangement, and “engagement” means an arrangement, whereby a lobbyist is employed or otherwise hired or retained to lobby on behalf of a principal for economic consideration.

Engaging in lobbying—Performing an act which constitutes lobbying as defined by the act and this part.

Ethics Act—The Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101—1113.

Fax—Facsimile Transmission.

Filed—Registration statements, reports, and other official statements or papers are filed on the date they are physically received at the Commission office whether filed electronically or delivered by United States mail, express carrier, hand delivery or by fax. See § 31.12 (relating to faxed filings) for additional requirements when filing by fax.

Fund—The Lobbying Disclosure Fund established in section 1310(b) of the act (relating to filing fees; fund established; regulations).

Gift—Anything which is received without consideration of equal or greater value.

(i) The term does not include a political contribution which is otherwise reported as required by law or a commercially reasonable loan made in the ordinary course of business.

(ii) For the purpose of categorizing a reportable item under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act, the term does not include "transportation and lodging or hospitality received in connection with public office or employment" as defined in this section, which is otherwise reported as required by law.

Immediate family—An individual's spouse, child, parent, brother, sister, mother-in-law, father-in-law, brother-in-law or sister-in-law.

Indirect communication—An effort, whether written, oral or by another medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action. The term includes, but is not limited to, letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues. The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

Investigative Division—The Investigative Division of the Commission.

Legislation—Bills, resolutions, amendments and nominations pending or proposed in either the Senate or the House of Representatives. The term includes any other matter which may become the subject of action by either chamber of the General Assembly.

Legislative action—An action taken by a State official or employe involving the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of legislation; legislative motions; overriding or sustaining a veto by the Governor; or confirmation of appointments by the Governor or of appointments to public boards or commissions by a member of the General Assembly.

Lobbying—An effort to influence legislative action or administrative action. The term includes the following:

(i) Providing any gift, entertainment, meal, transportation or lodging to a State official or employe for the purpose of advancing the interest of the lobbyist or principal.

(ii) Direct or indirect communication.

Lobbyist—An individual, firm, association, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration. The term includes an attorney who engages in lobbying. The term does not include an individual who receives economic consideration which is de minimis. Membership in an association does not in and of itself operate to make an association member a lobbyist.

Negligent conduct—Conduct, whether of action or omission, which violates or fails to comply with the act, and which is occasioned by a failure to exercise such care as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of section 1304, 1305 or 1307 of the act (relating to prohibited activities), and is characterized by inadvertence, thoughtlessness, inattention, or the like. Negligent conduct is to

be distinguished from willful, wanton or reckless conduct, which would fall within the ambit of intentional conduct.

Negligent failure to register or report—A negligent failure to register or report as required by the act is occasioned by a failure to exercise care such as a reasonably prudent and careful principal or lobbyist would exercise in satisfying the requirements of section 1304 or 1305 of the act, and is characterized by inadvertence, thoughtlessness, inattention, or the like. A negligent failure to register or report is to be distinguished from a willful, wanton or reckless failure, which would fall within the ambit of intent. See, §§ 31.5 and 31.6 (relating to delinquency; and deficiency).

Negligent violation—A negligent violation of the act is one occasioned by or accompanied with negligent conduct.

Principal—

(i) An individual, firm, association, corporation, partnership, business trust or business entity on whose behalf a lobbyist influences or attempts to influence an administrative action or a legislative action; or that engages in lobbying on the principal's own behalf.

(ii) Membership in an association does not in and of itself operate to make an association member a principal.

Registrant—A registered lobbyist or a registered principal.

Regulatory Review Act—71 P. S. §§ 745.1—745.14.

Regulation—Any rule, regulation or order in the nature of a rule or regulation, including formal and informal opinions of the Attorney General, of general application and future effect, promulgated by an agency under statutory authority in the administration of a statute administered by or relating to the agency, or prescribing the practice or procedure before the agency.

Respondent—The subject of an audit, complaint, notice of noncompliance, investigation or formal proceeding before the Commission.

Service (of official papers)—Official papers are deemed served by the Commission, or by a Division thereof, on the date of mailing if delivered by United States mail; the pickup date if delivered by express carrier; or the date received from the Commission if hand delivered or transmitted by fax.

Staff—The Executive Director, the Chief Counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

State official or employe—An individual elected or appointed to a position in State Government or employed by State Government, whether compensated or uncompensated, who is involved in legislative action or administrative action.

Transportation and lodging or hospitality received in connection with public office or employment—Transportation, lodging or hospitality received in the course of, or incident to, the performance of official duties or responsibilities, or received on the basis of the status of the recipient as a public official or employe or State official or employe as those terms are defined under the Ethics Act or the act, respectively. Hospitality includes:

(i) Meals.

(ii) Beverages.

(iii) Recreation and entertainment.

(iv) Hospitality composed of promotional items, certificates, mementos or tokens, which are of a de minimis

economic value. For purposes of reporting under section 1305 of the act, promotional items, certificates, mementos or tokens, which are of a de minimis economic value need not be reported under section 1305(b)(3) of the act, but shall be included in the appropriate totals reported under section 1305(b)(2) of the act.

Travel expenses—For the limited purpose of determining exemption under section 1306(3)(i) of the act (relating to exemption from registration and reporting), travel expenses are defined as reasonable expenses for transportation, meals, beverages and lodging.

§ 31.2. Ethics Act regulations in Part I.

(a) When a comparable process relating to advices, opinions, investigations or other procedure is involved, Part I (relating to State Ethics Commission) will be followed to the extent it is applicable.

(b) To the extent sections of 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) are superseded by Part I, they are likewise superseded by this part.

(c) The definitions of “gift” and “transportation and lodging or hospitality received in connection with public office or employment” in § 31.1 (relating to definitions) apply to administration of the act and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(d) Section 35.1(k) (relating to quarterly expense reports) applies to reporting the amount of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act (relating to registration; and reporting) or under section 1105(b)(6) or (7) of the Ethics Act.

§ 31.3. Filing deadlines to fall on Commonwealth working days.

When the deadline for filing a registration statement, report, answer, brief or other official paper with the Commission falls on a weekend or holiday, or on another day that Commission offices are closed or close early, the deadline for the filing shall be extended to the following Commonwealth working day.

§ 31.4. Registration periods and reporting periods.

(a) Registration under section 1304 of the act (relating to registration) shall be within biennial registration periods that coincide with the terms of the members of the House of Representatives (December 1 of each even-numbered year to November 30 of the following even-numbered year), except that the first registration period shall commence August 1, 1999, and continue through November 30, 2000.

(b) Reporting under section 1305 of the act (relating to reporting) shall be quarterly within each year of the biennial registration period, specifically, for December through February; March through May; June through August; and September through November, except that the first quarterly reporting period shall commence August 1, 1999, and shall continue through November 30, 1999.

§ 31.5. Delinquency.

(a) A registration statement or report required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is delinquent if not received by the Commission by 5 p.m. on the date due.

(b) A failure to timely file a registration statement constitutes a failure to register as required by the act.

(c) A failure to timely file a report constitutes a failure to report as required by the act.

(d) A delinquent registration statement or report continues to be delinquent until received in proper form as required by the act and this part.

§ 31.6. Deficiency.

(a) A registration statement, report or notice of termination required to be filed under section 1304 or 1305 of the act (relating to registration; and reporting) is deficient if one or more of the following exist:

(1) It does not fully and accurately include and disclose all that is required by the act and this part.

(2) It includes a false statement.

(3) It is illegible.

(4) The filer fails to use the appropriate form prescribed by the Commission.

(5) The filer fails to date the registration statement, report or notice of termination.

(6) The filer fails to sign the registration statement, report or notice of termination under oath or affirmation as set forth in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(b) The filing of a deficient registration statement constitutes a failure to register as required by the act.

(c) The filing of a deficient report constitutes a failure to report as required by the act.

(d) The filing of a deficient notice of termination shall be ineffective.

(e) A deficient registration statement, report or notice of termination continues to be deficient until it is amended to fully and accurately disclose all of the information that is required to be disclosed by the act and this part.

§ 31.7. Biennial review of exemption threshold and reporting threshold.

(a) On a biennial basis commencing in January 2002, the Commission will review the threshold for reporting under section 1305(d) of the act (relating to reporting) and the threshold for exemption under section 1306(3)(ii)—(iv) of the act (relating to exemption from registration and reporting), using, to the extent applicable, the procedures within Part I (relating to State Ethics Commission) for reviewing the threshold dollar amounts in section 1105(b) of the Ethics Act (relating to statement of financial interests).

(b) The Commission may increase the exemption threshold and reporting threshold amounts to rates deemed reasonable for assuring appropriate disclosure. Changes to the thresholds made under this section will become effective as determined by the Commission.

(c) The Commission will publish adjusted threshold amounts in the *Pennsylvania Bulletin* by June 1, 2002, and every 2 years thereafter, as necessary.

§ 31.8. Forms, records and Commission publications.

(a) Blank forms for filing or amending registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports or separate termination reports under the act may be obtained by contacting the Commission at: State Ethics Commission, Post Office Box 11470, Harrisburg, Pennsylvania 17108-1470, (717) 783-1610 or (800) 932-0936, or by

visiting any Commission office during business hours on Commonwealth working days. Forms are also available at the Commission's web address: <http://www.ethics.state.pa.us>

(b) Additional sheets of equal size may be attached to any hard copy form filed under the act, if more space is required.

(c) Completed registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements of limitations of knowledge, notices of termination, termination reports and separate termination reports filed with the Commission shall remain on file for 4 years and shall be available for public inspection at the office of the Commission in Harrisburg, Pennsylvania during business hours on Commonwealth working days. The Commission will provide copies of these documents for the cost of the copying. Documents that are maintained and reproducible in an electronic format are available in that format upon request, at cost.

(d) Payments to the Commission for charges under subsection (c) shall be deposited into the Fund established by section 1310(b) of the act (relating to filing fees; fund established; regulations).

(e) Under section 1308 of the act (relating to administration and enforcement), the Commission will prepare and publish the following:

(1) An annual report of lobbying activities in this Commonwealth.

(2) An annual listing of principals, which shall identify affiliated political action committees and lobbyists.

(3) An annual listing of lobbyists, which shall identify affiliated political action committees and principals.

(4) A biennial directory of all registered lobbyists, which shall include photographs.

(i) The directory will be produced and distributed on or before May 1 of each odd-numbered year.

(ii) Copies of the directory will be made available to the public at a price not to exceed the actual cost of production.

(iii) Revenue received by the Commission from sales of this directory will be deposited into the Fund established by section 1310(b) of the act.

(5) One or all of the items in paragraphs (1)–(3) may, at the discretion of the Commission, be supplemented or be combined in a single publication or combined with the annual report prepared and published by the Commission under the Ethics Act.

§ 31.9. Amended filings.

(a) Filings under the act may be amended.

(b) The filer of an amended form shall check the appropriate block on the form to indicate that it is an amended form.

(c) Amended filings will not affect the Commission's authority to conduct investigations, hearings or other proceedings under the act.

(d) Registration statements may be amended and shall conform to the additional requirements detailed in § 33.4 (relating to amended registration statements).

§ 31.10. Filings to be originals signed under oath or affirmation.

(a) Registration statements, quarterly expense reports, separate quarterly expense reports, lobbyists' statements

of limitations of knowledge, notices of termination, termination reports, separate termination reports and amendments to these filed with the Commission shall be signed originals bearing the signature of the filer. See, §§ 31.11 and 31.12 (relating to electronic filing; and faxed filings) for requirements when filing electronically or by fax.

(1) A document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink.

(2) A principal who is an individual shall sign his own filings.

(3) Filings by a principal that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(4) A lobbyist who is an individual shall sign his own filings.

(5) Filings by a lobbyist that is a firm, association, corporation, partnership, business trust or business entity shall be signed by a named officer or other individual who has the authority to sign documents on its behalf.

(6) The signature shall appear on the line indicated on the form as promulgated by the Commission.

(b) Registration statements, notices of termination and amendments to these filed under the act shall include an affirmation subject to penalty under 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities) that the information provided therein is true and correct to the best of the filer's knowledge, information and belief.

(c) Quarterly expense reports, separate quarterly expense reports, termination reports, separate termination reports and amendments to these, filed under the act, shall be filed under oath or affirmation.

(d) A lobbyist who signs a principal's quarterly expense report, termination report or amendment to these, shall do so under an affirmation subject to penalty under 18 Pa.C.S. § 4904 that the information provided therein is true and correct to the best of the lobbyist's knowledge, information and belief.

(e) A lobbyist attaching a statement to a principal's quarterly expense report, termination report or amendment to these, describing the limits of the lobbyist's knowledge concerning the expenditures contained therein, shall do so under an affirmation subject to penalty under 18 Pa.C.S. § 4904 that the information provided in the Statement is true and correct to the best of the lobbyist's knowledge, information and belief.

§ 31.11. Electronic filing.

(a) Electronic filing shall be available when notice of its availability is announced in the *Pennsylvania Bulletin* by the Commission.

(b) Upon the availability of electronic filing, forms that are required to be filed under the act may be filed electronically. The use of a digital signature assigned by the Commission shall have the same force and effect as a manual signature upon acceptance by the filer. The digital signature assigned shall be: unique to the person to whom it is assigned; capable of verification; under the sole control and authority of the person to whom it is assigned; and linked to the data in a manner so that if the data are changed, the digital signature is invalidated.

(1) A digital signature shall be assigned to a lobbyist or principal that submits to the Commission, in proper form as required by this section, an application to file electronically.

(2) The application to file electronically shall be on a form prescribed by the Commission.

(3) In submitting an application to file electronically, the applicant shall agree to all of the following:

(i) For any registration statement, notice of termination or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under affirmation as set forth in § 31.10(b) (relating to filings to be originals signed under oath or affirmation).

(ii) For any quarterly expense report, separate quarterly expense report, termination report, separate termination report or amendment to these that the applicant files with the Commission electronically, the digital signature assigned to the applicant shall constitute the applicant's signature under oath or affirmation as set forth in § 31.10(c).

(iii) The use of the digital signature assigned to the applicant to "sign" a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(d).

(iv) The use of the digital signature assigned to the applicant to attach a statement to a quarterly expense report, termination report or amendment to these filed by another shall constitute the applicant's affirmation as set forth in § 31.10(e).

(4) An application to file electronically may be rejected if the application is illegible, incomplete or unsigned.

(c) A registration statement or amendment that is submitted to the Commission electronically is filed on the date the Commission receives the document electronically if the Commission receives the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter.

(1) If the Commission does not receive the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the document electronically, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

§ 31.12. Faxed filings.

(a) A registration statement or amendment sent by fax is filed on the date the Commission receives the faxed copy if the Commission receives the signed original, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days thereafter. A registration statement or amendment shall be deemed to be a signed original if it is filed electronically under § 31.11 (relating to electronic filing) or if it bears an original manual signature in ink.

(1) If the Commission does not receive the signed original, together with the required photograph (in the case of a lobbyist's registration statement) and the biennial filing fee, if due, within 5 business days from the date of receiving the faxed copy, the registration statement or amendment is filed on the date the Commission receives all the required items.

(2) The failure to submit a photograph or to pay a biennial filing fee as required by the act and this part constitutes a failure to register as required by the act.

(b) A quarterly expense report, separate quarterly expense report, lobbyist's statement of limitations of knowledge, notice of termination, termination report, separate termination report or amendment to these sent by fax transmission is filed on the date the Commission receives the faxed copy if the Commission receives the signed original within 5 business days thereafter. The document shall be deemed to be a signed original if it is filed electronically under § 31.11 or if it bears an original manual signature in ink. If the Commission does not receive the signed original within 5 business days from the date of receiving the faxed copy, the document is filed on the date the Commission receives the signed original.

§ 31.13. Enforcement of Commission orders.

The Commission through its staff may take appropriate action to enforce its orders.

§ 31.14. Severability clause.

(a) *General rule.* Generally, the provisions of this part are severable. Subject to the exception in subsection (b), if any provision of this part is held invalid, or if the application of a provision of this part to a person or circumstance is held invalid, the invalidity will not affect other provisions or applications of this part which can be given effect without the invalid provision or application.

(b) *Exception.* If the act becomes void as a whole, this part shall be void as a whole.

CHAPTER 33. REGISTRATION AND TERMINATION

Sec.	
33.1.	Biennial filing fee.
33.2.	Principal registration.
33.3.	Lobbyist registration.
33.4.	Amended registration statements.
33.5.	Termination.

§ 33.1. Biennial filing fee.

(a) Under section 1310(a) of the act (relating to filing fees; fund established; regulations), a principal or lobbyist required to be registered under the act shall pay a biennial filing fee of \$100 to the Commission.

(1) The biennial filing fee shall be tendered to the Commission with the filing of the principal's or lobbyist's first registration statement in each registration period.

(2) The biennial filing fee shall be a flat fee for the registration period in which paid.

(3) A separate biennial filing fee shall be paid for each principal or lobbyist required to be registered, even if employed by a firm, association, corporation, partnership, business trust or business entity that is also required to register and that has paid or will pay the fee. A principal also acting as a lobbyist shall pay no more than one fee in a registration period.

(4) The biennial filing fee is nonrefundable and nontransferrable.

(5) Filing fees shall expire at the end of each registration period, regardless of when paid.

(b) The failure to pay a biennial filing fee as required by the act and this section shall constitute a failure to register as required by the act.

(c) Money received from biennial filing fees shall be deposited in the Fund established by section 1310(b) of the act.

§ 33.2. Principal registration.

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a principal shall register with the Commission within 10 days of acting in any capacity as a principal.

(1) Engaging a lobbyist for lobbying purposes constitutes acting in the capacity of a principal.

(2) Lobbying by a principal on the principal's own behalf constitutes acting both in the capacity of a principal and in the capacity of a lobbyist.

(i) Unless exempt under section 1306 of the act, a principal that so engages in lobbying on its own behalf shall register with the Commission both as a principal and as a lobbyist.

(ii) Unless exempt under section 1306 of the act, members or employees of a principal who engage in lobbying on behalf of the principal shall register as lobbyists with the Commission under § 33.3 (relating to lobbyist registration).

(b) A principal shall register by filing a registration statement with the Commission, on a form promulgated by the Commission, which shall disclose the following information:

(1) The name, permanent address, daytime telephone number, and name and nature of business of the principal.

(2) The name, registration number and acronyms of "affiliated political action committees" as defined in section 1303 of the act (relating to definitions), as to the principal or the principal's employees, or both.

(3) The name and permanent business address of each individual, registered or unregistered, who will for economic consideration engage in lobbying on the principal's behalf, whether as an individual or as a member, employee, or agent of a firm, association, corporation, partnership, business trust or business entity.

(4) If the principal is an organization or association, the number of its dues-paying members in the past calendar year.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the street address and, if different, the mailing address. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the principal's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the principal has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and sections 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) A principal will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(g) Each registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The principal

shall file new registration statements after that date, to the extent the principal is required to be registered under the act and this section.

§ 33.3. Lobbyist registration.

(a) Unless exempt under section 1306 of the act (relating to exemption from registration and reporting), a lobbyist shall register with the Commission within 10 days of acting in any capacity as a lobbyist.

(1) Accepting an engagement to lobby constitutes acting in the capacity of a lobbyist.

(2) Engaging in lobbying constitutes acting in the capacity of a lobbyist.

(3) When a firm, association, corporation, partnership, business trust or business entity is engaged as a lobbyist, it and each of its members or employees that engage in lobbying on behalf of the principal shall register with the Commission, unless exempt under section 1306 of the act.

(b) A lobbyist shall register by filing a "registration statement" with the Commission on a form promulgated by the Commission which shall include and disclose the following information:

(1) The name, permanent business address and daytime telephone number of the lobbyist.

(2) A passport-sized (approximately 2 inches x 2 inches) photograph of the lobbyist which photograph shall be of reasonable clarity and shall have been taken within 2 years of the date of registration, except that if the lobbyist is not an individual, a photograph is not required.

(3) The name, permanent business address and daytime telephone number of the principal the lobbyist represents.

(4) The name, registration number and acronyms of "affiliated political action committees," as defined in section 1303 of the act (relating to definitions) as to the lobbyist or the lobbyist's employees, or both.

(c) For each address that is to be disclosed on a registration statement, the filer shall include the street address and, if different, the mailing address. The filer may, at the filer's option, also include a fax number or electronic mail address.

(d) The registration statement shall include the lobbyist's consent to receive service of notices, other official mailings or process at addresses listed in the registration statement on file with the Commission.

(e) The registration statement shall include a statement that the lobbyist has received, read and understands the requirements and prohibitions of sections 1304, 1305 and 1307 of the act (relating to registration; reporting; and prohibited activities) and section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(f) Lobbyists required to be registered under the act shall file a separate registration statement for each principal represented.

(g) A lobbyist will not be considered registered until the completed registration statement, in proper form as required by the act and this section, is received by the Commission.

(h) Each registration statement filed under the act shall be effective from the date of filing through the final day of the registration period then in effect. The lobbyist

shall file new registration statements after that date, to the extent the lobbyist is required to be registered under the act and this section.

§ 33.4. Amended registration statements.

(a) A principal required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the principal's registration statement. The amended registration statement shall be filed with the Commission within 14 days after the change occurs, except that if the change is solely as to the number of dues-paying members in the past calendar year, the amended registration statement shall be filed with the Commission within 14 days of the end of the year in which the change occurs.

(b) A lobbyist required to be registered under the act shall file an amended registration statement whenever there is a change of or in the information required to be disclosed on the lobbyist's registration statement.

(1) The amended registration statement shall be filed with the Commission within 14 days after the change occurs.

(2) A change to the identity or name of the principal represented shall require a new registration statement.

(c) The filing of amended registration statements shall be subject to the additional requirements detailed in § 31.9 (relating to amended filings).

§ 33.5. Termination.

(a) A lobbyist or a principal may terminate registration by filing a completed notice of termination with the Commission.

(1) The notice of termination shall be on a form prescribed by the Commission.

(2) A lobbyist may file notices of termination solely as to registration statements which the lobbyist has filed.

(3) A principal may file notices of termination solely as to registration statements which the principal has filed.

(b) A separate notice of termination shall be required for each registration statement.

(c) A notice of termination shall identify the applicable registration statement by the date filed, the name and address of the principal, and the names and addresses of the lobbyists.

(d) A notice of termination may be amended, but cannot be withdrawn.

(e) A registration statement cannot be revived or otherwise made effective after a notice of termination as to the registration statement has been filed.

(f) No lobbying may occur after the filing of a notice of termination unless the lobbying is under a separate registration statement which has already been filed with the Commission and which, at the time of the lobbying, has not been terminated.

(g) A lobbyist or principal filing a notice of termination shall, within 30 days thereafter, file a termination report with the Commission.

(1) Termination reports shall be filed on the quarterly expense report form promulgated by the Commission. The filer shall check the appropriate block on the form to indicate that it is a termination report.

(2) A termination report shall identify the applicable notice of termination by the date filed, the name and address of the principal, and the names and addresses of the lobbyists.

(3) For purposes of determining whether the reporting threshold has been met, expenses shall be accounted for in the period in which incurred, regardless of when paid.

(4) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are \$500 or less, the termination report may substantively be limited to a statement to that effect, by checking the appropriate block on the form.

(5) If the total lobbying expenses of the registered principal or registered lobbyist, lobbying on the principal's behalf, or both, from the end of the previous quarterly reporting period through the final day of lobbying are in excess of \$500, a termination report by the principal shall include all information required by section 1305(b)(1)—(3), (5) and (7) of the act (relating to reporting), and a termination report by a lobbyist shall include all information required by section 1305(b)(2) and (3) of the act, through the final day of lobbying activity.

(i) Compensation, costs and expenses shall be accounted for in the period in which earned or incurred, regardless of when paid.

(ii) An item previously reported as earned or incurred need not be reported again when actual payments are made.

(6) The filer of the termination report shall give written notice to each public official or employe of the public official's or employe's inclusion in the termination report within 7 days of the submission of the termination report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act (relating to statement of financial interests).

(h) A lobbyist required to be registered under the act shall sign the termination reports and amended termination reports submitted by the principal represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge.

(1) A lobbyist may attach a statement to the report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall describe the limitations and the reasons for the limitations with specificity.

(i) A lobbyist required to be registered under the act shall file a separate termination report or a separate amended termination report if, during the period covered by the principal's termination report or amended termination report, the lobbyist engaged in lobbying on behalf of the principal which was not contained in the report.

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) The lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be originals signed under oath or affirmation).

(2) The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed.

(3) Separate reports shall be filed on a form promulgated by the Commission.

(4) A separate termination report or separate amended termination report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate termination report or separate amended termination report shall include all information required by section 1305(b)(2), (3) and (7) of the act.

(6) A separate termination report or separate amended termination report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate termination report or separate amended termination report shall promptly serve it upon the principal.

(8) A lobbyist filing a separate termination report or separate amended termination report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

(j) After a reasonable review of the termination report, the Commission will issue to the lobbyist or principal who filed the notice of termination a letter stating that the registrant has terminated registration. The letter shall be issued within 90 days after the Commission's receipt of the notice of termination except that the filing of a defective or delinquent termination report shall automatically and correspondingly extend the Commission's deadline for issuing the letter.

(k) The filing of a notice of termination or a termination report, or the issuance of a Commission letter stating that the registrant has terminated registration, does not affect the Commission's authority to conduct audits, investigations, hearings or other proceedings under the act and this part.

CHAPTER 35. REPORTING

- Sec. 35.1. Quarterly expense reports.
- 35.2. Records maintenance, retention and availability.

§ 35.1. Quarterly expense reports.

(a) A quarterly expense report is required to be filed as set forth in this section when the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, exceed \$500 in a quarterly reporting period.

(b) For a quarterly reporting period in which the total lobbying expenses of a registered principal or registered lobbyist lobbying on the principal's behalf, or both, are \$500 or less, a statement to that effect shall be filed with the Commission by checking the appropriate block on the quarterly expense report form.

(c) For purposes of determining whether the reporting threshold has been met, and for filing reports required under sections 1304 and 1305 of the act (relating to registration; and reporting), compensation, costs and ex-

penses shall be accounted for in the period in which earned or incurred, regardless of when paid. An item previously reported as earned or incurred need not be reported again when actual payments are made.

(d) The duty to file a quarterly expense report or statement of failure to meet the reporting threshold is preliminarily placed upon the registered principal. The deadline for a principal to file a quarterly expense report or statement of failure to meet the reporting threshold shall be the 30th day after the quarterly reporting period ends.

(e) A lobbyist required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if, during the reporting period, the lobbyist engaged in lobbying which was not contained in the report filed by the principal represented by the lobbyist. The deadline for filing a separate report shall be the 30th day after the date the principal's related report was filed.

(f) Quarterly expense reports, statements of failure to meet the reporting threshold, separate quarterly expense reports by lobbyists and amendments to these shall be filed on forms promulgated by the Commission. Those required to report shall make a good faith effort to include each reportable item in the appropriate category.

(g) A quarterly expense report of a principal required to be registered under the act shall include the following information:

(1) The name, permanent business address and daytime telephone number of any individual, firm, association, corporation, partnership, business trust or business entity which contributed more than 10% of the total resources received by the principal during the reporting period.

(2) The names of all lobbyists, registered or unregistered, by whom the lobbying is conducted, so that if a lobbyist is a firm, association, corporation, partnership, business trust or business entity, its name and the names of the individuals who lobby on behalf of the principal shall be included.

(3) The general subject matter or issue being lobbied, which shall be indicated by checking the appropriate block on the form or completing the category designated "other."

(i) A correlation as to which lobbyists are lobbying on which matters or issues is not required.

(ii) With regard to legislative action, specific bill numbers are not required to be included.

(iii) Except as provided by the act or this part, the specific contents of a particular communication, or the identity of those with whom the communications take place, need not be reported.

(4) A single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, to be calculated as prescribed by subsection (i).

(5) A single aggregate good faith estimate of the total amount spent for direct communication.

(6) The total costs for gifts, entertainment, meals, transportation, lodging and receptions, given to or provided to State officials or employes or their immediate families.

(7) A single aggregate good faith estimate of the total amount spent for indirect communication.

(8) The information required to be disclosed by section 1305(b)(3) of the act, as detailed by subsections (j) and (k).

(h) A registered principal or registered lobbyist that attempts to influence an agency's preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included in calculating the totals referenced by subsection (g)(4)–(7).

(i) The single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying shall include salaries and other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses for those involved in lobbying, and costs for offices, equipment and supplies utilized for lobbying.

(1) In calculating the single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying, any reasonable accounting method may be used.

(2) Reportable personnel costs include costs for lobbying staff, research and monitoring staff, consultants, lawyers, lobbyists, publications and public relations staff, and technical staff, as well as clerical and administrative support staff who engage in lobbying but who are exempt from reporting under section 1306(6) of the act (relating to exemption from registration and reporting).

(3) Compensation, benefits and expenses of any nature shall be included if paid in furtherance of lobbying.

(4) If compensation is to be reported by or for an individual or entity whose lobbying is incidental to regular employment, it shall be sufficient to report a good faith prorated estimate based on the value of the time devoted to lobbying. The time devoted to lobbying shall include:

- (i) Research time spent in preparation for lobbying.
- (ii) Time spent in direct communication or indirect communication as defined by the act.
- (iii) Other time consumed in furtherance of lobbying for which the individual or entity is compensated or reimbursed.

(5) Reportable costs for offices, equipment and supplies shall include, but not be limited to: the rental value of the physical facilities of an office during the period of time used for lobbying, together with additional charges for utilities, telephone usage, fax, insurance, services, furnishings, computers, printers, systems, copiers, fax machines, office supplies, postage and other costs related to the physical facilities and operation of an office during the period of time used for lobbying.

(j) A quarterly expense report shall also identify, by name, position and each occurrence, the State officials or employes, or both, who received from a principal or lobbyist anything of value which must be included in the statement of financial interests under section 1105(b)(6) or (7) of the Ethics Act (relating to statement of financial interests) as implemented by section 1105(d) of the Ethics Act.

(1) For purposes of the act, the amount referred to in section 1105(b)(7) of the Ethics Act shall be considered an aggregate amount per year.

(2) The reporting of the provision of a gift to a State official or employe shall identify:

(i) The name and position of the State official or employe.

(ii) The name and address of the source of the gift.

(iii) The amount of the gift.

(iv) The circumstances of the gift, including the nature of the gift.

(3) The reporting of the provision of transportation/lodging/hospitality to a State official or employe in connection with public office or employment shall identify the following:

(i) The name and position of the State official or employe.

(ii) The name and address of the source of the payment.

(iii) The amount of the payment.

(k) For purposes of reporting the value of gifts or transportation, lodging or hospitality to be disclosed under section 1304 or 1305 of the act, or under section 1105(b)(6) or (7) of the Ethics Act:

(1) Gifts and hospitality items that are returned unused to the donor within 30 days of the date of receipt need not be reported.

(2) The valuation of a complimentary ticket to a fundraiser shall be based upon the reasonable amount of the goods or services received by the donee.

(3) The value of gifts, transportation, lodging or hospitality shall equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.

(4) When paragraph (3) is not applicable, the value of the gifts, transportation, lodging or hospitality shall equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.

(5) When paragraphs (3) and (4) are not applicable, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality, but shall include a detailed explanation of the specific method used.

(6) When more than one individual is benefited incident to an occasion or transaction, the registrant may calculate the value of the gifts, transportation, lodging or hospitality provided to a particular individual by one of the following:

(i) Calculating the actual benefit provided to that individual.

(ii) Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.

(l) The filer of the quarterly expense report or amended quarterly expense report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

(m) A lobbyist required to be registered under the act shall sign the quarterly expense reports or amended quarterly expense reports submitted by the principals represented to attest to the validity and accuracy of the reports to the best of the lobbyist's knowledge.

(1) A lobbyist may attach a statement to the quarterly expense report or amended quarterly expense report of any principal, describing the limits of the lobbyist's knowledge concerning the expenditures contained in the report.

(2) Lobbyists' statements as to limitations of knowledge shall be on a form prescribed by the Commission and shall describe the limitations and the reasons for the limitations with specificity.

(n) A lobbyist required to be registered under the act shall file a separate quarterly expense report or a separate amended quarterly expense report if, during the period covered by the principal's quarterly expense report or amended quarterly expense report, the lobbyist engaged in lobbying which was not contained in the report.

(1) When more than one lobbyist would be required to file a separate report, they shall have the option of filing the reports jointly.

(i) The joint filing of a separate report does not excuse the various lobbyists involved from the duty to fully comply with the act and this section as to the separate reports.

(ii) All lobbyists joining in a joint report shall sign the report as provided in § 31.10 (relating to filings to be under oath or affirmation).

(2) The deadline for filing any separate quarterly expense report or separate amended quarterly expense report shall be the 30th day after the date the principal's related report was filed.

(3) Separate quarterly expense reports and separate amended quarterly expense reports shall be filed on a form promulgated by the Commission.

(4) A separate quarterly expense report or separate amended quarterly expense report shall contain the identity of the principal for whom the lobbying was performed.

(5) A separate quarterly expense report or separate amended quarterly expense report shall include all information required by section 1305(b)(2), (3) and (7) of the act.

(6) A separate quarterly expense report or separate amended quarterly expense report may include a statement which sets forth, with specificity, the limitations of the lobbyist's knowledge and the reasons for the limitations.

(7) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall promptly serve it upon the principal.

(8) A lobbyist filing a separate quarterly expense report or separate amended quarterly expense report shall give written notice to each public official or employe of the public official's or employe's inclusion in the report within 7 days of the submission of the report to the Commission. The notice shall include the information which will enable the public official or employe to comply with section 1105(b)(6) and (7) of the Ethics Act.

§ 35.2. Records maintenance, retention and availability.

(a) A registrant shall maintain records of all lobbying activity.

(1) The Commission may promulgate standardized forms for the records, in which case the forms promulgated by the Commission may be used by all principals and lobbyists required to be registered under the act.

(2) Records of lobbying activity shall be maintained in sufficient detail to enable the registrant to fully comply with the act and this part.

(3) The records shall identify the general subject matter or issue being lobbied. Except as provided by the act or this part, the specific contents of a particular communication, or the identity of those with whom the communications take place, need not be recorded.

(b) A registrant may keep records of all lobbying activity separate from records of the registrant's non-lobbying activity.

(1) Records which integrate both lobbying and non-lobbying activities shall be retained and made available for inspection or audit under this section and Chapter 41 (relating to compliance audits).

(2) An expenditure incurred partially in connection with lobbying may be prorated by any reasonable accounting method, but the method used shall be described in detail in the records maintained as to the expenditure.

(c) A registrant shall retain all documents reasonably necessary to substantiate the reports to be made under section 1304 or 1305 of the act (relating to registration; and reporting) for 4 years from the date of filing of the subject report.

(1) The documents shall include, but not be limited to: books, journals, ledgers, accounts, statements, invoices, bills, vouchers, receipts, charge slips, cancelled checks, payroll check stubs, time sheets, tax returns and related forms, contracts, subcontracts, business diaries and calendars, and other related written or computerized records.

(2) Original source records received by the registrant shall be retained in their original form.

(3) Records prepared by the registrant under this section may be in written or computerized/electronic formats.

(4) Computerized/electronic records shall be maintained to enable the Commission or the Office of Attorney General to access all of the recorded information. Passwords or other privacy/security measures shall be memorialized and maintained to enable the Commission or the Office of Attorney General to fully access, identify and use them.

(5) Affidavits may be used if actual records are lost, stolen or destroyed through no fault of the registrant, or are otherwise unavailable, and cannot be recreated from other sources. An affidavit shall be as complete and detailed as is reasonably possible, and shall include the specific reasons for the unavailability of the actual records.

(d) Reportable expenditures shall be supported by original source documents to the extent they are available. If an original source document is not available to support a reportable expenditure, the registrant shall upon payment of the expenditure promptly prepare a written voucher, journal entry, or other written or electronic form of record to document the expenditure, which record shall include a notation of the reason an original source document was not available.

(e) The documents and records maintained and retained to substantiate expenditures shall reflect for each reportable item, the following information:

(1) The full names of the payor and payee.

- (2) The date of the transaction.
- (3) The dates and forms of payments.
- (4) The full name and official position of each State official or employe who was a beneficiary, and the amount of the expenditure reasonably attributable to each of them.
- (5) The number of immediate family members of a State official or employe, who were beneficiaries, and the amount of the expenditures reasonably attributable to them.

(6) A description of the goods or services or other consideration for which the expenditure was made or incurred.

(f) Contributions of resources which are reportable under section 1305(b)(5) of the act shall upon receipt be promptly documented by the registered principal through the preparation of a written receipt, an entry in a journal maintained by the principal, or other written or electronic form of record.

(g) Documents and records maintained and retained to substantiate contributions of resources reportable under section 1305(b)(5) of the act shall reflect for each reportable item, the following information:

- (1) The full names of the donor and donee.
- (2) The amount or value and date of the contribution.
- (3) In the case of a nonmonetary contribution, a description of the goods, services or other forms of resources provided.
- (4) Instructions, directions, conditions, restrictions, limitations or controls provided or imposed by the donor as to the use or disposition of the contribution.

(h) Upon written request by the Office of Attorney General or the Commission, all documents reasonably necessary to substantiate reports made under section 1305 of the act shall be made available for inspection and copying within 30 days.

(1) Either the Office of Attorney General or the Commission may extend this 30-day deadline in connection with its own requests, when circumstances compelling an extended deadline are established.

(2) For computerized/electronic records, the information required to access the recorded information, such as any passwords or other privacy/security measures, shall be provided together with the records.

CHAPTER 37. EXEMPTION FROM REGISTRATION AND REPORTING

Sec.	
37.1.	Qualifications for exemption.
37.2.	Exempt status.

§ 37.1. Qualifications for exemption.

The following individuals and activities shall be exempt from registration under section 1304 of the act (relating to registration) and reporting under section 1305 of the act (relating to reporting):

(1) An individual whose lobbying activities are limited to preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding.

(2) An individual who is an employe of an entity engaged in the business of publishing, broadcasting or televising while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.

(3) An individual who does not receive any compensation for lobbying, other than travel expenses.

(4) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(5) An individual who engages in lobbying on behalf of the individual's employer when the lobbying activity represents less than the equivalent of \$2,500 of the employe's time during any reporting period, based on an hourly proration of the employe's compensation.

(6) A principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

(7) An elected State officer acting in an official capacity.

(8) A State executive officer appointed by the Governor acting in an official capacity.

(9) An elected or appointed official or employe of a political subdivision acting in an official capacity.

(10) An employe of the Commonwealth or an employe or official of an independent agency of the Commonwealth acting in an official capacity.

(11) An individual representing a bona fide church of which the individual is a member which the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion.

(12) An employe, who is not a registered lobbyist, of a corporation which is registered as a principal under section 1304 of the act; has one or more registered lobbyists; and includes in its reports under section 1305 of the act all of the employe's expenses related to lobbying. The failure of the registered principal to include the employe's lobbying-related expenses in its reports under section 1305 of the act will cause the employe to lose the employe's exempt status unless the employe is otherwise exempt under this section.

§ 37.2. Exempt status.

(a) As long as a principal qualifies for exemption under section 1306 of the act (relating to exemption from registration and reporting), the principal is not required to register or report under the act, even if total lobbying expenses for a quarterly reporting period exceed \$500.

(1) Upon losing exempt status, a principal is immediately subject to the registration and reporting requirements of the act.

(2) A principal is not required to retroactively file reports for quarterly reporting periods prior to the loss of exempt status.

(b) As long as a lobbyist qualifies for exemption under section 1306 of the act, the lobbyist is not required to register or report under the act.

(1) The exemption from reporting includes exemption from filing separate quarterly expense reports or separate termination reports.

(2) The exemption from reporting includes exemption from signing reports filed by principals.

(3) Upon losing exempt status, a lobbyist is immediately subject to the registration and reporting requirements of the act.

(4) A lobbyist is not required to retroactively sign or file reports for quarterly reporting periods prior to the loss of exempt status.

CHAPTER 39. OPINIONS AND ADVICES OF COUNSEL

- Sec.
- 39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.
- 39.2. Standing requirements.
- 39.3. Prospective conduct to be reviewed.

§ 39.1. Ethics Act regulations in Part I as to opinions and advices of counsel.

Part I (relating to State Ethics Commission) provisions relating to opinions and advices of counsel will govern to the extent applicable.

§ 39.2. Standing requirements.

(a) An advice or opinion may be requested by a lobbyist, principal, State official or employe, or by his authorized representative, as to his own conduct.

(b) An unauthorized request for an advice or opinion as to the conduct of another shall be considered a "third-party request" and may not be entertained.

§ 39.3. Prospective conduct to be reviewed.

An advice or opinion may only be issued as to prospective—future—conduct.

CHAPTER 41. COMPLIANCE AUDITS

- Sec.
- 41.1. Lotteries.
- 41.2. Number and scope of compliance audits.
- 41.3. Audit procedures.
- 41.4. Audit report.
- 41.5. Confidentiality.

§ 41.1. Lotteries.

(a) Each year, the Commission will initiate, by lottery, random audits of registration statements and disclosure reports required to be filed under the act.

(b) The Commission may hold up to four lotteries per year. The number of lotteries held in a given year will be a matter within the Commission's discretion.

(c) Unless for cause, no lobbyist or principal will be subject to an audit more than once in any biennial registration period.

§ 41.2. Number and scope of compliance audits.

(a) The purpose of conducting the audits shall be to ensure compliance with the act and to review methods of recordkeeping, reporting, training and other areas relating to lobbying activities.

(b) Each year, the number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings. The number of audits conducted in a given year will depend upon various factors, including the complexity, results and time required to complete the audits.

(c) An audit shall include registration statements and disclosure reports, as well as other relevant information to verify, explain, clarify, support or contravene the registration statements and disclosure reports.

(d) When the records of a principal are audited, the relevant records of any other registrant may also be examined as part of that audit.

(e) When the records of a lobbyist are audited, the relevant records of any other registrant may also be examined as part of that audit.

(f) An audit shall be limited in time to the previous 4 calendar years, except that lobbying activities performed prior to August 1, 1999, will not be audited under the act.

§ 41.3. Audit procedures.

The following general procedures will be employed by the Commission for audits conducted under section 1308(g) of the act (relating to administration and enforcement):

(1) At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that it was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.

(2) Prior to the initiation of the audit, a review of the subject's reports on file with the Commission for a period not to exceed 4 years will be conducted.

(3) The audit will be initiated by way of conference with the audit subject or in the case of a firm, the designated representative thereof.

(i) The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.

(ii) The audit may include independent verification of some or all of the information reported.

(A) The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and shall execute all waivers, releases or authorizations to allow the Commission to obtain the records.

(B) Registrants shall have an affirmative duty to cooperate fully in any audit of themselves or another registrant.

(iii) The audit may include interviews of lobbyists, principals, representatives and employes thereof and other individuals necessary to the completion of the audit.

(4) A post audit conference will be conducted with the subject of the audit, or in the case of an entity, with the designated representative thereof.

(5) Post audit preparation of a report describes the result of the audit.

§ 41.4. Audit report.

(a) The Division of the Commission that is responsible for performing compliance audits will, at the conclusion of each audit, prepare an audit report which will include findings.

(b) An audit report may include recommendations as to recordkeeping, reporting and other practices arising from the audit.

(c) Upon completion, an audit report will be served upon the principal or lobbyist that is the subject of the audit.

(1) Service of the audit report shall be complete upon mailing.

(2) Within 30 days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth the subject's position as to the audit report.

(d) Audit reports shall be submitted to the Executive Director of the Commission for review, and may form the basis for further proceedings under the act or the Ethics Act.

§ 41.5. Confidentiality.

An audit report and findings will be confidential, except that the Commission will include the relevant portion of an audit as part of its findings of fact in a Commission order which results from an investigation arising out of an audit.

CHAPTER 43. INVESTIGATIONS, HEARINGS AND REFERRALS

Sec.	
43.1.	Intentional violations.
43.2.	Commission proceedings under section 1307 of the act.
43.3.	Commission proceedings under section 1304 or 1305 of the act.

§ 43.1. Intentional violations.

(a) If the Commission after investigation believes an intentional violation of the act has been committed, it will refer all relevant documents and other information to the Office of Attorney General.

(b) Under section 1309(b) of the act (relating to penalties) and § 43.3(c)(16) (relating to Commission proceedings under section 1304 or 1305 of the act), if the Commission finds that a failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

§ 43.2. Commission proceedings under section 1307 of the act.

(a) Upon receipt of a complaint, the Commission, through its Executive Director, will conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act (relating to prohibited activities).

(b) Upon the own motion of the Executive Director of the Commission, the Commission, through its Executive Director, may conduct a preliminary inquiry into an alleged negligent violation of section 1307 of the act.

(c) Preliminary inquiries will be conducted under the procedures for preliminary inquiries set forth within Part I (relating to State Ethics Commission), to the extent applicable.

(d) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1307 of the act by a lobbyist or principal, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions in Part I.

(1) If the respondent does not submit a timely request for a hearing, the Investigative Division shall have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(2) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(e) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1307 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, the related provisions in Part I.

§ 43.3. Commission proceedings under section 1304 or 1305 of the act.

(a) Commission proceedings under section 1304 or 1305 of the act (relating to registration; and reporting) may be initiated based upon one or more of the following:

(1) Receipt of a complaint.

(2) An audit or related audit conducted by the Commission under Chapter 41 (relating to compliance audits).

(3) Reviews of filings conducted by Commission staff.

(4) Information received that does not satisfy the criteria for a formal complaint.

(5) The own motion of the Executive Director of the Commission, which may be based upon information received, including but not limited to, audits or related audits conducted under Chapter 41.

(b) The Commission, through its Executive Director, will initiate proceedings involving section 1304 or 1305 of the act under either the noninvestigative procedures set forth in subsection (c) or under the investigative procedures in subsection (d).

(1) In each case, the Executive Director of the Commission will elect which process will be followed, which election may be based upon factors, including but not limited to, the following:

(i) The complexity of the matter.

(ii) Whether an investigation is needed to fully review the matter.

(iii) Whether the filer has had prior notice of the requirements of the act.

(iv) Whether the filer has in the past complied with the act.

(2) The election of the process to be followed will not be controlled by the manner in which the alleged negligent violation or noncompliance comes to the attention of the Commission.

(3) If a formal complaint is received alleging a failure to register or report as required by the act, or the filing of a report containing a false statement, the Commission through its Executive Director may elect to proceed in the matter under the noninvestigative procedures of subsection (c) rather than through the investigative procedures of subsection (d).

(i) A complainant will be notified of the Executive Director's election of the process to be followed.

(ii) A complainant will also be notified of the final resolution of the matter.

(4) Information received informally or from an audit or related audit conducted under Chapter 41 may form the basis for proceedings under either the noninvestigative procedures of subsection (c), or, upon the own motion of the Executive Director, the investigative procedures of subsection (d).

(c) The noninvestigative process for matters under section 1304 or 1305 of the act will include the following procedures:

(1) The Executive Director of the Commission will issue a notice of noncompliance to the lobbyist, principal or individual that has failed to register or report as required by the act. A notice of noncompliance may encompass multiple failures to comply with the act.

(2) The notice of noncompliance will state the nature of the alleged noncompliance and the civil and criminal penalties for failing to register, failing to file a report or filing a report containing a false statement. A notice of noncompliance will also advise of the right to a hearing before the Commission and the time and manner in which to request a hearing.

(3) The notice recipient shall have 20 days from the mailing date of the notice of noncompliance in which to cure the noncompliance. If the noncompliance is not cured within that time, the Investigative Division may file with the Commission a petition for civil penalties, which petition shall be served upon the respondent by the Investigative Division.

(4) The petition for civil penalties shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter.

(5) An answer to the petition for civil penalties shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(6) An answer to the petition for civil penalties shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(7) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition for civil penalties.

(8) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition for civil penalties upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing shall be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(9) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(10) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(11) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(12) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged, or information not within paragraph (11).

(13) A hearing under section 1309 of the act (relating to penalties) will be public and will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethic Commission). The Investigative Division bears the burden of proof.

(14) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under Part I to the extent applicable.

(15) After the opportunity for a hearing has been provided, and following the submission of any briefs, the Commission will determine, based upon the record before

it, whether the respondent was required to register or report under the act; whether the failure to register or report was negligent; and if the failure was negligent, the amount of the civil penalty to be imposed.

(16) If the Commission finds that the failure to register or report was intentional, it will refer the matter to the Attorney General for investigation and prosecution.

(17) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(18) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under Part I to the extent applicable.

(19) The official record of the case before the Commission will be publicly available.

(20) The files of the Investigative Division will not be publicly available.

(d) The investigative process for matters under section 1304 or 1305 of the act (relating to registration; and reporting) shall include the following procedures.

(1) The Commission, through its Executive Director, may conduct a preliminary inquiry into any alleged negligent violation of section 1304 or 1305 of the act. Preliminary inquiries will be conducted under the procedures for preliminary in Part I, to the extent applicable.

(2) The Commission, through its Executive Director, may initiate an investigation and hold a hearing concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission) and, to the extent applicable, the related provisions of Part I.

(i) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(ii) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve any contested facts to make a final determination.

(3) The Commission will decide cases, issue orders and rule upon requests for reconsideration concerning alleged negligent violations of section 1304 or 1305 of the act, in accordance with sections 1107 and 1108 of the Ethics Act and, to the extent applicable, the related provisions of Part I.

(e) Following a noninvestigative process under subsection (c), or an investigative process under subsection (d), if the Commission finds negligent failures to register or report as required by the act, the Commission may, upon the majority vote of its members present, levy one or more civil penalties as provided for in this subsection.

(1) Each negligent failure to register or report as required by the act is punishable by a civil penalty of up to \$50 per day for each day the registration statement or report is delinquent or deficient.

(2) A civil penalty shall be calculated from the first day the registration statement or report is delinquent or deficient, through the date a complete and accurate registration statement or report is filed or the Commission decides the matter, whichever first occurs.

(3) In determining whether to impose a civil penalty that is less than \$50-per-day, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the delinquency, deficiency or falsehood.

(ii) Whether the respondent has raised any justifiable excuse such as, for example, the following:

(A) The unavailability of records due to loss, theft or destruction through no fault of the respondent.

(B) Incapacitating physical or mental illness, hospitalization, accident involvement, or death of a person required to register or report, a person whose participation is essential to the filing, or a member of the immediate family of the persons.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the registration/reporting requirements of the act.

(iv) Whether Commission records indicate that the Commission has previously notified the respondent, in writing, of other delinquent, deficient, or false registration statements or reports.

(v) Whether proceedings have previously been initiated against the respondent under the act, either by the Commission or by the Attorney General.

(vi) Whether there are any other factors which should be considered as aggravating or mitigating factors in the case.

(f) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

CHAPTER 45. PROHIBITION AGAINST LOBBYING AS A SANCTION

Sec.

45.1. Basis for prohibition against lobbying.

45.2. Procedures for imposing prohibition against lobbying.

§ 45.1. Basis for prohibition against lobbying.

(a) Under section 1309 of the act (relating to penalties), the Commission may prohibit a lobbyist or principal from lobbying for up to 5 years when the lobbyist or principal has done one or more of the following:

(1) Intentionally failed to register or report as required by the act.

(2) Filed a report under the act with knowledge that the report contained a false statement.

(3) Otherwise intentionally violated the act.

(4) Failed to comply with section 1304, 1305 or 1307 of the act (relating to registration; reporting; and prohibited activities) after notice of noncompliance and after a hearing, if requested.

(b) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have been notified of noncompliance when served with the following:

(1) A findings report, notice of noncompliance or other form of process which meets the requirements of section 1309(a) of the act.

(2) A Commission order or court order finding the respondent in noncompliance with, or in violation of, the act.

(c) For the limited purpose of the imposition of a prohibition against lobbying, the respondent shall be deemed to have failed to comply after notice of noncompliance if the respondent has not satisfied the requirements

of the act within 30 days of the issuance of a Commission order or court order finding the respondent in noncompliance/violation, or within another time for compliance as specified by the order.

(d) The prohibition against lobbying will not be imposed unless the defendant/respondent has been afforded the opportunity for a hearing as to whether the prohibition should be imposed.

(1) A hearing, if requested, will be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission).

(2) The record of the underlying proceeding on violation/noncompliance, as well as relevant evidence of mitigating or aggravating factors, shall be admissible.

§ 45.2. Procedures for imposing prohibition against lobbying.

(a) Giving consideration to the factors set forth in subsection (b)(14), the Commission, through its Executive Director, may institute proceedings to seek the imposition of a prohibition against lobbying.

(b) The procedures for the imposition of a prohibition against lobbying shall be as follows:

(1) The proceedings shall be initiated with the Commission through the filing of a petition by the Investigative Division, which petition shall be served upon the respondent by the Investigative Division.

(2) The petition shall set forth the pertinent factual averments in numbered paragraph form, and shall notify the respondent of the opportunity to file a written answer and to request a hearing in the matter. If the basis for the petition is the failure to comply with a Commission order, the petition shall be docketed to the same number as the base case before the Commission. If the basis for the petition is the failure to comply with a court order, the petition shall be docketed to the same number as the base case before the Commission if there was one, and if not, to a new number.

(3) An answer to the petition shall be filed (received at the Commission) within 30 days of service of the petition upon the respondent.

(4) An answer to the Investigative Division's petition shall specifically admit or deny each of the allegations made in the petition, and shall set forth the facts and state concisely the matters of law upon which the respondent relies. Matters not specifically denied shall be deemed admitted.

(5) Failure to file an answer within the 30-day period or the filing of general denials will be deemed an admission of the averments of the petition seeking the prohibition.

(6) A request by the respondent for a hearing shall be in writing and be received at the Commission within 30 days of service of the petition upon the respondent.

(i) A request for a hearing may be set forth within an answer to the petition or it may be submitted separately.

(ii) Failure to submit a timely request for a hearing will be deemed a waiver of a hearing, so that a final order may be entered against the respondent without a hearing.

(7) If the respondent does not submit a timely request for a hearing, the Investigative Division will have an additional 7 days beyond the respondent's deadline in which to submit a written request for a hearing.

(8) The Commission may sua sponte schedule a hearing if it is determined that a hearing is needed to resolve contested facts to make a final determination.

(9) The respondent will be given access to evidence intended to be used by the Investigative Division at the hearing, as well as exculpatory evidence obtained by the Investigative Division.

(10) Access to evidence does not include an original complaint or the name of a complainant, information which is otherwise privileged or information not within paragraph (9).

(11) A hearing under this chapter will be public and be conducted by the Commission in accordance with sections 1107(14) and 1108(e) of the Ethics Act (relating to powers and duties of Commission; and investigations by Commission), and to the extent applicable, the related provisions of Part I (relating to State Ethics Commission). The Investigative Division bears the burden of proof.

(12) The hearing officer or the parties may request that briefs be presented. The filing of briefs shall be in accordance with the procedures for filing briefs under Part I, to the extent applicable.

(13) After the opportunity for a hearing has been provided, and following the submission of briefs, the Commission will determine, based upon the record before it, whether and for how long a prohibition against lobbying is to be imposed against the respondent.

(14) In determining whether and for how long a prohibition against lobbying is to be imposed against a respondent, the Commission may consider factors including the following:

(i) Whether the respondent contacted the Commission or took any meaningful measures to attempt to remedy the violation or failure to comply.

(ii) Whether the respondent has raised a justifiable excuse.

(iii) Whether the record establishes that the matter involved the first instance that the respondent was subject to the requirements of the act.

(iv) Whether other proceedings have been initiated against the respondent under the act, either by the Commission or by the Attorney General.

(v) Whether there are other factors which should be considered as aggravating or mitigating factors in the case.

(15) The determination of the Commission will be in the form of a final order with findings and reasons for the adjudication.

(16) Requests for reconsideration may be submitted to the Commission. The Commission will consider and rule upon requests for reconsideration under the related provisions of Part I, to the extent applicable.

(17) The official record of the case before the Commission will be publicly available.

(18) The files of the Investigative Division will not be publicly available.

[Pa.B. Doc. No. 99-156. Filed for public inspection January 29, 1999, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

General Provisions

The State Real Estate Commission (Commission) proposes to amend Chapter 35 to read as set forth in Annex A.

The purpose of the proposal is to update the Commission's existing regulations to address issues of current importance in the real estate industry, and to better serve and protect the interest of consumers who use the services of a licensee in a real estate transaction.

Many of the Commission's regulations have not been updated since 1989, see 19 Pa.B. 781 (February 25, 1989). Other regulations which are proposed to be amended were last revised in 1994, see 24 Pa.B. 2904 (June 11, 1994). This proposed rulemaking is one of several the Commission will propose as part of its ongoing review of its regulations.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following boards and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Cemetery Association of Pennsylvania; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council.

In formulating this proposal, the Commission reviewed and considered all comments and suggestions received by these and other interested parties during the regulatory development process.

*Description of Proposed Amendments:**§ 35.201. Definitions.*

The Commission proposes to delete references to appraising from the definition of "broker" and "salesperson." The proposed amendments will bring the definitions of "broker" and "salesperson" into conformity with the statutory change of the act of July 2, 1996 (P. L. 460, No. 71) (Act 71) which deleted the words "or appraises" from the Real Estate Licensing and Registration Act (act) (63 P. S. §§ 455.101—455.902).

*§ 35.222. Licensure as broker.**Subsection (b):*

The Commission proposes to amend subsection (b), relating to nonresident brokers, in an effort to facilitate licensure for nonresident brokers who desire to transact business in this Commonwealth, and to facilitate out-of-State licensure for Commonwealth brokers who desire to transact business in other states.

Under current regulations, an individual holding a broker's license issued by another jurisdiction who wants to obtain a Commonwealth broker's license must hold a broker's license issued by another jurisdiction that has been active for 5 years prior to the submission of a Commonwealth license application; have scored a passing grade on the Commonwealth portion of the broker's examination within 3 years prior to the submission of a license application; and satisfy requirements for education and experience under § 35.271 (relating to examination for broker's license).

The experience requirements under § 35.271 include 3 years as a licensed salesperson, with experience qualifications that the Commission considers adequate for practice as a broker, or at least 3 years of other experience, education, or both, that the Commission considers the equivalent of 3 years' experience as a licensed salesperson. The education requirements include 16 credits or 240 hours of instruction in professional real estate education as further delineated by the Commission under subsection (b).

The Commission, in conjunction with regional and National state licensing law groups, is working toward the common goal of removing licensure restrictions which hamper the ability of licensees to practice from state to state. The eventual goal is to achieve uniform licensure requirements with our neighboring states with an eye toward elimination of a separate State licensing examination for nonresidents who wish to practice in this Commonwealth. This would be consistent with the position advocated at the National level by the National Association of Realtors (NAR) and the Association of Real Estate License Law Officials (ARELLO). Both organizations are committed to eliminating additional examination requirements for licensees who wish to be licensed in more than one jurisdiction.

In studying this issue, the Commission discovered that section 602 of the act (63 P. S. § 455.602) does not require that a nonresident be licensed in another jurisdiction for 5 years prior to being eligible to hold a Commonwealth license. Similarly, the act does not require that a nonresident satisfy equivalent educational requirements as a prerequisite for licensure in this Commonwealth. The act requires only that nonresidents meet equivalent experience requirements "and other standards and qualifications as the Commission shall by rule provide. . . ."

In the Commission's view, qualified brokers and salespersons from other states should be permitted to practice

in this Commonwealth based upon their acquisition and possession of a current license in another state with a minimum of restriction. This belief is based, in part, upon the Commission's underlying recognition that over the years an increasing number of real estate transactions are having some aspect of interstate character. Recognizing another state's license as establishing the prerequisite knowledge and experience in real estate transactions enables the public to take advantage of a wider range of services and enhances competition. The Commission therefore proposes to amend subsection (b) by granting a broker's license to an individual holding a broker's license issued by another jurisdiction who meets substantially equivalent experience requirements of § 35.271(a)(3), and who satisfies the requirements of paragraphs (1)—(3).

As proposed, paragraph (1) would require applicants to have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to submission of a properly completed license application. The Commission wishes to eliminate this requirement eventually but believes that until licensure requirements are substantially uniform among the states, Commonwealth consumers will be better served by licensees who can demonstrate their competency of the Commonwealth's law and regulations.

Paragraph (2) would require applicants to possess either a current broker's or associate broker's license issued by another jurisdiction prior to submission of a properly completed application. Consistent with the Commission's view that qualified brokers and salespersons from other states should be permitted to practice in this Commonwealth based upon their acquisition and possession of a current license in another state with a minimum of restriction, the current requirement that an applicant possess the license for 5 years would be eliminated.

Paragraph (3)(i) would require the applicant to submit a completed license application to the Commission containing a signed affidavit attesting that the individual has received a copy of the act and regulations of the Commission and has read, understands and agrees to comply with all provisions of the act and regulations while performing real estate activities in this Commonwealth. It is anticipated that this provision, in time, will replace the requirement that an applicant score a passing grade on the Pennsylvania portion of the broker's examination. In the interim, the requirement will help to ensure that licensees from other states who practice in this Commonwealth are familiar with and understand the laws and regulations governing real estate activities in this Commonwealth.

Subparagraph (ii) would refer the applicant to the requirement under § 35.221(3) (relating to general requirements) that the applicant sign a written consent to service of process. Subparagraph (iii) would require the individual to sign an affidavit agreeing to cooperate with any investigation and to provide information requested by the Commission or any of its authorized agents as a result of a formal or informal complaint to the Commission indicating a violation of the act. This requirement is consistent with section 604(a)(17) of the act (63 P. S. § 455.604(a)(17)).

Under subparagraph (iv), an applicant would be required to submit a certification from the real estate licensing authority of the other jurisdiction containing: the applicant's license number and confirmation that the applicant obtained initial licensure by written examination; confirmation that the applicant's license is current and in good standing; a description of any past disciplin-

ary action taken by the licensing authority against the applicant; and, the applicant's office address. If the applicant is an associate broker, the name and address of the applicant's employer would be required. With the exception of the 5 year licensure requirement, this language is similar to what appears in the current regulations under paragraph (4).

Finally, subsection (c) would require that an applicant for an associate broker's license satisfy the requirements of subsection (b) and submit a sworn statement from a licensed Commonwealth broker with whom the applicant will be affiliated, certifying that he will actively supervise the applicant.

§ 35.223. Licensure as salesperson.

Subsection (b):

The Commission proposes amendments to § 35.223(b) similar to those proposed to § 35.222(b). Neither the act nor the regulations of the Commission require an applicant for a salesperson's license to acquire experience prior to licensure. Therefore, the primary difference between proposed § 35.223(b) and proposed § 35.222(b) is the requirement that a nonresident who desires to hold a Commonwealth salesperson's license meet substantially equivalent education requirements of § 35.272 (relating to examination for salesperson's license) and satisfy the requirements of paragraphs (1)—(3).

With one exception, the requirements of paragraphs (1)—(3) parallel the requirements proposed under § 35.222(b). The major difference in these two proposals is found in paragraph (3)(ii) and (iii). As proposed, paragraph (3)(ii) would require a nonresident salesperson or broker to include with his license application a sworn statement from a licensed Commonwealth broker with whom the applicant will be affiliated attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence, and certifying that he will actively supervise and train the applicant. Paragraph (3)(iii) would also require that the license application include official transcripts evidencing the acquisition of degrees or course credits required by § 35.272(a)(2).

§ 35.245. Display of licenses in office.

Currently, § 35.245 requires the display of a license in a conspicuous place at the office out of which the licensee works. The Commission proposes to amend this section to conform with industry practice and to ensure compliance with section 601 of the act (63 P. S. § 455.601). In the first instance, licenses would be required to be on file and readily available for inspection in the main office or an office designated by the broker within this Commonwealth. In the second instance, a photocopy of the license would be displayed in a conspicuous place in the main or branch office out of which the licensee works. As amended, the regulation will ensure that anyone, that is, a consumer or an inspector, will have access to information to verify the licensure status of a licensee.

§ 35.271. Examination for broker's license.

Subsection (b)(2):

Under current regulations, at least eight of the required 16 credits of real estate instruction shall be in four or more of the Commission-developed courses listed in paragraph (2). The remaining eight credits must be in real estate courses, but, licensees are free to elect the course topics.

The Commission proposes to amend subsection (b)(2) to require that two of the required 16 education credits shall

be in a Commission-developed or approved real estate office management course and that two of the required 16 credits be in a Commission-developed or approved law course.

Brokers are responsible for the overall operation of a real estate office and have the legal responsibility to supervise the activities of their licensed salespersons or associate brokers. Yet, there is no requirement that an individual receive office management or supervisory training prior to obtaining a broker's license. Moreover, many consumer complaints which are filed against brokers relate to poor office policies or management, or both, and to issues associated with changes in the law—for example, seller disclosure, lead-based paint disclosure and agency. With this proposal, the Commission hopes to impart office management skills on newly licensed brokers and to ensure that newly licensed brokers are aware of new laws as they develop in today's practice.

Editorial changes are proposed to subsection (b)(2)(vii), (ix) and (x) consistent with the amendments to subsection (b)(2). The Commission also proposes to remove courses currently entitled "Appraisal of Residential Property" and "Appraisal of Income-Producing Property" in subparagraphs (ix) and (x), respectively. These courses would be re-titled "Valuation of Residential Property" and "Valuation of Income Producing Property." Under Act 71, effective September 3, 1998, all real estate appraisal activities will be under the jurisdiction of the State Board of Certified Real Estate Appraisers. Since brokers will continue to be able to perform comparative market analyses, the new course titles will more accurately reflect the subject matter content of these courses.

Subsections (b)(3)(iii) and (iv):

Under subsection (b)(3)(iii), a real estate course offered by a real estate school outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the school is located may be counted toward satisfying the education requirement. The Commission proposes to add language to this provision to require that the course transcript or certificate of completion provided by schools outside this Commonwealth state that the course is approved by the licensing authority of the jurisdiction where the school is located. This will shorten administrative review and speed the issuance of licenses.

The Commission also proposes to amend subsection (b)(3)(iv) to allow a real estate course which is offered by an industry organization outside of this Commonwealth to be counted toward satisfying the education requirement if the course is approved by the licensing jurisdiction of another state. As proposed, language would also be added to require the course transcript or certificate of completion to state that the course is approved by the licensing jurisdiction which has approved it. Under current regulations, the course would only be acceptable towards satisfying the education requirement if the course was also offered by a real estate school in this Commonwealth. The Commission has determined that the regulation as written unduly limits some very suitable and appropriate courses that otherwise would not be available in this Commonwealth. As long as the course is an acceptable real estate course which is approved by the licensing jurisdiction of another state, it should not matter whether the course is also offered by a real estate school in this Commonwealth.

Subsection (b)(4):

Under Act 71, effective September 3, 1998, all real estate appraisal activity will be transferred to the juris-

diction of the State Board of Certified Real Estate Appraisers. The Commission therefore proposes to delete from subsection (b)(4), language that allowed a maximum of six credits for courses in real estate appraisal under subsection (b)(2).

§ 35.281. Putting contracts, commitments and agreements in writing.

Editorial amendments are proposed to subsections (a) and (b). The Commission proposes to delete reference to an oral open listing agreement in subsection (b) because the reference is contradictory to the requirement in subsection (a) that agreements in connection with a real estate transaction be in writing.

§ 35.287. Supervised property management assistance by salespersons.

The Commission proposes to delete language under subsection (a) that allows a salesperson to assist in the preparation of an appraisal by the employing broker or an associate broker. Effective September 3, 1998, all real estate appraisal activities now fall under the jurisdiction of the State Board of Certified Real Estate Appraisers.

§ 35.304. Disclosure of licensure when advertising own real estate.

Amendments are proposed to § 35.304 to require that any licensee who sells or leases his own real estate shall disclose his licensure status in advertisements for the property. As currently written, the regulation applies only to brokers who sell or lease their own property. The current language is inconsistent with § 35.288(a) (relating to duties when selling or leasing own real estate). As proposed, the amendment will clarify that disclosure is required of all licensees. The proposed amendment will also ensure that consumers who independently negotiate with a licensee will be on notice that they are dealing with an individual who has more training and experience on real estate issues than the average consumer.

§ 35.305. Business name on advertisements.

Several amendments are proposed to § 35.305. The amendments to subsection (a) are editorial in nature. This subsection would advise brokerage companies, cemetery companies and rental listing referral agencies of their responsibility to advertise or otherwise hold themselves out to the public only under the business name designated on their license.

Subsection (b), as proposed, would permit licensees other than brokerage companies, cemetery companies and rental listing referral agencies, to use and advertise nicknames, that is, Jack v. John or Margaret v. Peggy if the names are included on their licensure applications or biennial renewal applications, or both. The inclusion of this information on application materials will enable the Commission to readily identify the individual on its computer tracking system if inquiry is made by the public about the licensure status of the individual. Currently, individuals are tracked only by the names appearing on their application and licensure documents. Nicknames are not included.

The proposed amendments to subsection (c) would delete the requirement that the telephone number of the employing broker be given greater prominence in an advertisement than the telephone number of the employee. Although the employing broker's telephone number must appear in the advertisement, as long as the name of the employing broker is given greater prominence in the advertisement than the name of the employee, the Commission is of the view that the telephone number of the

broker need only appear in a size equal to the telephone number of the employee. The purpose of the regulation is to ensure that a consumer will know the name and telephone number of the broker who, by law, is responsible for the activities of the employee. The proposed amendment should accomplish this objective without imposing additional advertising costs on the employee.

§ 35.308. Relationship with educational institution.

The proposed amendments to § 35.308 would delete the prohibition against a real estate company, franchise or network promoting, endorsing or advertising its association, affiliation or connection with a real estate school, college, university or institute of higher learning regarding its offering of real estate instruction. If the association, affiliation or connection includes an ownership interest, the proposed amendments would require full disclosure of the interest in all promotions, endorsements or advertisements. As proposed, an ownership interest would be defined to include proprietary or beneficial interests through which the real estate company, franchise or network earns or has the potential to earn income, or which produces a direct or indirect economic interest.

§ 35.321. Duty to deposit money belonging to another into escrow account.

The Commission's regulations relating to escrow requirements are in need of substantial amendments to better serve consumers and the regulated community.

As proposed, subsection (a) would be amended to provide an exception to the requirement that a broker deposit all moneys received by him into an escrow account to be held pending consummation of a transaction. The exception is set forth in the proposed amendments to § 35.322 (relating to transfer of escrow funds).

The proposed amendments to subsection (e) would allow a broker to transfer a security deposit that he receives belonging to another from the broker's escrow account to the escrow account of the lessor or the lessor's broker in the event of a sale of the leased property or a change in the property management agreement during the term of the tenancy. The transfer would be conditional upon the broker providing notification in writing to each tenant from whom the broker received such a deposit of the name and address of the banking institution in which the deposits will be held, and the amount of the deposits. The existing regulation fails to contemplate a sale of the leased premises or a change in the property management agreement during the term of a tenancy. As currently written, the regulation requires that the original broker continue to hold the deposits until the tenancy ends, regardless of whether the new lessor wants to continue to use that broker's services, to manage the property himself or to use the services of another broker.

§ 35.322. Transfer of escrow funds.

The proposed amendments to § 35.322 would permit the buyer and the seller or the lessor and the lessee, at any time, by separate written agreement, to direct the broker to transfer escrow funds being held by the broker to either the buyer or the seller, the lessor or the lessee or a bona fide escrow agent, for example, an attorney, a title company or a real estate brokerage company. Under current regulations, a broker's escrow duty may not be altered by agreement between the parties to the transaction. Therefore, the moment that a broker deposits funds belonging to another into escrow, the principals to the transaction lose their right to agree to a subsequent transfer of these funds. The Commission has found that

this regulation unduly infringes upon the contractual rights of the parties and has proved to be cumbersome not only for consumers of real estate services, but, for licensees as well.

§ 35.327. Procedure when entitlement to money held in escrow is disputed.

The proposed amendments to § 35.327 are intended to establish a fair and equitable procedure for the return of escrow money when entitlement to the money is disputed.

Currently, if the parties to a real estate sales or lease transaction dispute entitlement to escrow funds, § 35.327 compels the broker to hold the money in escrow until the dispute is resolved. Sometimes, the parties take no action to resolve the dispute. Nonetheless, the broker must continue to hold that money in escrow regardless of whether the payor-buyer has abandoned any claim to the earnest money deposit, or whether the payor-buyer's entitlement to the money is clear (for example, a contingency in the purchase agreement has not been met). Although current regulations allow a broker, following 30 days' notice to the parties, to petition the county court having jurisdiction in the matter to interplead the rival claimants, this procedure is only available when a civil action has been commenced by one of the parties against the other. When a case is not already before the court and there are no "rival claimants," a broker cannot petition the court to interplead the rival claimants. Moreover, frequently the dollar amount of the escrow deposit does not justify litigation costs.

The new proposal attempts to address these issues. As proposed, § 35.327 would be divided into three subsections, (a) through (c). Proposed subsection (a) would still require a broker to retain an earnest money deposit in escrow until either a written release is obtained from all parties consenting to its disposition, or a civil action is filed by one of the parties to determine its disposition. If a civil action is filed, the broker may petition the county court having jurisdiction in the matter to interplead the rival claimants and may, with written notice to the parties, deduct the costs incurred by the broker to interplead the claimants from the funds being held in escrow. The Commission believes that in the case of a dispute the parties should bear the cost of its resolution.

Proposed subsection (b) addresses the situation when there is a dispute between the parties over entitlement to moneys being held in escrow, but, no written release is signed and no civil action is filed to determine its disposition. In this instance, a broker would be permitted, after written notice to the parties and after the passage of 180 calendar days from the date of the proposed settlement, to either return the earnest money deposit to the payor-buyer, when the broker in good faith believes that a contingency in the purchase agreement has not been met, or pay out the deposit to a seller when the broker in good faith believes that the payor-buyer has abandoned any claim to the deposit. Although the broker could still stand subject to a civil action being filed against him by a disgruntled seller or the payor-buyer, under proposed subsection (c), the broker would not stand subject to disciplinary action by the Commission for paying out the deposit under these conditions.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 1999, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional

Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Commission, the Governor and the General Assembly to review these objections before final publication of the proposed amendments.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth, its political subdivisions or the public, that is, the regulated community. Likewise, the proposed amendments should not necessitate any legal, accounting, reporting or other paperwork requirements on the regulated community.

Statutory Authority

The amendments are proposed under the authority of sections 404 and 602 of the act (63 P. S. §§ 455.404 and 455.602).

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Judith Pachter Schulder, Counsel, State Real Estate Commission, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

HARVEY M. LEVIN,
Chairperson

Fiscal Note: 16A-560. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

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

* * * * *

Broker—An individual or entity that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

* * * * *

(iii) Manages [or appraises] real estate.

* * * * *

Salesperson—An individual who is employed by a broker to do one or more of the following:

* * * * *

(vii) Assist a broker in managing [or appraising] property.

* * * * *

**Subchapter C. LICENSURE
LICENSURE REQUIREMENTS**

§ 35.222. Licensure as broker.

* * * * *

(b) [An individual holding a broker's license issued by another jurisdiction who wants to obtain a Pennsylvania broker's license either shall comply with subsection (a) or shall:

(1) Possess a broker's license issued by another jurisdiction that has been active within 5 years prior to the submission of a properly completed license application.

(2) Have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application. See § 35.271.

(3) Comply with §§ 35.241 and 35.242.

(4) Submit a completed license application to the Commission with a certification from the real estate licensing authority of the other jurisdiction containing the following information:

(i) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) Whether the license has been active within the past 5 years.

(iii) A description of past disciplinary action taken by the licensing authority against the applicant.

(iv) The applicant's office address and the name of the applicant's employer.]

The Commission will grant a broker's license to an individual holding a broker's license issued by another jurisdiction who meets substantially equivalent experience requirements of § 35.271(a)(3), and who satisfies the following requirements:

(1) Has scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application.

(2) Possesses a current broker's or associate broker's license issued by another jurisdiction prior to the submission of a properly completed license application.

(3) Submits a completed license application to the Commission containing:

(i) A signed affidavit attesting that the individual has received a copy of the act and this chapter and has read, understands and agrees to comply with the act and this chapter while performing real estate activities in this Commonwealth.

(ii) A signed written consent to service of process as required under section § 35.221(3) (relating to general requirements).

(iii) A signed affidavit agreeing to cooperate with any investigation and to provide information requested by the Commission or any of its authorized agents as a result of a formal or informal complaint to the Commission indicating a violation of the act.

(iv) A certification from the real estate licensing authority of the other jurisdiction containing:

(A) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(B) Confirmation that the applicant's license is current and in good standing.

(C) A description of any past disciplinary action taken by the licensing authority against the applicant.

(D) The applicant's office address and, if an associate broker, the name of the applicant's employer.

(c) An applicant for an associate broker's license shall satisfy the requirements of subsection (b) and submit an affidavit from a licensed Pennsylvania broker with whom the applicant will be affiliated:

(1) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(2) Certifying that he will actively supervise the applicant.

[(c)] (d) * * *

* * * * *

§ 35.223. Licensure as salesperson.

* * * * *

(b) [An individual holding a broker's or salesperson's license issued by another jurisdiction who wants to obtain a Pennsylvania salesperson's license shall comply with subsection (a) or shall:

(1) Possess a broker's or salesperson's license issued by another jurisdiction that has been active within 5 years prior to the submission of a properly completed license application.

(2) Have scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application. See § 35.272.

(3) Submit a completed license application to the Commission with a certification from the real estate licensing authority of the other jurisdiction containing the following information:

(i) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) An indication of whether the license has been active within the past 5 years.

(iii) A description of past disciplinary action taken by the licensing authority against the applicant.

(iv) The applicant's office address and name of the applicant's employer.]

The Commission will grant a salesperson's license to an individual holding a broker's or salesperson's license issued by another jurisdiction who meets substantially equivalent education requirements of § 35.272, and satisfies the following requirements:

(1) Has scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application.

(2) Possesses a current broker's or salesperson's license issued by another jurisdiction prior to the submission of a properly completed license application.

(3) Submits a completed license application to the Commission containing:

(i) A signed affidavit attesting that the individual has received a copy of the act and the regulations of the Commission and has read, understands and agrees to comply with the act and this chapter while performing real estate activities in this Commonwealth.

(ii) A sworn statement from a licensed Pennsylvania broker with whom the applicant will be affiliated:

(A) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(B) Certifying that he will actively supervise and train the applicant.

(iii) Official transcripts evidencing the acquisition of degrees or course credits required by § 35.272(a)(2).

(iv) A certification from the real estate licensing authority of the other jurisdiction containing:

(A) The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(B) Confirmation that the applicant's license is current and in good standing.

(C) A description of any past disciplinary action taken by the licensing authority against the applicant.

(v) The applicant's office address and name of the applicant's employer.

(vi) A written consent to service of process as required under § 35.221(3) (relating to general requirements).

(vii) An affidavit agreeing to cooperate with any investigation and to provide information requested by the Commission or any of its authorized agents as a result of a formal or informal complaint to the Commission indicating a violation of the act.

OFFICES

§ 35.245. Display of licenses in office.

* * * * *

(b) The current license of an associate broker, salesperson, associate cemetery broker or cemetery salesperson shall be [displayed in a conspicuous place at the office out of which the licensee works] on file and readily available for inspection in the main office or an office designated by the broker within this

Commonwealth. A photocopy of the license shall be displayed in a conspicuous place in the main or branch office out of which the licensee works.

* * * * *

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

* * * * *

(2) Except as provided in paragraph (6), [at least eight] two of the required 16 credits shall be in [real estate courses in four] a Commission-developed or approved real estate office management course and two of the required 16 credits shall be in a Commission-developed or approved law course. At least six of the remaining 12 credits shall be in three or more of the Commission-developed courses listed in this paragraph. The remaining [eight] six credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

* * * * *

(vii) [Real Estate Brokerage and Office Management.

(viii)] Residential Construction.

[(ix) Appraisal] (viii) Valuation of Residential Property.

[(x) Appraisal] (ix) Valuation of Income-Producing Property.

(3) To be counted toward the education requirement, a real estate course shall have been offered by:

* * * * *

(iii) A real estate school outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the school is located. The course transcript or certificate of completion shall state that the course is approved by the licensing authority of the jurisdiction where the school is located.

(iv) A real estate industry organization outside this Commonwealth, if the course is [also offered by a real estate school in this Commonwealth approved by the Commission] approved by the licensing jurisdiction of another state. The course transcript or certificate of completion shall state that the course is approved by the licensing jurisdiction which has approved it.

(4) A maximum of four credits will be allowed for each real estate course. A maximum of four credits will be allowed for each area of real estate study listed in paragraph (2) [, except that a maximum of six credits will be allowed for courses in Real Estate Appraisal].

* * * * *

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

GENERAL ETHICAL RESPONSIBILITIES

§ 35.281. Putting contracts, commitments and agreements in writing.

(a) A licensee who acts in a representative capacity [**in connection with a real estate transaction**] shall ensure that sale or lease contracts, commitments and agreements [**regarding the**] in connection with a real estate transaction that he has knowledge of, or that he reasonably should be expected to have knowledge of, are in writing.

(b) A licensee who enters into an [**oral**] open listing agreement shall provide the seller or lessor with a written memorandum stating the terms of the agreement.

* * * * *

§ 35.287. Supervised [appraisal and] property management assistance by salespersons.

[(a) A salesperson may assist in the preparation of an appraisal by the employing broker or an associate broker, if the employing broker or associate broker:

(1) Directly supervises and controls the salesperson's work, assuming total responsibility for the contents of the appraisal documents and value conclusions. The salesperson may not arrive at an independent determination of value.

(2) Personally makes a physical inspection of the interior and exterior of the subject property.

(3) Signs the appraisal document as "appraiser" and has the salesperson sign as "assistant to the appraiser."

(b)] A salesperson may assist in the management of real estate if the salesperson's work is directly supervised and controlled by the employing broker. The salesperson may not independently negotiate the terms of a lease nor execute a lease on behalf of the lessor.

ADVERTISING AND SOLICITATION

§ 35.304. Disclosure of licensure when advertising own real estate.

A [**broker**] licensee who sells or leases his own real estate shall disclose that he is a real estate [**broker**] licensee in advertisements for the property. **This requirement does not apply if the property is listed with a real estate company.**

§ 35.305. Business name on advertisements.

(a) [A broker, cemetery broker or rental listing referral agent] Brokerage companies, including sole proprietorships, cemetery companies and rental listing referral agencies shall advertise or otherwise hold [**himself**] themselves out to the public only under the business name designated on [**the**] their license.

(b) Individual brokers of record, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons and rental listing referral agents who wish to use and advertise nicknames (for example, Jack v. John or Margaret v. Peggy),

shall include the names on their licensure applications or their biennial renewal applications, or both.

[(b)] (c) An advertisement by an associate broker, salesperson, cemetery associate broker or cemetery salesperson shall contain the business name and telephone number of the employing broker. The name [**and telephone number**] of the employing broker shall be given greater prominence in the advertisement than the name [**and telephone number**] of the employe. **The telephone number of the employing broker shall be at least equal in size in the advertisement to the telephone number of the employe.**

§ 35.308. Relationship with educational institution.

A real estate company, franchise or network may [**not**] promote, endorse or advertise its association, affiliation or connection with a real estate school or with a college, university or institute of higher learning regarding its offering of real estate instruction. [**This prohibition does not apply to individual licensees.**] An association, affiliation or connection which includes an ownership interest shall be disclosed in promotions, endorsements or advertisements. For purposes of this section, an ownership interest will be considered by the Commission to include proprietary or beneficial interests through which the real estate company, franchise or network earns or has the potential to earn income, or which produces a direct or indirect economic benefit.

ESCROW REQUIREMENTS

§ 35.321. Duty to deposit money belonging to another into escrow account.

(a) Except as provided in subsection (b) and § 35.322 (relating to transfer of escrow funds), a broker shall deposit money that he receives belonging to another into an escrow account in a Federally or State-insured bank or depository to be held pending consummation of the transaction, or a prior termination thereof that does not involve a dispute between the parties to the transaction, at which time the broker shall pay over the full amount to the party entitled to receive it. If a broker is a partnership, association or corporation, its broker of record shall be responsible for ensuring that the escrow duty is performed.

* * * * *

(e) If a broker receives a security deposit belonging to another under a lease agreement, the broker's duty to pay over the deposit, for purposes of subsection (a), shall arise when the tenancy ends. **If a sale of the leased premises or a change in a property management contract occurs during the term of the tenancy, the broker may transfer the security deposit from the broker's escrow account to the escrow account of the lessor or the lessor's broker upon notification in writing to each tenant from whom the broker received such a deposit of the name and address of the banking institution in which the deposits will be held, and the amount of the deposits.**

§ 35.322. [Nonwaiver of escrow duty] Transfer of escrow funds.

[A broker's escrow duty may not be waived or altered by an agreement between the parties to the transaction, between the broker and the parties, or between the broker and other brokers who may be

involved in the transaction.] The buyer and the seller or the lessor and the lessee may, at any time, by separate written agreement, direct the broker to transfer escrow funds to either the buyer or the seller, the lessor or the lessee or a bona fide escrow agent—for example, an attorney, a title company or a real estate brokerage company.

§ 35.327. Procedure when entitlement to money held in escrow is disputed.

[If a dispute arises between the parties to a real estate transaction over entitlement to money that is being held in escrow by a broker, the broker shall retain the money in escrow until the dispute is resolved. If resolution of the dispute appears remote without legal action, the broker may, following 30 days' notice to the parties, petition the county court having jurisdiction in the matter to interplead the rival claimants.]

(a) In the event of a dispute over the return or forfeiture of any earnest money deposit held by a broker, the broker shall continue to hold the deposit in escrow until a written release is obtained from all parties consenting to its disposition or until a civil action is filed to determine its disposi-

tion, at which time the broker may petition the county court having jurisdiction in the matter to interplead the rival claimants. The costs incurred by the broker to interplead the rival claimants may, with written notice to the parties, be deducted from the funds being held in escrow.

(b) If the parties have not released the broker and a civil action has not been filed 180 days after the settlement date, the broker may, after written notice to the parties, do one of the following:

(1) Return the earnest money to the payor-buyer when the broker in good faith believes that the payor-buyer is entitled to it because a contingency in the purchase agreement has not been met.

(2) Pay out the earnest money to the seller when the broker in good faith believes that the payor-buyer has abandoned any claim to it.

(c) A broker will not be subject to disciplinary action by the Commission for returning the earnest money to either party under subsection (b).

[Pa.B. Doc. No. 99-157. Filed for public inspection January 29, 1999, 9:00 a.m.]