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**INDEPENDENT REGULATORY REVIEW COMMISSION  
 COMMONWEALTH OF PENNSYLVANIA  
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March 10, 2003

Honorable Dennis Yablonsky, Secretary-designee  
 Department of Community and Economic Development  
 400 Commonwealth Avenue  
 4<sup>th</sup> Floor, Commonwealth Keystone Building  
 Harrisburg, PA 17120

Re: Regulation #4-72 (IRRC #2282)  
 Department of Community and Economic Development  
 Industrial Housing

Dear Secretary-designee Yablonsky:

Enclosed are the Commission's Comments that include objections and recommendations for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
 Executive Director

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Enclosure

cc: Honorable George C. Hasay, Majority Chairman, House Commerce Committee  
 Honorable Thomas R. Caltagirone, Democratic Chairman, House Commerce Committee  
 Honorable Terry L. Punt, Chairman, Senate Community and Economic Development Committee  
 Honorable Gerald J. LaValle, Minority Chairman, Senate Community and Economic Development Committee

# Comments of the Independent Regulatory Review Commission

on

## Department of Community and Economic Development Regulation No. 4-72

### Industrial Housing

March 10, 2003

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 Community and Economic Development (Department) 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. Section 145.36. Applicability of locally-enacted codes and ordinances. – Statutory authority, Reasonableness; Clarity.**

Subsection (e) provides that these regulations will not apply to local codes, ordinances or regulations except where “local codes, ordinances or regulations preclude the siting of industrialized housing in a manner that does not show a reasonable relationship to legitimate public health, safety or welfare considerations.” We understand that this language is consistent with the decision of the Pennsylvania Supreme Court in *Geiger v. Zoning Hearing Board of the Township of North Whitehall*, 507 A.2d 361 (1986). However, we question how these regulations will apply in those situations. Nothing in either the Court’s opinion, or in the Industrialized Housing Act, authorizes the Department to oversee local ordinances, codes or regulations. The Department should justify its authority to do so, or delete this provision.

If the Department demonstrates that it has this authority, it should explain how it would enforce this provision. It should also explain how it would determine whether local ordinances, codes or regulations are needed to protect the public health, safety or welfare. The final-form regulation should include the criteria upon which this determination will be based.

#### **2. Section 145.53. Variations. – Clarity.**

The Modular Building Systems Association commented that it is unclear if third party review and approval of plans is required for every building. This section appears to require pre-construction approval of plans and specifications for every building that varies to any degree from previously approved building system documentation. Is this the Department’s intent? If not, the final-form regulation should clearly set forth the circumstances under which pre-construction approval is required for variations from a previously approved building system design.

**3. Section 145.72a. Frequency of inspections. – Reasonableness; Clarity.**

Subsection (d) requires dwelling units to be selected for inspection, “in a manner and frequency necessary to confirm that the manufacturer’s approved compliance control program is effective in assuring installation consistent with the manufacturer’s approved building system documentation.” What criteria will be used to judge “in a manner and frequency necessary....”?

Also under Subsection (d), the final-form regulation should specify the time frame within which a manufacturing facility must produce the documentation of an onsite inspection when the Department requests it.

**4. Section 145.94. Fees. – Need; Clarity.**

*Subsection (e)*

This subsection lists fees which the manufacturer “may be required to pay” when the Department is authorized to monitor or inspect or provide evaluation services. As written, this provision could be interpreted to mean that the fees for the services rendered by the Department in Paragraphs (1) through (3) are optional. Subsection (e) should be revised to clearly state that if the Department renders any of the services in Paragraphs (1) through (3), the corresponding fees for these services will be assessed.

*Subsection (f)*

Existing Subsection (f) authorizes the Department to establish “reasonable handling and other administrative fees as indicated elsewhere in this chapter....” Is this subsection necessary given that the Department is updating all the fees in this proposed regulation? What other “handling,” and “administrative” fees would apply?

**5. Miscellaneous clarity issue.**

The first sentence of the Preamble, as published in the *Pennsylvania Bulletin*, contains a typographical error in the citation to the Department’s statutory authority. The Preamble to the final-form regulation should list the Department’s statutory authority as 35 P.S. § 1651.5.