

**An Agency Guide to
the Pennsylvania
Regulatory Review
Process**

**Presented by the
Independent Regulatory Review Commission**

Legislative Intent of the Regulatory Review Act

- **Establish a method for ongoing and effective legislative review and oversight to foster executive branch accountability;**
- **Provide for primary review by an agency with sufficient authority, expertise, independence and time to perform that function;**
- **Provide ultimate review of regulations by the General Assembly;**
- **Assist the Governor, the Attorney General and the General Assembly in their supervisory and oversight functions; and**
- **Encourage the resolution of objections to a regulation and the reaching of a consensus among the Commission, the Committees, interested parties and the agency.**

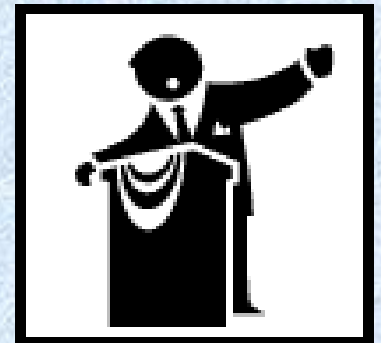
71 P.S. § 745.2(a)

What is IRRC?

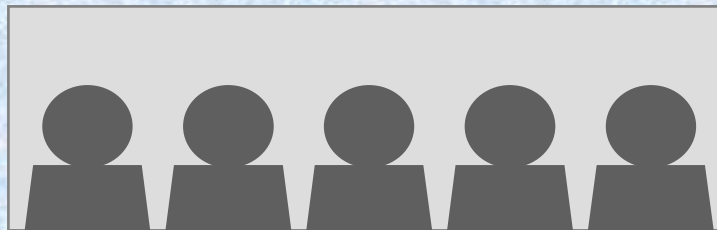


General Assembly

John R. McGinley, Jr., Chairman
Alvin C. Bush, Vice Chairman
Daniel F. Clark
Arthur Coccodrilli
Murray Ufberg



Governor



IRRC

Two stages in review process

Proposed rulemaking stage

- Agency publishes proposed regulation in the *Pennsylvania Bulletin* for public review and comment

Final-form regulation stage

- Agency submits regulation to Committees and IRRC for review before publication as a final rule

Cost-Benefit Analysis

Administrative Code - Governor's Office of Budget prepares fiscal notes for proposed regulations that include --

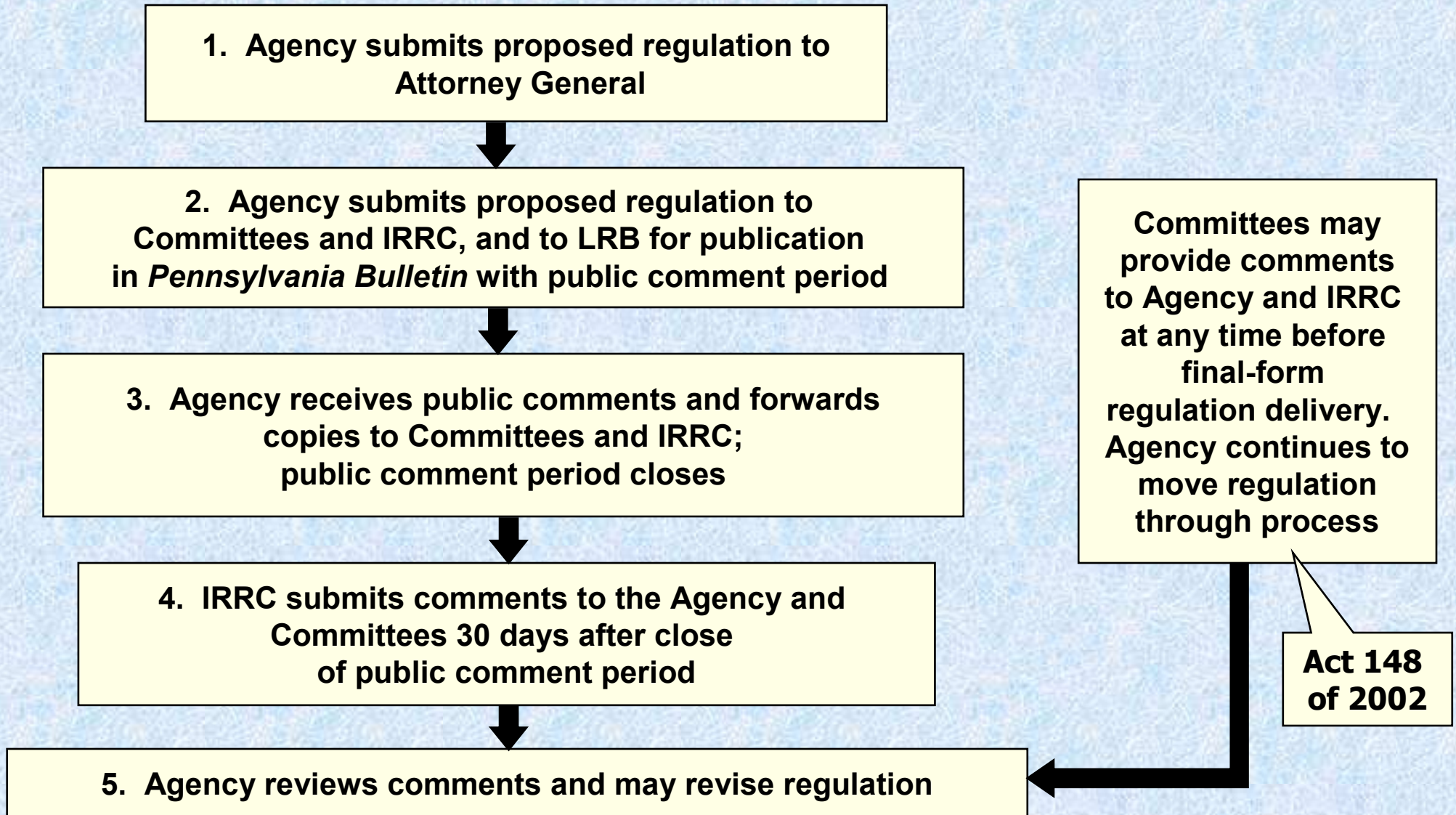
- Probable cost and revenue loss for the first fiscal year
- Projected cost estimate and revenue loss for the next five years
- Fiscal history of program

Regulatory Review Act - Agencies must submit --

- Estimates of direct and indirect costs to public and private sectors
- Specific identification of the individuals, businesses, professions and organizations affected by the regulation
- Evaluation of the benefits of the regulation
- Description of alternative regulatory provisions considered

71 P.S. §§ 232 and 745.5(a)

Proposed rulemaking stage



Statutory criteria: The cornerstone of IRRC's review

- ◆ **Whether agency has statutory authority to implement regulation**
- ◆ **Whether the regulation is consistent with the legislative intent**
- ◆ **Economic and fiscal impact on the public and private sector**
- ◆ **Protection of the public health, safety and welfare**
- ◆ **Clarity, feasibility and reasonableness of the regulation**
- ◆ **Whether regulation is a policy decision requiring legislative review**
- ◆ **Comments, objections or recommendations of a Committee**
- ◆ **Compliance with the Regulatory Review Act and IRRC regulations**

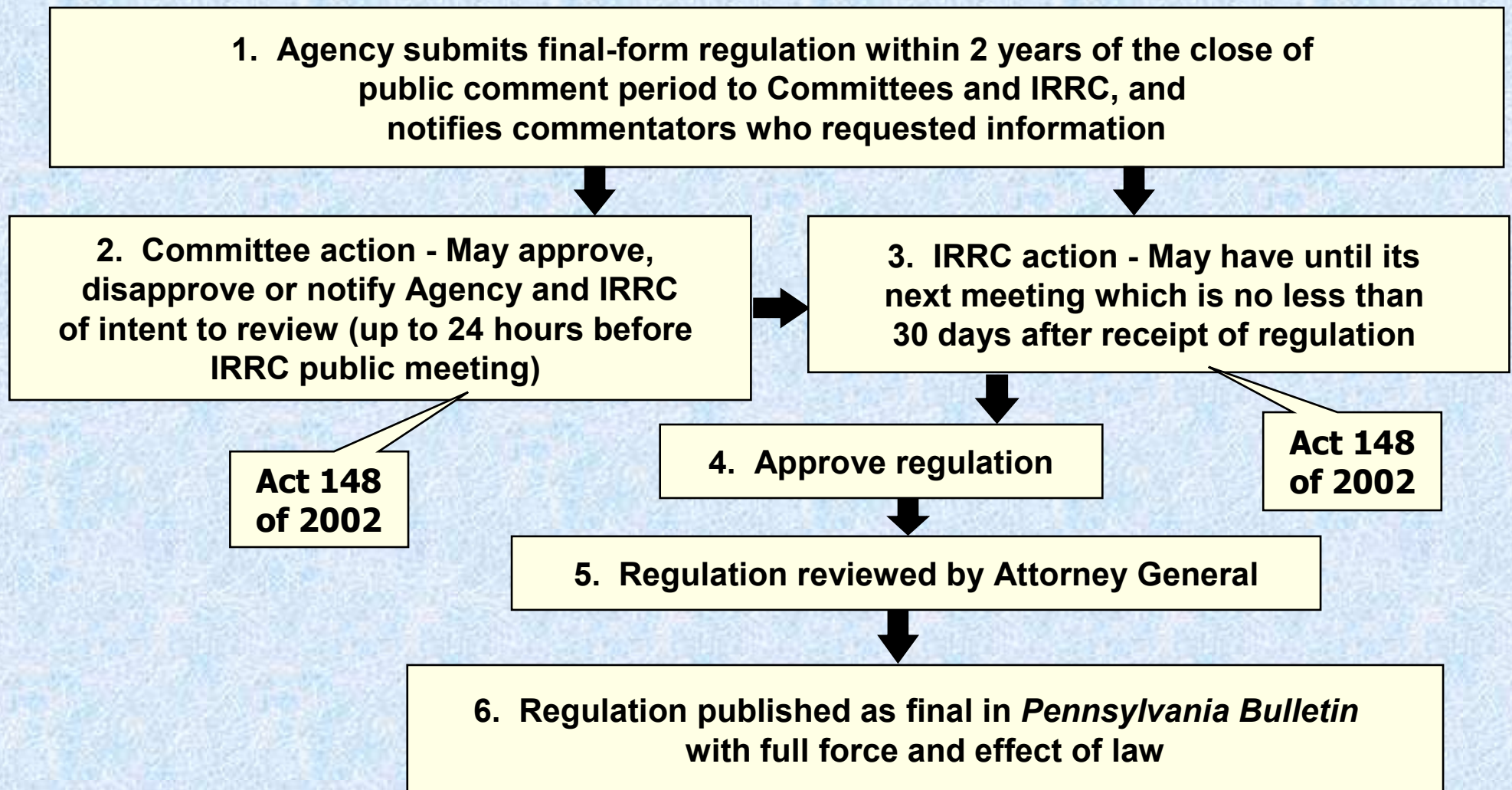
**Act 148
of 2002**

Statutory limits on IRRC review

If IRRC does not comment, its review of the final-form regulation may be restricted --

If IRRC does not comment on a provision in the proposed regulation, it is barred by statute from basing a disapproval on objections to the same provision in the final-form regulation except when the Agency amends the proposed version or a Committee comments on the provision

Final-form stage: Reviewing Agency's response and approving regulation



Amending a final regulation

- Tolling
- Withdrawal
- Disapproval

Tolling

- ◆ “Time Out” - the review clock can be stopped to consider revising a final regulation
- ◆ Review period can only be tolled once
- ◆ Agency may toll the review period only to consider revisions recommended by IRRC or a Committee
- ◆ Tolling must start before either Committee takes action on the regulation or the expiration of IRRC’s review period
- ◆ Agency may toll the review period for up to 30 days
- ◆ Tolling cannot occur if IRRC objects
- ◆ Examples of revisions made through tolling include correcting inconsistencies between Preamble and regulation and other drafting errors

Agency may withdraw regulation

At any point, Agency may withdraw final regulation

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- **Agency may revise final-form regulation and submit again before two-year deadline expires**
- **If Agency submits regulation again, it must submit it to Committees and IRRC, and notify commentators who requested information**

Disapproval by IRRC

- IRRC may disapprove a final regulation.
- Agency may resubmit with or without revisions, or withdraw.
- IRRC votes at second meeting.
- Regulation is sent to Committees for final review.

Disapproval by a Committee

- A Committee may disapprove or send notice of intent to review.
- Final Committee review: Committee(s) may report out concurrent resolution (with or without IRRC action) to bar regulation. If Committees do not act in 14 days, Agency may publish regulation as final rule.
- “Bicameral action” - House and Senate must pass concurrent resolution to permanently bar regulation.
- Presentment - Governor may approve or veto concurrent resolution.
- House and Senate may override veto by two-thirds vote.

Example of review process

Insurance Department, #11-206 Privacy of Consumer Financial Information

Publication of Proposed Rulemaking - March 31, 2001

Close of Public Comment Period - April 30, 2001

IRRC Comments Filed - May 31, 2001



Two weeks, Agency can take up to 23 months

Department Submitted Final-Form - June 14, 2001

IRRC Approved at Public Meeting - July 12, 2001

Final Regulation Published in *Pennsylvania Bulletin* - August 11, 2001

Less traveled paths

■ Final-omitted regulations

- 1 Pa. Code 307.3, Process Booklet pages 7-11 and 18, 45 P.S. § 1204

■ Emergency certified regulations

- 1 Pa. Code Chapter 313, Process Booklet pages 18-19, 71 P.S. § 745.6(d)

■ Existing regulations

- 1 Pa. Code Chapter 315, Process Booklet page 19, 71 P.S. § 745.8a

■ Published and unpublished documents

- 1 Pa. Code Chapter 315, Process Booklet page 19, 71 P.S. § 745.7a

Final-omitted regulation

- **Adoption of a regulation as final when:**
 - The proposed rulemaking stage is omitted.
 - Public notice and comment period for public, Committee and Commission is omitted.
- **Limited to the specific circumstances prescribed by statute.**
- **Final review process is concluded before regulation becomes effective**

Emergency certified regulation

- Governor or AG must certify regulation as necessary to immediately respond to an “emergency”
 - Statutory change or court order
 - Conditions which may threaten public health, safety or welfare
 - Deficit in excess of \$1 million
- Effective for 120 days after publication or until final disapproval whichever is later
- Review process is concluded **after** regulation becomes effective

Existing regulations

- Review based on statutory criteria
- IRRC's role is advisory only

Published and unpublished documents

- **Statements of Policy and Guidelines can be used to:**
 - ❖ Forecast future program initiatives
 - ❖ Describe agency's internal operating procedure
 - ❖ Grant waivers or benefits
 - ❖ Interpret enabling statute or regulations
 - ❖ Announce standards or criteria for administrative decisions
- **Statements of Policy and Guidelines can't be used to:**
 - ❖ Establish binding norms of general applicability and future effect
 - ❖ Impose penalties for noncompliance
- **Forums for challenge**
 - ❖ Judicial review
 - ❖ Joint Committee on Documents

A partnership in building consensus and developing effective regulations

- Outreach and participation is crucial
- Work begins before proposed rulemaking is published
- The review process is a forum whereby Agencies may build partnerships with the public and General Assembly to improve regulations

IRRC website - www.irrc.state.pa.us

- IRRC's Comments and Orders
- Public meeting information
- Commissioner and staff information
- IRRC email address - irrc@irrc.state.pa.us
- Docket of regulations
- Regulatory documents -
 - ◆ Checklist of delivery procedures for final regulations
 - ◆ Transmittal sheets
 - ◆ Regulatory Analysis Form (RAF)
- Annual Report
- Regulatory Review Process Handbook
- IRRC's regulations -- 1 Pa. Code Chapters 301 - 315