

Comments of the Independent Regulatory Review Commission



Department of Community and Economic Development Regulation #4-95 (IRRC #3063)

Industrial Housing and Components

September 24, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the July 26, 2014 *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. Consistency with statute; Implementation procedures; and Economic impact

Industrialized Housing Advisory Commission (IHAC)

The Industrialized Housing Act (Act) requires the Department “to consult with and obtain advice of the Industrialized Housing Advisory Commission in the drafting and promulgation of rules and regulations.” 35 P.S. §§ 1651.5(a) and 1651.8. Commentators state that the final version of the proposed regulation was not presented to IHAC. In developing the final-form regulation, we recommend that the Department work closely with IHAC and consider publishing an Advanced Notice of Final Rulemaking to give IHAC and any other interested party the opportunity to build consensus on the language of the regulation prior to submittal of the final-form regulation.

Housing and components manufactured prior to the effective date of the regulation

At 35 P.S. § 1651.4(d), the Act states:

All industrialized housing or housing components manufactured prior to the effective date of the duly promulgated rules and regulations adopted by the department pursuant to section 5 of this act and not carrying the insignia of certification may be sold, leased or installed in any municipality of the Commonwealth subject to any and all local ordinances, regulations, building codes, and special local requirements.

Several commentators expressed strong concerns that the regulation does not address existing housing and components, and therefore, effectively bans their existing inventory. The commentators cite costs to them in the millions of dollars, as well as loss of jobs and tax revenue.

The commentators are also concerned that, based on the language of the proposed regulation, local officials might only accept units with an insignia.

We do not believe it was the Department's intent to exclude existing inventories. The regulation needs to be amended to directly address existing inventories to be consistent with the business protections established by 35 P.S. § 1651.4(d). Some of the commentators cite the language of Section 145.31(a) as the specific problem. However, given the above concern regarding consultation with IHAC, we ask the Department to review the entire regulation in consultation with the regulated community and explain how the final-form regulation complies with 35 P.S. § 1651.4(d).

2. Evaluation of costs in the Regulatory Analysis Form (RAF) – Compliance with the provisions of the Regulatory Review Act.

The RAF requests information we must consider in determining whether a regulation is in the public interest. 71 P.S. §§ 745.5 and 745.5b(b)(6). There are responses in the RAF which should be further explained:

- RAF 19, 20 and 21 ask for “specific estimates of the costs and/or savings.” The Department describes minimal costs of the Insignia Certification, but does not provide a specific estimate, as requested.
- RAF 22 states there is an attached form, but we did not find this form in our copy of the submittal.
- The responses to RAF 23, 23a, 24, 25, 26, 27 and 28 are “N/A.”

We recommend that the Department review the responses provided in the RAF. For example, in addition to Insignia Certification, the Department is amending its fees in Section 145.94 which is not mentioned in the RAF. If the appropriate response is “N/A,” then we recommend that the Department explain why a particular RAF request is not applicable. In all other instances, we ask the Department to provide more detailed and complete RAF responses to assist us in our determination of whether the regulation is in the public interest.

3. Section 145.1. Definitions. – Protection of the public; Reasonableness; Economic impact; and Clarity.

Substantive provision in a definition

The definition of “permanent foundation” includes substantive provisions addressing how the foundation must be constructed. Subsection 2.11(e) of the *Pennsylvania Code & Bulletin Style Manual* (fifth edition) states that substantive provisions may not be contained in a definition section. For clarity, we recommend moving these provisions to the body of the regulation.

Requirements

Commentators stated that the requirements for permanent foundations:

- Are more restrictive than the Uniform Construction Code;
- Limit the method of installation and securing buildings to grade;
- Favor welded attachment and crane setting of buildings over other options currently in use; and
- Go against standard installation practices through the use of mortared piers and no tie downs.

We recommend that the Department review the requirements for permanent foundations with the regulated community to reach consensus on the requirements and how to amend them.

4. Section 145.94. Fees – Economic Impact; Reasonableness.

The Department is amending and adding fees in this section. For each fee in this section, we ask the Department to provide support for the amount of the fee, the amount of revenue the Department expects the fee to generate and an explanation of why the fee is reasonable.