

RULES AND REGULATIONS

Title 1—GENERAL PROVISIONS

INDEPENDENT REGULATORY REVIEW COMMISSION

[1 PA. CODE CHS. 301, 303, 305, 307, 309, 311,
311a AND 315]

General Revisions

The Independent Regulatory Review Commission (Commission) amends Chapters 301, 303, 305, 307, 309, 311, 311a and 315 to read as set forth in Annex A.

Statutory Authority

This final-form rulemaking is adopted under the authority in section 11(a) of the Regulatory Review Act (act) (71 P.S. § 745.11(a)).

Purpose

This final-form rulemaking implements the act to clarify definitions, when documents are to be delivered to the Commission and what should be included in agency rulemaking packages, as well as to ensure consistency with the act and current practice and procedure.

Summary of Amendments

Amendments to § 301.1 (relating to definitions) clarify the definitions of “comments” and “transmittal sheet” and add a definition of “preamble.” Revisions further clarify the definitions of “preamble,” “regulatory analysis form” and “transmittal sheet.”

Amendments to §§ 301.2 and 303.1 (relating to regulation files; and notice of Commission public meetings; participation; minutes) clarify the retention schedule for regulation files and the location of the Commission’s fee schedule and Right to Know Law Policy.

Amendments to § 301.3 (relating to determination of date and time of delivery of comments and documents) clarify that the time of delivery will be determined by when documents are received by the Commission.

Amendments to § 301.7 (relating to withdrawal of a regulation) provide that a withdrawal notice should be delivered to the Commission and the committees before the Commission’s public meeting.

Amendments to § 301.9 (relating to procedure for public hearings) provide that public hearings may be scheduled for any matter before the Commission, rather than just for regulations that are under review. This is consistent with section 11(c) of the act. An additional revision further clarifies matters before the Commission.

Amendments to §§ 305.1, 307.2 and 307.3 (relating to delivery of a proposed regulation; delivery of a final-form regulation; and delivery of a final-omitted regulation) add cross-references to clarify the information that should be included in the preamble of a regulation. Revisions to these sections further clarify cross-references to the definition of preamble in § 301.1.

Amendments to § 305.1 add a requirement that instructions for submitting public comments should be included. Section 5(b) of the act (71 P.S. § 745.5(b)) requires a public comment period. Revisions further clarify the materials to be submitted with the proposed regulation.

Amendments to § 307.2 clarify what should be included in the final rulemaking package. Section 5.1(a) of the act (71 P.S. § 745.5a(a)) provides that the agency shall include in the final rulemaking package the names and addresses of commentators who have requested additional information. Accordingly, amendments to § 307.2(c)(6) state that if no commentator requested additional information, this should be specified by the agency.

A revision to § 307.2(c)(1) provides that the Regulatory Analysis Form (RAF) should reflect changes made from the proposed to the final-form regulation. For example, if an agency makes a change to the final-form regulation or its fiscal analysis, this change should be reflected in the RAF for the final-form regulation.

Section 307.2(d) is added in this final-form rulemaking to clarify that agencies shall forward copies of comments on final regulations to the Commission and the committees within 5 business days.

A revision to § 307.3(c) clarifies that agencies shall forward copies of comments on final-omitted regulations to the Commission and the committees within 5 business days.

Amendments to § 307.3a (relating to formatting the text of a final regulation) take into consideration that prior to publication in the *Pennsylvania Bulletin*, the Legislative Reference Bureau may edit the text of a proposed regulation to comply with its editorial policies and procedures. The published text is considered to be the official version of the proposed regulation. Therefore, § 307.3a is amended to require an agency to use the official version when preparing and delivering a final rulemaking package.

Section 307.3a(f) recognizes that there may be an instance when it is impractical for an agency to use the standard formatting method in a final regulation. In this case, the agency should contact the Commission to discuss an alternative method that will still allow readers to easily determine the changes that were made from the proposed regulation.

Amendments to § 309.1 (relating to Commission and committee action on a final regulation) correct typographical errors. A revision clarifies the timing of the Commission’s public meeting.

Amendments to § 311.1 (relating to Commission disapproval of a final regulation) replace “may” with “will” regarding the Commission’s notification to commentators to be consistent with section 6(a) of the act (71 P.S. § 745.6(a)). A revision allows for notice to be published on the Commission’s web site.

Amendments to § 311.4 (relating to report for a disapproved regulation submitted with revisions) require an agency to include an RAF with a revised previously-disapproved regulation. The RAF will capture new cost data or other changes that may differ from the previously submitted final-form regulation.

Amendments to §§ 311a.1—311a.5 and 311a.7 clarify that delivery before and after the end of the legislative session must be made between the fourth Monday in January and the second Monday after publication of the General Assembly committee designations in the *Pennsylvania Bulletin*, whichever is later. Amendments to § 311a.4 (relating to delivery of a final regulation within 20 days before the end of the legislative session) correct a typographical error.

Amendments to § 315.1 (relating to review of an existing regulation) replace “investigation” with “further review” to be consistent with section 8.1 of the act (71 P.S. § 745.8a).

The headings of Chapter 315 (relating to existing regulations and published or unpublished documents) and § 315.2 (relating to review of a published or an unpublished document) are amended to accurately reflect the content of the chapter and the section.

Summary of Comments and Responses to the Proposed Rulemaking

The Commission received written comments from the Joint Committee on Documents (JCD), the House State Government Committee (House Committee), the Liquor Control Board (LCB), the Marcellus Shale Coalition (MSC) and the Pennsylvania Oil and Gas Association (PIOGA). Two comments from PIOGA are addressed under Additional Comments because they were submitted outside of the public comment period, which ended on December 28, 2015.

General

Comment

The House Committee, in support of comments made by MSC and PIOGA, commented that “an effective regulatory review process depends on timely and detailed information regarding a proposed or final form regulation.”

Response

The Commission agrees with the House Committee and continues to review its regulations to ensure that they provide agencies with clear and comprehensive direction during the rulemaking process. The Commission finds comments from the committees, the regulated community, other State agencies and all interested parties to be invaluable and will continue to encourage feedback.

§ 301.1. Definitions

Comment

MSC and PIOGA suggested adding a definition of “completed regulatory analysis form” as follows:

Completed regulatory analysis form—A regulatory analysis form that includes all requested documents and information provided in sufficient detail for the Commission to make an initial determination that the response will enable the Commission to determine whether regulation is in the public interest in accordance with the regulatory review criteria.

The House Committee agreed with MSC and PIOGA.

The JCD commented that the phrase “sufficient detail” in the suggested definition from MSC and PIOGA is subjective and ambiguous.

Response

Section 5(a) of the act provides that an agency must submit to the Commission and standing committees a copy of the proposed regulation and an RAF. This section further provides a list of information that must be included in the RAF. RAF is defined in § 301.1 and provides a cross-reference to section 5 of the act.

The RAF includes, among other things, the legal authority for the regulation, a detailed cost-benefit analysis, a description of the agency’s outreach efforts, and an explanation of any adverse effects of the regulation on third parties, including government entities, the elderly, minority groups and small businesses. Section 5.1(c) of

the act has a similar requirement for final-omitted regulations. Chapters 305 and 307 (relating to procedures for delivery and review of proposed regulations; and procedures for delivery and review of final regulations) provide that an RAF must be included with proposed, final and final-omitted regulations. The agency must also provide any information as requested by the Commission under section 5(c) of the act.

If an RAF is not included with a rulemaking package, the Commission will not accept the package for delivery. Similarly if, during the delivery process, it is apparent on its face that required information has been omitted (such as pages, signatures, the annex and referenced data), the Commission will not accept delivery until the information has been properly submitted to the Commission and committees.

During 2015-2016, there was considerable discussion about whether an agency should have submitted forms with a particular rulemaking package and when the forms should have been submitted under section 5(a)(5) of the act. Although this is not a widespread issue affecting the majority of regulations submitted to the Commission, on December 15, 2016, the Commission adopted a policy to clarify that the failure to include the forms in an acceptable format would be deemed a faulty delivery of the rulemaking package. This policy is consistent with what the Commission currently does for missing information referenced in the previous paragraph. The Commission subsequently updated box # 22b of the RAF to provide additional instructions for attaching required forms to the rulemaking package, including the following language: “Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.”

The Commission agrees with the House Committee that the act provides the Commission with the authority to compel agencies to include the required information in an RAF to determine whether a regulation is in the public interest. The Commission believes that the regulation does in fact do so. The Commission also agrees with the JCD and believes that the language recommended by the other commentators will only create further ambiguity and is not necessary. Therefore, the Commission has not added this language.

Comment

PIOGA commented that the Commission should include a definition of “advance notice of final rulemaking.”

Response

“Advance notice of final rulemaking” is not used in the regulations, this final-form rulemaking, the act, the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1102—1208), known as the Commonwealth Documents Law (CDL), or the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506). Therefore, the Commission has not added this definition in this final-form rulemaking.

Comment

The LCB suggested that the definition of “preamble” be revised to advise commentators that they have “the right to request further information as set forth in [§] 305.2(d).” The JCD disagreed with this suggestion.

Response

The Commission agrees with the JCD. Section 5.1(a) of the act and § 305.2(d)(1) (relating to delivery of comments and information by an agency; notification to

commentators) provide that the agency shall inform commentators that they may request further information on the final-form regulation. The Commission has not added the suggested language since it will not improve or provide clarity to the regulation.

Comment

The JCD commented that the definition of “preamble” should be revised to distinguish between proposed and final regulations and what should be included in each, using subparagraphs to make the distinction clearer. The JCD also recommended that the Commission clarify that the preamble is a part of the rulemaking package.

Response

The Commission agrees with these comments and revised the definition of “preamble” accordingly.

Comment

The JCD recommended that the definition of “transmittal sheet” be amended to clarify that the Legislative Reference Bureau signs the transmittal sheet for proposed regulations only.

Response

The Commission agrees with this recommendation and revised the definition of “transmittal sheet” accordingly.

§ 305.1. Delivery of a proposed regulation

Comment

MSC and PIOGA commented that the Commission should add language to § 305.1(b)(1) to require the Commission to review all proposed regulations within 10 days of delivery and to require an agency to cure any “deficiency” within 10 days. The House Committee agreed with this comment. The JCD disagreed with this comment.

Response

The intent of the regulatory review process under the act, from the publication of a proposed regulation to the delivery of a final-form regulation (which is due 2 years from the close of the public comment period for the proposed regulation), is to determine whether the regulation is in the public interest. Upon receipt of a rule-making package, if the Commission identifies missing information that is required under the act, it will request the agency to immediately provide the information. If the information is not provided upon request, the Commission will deem the delivery to be faulty and the agency must redeliver the package.

During the formal review and analysis of a rulemaking package, the Commission may identify issues consistent with section 5.2 of the act (71 P.S. § 745.5b) that might warrant further explanation and clarification or require additional documentation. The Commission may also raise questions about the information that was provided and ask the agency to respond or explain why the regulation is in the public interest. Similarly, interested parties may comment that the agency did not provide the required information or that the information is inaccurate. This does not necessarily mean the RAF or rule-making package is deficient on its face. The existing law and regulations provide a mechanism for addressing these issues.

The Commission must deliver its official comments to the agency no later than 30 days from the close of the public comment period. The time period for the standing committees to send comment on the proposed regulation extends up to the delivery of a final-form regulation. The

agency must provide responses to all comments and issues in the final-form rulemaking package, as well as be prepared to discuss them at the Commission’s public meeting when a determination would be made to approve or disapprove the regulation.

The commentators were effectively suggesting that the Commission conduct a two-tiered review and analysis at the proposed stage of the rulemaking process.

The Commission has not found a systemic problem with agencies failing or refusing to provide the basic information required. If the Commission determines that information is missing, the agency shall provide it generally by the close of the business day, or redeliver the package. It is neither practical nor feasible to provide an additional 10-day response time for the agency. The definition proposed by PIOGA provides no further clarity in this regard and is not necessary. Therefore, the Commission has not made the recommended change.

Comment

MSC and PIOGA commented that the cross-reference to the definition of “preamble” in § 305.1(b)(4) should be clarified.

Response

The Commission agrees with this comment and has made the suggested revision.

Comment

The LCB and the JCD recommended clarifying language in § 305.1(b)(4) and (5) to address whether the instructions for the public comment period should be separate from the preamble.

Response

The Commission agrees with this recommendation. This section has been revised to clarify that the instructions for the public comment period need not be separate from the preamble.

Comment

The JCD commented that the term “proposed” be added to § 305.1(b)(6) for consistency with the other provisions in this regulation.

Response

The Commission agrees with this comment and has made the suggested revision.

§ 305.3. Commission comments

Comment

MSC and PIOGA commented that agencies should be required to comply with a 30-day public comment period and deliver a new RAF when they issue an advance notice of final rulemaking (ANFR). The JCD disagreed with this comment as an improper expansion of the Commission’s statutory authority.

Response

An ANFR is a mechanism occasionally used by some agencies to provide notice of intended changes from a proposed regulation to the final-form regulation. It is done after the public and Commission comment periods have ended and before the final-form regulation has been delivered. An agency might use an ANFR if a regulation is particularly complicated, if there are substantial changes based upon feedback received during the comment period, to provide a courtesy notice to interested parties that the delivery of a final-form regulation is imminent or to build consensus for the regulation.

Changes can be made to a proposed regulation without republishing it or reopening the public comment period, so long as the changes are within the scope of the original purpose of that regulation. See section 202 of the CDL (45 P.S. § 1202). Additionally, an agency's use of an ANFR does not extend the time period for review under the act.

The Commission does not have the legal authority to mandate an additional 30-day comment period for an ANFR. Further, the commentators were seeking to require agencies to complete additional documentation, such as a new RAF, although the agencies that use an ANFR have already gone beyond what is required under the act in providing this type of optional notice. It is foreseeable that agencies would forgo this mechanism altogether if these additional requirements are imposed.

When a final-form rulemaking package is delivered, comments can be delivered up to 48 hours before the Commission's next scheduled public meeting, which will take place no less than 30 days after receiving the final-form regulation. Additionally, interested parties may address the Commission during the public meeting.

For these reasons, the Commission has not made these recommended changes.

§ 307.2. *Delivery of a final-form regulation*

Comment

MSC and PIOGA commented that a final-form RAF should be revised to correspond with any changes made from the proposed rulemaking package.

Response

The Commission agrees with this comment and revised § 307.2(c)(1) accordingly.

Comment

PIOGA commented that the Commission should revise § 307.2(c)(4) to require a comment and response document separate from the preamble when the document exceeds two pages.

Response

It is beneficial to provide a certain level of flexibility for agencies when they are preparing their rulemaking package so long as they are in compliance with the law. The Commission has not identified problems when agencies include their responses to the comments within the text of the preamble since they can be easily located and the agencies generally make it clear where this information can be found. Therefore, the Commission has not made this recommended change.

Comment

The JCD commented that the "response to comments" requirement in § 307.2(c)(4) should be moved to the definition of "preamble" in § 301.1.

Response

To make it clear that an agency may include its response to comments in the preamble or as a separate document, the Commission revised the definition of "preamble" in § 301.1 to include "a response to all comments received, unless that response is provided in a separate document."

Comment

MSC and PIOGA commented that the cross-reference to the definition of "preamble" in § 307.2(c)(5) should be clarified.

Response

The Commission agrees with this comment and made the suggested revision to clarify the cross-reference. The Commission made similar revisions to §§ 305.1(b)(4) and 307.3(b)(4) for consistency.

Additional comments

By letter dated January 14, 2016, PIOGA supplemented its previous comment by stating that an agency can and should develop forms and guidance documents during the proposed regulation stage. PIOGA also attached a press release and advisory committee agenda to the letter. Since this is not a comment on the proposed regulation, a response is not necessary.

By letter dated January 17, 2017, PIOGA provided additional comments requesting that the Commission include in the regulation the policy adopted on December 15, 2016, that the failure to include forms in the proposed rulemaking package will result in a faulty delivery and the process will not move forward without this information. For the reasons stated earlier, the Commission does not agree that this suggestion is necessary and has not made the suggested change.

Persons and Entities Affected

This final-form rulemaking will benefit Commonwealth agencies that intend to promulgate regulations by way of the regulatory review process. It also provides clarity for members of the public and other entities that wish to comment on regulations or otherwise participate in the process.

Fiscal Impact

This final-form rulemaking is not expected to have a fiscal impact on the Commission, the regulated community (that is, promulgating agencies), the Commonwealth, local governments or the general public. This final-form rulemaking clarifies the requirements of the regulatory review process.

Effective Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Sunset Provisions

The Commission is not establish a sunset date for these regulations. However, the Commission will continue to closely monitor the regulations for effectiveness and consistency with the act.

Public Notice

The proposed rulemaking was published at 45 Pa.B. 6818 (November 28, 2015), with a 30-day public comment period.

Contact Persons

Comments and questions may be referred to Leslie Lewis Johnson, Chief Counsel, ljohnson@irrc.state.pa.us, or Michelle L. Elliott, Regulatory Analyst, melliott@irrc.state.pa.us, (717) 783-5417. Comments may also be faxed to (717) 783-2664. Alternative means of providing public comments and alternative formats of this final-form rulemaking may be made available to persons with disabilities upon request by contacting Cheryl Yohn, cyohn@irrc.state.pa.us, or Stephen F. Hoffman, shoffman@irrc.state.pa.us, (717) 783-5417, (717) 783-5417.

Regulatory Review

Under sections 5(a) and 11(a) of the act, on October 13, 2015, the Commission submitted a copy of the notice of

proposed rulemaking, published at 45 Pa.B. 6818, to the JCD and the Chairpersons of the House Committee and the Senate Rules and Executive Nominations Committee for review and comment.

Under section 5(c) of the act, the Commission is required submit to the JCD and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Commission considered all comments from the JCD, the House Committee and the public.

Under section 5.1(j.2) of the act, on February 28, 2018, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, the JCD met on March 1, 2018, and approved this final-form rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this order has been given under section 201 of the CDL (45 P.S. § 1201), section 202 of the CDL and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 1 Pa. Code Chapters 301, 303, 305, 307, 309, 311, 311a and 315, are amended by amending §§ 301.1—301.3, 301.7, 301.9, 303.1, 305.1, 307.2, 307.3, 307.3a, 309.1, 311.1, 311.4, 311.5, 311a.1—311a.5, 311a.7, 315.1 and 315.2 to read as set forth in Annex A.

(b) The Chairperson of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GEORGE D. BEDWICK,
Chairperson

(*Editor's Note:* See 48 Pa.B. 1658 (March 17, 2018) for the JCD's approval order.)

Fiscal Note: Fiscal Note 70-9 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 1. GENERAL PROVISIONS

PART III. INDEPENDENT REGULATORY REVIEW COMMISSION

CHAPTER 301. GENERAL PROVISIONS

§ 301.1. Definitions.

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

Act—The Regulatory Review Act (71 P.S. §§ 745.1—745.14).

Agency—As defined in section 3 of the act (71 P.S. § 745.3).

Blackout period—The 48-hour period immediately preceding the call to order of the public meeting.

CDL—Commonwealth Documents Law—The act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1102 and 1201—1208) and 45 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents).

Comments—Written statements delivered to the agency or Commission supporting, opposing or recommending changes to a final, proposed or existing regulation which is subject to review by the Commission. Comments do not include previously published or copyrighted material.

Commission comments—Objections, recommendations, statements or questions relating to a proposed regulation issued by the Commission in accordance with section 5(g) of the act (71 P.S. § 745.5(g)).

Commission—The Independent Regulatory Review Commission.

Committee—As defined in section 3 of the act.

Committee action—Approval or disapproval of a regulation, or notice that the committee intends to review the regulation under section 5.1(j.2) of the act (71 P.S. § 745.5.a(j.2)); or reporting of a concurrent resolution under section 7(d) of the act (71 P.S. § 745.7(d)), within the time allotted by the act.

Commonwealth Attorneys Act—The act of October 15, 1980 (P.L. 950, No. 164) (71 P.S. §§ 732-101—732-506).

Deemed approved by the Commission—The approval of a regulation by the Commission by operation of law when the Commission has not approved or disapproved the regulation, in accordance with section 5.1(e) of the act. The approval of an agency report by operation of law when the Commission has not approved or disapproved the agency report, in accordance with section 7(c.1) of the act.

Deemed approved by a committee—The approval of a regulation by a committee by operation of law when the committee has not taken action on a regulation under section 5.1(j.2) or 7(d) of the act.

Delivery—

(i) The deposit of regulations, correspondence or other documents with the Commission or committees through postal or other delivery service, hand delivery, email or facsimile.

(ii) The deposit of orders, Commission comments, public comments, correspondence or other documents with agencies, committees or persons through postal or other delivery service, hand delivery, e-mail or facsimile.

Embargoed material—

(i) Comments pertaining to a regulation on the agenda for the Commission's public meeting delivered during the blackout period by anyone, except comments from the agency or members of the General Assembly and their staffs.

(ii) The term does not include comments submitted by any person at the request of the Commission.

End of the legislative session—The adjournment sine die or the expiration of the regular legislative session in an even-numbered year.

Existing regulation—An enforceable regulation codified in the *Pennsylvania Code*.

Face sheet—A form accompanying a regulation for filing documents with the LRB, completed in accordance with

the regulations of the Joint House Committee on Documents. See 1 Pa. Code § 13.12 (relating to requirements as to form and size).

Final regulation—A final-form or final-omitted regulation.

Final-form regulation—As defined in section 3 of the act.

Final-omitted regulation—As defined in section 3 of the act.

Form letters—Letters which contain verbatim text.

LRB—The Legislative Reference Bureau of the Commonwealth.

Order—The statement of the Commission’s findings and action on a final regulation, which is not subject to appeal.

Preamble—A part of the regulatory package that provides information about the following:

(i) A proposed regulation that includes the effective date, statutory authority, purpose and explanation of the regulation, a description of the amendments to the regulation, fiscal impact, contact person and details regarding the public comment period.

(ii) A final regulation that includes the effective date, statutory authority, purpose and explanation of the regulation, a description of any amendments made from the proposed stage, fiscal impact, contact person and a response to all comments received, unless that response is provided in a separate document.

(iii) A final-omitted regulation that includes the effective date, statutory authority, purpose and explanation of the regulation, legal authority for omitting the proposed stage, a description of any amendments to the regulation, fiscal impact and contact person.

Promulgate—As defined in section 3 of the act.

Proposed regulation—As defined in section 3 of the act.

Public meeting—The scheduled meeting of the Commission conducted in accordance with the Sunshine Act.

Regulation—As defined in section 3 of the act.

Regulatory analysis form—The document accompanying a regulation that contains the information required under section 5(a) of the act.

Regulatory review criteria—The criteria delineated in section 5.2(a) and (b) of the act.

Sunshine Act—65 Pa.C.S. §§ 701—716.

Transmittal sheet—The form accompanying a regulation which lists the regulation number, the title of the regulation, the agency promulgating the regulation, the type of regulation, the date of delivery and the signatures of the persons receiving the regulation on behalf of the committees, the Commission, the Attorney General (for proposed and final-omitted regulations) and the LRB (for proposed regulations).

Web site—The Commission’s web site at www.irrc.state.pa.us.

Withdrawal—As defined in section 3 of the act.

§ 301.2. Regulation files.

(a) The Commission will retain regulation files for no less than the time period in the following schedule:

(1) *Promulgated regulations.* Four years after the date of promulgation.

(2) *Withdrawn or deemed withdrawn regulations.* Four years after the date of delivery of the proposed or final-omitted regulation to the Commission.

(3) *Final regulations which are not promulgated.* Four years after the date of delivery to the Commission.

(b) Regulation files will include the following materials:

(1) The original regulatory analysis form and the original regulation.

(2) Comments received from the time a proposed or final regulation is delivered until the Commission takes action on the regulation under section 5.1(e), (g)(3) or 7(c.1) of the act (71 P.S. § 745.5a(e), (g)(3) and 7(c.1)), or until the regulation is withdrawn or deemed withdrawn.

(3) Commission comments.

(4) Commission orders.

(c) After the Commission takes final action on a regulation under section 5.1(e), (g)(3) or 7(c.1) of the act or the regulation is withdrawn or deemed withdrawn, the Commission’s regulation file will be closed.

(d) Any person may examine or obtain copies of the materials contained in regulation files. The Commission will make regulation files available by doing one or more of the following:

(1) Posting on the Commission’s web site.

(2) Sending by means of e-mail or first class mail upon request.

(3) Allowing inspection in the Commission office during normal business hours upon request.

(e) The Commission may charge reasonable fees for copying, certifying and mailing material contained in a regulation file. Fees are established in the Commission’s Right to Know Law Policy, which is available in the Commission’s office and posted on the web site.

§ 301.3. Determination of date and time of delivery of comments and documents.

(a) The Commission will determine the date and time of delivery of comments and documents as follows:

(1) *E-mail.* The time and date of receipt by the Commission as indicated on the Commission’s computer system.

(2) *Fax.* The time and date of receipt by the Commission as indicated on the transmittal report generated by the Commission’s facsimile machine.

(3) *Postal or other delivery service.* As indicated on the Commission’s time and date stamp.

(4) *Hand delivery.* As indicated on the Commission’s time and date stamp.

(b) If the commentator requests confirmation of delivery of hand-carried comments or documents, the commentator shall include an additional copy of the first page. The Commission will stamp the copy with the date and time of delivery and return it to the commentator. If the commentator requests confirmation of a document delivered through the postal or another delivery service, the commentator shall include an additional copy of the first page and a stamped, self-addressed envelope. The Commission will stamp the additional copy with the date and time of delivery and mail it to the commentator.

(c) If the commentator requests confirmation of delivery of e-mailed or faxed comments or documents, the Commission will fax or e-mail confirmation of delivery to the commentator.

(d) The commentator shall have the responsibility to obtain confirmation that comments or documents were delivered prior to the blackout period.

§ 301.7. Withdrawal of a regulation.

(a) If an agency withdraws or is deemed to have withdrawn a regulation, the Commission and the committees will cease their review of the regulation and will not take further action on the regulation.

(b) If the agency withdraws a proposed regulation, but subsequently desires to proceed with promulgation, the agency shall deliver a new proposed regulation in accordance with § 305.1 (relating to delivery of a proposed regulation).

(c) If the agency withdraws a final-form regulation after delivery to the Commission and the committees and before the Commission's public meeting, but subsequently desires to proceed with promulgation, the agency may deliver a new final-form regulation in accordance with § 307.2 (relating to delivery of a final-form regulation) within 2 years from the close of the public comment period.

(d) If the agency desires to proceed with promulgation of a withdrawn regulation but does not submit a new final-form regulation within 2 years from the close of the public comment period, the agency shall deliver a new proposed regulation.

§ 301.9. Procedure for public hearings.

(a) The Commission may schedule public hearings on any matter before the Commission, including those that are related to a proposed, a final or an existing regulation under review.

(b) Notice of a public hearing will be published in accordance with the Sunshine Act. The notice will include the date and time of the public hearing, the subject matter of the public hearing and the address where the public hearing will take place.

(c) The chairperson will designate a hearing officer to preside at the public hearing. The hearing officer will be charged with preserving order during the public hearing. The hearing officer may determine the agenda, the order of commentators and the time allotted to each commentator.

(d) When participating at a public hearing, commentators shall bring ten written copies of their comments and supporting documents to the hearing.

CHAPTER 303. MEETINGS OF THE COMMISSION

§ 303.1. Notice of Commission public meetings; participation; minutes.

(a) The Commission will give notice of public meetings in accordance with the Sunshine Act.

(b) The Commission will deliver notice of a public meeting to the committees and agencies whose regulations are on the agenda at least 10 calendar days prior to the meeting date.

(c) Public meetings are conducted in compliance with the Sunshine Act.

(d) The Commission will make minutes of public meetings available by doing one or more of the following:

(1) Posting on the Commission's web site.

(2) Sending by means of e-mail or First Class Mail upon request.

(3) Allowing inspection in the Commission office during normal business hours upon request.

(e) The Commission may charge reasonable fees for copying, certifying and mailing minutes. Fees are established in the Commission's Right to Know Law Policy, which is available in the Commission's office and posted on the web site.

CHAPTER 305. PROCEDURES FOR DELIVERY AND REVIEW OF PROPOSED REGULATIONS

§ 305.1. Delivery of a proposed regulation.

(a) The agency shall deliver a proposed regulation to the LRB, the committees and the Commission on the same date.

(b) The agency shall include the following material with the regulation:

(1) A completed regulatory analysis form.

(2) A face sheet signed by the agency head, the Office of Attorney General and the Office of General Counsel or the chief counsel of an independent agency.

(3) A transmittal sheet signed by the committees and the LRB.

(4) The preamble, which must include the information in the definition of "preamble" in § 301.1 (relating to definitions).

(5) Instructions for submitting public comments to the agency.

(6) The text of the proposed regulation.

CHAPTER 307. PROCEDURES FOR DELIVERY AND REVIEW OF FINAL REGULATIONS

§ 307.2. Delivery of a final-form regulation.

(a) The agency shall deliver a final-form regulation to the committees and the Commission on the same date.

(b) On the same date that the agency submits the regulation to the committees and the Commission, the agency shall send, by first class mail or e-mail, a notice of submission and a copy of the text of the final-form regulation or a copy of all changes to the proposed regulation which are incorporated into the final-form regulation, to those commentators who requested information on the final-form regulation.

(c) The agency shall include the following documents with the regulation:

(1) A completed regulatory analysis form relating to the final-form regulation updated and revised to correspond with changes made to the proposed regulation.

(2) A face sheet signed by the agency head and the Office of General Counsel or chief counsel of an independent agency.

(3) A transmittal sheet signed by the committees.

(4) The agency's response to the comments received. This response may be included in the preamble or in a separate document submitted with the regulation.

(5) The preamble, which must include a summary of the changes made to the proposed regulation and the information in the definition of "preamble" in § 301.1 (relating to definitions).

(6) The names and addresses of commentators who requested additional information on the final-form regulation or a statement that no commentator requested additional information.

(7) The text of the final-form regulation.

(d) Until the date the Commission takes final action on the regulation, the agency shall deliver to the Commission and committees copies of comments within 5 business days of receipt. If a comment indicates that a copy has been sent to the Commission and the agency verifies that the comment was delivered to the Commission, the agency is not required to deliver an additional copy of that comment. The agency may deliver one copy of form letters received and indicate the number of copies of that form letter it has received as of the date of delivery.

§ 307.3. Delivery of a final-omitted regulation.

(a) The agency shall deliver a final-omitted regulation to the committees, the Attorney General and the Commission on the same date.

(b) The agency shall include the following documents with the regulation:

(1) A completed regulatory analysis form.

(2) A face sheet signed by the agency head and the Office of General Counsel or chief counsel of an independent agency.

(3) A transmittal sheet signed by the committees and the Office of Attorney General.

(4) The preamble, which must include the information in the definition of “preamble” in § 301.1 (relating to definitions).

(5) The text of the final-omitted regulation.

(c) Until the date the Commission takes final action on the regulation, the agency shall deliver to the Commission and committees copies of comments within 5 business days of receipt. If a comment indicates that a copy has been sent to the Commission and the agency verifies that the comment was delivered to the Commission, the agency is not required to deliver an additional copy of that comment. The agency may deliver one copy of form letters received and indicate the number of copies of that form letter it has received as of the date of delivery.

§ 307.3a. Formatting the text of a final regulation.

(a) When preparing and formatting the text of the final-form regulation, the agency shall use as its source document the proposed regulation as published by the LRB in the *Pennsylvania Bulletin*.

(b) If the proposed regulation was published in the format prescribed in § 305.1a(a) (relating to formatting the text of a proposed regulation) as an amendment to an existing regulation, amendments in the final-form regulation must be illustrated as follows:

(1) Strikeout type to indicate language in the existing or proposed regulation which is being deleted.

(2) Capital letters to indicate new language which is being added to the final-form regulation which was not included in the existing or proposed regulation.

(c) If the entire proposed regulation was published in the format in § 305.1a(b) as new, and not an amendment to an existing regulation, amendments in the final-form regulation shall be illustrated as follows:

(1) Brackets to indicate language in the proposed regulation which is being deleted.

(2) Underscoring or bolding to indicate new language which is being added in the final-form regulation.

(d) If the entire final-omitted regulation is new, and not an amendment to an existing regulation, the formatting described in subsections (b) and (c) is not required.

(e) If the final-omitted regulation is an amendment to an existing regulation, amendments in the final-omitted regulation must be illustrated as follows:

(1) Brackets to indicate language in the existing regulation which is being deleted.

(2) Underscoring or bolding to indicate new language which is being added in the final-omitted regulation.

(f) If there are extenuating circumstances that may prevent an agency from using the requirements of this section, the agency shall contact the Commission to discuss alternative formatting methods.

CHAPTER 309. ACTION ON REGULATIONS

§ 309.1. Commission and committee action on a final regulation.

(a) The Commission may approve or disapprove a final regulation by majority vote of members participating.

(b) If a committee does not take action on a regulation under section 5.1(j.2) or (j.3) of the act (71 P.S. § 745.5a(j.2) and (j.3)), the committee is deemed to have approved the regulation.

(c) The Commission is deemed to have approved a final-form regulation under section 5(g) of the act (71 P.S. § 745.5(g)) and section 5.1(e) of the act if one of the following conditions applies:

(1) All of the following events occur:

(i) The Commission has not issued comments relating to any portion of the regulation as proposed within the time provided for its review.

(ii) The agency has not made changes in the final-form regulation which were not included in the proposed regulation.

(iii) A committee has not conveyed to the Commission or agency any recommendations, comments or objections after the expiration of the Commission comment period under section 5(g) of the act but within the time frame for committee review under section 5.1(j.2) of the act.

(iv) The agency has complied with the act and this part.

(v) The Commission has a public meeting no less than 30 days after receipt of the final-form regulation.

(2) The Commission does not take action within the time period established under § 307.6 (relating to time period for Commission review of a final regulation).

(3) The Commission’s vote results in a tie and the time for the Commission’s review expires.

(d) The Commission will notify the LRB, the committees and the agency of its action on or deemed approval of a regulation.

(e) When the committees and the Commission approve or are deemed to have approved a regulation, the agency may proceed with promulgation of the regulation.

CHAPTER 311. PROCEDURES FOR REVIEW OF DISAPPROVED FINAL REGULATIONS

§ 311.1. Commission disapproval of a final regulation.

(a) If the Commission disapproves a final regulation, the Commission will issue a disapproval order specifying the regulatory review criteria that the regulation has not met.

(b) The Commission will deliver its disapproval order to the LRB, the committees, the agency and the Attorney General. The Commission will notify commentators listed by the agency as having requested information on the final regulation by delivery of the disapproval order or by publication of a legal notice under 45 Pa.C.S. Chapter 3 (relating to Newspaper Advertising Act) or on the web site.

(c) The Commission's disapproval order shall continue the bar on the promulgation of the regulation until the review provided under section 7(d) of the act (71 P.S. § 745.7(d)) and this chapter is completed.

§ 311.4. Report for a disapproved regulation submitted with revisions.

If the agency chooses to revise or modify the final regulation under § 311.2(a)(2) (relating to response by an agency to Commission disapproval), the report must contain the following:

- (1) A completed regulatory analysis form.
- (2) The revised final regulation, formatted in accordance with § 307.3a (relating to formatting the text of a final regulation).
- (3) The Commission's disapproval order.
- (4) A detailed explanation of how the revisions respond to the Commission's disapproval order.
- (5) A signed transmittal sheet indicating that the report was delivered to the committees on the same day on which it was delivered to the Commission.

§ 311.5. Subsequent review of disapproved regulation.

(a) The Commission may have until its next scheduled meeting which occurs no less than 15 days from receipt of the report to approve or disapprove the report. The Commission will calculate its review period as beginning the day after receipt of the report.

(b) If the Commission does not disapprove the report, the Commission is deemed to have approved the report.

(c) Upon receipt of the Commission's order approving or disapproving the report, or at the expiration of the Commission's review period if the Commission does not act on the report or deliver its order within the time prescribed by section 7(c.1) of the act (71 P.S. § 745.7(c.1)), the committees will have 14 days to review the report in accordance with section 7(d) of the act.

(d) If, by the expiration of the 14-day period, neither committee reports a concurrent resolution, the committees will be deemed to have approved the report.

(e) If the committees and the Commission approve or are deemed to have approved the report, the agency may proceed with promulgation of the revised final regulation.

(f) If a concurrent resolution is reported, the bar on the promulgation of the final regulation shall continue until the review provided under section 7(d) of the act is completed.

(g) If a concurrent resolution is adopted by the House and the Senate and the Governor approves or is deemed to have approved the resolution, or if the Governor's veto of the resolution is overridden, in accordance with section 7(d) of the act the agency shall be permanently barred from promulgating the regulation.

CHAPTER 311a. DELIVERY OF REGULATIONS, COMMENTS, REPORTS AND ORDERS BEFORE AND AFTER THE END OF THE LEGISLATIVE SESSION

§ 311a.1. Delivery of a proposed regulation after the end of the legislative session.

(a) An agency may deliver a proposed regulation and required material to the Commission and the LRB after the end of the legislative session. The public comment period will begin upon publication of the proposed regulation in the *Pennsylvania Bulletin*. The Commission may submit comments within the time frame in § 305.3 (relating to Commission comments).

(b) An agency may not deliver the proposed regulation and required material to the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the agency does not deliver the proposed regulation and required material to the committees on the fourth Monday in January or by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, whichever is later, the regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency shall submit a new proposed regulation to the Commission, committees and the LRB in accordance with section 5(a) of the act (71 P.S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).

(d) The agency is not required to redeliver the regulation to the Commission when it delivers the regulation to the committees.

(e) The agency shall deliver the transmittal sheet signed by the committees to the Commission on the same day that it delivers the regulation to the committees.

(f) The agency may not make any changes in the regulation after delivery to the Commission. If the agency wants to amend the proposed regulation prior to delivery to the committees, the agency shall withdraw the regulation from the Commission and submit a new proposed regulation to the Commission, committees and the LRB in accordance with section 5(a) of the act and § 305.1.

§ 311a.2. Delivery of public comments after the end of the legislative session.

(a) The agency shall deliver public comments to the Commission in accordance with § 305.2 (relating to delivery of comments and information by an agency; notification to commentators).

(b) The agency may not deliver public comments to the committees which are received after the end of the legislative session until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the agency does not deliver public comments received after the end of the legislative session to the committees on the fourth Monday in January or by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, whichever is later, the agency may be in violation of the act and this part, under section 5.2(b)(6) of the act (71 P.S. § 745.5b(b)(6)).

§ 311a.3. Delivery of Commission comments after the end of the legislative session.

(a) The Commission will deliver comments to the agency issued after the end of the legislative session in accordance with section 5(g) of the act (71 P.S. § 745.5(g)).

(b) The Commission may not deliver Commission comments issued after the end of the legislative session to the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) The Commission will deliver Commission comments issued after the end of the legislative session to the committees on the fourth Monday in January or by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, whichever is later.

§ 311a.4. Delivery of a final regulation within 20 days before the end of the legislative session.

(a) An agency may deliver a final regulation to the Commission and the committees up to the end of the legislative session.

(b) If the end of the legislative session occurs before the committees have had at least 20 days to review the regulation, the agency shall redeliver the final regulation and required material to the Commission and committees in the next legislative session.

(c) The agency may not redeliver the final regulation and required material to the Commission and the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(d) If the agency does not redeliver the final regulation on the fourth Monday in January or by the second Monday after the publication of both committee designations in the *Pennsylvania Bulletin*, whichever is later, the regulation shall be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency may submit one of the following:

(1) A new proposed regulation to the Commission, committees and the LRB in accordance with section 5(a) of the act (71 P.S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).

(2) A new final-form regulation to the Commission and the committees in accordance with section 5.1(a) of the act (71 P.S. § 745.5a(a)) and § 307.2 (relating to delivery of a final-form regulation).

(3) A final-omitted regulation to the Commission, the committees and the Attorney General in accordance with section 5.1(c) of the act and § 307.3 (relating to delivery of a final-omitted regulation).

§ 311a.5. Delivery of a final regulation after the end of the legislative session.

(a) An agency may not deliver a final regulation and required material to the Commission and the committees after the end of the legislative session.

(b) The agency may not deliver the final regulation and required material to the Commission and the committees until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the 2-year period for promulgation of a final-form regulation under section 5.1(a) of the act (71 P.S.

§ 745.5(a)) and § 307.1 (relating to two-year period for promulgation) expires after the end of the legislative session, the agency shall deliver the final-form regulation and required material to the Commission and the committees on the fourth Monday in January or by the second Monday after publication of both committee designations in the *Pennsylvania Bulletin*, whichever is later. If the agency does not deliver the final-form regulation and required material by this date, the regulation will be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency may submit one of the following:

(1) A new proposed regulation to the Commission, committees and the LRB in accordance with section 5(a) of the act (71 P.S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation).

(2) A final-omitted regulation to the Commission, the committees and the Attorney General in accordance with section 5.1(c) of the act and § 307.3 (relating to delivery of a final-omitted regulation).

§ 311a.7. Delivery of the report for subsequent review of a disapproved regulation.

(a) An agency may not deliver its report and required material under section 7(b) or (c) of the act (71 P.S. § 745.7(b) and (c)) and § 311.3 or § 311.4 (relating to report for a disapproved regulation submitted without revisions or modifications; and report for a disapproved regulation submitted with revisions) after the end of the legislative session.

(b) The agency may not deliver its report and required material until the fourth Monday in January of the next year or until both committees have been designated in the next legislative session, whichever is later.

(c) If the agency does not deliver its report and required material on the fourth Monday in January or by the second Monday after both committee designations have been published in the *Pennsylvania Bulletin*, whichever is later, the disapproved final regulation will be deemed withdrawn. If the agency wants to promulgate the regulation after the regulation has been deemed withdrawn, the agency shall submit either a new proposed regulation to the Commission, committees and the LRB in accordance with section 5(a) of the act (71 P.S. § 745.5(a)) and § 305.1 (relating to delivery of a proposed regulation), a new final-form regulation to the Commission and the committees in accordance with section 5.1(a) of the act (71 P.S. § 745.5a(a)) and § 307.2 (relating to delivery of a final-form regulation), or a final-omitted regulation to the Commission, the committees and the Attorney General in accordance with section 5.1(c) of the act and § 307.3 (relating to delivery of a final-omitted regulation).

CHAPTER 315. EXISTING REGULATIONS AND PUBLISHED OR UNPUBLISHED DOCUMENTS

§ 315.1. Review of an existing regulation.

(a) The Commission, on its own motion or at the request of any person or member of the General Assembly, may review an existing regulation which has been in effect for at least 3 years, under section 8.1 of the act (71 P.S. § 745.8a). If a committee of the Senate or House of Representatives requests the review, the Commission will assign it high priority.

(b) Upon delivery of a request to review an existing regulation, the Commission will initiate a preliminary review to determine whether further review is warranted.

(c) If the Commission determines that further review is not warranted, the matter will be closed. The Commission will notify the person or entity requesting the review of the existing regulation that no further action will be taken.

(d) If it is determined that further review is warranted, the Commission will notify the agency of the issues that have been raised and request a written response.

(e) After review of the agency's response and other relevant material, the Commission will issue a report setting forth its findings, conclusions or recommendations.

(f) The Commission will deliver its report to the agency, the committees, the Governor and the Attorney General. The Commission's report may include recommendations for amendment of the statute that provides statutory authority for the regulation.

§ 315.2. Review of a published or an unpublished document.

If the Commission finds that a published or unpublished document should be promulgated as a regulation, the Commission will present its finding to the Joint House Committee on Documents. The Joint House Committee on Documents shall determine whether the document should be promulgated as a regulation, and may order the agency to promulgate the document as a regulation within 180 days, or to desist from using the document in its business.

[Pa.B. Doc. No. 18-563. Filed for public inspection April 13, 2018, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

Code of Ethics

The State Board of Occupational Therapy Education and Licensure (Board) amends § 42.24 (relating to code of ethics) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(b) of the Occupational Therapy Practice Act (act) (63 P.S. § 1505(b)) authorizes the Board to promulgate and adopt rules and regulations not inconsistent with the act as it deems necessary for the performance of its duties and the proper administration of the act.

Background and Purpose

Section 16(a) of the act (63 P.S. § 1516(a)) authorizes the Board to discipline licensees who are guilty of unprofessional conduct which has or is likely to endanger the health, welfare or safety of the public. Section 16(a)(2) of the act further defines "unprofessional conduct" to include conduct that violates a code of ethics adopted by the Board. In 1992, the Board adopted a code of ethics in § 42.24 which was essentially an adaptation and codification of the code of ethics promulgated by the American

Occupational Therapy Association (AOTA) in 1988. In 2001, the Board amended § 42.24 to reflect the 1994 version of the AOTA code of ethics.

Beginning in 2011, the Board undertook a review of § 42.24 and compared it to the AOTA *Occupational Therapy Code of Ethics and Ethics Standards* (Code and Standards) promulgated in 2010. As a result of its review, the Board determined that it should update § 42.24 by adopting the 2010 AOTA Code and Standards and voted in 2013 to begin the process to amend § 42.24. While the proposed amendment was pending, AOTA updated its Code of Ethics in 2015. At its June 3, 2015, meeting, the Board reviewed the AOTA *Occupational Therapy Code of Ethics (2015)* (2015 AOTA Code of Ethics), which the Board found to be the minimum standard of ethical conduct for occupational therapists and occupational therapy assistants in this Commonwealth, and voted to revise the pending proposed amendment to adopt the 2015 AOTA Code of Ethics. The 2015 AOTA Code of Ethics not only reflects the Board's view of ethical practice, but will also keep the Commonwealth's ethical standards consistent with the National standards. Rather than copy the standards verbatim into § 42.24, the Board adopts the 2015 AOTA Code of Ethics by reference. A copy of the 2015 AOTA Code of Ethics is available on the AOTA web site at <https://ajot.aota.org/article.aspx?articleid=2442685> and was attached to the Regulatory Analysis Form provided to the Independent Regulatory Review Commission (IRRC) with this final-form rulemaking. A copy is available upon request. The Board intends to place a copy of the 2015 AOTA Code of Ethics on its web site following publication of this final-form rulemaking.

Description of Amendments

Former § 42.24 is deleted in its entirety. In its place, the Board adopts new subsections (a)—(c).

Subsection (a) provides that licensees shall adhere to the 2015 AOTA Code of Ethics, except as provided in subsections (b) and (c). Subsection (b) requires licensees to adhere to Federal and State law whenever there is a conflict between the 2015 AOTA Code of Ethics and Federal and State law. Likewise, subsection (c) requires licensees to adhere to Chapter 42 whenever there is a conflict between the 2015 AOTA Code of Ethics and the Board's regulations.

If the AOTA later updates its Code of Ethics, the Board will review future updates to determine whether to adopt them. If the Board decides not to adopt future updates to the AOTA Code of Ethics, the Board may decide to retain the 2015 AOTA Code of Ethics or adopt other ethical standards.

Comments on the Proposed Rulemaking

Notice of proposed rulemaking was published at 46 Pa.B. 886 (February 20, 2016), with a 30-day public comment period. The Board did not receive any public comments. IRRC reviewed the proposed rulemaking and did not have objections, comments or recommendations. The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Fiscal Impact and Paperwork Requirements

There are only minimal fiscal impacts and paperwork requirements associated with this final-form rulemaking. Following publication of this final-form rulemaking, the Board will place a copy of the 2015 AOTA Code of Ethics

on its web site. The Board will also include in its initial application, renewal and reactivation forms information regarding how to access the 2015 AOTA Code of Ethics. The cost of doing so will be de minimis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 5, 2016, the Board submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 886, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received during the public comment period, as well as other documents when requested. No comments were submitted on the proposed rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on February 21, 2018, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective February 21, 2018.

Additional Information

Further information may be obtained by contacting Carol Niner, Board Administrator, State Board of Occupational Therapy Education and Licensure, P.O. Box 2649, Harrisburg, PA 17105-2649. Reference No. 16A-6710 (Code of Ethics) when requesting information.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 46 Pa.B. 886.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending § 42.24 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

KERRI L. HAMPLE, OTD, OTR/L,
Chairperson

(Editor's Note: See 48 Pa.B. 1482 (March 10, 2018) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-6710 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

MINIMUM STANDARDS OF PRACTICE

§ 42.24. Code of ethics.

(a) Licensees shall adhere to the American Occupational Therapy Association (AOTA) *Occupational Therapy Code of Ethics (2015)*, except as provided in subsections (b) and (c).

(b) Whenever there is a conflict between the AOTA *Occupational Therapy Code of Ethics (2015)* and Federal or State law, licensees shall adhere to Federal and State law.

(c) Whenever there is a conflict between the AOTA *Occupational Therapy Code of Ethics (2015)* and this chapter, licensees shall adhere to this chapter.

[Pa.B. Doc. No. 18-564. Filed for public inspection April 13, 2018, 9:00 a.m.]