

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

INDEPENDENT REGULATORY REVIEW COMMISSION

SECTION I: PROFILE

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number: 16

Identification Number: 16A-6804

IRRC Number:

2839

(3) Short Title:

Schedule of Civil Penalties – Audiologists, Speech-Language Pathologists and Teachers of the Hearing Impaired.

(4) PA Code Cite:

49 Pa. Code § 43b.16a.

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Cynthia Montgomery, Regulatory Counsel

Department of State (717) 783-7200

Secondary Contact: Joyce McKeever, Deputy Chief Counsel

Department of State (717) 783-7200

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposal would codify the schedule of civil penalties that the Commissioner previously published pertaining to practice on a lapsed license and add a schedule of civil penalties for failing to complete mandatory continuing education, as required by the Board's regulations at § 45.501 (relating to credit hour requirements).

(9) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The date by which the agency must receive public comments: | 30 days after publication as proposed. |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Fall 2010 |
| D. The expected effective date of the final-form regulation: | Upon publication of the final-form rulemaking |
| E. The date by which compliance with the final-form regulation will be required: | Upon publication of the final-form rulemaking |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

(10) Provide the schedule for continual review of the regulation.

The Board continually monitors its regulations under Executive Order 1996-1.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (the Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition, and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation will improve the efficiency of the Board in handling violations for which a civil penalty is the appropriate sanction. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. Citations are far more cost effective than formal proceedings for minor violations where the Board has determined that a civil penalty alone is the appropriate sanction. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies, references were used to justify this regulation.

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(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulation. The laws and regulations of the Board will be enforced with or without these regulations. The proposed regulation will simply make the enforcement more efficient and less costly to both the Board and the licensees who are found to be in violation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All licensed audiologists, speech-pathologists and teachers of the hearing impaired will be required to comply with this regulation. The Board currently has the following active licensee counts:

Audiologists – 887

Speech-pathologists – 5,809

Teachers of the Hearing Impaired – 100

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed regulation would impose no additional costs on the regulated community, because licensees who violate the act or regulations of the Board are already subject to the imposition of administrative civil penalties through the more formal administrative process. The use of civil penalty schedules and the summary citation process allows violations to be prosecuted more efficiently. Therefore, licensees may realize a savings in the form of time and reduced legal fees because of the use of the less formal citation process.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Not applicable.

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(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board will realize minimal savings by utilizing the more efficient citation summary process, rather than the more costly formal administrative disciplinary proceedings. Since the Board began participating in the Act 48 citation program, only six citations have been issued – all for lapsed license cases. The Board anticipates some increased use of the citation process every two years or so in connection with the biennial audits of continuing education. The continuing education requirement for Speech-Language and Hearing licensees began with the August 2008 – July 2010 biennial period. Therefore, the Board has no historical information to indicate the number of continuing education violations to expect.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 06-07 (actual)	FY -2 FY 07-08 (actual)	FY -1 FY 08-09 (estimated)	Current FY FY 09-10 (budgeted)
State Board of Examiners in Speech-Language and Hearing	\$148,192.89	\$158,082.60	\$147,353.43	\$190,000.00

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The minimal costs would be outweighed by the increased efficiency in resolving disciplinary matters.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Commissioner originally proposed the idea of using an Act 48 civil penalty schedule for continuing education violations to the Board sometime in 2007 in light of the upcoming continuing education requirement for the 2008-2010 biennial period. A representative of the Commissioner presented a draft of the proposed schedule of civil penalties to the Board at its regularly scheduled public meeting on July 24, 2009, at which time interested parties were apprised of the proposal and invited to comment. The Board voted to approve the draft schedule at that meeting. The intent is to get the schedule in place before the Board commences audits of continuing education in late 2010.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered. The Commissioner believes the use of the Act 48 citation process for lapsed license and continuing education violations is the least burdensome alternative.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The Board is not aware of any federal standards that relate to the issues addressed in this rulemaking.

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(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The civil penalty schedules will not put Pennsylvania at a competitive disadvantage. Licensees who violated the act or regulations of the Board would face enforcement proceedings even in the absence of Act 48 citations or civil penalty schedules. Act 48 citations and the civil penalty schedules merely streamline the process by which administrative action is taken. A survey of surrounding states (NY, NJ, Ohio, and Maryland) indicates that one of them have expedited procedures for minor or uncontested violations. In New York, a committee of the Board has the authority to issue censures or civil penalties up to \$500 for each specification of minor or technical misconduct. See NYED Title VIII, Article 130, Subarticle 3, § 6510(2)(c).

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations of the Board or other state agencies would be affected by these regulations.

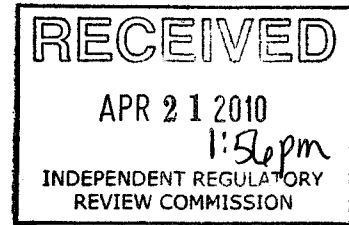
(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The amendments to the civil penalty schedules may lead to the issuance of additional Act 48 citations. This increased citation activity would have to be tracked and reported annually by each board to the General Assembly, as required by Act 48.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board is not aware of any groups with special needs that could be adversely affected by the proposed amendments.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

[Signature]

BY: _____
(DEPUTY ATTORNEY GENERAL)

APR 07 2010

DATE OF APPROVAL

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of State
Bureau of Professional and Occupational Affairs
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-6804

DATE OF ADOPTION: _____

BY: *[Signature]*
Basil L. Merenda

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as to form and legality. Executive or Independent Agencies

[Signature]

BY: Andrew C. Clark

MAR 25 2010

DATE OF APPROVAL

(Deputy General Counsel
(~~Chief Counsel,~~
~~Independent Agency~~
~~Strike inapplicable~~
~~title~~)

- Check if applicable
Copy not approved.
Objections attached.
- Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
49 PA. CODE § 43b.16a
SCHEDULE OF CIVIL PENALTIES - AUDIOLOGISTS, SPEECH-LANGUAGE PATHOLOGISTS
AND TEACHERS OF THE HEARING IMPAIRED

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b (relating to Commissioner of Professional and Occupational Affairs) by deleting § 43b.16 (relating to schedule of civil penalties – audiologists, speech-language pathologists and teachers of the hearing impaired – statement of policy) and replacing it with § 43b.16a (relating to schedule of civil penalties – audiologists, speech-language pathologists and teachers of the hearing impaired), to read as set forth in Annex A.

Effective date

The amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (the Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition, and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission relating to the conduct or operation of a business or facility licensed by the board or commission.

Background and purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Boards and Commissions being accomplished through the Act 48 citation process.

The Commissioner had previously published a policy statement on October 23, 2004 (34 Pa.B. 5809) establishing Act 48 civil penalties for practicing as an audiologist, speech-language pathologist or teacher of the hearing impaired on a lapsed license. The Commissioner now proposes to codify and amend the schedule of civil penalties in this proposed rulemaking. Proposed § 43b.16a would add a schedule of civil penalties for failure to complete required continuing education. The civil penalties set forth in proposed § 43b.16a were drafted following discussions between the State Board of

Examiners in Speech-Language and Hearing (Board) and a representative of the Commissioner and were approved by the Board at its meeting on July 24, 2009.

Description of the proposed amendments

The proposal would codify the schedule of civil penalties that the Commissioner previously published pertaining to practice on a lapsed license and add a schedule of civil penalties for failing to complete mandatory continuing education, as required by the Board's regulations at § 45.501 (relating to credit hour requirements).

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

The Board continually monitors the effectiveness of its regulations. As a result, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 2010, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly, and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Bureau of Professional and Occupational Affairs, P.O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Basil L. Merenda,
Commissioner

ANNEX

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL

AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL

PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.16. [Schedule of civil penalties—audiologists, speech-language pathologists and teachers of the hearing impaired—statement of policy] (Reserved).

[STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

Violation under

63 P.S.	Title/Description	Civil Penalty
§ 1706	Practicing as a audiologist, speech-language pathologist, or teacher of the hearing impaired on a lapsed license	0-12 months—\$50 per month Over 12 months—formal action 2 nd offense—formal action]

§ 43b.16a. Schedule of civil penalties—audiologists, speech-lanaguage pathologists and teachers of the hearing impaired.

STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

<u>Violation under</u>	<u>Title/Description</u>	<u>Civil Penalty</u>
<u>63 P.S. § 1706</u>	<u>Practicing as a audiologist, speech- language pathologist, or teacher of the hearing impaired on a lapsed license.</u>	<u>0-12 months—\$50 per month Over 12 months—formal action 2nd offense—formal action</u>
<u>49 Pa. Code § 45.501</u>	<u>Failure to complete 20 hours of approved continuing education during a biennial renewal period.</u>	<u>1st Offense— \$100 per clock hour 2nd Offense—formal action</u>

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7200

April 21, 2010

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
Bureau of Professional and Occupational Affairs
16A-6804

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs pertaining to the schedule of civil penalties for audiologists, speech-language pathologists and teachers of the hearing impaired.

The Commissioner will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Basil L. Merenda".

Basil L. Merenda
Commissioner
Bureau of Professional and Occupational Affairs

BLM/CKM:pah

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
David Green, Counsel
State Board of Examiners of Speech-Language and Hearing
State Board of Examiners of Speech-Language and Hearing

