

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE ARCHITECT LICENSURE BOARD

[49 PA. CODE CH. 9]

Examination Fees

The State Architect Licensure Board (Board) amends Chapter 9 (relating to State Architects Licensure Board), pertaining to increased fees for examinations for licensure to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a), and sections 6(c), 8(c) and 11 of the Architects Licensure Act (act) (63 P. S. §§ 34.6(c), 34.8(c) and 34.11), examinations for licensure shall be prepared and administered by a professional testing organization under contract to the Board. The Board utilizes the examination of the National Council of Architectural Registration Boards (NCARB). The NCARB consists of the licensing boards of all 50 states, the District of Columbia and United States territories and possessions. The NCARB and its Canadian counterpart, the Committee of Canadian Architectural Councils, have jointly developed a computer-based examination to replace the written (pencil and paper) examination known as the ARE. The last 4-day pencil and paper examination was given in June 1996. Beginning in February 1997, the NCARB will offer the ARE in computerized format. The examination will be offered year-round at a network of computer-based test centers by a professional testing organization under contract with the NCARB. Candidates eligible to take the examination under §§ 9.41—9.49a may now schedule any division of the ARE at anytime in any order at available test centers.

These amendments reflect the replacement of the pencil-and-paper ARE with the computer-delivered ARE. The amendments to § 9.3 (relating to fees) establish new examination fees and reflect changes in examination nomenclature. The fees will be the actual charges of NCARB to schedule a candidate to take the examination. The two parts of former Division B: Site Design are combined and renamed Site Planning; former Division C: Building Design has been divided into two parts; Building Planning and Technology. Section 9.118 (relating to NCARB standard examination; transition candidate) is amended to add new subsections which provide for transition candidates who have already started, but not completed the examination process.

In addition, the Board has amended §§ 9.41, 9.82, 9.86, 9.111, 9.113, 9.114, 9.117 and 9.118 to reflect changes in the available dates and locations of the examinations and procedures to schedule and take the examination. Also, the Board has deleted §§ 9.44, 9.85 and 9.112 since these procedures and provisions apply to the written form ARE. Computer-based examinations may be taken at any available location where the ARE is administered.

Public notice of intention to adopt the amendments under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)),

because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by the amendments have been given actual notice of the Board's intention to amend the regulations in advance of final rulemaking under section 204(2) of the CDL.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

Statutory Authority

These amendments are adopted under section 812.1 of The Administrative Code of 1929 and sections 6(c), 8(c) and 11 of the act.

Fiscal Impact and Paperwork Requirements

The amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to pay an increased fee to cover contract costs for the examination.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), a copy of the amendments was submitted on September 13, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the amendments were submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5(c) of the Regulatory Review Act, the amendments were approved by the House and Senate Committees on October 1, 1996, and September 25, 1996, respectively, and by IRRC on October 3, 1996.

Additional Information

Individuals who desire information are invited to submit inquiries to Kathleen Davis, Board Administrator, State Architects Licensure Board, P. O. Box 2649, Harrisburg, PA 17105-2649, telephone number (717) 783-3398.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL is, in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination.

(2) Persons affected by the amendments as adopted by this order have been given actual notice of the Board's intention to amend the regulations in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 9, are amended by amending §§ 9.2, 9.3, 9.41, 9.82, 9.86, 9.111, 9.113, 9.114, 9.117 and 9.118 and by deleting §§ 9.44, 9.85 and 9.112 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DENNIS L. ASTORINO,
President

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: 16A-412. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD

GENERAL PROVISIONS

§ 9.2. Definitions.

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

ARE—Architect Registration Examination

* * * * *

§ 9.3. Fees.

The cost of the ARE is \$980. The fee for each portion is:

Table with 2 columns: Portion Name and Fee. Rows include Predesign (\$92), Site Planning (\$129), Building Planning (\$155), Building Technology (\$145), General Structures (\$108), Lateral Forces (\$79), Mechanical and Electrical (\$83), Material and Methods (\$90), and Construction Documents and Services (\$99).

REGISTRATION BY EXAMINATION

§ 9.41. General requirements.

Registration may be granted to an applicant who has successfully passed the ARE examination. The subject matter is described in detail in the NCARB's Circular of Information No. 2 which is available from the Board or from the National Council of Architectural Registration Boards, 1735 New York Avenue, N. W., Suite 700, Washington, D. C. 20006.

§ 9.44. (Reserved).

APPLICATION PROCEDURES

§ 9.82. Forms and fees.

Application shall be made on forms furnished and in the manner prescribed by the Board. Examination fees shall be payable as specified in the application. Applications shall be submitted to the address indicated on the application and within deadlines established by the Board and specified on the application.

§ 9.85. (Reserved).

§ 9.86. Expiration of application.

After an applicant is notified that he is eligible to sit for examination, the Board will provide the NCARB with written authorization to test the candidate. Under § 9.27 (relating to inactive records), the authorization to test is valid for 5 years from the date a candidate is declared eligible to take the examination.

EXAMINATION

§ 9.111. Dates of examination.

The ARE shall be given on dates and in the form as made available to the Board by the NCARB.

§ 9.112. (Reserved).

§ 9.113. Location of examination site.

The ARE shall be given at locations determined by the Board in conjunction with the NCARB.

§ 9.114. Due notice.

A candidate eligible to take the examination will be given due notice of the date, time and place of examinations and will be given specific preexamination instructions. Candidates may schedule and reschedule examinations in accordance with NCARB Administration Procedures. The NCARB will notify candidates of scheduling deadlines and costs of rescheduling at the time the candidate first is scheduled to take the examination.

§ 9.117. Proctors.

The professional testing organization will arrange for proctors at an examination whose duty it is to administer the conduct of the examination. Candidates will be given specific instructions as to conduct which will be deemed to constitute suspected cheating. A candidate found to have engaged in suspected cheating shall be dismissed from the examination. Proof of the activity may result in disqualification to sit for future examinations.

§ 9.118. NCARB standard examination; transition candidate.

(a) The examination will be the ARE in computer-administered form as adopted by the NCARB.

(b) A candidate who did not successfully complete the entire examination in written format will be required to complete only the computer-administered portions which were not successfully completed in written format.

(1) A candidate who has not passed both parts of Division B: Site Design on or before June 30, 1996, will be required to successfully complete the Site Planning part.

(2) A candidate who did not successfully complete Division C: Building Design on or before June 30, 1996, will be required to successfully complete the Building Planning and Building Technology parts.

[Pa.B. Doc. No. 96-1788. Filed for public inspection October 25, 1996, 9:00 a.m.]

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Examination Fees

The State Board of Certified Real Estate Appraisers (Board) amends § 36.6 (relating to fees) pertaining to increased fees for January 1997 and subsequent examinations for certification of real estate appraisers to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a), examinations for certification shall be prepared and administered by a professional testing organization under contract to the appropriate board. The Board is under contract with Assessment Systems, Inc. Contract costs for examination services will increase beginning January 1997. This amendment will change fees for examinations to candidates for certification in accordance with the new contract costs.

Public notice of intention to amend § 36.6 under procedures in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by this amendment have been given actual notice of the Board's intention to adopt this amendment in advance of final rulemaking under section 204(2) of the CDL.

Compliance with Executive Order 1996-1

The Board reviewed this amendment and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1 (relating to regulatory review and promulgation). This amendment addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

This amendment is adopted under section 812.1 of The Administrative Code of 1929 and sections 5(6) and 9 of the Real Estate Appraisers Certification Act (63 P. S. §§ 457.5(6) and 457.9).

Fiscal Impact and Paperwork Requirements

This amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for the certification examination will be required to pay an increased fee to cover contract costs for the examination.

This amendment will not create new paperwork requirements for the Commonwealth, its political subdivisions or the private sector.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), a copy of this amendment was submitted on September 13, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. At the same time, a copy of this amendment was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5(c) of the Regulatory Review Act, this amendment was approved by the House Professional Licensure Committee on October 1, 1996, approved by the Senate Consumer Protection and Professional Committee on September 25, 1996, and approved by IRRC on October 3, 1996.

Additional Information

Individuals who desire information are invited to submit inquiries to Shirley Klinger, Board Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649. The telephone number of the Board is (717) 783-4866.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulation adopted by this order under the procedures in sections 201 and 202 of the CDL has been omitted under section 204(3) of the CDL because the Board has, for good cause, found that the procedures in sections 201 and 202 of the CDL are, in this circumstance, unnecessary, inasmuch as section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination.

(2) Persons affected by the amendment adopted by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending § 36.6 to read as set forth in Annex A.

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

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

(d) This order shall take effect January 2, 1997.

DAVID J. KING,
Chairperson

(Editor's Note: A document amending § 36.6 appears at 26 Pa.B. 5104 (October 26, 1996).)

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: 16A-705. No fiscal impact; (8) recommends adoption.

Annex

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter A. GENERAL PROVISIONS

GENERAL PROVISIONS

§ 36.6. Fees.

The following is the schedule of fees charged by the Board:

Certification of scores	\$15
Verification of certification	\$10
<i>Certified Real Estate Appraisers</i>	
Application fee	\$55
Examination fee	\$100
Initial certification (if certified on or after 7/1 of odd-numbered years or on or before 6/30 of even numbered years)	\$90
Initial certification (if certified between 7/1 of even numbered years and 6/30 of odd-numbered years)	\$45
Biennial renewal fee	\$105
<i>Certified Pennsylvania Evaluators</i>	
Application fee	\$55
Initial certification (if certified on or after 7/1 of odd-numbered years or on or before 6/30 of even numbered years)	\$90
Initial certification (if certified between 7/1 of even numbered years and 6/30 of odd numbered years)	\$45
Biennial renewal fee	\$105
Reciprocity certification fee	\$25
Temporary practice registration fee	\$25
Examination fee	\$200

[Pa.B. Doc. No. 96-1789. Filed for public inspection October 25, 1996, 9:00 a.m.]

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

General Provisions

The State Board of Certified Real Estate Appraisers (Board), adopts amendments to §§ 36.6 and 36.203 (relating to fees; and application process). The amendments are adopted as proposed at 25 Pa.B. 5614 (December 9, 1995).

Consistent with the established procedures for certified real estate appraisers, the amendments address how long an approved application for the certified Pennsylvania evaluator examination (which authorizes an applicant to report for the certification examination at leisure) is valid, and how long an applicant (whose application has been disapproved) has to correct the deficiencies. The amendments also delete the reapplication fee of \$35 at § 36.6 which is no longer necessary.

Notice of proposed rulemaking was published at 25 Pa.B. 5614. Publication was followed by a 30-day public comment period during which the Board received no comments from the general public.

Neither the House Professional Licensure Committee nor the Senate Consumer Protection and Professional Licensure Committee commented or objected to the amendments. By correspondence dated February 7, 1996, the Independent Regulatory Review Commission (IRRC) advised the Board that it had no objections, comments or suggestions to offer on the amendments.

Fiscal Impact

The amendments should have no negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Paperwork Requirements

The amendments will impose additional paperwork requirements on applicants who fail to report for the certification examination within 1 year from the date of application approval. The amendments will also impose additional paperwork requirements on applicants who fail to correct deficiencies in their applications within 1 year from the date of application disapproval. These applicants will be required to submit a new application form to the Board.

Statutory Authority

The amendments are proposed under the authority of section 3 of the Assessors Certification Act (act) (63 P. S. § 458.3), which empowers the Board to promulgate rules and regulations consistent with the statutes of the Commonwealth to administer and enforce the provisions of the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 25 Pa.B. 5614, to IRRC and to the Chairpersons of the House Professional Licensure Committee and the Senate Committee on Consumer Protection and Professional Licensure.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comments from the public. Subsequent to the close of the public comment period, IRRC advised the Board that it had no objections, comments or suggestions to offer on the amendments. Neither the House Committee nor the Senate Committee offered comments or objections regarding the amendments.

These final-form regulations were approved by the House Committee on October 1, 1996, and by the Senate Committee on September 25, 1996. These amendments were deemed approved under section 5(b.3) of the Regulatory Review Act effective October 4, 1996.

Further Information

Individuals who need information about the amendments may contact Cheryl Lyne, Board Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866.

Findings

The Board finds that:

(1) Public notice of the Board's intention to adopt the regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments adopted by this order are 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 36, are amended by amending §§ 36.6 and 36.203 to read as set forth at 25 Pa.B. 5614.

(b) The Board shall submit this order and 25 Pa.B. 5614 to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 25 Pa.B. 5614 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall be effective upon publication in the *Pennsylvania Bulletin*.

DAVID J. KING,
Chairperson

(Editor's Note: For the text of a document amending § 36.6 see 26 Pa.B. 5103 (October 26, 1996).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996). The amendment of § 36.6 is incorporated in Annex A of this document.)

Fiscal Note: Fiscal Note 16A-703 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 96-1790. Filed for public inspection October 25, 1996, 9:00 a.m.]

**STATE BOARD OF CERTIFIED REAL
ESTATE APPRAISERS
[49 PA. CODE CH. 36]
General Provisions**

The State Board of Certified Real Estate Appraisers (Board) adopts amendments to Chapter 36, Subchapter C (relating to certified Pennsylvania evaluators), to read as set forth in Annex A.

The amendments define two phrases: (1) "ad valorem taxation purposes" and (2) "real estate tax assessment." The phrase "ad valorem taxation purposes" is used in the statutory definition of "assessor" in sections 2 and 8(a) of the Assessors Certification Act (63 P. S. §§ 458.2 and 458.8(a)) (act), within the context of unlawful practices.

The phrase "real estate tax assessment" appears in the Board's definition of "ad valorem taxation purposes."

The Board seeks to clarify with this amendment that assessors and revaluation company personnel who receive certification from the Board as a Pennsylvania evaluator may perform appraisals of real property only in limited circumstances, that is, for tax assessment/governmental purposes.

Notice of proposed rulemaking was published at 25 Pa.B. 5613 (December 9, 1995). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public.

Neither the House Professional Licensure Committee nor the Senate Consumer Protection and Professional Licensure Committee offered comments or objections regarding the amendments.

By correspondence dated February 7, 1996, the Independent Regulatory Review Commission (IRRC) offered two recommendations for the Board's consideration. First, IRRC recommended that the Board's definition for "real estate tax assessment" be revised to incorporate within the definition valuations placed on real property by contractors. IRRC suggested that the phrase be defined to mean: "A valuation placed on real property for governmental purposes by a government employe or revaluation company personnel on contract with a government." The Board agrees with this suggestion and has revised the definition of "real estate tax assessment," accordingly. Second, IRRC suggested that, in addition to the definitions, the Board add a "scope" section to Chapter 36 to clearly define the limitations of appraisal authority of certified Pennsylvania evaluators. IRRC noted that while the preamble explains that the definitions are necessary to appropriately define the scope of appraisal authority of a certified Pennsylvania evaluator, the definitions alone do not make that purpose readily clear. The Board also agrees with this suggestion.

In response to IRRC's latter suggestion, the Board has added § 36.204 to read "Scope of Practice." Under this new section, the Board explains that assessors and revaluation company personnel who receive certification as a certified Pennsylvania evaluator may perform appraisals of real property only in limited circumstances, that is, for tax assessment/governmental purposes.

Finally, in line with the revisions made to the definition of "real estate tax assessment," editorial changes have been made to the definition of "ad valorem taxation purposes." The phrase "governmental employe" where it originally appeared in that definition has been changed to "government employe." The word "property" has been changed to "real property."

Fiscal Impact

The amendments should have no negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Paperwork Requirements

The amendments should not result in additional paperwork requirements.

Statutory Authority

The amendments are adopted under the authority of section 3 of the act (63 P. S. § 458.3). Section 3 of the act empowers the Board to promulgate rules and regulations consistent with the statutes of the Commonwealth to administer and enforce the provisions of the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 25 Pa.B. 5613, to IRRC and to the Chairpersons of the House Committee and the Senate Committee.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comments from the public. Subsequent to the close of the public comment period, IRRC submitted for the Board's consideration comments and suggestions regarding the amendments. The Board has incorporated IRRC's suggestions into this final rule-making package.

These final-form regulations were approved by the the House on October 1, 1996, and by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

Further Information

Individuals who need information about the regulations may contact Cheryl Lyne, Board Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866.

Findings

The Board finds that:

(1) Public notice of the Board's intention to adopt the amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments adopted by this order are 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 36, are amended by amending § 36.201 and adding § 36.204 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 certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall be effective upon publication in the *Pennsylvania Bulletin*.

DAVID J. KING,
Chairman

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: Fiscal Note 16A-702 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS****PART I. DEPARTMENT OF STATE****Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS****CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS****Subchapter C. CERTIFIED PENNSYLVANIA EVALUATORS****GENERAL PROVISIONS****§ 36.201. Definitions.**

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

Ad valorem taxation purposes—The establishment of the value of real property as determined by a government employe or revaluation company personnel on contract with a governmental entity for real estate tax assessment.

Appraisal assessing profession—The body of individuals who are deemed to be qualified to perform ad valorem tax appraisals.

Assessor—A person responsible for the valuation of real property for ad valorem taxation purposes.

Certified Pennsylvania evaluator—An individual who has completed a minimum of 90 hours of basic courses of study covering the appraisal assessing profession and has successfully completed a comprehensive examination covering all phases of the appraisal process and the assessment function established by the assessment statutes of the Commonwealth.

Real estate appraisal—A written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property, for or in expectation of compensation.

Real estate tax assessment—A valuation placed on real property for governmental purposes by a government employe or revaluation company personnel or contract with a government.

§ 36.204. Scope of practice.

Assessors and revaluation company personnel who receive certification as a Pennsylvania evaluator may perform appraisals of real property only in limited circumstances, that is, for tax assessment/governmental purposes.

[Pa.B. Doc. No. 96-1791. Filed for public inspection October 25, 1996, 9:00 a.m.]

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS**[49 PA. CODE CH. 37]****General Revisions**

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) adopts amendments to Chapter 37 (relating to State Registration Board for Professional Engineers, Land Surveyors and

Geologists) to read as set forth in Annex A. The amendments are responsive to the act of December 16, 1992 (P.L. 1151, No. 151) (Act 151) which amended the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. §§ 148—158.2), the chief impact of which was to provide for the regulation of the profession of geology.

The amendments establish consistency with statutory changes by adding language to the Board's existing regulations to reference geologists and geology, respectively, throughout Chapter 37 where references to engineers, land surveyors, engineering and land surveying currently appear. The amendments also provide definitions for "professional geological work" and "responsible position" within the context of Act 151 and set forth the education and experience requirements for licensure as a professional geologist.

Notice of proposed rulemaking was published at 25 Pa.B. 5747 (December 16, 1995). Publication was followed by a 30-day public comment period during which the Board received written comments from William V. Knight, CPG, RPG, Executive Director, American Institute of Professional Geologists, Michael M. Ryan, P.E., Deputy Secretary, Highway Administration and Bryan J. McConnell.

Following the close of the public comment period, the Board received written comments from the Independent Regulatory Review Commission (IRRC). Neither the Senate Consumer Protection and Professional Licensure Committee nor the House Professional Licensure Committee offered comments, suggestions or objections regarding the amendments.

The amendments reflected in Annex A are responsive to the comments and suggestions received from the commentators. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations benefit applicants for licensure as a geologist in this Commonwealth as described in this Preamble and otherwise comply with Executive Order 1996-1. For ease of reference, the Board will address the comments in the order in which the amendments appear.

§ 37.1. Definitions.

Several commentators were confused by the Board's proposed definition for the phrase "professional geological work." Michael M. Ryan, P.E. expressed concern that if the term is interpreted to include soil/foundation studies, professional engineers could be barred from this portion of their work. Mr. Ryan also opined that geological mapping and some laboratory work be considered as professional geological work. Bryan McConnell was of the view that the portion of the definition which excluded from professional geological work, "the routine review of others' work . . ." is an attempt by the Board to exclude individuals that are responsible under statutes and regulations to conduct inspections or reviews of work product of others. IRRC commented as well that it was unsure whether the definition was an attempt to clarify the specific statutory definitions or an attempt by the Board to add new exclusions beyond those listed in the act.

In response to these comments, the Board wishes to clarify that the definition, as proposed, was simply an attempt by the Board to define for applicants the meaning of the phrase, "professional geological work" within the context of section 4.4(b)(3) of the act (63 P.S. § 151.4(b)(3)). Section 4.4(b)(3) of the act requires applicants for licensure to have completed at least 5 years of

professional geological work which includes either a minimum of 3 years of professional geological work under the supervision of a licensed professional geologist (or a qualified geologist who was not licensed) or a minimum of 5 years experience in a responsible position in professional geological work. The Board did not intend by the proposed definition to enlarge statutory language or to bar professional engineers from the ability to perform soil/foundation studies.

To constitute professional geological work, the Board is of the view that individuals who conduct reviews of work performed by others should have a practical basis, built upon a foundation of experience, within which to properly evaluate the work. The Board therefore proposed to advise applicants that the routine review of others' work, or, stated another way, an administrative completeness review, would not be considered to be geological work of a grade or character to qualify one to satisfy the experience requirements for licensure.

Since the Board's initial proposal was confusing to many commentators, the Board has redefined the phrase "professional geological work" to mean, "the performance of geological service or work, including technical completeness reviews or inspections of unfinalized work product, that requires the utilization, application and interpretation of fundamental and practical principles of the geological sciences in the practice of geology. The term does not include routine sampling, laboratory work, or geological drafting." The Board agrees with Mr. Ryan that geological mapping and complex laboratory work can require the utilization, application and interpretation of fundamental and practical principles of geological sciences; however, since the act specifically excludes from acceptable geological experience routine sampling, laboratory work or geological drafting, the Board will review this type of work on a case-by-case basis.

Commenting on the Board's proposed definition of "responsible position," Michael M. Ryan, P.E. recommended that the definition be strengthened to ensure that the level of personal responsibility for a professional geologist is similar to that required of a professional engineer. By way of example, Mr. Ryan suggested that the definition of "responsible charge" where it appears in section 2(i) of the act (63 P.S. § 149(i)), be incorporated into the Board's definition. IRRC commented that the definition as crafted was unclear.

In response to these concerns, the Board has redefined the term "responsible position" to mean, "a job which requires independent judgment, competence and accountability in the performance of professional geological work."

§ 37.36. Eligibility for licensure.

At the suggestion of IRRC, minor changes have been made to § 37.36. Under paragraph (1)(ii), the Board has added the words "undergraduate courses or" between the words "fourth year" and "graduate courses." The addition of the word "or" tracks the statutory language of section 4.4(b)(2) of the act. The addition of the words "undergraduate courses" clarifies that either third or fourth year undergraduate courses or graduate courses will be acceptable to satisfy this education requirement. IRRC noted that Mr. McConnell was apparently confused by the omission of the word "or" in the Board's initial proposal. Mr. McConnell thought that the Board was trying to require additional graduate studies which clearly it was not. The editorial changes should clarify the Board's original intent to track the statutory language.

§ 37.37. References.

Several commentators expressed concern about the Board's proposed reference requirement. William V. Knight, CPG, RPG, commented that many geologists, including most over 50 years of age, have not worked under the supervision or direction of another geologist for several years. Mr. Knight also commented that many geologists who wish to become registered have been in a "responsible position in geological work" for far more than the minimum 5 years required by the act. Mr. Knight pointed out that these geologists may not necessarily be able to provide names of former supervisors under whose supervision they have worked.

IRRC expressed similar concerns and also noted that the proposal did not include language to allow experience acquired before the effective date of Act 151 to be under the supervision of a qualified geologist who was not licensed. IRRC also suggested that language be added to the regulation to indicate that applicants will be notified of any investigation which is being conducted relative to the contents of the applicant's application.

These comments are well taken. The Board's original proposal was primarily directed at the applicant whose experience is/was obtained under appropriate supervision. In those instances, the Board is still of the view that applicants should provide the names and addresses of at least three references who, collectively, can verify the experience claimed by the applicant and attest to the applicant's good moral character.

To clarify the Board's intent with respect to the reference requirement, the Board has divided § 37.37 into three subsections (a)—(c). Subsection (a) applies to applicants whose experience under § 37.36(2) includes a minimum of 3 years of professional geological work under appropriate supervision. The Board has added language to this subsection to clarify that individuals used as references should include either licensed professional geologists under whose direction the applicant has worked or unlicensed geologists who are qualified to evaluate the applicant's training and experience. The Board has also added language to give appropriate recognition to geological work that was performed prior to the effective date of Act 151 under the supervision of a qualified geologist who was not licensed.

Subsection (b) applies to applicants whose experience under § 37.36(2) includes a minimum of 5 years experience in a responsible position in professional geological work. Applicants who apply for licensure under this criteria need only provide the names and addresses of three references who, collectively, can verify the experience claimed by the applicant and attest to the applicant's good moral character.

Subsection (c) notifies applicants that an application may be withheld pending investigation if, in the opinion of the Board, the references reflect adversely on the applicant's character or qualifications. Language has also been added to this subsection to indicate that applicants will be notified of any investigation which is being conducted relating to the contents of the applicant's application.

Fiscal Impact and Paperwork Requirements

The amendments should have no negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

The Board has already altered its existing application forms to address applicants for geology licensure.

Statutory Authority

The Board's authority for promulgation of the amendments is section 4(1) of the act, which empowers the Board to adopt, promulgate and enforce administrative rules and regulations, not inconsistent with the act, as are deemed necessary and proper by the Board to carry into effect the powers conferred by law.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 25 Pa.B. 5747, to IRRC and to the Chairpersons of the House Professional Licensure Committee and the Senate Committee on Consumer Protection and Professional Licensure.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board entertained public comments from William V. Knight, CPG, RPG, Executive Director, American Institute of Professional Geologists, Michael M. Ryan, P. E., Deputy Secretary, Highway Administration and Bryan J. McConnell. Subsequent to the close of the public comment period, the Board also entertained comments from IRRC. Neither the House Professional Licensure Committee nor the Consumer Protection and Professional Licensure Committee offered comments or objections regarding the amendments.

These final-form regulations were approved by the House Professional Licensure Committee on October 1, 1996, and by the Senate Consumer Protection and Professional Licensure Committee on September 25, 1996.

IRRC met on October 3, 1996, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

Further Information

Individuals who need information about the amendments may contact Shirley Klinger, Administrative Assistant, State Registration Board for Professional Engineers, Land Surveyors and Geologists, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7049.

Findings

The Board finds that:

(1) Public notice of the Board's intention to adopt the amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments adopted by this order are 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 37, are amended by amending §§ 37.18, 37.58, 37.59 and 37.81—37.83 to read as set forth at 25 Pa.B. 5747 (December 16, 1996); and by amending § 37.1 and adding §§ 37.36 and 37.37 to read as set forth in Annex A.

(b) The Board shall submit this order, 25 Pa.B. 5747 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 certify this order, 25 Pa.B. 5747 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: Fiscal Note 16A-473 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

GENERAL REVISIONS

§ 37.1. Definitions.

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

Act—The Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148—158.2).

Board—The State Registration Board for Professional Engineers, Land Surveyors and Geologists.

Bureau—The Bureau of Professional and Occupational Affairs.

Documents—Specifications, land surveys, reports, plats, drawings, plans, design information and calculations.

Engineering curriculum—A curriculum of 4 or more years approved by a National accrediting association recognized by the Board which leads to a baccalaureate degree. In the case of a degree issued from an institution outside of the United States, an engineering curriculum is a curriculum of 4 or more years which a Board recognized professional credentials evaluation service has determined to be equivalent to a baccalaureate degree issued from a college or university in the United States.

Hearing examiner—An individual appointed by the Board, with the approval of the Governor, to conduct hearings as may be required under the act in accordance with the act and this chapter.

Professional geological work—The performance of geological service or work, including technical completeness reviews or inspections of unfinalized work product, that requires the utilization, application and interpretation of fundamental and practical principles of the geological sciences in the practice of geology. The term does not include routine sampling, laboratory work or geological drafting.

Progressive experience in engineering work—Within the context of the engineer-in-training, experience of a grade and character sufficient to enable an individual to learn through practice the principles of math and science attained through formal education.

Progressive experience in surveying work—Within the context of a surveyor-in-training, experience of a grade and character sufficient to qualify an individual to personally and independently attain the equivalent survey-

ing skills and math attained through an associate degree program in surveying.

Progressive teaching experience—Full-time faculty teaching experience, attained after the issuance of an engineer-in-training certificate or a surveyor-in-training certificate which includes teaching engineering courses or land surveying courses at the junior, senior or graduate level, covering the breadth and depth of the curriculum.

Responsible position—A job which requires independent judgment, competence and accountability in the performance of professional geological work.

Similarly qualified engineer—A natural person who is not registered as a professional engineer in this Commonwealth, or in another jurisdiction which licenses professional engineers, who has attained a level of expertise in a recognized branch of engineering by means of experience and education which, in the opinion of the Board, would qualify the person to provide supervision of the applicant's progressive work experience in the major branch of engineering in which the applicant indicates proficiency.

Similarly qualified surveyor—A natural person who is not registered as a professional land surveyor in this Commonwealth, or in another jurisdiction which licenses professional land surveyors, who has attained a level of expertise in land surveying by means of experience and education which, in the opinion of the Board, would qualify the person to provide supervision of the applicant's progressive work experience in land surveying.

Special meetings—A meeting scheduled by the Board after the Board's regular schedule of meetings has been established.

REGISTERED PROFESSIONAL GEOLOGISTS

§ 37.36. Eligibility for licensure.

An applicant for licensure as a professional geologist shall be of good moral character, meet the following education and experience requirements and pass an examination adopted by the Board.

(1) *Education.*

(i) An applicant shall submit evidence to the Board of having graduated from an accredited institution of higher learning with a major in geology, geophysics, geochemistry or engineering geology, with a minimum of 30 semester or 45 quarter hours in geology, geophysics, geochemistry, engineering geology or their subdivisions.

(ii) An applicant who has graduated from an accredited institution of higher learning which does not grant semester or quarter hours in geological science courses leading to a major in geology, shall submit evidence to the Board of having completed 30 semester or 45 quarter hours or an equivalent amount of geological education, of which at least 24 semester hours or an equivalent amount are in third or fourth year undergraduate courses or graduate courses. The applicant shall submit documentation from the institution certifying that at the time the applicant attended the institution, the institution did not offer semester or quarter hours in geological science courses leading to a major in geology. The certification shall accompany the application materials.

(iii) Graduates of a foreign college or university shall have their educational credentials reviewed by a professional evaluation service approved by the Board. To be acceptable, the applicant's educational credentials shall be equivalent to a Bachelor Degree in geology, geophysics,

geochemistry, engineering geology or their subdivisions from an accredited United States college or university.

(2) *Experience.* An applicant shall complete at least 5 years of professional geological work. The applicant's experience shall include either a minimum of 3 years of professional geological work under the supervision of a licensed professional geologist or a minimum of 5 years in a responsible position in professional geological work. Professional geological work performed prior to February 16, 1993, shall satisfy the requirement of this subsection if it was performed under the supervision of either a licensed professional geologist or a qualified geologist who was not licensed. Experience, to be acceptable, shall demonstrate the applicant's ability to apply principles of geology, geophysics, geochemistry, engineering geology or their subdivisions to the actual practice of geology. Routine sampling, laboratory work and geological drafting is not professional geological work and will not be credited as acceptable experience. A Graduate Degree in geology, geophysics, geochemistry, engineering geology or their subdivisions may be substituted as part of the total experience requirements for licensure, at the rate of 1 year for a Master's Degree and 1 year for a Doctor's Degree. Credit for a Graduate Degree may not exceed a total of 2 years toward meeting the required number of years of professional geological work.

§ 37.37. References.

(a) As part of the application process, an applicant whose experience under § 37.36(2) (relating to eligibility for licensure) includes a minimum of 3 years of professional geological work under the supervision of either a licensed professional geologist or, in the case of work performed prior to February 16, 1993, a qualified geologist who was not licensed, shall give the names and addresses of at least three references who, collectively, can verify the required experience claimed by the applicant and attest to the applicant's good moral character. Individuals used as references should include either licensed professional geologists under whose direction the applicant has worked or unlicensed geologists who are qualified to evaluate the applicant's training and experience. The Board will not review an application until three acceptable references have been received.

(b) An applicant whose experience under § 37.36(2) includes a minimum of 5 years experience in a responsible position in professional geological work shall give the names and addresses of at least three references who, collectively, can verify the experience claimed by the applicant and attest to the applicant's good moral character. The Board will not review an application until three acceptable references have been received.

(c) If, in the opinion of the Board, references reflect adversely on the applicant's character or qualifications, the Board may withhold processing the application until an investigation into the applicant's character or qualifications, or both, is completed. The applicant will be notified in writing of any investigation which is being conducted relative to the content of the applicant's application. Based upon the results of an investigation, additional references may be required by the Board.

[Pa.B. Doc. No. 96-1792. Filed for public inspection October 25, 1996, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY [49 PA. CODE CH. 40] Examination Fees

The State Board of Physical Therapy (Board) amends § 40.5 (relating to fees) pertaining to increased fees for March 1997 and subsequent examinations for licensure of physical therapists to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and section 8 of the Physical Therapy Practice Act (63 P. S. § 1308) (act), examinations for licensure must be prepared and administered by a professional testing organization under contract to the appropriate board. The Board is under contract with Professional Examination Service (PES) which provides the examination and with Local Government Research (LGR) which currently administers it in March, July and November each year. This amendment will change fees for examinations to candidates for licensure to implement computer-based testing. The examination remains unchanged; however, through the implementation of computer-based testing, it will be available throughout the year at any of eight locations in this Commonwealth or nearly 200 locations Nationwide. PES subcontracts with Sylvan Technology Centers which administer the examination. The Federation of State Boards of Physical Therapy anticipates that all states will adopt computer-based testing by 1998. Contract costs for examination services will increase beginning with the effective date of this increase and the implementation of computer-based testing which is planned to occur prior to the scheduled March 1997 administration of the examination.

Public notice of intention to amend § 40.5 under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by this amendment have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

This amendment is adopted under section 812.1 of The Administrative Code of 1929 and section 8 of the act.

Fiscal Impact and Paperwork Requirements

The amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to pay an increased fee to cover contract costs for the examination.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), a copy of the amendment was submitted

on September 13, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the amendments were submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5(c) of the Regulatory Review Act, the amendment was approved by the House and Senate Committees on October 1, 1996, and September 25, 1996, respectively, and by IRRC on October 3, 1996.

Additional Information

Individuals who desire information are invited to submit inquiries to Robert Kline, Board Administrator, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649. The telephone number of the Board is (717) 783-7134.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under the procedures specified in sections 201 and 202 of the CDL, has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL is in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination.

(2) Persons affected by the amendment as adopted by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Orders

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

(a) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by amending § 40.5 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*, and apply to examinations administered by PES after October 26, 1996.

BARBARA A. AFFLERBACH,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: 16A-654. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

GENERAL PROVISIONS

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

- Application for licensure by examination \$20
- Application for licensure by endorsement \$20
- Application for licensure by foreign training \$160

Physical therapy examination:

- (Effective 11/95) \$230
- Examination (Effective 3/97) \$245
- Temporary license \$15
- Biennial renewal \$37

Athletic trainer:

- Application for certification \$20
- Athletic trainer examination \$83.75
- Biennial renewal \$37
- Physical therapist assistant listing \$15
- Certification of examination scores or certification of licensure \$15
- Verification of licensure or certification \$10

[Pa.B. Doc. No. 96-1793. Filed for public inspection October 25, 1996, 9:00 a.m.]

Title 52—PUBLIC UTILITIES
PENNSYLVANIA PUBLIC UTILITY COMMISSION

[L-960115]

[52 PA. CODE CH. 55]

Termination of Utility Service to Health Care Facilities

The Pennsylvania Public Utility Commission (Commission) on March 28, 1996, adopted a final/omitted rulemaking to require utilities to provide advance notice of utility service termination of health care facilities, to the agencies that regulate health care facilities and to the Commission. The public health and safety of patients in health care facilities are called into question when a health care facility is faced with termination of essential utility service, since necessary arrangements for patient transfer prior to shut-down cannot, in all probability, be made within the current minimum 3-day termination period. The contact persons are David Lewis, Chief of Field Services, Bureau of Consumer Services, (717) 783-5187 and Susan D. Colwell, Assistant Counsel, Law Bureau, (717) 783-3459.

Executive Summary

At its public meeting of March 28, 1996, the Commission adopted an order which mandates that utilities provide advance warning of utility service termination to health care facilities in addition to that required under the general regulations, and that the utility also notify the agencies which regulate health care facilities as well as the Commission of the impending termination of service. Such notice is necessary since it is unlikely that a health care facility would be able to transfer its residents or patients within the current minimum 3-day notification period, and a service termination would place the health and safety of the facility's residents or patients in jeopardy.

A prior submission was published April 3, 1993, and was rejected by the Independent Regulatory Review Commission (IRRC), but the Commission elected to resubmit the regulations with revisions. Since the regulations have already been published and have been the subject to extensive comments of IRRC, the utility industry, health care organizations and State agencies which license health care facilities, the Commission is using the final/omitted procedure.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), the Commission submitted a copy of these regulations with proposed rulemaking omitted on September 13, 1996, to IRRC and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure.

On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506), and to the Office of Budget for fiscal impact. In accordance with section 5(c) of the Regulatory Review Act, these regulations were deemed approved by the House Committee and approved by the Senate Committee on September 25, 1996. These regulations were approved by IRRC on October 3, 1996.

Commissioners present: John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka, Statement attached; and Robert K. Bloom

Public Meeting held
March 28, 1996

Order*By the Commission:*

By order adopted and entered December 17, 1992, we initiated a rulemaking at Docket No. L-00920071 to adopt regulations which mandate that utilities provide advance warning of utility service termination to health care facilities, to the agencies that regulate health care facilities and to the Commission. The regulations (which required a longer notice period for service termination than the current minimum 3-day period) were undertaken since necessary arrangements for the transfer of residents or patients prior to the shut-down of a health care facility can not, in all probability, be made within the current minimum 3-day period. Notice to the regulatory agencies is necessary for the public good since any health care facility which faces utility service termination places the health and safety of its residents or patients in serious jeopardy. Alternative arrangements for the care of such residents or patients must be assured by the

appropriate agencies. The regulations were consistent with the ongoing effort by this Commission to codify our policies for collections.

The proposed regulations at Docket No. L-00920071 were published for comment at 23 Pa.B. 1580 on April 3, 1993. The Legislative standing committees and IRRC submitted comments, as well as the following parties:

- Pennsylvania Department of Aging (Aging)
- Pennsylvania Department of Health (Health)
- Pennsylvania Department of Public Welfare (Welfare)
- Hospital Association of Pennsylvania (HAP)
- Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA)
- Pennsylvania Association of Resources for People with Mental Retardation (PAR)
- Pennsylvania Catholic Health Association (PCHA)
- Pennsylvania Health Care Association (PHCA)
- York Water Company (York Water)
- Philadelphia Thermal Energy Corporation (PhiladelphiaThermal)
- Pennsylvania Telephone Association (PTA)
- Bell of Pennsylvania (Bell)
- Bentleyville Telephone Company (Bentleyville)
- Hickory Telephone Company (Hickory)
- United Telephone—Eastern (United)
- Duquesne Light Company (Duquesne)
- Metropolitan Edison Company and Pennsylvania Electric Company (Met-Ed and Penelec)
- Pennsylvania Power Company (Penn Power)
- Pennsylvania Power and Light Company (PP&L)
- Philadelphia Electric Company (PECO)
- West Penn Power Company (West Penn)
- Pennsylvania Gas Association (PGA)
- Columbia Gas of Pennsylvania, Inc. (Columbia)
- Equitable Gas Company (Equitable)
- National Fuel Gas Distribution Corporation (National Fuel)
- T. W. Phillips Gas and Oil Co. (T.W. Phillips)
- UGI Utilities, Inc. (UGI)

The comments and Commission responses were discussed in detail in our final rulemaking order at Docket No. L-00920071 entered April 3, 1995. The final rulemaking order was deemed approved by the Senate Standing Committee, but disapproved on May 23, 1995, by the House Standing Committee. At its May 24, 1995, public meeting, IRRC disapproved the final-form regulations.

Representatives from the House standing committee, affected utilities and their associations, health care facilities, IRRC and the Commission staff attended a meeting on June 9, 1995, to discuss the issues raised in the IRRC disapproval order. At that session, an agreement in principle was reached as to how to deal with the issues raised by IRRC. Consensus modifications were then reflected in revised final-form regulations approved by order entered June 23, 1995.

Although IRRC subsequently disapproved the final-form regulations, the Commission elected to proceed with

a resubmission (with revisions) in accordance with section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)). The Commission therefore had 40 days after IRRC's disapproval to submit the revised final-form regulations to the House and Senate standing committees and to IRRC. Since the Legislature was in summer recess, service upon the Legislature could not be perfected and the regulations were terminated by operation of law.

Due to the unique circumstances involved in the termination of the prior rulemaking at L-00920071, the Commission believes that it is appropriate to utilize final/omitted procedures to reinitiate our health care facility termination rulemaking. The regulations have already been published in the *Pennsylvania Bulletin* in proposed form and serious consideration has already been given to the extensive comments filed by IRRC, the utility industry, health care organizations and State agencies which license health care facilities. Thus, all parties subject to the regulations had either actual or legal notice of the rulemaking and the opportunity to comment. See 45 P.S. § 1204(2) (regarding the use of final/omitted rulemaking when all persons subject to the regulations have notice of it). Further, since a consensus opinion was reached as to the substance of the regulations, but revised regulations embodying the consensus could not proceed through the regulatory process due to mere scheduling problems, it is unnecessary, impractical and contrary to the public interest to use the proposed rulemaking procedure again. See 45 P.S. § 1204(3) (regarding the use of final/omitted rulemaking when the agency for good cause finds that the proposed rulemaking procedure is impractical, unnecessary or contrary to the public interest).

The regulations adopted as set forth in Annex A by this order are essentially identical to those finalized by our order entered June 23, 1995, at Docket No. L-00920071. The only exceptions involve minor editorial changes for purposes of clarification and a change in the definition of "dispute." This definition was changed to eliminate as a "dispute" those situations when, with a health care facility's consent, a utility reviews pertinent records and can then satisfy the health care facility through a return telephone call. Service cannot terminate while the facility is awaiting a callback from the utility.

As stated in our order entered June 23, 1995, the identification of existing facilities under § 55.103(a) (relating to responsibility of identification of health care facilities subject to advance notes) of the regulations will occur in the following manner: before the effective date of the regulations, the Departments of Aging, Health and Public Welfare will provide to the Commission's Bureau of Consumer Services a current listing of health care facilities which those Departments certify or license and which are subject to these regulations. The listings will include, if readily available, the name of an administrator or contact person for each facility. An administrator or contact person so identified will be deemed to be the "designated individual" under the regulations unless the health care facility otherwise informs the utility.

The Commission will have copies of the initial listings available at its Harrisburg office to assist jurisdictional utilities in identifying and coding existing customer accounts as health care facilities. If the regulating agencies can provide the listings in a suitable format, the listings will also be made available electronically on the Commission's Bulletin Board. Affected utilities will have 90 days from the effective date of the regulations to identify their existing health care facility customers.

The regulations at § 55.103(b) require that a utility only identify nonresidential applicants as new health care facility customers. This procedure should allow utilities to identify the majority of health care facilities. We intend to mail subsequent revised lists (provided by health care regulators) to jurisdictional utilities. If feasible, the revised listings will also be available on the Commission's electronic Bulletin Board. The revised lists should allow utilities to identify those health care facilities receiving service under the residential account classification. Thus, a utility can subsequently code its records in order to assure that all health care facilities receive the additional termination notice mandated by these regulations.

We believe that our regulations pertaining to the termination of utility service to health care facilities, as discussed in this Order and set forth in Annex A to this Order, are in the public interest. We note, for example, a situation where PECO Energy Inc. voluntarily applied the notice standards established in these regulations, and a payment arrangement was reached for a hospital facing service termination. Additionally, we are concerned that escalating costs in areas affecting health care administration could increase the incidence of service terminations at hospitals and similar facilities. Thus, the procedures established in these regulations, which help to ensure the safety of health care residents and patients during the service termination process, are in the public interest.

Accordingly, under sections 501, 1501 and 1504 of the Public Utility Code, 66 Pa. C.S. §§ 501, 1501 and 1504; section 204 of the Commonwealth Documents Law (45 P.S. § 1204); and regulations at 1 Pa. Code §§ 7.1—7.4, the Commission adopts as final the regulations at 52 Pa. Code §§ 55.101—55.115 to read as set forth in Annex A of this Order; *Therefore,*

It is Ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapter 55, are amended by adding §§ 55.101—55.115 to read as set forth in Annex A.
2. This order, together with Annex A, be published as final in the *Pennsylvania Bulletin*.
3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by IRRC.
6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
7. This subchapter shall become effective upon publication in the *Pennsylvania Bulletin*.
8. By January 24, 1997, affected jurisdictional utilities shall identify existing health care facility customers protected under the regulations.
9. A copy of this order shall be served upon all persons that submitted comments in the rulemaking proceeding at Docket No. L-00920071, and upon all jurisdictional utilities subject to these regulations, the Office of Consumer Advocate and the Office of Small Business Advocate. Alternate formats of this document are available to persons with disabilities and may be obtained by contact-

ing Shirley M. Leming, Regulatory Coordinator, Law Bureau, at (717) 772-4597, or toll free, the AT&T Relay Center at (800) 654-5988.

(Editor's Note: The addition of § 55.115 was not included in the proposal at 23 Pa.B. 1580.)

JOHN G. ALFORD,
Secretary

Statement of Commissioner David W. Rolka

I would like to take this opportunity to thank the staff of the Commission and the utility industry for their efforts to amicably resolve the technical and administrative issues previously identified in this proposed rule-making. I remain concerned that escalating costs in health care administration could increase the incidence of service terminations at hospitals and similar facilities. Thus, the procedures established in these regulations, which help to ensure the safety of health care residents and patients during the service termination process, are in the public interest.

The history of events leading up to the promulgation of these regulations is adequately addressed in the Order itself and requires no further elaboration. As a witness to the proceedings before the Independent Regulatory Review Commission, I can share my observation that the decision to reject the regulations at that time rested on the understanding that there were as yet unresolved administrative concerns regarding the implementation of the notice requirements. A consensus opinion was reached as to the substance of the regulations after IRRC's disapproval, but time did not permit the continuation of the process. Some utilities, PECO Energy, for example, have voluntarily initiated the procedures called for in the rulemaking. The revisions and clarifications incorporated at this time should clear the path for final adoption and uniform implementation of the regulations.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: 57-173. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 55. NONCARRIER RATES AND PRACTICES

Subch.

**A. DISCONTINUATION OF SERVICE
B. TERMINATION OF UTILITY SERVICE TO HEALTH CARE FACILITIES**

Subchapter A. DISCONTINUATION OF SERVICE

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Subchapter B. TERMINATION OF UTILITY SERVICE TO HEALTH CARE FACILITIES

Sec.	Purpose.
55.101.	Definitions.
55.102.	Responsibility for identification of health care facilities subject to advance notice.
55.103.	Required 37-day notice before termination of service.
55.104.	Required 10-day notice before termination of service.
55.105.	Coordination of termination of utility service with regulatory agencies and termination date.
55.106.	Newly discovered health care facilities.
55.107.	Form of notice.
55.108.	Customer obligation upon receipt of service termination notice.
55.109.	

- 55.110. Notice when dispute, informal complaint or formal complaint pending.
- 55.111. Days termination prohibited.
- 55.112. Use of termination notice solely as collection device prohibited.
- 55.113. Exception for terminations based on occurrences harmful to person or property.
- 55.114. Inconsistent tariff provisions.
- 55.115. Coordination with other regulations.

§ 55.101. Purpose.

The purpose of this subchapter is to establish requirements for advance notice to health care facilities, and to the agencies of the Commonwealth that regulate the facilities, of termination of electric, gas, steam heat, water, sewer and local exchange telephone service to health care facilities. Advance notice of the termination of utility services is required so that alternative arrangements for the care of affected patients or residents who are dependent upon others due to permanent or temporary disabilities can be made by affected health care facilities, and by the agencies regulating them, prior to the actual cessation of utility services.

§ 55.102. Definitions.

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

Bureau—The Bureau of Consumer Services.

Designated individual—An employe or representative of a health care facility who will act on behalf of the facility to receive and take action on termination notices regarding utility service. The administrator or contact person identified on the listing provided by the Department of Aging, Health or Public Welfare is deemed the designated individual for purposes of this subchapter unless the health care facility specifically identifies a designated individual.

Dispute—A health care facility grievance regarding subjects such as credit determinations, deposit requirements, the accuracy of meter readings, bill amounts and the proper party to be charged, which remains unresolved after the initial contact or utility follow-up response where the health care facility consents to the utility reviewing pertinent records or other information and calling back. If, at the conclusion of the health care facility's initial contact or the utility follow-up response, the health care facility indicates satisfaction with the resulting resolution or explanation, the contact will not be considered a dispute. A grievance regarding rate or service issues which does not involve potential termination of utility service will not be considered a dispute for purposes of this subchapter.

Emergency—An unforeseen combination of circumstances requiring temporary discontinuance of service in order to effect repairs or maintenance, or to eliminate an imminent threat to life, health, safety or property.

Health care facility—

(i) Inpatient and residential institutions, including the following, which serve persons who are dependent upon others because of permanent or temporary disabilities:

(A) A birth center, hospital or long-term care nursing facility as defined in section 802.1 of the Health Care Facilities Act (35 P. S. § 448.802a).

(B) Overnight residential schools, facilities and institutions which provide overnight care for dependent children, adults and mentally retarded persons (such as boarding homes for children, personal care homes, mental health establishments, intermediate care facilities for the mentally retarded and intermediate care facilities for

other related conditions, but not child day care centers, adult training facilities, vocational facilities or private homes) which are supervised or licensed under Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1059) by the Department of Public Welfare, the Department of Aging or the Department of Health.

(C) Domiciliary care homes as defined in section 2202-A of The Administrative Code of 1929 (71 P.S. § 581-2) for which the Department of Aging issues the certificate of operation.

(ii) The term does not include boarding schools, dormitories or similar facilities involving community living arrangements. The term does not include separately metered outpatient clinics or other outpatient facilities which are located on the site of an affiliated inpatient or residential health care facility or which are part of a commercial account of an inpatient or residential health care facility.

Regulatory agency—A governmental agency of the Commonwealth responsible for licensing, approving, supervising or certifying, for reimbursement purposes, health care facilities. Specifically, the Departments of Aging, Health and Public Welfare.

Termination of service—Cessation of service, whether temporary or permanent, without the consent of the affected health care facility.

Utility—An entity which provides electric, gas, steam heat, water, sewer or local exchange telephone service subject to the jurisdiction of the Commission.

§ 55.103. Responsibility for identification of health care facilities subject to advance notice.

(a) *Utility responsibility for existing customers.* The Commission's Bureau will obtain from the Departments of Aging, Health and Public Welfare current listings of the name, address, county, telephone number, and if available, the name of the administrator or contact person for each health care facility licensed by the respective regulatory agency. The Departments of Aging, Health and Public Welfare should each provide to the Commission's Bureau an annual revised and updated listing of licensed health care facilities. Each utility subject to this subchapter is responsible for identifying its customers from these listings and for appropriately coding its records so as to assure compliance with this subchapter.

(b) *Utility responsibility for new service applicants.* When a nonresidential applicant applies for utility service, the utility shall ascertain whether that applicant is a health care facility subject to this subchapter, code its records appropriately if the applicant is a health care facility and identify the name, job title or office, address, telephone number and facsimile number of a designated individual. The utility shall inform the health care facility of its continuing obligation to notify the utility of any change in information regarding the designated individual.

(c) *Health care facility responsibility.* The health care facility is responsible for providing to the utility a copy of its current license or operating certificate issued by its regulatory agency, if requested, so that the utility can verify the identification of the customer as a health care facility. The health care facility is responsible for providing to the utility current information regarding the designated individual, as well as informing the utility of any changes in this information. The health care facility

is responsible for providing to the utility documentation and information within 10 days of the utility's request.

§ 55.104. Required 37-day notice before termination of service.

(a) *Thirty-seven day written notice to health care facilities.* Except when required to prevent or alleviate an emergency, a utility shall, at least 37 days before terminating service to a health care facility, send to the affected facility a service termination notice in the form specified in § 55.108 (relating to form of notice).

(b) *Thirty-seven day notice to agencies.* On the same day that a utility sends the 37-day notice to the health care facility as required by subsection (a), the utility shall also send a copy of the notice to the following:

(1) The regulatory agency of the health care facility as identified on the listings available from the Commission's Bureau or from the license or operating certificate provided by the health care facility.

(2) The Commission's Bureau.

(c) *Methods of serving the 37-day notice to health care facilities and to regulatory agencies.* Notice to an affected health care facility and involved agencies shall be given in writing using one of the following methods:

(1) First class certified mail.

(2) Hand delivery with acknowledgment of receipt.

(3) Overnight express service with acknowledgment of receipt.

(4) Facsimile or other electronic transmission which produces a written copy at the receiving location, if a written confirmatory copy is subsequently dispatched the same day by a method specified in paragraph (1), (2) or (3), and if prior consent is obtained from the health care facility.

(d) *Health care facilities failure to respond.* If a health care facility fails to accept service of the 37-day notice within 10 days after service as specified in subsection (c), the utility shall inform the Commission's Bureau by telephone or facsimile prior to proceeding further with the termination of service. Unless otherwise directed by the Bureau, the utility may then thereafter proceed with termination of service in accordance with this subchapter.

§ 55.105. Required 10-day notice before termination of service.

(a) *Ten-day notice to health care facilities.* Except when required to prevent or alleviate an emergency, a utility may not terminate service without personally contacting the designated individual, or administrator of the health care facility when no designated individual is identified, at least 10 days prior to the expiration of the 37-day termination notice period required in § 55.104 (relating to required 37-day notice before termination of service). This 10-day notice shall be in addition to the 37-day notice required under § 55.104. To satisfy the requirement of 10-day personal contact:

(1) The utility shall contact the designated individual, or the administrator of the health care facility if no designated individual is identified, in person or by telephone. For purposes of this subsection, leaving a message on an answering machine will not be deemed personal contact.

(2) If the health care facility refuses to accept personal contact for more than 48 hours, the utility shall so inform the Commission's Bureau by telephone, letter or facsimile before proceeding further with termination of service.

Unless otherwise directed by the Bureau, the utility may thereafter proceed with termination of service.

(b) *Ten-day notice to agencies.* On the same date a utility gives the 10-day notice to the health care facility as required by subsection (a), the utility shall also inform the involved regulatory agencies, utilizing a method specified in § 55.104(c).

§ 55.106. Coordination of termination of utility service with regulatory agencies and termination date.

The health care facility is responsible for cooperating with the involved regulatory agencies to ensure that there is a safe and orderly transfer of the residents or patients to alternative facilities prior to the scheduled date for termination of service. If residents or patients remain in the health care facility at the end of the 10-day termination period, the utility shall, at the request of the Commission's Bureau, continue to provide service for an additional 30 days or until the Bureau notifies the utility that all residents or patients are removed, whichever occurs first. Unless the Commission's Bureau makes a request, the utility may proceed with termination of service at the end of the 10-day period.

§ 55.107. Newly discovered health care facilities.

If a customer which had not been previously identified as a health care facility identifies itself as such in response to a notice of termination, the health care facility shall provide verification of its status to the utility within 3 days after being requested by the utility to do so. If the customer is a health care facility, the utility shall renotify the customer of termination under this subchapter. Thereafter, both the health care facility and the utility shall comply with the applicable provisions of this subchapter. If the customer does not provide the verification within the 3-day period, the utility may proceed with termination of service by serving a 48-hour notice.

§ 55.108. Form of notice.

The following form shall be used in providing the 37-day service termination notice required under this subchapter:

SERVICE TERMINATION NOTICE
TO HEALTH CARE FACILITY*

(Name and address of Utility)

(Date of notice)

(Customer's name)

(Customer's billing address)

(Customer's phone number)

(Customer's account number)

Under rules established by the Pennsylvania Public Utility Commission, we are notifying you that we intend to terminate (*type of utility service*) service to the premises at (*address(es) of location(s) where service is to be terminated*) on or after (*time of day*) on (*date of scheduled service termination*). This action is being taken because

your (*name of utility*) utility service bill is overdue in the amount of \$(*amount of overdue balance*). You may avoid termination of service BY CALLING YOUR ACCOUNT OR CUSTOMER SERVICE REPRESENTATIVE AT (*telephone number of utility account representative*), OR VISITING OUR OFFICE AT (*utility business office address*) to make payment arrangements mutually acceptable to you and us.** Contact us at once if you believe for any reason that your service should not be terminated or if you need further information.

If after having discussed with us your billing, payment or other problem, you are not satisfied with the resolution proposed by us, YOU HAVE A RIGHT TO CALL THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AT THIS NUMBER (*telephone number of the Commission's Bureau of Consumer Services*) FOR FURTHER INFORMATION AND ASSISTANCE. The Commission will have staff available to attempt to mediate your billing problem in order to avoid termination of your service. Mediation or negotiation may take considerable time and should not be postponed until just prior to service termination.

Notice of this termination is being given to the (*name of involved regulatory agency*) and to the Pennsylvania Public Utility Commission's Bureau of Consumer Services. Please cooperate with them in implementing an orderly shut down plan for your health care facility before the termination date stated above. It is your responsibility to have all patients or residents relocated to other facilities before the scheduled termination date.

Sincerely yours,

* Typeset for heading to be no smaller than 10 point.

** If termination is for a reason other than an overdue bill, e.g., tampering with company equipment, substitute applicable reason and the action the customer can take to avoid termination.

§ 55.109. Customer obligation upon receipt of service termination notice.

Upon receipt of a 37-day service termination notice, a health care facility is expected to immediately contact its regulatory agency and the public utility involved to eliminate the reason for termination, establish payment terms, close down the health care facility or pursue other action as appropriate.

§ 55.110. Notice when dispute, informal complaint or formal complaint pending.

A utility may not serve any notice of termination if a dispute, informal complaint or formal complaint has been filed with the Commission and is unresolved if the subject matter of the dispute, informal complaint or formal complaint forms the grounds for the proposed termination. A notice of termination mailed or delivered in violation of this section is void. Pending resolution of a dispute, the utility is entitled to bill for and collect the undisputed portion of its utility bills.

§ 55.111. Days termination prohibited.

Except when required to prevent or alleviate an emergency, or upon request of the health care facility, a public utility may not terminate or authorize termination on the following days:

- (1) On Friday, Saturday or Sunday.
- (2) On a bank holiday or on the day preceding a bank holiday.

(3) On a holiday observed by the public utility or on the day preceding the holiday. A holiday observed by a public utility means any day on which the business office of the public utility is closed for any reason.

(4) On a holiday observed by the Commission or on the day preceding the holiday.

§ 55.112. Use of termination notice solely as collection device prohibited.

A utility may not threaten to terminate service when it has no present intent to terminate service or when actual termination is prohibited. Notice of the intent to terminate shall be used only as a warning that service will in fact be terminated unless the health care facility remedies the situation which gave rise to the notice.

§ 55.113. Exception for terminations based on occurrences harmful to person or property.

When a service termination is undertaken due to a situation which endangers the safety of a person or which may prove harmful to the facilities of the utility, the utility may terminate service without written notice if that the utility reasonably and in good faith believes the basis for termination to exist. At the time of the actual termination, the utility shall make a bona fide attempt to deliver a notice of termination to a responsible person at the affected premises and shall also notify the involved regulatory agency and the Commission's Bureau of Consumer Services.

§ 55.114. Inconsistent tariff provisions.

A tariff provision inconsistent with this subchapter will be deemed inoperative and superseded by this subchapter.

§ 55.115. Coordination with other regulations.

(a) *Subchapter A (relating to discontinuation of service).* With respect to termination of utility service to health care facilities, this subchapter supersedes §§ 55.1—55.3 (relating to definitions; personal contact before utility service discounted; and content of notice).

(b) *Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service).*

(1) When a dispute, informal complaint or formal complaint is filed, § 56.2 and Chapter 56, Subchapter F (relating to definitions; and disputes; termination disputes; informal and formal complaints) apply for electric, gas, water, sewer and steam heat utilities except to the extent specifically superseded in this subchapter. Section 64.2 and Chapter 64, Subchapter G (relating to definitions; and disputes; informal and formal complaints) apply for telephone utilities except to the extent specifically superseded in this subchapter.

(2) With respect to a residential account of a patient or resident in a health care facility, Chapters 56 and 64 apply.

[Pa.B. Doc. No. 96-1794. Filed for public inspection October 25, 1996, 9:00 a.m.]