



The Environmental Regulatory Process in Pennsylvania



pennsylvania

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

The Environmental Regulatory Process

The Pennsylvania General Assembly has passed a number of laws to protect the environment. To enforce and implement these laws, the General Assembly often delegates specific responsibilities to administrative agencies and rulemaking boards to develop and adopt regulations. Regulations are detailed requirements or rules that are created to implement laws and have the full force and effect of law.

To enact regulations in Pennsylvania, a detailed process must be followed. This guide provides a step-by-step outline of that process. It also provides information on why, how and when a Pennsylvania resident can become involved in the regulatory development process.

Did you know? *Statutes and regulations are different but are both enforceable as laws. Statutes are created by the legislature and signed into law by the Governor. Regulations are how those laws are applied and enforced under the authority of the statute.*

How the Regulatory Process Begins

The process to change or create a new regulation begins when a need or opportunity for improvement is identified. This process can be initiated by Department of Environmental Protection (DEP) staff or by the public petitioning the Environmental Quality Board. This process is also initiated when a law is amended or a new law is passed. Corresponding amendments then need to be made to regulations or new regulations need to be created. DEP will evaluate and address the need for regulatory amendments by developing draft regulations in consultation with stakeholders, including DEP advisory committees. DEP continuously reviews existing regulations for opportunities to improve and enhance those regulations.

In addition to offering recommendations to DEP, Pennsylvania residents may request the development of a new or modified regulation by petitioning the Environmental Quality Board (EQB). The EQB petition process is initiated by the public through the submission of a formal request or petition.





EQB Petition Process

For more information on the EQB Petition Process, including the petition policy and form, visit DEP's website www.dep.pa.gov and select "Public Participation -> Environmental Quality Board" and then select the Rulemaking Petitions link.

Where to Learn About Regulations

Pennsylvania Code Online: The Pennsylvania Code is the Commonwealth's official publication of rules and regulations. All of Pennsylvania's environmental protection regulations can be found in Title 25 (Environmental Protection). To view all current regulations, visit <http://www.pacodeandbulletin.gov/>.

Pennsylvania Bulletin Online: The *Pennsylvania Bulletin* is the official publication and notification source for information and rulemakings. This is where information such as draft policies, proposed permits, public comment periods, etc. can be found. Visit the *Pennsylvania Bulletin* online at <http://www.pacodeandbulletin.gov/>.

Public Participation: The EQB's website includes a Regulatory Update button to take the viewer to the DEP Regulatory Update, which provides a snapshot of the current status of regulations being worked on by DEP. The Regulatory Update also links to the most recent published Governor's Agenda which lists active regulations for all state agencies.

To access the Public Participation section of DEP's website, visit www.dep.pa.gov and click on Public Participation.

eNotice: eNotice is an email notification system that provides status updates on a number of DEP actions and on EQB actions on regulations. Anyone may subscribe to eNotice by visiting DEP's website and clicking on Data and Tools and then click the Tools button.

DEP Newsroom: The DEP Newsroom provides environmental news updates and an option to subscribe to DEP news releases. To subscribe, visit the DEP website and click on "DEP Newsroom," then, under Options, click "Subscribe to Email Alerts."

STAY INFORMED!

Current information on DEP regulations is easily available. Sign up for eNotice to receive email notices when an action is taken on a regulation. From DEP's home page, select Data and Tools and then click the Tools button. Provide your email address, select a password and the types of notifications you select will be sent to you.

How DEP Advisory Committees Provide Feedback on Regulations

Several statutes governing environmental protection require the establishment of advisory committees to provide DEP with input in policy development, including the development of regulations. These advisory committees are made up of stakeholders with different appointing authorities. In order to have a variety of perspectives, advisory committees are made up of members from groups such as non-profit organizations, industry, environmental consultants, grassroots organizations, healthcare professionals, environmental lawyers, and local governments.

Advisory committees can review DEP regulations related to their specific area of expertise and provide advice to improve the regulation or suggest an alternative for solving the issue the regulation is intended to fix.

Each individual advisory committee has a page on DEP's website that includes the committee's charge and responsibilities, committee member information, minutes and documents from past meetings and information about future meetings.

To find out more about DEP advisory committees, including schedules and agendas, visit www.dep.pa.gov and click on "Public Participation" and then "Advisory Committees."





The Regulatory Process: Step by Step

1. After a need to create or change a regulation is identified, DEP develops **draft regulatory language**, which is shared with stakeholder groups, including DEP advisory committees.
2. The (EQB) considers the draft regulation and votes to adopt it as a **proposed regulation**.
3. Once adopted, the proposed regulation undergoes review by the Office of General Counsel, the Governor's Budget Office, and the Office of Attorney General.
4. The proposed regulation is published in the *Pennsylvania Bulletin* and opened for public comment (<http://www.pacodeandbulletin.gov/>), then sent to the House and Senate Environmental Resources and Energy committees and IRRC for review. The EQB may hold public hearings on the proposed regulation as part of the public comment period.
5. All **public comments** submitted during the public comment period to the EQB become part of the official public record.
6. DEP reviews all comments and develops responses to those comments, including developing revisions to the proposed rulemaking, if needed. This new version, called the draft final regulation is again shared with stakeholder groups, including DEP advisory committees.
7. EQB considers and votes whether to adopt the **final regulation**.
8. Once adopted as final, the regulation is sent to the House and Senate Environmental Resources and Energy standing committees and IRRC for action.
9. If approved by the standing committees and IRRC, the final regulation is submitted to the Attorney General's Office for approval.
10. Once approved by the Attorney General's Office, the regulation is published in the *Pennsylvania Bulletin* and becomes enforceable under law.
11. Once the regulation is published, it is immediately effective, unless otherwise specified, and is enforced by DEP. Reference materials such as fact sheets are developed, training for staff and opportunities for stakeholders to become educated are put in place. As part of its compliance assistance efforts, DEP will work with the regulated community to ensure understanding of the new regulations and obligations for compliance.



The Environmental Quality Board (EQB)

The EQB is a 20-member independent board that adopts all DEP regulations. The members of the board include representatives of:

Eleven state agencies, including the departments of Environmental Protection (chair), Agriculture, Health, Community and Economic Development, Transportation, the Public Utility Commission, the Fish and Boat Commission, the Game Commission, Labor and Industry, the Governor's Office of Policy, the Historical and Museum Commission, five members of the Citizens Advisory Council and four members of the senate and house.

How a Regulation Moves From Draft to Proposed

A draft regulation becomes a proposed rulemaking once it is adopted by the Environmental Quality Board (EQB).

How to Understand a Regulation Notice

The official notice of a proposed regulation in the *Pennsylvania Bulletin* is called a Notice of Proposed Rulemaking. This notice contains two parts: the Preamble and the Annex A. **The Preamble** contains background information and a summary of the regulation. The **Annex A** is the text of the proposed regulation.

How to Read and Understand the Annex A

Words that are in normal type/text are unchanged from the existing regulation. Example: This text is unchanged.

Words that are underlined and appear in bold text will be added to the existing regulation. Example: **This text is new to the regulation.**

Words that are bold inside square brackets are proposed to be deleted from the current regulation. Example **[This text will be deleted from the regulation]**.



How to Submit Public Comments

The public comment period starts the day that the regulation is published in the *Pennsylvania Bulletin*. The comment deadline will be published in the Preamble along with specific directions about how and where to submit comments. A minimum of a 30-day public comment period will be offered on all proposed regulations.

Written Comments: Most regulations require that comments be submitted in writing. Written comments can be transmitted through DEP's online comment application, eComment; by email; or through postal mail.

- **eComment:**

Comments may be submitted accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

- **Email:**

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

- **Mail:**

Written comments should be mailed to:

Environmental Quality Board, P.O. Box 8477,
Harrisburg, PA 17105-8477.

Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

Verbal Comments: When a regulation is likely to receive increased public interest, the EQB may choose to schedule a **public hearing**. You can submit comments verbally at these public hearings. These comments will not be responded to during the hearing, but become part of the public record and are responded to in the Comment and Response document that will accompany the final rulemaking. However, a public hearing will not be held for every proposed regulation.

Did you know? By law, DEP is required to submit all written comments and public hearing transcripts received by the EQB to the House and Senate Environmental Resources and Energy committees and the Independent Regulatory Review Commission (IRRC).



Things to Remember When Writing Comments

The most effective comments are those that provide feedback to help DEP improve the regulation to better protect the environment, public health and safety while ensuring that regulations are feasible to implement. It is also important to understand that regulations have a very specific function and scope and must remain within statutory boundaries. Comments that address the specific content of the regulation and provide suggestions for improvement with an explanation as to how and why it could be improved are the most helpful to the development of regulations.



Tips for Submitting Effective Comments

1. Read the proposal through carefully before submitting comments.
2. Contact DEP if you have any questions on the proposal.
3. Be as clear and concise as possible in written comments and provide support for claims or opinions. Support includes things like data, peer-reviewed studies, journal articles.
4. There are no minimum or maximum length requirements for submitting an effective comment.
5. Suggest alternatives, including different options to address a need, with or without regulatory requirements.
6. Provide specific examples of how the regulation will meet or not meet the intended need or objective.

How to View Public Comments

DEP's eComment is an online public comment system for regulations, policies, technical guidance, State Implementation Plan revisions, and other reports. eComment is accessible at www.ahsdep.pa.gov/eComment/. With this tool, you can read proposed regulations, submit comments directly to EQB, and view comments submitted. All comments submitted will be publicly available within 5-business days of receipt.





Format of a Public Hearing for a Proposed Regulation

Public hearings are used by DEP for a variety of reasons. For a proposed regulation, a public hearing provides a forum for verbal comments to be heard by the EQB. It is important to understand that public hearings are not question and answer sessions. Those speaking at a hearing provide testimony and are encouraged to speak clearly and concisely, as a limited amount of time is provided to each person testifying. Those providing comment should be respectful to all those in attendance, anyone interrupting other commentators, or disrupting the hearing may be asked to leave the public hearing.

People with disabilities can call 800-654-5984 (TDD users) or 800-654-5988 (voice users) to provide comments.



Tips for Providing Comments at a Public Hearing

1. Commenters who wish to provide testimony are encouraged to sign up in advance to reserve a time to speak. For some hearings commenters can also sign up to speak at the meeting, but will be added to the end of the list.
2. Commenters must provide their names and postal addresses to provide testimony. It is helpful if email addresses are also provided.
3. When commenters are called to testify, they must state their name and address clearly for the stenographer.
4. Commenters do not need to submit written remarks but are encouraged to do so to aid the stenographer in the transcription of the comments. All written testimony provided will be made available on eComment.
5. Upon being called to provide comments, a commenter must abide by his or her allotted time to testify.
6. The most **effective comments** are those that are based on facts, science, data, or relevant experience from residents or other stakeholders and pertain to the specific regulation.

How a Regulation Moves from Proposed to Final

All written comments received by the EQB during the official public comment period, including those verbal comments received at any EQB public hearing, become a part of the public record and are responded to in a written Comment and Response document that is developed by DEP as part of the final rulemaking package. In the review and consideration of comments, DEP will present a summary of comments received on a proposed rulemaking with the appropriate advisory committee, and discuss potential changes to the rulemaking to accommodate the suggestions. Once the final rulemaking is developed and discussed with an advisory committee, it is submitted to the EQB for adoption, along with the Comment and Response document. The Comment and Response Document is made public when the final regulation is submitted to the EQB.

Independent Regulatory Review Commission (IRRC)

IRRC is an independent commission established by law (the Regulatory Review Act) to review Commonwealth agency regulations to ensure they meet certain criteria, including that all regulations are in the public's interest. For more information on IRRC, visit their website at <http://www.irrc.state.pa.us>. Public comments and testimony are also posted to IRRC's webpage during the public comment period. IRRC reviews final regulations after they have been adopted by the EQB and after they are published for public comment.

Once a final regulation has been adopted by the EQB it will be reviewed and voted on by IRRC.





Next Steps

After a final regulation has been approved by IRRC there are several final steps before it can be published in the *Pennsylvania Bulletin*.

- **Standing Committees:** The standing committees of the PA General Assembly in the House and Senate can review and vote to approve or disapprove a final regulation. Disapproval resolutions must be signed by the Governor or overcome a Governor's veto to affect a regulation
- **Review by the Office of Attorney General:** Final regulations are once again reviewed to ensure they are compliant with the relevant statutes.

Once these last steps are concluded, the regulation can be published in the *Pennsylvania Bulletin* and become enforceable regulations.

For more information, contact:

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P.O. Box 2063 Harrisburg, PA 17105-2063
717-783-8727
www.dep.pa.gov



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