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

February 22, 2006

Honorable Dennis J. Yablonsky, Secretary
Department of Community and Economic Development
Commonwealth Keystone Building
4th Floor
Harrisburg, PA 17120

Re: Regulation #4-82 (IRRC #2507)
Department of Community and Economic Development
Manufactured Housing Improvement Program

Dear Secretary Yablonsky: *Dennis*

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

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

Comments of the Independent Regulatory Review Commission

on

Department of Community and Economic Development Regulation #4-82 (IRRC #2507)

Manufactured Housing Improvement Program

February 22, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the December 24, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Community and Economic Development (Department) to respond to all comments received from us or any other source.

1. Section 149.1. Definitions. – Clarity.

We have two concerns with this section.

First, statutory citations to the definitions in the Act are found in some definitions in this proposed regulation, while missing in others. The Department should add the appropriate statutory citations to the definitions of “Installation,” “Installer,” “Manufactured Home Construction and Safety Standards,” “Manufactured housing or manufactured home,” and “Manufacturer’s approved design.”

Second, the information in Subsection (ii) in the definition of “Manufacturer’s approved design” is substantive in nature. Substantive provisions in a definition cannot be enforced. This information should be removed from the definition and placed in an appropriate section later in the regulation, such as Section 149.3(b) (relating to Installation standard).

2. Section 149.3. Installation standard. – Clarity.

Subsection (d) contains the phrase, “...the building code official **should** contact the Department...” (Emphasis added). “Should” is not a regulatory term. Therefore, it should be replaced with “may.”

3. Section 149.4. Installer training and certification. – Clarity.

Subsection (a)(2)

The Department indicated that the “other information” mentioned in this subsection is information that might be requested as it reviews an application. The language in this subsection should be amended to clearly state that the Department may request additional information.

Subsection (a)(3)

Why must the training provider consult with the Department before scheduling courses or setting its tuition? Unless the Department is planning to review and approve these things, this provision should be deleted.

Also, the Department should cross-reference the appropriate fee in Section 149.7.

Subsection (b)(1)

Will the application forms for certification be provided by the Department?

Also, the Department should cross-reference the appropriate fee in Section 149.7.

4. Section 149.5. Building code official training. – Reasonableness; Clarity.

We understand that the training for building code officials under this section is intended to be separate and distinct from the training for installers under the previous section. However, this section is missing the specific details concerning the application and approval process that the previous section contains. The Department should clearly set forth the requirements for building code official training in the final-form regulation.

5. Section 149.6. Certificate of Compliance. – Consistency with statute; Clarity.

Subsection (a)

The phrase “An installer is not required to complete a certificate of compliance for installation of items such as...” is vague. The Department indicated that this is meant to include anything that falls under the Uniform Construction Code as opposed to anything that is covered by the Manufactured Home Construction and Safety Standards. The Department should amend this subsection to clearly state its intent.

Subsection (c)

This subsection does not state who is required to submit the completed copy of the Certificate of Compliance to the building code official. The Department indicated that this responsibility falls on whoever initially applies for the building permit.

However, the Manufactured Housing Improvement Act (Act) at 35 P.S. § 1658.6(e) states, “The **installer** shall certify to the department and the building code official that the new manufactured home has been installed in accordance with...” (Emphasis added). To be consistent with the Act, the Department should amend this section to state that it is the installer’s duty to submit a copy of the Certificate of Compliance to the building code official.

6. Section 149.7. Fees. – Clarity.

The Department is required by the Act to establish fees for “educational programs, testing and certification of those persons certified to install and inspect....” However, the Act does not specifically require these fees to be established via regulation.

The only way to change a promulgated regulation is through a subsequent regulation. If the Department chooses to establish these fees through regulation, Subsection (c) should be deleted. If the Department wishes to be able to change the fees through a publication of notice in the *Pennsylvania Bulletin*, all of the fees in this proposed regulation should be deleted.

7. Section 149.8. Penalties. – Clarity.

Subsection (a)(1)

This subsection deals with suspension or revocation of certification for those who violate the Act or this chapter. However, the Act at 35 P.S. § 1685.5(b)(3) also mentions the issuance of warnings. The Department indicated that it currently has a warning system in place. The procedures of this system should be set forth in the final-form regulation.

Subsections (a)(1)(i) and (ii)

These subsections refer to complaints. What format does the Department deem to be an acceptable method of receiving complaints? Do they need to be in writing? Will a telephone call or an email be sufficient? The final-form regulation should clearly set forth the appropriate procedure for filing a complaint with the Department.

Subsection (b)

This subsection states in part, "...the Department may impose a civil penalty of up to \$1,000 on any person..." The final-form regulation should clarify if the cumulative maximum that one can be fined is \$1,000 or if this penalty can be assessed per offense.

Facsimile Cover Sheet

Kristine M. Shomper
Director for Administration



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Date: February 22, 2006
Pages: 5

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Community and Economic Development's regulation #4-82 (IRRC #2507). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Jill B. Busch Date: 2/22/06

Fax 5

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