

CHAPTER 7. PROCEDURE FOR ADOPTION OR CHANGE OF REGULATIONS

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Authority

The provisions of this Chapter 7 issued under sections 201—208 and 606 act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208 and 1606)(Repealed), unless otherwise noted.

Source

The provisions of this Chapter 7 adopted by JCD Order No. 4, dated July 8, 1969, unless otherwise noted.

Notes of Decisions

Amend or Void during Judicial Review

Due to the Commonwealth Documents Law, which contains public notice and comment requirements that must be followed to amend or void an administrative regulation, a Commonwealth agency may not seek to void or amend an administrative regulation in the course of judicial review. *Muscarella v. Commonwealth*, 87 A.3d 966 (Pa. Commw. 2014).

Cross References

This chapter cited in 1 Pa. Code § 11.21 (relating to general requirements); 1 Pa. Code § 13.3 (relating to agency action or proceedings invalid in absence of notice required by Joint Committee); 1 Pa. Code § 35.104 (relating to notice of rulemaking proceedings); 52 Pa. Code § 5.211 (relating to notice of rulemaking proceedings); and 52 Pa. Code § 1001.112 (relating to notice of rulemaking proceedings).

§ 7.1. Notice of proposed rulemaking required.

Section 201 of the act (45 P. S. § 1201) provides that except as provided in § 7.4 (relating to omission of notice of proposed rulemaking) an agency shall give public notice of its intention to promulgate, amend or repeal an administrative regulation by publication in the *Bulletin* of a notice of proposed rulemaking conforming to this part. The notice includes the following:

(1) The text of the proposed administrative regulation, except a portion thereof omitted under § 3.41 (relating to matter not required to be published), prepared in such a manner as to indicate the words to be added or deleted from the presently effective text, if any. A statement containing an appropriate citation to text proposed for deletion or rescission may be substituted for the complete text thereof in those cases where the text is voluminous.

(2) A statement of the statutory or other authority under which the administrative regulations or change is proposed to be promulgated.

(3) A brief explanation of the proposed administrative regulation or change.

- (4) A request for written comments by an interested person concerning the proposed administrative regulation or change.
- (5) Another statement required by statute.

Source

The provisions of this § 7.1 amended August 1, 1975, 5 Pa.B. 1970. Immediately preceding text appears at serial pages (16426) and (0230).

Cross References

This section cited in 1 Pa. Code § 5.1 (relating to official text of published documents); 1 Pa. Code § 7.2 (relating to adoption of regulations); 1 Pa. Code § 7.3 (relating to effective date of regulations); 1 Pa. Code § 7.4 (relating to omission of notice of proposed rulemaking); 1 Pa. Code § 13.56 (relating to correction of errors); and 1 Pa. Code § 35.104 (relating to notice of rulemaking proceedings).

§ 7.2. Adoption of regulations.

(a) Section 202 of the act (45 P. S. § 1202) provides that before taking action upon an administrative regulation or change the agency shall review and consider a written comment submitted under § 7.1 (relating to notice of proposed rulemaking required) and may hold public hearings as appropriate; that if the statute or other authority under which a regulation is proposed to be promulgated, amended or repealed requires the holding of public hearings or establishes other procedures in addition to those prescribed by sections 201—208 of the act (45 P. S. §§ 1201—1208), the agency shall hold public hearings or comply with the other procedures as are not inconsistent with the provisions of the act; that the agency text of an administrative regulation or change as finally adopted may contain modifications to the proposed text as published under § 7.1 as do not enlarge its original purpose; and that modifications which enlarge the original purpose of a proposal as published under § 7.1 shall be republished thereunder prior to final adoption by the agency.

(b) Whenever an agency finally adopts a proposed regulation more than 1 year after the proposed regulation was published under § 7.1, the Bureau will republish, in full, the entire regulation as finally adopted.

Source

The provisions of this § 7.2 amended by JCD Order No. 30, dated October 13, 1977, 7 Pa.B. 3124. Immediately preceding text appears at serial page (22593).

Cross References

This section cited in 1 Pa. Code § 5.1 (relating to official text of published documents); 1 Pa. Code § 7.3 (relating to effective date of regulations); 1 Pa. Code § 7.4 (relating to omission of notice of proposed rulemaking); and 1 Pa. Code § 13.56 (relating to correction of errors).

§ 7.3. Effective date of regulations.

The effective date specified in an administrative regulation or change subject to §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adop-

tion of regulations) may be not less than 30 days after the notice of proposed rulemaking required thereby has been given unless one of the following exists:

- (1) The administrative regulation:
 - (i) Grants or recognizes exemption or relieves restriction.
 - (ii) Interprets a self-executing statute or administrative regulation.
- (2) The agency for good cause finds—and incorporates the finding and the reasons therefor in the order adopting the administrative regulation or change—that the deferral of the effective date of the administrative regulation or change beyond the date specified in the order is impracticable or contrary to the public interest.

§ 7.4. Omission of notice of proposed rulemaking.

An agency may omit or modify the procedures specified in §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations) if:

- (1) The administrative regulation or change relates to one of the following:
 - (i) Military affairs.
 - (ii) Agency organization, management or personnel.
 - (iii) Agency procedure or practice.
 - (iv) Commonwealth property, loans, grants, benefits or contracts.
 - (v) The interpretation of a self-executing statute or administrative regulation.
- (2) Persons subject to the administrative regulation or change are named and are either personally served with notice of the proposed promulgation, amendment or repeal or otherwise have actual notice thereof under statute.
- (3) The agency for good cause finds—and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change—that the procedures specified in §§ 7.1 and 7.2 are in the circumstances impracticable, unnecessary or contrary to the public interest.

Notes of Decisions

Regulation was properly promulgated under section 204 of the act (45 P. S. § 1204) because the amendments were necessary to meet an emergency situation to speed the prosecution of drunk drivers and a delay in promulgation could have posed a risk to public safety. *Jeffers v. Department of Transportation*, 601 A.2d 401 (Pa. Commw. 1991).

Cross References

This section cited in 1 Pa. Code § 7.1 (relating to notice of proposed rulemaking).

§ 7.5. Approval as to legality.

(a) Section 205 of the act (45 P. S. § 1205) provides that administrative regulations and changes shall be approved as to legality Department of Justice before they are deposited with the Bureau under section 207 of the act (45 P. S. § 1207); that in the event the Department of Justice shall rule illegal an administrative

regulation or change, adopted by an agency which is by statute independent of the policy supervision and control of the Governor, and the agency or a party before the agency supporting the regulations or changes shall disagree with the ruling of the Department of Justice, such agency or the party may appeal from the determination of the Department of Justice to the Commonwealth Court; that in other cases the decision of the Department of Justice shall be final and may not be subject to a judicial review at the instance of the agency, or a supporting party, and that nothing in the section shall affect the right of a person adversely affected by a regulation or change to obtain a determination of the validity thereof in an appropriate proceeding.

(b) Section 205 of the act was repealed by section 504 of the Commonwealth Attorneys Act (71 P. S. § 732-504) insofar as it was inconsistent. Reference should be made to § 13.16 (relating to approval as to legality).

Source

The provisions of this § 7.5 amended by JCD Order No. 8, dated November 10, 1970, 1 Pa.B. 480. Immediately preceding text appears at serial page (0080).

§ 7.6. Format of regulations.

Section 206 of the act (45 P. S. § 1206) provides that the agency text of administrative and gubernatorial regulations required or authorized by this Part to be deposited with the Bureau shall be prepared in the form and format required by Chapter 9 (relating to preparation of documents subject to codification), Chapter 11 (relating to preparation of notices, rulemaking proposals and unpublished regulations) and Chapter 13 (relating to preparation and transmittal of documents generally).

§ 7.7. Deposit of agency text of regulations required.

Section 207 of the act (45 P. S. § 1207) provides that the agency text of administrative and gubernatorial regulations, and changes, certified by the executive officer, chairman or secretary of the agency, shall be deposited with the Bureau in the manner required by this part.

§ 7.8. Unfiled administrative regulations invalid.

Section 208 of the act (45 P. S. § 1208) provides that an administrative regulation or change promulgated after July 1, 1969, may not be valid until deposited in and filed by the Bureau, as provided in this part. Where agency administrative regulations relate to matters which are determined under § 3.13(b) (relating to contents of *Bulletin*), not to be of sufficient general interest to warrant publication under this part, such as, regulations relating to agency management or personnel, the regulations shall be filed by the Bureau without publication. Since the Joint Committee is not authorized to waive the filing requirement of section 208 of the act (45 P. S. § 1208), a determination that an agency regulation will not be

published may not be relied upon by the agency as a determination that the regulation is not an administrative regulation required to be filed under the act.

Source

The provisions of this § 7.8 amended June 14, 1974, 4 Pa.B. 1209. Immediately preceding text appears at serial page (0233).

§ 7.9. References to Administrative Agency Law.

Section 606 of the act (45 P. S. § 1606)(Repealed) provides that whenever a statute makes reference to the Administrative Agency Law for procedures relating to the promulgation of administrative regulations, the reference shall be deemed to be a reference to the applicable provisions of the act.

§ 7.10. Sample order adopting regulations.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
JOINT COMMITTEE ON DOCUMENTS

December 2, 1969

Before Members: (insert names of agency members participating in action on order.)

RULES AND REGULATIONS OF JOINT COMMITTEE
[DOCKET NO. R-2; ORDER NO. 5]

Amending Rules and Procedures of the Joint Committee

By order adopted July 8, 1969 in this preceding (Order No. 4, *Rules and Regulations of Joint Committee, Docket No. R-2*) we prescribed definitive Rules and Procedures for the implementation of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102, 1201—1208 and 1602) and 45 Pa.C.S. Chapters 5, 7 and 9, known as the Commonwealth Documents Law. Since that time a contract has been let to Autocode, a Division of Autocomp, Incorporated of Bethesda, Maryland, for the compilation, printing and distribution of the *Pennsylvania Code*, which places the Joint Committee in a position to amend its Rules and Procedures to prescribe subscription charges for the *Code*.

Also we have received suggestions for the modification and improvement of our Rules and Procedures from the Court Administrator of Pennsylvania, representatives of the Pennsylvania Public Utility Commission and other sources.

On the subject of *Code* subscription prices we are mindful of the injunction of CDL § 603 (45 P. S. § 1603) that we should administer the CDL “with a view

toward encouraging the widest possible dissemination of documents among the persons affected thereby which is consistent with the due administration of public affairs,” and of established practices in this Commonwealth concerning the public distribution of official documents of comparable character. Accordingly, we are adopting a policy of fixing a subscription price as low as reasonably possible, with the thought that the large number of users which such a subscription price may be expected to generate will result in economies of scale which ultimately should minimize the net cost of the Pennsylvania Code to the Commonwealth. Since it is difficult to predict the volume of supplementation which will be involved in connection with the Code, we are postponing a decision on the annual subscription rate for up-keep service by providing that the price of the Code will include supplementation service through June 30, 1971.

The other amendments which we are adopting today are minor in nature and are fully self-explanatory.

The Joint Committee finds:

(1) That public notice of intention to adopt the amendments to the Rules and Procedures adopted herein was given under 1 Pa. Code § 7.1 (relating to notice of proposed rulemaking required) by publication in the *Pennsylvania Bulletin*, 1 Pa.B. 64.

(2) The amendments to the Rules and Procedures adopted herein are necessary and appropriate for the administration of the Commonwealth Documents Law.

The Joint Committee, acting pursuant to The Administrative Code of 1929 and the Commonwealth Documents Law, including particularly those sections specified in the several authority citations herein specified with respect to each provision of the Rules and Procedures of the Joint Committee amended by this order, *orders:*

(A) The Rules and Procedures of the Joint Committee, as heretofore in effect, 1 Pa. Code Part I, are amended by adding, deleting and amending §§ 5.2, 9.14, 9.222(a), 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.21 and 15.23(b) to read as set forth in full in Annex A to this order.

(B) The Chairman of the Joint Committee shall submit the amendments to the Rules and Procedures of the Joint Committee effected hereby to the Department of Justice for approval as to legality as required by law.

(C) The Secretary of the Joint Committee shall duly certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect immediately.

By the Joint Committee

[SEAL]

JOHN DOE
Secretary

Authority

The provisions of this § 7.10 issued under sections 201—208 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208); and 45 Pa.C.S. § 503.

Source

The provisions of this § 7.10 added by JCD Order No. 6, dated May 21, 1970, 1 Pa.B. 10, and amended by JCD Order No. 8, dated November 10, 1970, 1 Pa.B. 480.

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