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

October 25, 2002

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

Re: Regulation #12-60 (IRRC #2283)
Department of Labor and Industry
Uniform Construction Code; Administrative and Enforcement; Elevators
and Other Lifting Devices

Dear Secretary Butler:

Enclosed are the Commission's Comments which list objections and suggestions 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. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
wbg
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 and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee

Comments of the Independent Regulatory Review Commission

on

Department of Labor and Industry Regulation No. 12-60

Uniform Construction Code; Administrative and Enforcement; Elevators and Other Lifting Devices

October 25, 2002

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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

General Issues

1. Comments from the House Labor Relations Committee. - Legislative intent; Statutory Authority; Fiscal impact; Reasonableness; Implementation procedure; Clarity.

During our review of this regulation, we identified issues that raised questions related to the criteria of the Regulatory Review Act. Many of these issues were also raised in the comments submitted to the Department by the House Labor Relations Committee (House Committee) on October 15, 2002. Several of the House Committee Members were actively involved in the passage of the Pennsylvania Construction Code Act, Act 45 of 1999 (Act). Comments and concerns raised by the House Committee are included in the Commission's Comments.

2. Compliance procedures for health care facilities under Section 403.22. - Statutory authority; Reasonableness; Economic impact; Clarity.

Sections 403.22(a)(1) and (a)(2) require health care facilities to comply with the Health Care Facilities Act and Department of Health regulations in 28 Pa. Code Part IV. Section 403.22(c) requires compliance with the same act and regulations. We request the Department explain its jurisdiction to require compliance with and enforce Department of Health regulations and the Health Care Facilities Act.

If the Department requires health care facilities to demonstrate compliance with Department of Health requirements as part of compliance with the proposed regulation, the procedures for coordinating the requirements of the Uniform Construction Code (UCC) and the Department of Health must be spelled out in the regulation. For example, the Hospital & Healthsystem Association of Pennsylvania (HAP) commented that the regulation is unclear regarding the process for health care facilities to obtain plan review/approval, inspections and issuance of occupancy certificates. HAP is concerned that health care facilities will have to coordinate between the Department, the Department of Health, and the local municipality or third-party

administrator, resulting in duplicative paperwork, confusion, potential construction delays and added costs.

Especially confusing is the provision in Section 403.22(f), which requires the building code official to "provide written notice of Department of Health license and approval requirements for construction and occupancy under the Health Care Facilities Act and regulations at the time of plan approval." Does the "notice" requirement mean that the building official has to provide a copy of the Health Care Facilities Act and regulations to the permit applicant or is the official required to simply notify the applicant that the Health Care Facilities Act and regulations apply?

The final-form regulation should clearly set forth the administrative and procedural requirements that health care facilities must meet for new construction and alterations to existing construction.

3. Manufactured and industrialized housing. - Statutory authority.

Section 403.25 of the proposed regulation addresses manufactured and industrialized housing. Under this section, the UCC applies to site preparation, foundation construction, connection to utilities and certain alterations and repairs. The Modular Building Systems Association (MBSA) and the Pennsylvania Manufactured Housing Association (PMHA) assert that the Act does not give the Department the authority to promulgate regulations which regulate manufactured or industrialized housing. They cite Section 901(a) of the Act (35 P.S. § 7210.901(a)) which states:

(a) Manufactured housing. This act shall not apply to manufactured housing which bears a label, as required by and referred to in the act of November 17, 1982 (P.L. 676, No. 192), known as the Manufactured Housing Construction and Safety Standards Authorization Act, which certifies that it conforms to Federal construction and safety standards adopted under the Housing and Community Development Act of 1974 (Public Law 93-383, 88 Stat. 633), nor shall it apply to industrialized housing, as defined in the act of May 11, 1972 (P.L. 286, No. 70), known as the Industrialized Housing Act.

MBSA argues that the proposed regulation conflicts with the Industrialized Housing Act and regulations administered by the Department of Community and Economic Development (DCEd) which comprehensively regulate both the manufacture and on-site completion of the home. PMHA also argues that the Industrialized Housing Act and the Manufactured Housing Act govern the installation of these homes. Senator Gibson E. Armstrong, Chairman of the Senate Labor and Industry Committee, submitted a letter questioning the Department's authority to include manufactured and industrialized housing in this regulation. We also question the Department's statutory authority for including industrialized and manufactured housing in Section 403.25.

4. Lack of action by municipalities on adopting UCC. - Legislative intent; Clarity.

Section 104(a) of the Act (35 P.S. § 7210.104(a)) states "this act shall apply to construction, alteration, repair and occupancy of all buildings in this Commonwealth." However, Section 403.101 of the proposed regulation does not indicate what happens when municipalities do not take positive action to either adopt and enforce the UCC or reject adopting and enforcing the UCC. What is the deadline for action? When and how does the statewide UCC become the effective code in a municipality if its governing body takes no action? Provisions for these situations should be included in the final-form regulation.

5. Building code official and Construction code official. - Clarity.

Commentators have noted that the terms “building code official” and “construction code official” and similar titles are often used interchangeably throughout the regulation. This proposed regulation is adding a definition of “building code official” to Section 401.1. The term “construction code official” is defined in the existing language in Section 401.1 and in the Act. There are similarities as well as differences between the two definitions. This results in confusion over the respective duties and powers of these officials. The Department should differentiate between these two officials and explain the differences in their duties.

Chapter 401. Uniform Construction Code Training and Certification of Code Administrators

6. Section 401.1. Definitions. - Consistency with other regulations; Reasonableness; Clarity.

General - Building, Permit and Structure

In Section 403.21(a) the regulation lists the codes that “the Department adopts and incorporates by reference as the Uniform Construction Code.” In this list, Subsection (a)(1) includes “the provisions of Chapters 2 - 29 and 31 - 35 of the ‘International Building Code [IBC].’” Commentators note that in Section 401.1, the proposed regulation includes definitions for terms that are also defined in Chapter 2 of the IBC. Although the definitions of these terms in the proposed regulation are very similar to the IBC definitions, there are differences. The Department should explain the need to define terms in the regulation when it is already incorporating the IBC definitions of these terms.

Building code official

This official is also described in the list of certified officials in the existing regulations at Section 401.7(18). It would be helpful to reference the existing description in the certification regulations in this definition.

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Given that this term is used only once in the regulation at Section 403.21(e)(2), the definition should be in that section. Since the “EZ” is not used in Section 403.21(e)(2), is it necessary?

Commercial construction

There are two concerns. First, the definition of this term is “a building, structure or facility that is not a residential building.” The regulation and Chapter 2 of the IBC include definitions for a “building” and “structure” but not for a “facility.” The inclusion of the word “facility” is unnecessary, and it should be deleted.

Occupancy or Occupied

These terms are used in different parts of the regulation. Some commentators have questioned whether their meaning is consistent. If these terms have a consistent meaning throughout the regulation, definitions of the terms should be included in this section.

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Given that this term is used only once in the regulation at Section 403.21(e)(1), the definition should be in that section.

Residential building

The use of the phrase “the dwellings’ accessory structures” is unclear. What are “accessory structures”?

7. Section 401.2. Department fees. - Fiscal impact; Reasonableness; Implementation procedure; Clarity.

Overall

Commentators have expressed concern about the impact of the fee formulas relating to construction and renovation or modification. They indicate that the fee schedules would add excessive and unnecessary costs that would deter growth in new buildings and the expansion and renovation of existing structures. The Department should justify the fees and the processes for calculating the fees. The methods and data used to determine that the fees meet and do not exceed costs should be made available to the public and included with submission of the final-form regulation.

Subsection (b)

Subsection (b)(4) lists a fee of \$200 for an “interim accessibility plan review and inspection.” However, this term is not used elsewhere in the regulation. What is an “interim accessibility plan review and inspection”?

Subsection (g)

For a “variance request,” Subsections (g)(1) and (2) list \$100 for both the Industrial Board and Accessibility Advisory Board. Does this fee apply to each request or each appearance before the respective board?

Chapter 403. Administration

Generally

8. Section 403.1. Scope. - Reasonableness; Clarity.

Subsection (a)

This subsection refers to “all existing structures that are not legally occupied.” Clarity would be improved by defining the term “legally occupied.”

Subsection (b)

Subsection (b)(3) exempts certain structures from the UCC, including “carports, detached private garages, greenhouses, sheds having a building area less than 500 square feet that are accessory to detached one-family dwellings, buildings or structures of an accessory character, and miscellaneous structures not classified in the Uniform Construction Code.” These exemptions are unclear and open to interpretation.

The final-form regulation should define “private garages” and “accessory character,” and should define or provide examples of “miscellaneous structures.” Additionally, why does the regulation

contain specific square footage limitations for sheds, but not for the other structures which are exempt from the UCC?

Subsection (c)

Subsection (c)(1) addresses construction under permits which were issued prior to the effective date of this regulation. Construction under these permits may be completed, provided that construction began within two years of permit issuance or within a time period specified in a municipal ordinance. Subsection (c)(2) authorizes construction to be completed if it was begun without a permit prior to the effective date of this regulation and a permit was not required at the time. However, Subsection (c)(2) contains no time limit for completion of construction. The Department should consider imposing a time limit for completion of construction in the final-form regulation.

9. Section 403.21. Uniform Construction Code. - Reasonableness; Economic impact; Adverse effect on competition; Clarity.

Subsection (a)

Commentators object to the adoption by reference of the International Codes Council (ICC) Electrical Code in Subsection (a)(2). They advocate adoption of the National Electrical Code (NEC) NFPA (National Fire Protection Association) 70. Is there a difference between these codes? If so, why did the Department select the ICC Electrical Code?

Subsection (c)

This subsection states, "Appendices to a code or standard listed in subsection (a) are not adopted in the Uniform Construction Code except for the provisions adopted in subsection (a)(10)." The Accessibility Advisory Board comments that this provision means Appendix E of the IBC entitled "Supplementary Accessibility Requirements" would not be adopted. As a result, certain accessibility standards would no longer be required. The Department should adopt Appendix E in the final-form regulation, or explain how accessibility requirements will remain at their current level without the adoption of Appendix E.

Subsection (d)

This subsection prescribes specifications for stairway construction for certain residential use groups which are to be followed until December 31, 2003. What specifications must be followed after December 31, 2003?

Subsection (e)

This subsection lists methods for demonstrating compliance with the UCC energy conservation requirements. One of the methods for residential construction is the Pennsylvania Housing Research/Resource Center (PHRC) Alternative. It is our understanding that the PHRC Alternative will provide residential builders with a simpler calculation to demonstrate compliance with energy conservation requirements than the window to wall area calculation required by the International Residential Code (IRC). Commentators, however, have questioned the validity of the PHRC Alternative, asserting that the standards in the PHRC Alternative are not as stringent as the IRC standards and will result in a less energy efficient home. Commentators further note that other states have successfully implemented the IRC standards.

Additionally, the Pennsylvania Petroleum Marketers and Convenience Store Association (PPMCSA) comments that the fuel efficiency standards for furnaces in the PHRC Alternative appear to favor one home heating fuel source. Specifically, PPMCSA states that since oil furnaces generally could not achieve the 90 Annual Fuel Use Efficiency rating required for high efficiency tradeoffs in the PHRC Alternative, consumers desiring oil heat would be required to meet the IRC requirements. The result would be that builders would incur higher costs to install oil heating units, making them an undesirable heating source for new construction. Senator Armstrong, by letter dated October 10, 2002, indicated agreement with the concerns expressed by PPMCSA.

We request that the Department explain the need for the PHRC Alternative and the impact it will have on the availability of choices of home heating sources for new construction. We also request the Department explain how the energy conservation requirements of the IRC will be met using the PHRC Alternative.

10. Section 403.23. Child day-care facilities. - Fiscal impact; Conflict with existing regulations; Reasonableness; Clarity.

Use group classifications

This section establishes the use group classifications for child day-care facilities. Several of the use group classifications are inconsistent with the requirements in the IBC. Specifically, Subsection (c) requires a family child day-care home that provides care to six children, which includes *a child* under 2-1/2 years old, to comply with Group I-4 of the IBC. However, in the IBC, Group I-4 applies to care of *more than five* children who are under age 2-1/2, not one child under age 2-1/2. Subsection (g) also requires compliance with Group I-4 when one child in care is under age 2-1/2. Finally, Subsections (i)(1) and (i)(2) require compliance with Group I-4 when care is provided to *five or more* children and one child is under age 2-1/2. However, as previously noted, the IBC Group I-4 applies when there are *more than five* children who are under age 2-1/2. The final-form regulation should be revised to be consistent with the IBC.

Additionally, commentators note that the use group classifications in the regulation are inconsistent with the existing Department of Public Welfare (DPW) requirements for family and group child care centers. Therefore, adopting the IBC requirements will impose more stringent construction and fire safety standards which will be cost prohibitive for child care centers. How will the requirements in this regulation be reconciled with the existing DPW requirements? Has the Department addressed conflicting regulatory requirements with DPW?

11. Section 403.24. Historic buildings, structures and sites. - Clarity.

This section lists the conditions under which a building code official may exclude a building or part of a building from the UCC. In the first sentence of Paragraph (3), the phrase "excluded from the Uniform Construction Code" is unnecessary and should be deleted.

12. Section 403.25. Manufactured and industrialized housing. - Clarity.

Subsections (a)(3)(iii) and (iv) include "occupancy" as a trigger for when the UCC applies. The final-form regulation should clarify whether the term "occupancy" refers to the ownership of the home or the IBC occupancy classification.

13. Section 403.42. Permit application. - Reasonableness; Need; Clarity.

Format

This section sets forth the permit application requirements for commercial construction. Section 403.62 sets forth the comparable requirements for residential construction. However, these two sections are formatted differently. For clarity, the formats should be similar.

Subsection (b)

This subsection and Section 403.62(b) require a permit applicant to use a form provided by the DCED. Local jurisdictions questioned the need for the DCED form, noting that they have either already established permit application forms or developed computerized permit applications with existing software.

We agree with commentators that a standardized permit application form is unnecessary. The Department should consider amending Sections 403.42(b) and 403.62(b) to list the information to be included on the permit application form and make the DCED form optional. We note the Department used this approach for certificates of occupancy in Sections 403.46 and 403.64.

This subsection also requires the applicant to “complete additional information requested by the municipality.” What types of “additional information” may be required?

Subsection (f)

This subsection requires the applicant to attach “construction documents” to the permit application. The final-form regulation should clarify whether “construction documents” includes the specifications document.

Subsection (j)

This subsection requires shop drawings to “be approved before the start of the system installation.” The regulation, however, does not specify who must approve the shop drawings. Is the approval done by the code official or by the licensed professional, or both?

Subsection (n)

Subsection (n) requires the permit application to identify the “name and address of the individual who will observe the construction.” A commentator notes that this information is usually not known until sometime between bidding and construction. Is this information generally available at the time of permit application? If not, this requirement should be revised.

14. Section 403.43. Grant, denial and effect of permits. - Reasonableness; Clarity.

Subsection (c) requires the code official to mark on the construction documents any required changes necessary to comply with the UCC. Commentators have raised concerns that this requirement would place the building code official in the position of violating the licensing and registration laws for architects and engineers. The final-form regulation should clarify that it is not the Department’s intent to have code officials engage in the practice of architecture or engineering without a license.

15. Section 403.44. Construction materials and changes. - Reasonableness; Clarity.

Subsection (a) states that materials, equipment and devices evaluated by National Evaluation Services, Incorporated that meet the UCC are considered an “approved” design, equipment or device. Commentators have noted that there are other organizations which evaluate materials

and equipment, such as the American Society for Testing and Materials or Underwriters Laboratories. Why is National Evaluation Services the only organization referenced in the regulation? We object to the selection of a single source evaluation agency if other qualified agencies are available.

16. Section 403.45. Inspections. - Clarity.

Subsection (c)

This subsection states that the “code official may inspect the construction and equipment during normal business hours.” The word “only” should be inserted after “equipment.”

Subsection (e)

Paragraph (e)(1) lists “general building” as an area to be listed in the final inspection report as complying with the UCC. Clarity would be improved by specifying what is encompassed by “general building.”

17. Section 403.46. Certificate of occupancy. - Clarity.

Subsection (b) requires the building code official to issue a certificate of occupancy after receiving the final inspection report which indicates that the completed construction work complies with the UCC. The final-form regulation should include the time frame within which the code official must issue the certificate of occupancy after receiving the final inspection report.

18. Section 403.47. Public utility connections. - Reasonableness; Clarity.

Subsection (a)

This subsection requires the building code official to authorize public utility connections. Numerous building code officials have commented that they do not generally authorize utility connections. Who may authorize a utility connection?

Subsection (b)

Under this subsection, the building code official must notify the owner or occupant in writing if a utility disconnection was authorized without prior notification. The final-form regulation should include the time frame within which the notification must be made.

19. Section 403.61. Residential buildings. - Consistency within the regulation; Clarity.

This section governs the construction, alteration and repair of residential buildings, but is not analogous to its counterpart, Section 403.41, which sets forth requirements for commercial construction. Section 403.61 highlights the applicable sections that apply to municipalities electing to enforce the UCC. Section 403.41 does not include a similar statement. Additionally, Section 403.61 applies to third-party agencies, while Section 403.41 does not. The Department should explain these differences.

20. Section 403.62. Permit application and approval. - Clarity.

Subsection (b) discusses the content of permit applications. We have two concerns. First, as stated in **Issue #13** relating to Section 403.42, the Department should amend the regulation to provide municipalities with the option of using the “form provided by the Department of Community and Economic Development” or their own forms which include the minimum content requirements established by regulation.

Second, what are examples of “additional information” municipalities may request from applicants? Could this information include construction documents? The Department should clarify the final-form regulation to include examples of “additional information.”

21. Section 403.63. Inspections. - Reasonableness; Clarity.

General

Section 403.63 sets out requirements and procedures for inspections. Section 403.64 provides requirements and procedures for certificates of occupancy. The final-form regulation should include the time frame within which the code official must issue the certificate of occupancy after receiving the final inspection report.

Subsections (a) and (g)

The term “building permit” is used in Subsections (a) and (g). For clarity, the Department should use the defined term “permit” in Subsections (a) and (g).

Subsections (d) and (f)

Subsection (d) requires a construction code official to make a number of inspections and file reports relating to UCC compliance in the following areas: foundation, plumbing, mechanical and electrical systems, frame and masonry and wallboard. Subsection (f) requires a final inspection report, covering the following areas: general building information, electrical, plumbing, mechanical, energy conservation and fuel gas. We have two concerns.

First, why are these lists different? Why will the construction code official be required to inspect different areas during and then after construction? The Department should explain.

Second, the term “general building information” in Subsection (f)(1) is unclear. The Department should provide examples of “general building information” in this section.

Subsection (e)

This subsection allows construction code officials to conduct “other inspections.” For clarity, the Department should include examples of what could be considered “other inspections.”

22. Section 403.65. Public utility connections. - Reasonableness.

Subsection (b)

This section addresses the building code official’s ability to connect and disconnect utility service. We have two concerns.

First, if a municipality opts out of enforcing the UCC, will a third-party building code official have the power to have a utility service disconnected?

Second, are the building code officials required to provide notice to parties before utility service is disconnected? The Department should include a time frame for the notice in Subsection (b).

23. Section 403.85. Retention and sharing of commercial construction records. - Public safety; Reasonableness; Need; Clarity.

Subsections (a), (c) and (d)

This section provides the recordkeeping requirements for building code officials. We have two concerns.

First, Subsection (a), relating to record retention, requires a building code official to “retain these records as long as the related building, structure or equipment remains in existence.” If a building is substantially renovated, will those records from the new construction replace the records for the old structure?

Second, relating to public access to records, Subsection (c) requires a municipality that discontinues enforcing the UCC to “keep records of previous Uniform Construction Code enforcement.” Further, the municipality “shall make these records available to the Department.” Subsection (d) provides that the Department make its records available to a municipality that elects to enforce the UCC. Will the public have access to these records? If so, how will access be granted?

Subsection (b)

Subsection (b) requires a building code official to “reproduce records kept in an electronic format to a hard-copy format upon request.” Who may request records? Are there any restrictions on public access to building plans where there may be a security risk involved?

24. Section 403.86. Right of entry to inspect. - Clarity.

Subsection (a) permits a construction code official to enter a building, structure or premises “at reasonable times.” This phrase is unclear. The Department should replace this phrase with “during normal business hours.”

25. Section 403.101. Municipalities electing to enforce the Uniform Construction Code. - Clarity.

Subsection (i)

The cross-reference to Subsection 401.3 (relating to municipal and third party agency fees) should be corrected to read Section 401.2a.

Subsection (j)

Municipalities that elect to enact an ordinance that equals or surpasses the UCC must notify the Department of their election, and submit materials for the Department’s review. How will the Department’s determination be communicated to the municipality?

Subsection (l)

Subsection (l) states, “A municipality may require an applicant to provide additional information on an addendum to an application.” The term “additional information” is unclear. The Department should provide examples of “additional information” in the final-form regulation.

26. Section 403.102. Municipalities electing not to enforce the Uniform Construction Code. - Consistency with statute.

Subsection (f) requires a permit applicant in a municipality that is not enforcing the UCC to obtain the Department’s services for plan review and inspection. However, Section 501(e)(2) of the Act (35 P.S. §7210.501(e)(2)) allows a permit applicant to obtain the services of the Department or an appropriate third-party agency. Why doesn’t the regulation include this option?

27. Section 403.103. Department review. - Reasonableness; Clarity.

Subsection (a)

This subsection requires that the Department investigate written and signed complaints concerning the enforcement and administration of the UCC. At the end of the investigation, "The Department will make a report to the governing body of the municipality or third-party agency that was the subject of the review and provide recommendations to address any deficiencies found by the Department." This section should include corrective measures the Department can pursue for non-compliance with the UCC.

Subsection (b)

Subsection (b) states, "The Department will review each municipal enforcement program at least once every 5 years." What would cause the Department to review a municipal enforcement program more than once in a five-year period?

28. Section 403.121. Board of Appeals. - Clarity.

Subsection (c) contains the qualifications for an individual to serve on a municipality's Board of Appeals. These credentials are: "A member of the board of appeals shall be qualified by training and experience to pass on matters pertaining to building construction."

These qualifications are vague. The Department should include more detail for minimum qualifications, such as membership in specific trade associations, inspection experience or current employment in the construction business.

29. Section 403.122. Appeals, variances and extensions of time. - Reasonableness; Clarity.

Subsection (a)

This subsection allows an owner or owner's agent to file an appeal with a building code official on a form provided by the municipality. The Department should explain why the appeal would be filed with the building code official rather than with the Board of Appeals.

Subsection (b)

This subsection states, "The postmark date or the date of personal service will establish the filing date." Will an individual be able to file by using an alternative delivery service, like United Parcel Service or Federal Express? If so, the Department should specifically include other delivery services in this section. If not, the Department should clarify the term "postmark" by replacing it with "United States Postal Service Postmark." This issue also appears in Section 403.142(d)(2), relating to Accessibility Advisory Board.

Subsection (i)

This subsection provides the range of actions the Board of Appeals may take. The phrase "other appropriate relief" in Subsection (i)(4) is unclear. The Department should include examples of "other appropriate relief" in the final-form regulation.

Subsection (j)

Subsection (j) requires the Board of Appeals to provide a written notice of its decision to the owner and the building code official. Will the municipality also receive written notice of the Board's decision?

30. Section 403.142. Accessibility Advisory Board. - Reasonableness; Clarity.

Subsection (d)(5) states, "The Accessibility Advisory Board will schedule a hearing and will notify the owner and the building code official of the date, time and place of the hearing." We have two concerns.

First, how much notice will the Accessibility Advisory Board provide to the parties between notification and the hearing? The final-form regulation should state a minimum time frame between notification and hearing.

Second, how will the parties be notified of the hearing? The regulation should specify the means of notice.

Chapter 405. Elevators and Other Lifting Devices

31. Section 405.1. Scope. - Reasonableness; Clarity.

Subsection (b) Exceptions

Subsection (b)(3) states that the UCC does not apply to "elevators and lifting devices solely used by the occupants of a dwelling unit." Commentators questioned the definition of a dwelling unit. This term appears to have several definitions in the IBC. The final-form regulation should explain the intent of this term and this exception.

Subsection (c) Prior permits and construction

Under Subsection (c)(3), elevators and lifting devices that were issued certificates of operation before the effective date of this proposed regulation may remain in use under the previous regulations. One commentator questioned at what level of repair or renovation this exemption would be negated, and the Department would require compliance with the new regulations. The final-form regulation should address the effect of repairs or renovations.

32. Section 405.8. Periodic inspection and testing. - Public safety; Reasonableness.

Subsection (a)(3) sets forth a periodic inspection interval of five years for certain items including oil hydraulic elevators. One commentator recommends that oil hydraulic elevators should be inspected on a more frequent basis because most of these units were installed before 1973. The commentator also references the American Society of Mechanical Engineers recommendation that these elevators be inspected on an annual basis. The Department should review this requirement and consider whether these elevators should be inspected more frequently than every five years.

33. Section 405.11. Accident report. - Reasonableness; Implementation procedure; Clarity.

Subsection (a)

This subsection includes a requirement that an owner of an elevator or lifting device must submit an accident report to the Department if the device is involved in an accident resulting in a "fatal injury or hospitalization to a person." One commentator raised the concern that ski lift owners

may not know when a skier injured by a lift is hospitalized. The commentator suggests that the provision be amended to provide direction regarding situations when an owner is not immediately aware that the injured party is hospitalized. This issue should be addressed in the final-form regulation.

Subsection (b)

This subsection requires the owner or authorized representative to submit the accident report on a Department-prescribed form that must be received by the Department within 24 hours of the accident. There are several questions. How will owners or their staff obtain copies of the Department-prescribed form? Will a copy be available on the Department website? What type of media may an owner or their authorized representative use to deliver the form to the Department? May they use email or fax to send the form?

34. Section 405.12. Lumber elevators. - Reasonableness; Clarity.

Subsection (w) reads: "As part of the initial inspection, the elevator shall be loaded to rated lifting capacity and operated throughout its entire travel." The intent of the words "initial inspection" is unclear. Do they limit testing an elevator at its rated lifting capacity to just the first inspection? The purpose of the word "initial" should be explained or this subsection should be amended in the final-form regulation.

35. Section 405.35. Landing doors. - Reasonableness; Clarity.

Subsection (b) states "shaftway landing doors shall be equipped with an approved interlock." What or who determines when an interlock is "approved"?

36. Editorial Changes. - Clarity.

Section 401.1. Definitions.

In the definition of "building code official," it appears that the word "code" is missing and should be placed between the words "building" and "enforcement" in the first sentence of the definition.

Section 403.25(a)(3)(ii)

The phrase "to the delivery" appears to be a typographical error and should be deleted.

Section 403.42(c)(vii)

This provision refers to "Temporary motion picture, television, and theater sets stage sets and scenery." The phrase "theater sets stage sets" is confusing and should be reworded.

Section 403.63(h)

There is a typographical error in this section. The second Subsection (f) should be re-lettered as Subsection (h).