

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Department of State

Bureau of Professional and Occupational Affairs

State Architects Licensure Board

(2) I.D. Number (Governor's Office Use)

16A-417

IRRC Number: 2326

(3) Short Title

Firm Practice

(4) PA Code Cite

49 Pa. Code, §§ 9.161 – 9.164

(5) Agency Contacts & Telephone Numbers

Primary Contact: Roberta L. Silver, Assistant Counsel
State Architects Licensure Board (717) 783-7200

Secondary Contact: Joyce McKeever, Deputy Chief
Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

☐ Proposed Rulemaking

☒ Final Order Adopting Regulation

☐ Policy Statement

(7) Is a 120-Day Emergency Certification
Attached?

☒ No

☐ Yes: By the Attorney General

☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The State Architects Licensure Board (Board) amends 49 Pa. Code §§ 9.161 – 9.164 (relating to professional and corporate practice) by adding the requirements for registration as a limited liability company or limited liability partnership, as set forth in Annex A.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are adopted under Sections 6(a) and 13(j) of the Architects Licensure Law (Act) (63 P.S. §§ 34.6(a), 34.13(j)).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Board is required by its Act to adopt regulations requiring any partnership, professional association, professional corporation, business corporation, limited liability company or limited liability partnership practicing architecture in this State to file with the board information concerning its officers, directors, partners, professional association board of governors, beneficial owners, members or managers and such other aspects of its organization as the board deems appropriate. (63 P.S. § 34.13(j))

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

In 1998, the Act was amended to include limited liability companies and limited liability partnerships as acceptable firm practice entities. (63 P.S. § 34.13(a)) This proposed regulation provides the Board with the opportunity to update the regulations for firm practice registration to reflect the changes in the Act.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

It is important that the Board have control over the registration requirements for architecture firms so that control of the firms is in the hands of licensed architects. Without the registration requirements, any firm could call itself an "architectural firm" and the public would not be protected against faulty design and construction of buildings.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The general public will benefit from the regulation by hiring regulated architectural firms.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board has not identified any group of individuals or entities who will be adversely affected by the regulation.

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

Any architectural firm seeking to practice architecture as a limited liability company or limited liability partnership will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Copies were provided to those interested parties who requested an opportunity to provide input. On March 14, 2002, the Board solicited input from the American Institute of Architects of Pennsylvania and the National Council of Architectural Registration Boards (NCARB). The Board did not receive comments or suggestions.

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

Each firm must pay a fee of \$50 for initial registration. This cost covers the administrative cost of issuing an initial license.

Regulatory Analysis Form

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

Local governments will not be affected by the regulation.

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

The Board will not incur an increase in administrative costs by implementing the regulation.

Regulatory Analysis Form

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

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

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
State Architects Licensure Board	247,480.26	236,308.10	228,921.41	247,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered because the Board's enabling statute requires the Board to promulgate regulations requiring registration of architecture firms.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered because the Board's enabling statute requires the Board to promulgate regulations requiring registration of architecture firms.

Regulatory Analysis Form

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

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

New York – requires filing of information about an entity as a condition of practice in the state.

New Jersey – same as NY

Delaware – does not require filing of information about an entity as a condition of practice in the state.

Maryland – same as NY

Ohio – same as NY

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

This regulation will have no effect on other regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews regulatory proposals at regularly scheduled bi-monthly public meetings. The meeting dates are listed on the Department of State website. However, the Board has not scheduled public hearings or informational meetings regarding this regulation.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Minimal paperwork and record keeping will be necessary because of the implementation of the regulation for registration as a limited liability company or limited liability partnership.

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

The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

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

The Board reviews regulatory proposals at regularly scheduled bi-monthly public meetings. A schedule of the Board's meetings is available at www.dos.state.pa.us/bpoa.

5. Indicate whether the company is in compliance with 52 Pa. Code, § 65.4(b) regarding complete and current mapping of the entire distribution system.

6. Provide a summary report demonstrating the company's efforts in water conservation, since the last rate proceeding, pursuant to 52 Pa. Code, § 65.20.

7. Provide a discussion of the company's policy regarding meter requirements, replacements and testing. State if the company's procedures are in compliance with 52 Pa. Code, § 65.8(b).

a. Provide meter test records as required in 52 Pa. Code, § 65.8(c) for the 50 meters most recently removed from service.

b. Provide a discussion of the company's policy and history of compliance with 52 Pa. Code, § 65.9 regarding adjustment of bills for meter error within the last year.

X. BALANCE SHEET

1. Provide a comparative balance sheet for the test year-end and the preceding year-end.

2. Provide a detail of other physical property, investments in affiliated companies and other investments.

3. Provide the amounts and purpose of special cash accounts as of the test-year end.

4. Describe the nature and amounts of notes receivable, accounts receivable from associated companies, and any other significant receivables, other than customers' accounts.

5. Provide the amount of accumulated reserve for uncollectible accounts, method and rate of accrual, amounts accrued and amounts written-off in each of the last three years.

6. Provide a list of prepayments and give an explanation of special prepayments.

7. Explain in detail any other significant (in amount) current assets listed on balance sheet.

8. Explain in detail, including the amount and purpose, the deferred asset accounts that currently operate to effect or will at a later date affect the operating account supplying:

a. Origin of these accounts.

b. Probable changes to this account in the near future.

c. Amortization of these accounts currently charged to operations or to be charged in the near future.

9. Explain the nature of accounts payable to associated companies, and note amounts of significant items.

10. Provide details of other deferred credits as to their origin and disposition policy (e.g., amortization).

11. Provide details of any significant reserves, other than depreciation and bad debt, appearing on balance sheet.

12. Provide an analysis of unappropriated retained earnings for the test year and two preceding years.

13. Describe the purpose of any advances made by the company to its parent corporation and describe all terms and conditions associated with such advances, including an estimate of future advances or repayments that are expected to occur.

XI. OTHER DATA

1. Provide the company's monthly balance sheets and income statements for each month of the historic and future test year.

2. Supply a copy of internal and independent audit reports of the test year and prior calendar year, noting any exceptions and recommendations and disposition thereof.

3. Provide all monthly and/or quarterly budget variance reports to management and/or the board of directors submitted during the past year. Please provide the most recent detailed budget variance report which the company compiled, and update as additional reports are issued.

4. Provide a copy of the company's most recent operating and capital budgets.

5. Provide a schedule that shows the percentage of unaccounted for water for the test year and two prior years. Describe how this amount was determined and explain any steps taken to reduce unaccounted for water.

6. Provide a corporate history (include the dates of original incorporation, subsequent mergers and/or acquisitions). Indicate all counties and cities and other governmental subdivisions to which service is provided (including service areas outside the state), and the total population in the area served.

[Pa.B. Doc. No. 03-348. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

Firm Practice

The State Architects Licensure Board (Board) proposes to amend §§ 9.161—9.164 by adding the requirements for registration as a limited liability company or limited liability partnership to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The proposed amendments are authorized under sections 6(a) and 13(j) of the Architects Licensure Law (act) (63 P. S. §§ 34.6(a) and 34.13(j)).

C. Background and Purpose

Prior to 1998, section 13 of the act, regarding firm practice, listed the following entities permitted to engage in the practice of architecture: sole proprietorships, partnerships, professional associations, professional corporations and business corporations. In 1998, section 13 of the

act was amended to include limited liability companies and limited liability partnerships as acceptable entities. The Board's regulations have not been updated to reflect the changes in the act relating to firm practice. Hence, this proposed rulemaking.

D. Description of the Proposed

The Board proposes to amend § 9.161 (relating to compliance with applicable statutes) by adding limited liability companies and limited liability partnerships as entities permitted to engage in the practice of architecture and by requiring compliance with 15 Pa.C.S. Chapters 82 and 89 (relating to limited liability partnerships; and limited liability companies).

The amendment to § 9.162(2) (relating to firm practice) would clarify that its requirements apply to both general partnerships and limited liability partnerships. Section 9.162(5) adds the requirements for registering as a limited liability company, by mirroring the requirements set forth in the act and by adding the additional requirement that at least one member or manager of the company is be a licensee of the Board.

Section 9.163 (relating to prior approval by the Board) requires that the applicant seeking registration for an entity permitted to practice architecture in this Commonwealth shall complete a formal application provided by the Board.

Section 9.164 (relating to exception for two owners) adds limited liability companies and limited liability partnerships to the list of entities which may be wholly owned by only two persons.

E. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed amendments should not necessitate legal, accounting, reporting or other paperwork requirements.

F. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 27, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, the SCP/PLC and the HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to final publication of the rulemaking.

I. Public Comment

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

rulemaking to Dorna Thorpe, State Architects Licensure Board, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649 dothorpe@state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ANN SHEPARD HOUSTON,
President

Fiscal Note: 16A-417. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD

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, a limited liability company, a limited liability partnership 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:

* * * * *

(6) In the case of a limited liability company, with 15 Pa.C.S. Chapter 89 (relating to limited liability companies).

(7) In the case of a limited liability partnership, with 15 Pa.C.S. Chapter 82 (relating to limited liability partnerships).

(8) ***

§ 9.162. Firm practice.

The practice of architecture may be conducted in one of the following business forms:

* * * * *

(2) A partnership (general or limited liability) or professional association, when the following exist:

* * * * *

(5) A limited liability company, when the following exist:

(i) At least two-thirds of the members if managed by members or at least two-thirds of the managers if managed by managers are licensed under the laws of any state to practice architecture, engineering or landscape architecture.

(ii) At least one-third of the members if managed by members or at least one-third of the managers if managed by managers are licensed under the laws of any state to practice architecture.

(iii) At least one member or manager is a licensee of the Board.

(iv) At least two-thirds of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture, engineering or landscape architecture.

(v) At least one-third of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture.

§ 9.163. Prior approval by the Board.

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

* * * * *

§ 9.164. Exception for two owners.

Section 9.162 (relating to firm practice) will not be construed to prevent the practice of architecture in a business form which is wholly owned by only two persons. The partnership, professional association, professional corporation, limited liability company, limited liability partnership or business corporation shall have at least one owner who is a licensee of the Board, and who owns at least 50% of the business.

[Pa.B. Doc. No. 03-349. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Continuing Education

The State Board of Optometry (Board) proposes to amend §§ 23.82, 23.83 and 23.87 (relating to continuing education hour requirements; continuing education subject matter; and reporting of continuing education credit hours) to read as set forth in Annex A. The proposed amendments would update the Board's continuing education regulations and conform them to prior regulatory amendments.

Effective Date

These proposed amendments would be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* and would apply to continuing education credits earned during the 2002–2004 biennial renewal period.

Statutory Authority

Section 3(b)(12) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(b)(12)) authorizes the Board to approve continuing education. Section 3(b)(14) of the act authorizes the Board to "promulgate all rules and regulations necessary to carry out the purposes of this act."

Background and Need for the Amendments

The Board recently deleted § 23.201 and amended § 23.202 (relating to the application procedure for certification in pharmaceutical agents for therapeutic purposes) by final-form rulemaking published at 32 Pa.B. 2886 (June 15, 2002). The Board's continuing education regulations refer to §§ 23.201 and 23.202, and these references must be updated to conform with the prior regulatory amendments. In addition, the Board's proposed rule-

making to its continuing education regulations will clarify the subject matter acceptable to the Board for continuing education in pharmaceutical agents for therapeutic purposes. Finally, the proposed rulemaking clarifies a licensee's duties in reporting continuing education courses to the Board. The proposed rulemaking conforms the Board's continuing education regulations to the statute and prior regulatory amendments and thereby eliminates confusion regarding the acceptable subject matter for continuing education courses related to pharmaceutical agents for therapeutic purposes.

Description of Proposed Amendments

§ 23.82. Continuing education hour requirements.

The Board proposes to amend § 23.82(a) by deleting the references to the Board's regulations in §§ 23.201 and 23.202 and replacing them with references to section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2)). This proposed amendment conforms the regulations to the Board's June 15, 2002, amendments of §§ 23.201 and 23.202, which deleted § 23.201 and amended § 23.202.

The Board proposes to amend § 23.82(b) to reflect the right to a hearing before discipline is imposed as provided in 2 Pa.C.S. § 504 (relating to hearing and record) and section 7(e) of the Optometric Practice and Licensure Act (63 P. S. § 244.7(e)). The Board may not unilaterally place a license on "inactive status" for failure to complete mandatory continuing education. The failure to complete mandatory continuing education is a violation of the act and regulations of the Board and the notice and hearing procedures of 2 Pa.C.S. §§ 501–508 and 701–704 (relating to Administrative Agency Law) and the act must be followed before the Board may discipline a licensee. The Board proposes to amend the regulation to provide that the Board may under notice and opportunity for a hearing, impose discipline on a licensee for failing to complete mandatory continuing education in accordance with section 7(3) of the act (63 P. S. § 244.7(c)).

§ 23.83. Continuing education subject matter.

The Board proposes to amend this section to reflect the changes made in the 1996 amendments to the act, in section 5(b) of the act (63 P. S. § 244.5(b)), which require optometrists who are certified to administer and prescribe pharmaceutical agents for therapeutic purposes (optometrists holding therapeutic certification) to complete at least 6 hours in the administration and prescription of pharmaceutical agents for therapeutic purposes. The proposed amendment notifies optometrists that these courses shall provide instruction regarding the treatment and management of ocular or oculo-systemic disease. The proposed amendment also notifies optometrists that Board-approved courses of therapeutic content will be designated with a course number with the suffix "T." In addition, the proposed amendment instructs course providers that the Board will notify the provider of approval of a course. Finally, the proposed amendment requests that preapproved course providers indicate on the certificate of attendance that the course is a therapeutic course.

§ 23.87. Reporting of continuing education hours.

The Board proposes to amend § 23.87 to conform the regulation to the current statutory requirement for biennial continuing education, 30 hours, and to note that providers with therapeutic certification shall include at least 6 hours in therapeutic courses. In addition, the Board proposes to amend the requirements for documentation that shall be submitted, upon request, to verify attendance at mandatory continuing education. The proposed amendment provides that optometrists shall

Comments of the Independent Regulatory Review Commission

on

State Architects Licensure Board Regulation No. 16A-417

Firm Practice

April 30, 2003

We submit for your consideration comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Architects Licensure Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Section 9.162. Firm Practice. – Consistency with statute.

Paragraph (5)

Paragraph (5) sets forth the criteria for an LLC. Paragraph (5)(iii) requires that “At least one member or manager is a licensee of the Board.” Act 31 of 1998 (63 P.S. § 34.13), which allows for LLPs and LLCs, does not contain this requirement. Therefore, the Board should explain why it included Paragraph (5)(iii).

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

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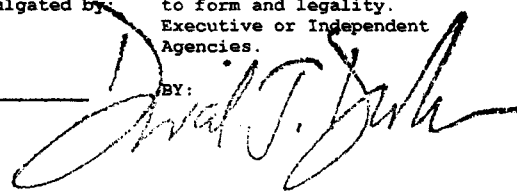
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Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Architects Licensure Board
(AGENCY)

BY: 

DOCUMENT/FISCAL NOTE NO. 16A-417

DATE OF ADOPTION: _____

8/20/2003
DATE OF APPROVAL

BY: 
Ann Shepard Houston, President

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

TITLE: President
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if
applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE ARCHITECTS LICENSURE BOARD
49 PA. CODE, CHAPTER 9

FIRM PRACTICE

The State Architects Licensure Board (Board) hereby amends its regulations at 49 Pa. Code §§ 9.161 – 9.164 by adding the requirements for registration as a limited liability company or limited liability partnership, to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The amendments are authorized under sections 6(a) and 13(j) of the Architects Licensure Law (act) (63 P.S. §§ 34.6(a) and 34.13(j)).

C. Background and Purpose

Prior to 1998, section 13 of the act, regarding firm practice, listed the following entities permitted to engage in the practice of architecture: sole proprietorships, partnerships, professional associations, professional corporations and business corporations. In 1998, section 13 was amended to include limited liability companies and limited liability partnerships as acceptable entities. The Board's regulations have not been updated to reflect the changes in the act relating to firm practice.

D. Description of Amendment

The Board amends § 9.161 (relating to compliance with applicable statutes) by adding limited liability companies and limited liability partnerships as entities permitted to engage in the practice of architecture and by requiring compliance with 15 Pa.C.S. Chapters 82 and 89 (relating to limited liability partnerships; and limited liability companies).

The amendment to § 9.162(2) (relating to firm practice) clarifies that its requirements apply to both general partnerships and limited liability partnerships. Section 9.162(5) adds the requirements for registering as a limited liability company, by mirroring the requirements set forth in the act and by adding the additional requirement that at least one member or manager of the company must be a licensee of the Board.

Section 9.163 (relating to prior approval by the Board) requires that the applicant seeking registration for an entity permitted to practice architecture in the Commonwealth must complete a formal application provided by the Board. At its June 12, 2003, meeting, the Board and representatives of the American Institute of Architects Pennsylvania discussed whether the original language of the regulation, "with the Board," which had been deleted in proposed rulemaking, should be reinserted in the final rulemaking. The Board agreed that without that language applicants could

be confused as to where they would be required to send the application and additional documents. Therefore, to clarify the procedure, the Board voted to reinsert the original language of the regulation, with one minor change. The amendment now reads, "Written approval shall be sought by submitting a completed application on forms provided by the Board along with the following documents to the Board:".

Section 9.164 (relating to exceptions for two owners) adds limited liability companies and limited liability partnerships to the list of entities that may be wholly owned by only two persons.

E. Comment and Regulatory Review of Proposed Rulemaking

Publication of proposed rulemaking at 33 Pa.B. 1116 (March 1, 2003) was followed by a 30-day public comment period during which the Board received no public comments.

Following the close of the public comment period, the Board received a comment from the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The following is the comment submitted by IRRC and the Board's response:

IRRC questioned the proposed amendment to § 9.162(5), which sets forth the criteria that must be met in order for an architecture firm to register as a limited liability company. Paragraph (5)(iii) requires that "At least one member or manager is a licensee of the Board." However, 63 P.S. §34.13, which allows for limited liability partnerships and limited liability companies, does not contain this requirement. Therefore, IRRC asked the Board to explain why it included this requirement in paragraph (5)(iii).

The legislative commentary to the Limited Liability Companies Act, at 15 Pa. C.S.A. § 8921, indicates that the General Assembly intended to allow professions to be practiced under a limited liability company, but also in accord with the restrictions traditionally placed on the practice of such professions. Since 1987, the Board has interpreted §§ 3, 6, 9, 13 and 18 of the act (63 P.S. §§ 34.3, 34.6, 34.9, 34.13 and 34.18), and their predecessors, as authorization for the Board to require a minimum number of corporate owners and officers to be licensees of the Board in regard to the prior permitted practice structures. Indeed, sections 9.162 (2), (3) and (4) of the Board's regulations, relating to firm practice, (49 Pa. Code § 9.162(2)(iii), (3)(ii) and (4)(iii)) all contain similar provisions for partnerships and professional association, professional corporations and business corporations, respectively.

Additionally, the requirement is also consistent with § 9.164 of the Board's regulations, relating to exception for two owners, (49 Pa.Code § 9.164). In the regulation, any business entity which is owned by only two people must have at least one of its owners licensed by the Board.

The General Assembly has not acted in any manner to suggest the Board's interpretation of the act is incorrect. Because the General Assembly has long acquiesced to this interpretation of the Board's authority, and the Board's interpretation of the 1998 amendments is consistent with these past practices, the Board's interpretation must be seen as an appropriate guide to legislative intent.

F. Compliance with Executive Order 1996-1

In compliance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board solicited input from the American Institute of Architects of Pennsylvania and the National Council of Architect Registration Boards. The Board reviewed the proposed regulation and considered its purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1.

G. Fiscal Impact and Paperwork Requirements

The amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed amendments should not necessitate any legal, accounting, reporting or other paperwork requirements.

H. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act, (71 P.S. § 745.5(a)), the Board submitted copies of the proposed rulemaking, published at 33 Pa.B. 1116 (March 1, 2003), to IRRC, SCP/PLC, and HPLC for review and comment.

In preparing the final-form regulation, the Board has considered any comments received from IRRC, SCP/PLC and HPLC and the public.

Under Section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was deemed approved by the HPLC and the SCP/PLC on _____. Under Section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), this final-form regulation was deemed approved by IRRC on _____.

J. Contact Person

Further information may be obtained by contacting Dorna Thorpe, Board Administrator, State Architects Licensure Board, P.O. Box 2649, Harrisburg, PA 17105-2649

K. Findings

The State Architects Licensure Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law.
- (3) This amendment does not enlarge the purpose of proposed rulemaking published at 33 Pa.B.1116.
- (4) This amendment is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

L. Order

The State Architects Licensure Board, acting under its authorizing statutes, orders that:

- (1) The regulations of the Board at 49 Pa. Code §§ 9.161- 9.164 are amended to read as set forth in Annex A.

- (2) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of the Attorney General as required by law.
- (3) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (4) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Ann Shepard Houston, President
State Architects Licensure Board

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

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, a limited liability company, a limited liability partnership 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:

* * *

(6) In the case of a limited liability company, with 15 Pa.C.S. Ch. 89 (relating to limited liability companies).

(7) In the case of a limited liability partnership, with 15 Pa.C.S. Ch. 82 (relating to limited liability partnerships).

- [6] (8) 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.

§ 9.162. Firm Practice.

The practice of architecture may be conducted in one of the following business forms:

* * *

- (2) A partnership (general or limited liability) or professional association, when the following exist:

* * *

- (5) A limited liability company, when the following exist:

- (i) At least two-thirds of the members if managed by members or at least two-thirds of the managers if managed by managers are licensed under the laws of any state to practice architecture, engineering or landscape architecture.

- (ii) At least one-third of the members if managed by members or at least one-third of the managers if managed by managers are licensed under the laws of any state to practice architecture.
- (iii) At least one member or manager is a licensee of the Board.
- (iv) At least two-thirds of all classes of voting membership at any one time shall be owned by an individual or individuals licensed under the laws of any state to practice architecture, engineering or landscape architecture.
- (v) At least one-third of all classes of voting membership at any one time shall be owned by an individual or individuals licensed under the laws of any state to practice architecture.

§ 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] submitting a completed application on forms provided by the Board along with the following documents [with] TO the Board]:

* * *

§ 9.164. Exception for two owners.

Section 9.162 (relating to firm practice) will not be construed to prevent the practice of architecture in a business form which is wholly owned by only two persons. The partnership, professional association, professional corporation, limited liability company, limited liability partnership or business corporation shall have at least one owner who is a licensee of the Board, and who owns at least 50% of the business.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE ARCHITECTS LICENSURE BOARD

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3397

October 28, 2003

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Architects Licensure Board
16A-417: Firm Practice


Dear Chairman McGinley:

Enclosed is a copy of the final rulemaking package of the State Architects Licensure Board pertaining to Firm Practice.

This regulation package was first submitted to the committees and the Independent Regulatory Review Commission on February 12, 2003. The proposed regulations were published in the Pennsylvania Bulletin on March 1, 2003, 33 Pa.B.1116.

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

Sincerely,


Ann Sheppard Houston, President
State Architects Licensure Board

ASH/RS/law

Enclosure

cc: Scott J. Messing, Deputy Commissioner
Bureau of Professional and Occupational Affairs
Andrew Sislo, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Gerald S. Smith, Senior Counsel in Charge
Department of State
Roberta Silver, Counsel
State Architects Licensure Board
State Architects Licensure Board

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-0417
SUBJECT: Firm Practice
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

Proposed Regulation
X Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
2003 OCT 28 AM 11:26
INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>10/28/03</u>	<u>[Signature]</u>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
<u>10/28/03</u>	<u>Mary Walmer</u>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
<u>10/28/03</u>	<u>Elena Page</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

August 21, 2003