RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

General Revisions

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

A. *Effective Date*

The amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The amendments are made 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), (b) and (d), 34.8(b), 34.13(h) and 34.14).

C. *Background and Purpose of Amendments*

Executive Order 1996-1 dated February 6, 1996, directed executive agencies, including the Board, to commence a program of review of regulations to ensure that regulations were consistent with the principles and requirements of the order. By these amendments, the Board implements its review of its existing regulations conducted under Executive Order 1996-1. In accordance with the principles of the Executive Order, the Board has deleted many regulations which it has determined are either unnecessary, outdated or for which viable nonregulatory alternatives exist. In revisions to existing regulations, the Board has clarified and simplified requirements for licensure by examination and reciprocity. The Board deleted regulations which embody former procedures and standards of the National Council of Architectural Registration Boards (NCARB) which have undergone changes since its last major revision to these regulations in 1986. Finally, the Board amended its regulations regarding complaints to conform to court decisions regarding the separation of prosecutorial and adjudicatory functions.

D. *Persons Affected*

These final-form regulations affect individuals who are in architectural schools and architectural intern programs, applicants for licensure either 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. *Summary of Comments and Responses to Proposed Rulemaking*

Proposed rulemaking was published at 27 Pa.B. 1566 (March 29, 1997). The Board received comments from ten public commentators, the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

Changes in the final-form regulations in response to commentators in a section-by-section description to each of the comments and the Board's response.

General Comments

Preliminarily, commentator Robert Shusterman and the Pennsylvania Society of Architects (PSA) requested that the Board withdraw the proposal in its entirety, redraft the proposal and submit a new regulatory proposal based upon the quantity of comments received in addition to those of the PSA. In the same comment, however, the PSA endorsed Mr. Shusterman's suggestions for changes and additional recommendations for additional regulation. The PSA noted that it also has endorsed amending the act to govern design-build.

The Board has considered the PSA's request to withdraw the amendments in light of other comments received and the overall purposes and objectives of the rulemaking. As noted in Section C of this Preamble, a principal purpose of the amendments is to execute Executive Order 1996-1, particularly with regard to the deletion of unnecessary and outdated regulations. The Board notes that no objections were made to the Board's proposal in this regard. Furthermore, for the reasons more fully explained in this section, the Board believes that its responses to commentators address concerns in a manner which allows the Board to proceed with final rulemaking, while reserving other concerns to future rulemaking. For these reasons, the Board declines to adopt the suggestion to withdraw these final-form regulations at this time.

Mr. Shusterman's comments were initially made to the PSA, in a letter commenting on a draft of the rulemaking as published in the *Pennsylvania Bulletin*. Although Mr. Shusterman's comments to the draft proposal were not provided to the Board prior to publication of proposed rulemaking, Mr. Shusterman provided these comments, based upon his view that the draft version was in all material respects identical as published in the *Pennsylvania Bulletin*.

In addition to a section by section analysis, Mr. Shusterman suggested that given the extensive nature of his comments, the best interest of the profession and the Board would be served if the Board would put the proposed amendments on hold until he could meet with the drafters of the proposal to resolve his concerns. For the reasons set forth in the Board's response to the PSA's identical suggestion, and for the reasons set forth in this Preamble, the Board has determined that it is not necessary to repropose a new regulatory document at this time. Many comments and suggestions made by Mr. Shusterman have been addressed in changes to the proposed rulemaking. With respect to other suggestions which the Board has not adopted, the Board has determined that many fall outside the scope of proposed rulemaking.

The act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1101—1602), limits the subject matter of final rulemaking to the subjects fairly encompassed in proposed rulemaking. See, *Brocal v. Department of Transportation*, 528 A.2d 114 (Pa. 1987). State agencies are required to submit proposed rules to the public and the regulatory review bodies to assure that the public, particularly the regulated community, has an opportunity to comment on the wisdom of the methods chosen by the agency to deal with a problem. See, *Department of Environmental Resources v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Cmwlth. 1991).

The Board is hesitant to adopt in final rulemaking a solution to the problem of firm regulation without allow-

ing licensees and firms, who would be paying a fee, an opportunity to comment. Also, detailed Board and Departmental discussion is necessary to factor costs and necessary reviews before the fee could be calculated.

IRRC noted that amendments were needed throughout the regulations to more fully implement the Board's intent to use the term "licensure" when referring to individuals who practice architecture and "registration" when referring to architectural firms which are required to register with the Board before practicing architecture in this Commonwealth. In this regard generally, throughout the final-form regulations, the Board has adopted IRRC's recommendations.

The following is a description of changes made to specific sections in response to commentator suggestions and regulatory review.

§§ 9.2, 9.166 and 9.167. Design-Build and Construction Management.

In proposed §§ 9.2 and 9.166 and 9.167, an architect's participation in design-build projects and construction management would be regulated.

The HPLC expressed the opinion that the Board lacks legislative authority to promulgate regulations relating to either construction management or design-build. Construction management associations and entities representing construction management firms commented on these sections. These public commentators expressed dissatisfaction with the Board's rulemaking in these two categories either on identical grounds to the HPLC or based on the regulatory scheme and language chosen by the Board. IRRC suggested that the provisions regarding design-build and construction management be deleted, and that the Board work with the Legislature to revise the act to deal with these issues. The Board agrees with the suggestion and has deleted both sections from final rulemaking.

§§ 9.71—9.73, 9.81 and 9.116—9.117. Examinations.

IRRC requested that the Board explain how the procedures of §§ 9.71—9.73 changed as a result of the change of the Architect Registration Examination (ARE) to a computerized format. When the ARE was administered in written form, the National Council of Architectural Registration Boards (NCARB), provided the examinations to State boards which either administered the examinations or contracted with a third party to do so. A candidate for NCARB certification (but not State licensure) took the ARE by applying to one of the states to do so. Under the computerized program, NCARB now contracts with a testing agency to administer the computer examination throughout the United States. Therefore, candidates for NCARB certification no longer need apply to sit for the examination in any given state.

IRRC noted that language regarding cheating appeared in §§ 9.116 and 9.117. The Board has adopted IRRC's recommendation to place this language in § 9.117 only.

The Board has made editorial changes to § 9.81 as to where applications may be obtained.

§§ 9.141—9.143. Seals.

IRRC, the PSA, Mr. Shusterman and Robert Kimball and Associates questioned whether proposed § 9.141, which provides that an identical stamp may be used in lieu of a seal, would require previously licensed architects to obtain new seals. Commentator Kimball also suggested that the section should explicitly so provide, and further recommended that the Board permit a computer image of the seal to be used in the same manner as permitted under regulations for engineers in § 37.58(d) (relating to seal).

In response, the Board notes that the section tracks section 12(a) of the act (63 P. S. § 34.12(a)), which requires that an architect obtain a seal which has been approved by the Board. Section 12(b) of the act provides that an architect may use a stamp of the design of the seal and use it in lieu of the seal. The amendments would not effect a repeal of existing regulations. Therefore, there is no need for an architect who has been licensed under the regulations prior to the amendment to obtain a new seal.

In response to the suggestion that the Board include in its regulations a provision for sealing documents by use of a computer image, the Board reviewed research conducted by the NCARB Electronic Technology Task Force. It is the Board's understanding that the NCARB Task Force has been researching issues which will affect the practice of architecture due to electronic technology, including the use of a computer image to seal documents. The use of a computer image seal would be a part of standards regarding the use of electronic technology in the practice of architecture. That study is not yet completed. The Board, therefore, has chosen to defer rulemaking in this area until research and recommendations have been made by the task force to the NCARB membership.

Finally, with regard to §§ 9.142 and 37.58, IRRC commented that the phrase "direct supervision" could imply that the architect must directly perform the architectural work. IRRC recommended that the Board replace this phrase with NCARB's preferred terminology, which is "responsible control."

In researching this issue, the Board notes that in 1996, the NCARB Electronic Technology Task Force recommended, and the NCARB adopted, a change in the NCARB's model law to replace the requirement that architectural designs not personally prepared by an architect be prepared under the architect's "direct supervision" with the requirement that designs not directly prepared by an architect be prepared under the architect's "responsible control." In making this change, the NCARB commented that it intended to loosen restrictions, because the term "direct supervision" was generally interpreted as to require that architectural work could only be performed by employes of a registered architect and only on the architect's premises.

The Board notes in response that the language of sections 12(a) and 15(1) of the act (63 P. S. §§ 34.12(a) and 34.15(1)), both require that work done by others be prepared under the architect's personal supervision. In contrast, section 5(a) of the Engineers, Land Surveyor and Geologist Registration Law (Engineer Law) (63 P. S. § 152(a)), provides for an exemption from licensure for persons who do not assume "responsible charge" of designs or supervision. Section 6 of the Engineer Law (63 P. S. § 153) requires directing heads or employes of firms or corporations to be "in responsible charge of" its activities in the practice of the profession, including sealing design documents issued by the firm.

In the Board's view, the Legislature's use of the words "personal supervision" in the 1982 version of the act, demonstrates an intent to follow the language of the NCARB Model Law in place at that time. To avoid departing from the intent of the Legislature with regard to the regulation of architects, the Board intends to

employ the legislative language of the act in its regulations, rather than the language employed by the Legislature with reference to engineers.

However, with regard to other suggestions made by IRRC concerning modeling §§ 9.141 and 9.142 after the regulations of the State Registration Board for Professional Engineers, Land Surveyors and Geologists, the suggestions have been adopted and are incorporated in the final rulemaking.

§ 9.151. Standards of professional conduct.

As proposed, § 9.151 was amended by the Board, and four new standards were added. Commentators to the final-form regulations, including IRRC, questioned why the Board does not instead adopt the NCARB Model Rules of Professional Conduct for the American Institute of Architects (AIA) Code of Ethics and Professional Conduct.

Informational material available to the Board from the NCARB and AIA indicate that the Ethical Standards and Rules of Conduct of both NCARB and AIA were developed after the Rules of Conduct of the Board had been placed in regulation under the statutory authority of the Architects Registration Law (63 P. S. §§ 21—33) (Repealed). Amendments to the Board's regulations in 1986 were designed to update the regulations to conform to the 1982 law.

While the Commonwealth's law is somewhat similar to the NCARB's Model Law as it existed in 1982, the NCARB has revised its model law substantially in the intervening years. Its model regulations have undergone similar changes to reflect the changes in its Model Law. For these reasons, the model regulations do not follow the structure or content of the regulations which the Board is here amending.

With regard to the Code of Ethics of the AIA, the Board's review of that organization's 1993 Code of Ethics indicates, as well, that the structure of the AIA Code is substantially different than the structure of the Board's regulations here. Proposed rulemaking was intended to revise the language of § 9.151 to provide architects with clear guidance and direction as to the conduct which the Board believes would constitute a violation of its standards of professional conduct, consistent with the act. Adopting the AIA Code of Ethics or the NCARB Model Rules would not accomplish this objective.

IRRC recommended that overlapping standards found in § 9.151(3) and (10), and (9) and (13), be combined. Paragraph (10) has been deleted in accordance with IRRC's suggestion and the subsequent paragraphs renumbered. With regard to paragraphs (9) and (13) as proposed, the Board believes that the proscriptions cover sufficiently distinct conduct as to justify separate subsections. Further, the Board believes architects will benefit from the notice that is provided in the two subsections.

IRRC also recommended that final-form regulations specify the statutes and regulations which are related to the practice of architecture. In response, the Board notes that architects' standards of professional practice require them to be aware of the building codes which apply to a project which they are undertaking in a given municipality or political subdivision.

Citations to all statutes and regulations which apply to the practice of architecture would be cumbersome and unwieldy, particularly with regard to statutes pertaining to building and construction standards. Local ordinances may vary from municipality to municipality, and are subject to revision on an ongoing basis. The Board has modified § 9.151(3) to provide sufficient notice to the architect of his professional responsibilities in this regard. Accordingly, the Board does not specify any particular statute or regulation.

§§ 9.163—9.177. Professional and Corporate Practice.

As proposed, § 9.175 (relating to firm or business names) requires that an architect engaged in the practice of architecture, individually or as a firm, notify the Board upon his discontinuance, retiring or withdrawing from practice. IRRC commented that the difference between the terms "discontinuance" and "retiring from practice" is unclear. As proposed, the Board intended that "discontinuance" was to refer to a short term leave of absence. IRRC suggested that to improve the clarity of the regulation, the Board define each of the terms in the definitional section of § 9.2, or, in the alternative, IRRC recommended that the Board replace "discontinuance" with "leave of absence." The Board has adopted the latter suggestion.

With regard to § 9.163(2) (relating to prior approval by the Board), IRRC, Shusterman and the PSA commented that the definition of "principal" as stated in the proposal is confusing. IRRC recommended that the Board revise the definition of "principal" to clarify the meaning of the phrase as "a person who is in charge of the architectural practice." The Board has revised that paragraph to define "principal" as an officer, principal stockholder or a person having a substantial interest or management responsibility for the architectural practice.

Mr. Shusterman indicated that a review of the regulations in his opinion showed six key areas that should be resolved to make the regulations and the practice of architecture in this Commonwealth both reasonable for both the practitioners and the Board. These areas included firm practice; licensure certificates and registration; standards of professional conduct; use of a seal; conflict with the licensure law; and inconsistent terminology.

With regard to firm practice, Mr. Shusterman characterized the regulation of firm practice as the most serious regulatory problem. He suggested that the absence of a physical firm license which, in his view, was contemplated in the enactment of the licensure law, creates uncertainty in the practice of architecture. He also maintains that the Board's current method of handling firm records precludes it from weeding out those firms which were once in compliance, but have ceased to comply with the licensure law.

The Board does not agree that the Legislature authorized licensure of firms which must register under section 13 of the act. In accordance with section 13(h) of the act, the Board has promulgated regulations which require prior approval of the Board in regard to certain information concerning firm governance and ownership. Section 9.163(4) provides that all owners of a firm certify that notice will be given to the Board of any changes in firm ownership prior to the firm practicing under those changes. It is the Board's experience that firms which have registered do give the Board notice of changes in ownership and firm governance. Nonetheless, the Board is aware that there are some architects who practice in firm settings without registration. The Board takes action to assure compliance and enforce the requirement of the law when appropriate.

Mr. Shusterman also suggested that the regulations treat differently sole practitioners who practice as a sole

proprietorship and sole proprietorships which employ others. He suggests that the current regulatory language can be construed so as to require a sole practitioner to get approval of his "ownership of the firm" prior to practicing architecture. Prior approval is indeed required under § 9.163 for business firms. However, §§ 9.162, 9.163—9.165, read together, indicate that prior approval is necessary for business firms composed of architects and others practicing under a business structure and single name.

The commentator also suggested that the firm practice section should address the issue of limited liability corporations and limited liability partnerships, although he expressed concern that because these corporate formations are not explicitly authorized in the act, amendments to permit the formations might be required. A suggestion was also made that provisions on firm practice address businesses such as joint ventures.

The different forms of business associations in Title 15 of the *Pennsylvania Consolidated Statutes*, include general partnerships under 15 Pa.C.S. §§ 8301—8365 (relating to Uniform Partnership Act); limited partnerships under 15 Pa.C.S. §§ 8501—8594 (relating to the Uniform Limited Partnership Act); registered limited liability partnerships under 15 Pa.C.S. §§ 8201—8221 (relating to registered limited liability partnerships); and limited liability companies under 15 Pa.C.S. §§ 8901—8998 (relating to Limited Liability Company Law of 1994). The official comment to the Limited Liability Company Law by the Pennsylvania Bar Association's Title 15 Task Force Committee concluded that no policy reason exists to differentiate between the various forms of organization authorized by Title 15 for purposes of determining the appropriate form for conduct of a profession subject to any limitations in individual licensure laws. Accordingly, architects should be permitted to practice and organize their firms as a limited liability company or as a limited liability partnership because section 13 of the act does not prohibit these business forms. Joint ventures are not one of the business forms which the Board is permitted to regulate under section 13 of the act.

With regard to licensure, certificates and registration, the commentator expressed a view that, however well intended, the reservation of the word "licensure" for individuals and the reservation of the word "registration" for firm practice causes unnecessary confusion and potentially burdens the Board with a host of interpretative issues. The Board has attempted to clarify the language in its regulations by using these terms consistently. Although the commentator correctly notes that words are used interchangeably in the statute, the Board believes that the use of these terms consistently in the regulations will assist readers and practitioners in complying with the regulatory requirements. The Board does not perceive its action with regard to the amendments as being contrary to the statute's overall scheme and intent. Also, with regard to the use of the word "certification," the Board notes that it has reserved the word "certification" for instances relating to the NCARB certification.

In addition to these general comments, Mr. Shusterman has offered additional amendments which would add new definitions and rewrite the proposed language.

The Board believes Mr. Shusterman's comments and suggestions with regard to the need for additional rulemaking should be more fully considered. In the Board's review of the need of additional rulemaking to further implement the act, the Board will consider Mr. Shusterman's comments in making these proposals.

F. *Fiscal Impact*

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

G. *Paperwork Requirements*

The amendments 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 the notice of proposed rulemaking, published at 27 Pa.B. 1566, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided the IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the Committees on May 11, 1998. IRRC met on June 4, 1998, and approved the final-form regulations in accordance with section 5.1(d) of the Regulatory Review Act (7l P. S. § 745.5a(a)).

I. *Public Information*

Interested persons may obtain information regarding the amendments by writing to Dorna Thorpe, Board Administrator, State Architects Licensure Board, P. O. Box 2649, Harrisburg, PA 17105-2649.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 27 Pa.B. 1566.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 9, are amended, by amending §§ 9.2, 9.11, 9.21, 9.27, 9.41, 9.46, 9.49a, 9.61, 9.62, 9.81, 9.84, 9.88, 9.90, 9.93, 9.101—9.103, 9.116, 9.131, 9.132, 9.141—9.143, 9.145, 9.151, 9.161, 9.163, 9.165, 9.171, 9.175—9.177, 9.181, 9.182, 9.185, 9.190, 9.202 and 9.211; by deleting §§ 9.12—9.17, 9.22—9.26, 9.28—9.35, 9.42, 9.43, 9.45, 9.47, 9.48, 9.63, 9.71—9.73, 9.87, 9.89, 9.91, 9.120, 9.144, 9.152, 9.172 and 9.173; and by adding § 9.50 to read as set forth in Annex A.

(*Editor's Note:* The amendment of §§ 9.41 and 9.81 was not included in the proposal at 27 Pa.B. 1566. The proposal to add §§ 9.166 and 9.167 has been withdrawn by the Board.)

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

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

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

ROBERT J. CROWNER,
President

Fiscal Note: Fiscal Note 16A-413 remains valid for the final adoption of the subject regulations.

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 2869 (June 20, 1998).)

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.

Act—The Architects Licensure Law (63 P. S. §§ 34.1—34.22).

Administrative Code—The Administrative Code of 1929 (71 P. S. §§ 51—732).

Board—The Architects Licensure Board as defined in section 4 of the act (63 P. S. § 34.4).

Board prosecutor—An attorney employed through the Office of General Counsel to act as the prosecutor for the Commonwealth before the Board.

Bureau—The Bureau of Professional and Occupational Affairs.

Commissioner—The Commissioner of the Bureau.

Examination—The examination as referred to in this chapter is the examination for architectural registration approved by the Board.

IDP—Intern Development Program of NCARB.

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

NAAB—National Architectural Accrediting Boards, Inc.

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

Plans and models—Drawings, graphic representations or scaled models, or a combination of drawings, graphic representations or models, or reproduction thereof, prepared for the purpose of illustrating proposed or intended designs for the construction, enlargement or alteration of a building or project.

Specifications—A written instruction or reproduction thereof describing a material or method of construction proposed or intended to be employed in the construction, enlargement or alteration of a building or project.

AFFILIATION WITH NCARB

§ 9.11. NCARB membership.

The Board will maintain membership in 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).

§ 9.12. (Reserved).

§ 9.13. (Reserved).

§ 9.14. (Reserved).

§ 9.15. (Reserved).

§ 9.16. (Reserved).

§ 9.17. (Reserved).

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, 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. § 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.

§ 9.22. (Reserved).

§ 9.23. (Reserved).

§ 9.24. (Reserved).

§ 9.25. (Reserved).

§ 9.26. (Reserved).

§ 9.27. Inactive records.

Records of candidates for licensure that are inactive for 5 years will be destroyed. A record will be considered inactive if a candidate 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.

§ 9.28. (Reserved).

§ 9.29. (Reserved).

§ 9.30. (Reserved).

§ 9.31. (Reserved).

§ 9.32. (Reserved).

§ 9.33. (Reserved).

§ 9.34. (Reserved).

§ 9.35. (Reserved).

EXAMINATION

§ 9.41. General requirements.

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

§ 9.42. (Reserved).

§ 9.43. (Reserved).

§ 9.45. (Reserved).

§ 9.46. Requirements for examination eligibility.

A candidate for the examination shall have:

(1) A professional degree in architecture from an accredited program.

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

(3) An architectural degree candidate applying for first time licensure 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.

§ 9.47. (Reserved).

§ 9.48. (Reserved).

§ 9.49a. Diversified training requirements.

(a) The Board has adopted NCARB Training Requirements for 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(3) (relating to inactive records; and requirements for examination eligibility) shall meet the requirements of the act and regulations in effect at the time the new application is filed.

LICENSURE BY RECIPROCITY

§ 9.61. General requirements.

Licensure may be granted to an applicant who holds a license to practice architecture in another state, territory or country where the qualifications required for licensure are equal to the requirements for licensure in this Commonwealth 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.

§ 9.62. Reciprocal licensure.

(a) An applicant for reciprocal licensure shall submit a completed application on forms provided by the Board containing:

(1) A letter of good standing, or the equivalent from the licensing entity of the state or country where the architect currently practices.

(2) Information relative to training, education and experience as an employe or as a practicing principal.

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

(c) A candidate in another recognized and approved jurisdiction and seeking to practice within this Commonwealth who has not lawfully practiced architecture for 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 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.

§ 9.63. (Reserved).

NCARB CERTIFICATION

§ 9.71. (Reserved).

§ 9.72. (Reserved).

§ 9.73. (Reserved).

APPLICATION PROCEDURES

§ 9.81. Place of application.

An application for license shall be submitted to the Board, Box 2649, Harrisburg, Pennsylvania 17105-2649 on forms available from the Board.

§ 9.84. Experience.

The candidate shall be of good moral character. A candidate for first-time licensure shall reside in or be employed in this Commonwealth by a Commonwealth licensed architect, practicing as a principal in this Commonwealth and having a permanent Commonwealth address.

§ 9.87. (Reserved).

§ 9.88. Verification of IDP.

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 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.

§ 9.89. (Reserved).

§ 9.90. Board member as reference.

No Board member shall act as a reference on the application of a candidate for licensure except as an employer. 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.

§ 9.91. (Reserved).

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

(a) An applicant for a license issued by the Board shall apprise the Board of the following:

(1) A license, certificate, registration or other authorization to practice a profession issued, denied or limited by another state, territory or possession of the United States, a branch of the Federal government or another country.

(2) Disciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, a branch of the Federal government or another country.

(3) A finding or verdict of guilt, an admission of guilt or a plea of nolo contendere with respect to a felony offense or an offense involving moral turpitude.

(b) After the Board has issued a license, the licensee shall report any disciplinary action or criminal convictions, or both, to the Board in writing within 90 days after its occurrence or on the biennial renewal application, whichever occurs first.

REACTIVATION OF LAPSED AND EXPIRED LICENSES

§ 9.101. 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 license 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 to return to active status shall submit an application on the form prescribed by the Board, the current renewal fee, reactivation fee and a notarized affidavit stating that the candidate did not practice architecture in this Commonwealth during the period of inactive status.

§ 9.103. Lapsed licenses.

An architect who practices architecture in this Commonwealth and who has allowed his license to lapse by failing to pay a biennial renewal fee, may reactivate his license by submitting to the Board an application on the form prescribed by the Board. The application shall be accompanied by the reactivation fee 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 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 and form of positive identification for admittance to the examination. Candidates shall comply with examination procedures and conduct standards as established by NCARB.

§ 9.120. (Reserved).

GRADING AND REVIEW

§ 9.131. Examination grading.

The ARE shall be graded using procedures developed by NCARB in consultation with a professional testing organization. Examination results shall be recorded by the Board in the record of the candidate and shall be maintained in accordance with § 9.27 (relating to inactive records).

§ 9.132. Grading compilation.

To 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(3) (relating to requirements for examination eligibility), to retake those portions of the examination which were failed.

ARCHITECT'S SEAL OF LICENSURE

§ 9.141. Requirement.

(a) A licensee shall, upon licensure, obtain a metal seal, of the design authorized by the Board, bearing the licensee's name and license number and the legend, "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 following rules govern the proper use of an architect's seal:

(1) An architect may use his seal and signature only when the work being sealed and signed was prepared by the architect or under the architect's personal supervision, direction and control.

(2) When an architect issues final or complete documents to a client for the client's records, or when an architect submits final or complete documents to public or governmental agencies for final review, the seal and signature of the architect who prepared or who personally supervised the preparation of the documents, along with the date of issuance, shall be prominently displayed on the first page of all documents. Facsimile seals shall appear on all subsequent pages of plans.

(3) When an architect's signature is applied, it shall be applied near or across the seal, but not in a location that obliterates the license number.

(4) An architect may not affix or permit a seal and signature to be affixed to a document if the architect's license has lapsed, or for the purpose of aiding or abetting another person to evade or attempt to evade a provision of the act or this chapter.

§ 9.142. Unlawful use of seal or stamp.

(a) 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 or affixed, on drawings, specifications or other design documents which were not prepared by the architect or under his direct supervision.

§ 9.143. Design.

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

(b) A seal or stamp combining the names of a number of architects in a firm may be used in lieu of individual seals or stamps, if the names of the individual licensees, their license numbers and the legend "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 are 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 reproduction of a stamp identical to the prescribed stamp may be used.

(d) This section does not relieve an individual architect whose name appears on the combined seal or stamp of a responsibility mandated in the act and this chapter.

§ 9.144. (Reserved).

§ 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 license number and the stamp or seal, or both, of the deceased architect void.

CONDUCT OF LICENSED ARCHITECT

§ 9.151. Standards of professional conduct.

An architect 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:

(1) Failure to exercise 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) Knowingly permitting, without proper authorization, substantial deviation from plans or specifications by a contractor or supplier, when professional observation of the work is the architect's contractual responsibility.

(3) Knowingly practicing architecture in violation of relevant State and municipal building laws and regulations.

(4) 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.

(5) Knowingly engaging in or condoning dishonest or fraudulent activity.

(6) Paying or 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.

(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.

(8) Having a financial interest in the earnings of a contractor or supplier on work for which the architect has assumed professional responsibility, without full disclosure to and the approval of a client or employer.

(9) Knowingly making or issuing a statement that is misleading, deceptive or fraudulent in regard to any aspect of his professional responsibilities or capabilities.

(10) 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 seal of licensure).

(11) 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 without skill, diligence and care.

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

§ 9.152. (Reserved).

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:

(1) In the case of a sole proprietorship, the owner for the practice of architecture as defined at section 3 of the act (63 P. S. § 34.3) shall be an architect licensed by the Board.

(2) In the case of a partnership, with 15 Pa.C.S. Chapter 83 (relating to the Uniform Partnership Act).

(3) In the case of a professional corporation, with 15 Pa.C.S. Chapter 29 (relating to professional corporations).

(4) In the case of a business corporation, with 15 Pa.C.S. Part II, Subpart B (relating to the Business Corporation Law of 1988).

(5) In the case of a professional association, with 15 Pa.C.S. Chapter 93 (relating to the Professional Association Act of 1988).

(6) The business form chosen by an architect may not affect the statutes of the Commonwealth applicable to the professional relationship or the contract, tort or other legal rights, duties and liabilities between the architect and the person receiving architectural services.

§ 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:

(1) A copy of the completed Fictitious Name Application, Articles of Incorporation, Articles of Association, Partnership Agreement, Certificate of Authority or other relevant agreement or contract of association. If none of these documents apply to the particular business structure, composition or name of the firm, the rest of the filing requirements in this section shall be complied with.

(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 an officer, principal stockholder or person having a substantial interest in or management responsibility for an architectural practice.

(3) A complete list of the names of the individuals interested in the business as proposed, with specification for each as to profession, license number and state of licensure, if applicable, and percent of ownership. The list shall contain or have appended to it certification that the referenced licensed professionals are currently licensed by and in good standing with their state of licensure.

(4) Certification in writing that the owners will notify the Board prior to changes in the proposed ownership of the business, whenever the changes are contemplated. Proposed changes shall be reviewed and approved in writing by the Board prior to their implementation.

§ 9.165. Architect as employe.

(a) Nothing in this chapter prevents 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.

(b) 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)).

USE OF NAMES

§ 9.171. The title "Architect."

(a) Neither the title "architect" nor "architects" may 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 licensed or registered 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."

§ 9.172. (Reserved).

§ 9.173. (Reserved).

§ 9.175. Firm or business names.

(a) An architect, group of architects 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 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.

(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 retiring or withdrawing from practice.

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

The name of an architectural firm 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 unlicensed individual is licensed.

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

The names of deceased, withdrawn or retired sole owners, partners or shareholders may be retained in the firm name 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 or shareholders for at least 5 years at the time of death, withdrawal or retirement.

(3) The names of deceased, withdrawn or retired owners, partners, professional association members or shareholders are appropriately included on the firm stationery with suitable indication of status.

(4) The names of deceased, withdrawn or retired owners, partners, professional association members or 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.

(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.

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

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 to proceed to a formal hearing to consider disciplinary action against the person charged.

(b) Every phase of a proceeding shall be conducted under § 9.184 (relating to applicability of general rules).

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

§ 9.190. Return of license.

In the event of revocation or suspension of a license, the licensee shall be required to immediately return his license and his current biennial renewal card. The licensee's seal and stamp will also be impounded by the Board.

CHARGES AGAINST A NONARCHITECT

§ 9.202. Records of charges.

(a) A written statement under § 9.201 (relating to charges and complaints) shall be formally filed, and referred to the Board Prosecutor, for treatment under § 9.182 (relating to records of charges against an architect).

(b) A determination as to whether to proceed further on the filed charges shall be made by the 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 licensure.

Classes of licensure as an architect in this Commonwealth shall be limited to Classes X and B.

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

(2) *Class B*. Licensure by reciprocity may be granted to a practicing architect who holds a current license, in good standing, in any other state or country whose requirements for obtaining licensure are equal to those required under the act.

[Pa.B. Doc. No. 98-1095. Filed for public inspection July 10, 1998, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Prescribing, Administering and Dispensing Controlled Sympathomimetic Amines

The State Board of Osteopathic Medicine (Board) is deleting § 25.211 to read as set forth in Annex A. The objective of this amendment is to effectuate the sunset provision in § 25.211(g).

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), because notice of proposed rulemaking is unnecessary.

This regulation sunsetted by its own terms on January 17, 1992. The Board has determined not to take any action to revise or reestablish the regulation.

Accordingly, in this rulemaking, the Board deletes § 25.211.

Compliance with Executive Order 1996-1

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

Statutory Authority

This rulemaking is adopted under section 16 of the Osteopathic Medical Practice Act (63 P. S. § 271.16).

Fiscal Impact and Paperwork Requirements

This rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on May 28, 1998, a copy of the rulemaking was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the rulemaking was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the rulemaking was deemed approved by the House and Senate Committees on June 17, 1998. IRRC met on June 18, 1998, and approved the rulemaking.

Additional Information

Individuals who desire information are invited to submit inquiries to Gina Bittner, Board Administrator, State Board of Osteopathic Medicine, Post Office Box 2649, Harrisburg, PA 17105-2649. The telephone number of the Board is (717) 783-4858.

Findings

The Board finds that:

(1) Public notice of intention to amend its regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are, in this circumstance, unnecessary because the section repealed is ineffective by the sunset provision in § 25.211(g).

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

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by deleting § 25.211 to read as set forth in Annex A.

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

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

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

SILVIA M. FERRETTI, D.O.,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: 16A-538. 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 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter F. MINIMUM STANDARDS OF PRACTICE

§ 25.211. (Reserved).

[Pa.B. Doc. No. 98-1096. Filed for public inspection July 10, 1998, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 54]

[L-970131]

Reporting Requirements for Quality of Service Benchmarks and Standards

The Pennsylvania Public Utility Commission (Commission) on April 23, 1998, adopted a final rulemaking to establish uniform measurements and reporting requirements to allow the Commission to monitor the level of the electric distribution companies' (EDC) customer service performance. The contact persons are Stephen Gorka, Law Bureau, (717) 772-8840 and Mary Frymoyer, Bureau of Consumer Services, (717) 783-1628.

Executive Summary

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). Section 2807(d) of the act (relating to duties of electric distribution companies) is clear in its intent that utilities are to maintain, at a minimum, the current levels of reliability and customer service to their customers as they move toward competition. The purpose of these regulations is to establish uniform measurements and reporting requirements to allow the Commission to monitor the level of the EDCs' customer service performance. After the Commission has received and analyzed an adequate supply of data from the proposed uniform measurements, it will develop quality of service benchmarks and standards which will be the subject of a future rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 1998, the Commission submitted a copy of the final rulemaking, which was published as proposed at 28 Pa.B. 514 (January 31, 1998) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. Under section 5(c) of the Regulatory Review Act, the Commission also provided IRRC the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered all comments received from IRRC, the Committes and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on June 8, 1998, and were approved by IRRC on June 18, 1998, in accordance with section 5.1(e) of the Regulatory Review Act.

Public Meeting held
April 23, 1998

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; John Hanger; David W. Rolka; and Nora Mead Brownell

Final Rulemaking Order

By the Commission:

At public meeting of December 4, 1997, the Commission issued an order adopting and directing publication of proposed regulations to establish a means by which the Commission can develop uniform measurement and reporting requirements to assure that the customer services of EDCs are maintained, at a minimum, at the same level of quality under retail competition.

Background

By order adopted March 13, 1997, at Docket No. M-00960890F0007 (March Order), the Commission solicited comments on a variety of potential quality of service measures such as business office access, complaint resolution, posting customer payments, billing adjustments, installation of service, investigations and repairs, appointments kept with customers, meter reading, service reliability indices and customer satisfaction surveys. The order asked the EDCs to describe their current monitoring of customer service performance, performance standards and historic service performance.

In November 1997, the Bureau of Consumer Services (BCS) met with EDC representatives to clarify the information provided by the EDCs in response to the March order and to identify the benchmarks currently used by the EDCs to evaluate their own performance.

Based on the review of the comments and recommendations to the March order and the discussion with the EDC representatives, the Commission instituted a rulemaking proceeding to establish a means by which the Commission can assure that the quality of each EDC's customer service performance is being maintained. The proposed regulations set forth uniform measures and standard data reporting requirements for various components of an EDC's customer service performance and established effective dates for the reporting requirements.

After the Commission has experience with receiving data, it will embark on a separate proceeding to establish

performance benchmarks and standards for the EDCs. The Commission will also consider establishing reporting for the electric generation suppliers (EGSs) on applicable customer service performance measures.

The proposed regulations were published at 28 Pa.B. 514 (January 31, 1998) and a 30-day comment period set. The 30-day comment period for public comments ended March 2, 1998. The proposed rulemaking was served on all jurisdictional electric companies, the Office of Consumer Advocate, the Office of Small Business Advocate, participants in the Commission's electric competition investigation at Docket No. I- 00940032, the Electric Competition Legislative Stakeholders, all parties of record and the Universal Service and Energy Conservation Work Group. The Commission order was also posted on the Commission's Internet website.

We received comments from the Pennsylvania Electric Association (PEA) on behalf of its member companies; the Office of the Consumer Advocate (OCA); Duquesne Light Company (Duquesne); GPU Energy (GPU); PECO Energy (PECO); PP&L, Inc. (PP&L); UGI Utilities, Inc. - Electric Division (UGI); Columbia Gas of Pennsylvania, Inc. (Columbia); Equitable Gas Company (Equitable); the Pennsylvania Gas Association (PGA); Lawrence G. Spielvogel, Inc. (Spielvogel); the Mid-Atlantic Power Supply Association (MAPSA); the Environmentalists on behalf of the Clean Air Council, the Sierra Club, Citizen Power, the Energy Coordinating Agency, and the Nonprofits Energy Savings Investment Program; and IRRC.

We have considered all these comments. We appreciate and thank the commentators for suggestions to improve the proposed reporting requirements.

We have identified certain issues that were common to a number of the comments and will address them in a combined fashion. We begin by addressing the comments to specific sections. We address other nonsection specific comments after our response to the specific section-by-section comments. For example, several commentors addressed future actions of the Commission as far as what the Commission will do with the data obtained as a result of the reporting requirements and the establishment of similar reporting requirements for the EGSs. We address these comments under the "Other Issues" section of this order.

§ 54.151. Purpose.

We received no comments specific to § 54.151. However, we felt it appropriate to respond to one of the PEA's introductory comments regarding the collection of data by the EDCs. The PEA commented that the EDCs do not use the same method or have the same system capabilities to collect, measure and report data. Duquesne, UGI and GPU commented along similar lines. It is important to point out that the primary objective of this rulemaking is to establish a common set of measures for which performance data will be uniformly collected and reported to the Commission in a standard format. As a result of this effort, we expect that the EDCs will report data that has been gathered in a uniform way. Uniform data collection and reporting is the foundation which this rulemaking seeks to establish for the Commission and is essential to the Commission's future consideration of standards and benchmarks.

We are firmly committed to working toward the establishment of benchmarks and will do so based on the data reported in compliance with this rulemaking. Therefore, we strongly recommend to the EDCs and to the PEA that they take the necessary steps to make sure that they collect and report the data required by this rulemaking in a uniform manner. We will coordinate one or more meetings with representatives of the EDCs to work out the details of the reporting requirements.

§ 54.152. Definitions.

We have revised and clarified the language of the definitions based on comments of the interested parties. Consistent with the recommendations of the OCA, we have added the term "business office" and revised the definition of "call center." In addition, we agree with the OCA that "calls that were received" is the appropriate denominator in the calculation of the busy-out rate and have revised the language of the regulation accordingly. We have clarified justified informal complaint rate and justified payment arrangement request rate by inserting "residential" into the definitions.

We did not agree with Columbia's suggestion that abandoned calls should be calculated as abandoned only if the call is abandoned after 45 seconds and thus did not revise the definition of "call abandonment rate."

We rejected the PGA's recommendations related to infractions and infraction rates. The BCS does not limit its investigation or citation of infractions to Chapter 56; it investigates infractions of all Commission regulations discovered during its investigation of informal complaints and payment arrangement requests. We also reject the PGA's suggestion to replace "apparent" with "alleged" in the infraction definition because the BCS uses the term "alleged" to refer to infractions gleaned from its investigation of consumer complaints that are referred to the offending company for response. This has been the meaning of the term "alleged" for more than 15 years.

As recommended by many parties, including IRRC, we revised the label and definition of "small commercial customer" to the following: "small business customer"—a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months. This definition is consistent with the recommendations and mirrors the definition developed by Commission staff for the Customer Information Disclosure Requirements for Electricity Providers final order and rule.

Some of the commentators recommended the deletion of certain definitions that pertain to sections of the reporting requirements that they suggested be deleted. We will address these comments as we address the applicable sections of the rule.

§ 54.153. Reporting Requirements.

The PEA, Duquesne, PP&L, GPU and UGI-Electric suggested changing the reporting requirements to annual reporting requirements. They argued that there is no need for biannual reporting, especially because this new requirement would create additional expense under capped rates. Further, the PEA argued that the Commission review of customer complaints will alert them to developing problems.

IRRC asked the Commission to estimate the cost of submitting a report twice a year. IRRC recommended comparing the estimated costs with the benefits identified by the Commission to determine whether the report should be submitted annually or twice a year. We cannot estimate a dollar figure to produce the required reports. Each EDC has different pay scales for its employes and

can track and report data using different computer packages. Some of the EDCs already have these statistics on hand and others need to make some changes to accommodate the reporting requirements. Thus, the cost for one company could be far different than the cost for another. However, we believe that the EDCs can have this data each month and the cost differential of compiling it into a report twice a year as compared to once a year should be quite small. The EDCs should be producing this data regularly for their own analysis and work plans and may have this information available daily. The Commission plans to design an electronic reporting format that will allow the companies to plug in the numbers and deliver them to the Commission.

With the significant changes that are taking place in the electric industry, we believe that it is very important that the Commission receive reports on these important issues more than once each year during the transition to full competition. As electric generation becomes a competitive industry, these regulations are designed to ensure that the continuing regulated customer services of an EDC do not deteriorate. The Commission must monitor the effect of EDC reengineering efforts. If an EDC were to experience a deterioration in service that would begin in February, with annual reporting, the Commission would not become aware of the problem until the following February. Due to the significant changes that are taking place within the industry at this time, we believe that semiannual reporting will be beneficial during the early stages of competition. On the other hand, we think it is important that the reporting requirements are not overly burdensome. In consideration of both these positions, we have amended the rulemaking to allow for semiannual reporting in the first year, followed by annual reporting thereafter.

The OCA suggested amendment of this section to make clear that the data be provided for each performance area each month. We agree with this suggestion and have revised this section to require that the reports include data compiled and reported for each month as well as a 6-month cumulative average for the first report and a 12-month cumulative average for the reports that follow.

The OCA also recommended requiring utilities to analyze and compare, to the extent possible, their previous service quality with that reflected in the EDC's first report to the Commission. We agree with this recommendation. However, we believe it important to require the EDCs to compare and analyze the quality of their performance regularly. We have added this requirement to § 54.153(c).

Subsection (a). Telephone Access

Columbia Gas commented that the provisions on telephone access should distinguish between emergency calls and all other customer inquiries. We do not agree with Columbia's suggestions. All companies will have a certain percentage of calls that are generated as a result of emergencies. Similarly, PP&L recommended that the access statistics reflect the impact of storms because call volume increases significantly during major storms and despite steps to increase capability, the large volume of calls restricts customers' access to the call center. PP&L commented that storm-related calls should be excluded from the report or provided in a separate report on telephone access during a major storm. We do not agree with these recommendations. Responsiveness during a storm or an emergency is a central part of service quality. If an emergency is of such proportion as to greatly affect the access statistics in a particular reporting period, the EDC can explain the situation in its report to the Commission under § 54.153(c).

Columbia also proposed that data for nonemergency calls measure the percent of calls answered within 60 seconds rather than 30 seconds. However, the measurement of 30 seconds is recognized as the time period by which to measure access throughout the Nation. Further, in their responses to the March order several EDCs reported measuring access by percentage of calls answered within 30 seconds. We note the Commission's Chapter 63 regulations in § 63.59(b)(1) require local exchange carriers to answer 85% of customer calls within 20 seconds. We believe businesses should strive to answer the vast majority of calls from their customers in half a minute or less and thus we did not revise this section.

The OCA suggested that the EDC report data for each call center or business office when there is more than one because company-wide data may mask localized performance failures even of a substantial nature. IRRC agreed with the OCA. We concur with these suggestions and have amended the regulation to require that an EDC provide separate reports for each call center and business office available to respond to calls from customers. The EDC is to provide two sets of data: data for each individual call center and/or business office and data that provides overall statistics for the EDC.

PP&L suggested the Commission consider different performance standards for routine customer calls versus bill collection-related calls. We do not agree with PP&L's suggestion. An EDC should offer reasonable access to all customers, especially to those who need to get through to the company to discuss payment terms to avoid termination of service. When an EDC makes the policy decision to increase collection activity, we believe the EDC should take the necessary steps to make sure all customers are able to reach the company.

Spielvogel commented that the reporting requirements in this section are not adequate and some other means to measure telephone access must be provided. The access measures included in this section are commonly accepted measures of access for utilities and for other businesses. In addition, based on our guiding principle to measure customer service performance by using established measures, we will not seek other measures of access performance.

In its comments IRRC requested an explanation as to why the various measures in the reporting requirements are necessary to measure service quality. We included telephone access to the EDC as a measurement because we believe customers must be able to readily contact their EDCs with questions, complaints, requests for service and to report service outages and other problems. This component is second only to service reliability in importance to consumers. Other states such as New York include telephone access to a utility's call center or business office as an important measure of service quality. Access statistics are used or proposed throughout the nation as a measure of performance, not only for the electric industry but in the telephone industry as well. As mentioned earlier, Pennsylvania has regulations governing access rates to telephone utilities in § 63.59 (relating to operator-handled calls) relating to handling calls from customers, which specify the timeframe in which telephone companies must answer calls from customers seeking repair service.

We proposed three measures of access as important to produce an accurate, overall picture of telephone access

based on information provided by EDC representatives who pointed out that one measure of access could be manipulated to produce favorable results at the expense of other components.

The reporting requirements will assist the Commission to assure quality customer service by producing measurement statistics to monitor the performance of the EDCs. As a result of the data produced, the Commission will be aware of and able to investigate deterioration in performance, and assure remedial action on the part of the company.

Subsection (b). Billing

The PGA and Columbia recommended eliminating billing data for small business customers. The reporting requirements are based on existing regulation and statute. The statute relating to billing procedures in 66 Pa.C.S. § 1509 (relating to billing procedures) specifies that all customers, including small business customers, be permitted to receive bills monthly. It is important to monitor this aspect of customer service performance for the small business customers.

A typical quality of service measurement in billing may include billing error rates (percent canceled and rebilled). Responses to the March order revealed that this information is not available from the EDC for past performance and that seeking it in the future would require new record keeping on the part of the EDCs. Thus, for this paragraph, we determined that it would be appropriate to rely on existing regulations and statutes, that is, § 56.11 (relating to billing frequency) for residential customers and 66 Pa.C.S. § 1509 for small business customers. Both require companies to bill customers once each billing period or once each month.

We believe the customer bill is extremely important to customers in that it is often the only communication between the company and a customer. We believe that a company must be able to produce and send this very fundamental statement to customers at regular intervals. The Chapter 56 regulations have been in effect for more than 20 years and thus the EDCs, in compliance with these regulations, have taken steps to achieve this basic requirement as part of their commitment to provide adequate service to customers; thus, this section is retained.

Subsection (c). Meter Reading

The Environmentalists, Spielvogel and OCA recommended that the meter reading data be reported for both the residential and small commercial classes. Based on the principle that we would strive to use information that is readily available in establishing quality of service reporting requirements, we formulated the quality of service reporting requirements on established regulation—primarily Chapter 56 regulations. There are currently no regulations that spell out the frequency at which companies must read the meters of small business customers.

The Environmentalists recommended reducing the timeframe in which the EDCs obtain the readings, either customer supplied or actual. We crafted the reporting requirements to correspond with the meter reading sections of Chapter 56 and thus did not change the timeframes as proposed.

The Environmentalists also recommended that the EDC's be directed to track and report on meter reading mistakes as well. We believe that the measurements on meter reading as proposed will adequately monitor meter reading performance. In response to the March order, only a few of the EDCs reported monitoring meter reading errors and thus this requirement would require new data collection on the part of the EDCs. Further, historical data would not be available on this measurement. The Commission's experience is that lack of meter readings generates a large number of complaints from residential customers.

Equitable and Columbia suggested that this reporting requirement may not be an appropriate measurement since some customers fail to provide access or submit meter readings. We counter that the Chapter 56 regulations on meter reading have been in effect for 20 years. The companies are well aware they are required to obtain readings at specified intervals and have procedures when customers refuse to grant access, including the threat of and actual termination of service. We believe that the EDCs should have worked this problem out by now and should be able to obtain readings as required by the meter reading sections.

As indicated earlier, we based the meter reading reporting requirements on Chapter 56 regulations. During its 20 years investigating consumer complaints, the BCS has learned that this very fundamental activity, or lack thereof, produces numerous complaints to both companies and to the BCS. Regular meter reading is important to produce accurate bills for customers who expect to receive bills based on the amount of service they have used. We are concerned that regular meter reading may be one of the customer service areas where, as the generation function becomes competitive, EDCs may reduce service resulting in more bills being estimated. We appreciate that from time to time companies may need to estimate customer bills, but we also have seen the effects of too many estimates. The Chapter 56 regulations require one company or customer-supplied reading within a 6-month period and an actual (company) reading at least once every 12 months. We believe that these minimum requirements can be met and therefore have retained them in the reporting requirements.

Subsection (d). Response to Disputes.

The OCA suggested that the Commission track the EDC's timeliness in responding to customer disputes for both small commercial and residential customers. The OCA also suggested the Commission require that the EDCs track and report a residential and small commercial dispute ratio by key categories. This section mirrors Chapter 56 regulations and thus does not address the disputes of small business customers. We did not accept the OCA's suggestion about commercial customers because the EDCs have had no mandate to track this information up to this point. We believe that to add this additional requirement would be onerous and burdensome. We have the same basic rationale for not incorporating into the regulation the OCA's suggestion about tracking by key categories. The EDCs have not had any requirement to track disputes by category in the past and we do not believe we should require any additional tracking at this point. We do believe the interaction survey results will serve as indicators of service quality problems in various categories and expect that the EDCs will use them. In addition, the Commission's BCSs will continue to track complaints to the Commission by category which will give a good indication of areas that need the attention of EDC management. The BCS supplies company specific information to each EDC on a quarterly basis and includes similar statistics for the major EDCs in its annual report.

Columbia Gas recommended that data concerning responses to disputes be categorized between solely utility disputes and disputes which involve suppliers. Columbia believes that the number of contacts that are defined as disputes may increase as customers contact the utility with billing questions that ultimately involve the gas supplier. According to Columbia, if performance benchmarks are to be set based upon this data, the utility's ability to respond to disputes within 30 days should take into account possible delays occasioned by an increase in customer calls related to choice issues. We agree that customer choice issues may generate an increase in customer calls; however, we do not want to burden the EDCs with additional tracking. It is reasonable that EDC management would monitor the volume of these types of calls and alert the Commission to any associated problems by a written report explaining increases in the statistics reported.

When a customer contacts a company with a dispute or complaint, the customer deserves a prompt investigation and response from the company. As with the two previous reporting requirements, § 54.153(4) is based on Chapter 56 requirements. We believe that this particular requirement will be an excellent indicator of the timeliness and promptness of an EDC's interaction with residential customers.

This particular measurement partially replaces at least two potential measures for which we solicited comments in the March order: length of time to resolve complaints and length of time to complete nonemergency investigations and reports. These two measures are generally recognized by other states as accepted measures of customer service performance. However, due to the EDCs' lack of historical data on these measures and due to our desire not to place additional burdens on the EDCs to collect new data, we rely on Chapter 56. We believe this measure combined with the findings of the transaction surveys and the statistics from the BCS will produce a fairly accurate picture of the quality of an EDC's interactions with residential customers.

§ 54.154. Customer Surveys.

The Environmentalists expressed concern that the customer surveys take the place of objective data regarding EDC performance. The PGA agreed with this concern. The Environmentalists suggested the Commission increase the collection of objective data to measure customer service quality as originally proposed in the March order. We agree that in some instances the transaction surveys have taken the place of the objective data that we considered in the March order. Our review of the EDC responses to the data requests in that order and our subsequent meeting with representatives of the EDCs led us to conclude that the objective data we were seeking was not available and that to require its collection would be unduly burdensome to the companies. Although the collection of actual data for measures such as number of appointments kept and prompt and timely installation of new service would be desirable, we believe that the use of transaction survey results is the next best alternative to actual data. The survey results will give the Commission and the companies a good idea of where service is good and where improvement is needed.

Columbia Gas and Equitable expressed concern about all EDCs using the same customer survey. Columbia commented that "a one size fits all" survey may restrict a utility's ability to measure pertinent data. In our opinion, EDCs may incorporate their own questions onto the Commission-approved surveys. We would require that the Commission survey questions be asked first, followed by the company-specific questions. Further, this regulation does not preclude any EDC from undertaking its own separate surveys of customers.

The original intention in collecting customer service data from companies was to request records from the companies on number of appointments kept, response time to installation of service requests and emergency and nonemergency investigations and repairs, as well as the speed with which the EDCs posted customer payments. All these measures are commonly accepted as measures of customer service performance by experts in the field and are used in other states, particularly in New York. However, the EDC responses to the March Order and discussion with the EDC representatives led us to agree that requiring the EDCs to report on the above measures would be unduly burdensome to the EDCs. We agreed with the EDCs who suggested that we could monitor the EDC performance in these areas by asking specific and appropriate questions of a sample of the EDC customers who have had recent interactions with the EDCs regarding these and other issues. Thus, we are requiring each EDC to conduct transaction surveys of customers who have had recent interactions with the EDC so the Commission can monitor the responses.

(a) General Survey.

The PEA, the individual EDCs that commented to the proposed rulemaking and the PGA all recommended the deletion of the general survey requirement. They argued that the purpose of the general survey is to evaluate customer perceptions about EDCs and is not a reliable measurement of performance of the EDC. In addition they cited that conducting a general survey is expensive for the EDCs who are all operating under a rate cap at this time. IRRC also questioned the usefulness of the general survey to the Commission and asked us to provide an estimate of the costs to conduct the general survey and an explanation of how its findings will be used.

We believe that the general survey would be valuable to the Commission and to the EDCs to assess the overall satisfaction of customers with the EDC. Research has shown that if the EDCs pay attention to general survey results they can take steps to resolve customer dissatisfaction and thus avoid many of the problems that are associated with customer dissatisfaction. However, we agree that the value of a uniform general survey for all EDCs may not outweigh the expense associated with its administration. Therefore we have deleted the requirement for a general survey from the rulemaking.

(b) Transaction survey.

The OCA suggested we require this survey to be statistically valid within plus or minus 5 percentage points. We agree the survey should, at a minimum, be statistically valid within this range and inserted appropriate language into the regulation.

The OCA also recommended that the transaction survey be limited to residential and small business customers. We do not agree with this recommendation and have not revised the language. For the most part, we believe that industrial customers will have a specific contact within the company with whom to discuss problems, requests, and so forth. The majority of the customers surveyed will be residential customers, however we believe that it is important to survey a sample of all customers that had recent interactions with the EDC. The EDC may choose to have the results reported by

customer class if it desires. We intend to form a working group to decide the details of the sampling techniques of the survey procedures and do not believe it is necessary to include this information in the regulation.

Based on comments submitted by the PEA and some of its member companies about the importance of using predefined core attributes to measure customer satisfaction, we revised the language of the section on transaction surveys. In addition to the other areas that were in the proposed version, this section reads that survey questions shall measure the promptness by which the EDC responded to the customer's request and the EDC's timeliness of the response or visit. The surveys are also to include questions to measure satisfaction with the company's handling of the interaction. The addition of the language regarding satisfaction with the company's handling of the interaction will clarify that we realize that a customer may not be satisfied with the outcome of the interaction but be satisfied with the company's handling of the interaction. We believe that the majority of consumers are sophisticated enough to be able to recognize this difference. The language of the transaction survey questions will be crafted by the working group established to work on the surveys after the regulation is final.

All of the parties agreed that the survey questionnaire should be uniform for all EDCs; however, several parties commented that we should allow the EDCs the freedom to carry out the surveys in their own fashion, using their own methodology and, some suggested, their own consultant. IRRC indicated that there is merit in allowing the EDCs flexibility in how to conduct the surveys. We have found the comments of IRRC and several of the EDCs to be constructive regarding the administration of the transaction surveys.

An overall primary objective of the Commission for this rulemaking is to have the EDCs gather and report uniform quality of service data that can be compared among the Pennsylvania EDCs. We believe that it is of paramount importance that the survey instrument, sampling procedures, method of conducting the survey, analysis of results and reporting format be sufficiently uniform to support the Commission's overall primary objective. Although, as we stated earlier, the establishment of benchmarks will necessitate a separate proceeding, we do not want to automatically preclude the establishment of a standard that could be set for all EDCs. Without the prescribed uniformity, the Commission will not have a valid way of comparing the customer service performance of the EDCs in many important areas.

We believe that we can obtain the standardization necessary to achieve the Commission's overall objective while allowing flexibility as to the entities that may actually conduct the transaction surveys. Building on the suggestions of GPU, PEA and UGI-Electric, we will convene and facilitate a working group to provide recommendations as how to best achieve standardization in the areas of case selection, sampling, survey instrumentation, conducting the survey, analysis of results and reporting that are sufficiently uniform to ensure that the Commission can directly compare customer service performance among the EDCs using the transaction survey data reports. We will not require that a single, independent third party conduct, analyze and report results of the survey for all EDCs. We will allow EDCs to conduct their own surveys or contract with a third party to conduct the survey under terms that the working group and the Commission agree will result in standard, comparable information being reported to the Commission. The Commission will also permit EDCs to incorporate additional questions into the transaction surveys as suggested by GPU, to the extent that they will not interfere with the Commission obtaining standard information on the content areas required by this rulemaking.

The OCA and IRRC pointed out that the proposed language was not clear as to how often the transaction survey must be conducted. It is our intention that the transaction surveys be conducted at least monthly, or possibly on an ongoing basis. This is a matter that will be addressed by the working group. However, we do believe that a sample of consumers should be surveyed within 30 days after the company/consumer interaction has taken place because we think it is imperative that the interaction be fresh in the consumer's mind. We agree with the OCA and IRRC that the language needed to be revised and have added a subsection that stipulates this requirement.

The OCA questioned why EDCs are given an extra year to submit survey results and suggested a uniform reporting requirement for all data that is, in August and February of each year. The OCA requested that the final rule require customer surveys to be conducted in 1999 and results reported beginning in August 1999. We purposely prepared the requirement with the proposed timeline because we realized that forming a working group and working out the details associated with the transaction surveys will take time. We also believe that it will take time to analyze and report the survey results from each 6-month period and thus have included a 3-month period for this work. In March 1998, the Commission issued a Secretarial letter asking the EDCs to supply results from their current surveys to the Commission for 1997, 1998 and 1999. In this way, the Commission will still have some opportunity to monitor customer satisfaction until the uniform surveying procedures are fully implemented.

Under the timetable section, we amended the rulemaking to require that the EDCs should report the transaction survey results by month in their reports to the Commission as well as reporting 6- and 12-month average statistics. Transaction surveys are to be submitted every 6 months for the first year and annually thereafter. This will aid the Commission in monitoring seasonal fluctuations and other occurrences that may affect survey results.

§ 54.155. Regulatory Performance.

We have changed the section heading of § 54.155 to "Informal Complaints to the BCSs." In our opinion this heading more appropriately denotes the features of this section. All of the reporting requirements in this section are based on informal consumer complaints to the Commission's BCSs, either consumer complaints about billing, service delivery, repairs, metering and so forth or requests for payment arrangements. Further, we want to clarify that the performance being measured through the investigation of consumer complaints and the informal compliance process is that of the EDCs and not of the regulatory agency. We believe that the new heading better conveys the intention of this section.

PP&L agreed with the reporting components of this section but recommended that the BCSs statistics be reported by April 1 each year. The processing of BCS cases is not completed by April 1 of each year and thus, we did not accept this suggestion. The BCS does produce quarterly reports that it sends to the EDCs that can give an indication of where problems in EDC complaint handling are. The Commission, of course, has access to any of these reports.

Duquesne suggested using justified percentage as a measure of regulatory performance because volume of complaints is often indicative of how well company representatives provide customers with appeal rights during the complaint resolution process. The Bureau of Consumer Services agrees with Duquesne to a certain extent but believes that justified rates, which take into account both volume of complaints and justified percent, are the more appropriate measures. Duquesne also recommended that the BCS publish the rules and procedures to determine if a case is justified. The BCS has met with EDC representatives on several occasions to explain its rules for determining whether or not a case is justified. The BCS will meet with the EDC representatives again to go over its rules, although the companies should be well aware of them by this time.

The PGA suggested that the Commission should add a fifth element: the total number of customer contacts annually answered by a distribution company to provide a useful backdrop for assessing the four other elements to measure regulatory performance. Responses to the March order indicated that the majority of EDCs do not have this information available. Thus we have no historical base by which to judge future statistics. To require that the EDCs report this would require new data collection processes on the part of most of the EDCs and would likely add to their expenses.

GPU suggested that benchmarking an EDC's customer service quality based upon infractions and infraction rate is not relevant. GPU argued that the Commission must analyze definitive, verified data rather than informally verified infractions identified through investigation of informal complaint and payment arrangement requests to the BCS. We counter that the significance of these infractions is that they frequently represent systematic errors that are widespread and affect many utility customers. The BCS compliance process helps EDCs and other utilities pinpoint and voluntarily correct deficiencies. The utilities have the opportunity to affirm or deny the allegation of an infraction and the BCS makes a determination based on the company's position. The BCS believes that the informally verified infractions would hold up under a lengthy, formal process but in most cases has not chosen to pursue this route. The design of the compliance process is to help utilities identify errors and take corrective action. In several instances when utilities have not taken correction action to improve compliance with Commission regulations, the BCS has taken formal action and the infraction citations have stood up under the formal scrutiny. We reject GPU's argument and retained number of infractions and infraction rate in the reporting requirements.

§ 54.156. Public Information.

Based on the recommendations of the Environmentalists and IRRC, we added a new section that requires the Commission to release the information collected by the reporting requirements to the public. The Environmentalists suggested that the individual EDC reports be made public, be sent to the OCA and to the Office of Small Business Advocate, and be posted on the Commission's Internet web site. We do not believe that the individual EDC reports should be released to the public for a variety of reasons, including the fact that often data needs to be verified and sometimes revised after the Commission has carefully reviewed the submissions. We also believe that individual reports will be of limited use to the public or to the specified agencies. In our opinion, a report that summarizes: 1) the individual reports of the EDCs; 2) the survey findings; and 3) the BCS statistics will have the greatest value to those interested in the customer service performance of the EDCs. Therefore, the language of the regulation reads that the Commission will annually produce a document that summarizes and reports quality of service information, by the EDC. We agree that posting the document on the Commission's Internet web site is "user friendly" and we included language to that effect. The language also requires that the Commission will supply the report to any interested party, rather than limiting the recipients to the OCA and OSBA. We believe that a comprehensive report produced annually will adequately satisfy the needs of the public and will accommodate the different reporting timetables of the various sections of the requirements.

Other Issues

Several of the commentators including the PEA, several EDCs and the OCA suggested that the EGSs be required to adhere to similar reporting requirements. Section 2809(e) of the act (relating to requirements for electric generation supplies) mandates that the Commission is empowered to regulate EGSs to insure that quality of service is maintained. We agree with these comments. The Commission plans to institute proceedings to require the EGSs to report appropriate data regarding customer service performance. In addition, the Commission will consider the establishment of benchmarks and standards for suppliers. However, these are not the subject of the instant rulemaking and so we did not address them in this order except to say that we will consider them in the future.

The MAPSA recommended that the EDCs be required to designate a portion of their customer service center to working with the EGSs acting as representatives for customers. The MAPSA further suggested that it is important to track matters brought by the EGSs to a customer service center. The MAPSA argued that the concept of an EDC "customer" must include an EGS acting as the representative for individual customers. The purpose of this rulemaking is not to address the EDC and EGS interactions; rather the purpose is to gather data on existing measures of customer service to existing end use customers. Thus, we have retained this section as written.

IRRC recommended that the Commission consider tracking the quality of service provided to the EGSs by the EDCs for a future rulemaking. We agree with this recommendation. As we progress through the pilot phase of electric competition and the phase-in period, the Commission is closely monitoring and attempting to resolve the problems of all parties. The Commission's monitoring will determine the necessity of future rulemakings related to electric competition.

The preliminary and concluding remarks in many of the comments we received pertained to several issues outside the scope of this rulemaking. We received a number of comments regarding the setting of benchmarks and standards. Our response to these comments is that the Commission does plan to establish benchmarks for

the EDCs at a later date. This rulemaking is to establish uniform reporting on several important quality of service measures. The establishment of benchmarks or bands of acceptable performance will be the subject of a separate, future proceeding, based on the data collected.

We also received several comments regarding the linking of the measures to financial rewards or penalties, or both. The Commission recognizes that information provided by EDCs under the requirements of these new regulations is being provided solely for the purpose of insuring that quality of service is maintained. Financial implications linked to quality of service measures, or implementation of performance-based rates or alternative regulations, or both, would be the subject of a separate proceeding.

To fulfill our legislative mandate to ensure that the level of quality regarding customer service will not deteriorate in this Commonwealth, we amend our regulations to establish reporting requirements for quality of service benchmarks and standards. Accordingly, under sections 501 and 2807 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 2807(a) and (d), and the Commonwealth Documents Law (45 P. S. § 1202 et seq.) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we adopt the regulations at 52 Pa. Code §§ 54.151—54.156, as noted above and as set forth in Annex A; *Therefore*,

It is Ordered that:

(1) The regulations of the Commission, 52 Pa. Code Chapter 54, are amended by adding §§ 54.151—54.156 to read as set forth in Annex A.

(2) The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

(3) The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of the fiscal impact.

(4) The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both houses of the General Assembly, and for formal review and approval by IRRC.

(5) The Secretary shall deposit the original certified order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(6) A copy of this order and Annex A shall be served upon all persons who submitted comments in this rulemaking proceeding.

(7) The regulations adopted with this order are effective upon publication in the *Pennsylvania Bulletin*.

By the Commission

JAMES J. MCNULTY,
Secretary

(*Editor's Note*: The addition of § 56.156 (relating to public information) was not included in the proposal at 28 Pa.B. 514 (January 31, 1998). For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: Fiscal Note 57-192 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter F. REPORTING REQUIREMENTS FOR QUALITY OF SERVICE BENCHMARKS AND STANDARDS

Sec.
54.151. Purpose.
54.152. Definitions.
54.153. Reporting requirements
54.154. Customer surveys.
54.155. Informal complaints to the BCS.
54.156. Public information.

§ 54.151. Purpose.

This subchapter establishes a means by which the Commission can develop uniform measurement and reporting to assure that the customer services of the EDCs are maintained, at a minimum, at the same level of quality under retail competition. This subchapter sets forth uniform measurements and reporting requirements for monitoring the level of the EDCs' customer service performance. This subchapter also establishes the effective dates of the reporting requirements.

§ 54.152. Definitions.

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

BCS—The Bureau of Consumer Services of the Commission.

Business office—A centralized service group which receives small commercial or residential billing inquiries, or both, and requests for service, whether or not equipped with an automated call distribution system.

Busy-out rate—The number of calls to an EDC's call center or business office that received a busy signal divided by the number of calls that were received.

Call abandonment rate—The number of calls to an EDC's call center or business office that were abandoned divided by the total number of calls received at the EDC's telephone call center or business office.

Call center—A centralized facility established by a utility for transactions concerning installation and repair of service, billing and other inquiries between residential and small commercial customers and EDC representatives, but not including special purpose call centers established to respond to service emergencies and operating for a temporary period of time.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Commission—The Pennsylvania Public Utility Commission.

Customer—A retail electric customer as defined in section 2803 of the code (relating to definitions).

EDC—Electric Distribution Company—The term defined in section 2803 of the code.

Informal consumer complaint—An appeal by a consumer to the BCS about a utility's proposed resolution of

a dispute related to billing, service delivery, repairs and all other issues not related to requests for payment arrangements.

Informally verified infraction—An apparent misapplication of Commission regulations as determined by the BCS through its examination of information obtained as part of its review of informal consumer complaints and payment arrangement requests:

(i) The informal verification process implemented by the BCS notifies a utility of the information which forms the basis of an alleged infraction, affords the utility the opportunity to affirm or deny the accuracy of the information, and concludes with a BCS determination regarding the alleged infraction.

(ii) An informally verified infraction is not equivalent to a formal violation under section 3301 of the code (relating to civil penalties for violations) unless otherwise determined through applicable Commission procedures.

Infraction—A misapplication of a Commission regulation, particularly the standards and billing practices for residential service.

Infraction rate—The number of informally verified infractions per 1,000 residential customers.

Justified informal consumer complaint—A complaint where the BCS has determined that an EDC did not follow Commission procedures or regulations.

Justified informal consumer complaint rate—The number of justified informal, residential consumer complaints per 1,000 residential customers.

Justified payment arrangement request—A payment arrangement request where an EDC did not follow Commission negotiation procedures or regulations.

Justified payment arrangement request rate—The number of justified payment arrangement requests from residential customers per 1,000 residential customers.

Payment arrangement request—A customer request for payment terms to the BCS.

Small business customer—A person, sole proprietorship, partnership, corporation, association or other business that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months.

Transaction survey—A survey targeted toward individuals that have had a recent interaction with an EDC. A transaction includes filing a complaint, inquiring about a bill, having a repair completed, installation of service or an appointment for a special meter reading.

§ 54.153. Reporting requirements.

(a) *Reporting requirements.*

(1) Unless otherwise specified in this subchapter, each EDC shall file its first report with the Commission on or before August 1, 1999. The August report shall contain data, reported by month, from the first 6 months of the calendar year, as well as a 6-month cumulative average.

(2) Each EDC shall file its second report on or before February 1, 2000. The February report shall contain data, reported by month, from the second 6 months of the year as well as 6-month cumulative average and a 12-month cumulative average for the preceding calendar year.

(3) Thereafter, the EDCs shall file reports annually with the Secretary of the Commission on or before February 1. Each report shall contain data, reported by month, as well as a 12-month cumulative average for the preceding calendar year. Each report shall include the name and telephone number of the utility contact person responsible for the report.

(b) *Records.* Each EDC shall take measures necessary and keep sufficient records to report the following data to the Commission:

(1) *Telephone access.*

(i) The percent of calls answered at each EDC's call center or business office, or both, within 30 seconds with the EDC representative ready to render assistance and to accept information necessary to process the call. An acknowledgment that the customer or applicant is waiting on the line does not constitute an answer. If the EDC reports data for more than one call center or business office, the EDC should also provide the combined percent of calls answered within 30 seconds for the EDC as a whole.

(ii) The average busy-out rate for each call center business office, or both. If the EDC reports data for more than one call center or business office, the EDC should also provide the combined busy-out rate for the EDC as a whole.

(iii) The call abandonment rate for each call center or business office, or both. If the EDC reports data for more than one call center or business office, the EDC should also provide the combined call abandonment rate for the EDC as a whole.

(2) *Billing.*

(i) The number and percent of residential bills that the EDC failed to render once every billing period to residential ratepayers under § 56.11 (relating to billing frequency).

(ii) The number and percent of bills that the EDC failed to render once every billing period to small business customers.

(3) *Meter reading.*

(i) The number and percent of residential meters for which the company has failed to obtain an actual or ratepayer supplied reading within the past 6 months to verify the accuracy of estimated readings in accordance with § 56.12(4)(ii) (relating to meter reading; estimated billing; or ratepayer readings).

(ii) The number and percent of residential meters for which the company has failed to obtain an actual meter reading within the past 12 months to verify the accuracy of the readings, either estimated or ratepayer read in accordance with § 56.12(4)(iii).

(iii) The number and percent of residential remote meters for which it has failed to obtain an actual meter reading under the time frame in § 56.12(5)(ii).

(4) *Response to disputes.* The actual number of disputes as described in Chapter 56, Subchapter F (relating to disputes; termination disputes; informal and formal complaints) for which the company did not provide a response to the complaining party within 30 days of the initiation of the dispute under § 56.151(5) (relating to general rule).

(c) *Comparison of service quality.* Each EDC report to the Commission shall contain an analysis and comparison of the quality of service data in each performance area during the past 6 months with its previous service quality in these areas.

§ 54.154. Customer surveys.

(a) *Results of telephone transaction surveys.* Each EDC shall report to the Commission the results of telephone transaction surveys of customers who have had interactions with the EDC.

(1) The purpose of the transaction surveys is to assess the customer perception regarding the most recent interaction with the EDC. Survey questions shall measure access to the utility, employe courtesy, employe knowledge, promptness of EDC response or visit, timeliness of EDC response or visit and satisfaction with the handling of the interaction.

(2) The transaction survey questions shall specifically address the circumstances that generated the most recent transaction. Interaction categories include the following:

(i) Service installation.

(ii) Premise visit by company field personnel for an activity other than service installation.

(iii) Service interruption.

(iv) Billing balance inquiry or dispute.

(v) Request for discontinuance of service.

(vi) Application for service.

(vii) Other similar interactions.

(3) The EDCs shall carry out the transaction survey process using instruments and procedures that provide the Commission with uniform data that can be used to directly compare customer service performance among EDCs in this Commonwealth.

(4) A customer or consumer being surveyed shall be contacted within 30 days of the date that the interaction with the EDC took place.

(5) The sampling plan shall be designed so that the results are statistically valid within plus or minus 5%.

(b) *Commission approval.* The survey instrumentation, as well as procedures for case selection, sampling, conducting the survey, analyzing results and reporting to the Commission shall be subject to the review and approval of the Commission.

(c) *Timetable.*

(1) The first report on survey results shall be submitted to the Commission on or before October 1, 2000. The October report shall contain survey results, reported by month, from the first 6 months of the calendar year.

(2) The second report shall be submitted on or before April 1, 2001. The April report shall contain results, reported by month, from the second 6 months of the previous year as well as cumulative 12-month results.

(3) Thereafter, the EDC shall submit survey results annually, on or before April 1. Each annual report shall contain results reported by month as well as cumulative 12-month results.

§ 54.155. Informal complaints to the BCS.

(a) The BCS will review and analyze residential informal consumer complaints and payment arrangement requests filed with the Commission and will report the justified consumer complaint rate and the justified payment arrangement request rate to the Commission on an annual basis.

(b) The BCS will report to the Commission the number of informally verified infractions of applicable statutes and regulations relating to the treatment of residential accounts by each EDC. The BCS will calculate and report to the Commission an "infraction rate" for each EDC.

§ 54.156. Public information.

The Commission will annually produce a summary report on the customer service performance of each EDC using the statistics collected as a result of these reporting requirements. The reports will be public information. The Commission will provide the reports to any interested party and post the reports on the Commission's Internet website.

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