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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 7, 2001

Honorable Johnny J. Butler, Secretary  
Department of Labor & Industry  
1700 Labor and Industry Building  
Harrisburg, PA 17120

Re: Regulation #12-57 (IRRC #2202)  
Department of Labor & Industry  
Uniform Construction Code Training and Certification for Code Administrators

Dear Secretary Butler:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director  
evp  
Enclosure

cc: Honorable Robert J. Flick, Majority Chairman, House Labor Relations Committee  
Honorable Robert E. Belfanti, Jr., Democratic Chairman, House Labor Relations Committee  
Honorable Gibson E. Armstrong, Chairman, Senate Labor & Industry Committee  
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor & Industry Committee

# **Comments of the Independent Regulatory Review Commission**

**on**

## **Department of Labor and Industry Regulation No. 12-57**

### **Uniform Construction Code Training and Certification for Code Administrators**

**September 7, 2001**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Labor and Industry (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by August 6, 2003, the regulation will be deemed withdrawn.

#### **1. General – Fiscal impact; Reasonableness; Clarity.**

This regulation establishes training and certification requirements for all code administrators in the Commonwealth. Commentators have stated that the number of certifications required and the amount of training involved will place a financial burden on small municipalities to maintain a qualified code administrator.

The regulation is silent as to whether municipalities will be able to share a code administrator. Any financial burden that the regulation places on municipalities could be eased through the ability to share a code administrator. The regulation should allow a shared code administrator.

#### **2. Section 401.1. Definitions. – Consistency with statute; Clarity.**

This section defines two terms that are also defined in the Pennsylvania Uniform Construction Code Act (Act). We object to the definitions of the following terms that differ from the Act: “code administrator,” and “construction code official.” The final-form regulation should cross-reference these definitions to the Act. If the Department does not use the statutory definitions in the final-form regulation, it should justify the changes.

##### *Third-party agency*

The term, “third-party agency” is used throughout this regulation but is not defined. To eliminate confusion, this term should be defined in Section 401.1.

##### *Current code administrator*

The definition of this term applies to individuals who performed plan review of construction documents and inspections of one-family or two-family residential buildings or nonresidential buildings prior to the effective date of this regulation. Does the definition of “current code

administrator” only pertain to employees of third-party agencies, or does the definition apply to anyone who is currently performing code administration?

### **3. Section 401.2. Fees. – Clarity.**

This section establishes the fees for “initial certification and registration,” “certification renewal,” “third-party agency certification” and “photo identification replacement.” How were the fees determined?

### **4. Section 401.5. Waivers. – Clarity.**

#### *Subsection (a)*

We have two questions pertaining to Subsection (a). First, Subsection (a)(2)(i) states that one of the conditions under which the Department can grant a waiver is, “evidence of continued employment in the related field.” Does the term “employment” refer specifically to inspection employment, or does it also include construction or installation employment?

Second, in Subsection (a)(2)(iii), the applicant must show “evidence of substantial education in associated fields.” What will qualify as “substantial education”? The final-form regulation should include the minimum education standards.

#### *Subsection (b)*

This subsection requires an applicant to submit the required waiver application fee along with a waiver application. What is the “required application fee”? In the final-form regulation, the waiver application fee should be added to Section 401.2. *Fees* and cross-referenced in this subsection.

### **5. Section 401.6. Certification categories and testing. – Reasonableness, Clarity.**

This section states, “The Department will accept the following category examinations administered by the Department, the National Certification Program for Construction Code Inspectors, Assessment Services, Inc, and the National Association of Elevator Safety Authorities.” We have identified four areas of concern.

First, the Certified Building Official Certification is not listed. Commentators note that this certification is recognized by the Building Officials and Code Administrators International organization. Why is this certification not included in the proposed regulation?

Second, this section states that the Department will also recognize “other nationally-recognized testing programs.” How will an applicant know if a test has the Department’s approval?

Third, commentators have suggested that the separate testing requirements for elevator inspectors, conveying systems inspectors, belt manlift inspectors and passenger ropeway inspectors are duplicative. Could these certifications be consolidated?

Finally, there are 22 categories for which an inspector must obtain certification to continue performing inspections in his or her current position. Will an inspector who becomes qualified to be a commercial inspector also be qualified to inspect residential structures?

**6. Section 401.8. Certification renewal. – Clarity.**

Subsection (b) lists the items that an applicant must submit to renew a certification. Included in the list is a “completed Department-provided renewal form.” Will the Department mail the renewal form, or a notification that renewal is required, prior to the expiration of each code administrator’s certifications? If not, how will the applicant obtain the “Department-provided renewal form”? Will each code administrator be responsible for tracking the renewal dates for each of his or her certifications?

Additionally, Subsection (b) references the required fee for renewal. The fee for certification renewal is contained in Section 401.2 *Fees*. This subsection should contain a cross reference to the fee in Section 401.2.

**7. Section 401.9. Continuing education. – Clarity.**

Under Paragraphs (c)(5) and (c)(6), completion of an examination for a new certification category and attendance at a model code organization code change hearing qualify as acceptable continuing education courses. However, the regulation does not list the number of continuing education credits that will be awarded for completion of these activities. The final-form regulation should specify the continuing education credits for examinations and code change hearings.

**8. Section 401.10. Department-approved providers. – Clarity.**

Subsection (b) states, “The Department will approve additional providers who demonstrate competency to provide approved continuing education programs.” How will code administrators and construction code officials be notified of additional approved providers? This information should be included in the final-form regulation.

**9. Section 401.13. List of code administrators. – Clarity.**

This section provides that the Department will maintain a list of certified code administrators which will be available to the public and municipalities. For clarity, the final-form regulation should state how the public and municipalities can access the list.

**10. Section 401.14. Decertification or refusal to certify. – Clarity.**

*Subsection (c)*

Paragraph (c)(4) requires the presiding officer in a decertification hearing to issue a proposed report that is served upon the counsel of record or the parties to the hearing. The presiding officer is required to “promptly transmit the proposed report and certified record to the Secretary.” The phrase “promptly transmit” is vague. The final-form regulation should include the maximum time period within which the report must be transmitted to the Department.

*Subsection (e)*

Under Paragraph (e)(2), a code administrator that has been convicted of a felony or a crime related to code enforcement, must demonstrate that he is “fully rehabilitated” before the Department will reinstate his certification. The regulation, however, contains no criteria for determining when full rehabilitation occurs. The standards that must be met to comply with the requirement for full rehabilitation should be included in the final-form regulation.

**11. Section 401.15. Registration of current code administrators. – Reasonableness; Clarity.**

*Time periods for current code administrators to comply with the regulation*

Subsection (a) grants current code administrators engaged in plan review or inspection of one-family or two-family dwellings three years from the effective date of this rulemaking to comply with the training and certification requirements. Subsection (b) establishes a five-year time period for current code administrators engaged in plan review or inspection of buildings that are not one-family or two-family dwellings.

Section 701(e)(1) of the Act directs the Department to establish time periods between three and seven years for code administrators for one-family or two-family residential structures, and between five and ten years for code administrators for all other building structures. The Department has elected to use the minimum time frames authorized by the Act. We have several questions with this approach.

First, commentators have raised concerns that the time periods in the proposed regulation may be insufficient for current code administrators to obtain the required training and certifications. Why has the Department opted to adopt the minimum time frames authorized by the Act? Additionally, can current code administrators reasonably be expected to comply with the training and certification requirements in the proposed regulation within these time periods?

Also, can a current code administrator leave the employment of one municipality to work for another municipality within the three or five-year time period without losing the current code administrator status? Or will the administrator be required to meet the training and certification requirements as soon as he or she changes employment?

*Subsection (d)*

Under this subsection, the Department will issue a photo identification card to a current code administrator who “pays the required fee.” The fee for a photo identification card is not specified here or in Section 401.2. *Fees*. In the final-form regulation, the fee for the identification card should be included in Section 401.2 and cross-referenced in this subsection.

*Subsection (f)*

This subsection references “a required fee for issuance of a new photo identification card.” The fee for a photo identification replacement is contained in Section 401.2 *Fees*. This subsection should contain a cross-reference to the fee in Section 401.2.