



Leveling the Playing Field

**Information Communications Technology
(ICT) Innovations
Commonwealth of Pennsylvania**

Internet Access of Commonwealth Regulatory Process
Nomination for 2008 NASCIO Award

Executive Summary

The Independent Regulatory Review Commission (IRRC) is an independent agency charged with the task of reviewing nearly all the regulations promulgated by Pennsylvania's various state agencies, boards and commissions.

Regulations possess all the binding effects of law both upon the members of the general public as well as the promulgating agency. Regulations serve to provide detail to enacted legislation or emerge as manifestations of public policy generated by the executive branch as part of an agency's established rulemaking authority.

These regulations cover a wide range of daily activities such as the handling of food products, academic standards, the emissions from power plants, and the taxing of real estate transactions. However, the common theme for all these regulations is the need to involve the regulated public, the citizenry in the process of establishing these regulations.

IRRC was established twenty-five years ago by the Pennsylvania Legislature to provide a method of review to help ensure that regulations put in place by the executive branch are consistent with the original legislative intent. IRRC is granted a set of specific criteria through which it reviews and comments on regulations and provides this feedback in the form of comments to the promulgating agency.

Reaching Out

The process of establishing regulations entails a plethora of steps, timeframes, publication requirements, drafting, comment, and redrafting. It can prove confusing and difficult for the average citizen to understand. As a result, many have expressed frustration and question how they can influence a process that is unclear and often invisible. Participation can require that a citizen spend an undue amount of time to navigate the labyrinth of the regulatory process

Recognizing this, IRRC has adopted as part of its mission, that our role as a review agency must include making the process open and transparent to citizens who are affected by regulations but are not, nor need be, experts in the regulatory process.

Accomplishing this task requires work at a variety of levels. Meetings with citizens, seminars, and flyers have all been part of this effort. However, the cornerstone of this initiative has been to share all the relevant information regarding regulations on the internet www.irrc.state.pa.us, including a fully searchable database of regulations, related documents, and comments from all parties. In addition, for the first time, citizens can now register for automatic e-mail alerts on regulations from any agency where they express an interest.

Description of the Business Problem and Solution

The Challenge

Regulations surround us and often establish boundaries of conduct in an extraordinary range of daily activities. The types of cars we can purchase, the shape of the taillights on the buses that transport our children to school, rules regarding the assessment of taxes on real estate transactions, rules governing the prepayment of funeral expenses, rules on mortgage banking, and treatment for victims of sexual assault, are all recent examples of regulations in the Commonwealth of Pennsylvania.

The process by which regulations are disseminated is set forth in various statutes which set forth conventions for drafting, establishes timeframes, defines the publication requirements, and establishes the requirements for allowing public comments. However, this process largely requires a significant commitment on the part of the citizens (the regulated public) to know when these regulations are being proposed and to obtain documentation that would be necessary to comment on these regulations.

IRRC was created to address a concern expressed by the state legislature that the regulations being set forth by the executive branch did not accurately reflect legislative intent. The IRRC legislation, as currently expressed, establishes a set of criteria that is used to analyze and comment on pending regulations. These include:

- ✓ Whether the agency has the statutory authority to implement the 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 the regulation is a policy decision requiring legislative review.
- ✓ Comments, objections or recommendations of a (standing legislative with oversight responsibility) Committee.
- ✓ Compliance with the Regulatory Review Act and IRRC regulations.

The process of regulatory review as outlined in legislation implies a significant challenge. When an agency wishes to promulgate a regulation, typically a proposed regulation is published in the *Pennsylvania Bulletin* (the official “gazette” of the Commonwealth) and “delivered” to IRRC and the standing legislative committees for review. Generally, there is no requirement for an agency to make extra effort to make certain that the general public is aware of the regulation beyond its publication.

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This presumes a significant effort on the part of the common citizen to scan the *Pennsylvania Bulletin* and determine if there is a proposed regulation that may affect them. Further, once this regulation is published, the citizen typically has only thirty days during which to research any related documentation and comment to the promulgating agency. Many individuals have neither the time nor resources to undertake this task and have been effectively excluded from a process they barely understand.

If the citizen needs to do additional research on a regulation in order to comment, he/she may have to request additional information from the agency and in some cases may need to file a "Right to Know" request which typically cannot be fulfilled within the thirty-day comment period.

IRRC is provided with an additional thirty days beyond the end of the public comment period to issue its comments to the promulgating agency and the standing committee. However, IRRC for all its expertise in the regulatory process is quite small and is comprised of generalists. Accordingly, we rely heavily upon the comments of members of the legislature and the citizens who will be affected by the regulation. We do regularly consult with organizations and individuals who we think may have an interest in the proposed regulation.

Once the promulgating agency has received the comments from the public, IRRC, and the standing committees, it decides on any possible changes to the regulation and submits the final form to IRRC and the standing committees for their consideration. The final regulation contains not only the changes but also responses to those parties where the changes were rejected.

For individuals who did not comment in the proposed stage, there is generally no publication of the final version of the regulation prior to the final consideration of the regulation. So there is little opportunity for the public to keep abreast of changes that may affect them in the final regulation. Ultimately, the five commissioners of IRRC must consider and record a non-binding vote to advise the promulgating agency if they consider a regulation to "be in the public interest."

The Solution

To be fair to the promulgating agencies, they have a broad array of responsibilities of which regulations may constitute a very small part. By contrast, IRRC is a crossroad for regulations from nearly all agencies and it is uniquely positioned to be an informational resource to the general public.

Today, the demand for information from government agencies as well as full transparency in the decision making process presents a growing challenge and opportunity. For the last twenty-five years, IRRC has provided a high quality review of regulations and has met the needs of the legislature in its oversight of regulations.

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However, as IRRC reviewed the growing demands for information, we decided that we could develop our ability to ensure that the public was fully informed about upcoming regulations and had the opportunity to express their support or concerns about these regulations.

About two years ago we began to survey users of IRRC to see if we could determine needs that we could satisfy. We consulted parties that had commented on regulations, legislative staff, agency staff, and others who might have an interest in the process. The themes that emerged suggested that making more information available on a timely basis would enhance the overall regulatory process.

In taking all this input, we decided to try to address these changes in a way that would exceed nearly everyone's expectations. We began by meeting with the staff of the Legislature's Data Processing office and quickly determined that while they would serve as the operator of the Web site and an important partner in the process, we needed to retain additional consulting staff to review the task and suggest changes to our software.

IRRC maintains a comprehensive database on all regulations that are submitted for review as well as all the comments made by the general public, legislators, and IRRC. We quickly determined that we wanted to try to make all the relevant data available to any interested party.

One of the immediate concerns we had was how to make information available without opening the underlying data to hackers and viruses that could compromise our database. The consultant we hired, SRC Solutions, proposed that we could achieve our goals and limit our risk by creating a mirror image of the elements of our database from which information contained on our Web site is drawn.

As IRRC scans new documents, they are scanned into our internal database and the mirror database simultaneously. As the database is refreshed (approximately every fifteen minutes) the information is available in near "real time" on the Web site.

Concurrently with this overall project, we redesigned our website appearance to facilitate navigation and access to information that our surveys suggested was "important." In 2007, this new Web site www.irc.state.pa.us went live and allowed us to determine reaction to the Web site, and its structure as we enhanced our data capabilities. Based upon user comments, we continued to "tweak" the Web site's appearance and request enhanced abilities to quickly modify certain content without the delay of going through the legislature's Web site administrator.

The hallmark of the Web site design is the incorporation of a "narrative" summary of the regulation on a single page that incorporates links to all related documents. Within this single page, a user can determine all the critical points in the regulation's development as well as all the dates of official actions.

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In addition to making data available to the public in near “real time,” we also realized that we needed to be proactive in making sure that people would be aware of regulations that might be of interest to them. To accommodate this, we have added an e-mail-based “subscription” feature. By using this feature, anyone can select any agency that they want to monitor for new or revised regulations. Upon our receipt and scan of these regulations and comments, subscribers are notified by overnight e-mail of information that may be of interest and provided a link to view the data.

In addition to citizens, these services are also available to agency staff and legislative staff. Both agencies and legislative offices are invited to link directly to the IRRC Web site to keep constituents aware of specific regulations.

In anticipation of the site going live and in the period since, we have met with agencies, legislators, and the general public to build awareness of these changes. We have included notices of the Web site in our newsletter and have issued press releases to relevant publications.

Use of the Web site continues to expand and the reaction has been overwhelmingly popular.

Significance to the Improvement of the Operation of Government

The regulatory process has been described as both Byzantine and opaque. And while this description is colorful, for the general public this is unfortunately true. However, the citizens who must comply with these regulations have every right and expectation that this process should be as open and transparent as possible so that their support or reservations can receive a full airing before the regulations go into effect.

The IRRC decision to make this information available on its Web site is a step toward the realization of our legislated mission. As stated in our criteria, we need to review and comment on the effect of the proposed regulation. The time constraints as well as our status as generalists can limit our ability to comment knowledgeably. By making information on regulations more broadly available, we increase the ability for the general public to comment on, and influence the content of, regulations so that the minimal amount of regulation to achieve a desired effect can be found.

Further, rather than require the general public to constantly scan Commonwealth publications (or our Web site) for the release of proposed regulations, citizens can now register their interests and be automatically notified when we receive information.

Benefit of the Project

Viewed at a distance, IRRC has four interrelated responsibilities within the “regulatory world.” Our first responsibility is to review and comment on regulations and by doing so, improve the final product. The second is to serve as a forum using the comments as well as our public meetings to resolve concerns between the promulgating agency and the regulated public (citizens). The third is to serve as a repository for all relevant regulatory

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documents. Finally, we serve as civic educators, to make people aware of the regulatory process and the means by which they can make their voices heard.

Although IRRC is routinely defined as a “legislative service agency,” our responsibilities are significantly broader. Our comments, issued within a decidedly finite period of time, are written to improve the quality of proposed regulations. By increasing the opportunity for comment, and by providing relevant information to the public, we increase participation in the regulatory process. This input is ultimately to the benefit of all parties.

The cost of undertaking this project was quite modest. IRRC was already scanning and recording documents into our database and we already had the basic skeleton of a Web site at the outset of the project. There was no additional cost to redesign the appearance of the Web site beyond our existing maintenance agreement and the cost of maintaining our scanning capabilities to our database is an anticipated cost of operation.

Accordingly, the only incremental cost of this project to date has been under \$25,000 to the consultant to help us design the infrastructure needed to open up the database to the public and provide e-mail subscription availability to any interested party.

Leveling the Playing Field

It would be hard to overstate the benefit of this project to the public. A process that was hard to understand, inaccessible, and time-consuming, presented hurdles that effectively denied access to a wide range of citizens. Navigating the government bureaucracy to find information, traveling to the state capitol to sift through documents and constantly scanning government publications for regulations is unrealistic for most people.

Now, for the first time, all relevant information regarding public regulations is easily available to citizens. Instead of requiring people to divine when a regulation might be issued, people can now be notified of regulations for which they have expressed an interest.

The regulatory process is not intended to operate as an invisible form of government. For the process to retain the mantle of legitimacy, it must fully acknowledge the needs and concerns of the regulated public. The ultimate goal of the Web site project remains to make the regulatory process open, transparent, and accessible for all citizens of the Commonwealth.