

PROPOSED RULEMAKING

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 13 AND 15]

Notice of Review of Regulations Relating to Personnel Administration in County Health Departments and Relating to State Aid to Local Health Departments

Under the Governor's Executive Order 1996-1, the Department of Health (Department) will be reviewing its regulations at 28 Pa. Code Chapters 13 and 15 (relating to personnel administration in county health departments; and State aid to local health departments).

The Department is committed to considering the ideas and comments of all interested parties in the revision of these regulations. The Department will begin its review on April 28, 1997. Therefore, it will be considering submissions received prior to that date. It cannot guarantee consideration of submissions received after that date.

The Department anticipates completion of the review and revision process by July 1, 1997. Upon completion of the revisions, the revised regulations will be available prior to a public meeting to be held by the Department, at which time all interested parties will be invited to comment on the proposed revisions. Comments on the revisions will also be accepted by mail prior to the date of the public meeting, which will be announced in the *Pennsylvania Bulletin*.

For additional information or a copy of the current regulations, or if you are a person with a disability and desire a copy of the regulations in an alternative format, or wish to provide comments on the regulations in an alternative format (such as, large print, audio tape, braille), please contact Helen K. Burns, Ph.D., Director, Bureau of Community Health, at (717) 787-4366; TDD (717) 783-6514.

DANIEL F. HOFFMANN, FACHE,
Secretary

[Pa.B. Doc. No. 97-473. Filed for public inspection March 28, 1997, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 103]
Financial Assistance

The Environmental Quality Board (Board) proposes to amend Chapter 103 (relating to financial assistance). The proposed amendments include revisions to delete provisions related to the Federal Clean Water Act Title II construction grants program, retain the sewage project priority rating system used in the Federal Clean Water Act Title VI sewage construction loan program, delete text related to an obsolete design grant program and add language to allow use of a small amount of remaining Land and Water Conservation and Reclamation Act (32 P. S. §§ 5101—5121) funds for a grant to one or more economically depressed communities.

This proposal was adopted by the Board at a meeting held on February 18, 1997.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information contact Peter T. Slack, Chief, Division of Municipal Financial Assistance, Office of Water Management, P. O. Box 8466, 11th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8466 (717) 787-3481, or William S. Cumings, Jr., Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, 9th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8464 (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department's) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The amendments are being proposed under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and section 16(2) of the Land and Water Conservation and Reclamation Act (act) (32 P. S. § 5116(2)) which authorize the Board to promulgate rules and regulations relating to the awarding of construction grants for sewage facilities to political subdivisions and municipal authorities. The amendments are also proposed under the authority of section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

D. *Background and Purpose*

Over the past year, the Department has been conducting an overall review of its existing regulations through its Regulatory Basics Initiative as outlined at 25 Pa. B. 3343 (August 19, 1995). This Initiative was designed with the goal of adopting environmental regulations that are no more stringent than Federal rules unless there is a compelling need for more stringent rules. The amendments being proposed in this rulemaking are one of a number of proposed regulations resulting from the Initiative.

The proposed revisions to the Chapter 103, Subchapter A (relating to water pollution control revolving fund project priority list ratings) regulations delete provisions related to the Federal Clean Water Act Title II sewage treatment construction grant program. Almost all projects that received a Title II grant award for the construction of sewage treatment or conveyance facilities are nearing construction completion and the last one is about to go under construction. These regulations are no longer needed to administer the Title II grant program. The sewage construction project priority rating system is being retained as it will continue in use for establishing project priority ratings for projects seeking funding under the Clean Water Act Title VI loan program. The Federal Title VI loan program replaced the Title II grant program and is jointly administered by the Department and the Pennsylvania Infrastructure Investment Authority (PENNVEST).

The proposed revisions to Chapter 103, Subchapter D (relating to State grants for construction of sewage facil-

ities) delete provisions related to a State design grant program and a supplemental construction grant program. The design grant program provided funds to communities that had completed plans and specifications for a sewage treatment facility, but did not receive a Federal grant for construction of the facility. The grant program awarded a 5% supplemental grant to economically depressed communities that had received a 75% Federal construction grant. Eligible communities were identified and design and supplemental construction grants have been awarded and paid. A small amount of money remains available, and the Department proposes to award grants to one or more economically depressed communities to assist with the cost of construction of needed sewage treatment facilities. The source of these funds is the act bond issue moneys made available and intended as aid to political subdivisions for the construction of sewage facilities. The \$155,000 available cannot be awarded under the existing regulations and the proposed revisions will allow award of these funds as grants to one or more economically depressed communities.

E. *Summary of the Proposed Rulemaking*

1. *Section 103.1—Definitions.*

Section 103.1 contains several proposed new definitions necessitated as a result of the replacement of the Clean Water Act Title II construction grants program by the Title VI Water Pollution Control Revolving Fund, as described in Section D of this Preamble. Terms newly defined are: "intended use plan," "project priority list," "sewage facilities plan" and "Water Pollution Control Revolving Fund." Minor revisions are proposed for the existing definitions of "facilities" and "Federal act." In addition, the definitions relating to the four steps (steps 1, 2, 3 and 2 and 3) in the construction of a sewage treatment facility would be deleted.

2. *Sections 103.2—103.14—Federal Clean Water Act Title II Construction Grants Program.*

As noted in Section D of this Preamble, the Federal Clean Water Act Title II Construction Grants Program has been replaced by the Title VI Water Pollution Control Revolving Fund. Except for § 103.6, existing §§ 103.2—103.14 contain certain provisions which exclusively relate to the administration of the Title II Construction Grants Program, which is now obsolete. Accordingly, the existing language of §§ 103.4—103.5 and 103.13—103.14 will be deleted. In addition, references to the various steps will be deleted from §§ 103.8—103.11.

3. *Section 103.5—Preparation of Project Priority Lists.*

The existing provisions of this section are proposed to be deleted. However, this section would be amended by adding provisions relating to the establishment of a project rating system in accordance with the requirements of Subpart K of 40 CFR Part 35. Subpart K outlines the criteria established by the Environmental Protection Agency (EPA) for the administration of the Water Pollution Control Revolving Fund. The project priority ratings would be water quality based assessments of sewage treatment needs. The Department would prepare a project priority list and intended use plan for submission to the EPA in support of its annual Water Pollution Control Revolving Fund capitalization grant application. Once the Commonwealth receives its capitalization grant award, applications from municipalities would be evaluated under the Pennsylvania Infrastructure Investment Authority (35 P.S. §§ 751.1—751.20).

4. *Section 103.6—Priority Rating Factors.*

This section currently establishes a point system for certain rating factors to establish the priority among eligible projects. This section would be amended to clarify that the rating factors are for the purpose of creating the project priority list and intended use plan which the Department would be submitting to the EPA in support of its annual Water Pollution Control Revolving Fund capitalization grant application.

5. *Section 103.12—Other Considerations.*

The existing language of subsection (a) outlines factors to be utilized in the event projects receive the same number of rating points. The language would be amended to make it clear that the rating points will be used to determine the relative rank of the projects on the project priority list and intended use plan, which list and plan are a major component of the grant application the Department submits to the EPA.

Subsection (b), which applies to the ranking of regional projects, would be similarly amended by incorporating references to the project priority list and intended use plan. In addition, the language of this subsection would be revised to make it clear that the Department will make a determination whether each part of a regional project is essential to the integrity of the project for the purposes of establishing a rating. The existing language implies that the Department will make this determination.

Subsection (c), which outlines the procedure to be utilized if there is a need to rerate a project, would also be revised to make it clear that the rerating would be for the purpose of ranking projects on the project priority list or intended use plan. In addition, the subsection would be amended to provide that the rerating would be based on the sewage facilities plan the municipality adopted under the provisions of the Sewage Facilities Act (Act 537) (35 P. S. §§ 750.1—750.20).

6. *Sections 103.71—103.76—State Grants for Planning and Design.*

Potential recipients that may have been eligible under these regulations for grants from the act moneys were identified and awarded grants. The advance of allowance provisions authorized the Department to provide Title II Federal funds for projects that may in the future be ready for a Title II construction grant award. The Title II construction grant program has been replaced by the Title VI loan program and there is provision for advances of the design allowance in the Title VI program. Accordingly, these sections would be deleted.

7. *Sections 103.82—103.84—State Grants for Construction.*

Language is being deleted which authorizes award of grant funds as supplemental grants for projects that had received a Federal Title II construction grant. Existing language is retained to allow the award of the small amount of remaining funds to one or more communities that suffer financial hardship and would benefit from a grant to make construction of sewage treatment works more affordable to the community.

F. *Benefits and Costs*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

The proposed revisions are intended to clarify certain provisions for the benefit of applicants. No additional

costs are associated with the proposed revisions to Chapter 103, Subchapter A or D. There is approximately \$155,000 of act bond issue funds available for award to one or more communities for construction of sewage treatment facilities. There is no cost to potential recipients of these funds. The Department expects to identify a potential economically depressed community recipient rather quickly and award the funds to that municipality.

Compliance Costs

There are no existing or new compliance costs to be created by these regulatory revisions.

Paperwork Requirements

There are no new forms to be created or revisions to existing forms or other paperwork requirements relating to these proposed amendments.

G. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on March 18, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before final publication of the regulations.

I. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 28, 1997. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 28, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by April 28, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic com-

ments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-311. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 103. FINANCIAL ASSISTANCE

Subchapter A. [FEDERAL GRANTS FOR CONSTRUCTION OF SEWAGE FACILITIES] WATER POLLUTION CONTROL REVOLVING FUND PROJECTS PRIORITY LIST RATINGS

[FEDERAL GRANTS] WATER POLLUTION CONTROL REVOLVING FUND

§ 103.1. Definitions.

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

* * * * *

Facilities—Any device [**and**] or system for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes [**or**] necessary to recycle or reuse water at the most economical cost over the useful life of the works. The term includes intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, [**improvement**] **improvements**, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from [**such**] the treatment, including land for composting sludge and temporary storage of [**such**] the compost and land used for the storage of treated wastewater in land treatment systems before land application; or another method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

Federal Act—**The Federal Water Pollution Control Act** (33 U.S.C.A. §§ 1251[, 1252, 1254, 1255, 1256, 1259, 1262, 1263, 1281—1288, 1291, 1292, 1294—1297, 1311, 1314, 1315, 1317—1319, 1321, 1322, 1323, 1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375 and 1376]—1387).

* * * * *

Intended use plan—**The product of an evaluation of projects on the project priority list using the wastewater project evaluation criteria in §§ 103.6—103.12 to those proposed projects which are anti-**

pated to expend Water Pollution Control Revolving Fund moneys in a specific fiscal year.

* * * * *

NPDES—The [**national**] National system for the issuance of permits under section 402 of the Federal Act including, any State or interstate program which has been approved by the [**Administrator**] EPA, in whole or in part, under section 402 of the Federal Act.

Project equivalent population—The initial population equivalent which would be served by a [**Step 3**] project implemented for the rated area at the time that the area is rated.

Project priority list—The product of an evaluation of information submitted by municipalities to establish relative priority of proposed sewage facilities through a standardized set of criteria in §§ 103.6—103.12.

Sewage facilities plan—A plan developed under the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1—750.20) for the provision of adequate sewage facilities, adopted by municipal officials and approved by the Department.

* * * * *

[*Step 1 (Planning and Preliminary Design)*—A project to conduct planning and engineering studies that results in a facility plan that directly relates to the potential construction of treatment and other waste management facilities, that demonstrates the need for the facilities, and that by systematic evaluation of feasible alternatives, determines the most cost-effective means of meeting established effluent requirements and water quality goals while recognizing environmental and social considerations.

Step 2 (Plans, Specifications and Estimates)—A project to prepare detailed engineering plans, specifications, estimates and other documents necessary for the construction of facilities recommended in the applicable facilities plan and for taking other actions recommended therein.

Step 3 (Construction of Facilities)—A project to construct a facility in conformance with applicable Step 2 work.

Step 2 and 3 (Combination design and construction)—A project combining Step 2 and Step 3 for a wastewater treatment works.]

Water Pollution Control Revolving Fund—A fund jointly administered by the Department and the Pennsylvania Infrastructure Investment Authority (PENNVEST) that provides low-interest loan funds to borrowers for the construction of facilities.

* * * * *

§ 103.2. [**Grant application process**] (Reserved).

[(a) The Federal Act provides for funding in steps. Unless otherwise permitted by Federal regulations, no applications for any step may be approved unless the work required by the preceding steps has been completed and approved by the Department and EPA. Approval from the Department and EPA must have been received prior to the start of work for any step for said work to be grant eligible.

(b) Combined Step 2 and 3 grant projects in municipalities with a population of 25,000 or less may be accepted provided that the eligibility and procedural requirements of the Federal Act are met.

(c) Application for Federal grants shall be made in a manner prescribed by the EPA and the Department and shall contain and be supplemented with such information as may be required by EPA and the Department.

(d) An acceptable application for a State permit which contains necessary and sufficient documentation to support the application shall be submitted concurrent with or prior to submission of an application for a Step 3 grant. Under a combined Step 2 and 3 grant, a State permit must have been issued prior to a grant increase for Step 3.

(e) Applications for Federal grants will be accepted by the Department throughout the year.

(f) Applications will be reviewed by the Department for compliance with Federal and State law and regulations and the provisions of this subchapter.]

§ 103.4. [**Project eligibility**] (Reserved).

[Projects shall remain eligible for Commonwealth certification only if the following conditions are met:

(1) The project complies with all grant regulations and other requirements for such grant applications as promulgated by the EPA and the Department.

(2) The project remains eligible for issuance of a Commonwealth permit for construction and operation of the proposed project.

(3) The project is part of or consistent with a Department approved comprehensive program of water quality management and pollution control as described in § 91.31 (relating to comprehensive water quality management).

(4) Initiation of the project for which funding is requested has not occurred prior to grant award unless authorized by Federal regulations.]

§ 103.5. Preparation of project [**priority**] lists.

[(a) The Department will prepare annually a project priority list in conformance with Federal requirements for submittal of the lists. When approved by EPA, this project priority list will remain intact until the project priority list for the subsequent fiscal year has been approved by EPA, except that projects becoming ineligible will be removed from the project priority list.

(b) The Department will schedule a public hearing on the annual project priority list prior to submission of the list to EPA for approval. Municipalities will be invited to provide testimony on the list and the Department will comment to EPA on all testimony received. A public hearing will also be held for any revisions to the approved project priority list determined significant by the EPA Regional Administrator.

(c) The fundable portion of the project priority list will contain projects in priority order planned for funding during the fiscal year for which the

project priority list is being prepared and will not exceed the total funds expected to be available during the Federal fiscal year. The planning portion of the list will include projects outside the fundable portion which, may under anticipated future allotment levels, receive funding during subsequent Federal fiscal years.

(d) Step 1 and Step 2 projects approved by the Department for funding from the fiscal year 1976 allotment of Federal funds and projects which were on the project priority lists for Federal fiscal years 1978, 1979 and 1980 that maintain their eligibility will be placed at the top of the project priority list in the order of relative priority beginning with the Federal fiscal year 1981 priority list. These projects will retain their priority rating established under the previous priority rating system and be considered fundable as long as they make satisfactory progress toward Step 3 project implementation and the scope of the originally rated project is not significantly changed. These projects will be subject to rerating under the current priority rating system if the Department determines that progress toward Step 3 project implementation is not satisfactory or the scope of the originally rated project is significantly changed. Following completion of a Step 1 project, any portion of the facility planning area shown to have significantly lower impact on water quality or public health than the Step 1 project rating was based on, will be separated and rerated pursuant to the provisions of this chapter.

(e) Projects which appear on the fundable portion of the project priority list that are not ready to proceed during the funding year will be bypassed, and supplements to the fundable portion of the project priority list necessary to utilize available funds will be made by adding the highest ranked projects on the planning portion of the project priority list that are ready to proceed during the funding year. Bypassed projects which retain their priority rating will be subject to the same eligibility and funding considerations for future allotments as other fundable projects.

(f) Following Step 1 funding, subsequent Step 2 and Step 3 funding will take precedence over new Step 1 applications. Step 2 and Step 3 projects will be funded in order of their relative priority. Funds not obligated for active Step 2 and Step 3 applications will be applied to fundable Step 1 applications. Step 2 and Step 3 projects will maintain their preferential funding status as long as a satisfactory schedule for Step 3 project implementation is met and the definition of wastewater treatment need and the scope of the originally rated project are not significantly changed.

(g) A project will be removed from the project priority list if:

- (1) It has been fully funded.
- (2) It is no longer entitled to funding.
- (3) The project is otherwise ineligible under the requirements of the Federal Act or the provisions of this subchapter.

(4) EPA has determined that the project is not needed to comply with the enforceable requirements of the Federal Act.

(h) In developing the fundable portion of the project priority list, the Department will provide

for the establishment of reserves in accordance with the Federal Act and the Federal regulations promulgated thereunder.

(i) In the event the Department determines that the projects on the fundable portion of the project priority list will not fully utilize the required set aside funds, the Department may supplement the fundable portion of the list with qualified projects to obligate the balance of the set aside funds.

(j) The Federal Act allows for reimbursement of 100% of the cost for modification or replacement of eligible Alternative and Innovative processes and techniques which for technical reasons do not achieve projected performance requirements. These modification or replacement projects will be rated in accordance with the current project rating procedures and shall compete with other eligible projects for funding.

(k) If additional funds become available prior to preparation of the subsequent year's project priority list, the Department may supplement the fundable portion of the project priority list. Supplemental projects will be selected from the planning portion of the project priority list in order of priority established in accordance with rating procedures set forth in this subchapter.]

(a) The project priority ratings developed under this subchapter are water quality based assessments of sewage treatment needs. This priority rating system is mandated by section 216 of the Federal Act (33 U.S.C.A. § 1296) and has been approved by the EPA for ranking projects for the Water Pollution Control Revolving Fund (WPCRF) project priority list and intended use plan. To be funded under the WPCRF, a project first shall appear on a project priority list and then an intended use plan list.

(b) The Department prepares project priority lists and intended use plan lists required by Title VI of the Federal Act (33 U.S.C.A. §§ 1381-1387). These lists are prepared in conformance with 40 CFR Part 35, Subpart K (relating to State water pollution control revolving fund) and regulations and guidance issued by PENNVEST and submitted in support of annual WPCRF capitalization grant applications to EPA.

(c) Once the Commonwealth receives its capitalization grant award, applications for funding are evaluated under the Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.1-751.20) and Part VII (relating to Pennsylvania Infrastructure Investment Authority) and regulations including the wastewater evaluation criteria in § 963.8 (relating to wastewater project evaluation criteria). The water quality based project priority ratings are the bases for the public health and safety and environmental impact criteria in the PENNVEST project evaluation process.

§ 103.6. Priority rating factors.

(a) Priority among eligible projects for the purpose of creating the project priority list and intended use plan shall be established according to the [applicant's] accumulation of points for each of the following rating factors weighted as shown:

* * * * *

§ 103.8. Water pollution control.

(a) The number of points for water pollution control shall be based on the extent to which [**Step 3**] project implementation will eliminate detrimental effects of pollution and public health hazards from existing discharges of untreated or inadequately treated sewage.

(b) The following point values shall be used to determine rating points for this factor.

* * * * *

(2) *Domestic water supply.* Points awarded in the domestic water supply category shall be assigned as follows:

(i) *18 points*—Documented evidence provided by laboratory analysis that public drinking water sources or a significant number of private drinking water sources are contaminated by malfunctioning [**on-lot**] onlot disposal systems or that downstream drinking water sources are subject to water quality standards violations due to discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation.

(ii) *10 points*—Documented contamination of public or private groundwater drinking water sources supported by known subsurface soil and hydrogeologic conditions and evidence of periodic water source contamination or documentation that downstream drinking water sources are periodically subject to contamination by existing discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation, based on water quality analyses or evaluation of the stream's physical characteristics, or both.

(iii) *5 points*—Suspected contamination of public or private groundwater drinking water sources based on knowledge of subsurface soil and hydrogeologic conditions or a downstream drinking water source is shown to be affected by periodic water quality standards violations from discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation based on evaluation of the stream's physical characteristics.

(iv) *0 points*—No downstream drinking water sources or no documentation or evidence that drinking water sources are affected by the sewage treatment need which would be eliminated or upgraded by [**Step 3**] project implementation.

(3) *Fish and aquatic life.* Points awarded in the fish and aquatic life category shall be assigned as follows:

(i) *14 points*—Surface waters are capable of supporting a cold or warm water fishery but documented evidence shows that they are not because of pollution caused by discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation.

(ii) *8 points*—Surface waters currently supporting a depressed cold or warm water fishery shown through documentation to be caused by untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation.

(iii) *5 points*—Surface waters currently supporting a cold or warm water fishery documented to be periodically affected or threatened by discharge of untreated or inadequately treated sewage which would be eliminated

or upgraded by [**Step 3**] project implementation based on evaluation of the stream's physical characteristics.

(iv) *0 points*—No documentation or evidence that fish and aquatic life are affected by untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(4) *Public bathing.* Points awarded in the public bathing category shall be assigned as follows:

(i) *8 points*—A downstream permitted public bathing beach has been closed due to contamination as a result of water quality standards violations due to discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation.

(ii) *3 points*—A downstream permitted public bathing beach is shown through water quality analysis and an evaluation of stream and bathing area's physical characteristics to be subject to contamination by untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(iii) *1 point*—A public bathing place permit has been denied because of violations of water quality standards resulting from discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation.

(iv) *0 points*—No downstream public bathing uses are documented or there is no documented effect of discharges of untreated or inadequately treated sewage on downstream public bathing uses which would be eliminated or upgraded by [**Step 3**] project implementation.

(5) *Boating and recreation.* Points awarded in the boating and recreation category shall be assigned as follows:

(i) *5 points*—Documentation shows that discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation prevent the use of a stream or impoundment for boating and other nonswimming and nonfishing recreational purposes due to excessive aquatic growth or other material posing a danger to the user or his equipment.

(ii) *3 points*—Discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation are shown to adversely affect, but not prevent, the use of the stream or impoundment for boating and other nonswimming and nonfishing recreational purposes.

(iii) *1 point*—Discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation are shown to potentially affect the use of the stream or impoundment for boating or other nonswimming and nonfishing recreational purposes.

(iv) *0 points*—No downstream boating and recreation uses are documented or there is no documented effect of untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation on downstream boating or other nonswimming and nonfishing recreational purposes.

(6) *Industrial water supply.* Points awarded in the industrial water supply category shall be assigned as follows:

(i) *5 points*—Documented evidence that water supply intakes for industries which process foods or make fine papers are shown to be directly affected as a result of water quality standards violations due to untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(ii) *3 points*—The use of water supplies for industries which use water in a way that persons are exposed to untreated water is shown to be limited or restricted as a result of water quality standards violations due to untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(iii) *1 point*—Industrial water supply intakes are shown to be adversely affected by discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation based on evaluation of the stream's physical characteristics.

(iv) *0 points*—No downstream industrial water supply intakes are documented or there is no documented effect on downstream industrial water supply uses caused by untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(7) *Irrigation.* Points awarded in the irrigation category shall be assigned as follows:

(i) *3 points*—Irrigation water sources for crops grown or prepared for human consumption are shown to be adversely affected as a result of water quality standards violations due to discharges of untreated or inadequately treated sewage which would be eliminated or upgraded by [**Step 3**] project implementation.

(ii) *2 points*—Irrigation water sources for crops other than those grown or prepared for human consumption are shown to be adversely affected as a result of water quality standards violations due to untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(iii) *1 point*—Irrigation sources are shown to be affected by untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation based on evaluation of the stream's physical characteristics.

(iv) *0 points*—No downstream irrigation uses are documented or there is no effect on downstream irrigation uses by untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(8) *Stock watering.* Points awarded in the stock watering category shall be assigned as follows:

(i) *3 points*—Water sources used to wash and water dairy animals are documented to be adversely affected as a result of water quality standards violations due to untreated or inadequately treated sewage from discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(ii) *2 points*—Water sources used to water livestock other than dairy animals are documented to be in violation of water quality standards as a result of untreated or inadequately treated sewage from discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

(iii) *1 point*—Water sources used to water livestock are shown to be contaminated by untreated or inadequately treated sewage from discharges which would be eliminated or upgraded by [**Step 3**] project implementation based on evaluation of the stream's physical characteristics.

(iv) *0 points*—No downstream stock watering is documented or there is no documented effect on downstream stock watering uses caused by untreated or inadequately treated sewage discharges which would be eliminated or upgraded by [**Step 3**] project implementation.

* * * * *

§ 103.11. Small municipality projects.

* * * * *

(b) Where a [**Step 2 or Step 3**] project will serve more than one municipality, it shall qualify as a small municipality project if each municipality involved conforms to the definition of a small municipality as set forth in § 103.1 (relating to definitions).

§ 103.12. Other considerations.

(a) [**In the event that**] If two or more projects receive the same number of total rating points, the relative rank of the projects **on the project priority list and intended use plan** will be based on points awarded under the water pollution control factor, the higher rank being assigned to that project with the higher water pollution control points. If, after this test, the projects remain tied, the factors of stream segment priority and then population affected shall be used to break ties.

(b) In the case of a regional project [**for which**] **when the Department [has on hand separate applications from participating municipalities and] determines** each portion of the regional project is essential to the integrity of the project, the Department [**shall**] **will** rank all portions of the project together as a single project and assign the same number of rating points to [**each separate application. All**] all portions of the regional project [**shall be processed and certified as concurrently as possible to allow simultaneous funding**] **on the project priority list or intended use plan.**

(c) Based on the findings and conclusions of the [**Step 1**] **sewage facilities [plans] plan,** the Department will consider the need to rerate projects for [**subsequent Step 2 funding. If**] **the purpose of ranking projects on the project priority list or intended use plan if** the findings and conclusions of [**a facility**] **the sewage facilities plan** significantly alter the definition of wastewater treatment need or the scope of the project[**, the priority rating for Step 2 funding may be different than the Step 1 project rating**].

§ 103.13. [**Project certification**] (Reserved).

[**(a) The grant amount certified will be based on the estimated eligible cost contained in the grant application submitted to the Department and will normally be 75% of the estimated eligible cost except that the grant may be increased to 85% for eligible treatment works or portions thereof which meet the criteria for Alternative and Innovative processes and techniques. Final grant amounts will**

be based on the approved project cost determined at the completion of the project.

(b) With the exception of combined Step 2 and 3 applications, the Department will not certify any Step 3 project unless and until the applicant has submitted plans and specifications suitable for advertising for bids for construction. For combined Step 2 and 3 applications, no grant increase for the construction phase will be approved until plans and specifications suitable for advertising for construction bids have been approved.

(c) Any project on an approved project priority list which has not complied with all Federal and State requirements for certification or grant award within 90 days of notification of deficiencies in application documentation will be considered ineligible and will be removed from the fundable portion of the project priority list. Such bypassed projects will be considered for inclusion on the fundable portion of a subsequent project priority list only after requirements for funding have been met.

(d) Grants may be limited to a portion of a project if it is determined by the Department that staging of a Step 2 or 3 project, or both, is technically and economically feasible. In such event, subsequent portions of staged facilities will be given first priority in appropriate future project priority lists, provided that the funded stage or stages do not result in an operable system. Where funded stages do result in an operable system, subsequent stages will be ranked in priority with other projects in the appropriate fiscal year.]

§ 103.14. [Changes in scope] (Reserved).

[(a) All changes in scope of a grant project must be submitted in writing to the Department for approval.

(b) Grant funding for changes in the scope of a grant project will be approved by the Department:

(1) If the change in scope is the result of new or revised requirements of 42 U.S.C.A. §§ 4342, 4343, 4346A, 4346B and 4347; the Federal Act and the Federal regulations promulgated thereunder; this subchapter; other changes directed by EPA or DER; or

(2) In the case of a Step 3 grant project:

(i) Where the change in scope is necessary to protect the structural or process integrity of the facilities; or

(ii) Where adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition.

(c) The cost of any additional work under \$100,000 resulting from a change in scope shall not be eligible for grant participation unless the grantee requests and the Department subsequently gives written approval of the change in scope. Where changes in scope costs will exceed \$100,000, written approval will be required prior to initiation of the additional work. Funding eligibility for any change in scope will be based on the criteria described in subsection (b).]

Subchapter D. STATE GRANTS FOR CONSTRUCTION OF SEWERAGE FACILITIES

[STATE GRANTS FOR PLANNING AND DESIGN]

(Editor's Note: As part of this proposal, the Department is proposing to delete the text of §§ 103.71—103.76 (relating to State grants for planning and design) which appears at 25 Pa. Code pages 103-34—103-39, serial pages (162240)—(162245).)

§ 103.71—103.76. (Reserved).

STATE GRANTS FOR CONSTRUCTION

§ 103.82. Eligibility.

(a) Projects which meet the following criteria are eligible for construction grants:

(1) The eligible [cost] costs of the project based on construction bids or actual construction and associated [cost exceeds] costs exceed the [estimated project cost contained in the application for Federal construction grants] amount of grant funds made available from other State and Federal grant sources.

(2) [The applicant did not initiate construction on or before June 30, 1972, and does not qualify for funding under section 206(a) or (b) of the Federal Water Pollution Control Act (33 U. S.C.A. § 1286(a) or (b)).

(3) The applicant was awarded a Federal construction grant from allocations made prior to Federal Fiscal Year 1973.

(b) Projects meeting the criteria set forth in subsection (a) shall be called old projects.

(c) In addition to those eligible projects described in subsection (a), projects which meet the following criteria are also eligible for construction grants:

(1) The applicant has received a Federal construction grant in the amount of 75% of the eligible cost of the proposed project, from Federal Fiscal Year 1973 and later funds.

(2) [The [Department determines that the] municipality to be served by the proposed project suffers from unusual financial hardship and [that] State grant funds are available for the project. In evaluating the extent of financial hardship, the Department will consider the ratio of the median family income in the municipality to be initially served by the project to the State median family income[, the ratio of the local share of the project cost to market value of real estate in the municipality or municipalities to be initially served,] and the equivalent annual sewer rental to be charged.

[(d) Projects meeting the criteria set forth in subsection (c) shall be called new projects.]

§ 103.83. Applications.

[(a)] ***

[(b) Applications will be accepted by the Department throughout the year.

(c) Applications for grants for new projects shall be accompanied by or preceded by an acceptable application for a Federal construction grant.

(d) Applications for old projects will be processed in the order of priority to the extent of availability of funds. Priority for funding will be determined by the Department based on priorities assigned to the projects for Federal grants made prior to Federal Fiscal Year 1973.]

§ 103.84. Payments [and grant amount].

[(a) Grants to old projects for eligible cost overruns shall be based on the same percentage at which the project was originally funded.

(b) Grants to new projects shall be 5.0% of the eligible project cost; provided, however, that no project may receive grants exceeding 90% of the eligible project cost from all grant sources.

(c) Payments] Payment of grant funds shall be made [concurrently with Federal construction grant payments] subject to the terms and conditions established by the Department.

[Pa.B. Doc. No. 97-474. Filed for public inspection March 28, 1997, 9:00 a.m.]

[25 PA. CODE CH. 93]

Great Lakes Initiative (GLI)

The Environmental Quality Board (Board) proposes to amend Chapter 93 (relating to water quality standards) to read as set forth in Annex A. The proposed regulatory changes incorporate requirements of the Great Lakes Water Quality Guidance (GLI) into the water quality standards regulations.

This notice is given under Board order at its meeting of February 18, 1997.

A. Effective Date

These proposed amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rule-making.

B. Contact Persons

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environment Protection's (Department's) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

These proposed amendments are made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law.

D. Background of the Amendment

The Commonwealth's Water Quality Standards, which are in Chapter 93, implement the provisions of sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards consist of the designated uses of the surface waters of this Commonwealth and the specific numeric and narrative criteria necessary to achieve and maintain those uses.

The GLI requirements, promulgated at 40 CFR Part 132 on March 23, 1995 (60 FR 15366), provide for consistent protection for fish and shellfish in the Great Lakes System and the people and wildlife who consume them. The GLI focuses on long-lasting pollutants called bioaccumulative chemicals of concern (BCCs) that accumulate in the food web of large lakes. The major elements of the GLI are water quality criteria to protect human health, aquatic life and wildlife, methodologies for criteria development, procedures for developing effluent limits for point sources, and antidegradation policies and procedures. States are required to adopt water quality standards, antidegradation policies and implementation procedures as protective as the GLI.

The Commonwealth's strategy for complying with the GLI has two major objectives. The first objective is, wherever possible, to provide Statewide consistency, so that unequal requirements are not focused on specific regions of this Commonwealth. The second objective is to provide special protection to the unique resource known as the Great Lakes System in this Commonwealth. To meet these objectives, the Department proposes applying scientifically sound methodologies from both current practice and as identified in the GLI, Statewide. Exceptions to Statewide procedures are made when the unique character of the Great Lakes System demands special consideration. For example, BCCs pose a particular threat to the Great Lakes because of the long retention of pollutants in the Great Lakes, which contrasts with the ability of streams to flush out those pollutants by their flow. For this reason, application of procedures for BCCs is different for the Great Lakes than in other waters of this Commonwealth.

The Department held a public meeting in Erie on the requirements of the GLI on September 5, 1995. In February 1996, the Commonwealth's proposed strategy was made available on the world wide web for public comment. Two meetings were also held on June 5, 1996, one with an ad hoc Great Lakes Technical Committee and the second with the public, to discuss the proposed strategy. In addition, the Department has met on several occasions with the Water Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) to discuss the GLI strategy, and has sent representatives to participate in meetings with the Council of Great Lakes Governors Working Group and Technical Subcommittee, which provide a forum for the states to discuss how each is addressing the GLI requirements. Particular issues have been raised and responded to at the meetings. Comments were received from AWQTAC concerning definitions, applicability of site-specific criteria, protection of endangered species, mixing zones and antidegradation. In recognition of those comments, the Department has included definitions for the terms requested by AWQTAC, and has clarified language relating to site-specific criteria and mixing zones. For antidegradation, the Department's intent, which is in accordance with the requirements of the GLI, is to apply the same antidegradation policy to the Great Lakes System as to the rest of the State, with

additional provisions for bioaccumulative chemicals of concern in the Great Lakes System. A proposed Statewide antidegradation statement of policy was approved by the Board on January 21, 1997, and was published at 27 Pa.B. 1473 (March 22, 1997). Additional public comments will be requested as part of the rulemaking process.

The Department has proposed to incorporate numerous GLI provisions into the Statement of Policy at Chapter 16 (relating to water quality toxics management strategy). The proposed amendments to the Statement of Policy were published at 26 Pa.B. 4220 (December 28, 1996). Those proposed amendments should be reviewed together with these proposed amendments to obtain an understanding of the scope of the GLI.

E. Summary of Regulatory Revisions

Section	<i>Brief Description of Proposed Revision</i>
93.1	<i>Definitions:</i> Definitions for bioaccumulation factors, bioaccumulative chemicals of concern, the Great Lakes System, open waters of the Great Lakes and surface waters are added. The definitions are similar to the Federal definitions in the GLI, but the definition of the Great Lakes System is restricted to this Commonwealth portions of the Great Lakes basin.
93.8	<i>Development of site-specific water quality criteria:</i> The title and language of this section are modified to broaden the applicability of site-specific criteria to all forms of criteria in order to match the GLI (The current regulation is limited to aquatic life criteria). Site-specific criteria may be developed to replace currently existing Statewide or regional criteria; this change is not limited to the Great Lakes System, but is applicable Statewide. Language has also been added to cross reference this section to new proposed § 16.61 (relating to the Great Lakes System).
93.8a	<i>Toxic substances:</i> A new subsection (k) relating to requirements for discharges to the Great Lakes System is added to § 93.8a. Paragraph (1) adopts by reference the GLI mixing requirements for discharges of BCCs to the Great Lakes. Paragraph 2 adopts by reference the GLI procedures for total maximum daily loads (TMDLs) for the open waters. Paragraph (3) addresses antidegradation provisions for BCCs in all waters of the Great Lakes System. The GLI includes a provision for determining wasteload allocations (WLAs) for discharges to the tributaries as well as the open waters of the Great Lakes. The Department has submitted information to the Environmental Protection Agency (EPA) demonstrating that its existing procedures for developing WLAs on tributary streams are as protective as the GLI procedures for the tributary discharges. Because mixing procedures in lakes had not been developed prior to the GLI, the GLI methods are proposed for adoption for use in the open waters of the Great Lakes System.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will provide appropriate protection of surface waters in the Great Lakes System, including concerns specific to this Commonwealth.

Compliance Costs

Discharges to the Great Lakes System, especially to the open waters of the Lakes, may require alternate disposal methods, installation of additional technology to meet more stringent effluent limitations than discharges to other waters of this Commonwealth, and compliance costs may be higher for those discharges to the waters.

The changes may have some fiscal impact on or create additional compliance costs for the Commonwealth, political subdivisions, local governments and the private sector with wastewater discharges to the Great Lakes System. The number of affected discharges depends on the types and amounts of substances they discharge (whether or not they are BCCs). Currently, no permitted discharge to the Great Lakes System is known to be discharging BCCs and, therefore, no discharge currently has any effluent limitations for any BCCs.

Compliance Assistance Plan

The Department plans to educate and assist the affected public with understanding the revised requirements and how to comply with them by developing guidances. Regional Office permitting staff will work with dischargers, where necessary, to assist them in meeting any additional requirements imposed by the GLI. Based on currently available information, significant changes to permit limits and compliance levels are not expected.

Paperwork Requirements.

The regulatory revisions should not have any additional paperwork impacts on the Commonwealth, its political subdivisions and the private sector.

G. Pollution Prevention

Pollution prevention approaches to environmental management often provide environmentally sound and longer-term solutions to environmental protection because pollution is prevented at the source. Pollution prevention is defined by the EPA as measures taken to avoid or reduce generation of all types of pollution—solid/hazardous waste, wastewater discharges and air emissions—at their point of origin; however, it does not include activities undertaken to treat, control or dispose of pollution once it is created. The Federal Pollution Prevention Act of 1990 established a National policy and an environmental management hierarchy that promotes pollution prevention as the preferred manner for achieving State environmental protection goals. The hierarchy is as follows:

- a. Pollution should be prevented or reduced at the source.
- b. Pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible.
- c. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible to render it less hazardous, toxic or harmful to the environment.

d. Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

The short- and long-term health of this Commonwealth's economy depends on clean air, pure water and the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvanians spend over \$1 billion per year in efforts to control pollutants through regulation of both industrial point discharges and nonpoint sources. In order to meet the Commonwealth's economic development and environmental protection goals successfully, the Commonwealth needs to adopt programs like pollution prevention that not only protect the environment but also significantly reduce costs and increase the competitiveness of the regulated community. When pollution is prevented up front, it can reduce a company's bottom-line costs and overall environmental liabilities often by getting the company out of the regulatory loop. It also can get the Department out of the business of regulating pollution that may not need to be generated in the first place.

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, these proposed amendments have incorporated the following provisions and incentives to meet that goal: these regulations are consistent with the GLI provisions that encourage pollution prevention by promoting the development of pollution prevention analysis and activities in the level of detection, mixing procedures, and antidegradation. Also, special provisions for BCCs reduce the discharge of these pollutants in the future, and therefore aid in preventing pollution.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on March 18, 1997, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted.

Comments, suggestions or objections must be received by the Board by May 13, 1997 (within 45 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by May 13, 1997 (within 45 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by May 13, 1997. A subject heading of the proposal and return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

K. *Public Hearing*

The Board will hold a public hearing for the purpose of accepting comments on this proposal. The hearing will be held at 1 p.m. on the following date:

May 13, 1997 Department of Environmental Protection
1st Floor Meeting Room, Rachel Carson State Office Bldg.
400 Market Street
Harrisburg, PA

Persons wishing to present testimony are requested to contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at the hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Nancy Roush directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-312. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.1. Definitions.

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

* * * * *

BAF—bioaccumulation factor—The ratio in liters per kilogram of a substance's concentration in tissues of an aquatic organism to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time.

BCC—bioaccumulative chemical of concern—A chemical that has the potential to cause adverse effects which, upon entering the surface waters, by itself or its toxic transformation product, accumulates in aquatic organisms by a human health bioaccumulation factor greater than 1,000. After considering metabolism and other physiochemical properties that might enhance or inhibit bioaccumulation, BCCs are listed in Subpart A of Table 6 at 40 CFR Part 132 (relating to water quality guidance for the Great Lakes system).

* * * * *

Great Lakes system—The streams, rivers, lakes and other bodies of surface water within the drainage basin of the Great Lakes in this Commonwealth.

* * * * *

Open waters of the Great Lakes—The waters within the Great Lakes in this Commonwealth lakeward from a line drawn across the mouth of the tributaries to the lakes, including the waters enclosed by constructed breakwaters, but not including the connecting channels.

* * * * *

Surface waters—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

* * * * *

§ 93.8. Development of site-specific water quality criteria [for the protection of aquatic life].

(a) The Department will consider a request for site-specific [aquatic life] criteria for protection of aquatic life, human health or wildlife when a person demonstrates that there exist site-specific biological or chemical conditions of receiving waters or exposure factors which differ from conditions upon which [State-wide] the water quality criteria were based. Site-specific criteria may be developed for use only in place of current Statewide or regional (such as the Great Lakes system) criteria. The request for site-specific criteria shall include the results of scientific studies for the purpose of:

* * * * *

(2) Developing site-specific criteria which protect [the] its existing [aquatic life and aquatic life expected to be present if the stream were meeting its] use and designated use.

* * * * *

(c) This section applies to the criteria in regulations adopted by the EQB, including § 93.5(f) (relating to application of total residual chlorine criteria); § 93.7, Table 3 (relating to specific water quality criteria) or in the statement of policy implementing § 93.8a (relating to

toxic substances) set forth at §§ 16.51 and 16.61 (relating to table; and water quality criteria special provisions for the Great Lakes system); or otherwise forming the basis for effluent limitations established under § 93.7(f). These provisions include criteria developed by the EPA under section 304(a) of the Water Pollution Control Act (33 U.S.C.A. § 1314(a)), and adopted in their original or modified form, and criteria developed by the Department.

* * * * *

§ 93.8a. Toxic substances.

* * * * *

(k) The requirements for discharges to and antidegradation requirements for the Great Lakes system are as follows:

(1) Discharges of BCCs in the Great Lakes system shall comply with the mixing procedures at 40 CFR Part 132, Appendix F, Procedure 3, Subpart C, which are incorporated by reference.

(2) Total maximum daily loads (TMDLs) for open waters of the Great Lakes shall be derived following the procedures at 40 CFR Part 132, Appendix F, Procedure 3, Subpart D, which are incorporated by reference.

(3) Statewide antidegradation requirements in this chapter and Chapter 95 (relating to wastewater treatment requirements) and in the Federal regulation at 40 CFR 131.32(a) (relating to antidegradation policy—Pennsylvania), as applicable, apply to the surface waters of the Great Lakes system.

(4) If, for any BCC, the quality of the surface water exceeds the levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the waters, that quality shall be maintained and protected, unless the Department finds that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the surface water is located, and will result in economic or social benefits to the public which outweigh any water quality degradation which the proposed discharge is expected to cause.

[Pa.B. Doc. No. 97-475. Filed for public inspection March 28, 1997, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 113]
Certificates of Insurance

The Insurance Department (Department) proposes to delete Chapter 113, Subchapter C (relating to certificates of insurance) as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and The Insurance Company Law of 1921 (act) (40 P. S. §§ 361—991).

Purpose

The purpose of this rulemaking is to delete §§ 113.31 and 113.32, to eliminate redundant regulations. The Department adopted the regulations over 20 years ago to caution and advise insurers and their representatives

that many noninsurance entities require the submission of certificates of insurance by their insurance carrier, which may vary from the basic insurance policy. The regulations simply reiterate that section 354 of the act (40 P. S. § 477b) prohibits the use of policy forms and documents that have not been approved by the Department, including certificates of insurance. As the provisions of these regulations are sufficiently addressed in the act, and the regulations in no manner enhance the authorizing statute, they are found to be redundant. Therefore, it is no longer necessary to continue these sections within the Department regulations.

Affected Parties

The deletion of the regulations affects insurance companies licensed to do business in this Commonwealth.

Fiscal Impact

There is no fiscal impact as a result of the deletion of these sections because of the redundant nature of the regulations to the statute. The regulatory provisions remain in effect under the statute.

Paperwork

There is no impact on paperwork as a result of the deletion of these regulations.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Carolyn Montgomery, Director, Bureau of Consumer Services, 1321 Strawberry Square, Harrisburg, PA 17120 (717) 783-2153, within 30 days of its publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 14, 1997, the Department submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

If IRRC has objections to any portion of this proposal, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the proposal.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-142. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 113. MISCELLANEOUS PROVISIONS

**Subchapter C. [CERTIFICATES OF INSURANCE]
(Reserved)**

§ 113.31. [General] (Reserved).

[(a) Property and casualty insurance companies are cautioned that many noninsurance entities require the submission of Certificates of Insurance by their insurance carrier which enlarge or vary the terms of the underlying policy of insurance. The use of Certificates of Insurance may violate the insurance laws of the Commonwealth.

(b) Section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b) prohibits the use in this Commonwealth of policy forms and related documents which have not first been formally approved by the Insurance Department.]

§ 113.32. [Required statement] (Reserved).

[Certificates of Insurance shall contain either the following or substantially equivalent language:

"This Certificate of Insurance does not amend, extend, or otherwise alter the terms and conditions of insurance coverage contained in Policy No(s). ___issued by ___(Name of insurer)."]

[Pa.B. Doc. No. 97-476. Filed for public inspection March 28, 1997, 9:00 a.m.]

**[31 PA. CODE CH. 111]
Pennsylvania FAIR Plan**

The Insurance Department (Department) proposes to delete Chapter 111 (relating to Pennsylvania Fair Plan) as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and The Pennsylvania Fair Plan Act (act) (40 P. S. §§ 1600.101—1600.502).

Purpose

The purpose of this proposal is to delete Chapter 111 to eliminate redundant regulations. The Department adopted the regulations more than 20 years ago to implement the act. The act provides for the establishment of an Industry Placement Facility to assure fair access to insurance requirements (FAIR Plan) in order to make available basic property insurance for residential and commercial properties in this Commonwealth.

The substance of these regulations is sufficiently addressed in the act, and the regulations in no manner enhance the authorizing statute. Therefore, it is found to be redundant, and it is no longer necessary to continue Chapter 111 within the Department regulations.

Affected Parties

The deletion of this chapter affects property and casualty insurers licensed to do business in this Commonwealth.

Fiscal Impact

The deletion of this chapter has no fiscal impact because of the redundant relation of the regulations to the act. The regulatory provisions remain in effect under the statute.

Paperwork

There is no impact on paperwork as a result of the deletion of this chapter.

Effectiveness/Sunset Date

The rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete redundant regulations, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Carolyn Montgomery, Director, Bureau of Consumer Services, 1321 Strawberry Square, Harrisburg, PA 17120, (717) 783-2153, within 30 days of its publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 14, 1997, the Department submitted a copy of this proposal to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of the material is available to the public upon request.

If IRRC has objections to any portion of this proposal, it will notify the agency within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the proposal.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-140. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

**CHAPTER 111. [PENNSYLVANIA FAIR PLAN]
(Reserved)**

§ 111.1. [Fair Plan Act] (Reserved).

[The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502) provides for the establishment of an Insurance Placement Facility and the formulation of a Fair Plan in order to make available basic property insurance against loss from fire and certain other perils for residential and commercial properties of this Commonwealth. The insurance value limit is \$1.5 million.]

§ 111.2. [Cancellation notice] (Reserved).

[Section 202(9) of the Pennsylvania Fair Plan Act (40 P. S. § 1600.202(9)) requires that a written notice be given to a policyholder at least 30 days prior to the cancellation or refusal to renew of a risk eligible under the Fair Plan, except when there is nonpayment of premium or evidence of incendiaryism. The notice shall contain an explanation of the procedures available for the policyholder to request an inspection under Section VII of the Fair Plan.]

§ 111.3. [Endorsements] (Reserved).

[(a) The actual endorsement of each property insurance policy issued in this Commonwealth will not be required. It is recommended, however, that an endorsement in the following form or substantially similar be attached to each policy:

It is agreed that insurance provided by this policy on any property which is eligible for coverage in the insurance placement facility of Pennsylvania shall not, except in the case of nonpayment of premium or evidence of incendiaryism, be cancelled nor renewal of such insurance refused unless the company shall first have provided at least 30 days prior written notice to the insured of the company's intent to cancel or not to renew, together with an explanation to the insured of the procedure for obtaining an inspection and a policy of basic property insurance from the facility.

(b) No endorsements may be issued until they have been approved by the Insurance Department.

(c) Bureaus, associations or rating organizations licensed in this Commonwealth may submit to the Insurance Department for approval endorsements on behalf of their respective members.]

§ 111.4. [Penalties] (Reserved).

[Failure to provide proper notice shall constitute a violation of the Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502) and subject the violator to prosecution by the Insurance Department as provided by law.]

[Pa.B. Doc. No. 97-477. Filed for public inspection March 28, 1997, 9:00 a.m.]

**STATE ARCHITECTS
LICENSURE BOARD**

[49 PA. CODE CH. 9]
General Revisions

The State Architects Licensure Board (Board) proposes to amend Chapter 9 (relating to State Architects Licensure Board) to read as set forth in Annex A.

A. *Effective Date*

The amendments will go into effect upon publication as final rulemaking in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are proposed under sections 6(a), (b) and (d), 8(b), 13(h) and 14 of the Architects Licensure Law (act) (63 P. S. §§ 34.6(a), 34.6(b) and (d), 34.8(b), 34.13(h) and 34.14).

C. Purpose and Need for the Amendments

In Executive Order 1996-1, February 6, 1996, executive agencies, including the Board, were directed to commence a program of review of existing regulations to ensure that regulations were consistent with the principles and requirements of the Executive Order. By these amendments, the Board proposes to implement its review of its existing regulations. In accordance with the principles of the Executive Order, the Board proposes to delete many regulations which it has determined are either unnecessary, outdated or for which viable nonregulatory alternatives exist. In revisions to existing regulations, the Board proposes to clarify and simplify requirements for licensure by examination and reciprocity. The Board proposes to delete regulations which embody former procedures and standards of the National Council of Architectural Registration Board (NCARB) which have undergone changes since its last major revisions to these regulations in 1986. Substantively, the Board proposes to conform its regulations pertaining to the practice of architecture to current practice and procedures. To do so, the Board proposes new sections concerning the architect's participation in design/build construction projects and construction management. Finally, the Board proposes to amend its regulations regarding complaints to conform to court decisions regarding the separation of prosecutorial and adjudicatory functions.

D. Persons Affected

These proposed amendments will affect individuals who are in architectural schools and architectural internships, candidates for licensure by examination or reciprocity, Pennsylvania licensed architects and persons who practice architecture or a component of the practice of architecture as defined in section 3 of the act (63 P. S. § 34.3).

E. Description of Amendments

Throughout the existing regulations both licensure and registration are used interchangeably when referring to an architect who has been granted a license to practice architecture by the Board. The act, as well as the regulations, require registration of architectural firms. Throughout this proposal, the Board deletes references to registration or certification of an architect and refers to a "license" or "licensure" as an "architect," reserving the nomenclature "registration" to architectural firms which have registered or applied for registration to do business in this Commonwealth. The word "certification" is reserved for use in connection with certification by NCARB.

The following is a section-by-section description of the changes which are proposed in each major category.

Affiliations with NCARB and Board Functions

The Board proposes to delete §§ 9.12—9.17, 9.22—9.26 and 9.28—9.35. These sections now describe the status of the Board as a member of the NCARB and describe Board officers, staff and their duties and general information. The Board has determined that these regulations are unnecessary and do not assist the candidate for licensure or the architect in providing either useful or necessary information as to Board operations or the requirements of the act.

Registration by Examination

The Board proposes to revise its regulations pertaining to the eligibility of candidates to sit for the examination. This proposal would delete §§ 9.42, 9.43, 9.45, 9.47 and 9.48. Owing to 1989 amendments to the eligibility requirements for examination, the existing classifications are out-of-date. The 1989 amendments under existing § 9.48 adopted the education requirements of NCARB certification which require that candidates eligible to take the licensure examination in this Commonwealth must possess an NAAB professional degree in architecture.

The Board proposes to recodify the education requirement in a revised § 9.46. Section 9.49a pertaining to the required training would be revised to delete outdated transitional language when the Intern Development Program was adopted as a prerequisite for licensure. The Board proposes to add a new subsection (b) providing information helpful to the candidate in submitting a complete application.

Finally, the Board adds a new § 9.50 (relating to reapplications) which adds language to deal with reapplications. The candidates have up to 5 years to take and pass an examination. The section further advises candidates that they must meet the requirements of the law and the regulations in effect at the time they reapply for the examination.

Reciprocity

The Board proposes to revise §§ 9.61 and 9.62 and delete § 9.63 concerning reciprocal licensure in order to clarify the manner in which an individual may obtain a license to practice architecture in this Commonwealth by virtue of possessing a license in another jurisdiction. The proposal would establish three avenues by which an individual may become licensed by reciprocity:

(1) Having been licensed by a state, territory or country with education, training and examination requirements equal to that in this Commonwealth at the time the architect was originally licensed.

(2) Having been licensed under examination, education or experience requirements not equal to the requirements of the Commonwealth, but having at least 10 years of continuous practice as a licensed architect.

(3) Having been licensed without examination by submitting architectural work on completed projects for Board review.

NCARB Certification

Section 9(a) of the act (63 P. S. § 34.9(a)) requires that the Board accept NCARB certification as presumptive evidence of meeting the requirements for licensure in this Commonwealth. To receive an NCARB certificate, an individual must meet NCARB education, training and examination standards and hold a current license from an NCARB member board.

The Board proposes to delete §§ 9.71—9.73 relating to NCARB certification before examination. These sections are outdated because they refer to examination procedures employed when the ARE was in written format. As of February 1997, the licensure examination is given in computer format. See 26 Pa.B. 5101 (October 26, 1996).

Recognition of NCARB certification as prima facie evidence of meeting the education, training and experience requirements of the Commonwealth would be recodified at § 9.61 (relating to general requirements).

Application Procedures

The Board proposes to delete §§ 9.87, 9.89 and 9.91. All of these provisions are outdated and no longer applicable. The new computer-administered examination provided by NCARB gives candidates notice as to whether or not they have passed an examination at the time they take the examination. Although the actual license is issued by the Board, notification of having passed the examination is sent to the candidates by NCARB's test administrator.

Section 9.88 (relating to verification of IDP) would be revised under the proposal and renamed. Completion of the Intern Development Program (IDP) of NCARB has been required by the Board as a precondition to take the licensure examination since 1991. Training as an architect begins after a candidate completes his professional education. Interns apply directly to NCARB which maintains a record of the interns' practice experience. The completion of IDP is monitored by NCARB. Certification of having completed the training required under IDP guidelines is sent directly by NCARB to the Board where the intern has applied for licensure.

The Board proposes to revise § 9.93 (relating to reporting of disciplinary actions, criminal convictions and other licenses), the self-reporting requirement for other states' disciplinary actions to make compliance simpler and easier for licensees to understand. Licensee compliance will assure that the Board will receive the earliest possible notice of disciplinary actions or criminal convictions after their occurrence.

Reactivation of Lapsed and Expired Licenses

The Board proposes to make minor editorial changes to §§ 9.101—9.103 (relating to reactivation of lapsed and expired licenses).

Examination

Section 9.116 (relating to admittance) is proposed to be amended to notify candidates of identification required for admission to the examination and prohibited conduct during an examination.

The Board proposes to delete § 9.120 pertaining to the administration of examinations. Under the new computer-administered examination procedure of NCARB, candidates who the Board has determined are eligible for licensure by examination may take the examination in any jurisdiction in which it is offered by NCARB. Candidates may schedule and take any part of the examination in any sequence. Examination results are sent directly to the jurisdictions where the candidate has applied for licensure.

Grading and Review

The Board proposes to revise §§ 9.131 and 9.132 (relating to examination grading; and grading compilation) to delete outdated references to the C/ARE examination which is no longer used and to make appropriate cross reference to § 9.27 (relating to inactive records), which places a 5-year limit on the time allowed to take and pass all parts of the ARE.

Architect's Seal

The Board has proposed to revise §§ 9.141—9.143 and 9.145 and delete § 9.144 to reflect recognition in section 12(a) of the act (63 P. S. § 34.12(a)) that a stamp may be used in lieu of a seal. The Board proposes to revise language with reference to a seal to include a stamp inasmuch as the Board has determined that no special rule should apply to either one or the other with regard to impressing the seal or making the stamp on construc-

tion documents, contract documents and other architectural work prepared by an architect or under his direct supervision.

In addition, the Board intends to add a new subsection to § 9.141 (relating to requirement) to require that an architect must impress a seal or must stamp all contract documents, plans and specifications which he prepares or which are prepared under his direct supervision. The new subsection (b) would also require that the licensed architect oversign all original documents. An architect's placing of the architect registration seal and signature on a document certifies that the architect has exercised direction, guidance and judgment in all aspects of the plan pertaining to health, safety and welfare issues, and accepts legal responsibility on architectural matters embodied in the document.

The Board proposes to revise § 9.142(a) to simplify language and to place upon the architect the responsibility for knowledge of his licensure status.

Finally, the Board proposes to delete § 9.144. This matter is now covered in § 9.142, which will provide that it is unlawful for an architect to seal or stamp documents while a license is not current for any reason (revocation, suspension or not current).

Standards of Professional Conduct

Section 6(b) of the act authorizes the Board to establish standards of professional conduct for architects. It is the Board's intent that the standards will form the basis for disciplinary action and, therefore, should not contain precatory injunctions or hortatory language. To the contrary, the Board believes the regulation should contain clear unambiguous statements of conduct which is prescribed or required.

The standards have, therefore, been revised to command compliance of every licensed architect and subject an architect to revocation, suspension, reprimand or civil penalty for a violation or departure from a standard of professional conduct. In addition, the Board proposes to add four new categories of prohibited conduct. Subsection (j) concerns a violation of a law while in the conduct of an architect's professional practice. Subsection (k) concerns the use of a seal contrary to section 12(a) of the act which prohibits an architect from signing or sealing professional work which was not prepared under the direct supervision of the architect. Subsection (i) concerns the architect's responsibility to assist architect interns in the development training and the architect's responsibility when verifying architectural work performed by an intern which he is responsible for a supervising architect. Subsection (l) proscribes fraudulent representations to a prospective client or an existing client or an employer in connection with obtaining employment to perform architectural work.

The Board proposes to delete § 9.152. The Board finds this section is no longer necessary. This section was originally intended to abrogate a former rule which prohibited price quotations as unethical. Today, and for many years prior to this date, the regulation states it as an accepted standard of practice. Continuing its existence in these rules is both confusing and unnecessary for the licensed professional architect.

Professional and Corporate Practice

The Board proposes to make amendments to § 9.161 (relating to compliance with applicable statutes) to update statutory references to the Associations Code with regard to firm practice.

Section 9.163 (relating to prior approval by the Board) concerns Board approval of architectural firm practice. Although an architect licensed in another jurisdiction may offer to perform architecture without first obtaining a license, section 13(h) of the act authorizes the Board to require annual filings of the entities which offer to practice or practice in this Commonwealth. This section implements section 13(h) of the act. In accordance with section 13(f) of the act, the Board proposes to add additional language requiring that the proposed letterhead include the name of at least one of the principals of the firm who holds a license to practice architecture in this Commonwealth. The addition of this information will assist the Board in expeditiously processing firm practice requests.

The proposed amendment to § 9.165 (relating to architect as employee) will eliminate a transitional clause it made in 1987 which is no longer applicable.

Under corporate practice, the Board proposes to add two new sections. These sections concern the practice of architecture in conjunction with other entities and design professionals. Since the enactment of the act in 1982, two methods of delivery of a building to an owner or client have increased in usage throughout the United States. Both are designed to facilitate and speed the design and construction process. These delivery processes are alternatively referred to as construction management and design-build. Both these terms are defined in § 9.2 (relating to definitions).

Construction management is included as a service within the practice of architecture as defined in section 3 of the act. The Board proposal would define construction management as planning, managing and coordinating construction in order to serve the economic investment of all entities through the control of time, cost and quality. Under § 9.167 (relating to design/build projects), the Board proposes to require the construction management service be provided through an architect or a professional engineer in responsible charge of the construction management services. Section 9.167 would also provide notice that the Board does not consider individuals performing general construction work to be within the types of activities the Legislature intended to reserve to licensed architects.

With regard to design-build activities, the Board proposal would define design-build project as a process in which a single entity executes a contract document with an owner to provide combined architectural and construction services. Although not recognized in the act, throughout the United States the selection by both public and private owners of the design-build delivery process has been increasing. There are numerous versions of the design-build process, some of which the Board believes would be unlawful in the act.

For purpose of regulation, a design-build project is defined as a process whereby the owner obtains both design and construction services through a contract with a single entity. The entity accepts full responsibility for providing both design services and the construction of the building. Design-build contrasts with the traditional building plan in which separate contracts are made for design and construction. The act declares that licensure is required to practice architecture to protect the health, safety and property of the people of this Commonwealth. See section 2 of the act (63 P.S. § 34.2). A license is required for design services of a structure or group of structures which have as their principal purpose, human habitation or use. The practice of architecture is further

defined to include the rendering or offering to render architectural services. See section 3 of the act.

By proposed § 9.167 (relating to design/build projects), the Board intends to provide rules governing the architect's participation in a design-build project. This section would require the architect and the design-build entity to enter into a written agreement which would require that the architect participate in all material aspects of architectural services provided. In addition, in any offering for design-build, the design-build entity must certify: the name of the architect; that the architect is contractually and professionally responsible for providing the architectural services and will have direct supervision over the architectural work; and that the architect's services will not be terminated without the consent of the owner.

Use of Names

The Board proposes to add a new sentence to § 9.171 (relating to the title "Architect") that graduates of professional schools and interns in training may not use the title "architect" prior to passing licensure examination and any offering of architectural services.

The Board also proposes to delete existing §§ 9.172 and 9.173 as unnecessary.

The Board proposes to amend § 9.177 (relating to use of names of deceased, withdrawn or retired persons firm names) to provide that a firm should be able to retain the use of the name of a withdrawn owner, as well as a retired or deceased owner, if the parties to the original firm agreed to do so. By this proposal, the Board responds to concerns from architects practicing in this Commonwealth that such a procedure should be permitted in the use of firm names.

Complaints Procedures

Under section 21(a) of the act (63 P.S. § 34.21(a)), the Board has authority to conduct investigations of complaints regarding licensed architects as well as applicants. In accordance with *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992), the Board has delegated this function to the Office of Prosecution of the Bureau of Professional and Occupational Affairs. The Board has retained its authority to conduct hearings and render adjudications and refer matters to hearing examiners under section 21(b) and (c) of the act. The Board proposes to amend §§ 9.181, 9.182, 9.185 and 9.202 to reflect the Board's compliance with directives of the *Lyness* decision pertaining to the exercise of its investigatory and prosecutorial powers.

Classifications

The Board proposes to delete various classifications of license. Currently, the Board maintains only two classifications, licensure by examination and licensure by reciprocity. These classifications are used for administrative purposes only when, for example, verifying licensure to another jurisdiction, and have no effect on the ability of a licensee to practice architecture in this Commonwealth.

F. Fiscal Impact

The proposal will have no ascertainable fiscal impact on the Commonwealth or local governments. With regard to the regulated population and candidates for licensure, the proposed amendments will result in fewer regulatory requirements and eliminate some restrictions of existing regulations pertaining to corporate practice and filings.

G. Paperwork Requirements

The proposed amendments will add no additional paperwork requirements for the Commonwealth, its local governments or the regulated population.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on March 13, 1997, to Independent Regulatory Review Commission (IRRC) and the Chairperson of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Board, the General Assembly and the Governor of objections raised.

I. Public Comment

Persons wishing to make comments, suggestions or objections to the proposed amendments may do so by writing Kathleen Davis, Board Administrator, State Architects Licensure Board, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposal in the *Pennsylvania Bulletin*.

DENNIS L. ASTORINO,
President

Fiscal Note: 16A-413. 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 of the NCARB approved by the Board as the architecture licensure examination.

Accredited program—A program accredited by the National Architectural Accrediting Board to provide courses in architecture and related subjects and empowered to grant professional and academic degrees in architecture.

Construction management—The practice of planning, managing and coordinating a construction or development project for which the construction requires plans or specifications, or both, which are prepared by a licensed architect or a licensed engineer, and when the services performed are

intended to serve the economic investment of all entities through the control of time, cost and quality.

Design/build project—A combined design and construction process whereby a specific entity executes a single contract document with an owner to provide the owner with both architectural and construction services.

* * * * *

IDP—Intern Development Program of NCARB.

IDP council record—A detailed authenticated record of an individual's education, training and character maintained by NCARB.

* * * * *

NCARB—National Council of Architectural Registration Boards, 1735 New York Avenue, NW, Suite 700, Washington, DC 20006.

* * * * *

AFFILIATION WITH NCARB

§ 9.11. NCARB membership.

The Board will maintain membership in [the] NCARB and the Middle Atlantic Regional Conference of NCARB. The necessary costs for the membership will be paid for under section 11 of the act (63 P. S. § 34.11).

(Editor's Note: The Board is proposing to delete §§ 9.12—9.17 as they currently appear in the *Pennsylvania Code* at pages 9-7—9-9 (serial pages (221095)—(221097)).

FUNCTIONS OF THE BOARD

§ 9.21. Board meetings.

In addition to the one regular meeting per year prescribed by law, the Board will hold additional meetings as may be necessary to conduct the business of the Board. The administrative assistant, in conjunction with the administrative office of the Bureau [of Professional and Occupational Affairs], will give notice of the time and place of each meeting at which formal action will be taken, under section 9 of the Sunshine Act (65 P. S. § [§ 271—286] 279). Meetings of the Board will be conducted in accordance with the Sunshine Act (65 P. S. §§ 271—286), and *Roberts Rules of Order, Revised*.

(Editor's Note: The Board is proposing to delete §§ 9.22—9.26 as they currently appear in the *Pennsylvania Code* at pages 9-9 and 9-10 (serial pages (221097) to (221098)).

§ 9.27. Inactive records.

Records of candidates for [registration] licensure that are inactive for [a period of] 5 years will be destroyed. A record will be considered inactive if a candidate [has taken the examination, has failed one or more parts of the examination, and has failed to retake one or more of the parts of the examination required for registration for a period of 5 years, or if a candidate had been declared eligible to sit for the examination and fails to sit for the examination for a period of 5 years] does not correct a deficiency in an application, or pass the

entire examination within 5 years of notice from the Board of the deficiency or eligibility to take the examination.

(Editor's Note: The Board is proposing to delete §§ 9.28—9.35 as they currently appear in the Pennsylvania Code at pages 9-10—9-12 (serial pages (221098)—(221100)).

REGISTRATION BY EXAMINATION

(Editor's Note: The Board is proposing to delete §§ 9.42, 9.43 and 9.45 as they currently appear in the Pennsylvania Code at pages 9-13 and 9-14 (serial pages (221101) and (221102)).

§ 9.46. Requirements for [candidates holding architectural degrees] examination eligibility.

[Subject to § 9.49a (relating to diversified training requirements):

(1)] A candidate for the examination [who holds a] shall have:

(1) A professional degree in architecture from an accredited [school of architecture shall have 3 years of diversified training experience in the offices of architects or the equivalent of the experience.

(2) A candidate for the examination who holds a Master's, Ph.D. or Doctor's degree in architecture from an accredited school of architecture, where the degree is the first professional architectural degree, shall have 3 years' training experience in the office of architects or the equivalent of the experience] program.

[(3) A candidate for the examination who holds a Master's, Ph.D. or Doctor's degree in architecture from an accredited school of architecture, where the degree is the second professional architectural degree, shall have 2 years experience in the offices of architects or the equivalent of the experience.]

(2) Three years of diversified training experience demonstrated by training requirements of the IDP.

[(4)] (3) An architectural degree candidate applying for first time registration [and meeting the requirements listed in paragraphs (1)—(3)] is required to pass the entire professional licensure examination of the Board within 5 years of the date of notice by the Board of eligibility to take the examination. The Board may waive this requirement upon proof of medical hardship or other extraordinary circumstances.

(Editor's Note: The Board is proposing to delete §§ 9.47 and 9.48 as they currently appear in the Pennsylvania Code at pages 9-15 and 9-16 (serial pages (221103) and (221104)).

§ 9.49a. Diversified training requirements.

[Effective for the 1992 and subsequent written licensure examinations, a candidate shall meet the]

(a) The Board has adopted NCARB Training Requirements for [Intern-Architect Development Program (IDP)] IDP as set forth in Appendix B to the 1985-1986 NCARB Circular of Information No. 1. The 1985-1986 NCARB Circular of Information No. 1 is

available from: National Council of Architectural Registration Boards, 1735 New York Avenue, N. W., Suite 700, Washington, D.C. 20006.

(b) The candidate shall keep records of required diversified training experience in accordance with NCARB IDP requirements. The candidate is responsible for having NCARB transmit a certificate of completion of IDP as part of the candidate's application. An application which does not contain a certificate will not be reviewed.

§ 9.50. Reapplications.

Candidates required to file new applications under §§ 9.27 and 9.46(c) (relating to inactive records; and requirements for examination eligibility) shall meet all requirements of the act and regulations in effect at the time the new application is filed.

[REGISTRATION] LICENSURE BY RECIPROCITY

§ 9.61. General requirements.

[(a)] Registration may be granted to an applicant who holds a [certificate of registration or its equivalent as an architect] license to practice architecture in another state, territory or country where [, in the judgment of the Board,] the qualifications required for [registration] licensure are equal to the requirements for [registration] licensure in this Commonwealth [if the applicant is not under investigation in the other jurisdiction as a result of an alleged violation of statute, or the applicant, having been found guilty of a violation, has satisfied the penalty imposed] at the time of licensure in the original jurisdiction and the applicant is of good moral character. Possession of an NCARB Certificate is prima facie evidence that the individual meets the requirements of the Commonwealth.

[(b) The reciprocal registration may be granted by the Board under the following categories:

(1) Reciprocal—The applicant is registered in another state, territory or country and not holding a NCARB Certificate.

(2) NCARB—The applicant is registered in another state, territory or country and is certified by the NCARB.]

§ 9.62. Reciprocal [registration] licensure.

(a) An applicant [requesting] for reciprocal [registration may be required to] licensure shall submit [with the] a completed application [an official certification of registration in his home state, territory or country from the Secretary of the examining or registration board or other certifying official, stating on what basis registration was granted, whether by oral or written examination or exemption, and whether the registration is in] on forms provided by the Board containing:

(1) A letter of good standing [at the time of application for registration in this Commonwealth], or the equivalent from the licensing entity of the state or country where the architect currently practices.

[(b) An applicant requesting reciprocal registration may submit with the application complete information] (2) Information relative to training, edu-

cation and experience as an employe or as a practicing principal [, as may be required by the Board].

(b) An applicant who has qualified for original licensure by having passed the 1992 ARE shall submit certification of having met the training requirements for IDP.

(c) [An architect registered] A candidate in another recognized and approved jurisdiction and seeking to practice within this Commonwealth who has not lawfully practiced architecture for [a period of] more than 10 years is required to submit a detailed summary of professional or business activities, or both, during the inactive period. It is within the discretion of the Board to determine whether the activities are substantially equivalent to the continuing practice of architecture.

(d) [An applicant requesting reciprocal registration may be required to appear before the Board for a personal interview. Submission of examples of the professional performance of the applicant may be required.] An applicant licensed on the basis of education, experience or examination not equal to the requirements of the Commonwealth shall submit satisfactory evidence of at least 10 years of continuous practice of architecture while holding a valid license as an architect. An applicant who has not taken a licensure examination shall provide the Board with a list of not less than three nor more than ten examples of architectural services designed and supervised by the applicant, giving location, name of owner, use and purpose, and date of completion.

(e) An applicant may be required to appear before the Board for a personal interview and may be requested to submit detailed information about training and experience, or both.

(Editor's Note: The Board is proposing to delete § 9.63 as it currently appears in the Pennsylvania Code at p. 9-18 (serial page (221106)).

NCARB CERTIFICATION

(Editor's Note: The Board is proposing to delete §§ 9.71—9.73 as they currently appear in the Pennsylvania Code at page 9-19 (serial page (221107)).

APPLICATION PROCEDURES

§ 9.84. Age and experience.

The [applicant] candidate shall be [at least 20 years of age and] of good moral character. [An applicant] A candidate for first-time [registration] licensure shall reside in or be employed in this Commonwealth by a Commonwealth [registered] licensed architect, practicing as a principal in this Commonwealth and having a permanent Commonwealth address.

(Editor's Note: The Board is proposing to delete § 9.87 as it currently appears in the Pennsylvania Code at p. 9-21 (serial page (221109)).

§ 9.88. Verification of [employment records] IDP.

[It is the responsibility of the candidate to submit with the application verification of employment listed. The verification shall be in the form of a letter from the employer, giving dates of employment, whether part-time or full-time, and duties performed. Effective for the 1992 and subsequent examinations, a] The candidate shall keep records of

required diversified training experience in accordance with NCARB recordkeeping procedures on NCARB IDP Recordkeeping Forms. These forms are available [from the Board's administrative office or] from NCARB. The candidate is responsible for having NCARB transmit to the Board Offices, a certificate of completion of IDP requirements as part of the candidate's application. An application which does not contain submissions of verification will not be reviewed.

(Editor's Note: The Board is proposing to delete § 9.89 as it currently appears in the Pennsylvania Code at page 9-21 (serial page (221109)).

§ 9.90. Board member as reference.

No Board member will act as a reference on the application of a candidate for [registration] licensure except as an employer [, except that a]. A Board member may act as a reference of a candidate applying for certification by NCARB, whether the Board member is or was the employer or not.

(Editor's Note: The Board is proposing to delete § 9.91 as it currently appears in the Pennsylvania Code at pages 9-22 and 9-23 (serial pages (221110) and (221111)).

* * * * *

§ 9.93. Reporting of disciplinary actions, criminal convictions and other licenses.

* * * * *

(b) [The reporting responsibilities enumerated in subsection (a) continue after the Board issues a license. If, after] After the Board has issued a license [, any of the events listed under subsection (a) occur], the licensee shall report [that matter] disciplinary action or criminal convictions, or both to the Board in writing within [30] 90 days after its occurrence or on the biennial renewal application, whichever occurs first.

REACTIVATION OF LAPSED AND EXPIRED [CERTIFICATES] LICENSES

§ 9.101. [Application] Reactivation.

An architect who has been licensed by the Board and who has discontinued the practice of architecture in this Commonwealth, and who has allowed his certificate of licensure to lapse by failing to pay the biennial renewal fee, may apply to the Board for reactivation of licensure.

§ 9.102. Requirements.

An architect applying [for reactivation of lapsed certificates] to return to active status shall submit [to the Board] an application on the form prescribed by the Board [. The application shall be accompanied by a fee for the certificate and a fee for reinstatement. The application shall also be accompanied by], the current renewal fee, reactivation fee and a notarized affidavit stating that the [applicant] candidate did not practice architecture in this Commonwealth during the period of [lapsed licensure] inactive status.

§ 9.103. [Late renewal] Lapsed licenses.

An architect who practices architecture in this Commonwealth and who has allowed his [certificate of licensure] license to [expire] lapse by failing to pay

a biennial renewal fee, may reactivate his [**certificate**] **license** by submitting to the Board an application on the form prescribed by the Board. The application shall be accompanied by the reactivation fee [**as set forth**] in § 9.3 (relating to fees), along with, past due biennial renewal fees, including the biennial renewal fee for the current period and penalty fees [**as set forth**] in section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). The payment of any of these fees does not preclude the Board from taking disciplinary action against the architect for practicing architecture without a current license.

THE EXAMINATION

§ 9.116. Admittance.

A candidate shall present his admission letter [**to the proctor**] and **form of positive identification** for admittance to the examination. **Candidates shall comply with examination procedures and conduct standards as established by NCARB. Conduct evidencing suspected cheating, such as copying, photographing or using unauthorized materials will result in the dismissal of the candidate from the examination. Proof of suspected cheating may result in disqualification to sit for future examinations after notice to the candidate and an opportunity to be heard.**

(Editor's Note: The Board is proposing to delete § 9.120 as it currently appears in the Pennsylvania Code at page 9-27 (serial p. (221115)).

GRADING AND REVIEW

§ 9.131. Examination grading.

The [**written examination () ARE ()**] shall be graded using procedures developed by NCARB in consultation with a professional testing organization. [**under contract to the Bureau. The computer-administered examination (C/A RE) shall be graded using procedures developed by NCARB in consultation with a professional testing organization approved by the Bureau. Test**] Examination results shall be recorded by the Board in the [**permanent**] record of the candidate and shall be maintained in accordance with § 9.27 (relating to inactive records).

§ 9.132. Grading compilation.

To [**achieve overall passage of the examination**] **qualify for licensure**, a candidate shall receive a passing grade on each part or division of the examination. Grades received in individual parts or divisions will not be averaged. A candidate will have unlimited opportunities, **subject to § 9.46(c) (relating to requirements for examination eligibility)**, to retake those portions of the examination which were failed.

ARCHITECT'S [**SEAL**] **STAMP OF** [**REGISTRATION**] **LICENSURE**

§ 9.141. Requirement.

(a) A [**registrant**] **licensee** shall, upon [**registration**] **licensure**, obtain a metal seal, of the design authorized by the Board, bearing the [**registrant's**] **licensee's** name and **license** number and the legend, "[**Registered**] Architect." A stamp design identical to the prescribed seal may be obtained and used in lieu of, **or in conjunction with**, a seal.

(b) **The architect shall impress his seal or stamp on all contract documents, plans and specifications prepared by or under his direct supervision. The architect shall over-sign the original documents.**

§ 9.142. [**Use**] **Unlawful use of seal or stamp.**

(a) [**Plans and specifications prepared by or under the direct supervision of a registered architect shall be stamped with the architect's seal of registration during the life of the registrant's certificate, and it is unlawful for anyone to stamp or seal documents with the seal after the registration of the registrant named thereon has expired or has been revoked or suspended, unless and until the certificate has been renewed or reissued.**] **An architect may not seal or stamp a document unless his license is current with the Board.**

(b) An architect may not impress the seal **or stamp**, or knowingly permit it to be impressed, on drawings, specifications or other design documents which were not prepared by the architect or under his direct supervision.

§ 9.143. Design [**of seals**].

(a) A [**registrant**] **licensee** may not design his own seal **or stamp** except as provided in this chapter.

(b) [**While each registrant who is a member of a firm of architects is required to obtain an individual seal, a**] A seal **or stamp** combining the names of a number of architects in [**the**] a firm may be used in lieu of individual seals **or stamps**, if the names of the individual [**registrants**] **licensees**, their registration number and the legend "[**Registered**] Architects" appear on the combined seal **or stamp**, and the members of the firm are licensed to practice architecture in this Commonwealth. If one or more members of the firm is not licensed by the Board, the individual architect who is professionally responsible for the work of the firm in this Commonwealth is required to use his individual seal **or stamp** on that work.

(c) **A mechanical reproduction of a stamp identical to the prescribed stamp may be used.**

[(c)] (d) This section [**may**] **does not** [**be construed to**] **relieve an individual architect whose name appears on the combined seal or stamp of a responsibility mandated in the act and this chapter.**

(Editor's Note: The Board is proposing to delete § 9.144 as it currently appears in the Pennsylvania Code at page 9-31 (serial page (206079)).

§ 9.145. Surrender of seals **and stamps**.

(a) If an architect voluntarily surrenders or is required to surrender his seal and stamp to the Board, the surrender shall be made in person or by registered mail to the office of the Board. If the cause of the surrender is forfeiture or revocation, the seal **or stamp, or both**, will be destroyed by the Board. The destruction will be noted for the record in the file of the architect named on the seal **or stamp, or both**. If the cause of surrender is suspension, the seal **or stamp** will be held in security by the Board until the period of the suspension is concluded or the conditions of the suspension have been complied with to the satisfaction of the Board, or both.

(b) Upon the death of an architect, written notice of the death shall be submitted to the Board by the architect's personal representative. Upon receipt of the notice, the

Board will declare the [**registration**] license number and the stamp or seal, or both, of the deceased architect void. [**On or before the settlement of the deceased architect's estate, the stamp or seal, or both, shall be surrendered to the Board.**]

CONDUCT OF [**REGISTERED**] LICENSED ARCHITECT

§ 9.151. Standards of professional conduct.

[(a)] An architect [**licensed in this Commonwealth is expected to be dedicated to the highest standards of professionalism, integrity and competence, including design excellence. This dedication requires adherence**] who fails to adhere to the standards of professional conduct in this section is subject to disciplinary action under section 19(4) of the act (63 P. S. § 34.19(4)). Unprofessional conduct includes, but is not limited to the following [**architectural standards of professional conduct**]:

(1) [**An architect shall**] Failure to exercise [**the highest**] due regard for the safety, life and health of the public, an employe or other individual who may be affected by the professional work for which he is responsible.

(2) [**An architect may not knowingly permit**] **Knowingly permitting**, without proper authorization, substantial deviation from [**or disregard of**] plans [**of**] or specifications by a contractor or supplier, when professional observation of the work is the architect's contractual responsibility.

(3) [**An architect shall be aware of**] Violation of relevant statutes and regulations [**which affect the professional practice**] related to the practice of architecture.

(4) [**An architect may not knowingly present or participate in the presentation of the name of an unlicensed person in a manner that suggests or implies that the person is practicing architecture**] **Knowingly permitting, aiding or abetting an unlicensed or an unregistered person, partnership, association or corporation to perform activities requiring a license as an architect or registration.**

[(b) In pursuit of the goal of professional excellence, an architect licensed in this Commonwealth shall adhere to the following ethical standards of professional conduct:

(1) **An architect may not knowingly engage**] (5) **Knowingly engaging** in or [**condone**] **condoning** dishonest or fraudulent activity.

[(2) **An architect may not Pay**] (6) **Paying** or [**offer**] **offering** to pay, either directly or indirectly, a gift, bribe, kickback or other consideration to influence the award of a commission for work, or to secure payment on or the continuation of work in progress.

[(3) **An architect may not accept financial solicitation,**] (7) **Accepting or soliciting** a substantial gift, bribe, commission or other consideration, either directly or indirectly, from a contractor, supplier or other party attempting to influence or otherwise affect the architect's professional relationship with a client or employer.

[(4) **An architect may not have**] (8) **Having** a financial interest in the earnings of a contractor or supplier on work for which [**he**] **the architect** has assumed professional responsibility, without full disclosure to and the approval of a client or employer.

[(5) **An architect may not knowingly make**] (9) **Knowingly making** or [**issue**] **issuing** a statement that is misleading, deceptive or fraudulent in regard to any aspect of his professional responsibilities or capabilities.

(10) **Violating a statute or regulation adopted thereunder, which imposes a standard for the practice of architecture in this Commonwealth.**

(11) **Using an architect's seal or stamp in violation of section 12 of the act (63 P. S. § 34.12) and §§ 9.141—9.143 and 9.145 (relating to architect's stamp of licensure).**

(12) **Verifying a candidate's IDP Council record that work was performed with skill, diligence and care when the architect knows that the work was not performed or was performed negligently.**

(13) **Knowingly misrepresenting his qualifications to a prospective or existing client or employer.**

(Editor's Note: The Board is proposing to delete § 9.152 as it currently appears in the Pennsylvania Code at page 9-33 (serial page (206081)).

PROFESSIONAL AND CORPORATE PRACTICE

§ 9.161. Compliance with applicable statutes.

An architect or group of architects may elect to practice architecture professionally as a sole proprietorship, a partnership, a professional association, a professional corporation or a business corporation. A practice so elected shall be formed and conducted under the act and this chapter. In addition, the practice shall comply as follows:

* * * * *

(2) In the case of a partnership, with [**59 Pa.C.S. §§ 301—545**] **15 Pa.C.S. Chapter 83** (relating to the Uniform Partnership Act).

* * * * *

(5) In the case of a professional association, with **15 Pa.C.S. Chapter 93 (relating to the Professional Association Act of 1988 [15 P. S. §§ 12601—12619]**.

* * * * *

§ 9.163. Prior approval by the Board.

The practice of architecture may not be conducted in one of the business forms specified at § 9.162 (relating to firm practice) without first receiving the written approval of the Board. Written approval shall be sought by filing the following documents with the Board:

* * * * *

(2) A copy of the proposed letterhead, containing thereon the names of the principals, followed by credentials indicating their respective professions, as well as the word "architect" or some derivation thereof as part of the name of the business, or as a subtitle thereto. **At least one of the principals listed shall be a licensee of the Board. For purpose of this paragraph, "principal" means a licensed architect who is the person in charge of an architectural practice, either alone or in combination with other licensed architects.**

* * * * *

USE OF NAMES

§ 9.165. Architect as employe.

Nothing in this chapter may be construed to prevent the employment of an architect by a business which is not engaged in the practice of architecture as defined in section 3 of the act (63 P. S. § 34.3), if the work performed by the employed architect concerns the modification of or the origination and supervision of the design or the construction of structures, or both, which the employer intends to utilize for its nonarchitectural business purpose. The employed architect shall be a licensee of the Board. This section does not prevent registered engineers from performing, or employing architects to perform, architectural services incidental to the practice of engineering, as provided in section 15(2) of the act (63 P. S. § 34.15(2)). **[This section takes effect on July 31, 1988, to permit businesses employing architects in violation of this section, as of January 31, 1987, based upon a good faith misinterpretation of section 13(j) of the act (63 P. S. § 34.13(j)), to conform their ownership structures and employment practices to section 13 of the act and this section.]**

§ 9.166. Construction management.

Construction management services shall be provided, whether it be through an outside firm or an owner's staff, only by utilizing a registered architect or a professional engineer in responsible charge. This does not preclude the performance of construction phase activities by persons normally engaged in construction work so long as activities do not supersede or otherwise limit an architect or engineer's decisions or responsibilities.

§ 9.167. Design/build projects.

Design and other architectural services may be offered and provided to a design/build entity if the following conditions are met:

(1) The design/build entity and an independent architect licensed in this Commonwealth execute a written agreement which provides that the architect will participate in all material aspects of the provision of architectural services relating to:

- (i) Design consultation, development and preparation.**
- (ii) Coordination of construction documents and the bid process.**
- (iii) Verification of adherence to construction documents and completion of the project.**

(2) In any offering of design/build services, the design/build entity certifies in writing to the owner:

- (i) The name of the architect engaged.**
- (ii) That the architect is contractually responsible for the performance of architectural services described in the offerings.**
- (iii) That the architect is professionally responsible to the owner for the performance of the architectural services which are to be provided.**
- (iv) That the architect will have direct supervision of the architectural work.**
- (v) That the architect's services will not be terminated without the written consent of the owner.**

§ 9.171. The title "Architect."

(a) Neither the title "Architect" nor "Architects" shall be affixed or otherwise used in conjunction with a surname, word or business title when the use would imply that an individual, associate, partner, corporate officer or business is engaged in the practice of architecture when, in fact, the individual, associate, partner, corporate officer or business is not a person or business [registered] licensed and approved by the Board under § 9.163 (relating to prior approval by the Board).

(b) Candidates for examination or awaiting the results of an examination may not use the title "architect."

(Editor's Note: The Board is proposing to delete §§ 9.172 and 9.173 as they currently appear in the Pennsylvania Code pages 9-38 (serial pages (206086)).

§ 9.175. Firm or business names.

(a) An architect, group of architects [registered in this Commonwealth] or business organized for the practice of architecture under section 13 of the act (63 P. S. § 34.13) and § 9.162 (relating to firm practice) may use a firm name which incorporates the surnames of the owners [as may be permitted by this chapter] or use a fictitious name if the firm files a certificate with the Board stating the name of the firm and the name and address of each person engaging in the practice.

(1) If a fictitious name is used, the name chosen shall contain the word "architect" or some derivation thereof, or shall be directly modified by a subtitle indicating that the purpose of the business is the practice of architecture.

[(b) (2) By use of a fictitious name, a firm may not use a surname, word, letters or figures indicating or intended to imply that the firm is engaged in a professional practice other than the practice of architecture and other professions as may be allowed under this chapter.

(b) An architect engaged in the practice of architecture individually or as a firm shall notify the Board upon his discontinuance, retiring or withdrawing from practice.

[(c) When a fictitious name is used to designate a firm, it shall be the responsibility of the firm to fully disclose to the Board the names and professional status of the principals with whom the firm contracts for professional service.]

§ 9.176. The use of associates or unlicensed persons in firm names.

The name of an architectural firm [, whether it be a sole proprietorship, partnership, professional association, professional corporation or business corporation] may also carry the words associate or associates, or may include the name of an unlicensed person, if approval of the name under § 9.163 (relating to prior approval by the Board) has been secured from the Board. If associates or unlicensed persons are used in the name or upon the stationery, letterhead, title block, specifications or another document prepared by the firm, the use may not imply that the [unregistered] unlicensed individual is [a registered person] licensed.

§ 9.177. Use of names of deceased, withdrawn or retired persons firm names.

Names of deceased, **withdrawn** or retired sole owners, partners, [**professional association members, professional corporation shareholders**] or [**business corporation**] shareholders may be retained in the firm after their death, **withdrawal** or retirement only if:

(1) There is a written agreement providing for the continued use of the names between the deceased, **withdrawn** or retired persons and the succeeding owners of the firm.

(2) The parties to the written agreement have been active partners, association members, [**professional corporation shareholders**] or [**business corporation**] shareholders for [**not less than**] at least 5 years at the time of death, **withdrawal** or retirement.

(3) [**The retired partner, professional association member, professional corporation shareholder or business corporation shareholder does not practice the profession under his own name.**

(4)] The names of deceased, **withdrawn** or retired partners, professional association members[, **professional corporation shareholders**] or [**business corporation**] shareholders are appropriately included on the firm stationery with suitable indication of status.

[(5)] (4) The names of deceased, **withdrawn** or retired partners, professional association members[, **professional corporation shareholders**] or [**business corporation**] shareholders are not carried in the firm name for more than 2 years after the death, **withdrawal** or retirement, unless the written agreement between the parties specifies otherwise.

[(6)] (5) A copy of the written agreement is filed with the Board at the time of the death, **withdrawal** or retirement, and the agreement receives the written approval of the Board.

PROCEDURES FOR COMPLAINTS

§ 9.181. Filing of complaints.

[A charge brought against an architect, group of architects or architectural firm alleging a violation of the act or this chapter may be brought by a person or group of persons, and shall be brought to the attention of the Board by the filing of a written statement with] Any person, firm, corporation or public officer may submit a written complaint regarding the practice of architecture to the Complaints Office of the Bureau.

§ 9.182. Records of charges against an architect.

A written statement under § 9.181 (relating to filing of complaints) shall be formally filed, and referred to the [**Board Prosecutor for investigation and recommendation to the Board**] Office of Prosecution of the Bureau, which shall cause an investigation to be conducted.

§ 9.185. Hearings.

(a) Investigations into charges raised in filed complaints may result in a determination [**by the Board, in consultation with the Board prosecutor,**] to proceed to a formal hearing to consider disciplinary action against the person charged.

* * * * *

(c) [**If, after investigation and consultation as specified in subsection (a), the Board determines that the filed charges involve unintentional or ministerial violations of a minimal nature, or both, the Board may request that the charged person attend an informal hearing with the Board.**

(d)] If a licensee is called before the Board, he has the right to have counsel present.

§ 9.190. Return of [certificate of registration] license.

In the event of revocation[, **cancellation,**] or suspension [**or annulment or a certificate of registration**] of a license, the [**registrant**] licensee shall be required to immediately return his [**registration certificate**] license and his current [**annual registration**] biennial renewal card. The [**Registrant's**] licensee's seal and stamp will also be impounded by the Board.

CHARGES AGAINST A NONARCHITECT

§ 9.202. Records of charges.

* * * * *

(b) A determination as to whether to proceed further on the filed charges shall be made [**after consultation between the Board and**] by the [**Board Prosecutor**] Office of Prosecution of the Bureau. Licensed architects may be employed as necessary to provide expertise required for the review of the architectural aspects of a complaint and to assist in the prosecution of individual cases.

ROSTER OF ARCHITECTS

§ 9.211. Identification of classes of [registration] licensure.

[**Effective January 1, 1966, all classes**] Classes of [**registration**] licensure as [**architects**] an architect in this Commonwealth shall be limited to Classes [**E**] X and B. [**However, for purposes of identifying the classes of registration granted prior to January 1, 1966, the following shall identify all classes:**

(1) *Class A*—Registration without full examination may be granted to the holder of a diploma or certificate from an architectural college or school, supplemented by at least 3 years' satisfactory experience in the employment of a reputable architectural office.]

(1) *Class X*—Licensure by examination.

(2) *Class B*—[**Registration without full examination**] Licensure by reciprocity may be granted to a practicing architect who holds a [**certificate of registration of**] current license, in good standing, in any other state or country, [**the**] whose requirements for obtaining [**which**] licensure are equal to those required under the act.

[(3) *Class C*—Registration without full examination but with practical examination may be granted to a nonresident of this Commonwealth provided he has practiced architecture for a period of 10 or more years prior to the passage of the act.

(4) *Class D*—Registration without full examination but with practical examination may be granted to a person not a citizen of the United States

having the same qualifications as under Class "C" or having similar qualifications as Class "A," he may pursue that course at the discretion of the Board.

(5) *Class E*—Registration without full examination may be granted, based upon the applicant's evidence of proper qualifications and his being engaged in the practice of architecture in this Commonwealth on or prior to July 12, 1918, provided the application has been filed with the Board not later than July 12, 1921.

(6) *Class F*—Registration without examination may be granted, based upon the proper qualifications of the applicant and his having no less than 5 years' practice as an employe of a reputable architectural office or firm, provided the application has been filed with the Board not later than July 12, 1921.

(7) *Class EA (Affidavit Architect)*—Registration without full exam upon applicant's evidence of qualifications and his having been engaged in the practice of architecture in this Commonwealth on or before July 12, 1919, provided that an affidavit is filed prior to January 1940 and application for registration is filed with Board prior to January 1942.

(8) *Class FA*—Registration may be granted to an applicant who has been in the continuous employ of a "duly licensed, qualified, or registered architect or architects," performing general drafting duties and architectural services for 15 years, provided he submits evidence of having completed the course in a high school approved by the Board or its equivalent and satisfactorily passes a practical examination to be determined by the Board. Class FA applications shall be considered by the Board at a regular meeting in order to determine whether the education and experience of the applicant warrants granting an oral examination in lieu of the regular written examinations. If the application is accepted under Class FA, the applicant will be requested to appear before the Board and submit complete sets of plans for three different projects, one set of specifications and photographs of the completed structures. These exhibits should be accompanied by letter or statements from the architect whose name appears on the plans, indicating for what portions of the work the applicant was personally responsible.

(9) *Class EX*—Registration by full written examination.]

[Pa.B. Doc. No. 97-478. Filed for public inspection March 28, 1997, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Fees

The State Board of Dentistry (Board) proposes to amend § 33.3 (relating to the schedule of fees), to read as set forth in Annex A. The objective of the proposed

amendment is to establish application, temporary permit, verification and renewal fees for expanded function dental assistants (EFDAs) and to increase the application fees for dentists and dental hygienists. The fees will offset the identifiable costs incurred by the Board to process the documents and defray a portion of the Board's overhead.

EFDA Fees

The act of December 27, 1994 (P. L. 1361, No. 160) amended The Dental Law (act) (63 P. S. §§ 120—130i), to include the certification and regulation of EFDAs. Under the act, during the period between the effective date of the act and the date the results of the first certification examination is announced, the Board must issue temporary permits to qualified EFDA applicants. See 63 P. S. § 130h(a). The fees for the temporary permits shall be established by regulation. See 63 P. S. § 130h(b).

The Board was unable to obtain any reliable estimate from the private sector of the number of persons currently employed in dental offices who might apply for a temporary permit. As a result, the Board was required to choose between issuing temporary permits and charging a fee at a later time based upon the actual costs incurred in processing the applications, issuing the temporary permits and charging a fee based upon a guesstimate, or waiting to issue the temporary permits until the information could be obtained.

The Board decided that it would be in the interest of EFDAs and the dentists for whom they provide services to accept and process the applications as quickly as possible and charge the fee when the regulation is finally adopted based upon the actual review and processing costs. In May 1995, the Board began accepting and processing temporary permit applications. To date, approximately 1,600 temporary permits have been issued.

In processing the applications, the clerical staff spends approximately 15 minutes on each temporary permit application. The applications are reviewed for completeness, the education and experience are verified and the applicants are requested to provide missing information. If the application is acceptable, it is processed through the computer and the applicant is notified. Applications deemed deficient on their face are forwarded to a committee of the Board for review. If necessary, additional information is requested and reviewed, and the applicant is notified of the final action. The proposed fee of \$15 is a combination of these processing costs and the administrative overhead.

In addition to the temporary permit fee, the amendment proposes a \$25 biennial renewal fee and a \$35 criteria approval application fee for EFDAs. These fees are based upon the average biennial administrative expense per certificateholder added to the average biennial regulatory expense per certificateholder. Verification and certification fees have also been added to the Board's fee schedule to match those charged to dentists and dental hygienists.

Application Fees

The proposed amendment to § 33.3 also increases the application fees for dentists and dental hygienists to more accurately reflect the Board's actual expenses. Currently, dentists and dental hygienists pay an application fee of \$15, however, the actual cost of processing each application is approximately \$18.21. Since 1988, when these fees were last increased, the postal rates increased three times and the cost of personnel increased. The Board is therefore recommending a proposed fee of \$20.

In addition to the processing requirements outlined for temporary permits, prior to issuing a license, clerical staff also researched rosters to locate, verify and enter examination scores for the practical and clinical examinations.

Statutory Authority

Sections 4(a) and 11.7 of the act (63 P. S. §§ 123(a) and 130h), require the Board to fix the fees required for licensure and renewal of licenses, certificates and temporary permits by regulation.

Fiscal Impact

The proposed amendment will require EFDAs who wish to practice in this Commonwealth and dentists or dental hygienists to pay for the Board's expenses in processing their applications for temporary permits, certificates or licenses. The proposal should have no fiscal impact on the private sector, the general public or the political subdivisions.

Paperwork Requirements

The proposed amendment will require the Board to alter some of its forms to reflect the new application, certification, verification, temporary permit and biennial renewal fees; however, the proposed amendment should create no additional paperwork for the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 13, 1997, the Board submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposal, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Board within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

amendments to Judith Pachter Schulder, Counsel, State Board of Dentistry, Post Office Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication in the *Pennsylvania Bulletin*.

EDWIN F. WEAVER, III, D.D.S.,
Chairperson

Fiscal Note: 16A-463. 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 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

§ 33.3. Fees.

Following is the schedule of fees charged by the Board:

[License application] Application fee—dentists [and], dental hygienists and expanded function dental assistants **\$[15]20**

Criteria approval application fee—dentists [and], dental hygienists and expanded function dental assistants **\$35**

* * * * *

Verification [of licensure] fee—dentists [and], dental hygienists and expanded function dental assistants **\$10**

Certification [of licensure] fee—dentists [and], dental hygienists and expanded function dental assistants **\$15**

* * * * *

Biennial renewal fee—expanded function dental assistants **\$25**

Biennial renewal fee—unrestricted or restricted anesthesia permit **\$25**

Temporary permit—expanded function dental assistants **\$15**

[Pa.B. Doc. No. 97-479. Filed for public inspection March 28, 1997, 9:00 a.m.]