

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(1) Agency Department of Labor & Industry</p>		<p style="font-size: 2em; font-weight: bold;">3219</p> <p>IRRC Number:</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);"> RECEIVED IRRC 2018 OCT 22 P 3:43 </p>
<p>(2) Agency Number: 012 Identification Number: 109</p>			
<p>(3) PA Code Cite: 34 Pa. Code § 403.21</p>			
<p>(4) Short Title: Uniform Construction Code</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Matthew W. Kegg, (717) 783-6304, mkegg@pa.gov Secondary Contact: Joseph P. Marchioni, (717) 783-6304, jmarchioni@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p> <input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation </p>		<p> <input checked="" type="checkbox"/> Emergency Certification Regulation; <input checked="" type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General </p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This emergency certified final-omitted regulation updates the Uniform Construction Code (UCC) by adopting Section 3006 (relating to elevator lobbies and hoistway opening protection) of the International Building Code (IBC) of 2015, as directed by the UCC Review and Advisory Council (RAC)'s report dated October 17, 2018. The IBC is a national model construction code created by building code officials and code administrators and is updated every three years. Adding Section 3006 of the IBC of 2015 to the Department's regulations will require elevator lobbies of newly constructed or altered buildings to comply with the fire and smoke protection provisions found in that section.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This final-omitted rulemaking is promulgated under the authority provided in section 304(a)(1)(ii) of the Pennsylvania Construction Code Act (PCCA), 35 P.S. § 7210.304(a)(1)(ii). This section provides that the Department "shall promulgate final-omitted regulations" adopting the revisions listed in the RAC's report "without change." Also, Section 304(a)(1) requires the Department to adopt regulations within nine months of the receipt of the RAC's report. 35 P.S. § 7210.304(a)(1). Section 304(a)(2) of the PCCA, 35 P.S. § 7210.304(a)(2), exempts these regulations from Section 205, 45 P.S. § 1205, of the</p>			

Commonwealth Documents Law and Sections 204(b) and 301(10), 71 P.S. §§ 732.204(b) and 732.301(10), of the Commonwealth Attorneys Act.

The Department is adopting this as an emergency certified regulation because on October 18, 2018 the Governor certified that the failure to immediately require fire and smoke protection provisions for elevator lobbies threatens the public health, safety and welfare of citizens in the Commonwealth. *See* 71 P.S. § 745.6(d). Until October 1, 2018, the Department's regulations adopted Chapter 7 of the IBC of 2009, which contained fire and smoke protection provisions for elevator lobbies. However, the International Code Council (ICC) moved these fire and smoke protection provisions from Chapter 7 of the IBC to Chapter 30 of the IBC. Since Chapter 30 governs elevators and the RAC has no authority to require the Department to adopt elevator regulations, the RAC traditionally does not review Chapter 30. Section 3006 of the IBC of 2015 contains fire and smoke protection provisions for elevator lobbies. The Department cannot adopt this section into its elevator regulations because the Department only has exclusive authority to regulate the elevators themselves. Elevator lobbies are building components and, as such, the RAC was required to review section 3006 to determine whether to adopt these provisions. Since the RAC did not review and vote upon section 3006, the regulations requiring fire and smoke protection for elevator lobbies expired on September 30, 2018. 35 P.S. § 732.108(a)(1)(i)(B). As such, the RAC met on October 17, 2018 and voted to adopt section 3006 of the IBC of 2015. The RAC issued a report memorializing this vote and directing the Department add fire and smoke protection provisions for elevator lobbies.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes. Section 304(a)(1) of the PCCA, 35 P.S. § 7210.304(a)(1), states that "within nine months of receipt of the [RAC's] report . . . , the department shall promulgate final-omitted regulations under the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act, to adopt the council's decisions contained in the report without change."

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The change made by this regulation will require newly constructed buildings to comply with fire and smoke protections governing elevator lobbies, which provide for the health, safety and welfare of occupants or users of buildings and structures. The failure to require fire and smoke protection for elevator lobbies creates a risk to individuals who occupy newly constructed or altered commercial buildings because these protections help prevent serious injuries or death in the event of a fire in the building, as elevator lobby protection provides for a faster and safer response for first responders as well as a protected path of evacuation for building occupants in those buildings required to provide Fire Service Access and Occupant Evacuation elevators. By adopting section 3006 of the IBC of 2015,

design professionals and code enforcement officials can ensure that adequate fire and smoke protections are provided.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions that are more stringent than federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation adopts updated fire and smoke protection requirements for elevator lobbies. Each state enacts its own construction codes based on the ICC. As such, the Department does not anticipate that this regulation would affect Pennsylvania's ability to compete with other states.

The PCCA requires the Department to promulgate this regulation.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation changes the UCC by adopting fire and smoke protection provisions for elevator lobbies. The Department does not anticipate that this regulation will affect any other regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department is mandated by section 304(a)(1) of the PCCA to promulgate these regulations, adopting the specific sections of the ICC Codes identified in the RAC's report "without change." 35 P.S. § 7210.304(a)(1). The RAC reviewed the 2015 updates to the ICC following a statutorily-prescribed review process. Following its review, which included recommendations after reviews by technical advisory subcommittees and a public hearing, on February 13, 2018, where public comment was solicited, the RAC issued a report to the Secretary of the Department on May 1, 2018 advising the Department which updates were to be adopted into the UCC. On June 12, 2018 and July 23, 2018, the

RAC amended its report to more accurately reflect the matters the RAC discussed and voted upon. The Department promulgated regulations based on the RAC's amended report and these regulations became effective on October 1, 2018. However, these regulations did not contain fire and smoke protection provisions for elevator lobbies and the protection contained in the previous regulations expired. This issue was brought to the Department and to the General Assembly by a number of different stakeholders.

Accordingly, on October 17, 2018, the RAC held another meeting to consider fire and smoke provisions for elevator lobbies and on the same date issued another report adopting section 3006 of the IBC of 2015, which requires fire and smoke protection for elevator lobbies.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The Department does not possess data on the numbers of people, businesses and small businesses that will be affected by this regulation. Local governments and third-party inspection agencies enforcing the UCC and the Department are affected in that they will need to absorb the cost of updating their code materials and their code enforcement staff may require training on the changes.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The Department does not collect data on the number of people, groups and entities that will be required to comply with this regulation. Building and facility contractors, design professionals, building and facility owners, developers, local municipalities, construction code officials, third party inspection agencies and the Department must comply with this regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulated community will be financially impacted by the cost of compliance with updated building codes. The PCCA requires the Department to promulgate this regulation based on the RAC's report without change. 35 P.S. § 7210.304(a)(1).

However, the entire Commonwealth will benefit by having fire and smoke protection requirements for elevator lobbies because the failure to require fire and smoke protection for elevator lobbies creates a risk to individuals who occupy newly constructed or altered commercial buildings. A failure to require fire and smoke protections for elevator lobbies would make it far more likely that these individuals would suffer serious injuries or death in the event of a fire in the building, as elevator lobby protection

provides for a faster and safer response for first responders as well as a protected path of evacuation for building occupants in those buildings required to provide Fire Service Access and Occupant Evacuation elevators.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The PCCA requires the Department to promulgate this regulation based on the RAC's report without change and does not permit the Department to undertake a cost benefit analysis. This regulation provides for fire and smoke protection requirements for elevator lobbies, which will improve the safety of buildings constructed or altered in the Commonwealth, providing inherent benefits to citizens of the Commonwealth. The failure to require fire and smoke protection for elevator lobbies creates a risk to individuals who occupy newly constructed or altered commercial buildings because, in the event of a fire, these individuals could be at an increased risk of suffering serious injuries or death. Since fire and smoke protection provisions were in place until October 1, 2015, there will not be any significant costs to the regulated community.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulated community is required to absorb the cost of compliance with the new or altered standards mandated by these regulations. It is impossible to estimate the cost of compliance since the number of projects and the design of each individual project is unknown.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no additional costs to local municipalities as they have already purchased the IBC of 2015 to comply with the recent update to the UCC, which was effective October 1, 2018.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no additional costs to the Department as it has already purchased the IBC of 2015 to comply with the recent update to the UCC, which was effective October 1, 2018.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This final-form regulation will not significantly change the existing reporting, record keeping or other paperwork requirements.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
State Government	0	0	0	0	0	0
Total Savings						
COSTS:						
Regulated Community	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Costs	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
REVENUE LOSSES:						
Regulated Community	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
State Government	0	0	0	0	0	0
Total Revenue Losses	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	2015-2016	2016-2017	2017-2018	2018-2019
UCC Enforcement	\$5,414,200	\$5,414,000	\$6,490,200	\$6,283,850

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There are approximately 200 small businesses certified with the Department as third-party agencies. These businesses are comprised of inspection agencies and engineer and architecture firms. There are no additional costs to third-party agencies as they have already purchased the IBC of 2015 to comply with the recent update to the UCC, which was effective October 1, 2018.

The Department cannot consider less intrusive or less costly methods because the PCCA requires the Department to adopt this regulation based on the RAC's report without change. 35 P.S. § 7210.304(a)(1).

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The PCCA requires the Department to promulgate this regulation based on the RAC's report without change. 35 P.S. § 7210.304(a)(1). No special provisions have been developed, as this would not be consistent with the purpose of the PCCA or the RAC's report.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The PCCA requires the Department to promulgate this regulation according to the RAC's adoption of Section 3006 of the IBC of 2015 without changes. 35 P.S. § 7210.304(a)(1). Accordingly, no alternatives have been considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The PCCA requires the Department to promulgate this regulation according to the RAC's adoption without changes. 35 P.S. § 7210.304(a)(1). As such, the Department did not conduct a regulatory flexibility analysis.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This regulation was not based on the collection of data.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--------------------------------|
| A. The length of the public comment period: | <u>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>October 17, 2018</u> |
| C. The expected date of delivery of the final-form regulation: | <u>October 22, 2018</u> |
| D. The expected effective date of the final-form regulation:
<i>Pennsylvania Bulletin</i> | <u>Upon Publication in the</u> |
| E. The expected date by which compliance with the final-form regulation will be required:
<i>Pennsylvania Bulletin</i> | <u>Upon Publication in the</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The PCCA requires the Department to promulgate this regulation according to the RAC's adoption without change. 35 P.S. § 7210.304(a)(1). However, the ICC codes are updated every three years. The RAC is required to commence review 21 months after the publication of a new edition of an ICC code. See 35 P.S. § 7210.108(a)(1)(i). This RAC must submit a report within two years after commencement of its review. See 35 P.S. § 7210.108(b). The Department will have up to nine months after receipt of this report to publish updated regulations and these regulations will be effective 33 months after commencement of the RAC's review. 35 P.S. § 7210.304(a)(1)(i).

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NOTICE OF EMERGENCY CERTIFICATION FINAL-OMITTED RULEMAKING

TITLE 34. LABOR AND INDUSTRY

PART XIV. UNIFORM CONSTRUCTION CODE

CHAPTER 403. ADMINISTRATION

FINAL-OMITTED RULEMAKING

Title 34. Labor and Industry
Part XIV. Uniform Construction Code
Chapter 403. Administration
[34 Pa. Code, Part XIV, Chapter 403]

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In accordance with section 304 of the “Pennsylvania Construction Code Act,” the Act of November 10, 1999, (P.L. 491, N. 45) (PCCA), *as amended*, 35 P.S. §§ 7210.101 - 7210.1103, the Department of Labor and Industry (Department) amends Chapter 403 (relating to administration) to read as set forth in Annex A.

Statutory Authority

This final-omitted rulemaking is issued under the authority provided in sections 304(a)(1), 35 P.S. § 7210.304(a)(1), and 304(a)(2), 35 P.S. § 7210.304(a)(2), of the PCCA. Section 304(a)(1) provides that, with nine months of receipt of the report, the Department “shall promulgate final-omitted regulations” adopting the revisions provided in the report issued by the Uniform Construction Code Review and Advisory Council (RAC) to the Secretary of the Department specifying the 2015 code revisions of the International Code Council (ICC) codes the RAC adopts or modifies. The Department must adopt the RAC’s revisions “without change.” Section 304(a)(2) exempts the regulations from section 205 of the Commonwealth Documents Law, 45 P.S. § 1205, and sections 204(b) and 301(10) of the Commonwealth Attorneys Act, 71 P.S. §§ 732-204(b) and 732-301(10).

These regulations are also being submitted as emergency certified regulations. Section 6(d) of the Regulatory Review Act (RRA) allows an agency to immediately implement a final-omitted regulation when the Governor or Attorney General certifies that promulgation is necessary to respond to an emergency circumstance specified in the RRA. 71 P.S. § 745.6(d). Here, on October 18, 2018, the Governor issued a Certification for Need for Emergency Regulation that this final-omitted rulemaking is required to protect the public health, safety and welfare. In addition, this Certification for Need for Emergency Regulation is consistent with the goal of the PCCA “to provide standards for the protection of life, health, property and environment and for the safety and welfare of the consumer, general public and the owners and occupants of buildings and structures.” 35 P.S. § 7210.102(b)(1).

Background

In 1999, the Legislature established the PCCA and directed the Department to promulgate regulations adopting certain building codes as the Uniform Construction Code (UCC). *See* 35 P.S. §§ 7210.102(a)(3) and 7210.301. Since then, various codes issued by the ICC, including the International Building Code (IBC), have been adopted, in whole or in part, by reference into the UCC. *See* 34 Pa. Code §§ 403.1 and 403.21. Traditionally, the ICC has published fire and smoke protection features for elevator lobbies in Chapter 7 of the IBC. Every three years, the ICC publishes revisions to the ICC codes.

In Act 106 of 2008, the General Assembly established the RAC whose members represent industry sectors that participate in the various aspects relating to building construction including building component design, construction, building code enforcement and local government representation. The RAC is charged to review the periodic changes to the revised ICC codes prior to adoption into the UCC. *See* 35 P.S. § 7210.107.

Three years ago, for the 2015 review cycle, the RAC decided only to adopt sixteen (16) provisions in all the 2015 ICC codes. This was subsequent to the RAC's 2012 decision to not adopt any portion of the 2012 ICC codes. As a result, the Legislature amended the adoption procedure. Act 36 of 2017 directed the RAC to conduct another complete review of the 2015 ICC codes, disregarding the RAC's previous action on the 2015 ICC codes. 35 P.S. § 7210.108(a)(1)(i). If the 2015 ICC codes updated the 2012 ICC codes, then the RAC was free to consider those updated provisions. However, the RAC was to review any sections of the 2015 ICC codes that did not update the 2012 ICC sections only if two-thirds of the RAC determined a review to be necessary. 35 P.S. § 7210.108(a)(1)(iii).

For the 2015 code review, the RAC was required to submit a report to the Secretary of the Department outlining the ICC codes that the RAC was adopting or modifying. 35 P.S. § 7210.108(b). On May 1, 2018, the RAC submitted its report to the Secretary, outlining 37 different recommendations. On June 12, 2018 and July 23, 2018, the RAC submitted amended reports. The Department promulgated regulations based on the RAC's last amended report, and these regulations went into effect on October 1, 2018.

However, these regulations did not include fire and smoke protection features for elevator lobbies because, in 2012, the ICC moved the section providing these protection features from Chapter 7 of the IBC to Chapter 30 of the ICC. The ICC also updated these protection features between 2012 and 2015. Chapter 30 of the IBC governs elevators and the RAC typically does not review Chapter 30 because the Department has exclusive authority to regulate elevators. 35 P.S. 7210.105(c)(1)-(2). However, provisions concerning fire and smoke protection for elevator lobbies are not covered by the Department's elevator regulations since elevator is defined as, "Hoisting and lowering devices governed by ASME standards adopted by the Department under the Uniform Construction Code and other lifting devices subject to the requirements of the Uniform Construction Code." 34 Pa. Code § 401.1. The features found in Chapter 30 of the IBC of 2015 regulate elevator lobbies and hoistway openings and do not regulate the lowering devices themselves. As such, the RAC was required to review Section 3006 (relating to elevator lobbies and hoistway opening protection) of the IBC of 2015 and determine whether to adopt or modify the section.

On October 17, 2018, the RAC held a meeting where it reviewed Section 3006 of the IBC of 2015 and voted to adopt it. On that day, the RAC issued a report directing the Department to adopt section 3006 of the IBC of 2015 into its regulations. Therefore, the Department is submitting this emergency certified final-omitted regulation to add fire and smoke protection features found in section 3006 of the IBC of 2015 to the UCC regulations. This regulation is necessary to protect the public health, safety and welfare because the current regulations do not require fire and smoke protection features for elevator lobbies and these features are necessary to prevent serious injury or death in the event of a fire in a commercial building containing elevators.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

On October 17, 2018, the RAC held a public hearing to consider whether to adopt fire and smoke protection provisions for elevator lobbies.

Purpose

The purpose of this final-omitted rulemaking is to amend 34 Pa. Code § 403.21 to adopt the revisions specified in the RAC's October 17, 2018 report, as required by section 304(a)(1) of the PCCA, 35 P.S. § 7210.304(a)(1).

Summary of Final-Omitted Rulemaking

34 Pa. Code § 403.21. Uniform Construction Code.

The RAC voted to adopt Section 3006 (relating to elevator lobbies and hoistway opening protection) of the IBC of 2015. As such, the Department is amending paragraph (a)(1) of Section 403.21 to add Section 3006 of the IBC of 2015.

Affected Persons

This regulation will affect all builders and contractors in the construction industry and all building code officials who enforce the regulations.

Fiscal Impact

The Department is not aware of any fiscal impact to the regulated community.

Reporting, Recordkeeping and Paperwork Requirements

There are no additional reporting, record keeping or paperwork requirements.

Sunset Date

There is no sunset date for these regulations. The PCCA requires referenced standards to be reviewed every three years following publication of the triennial revisions to the ICC codes.

Effective Date

This emergency certified final-omitted regulation will take effect immediately upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person is Matthew W. Kegg, Director, Bureau of Occupational and Industrial

Safety, Department of Labor & Industry, 651 Boas Street, Room 1613, Harrisburg, Pennsylvania, 17121, (717) 783-6304; mkegg@pa.gov.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on October 22, 2018, the Department submitted a copy of this final-omitted rulemaking to the Chairpersons of the Senate Committee on Labor and Industry and the House Committee on Labor and Industry and to the Independent Regulatory Review Commission (IRRC). In addition to submitting the final-omitted rulemaking, the Department has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)), the Governor has certified that this final-omitted regulation is required to meet an emergency condition that threatens the public health, safety and welfare. As such, this final-omitted regulation is effective upon publication in the *Pennsylvania Bulletin*. Pursuant to section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC will review this regulation at its meeting on December 6, 2018.

Findings

The Department finds that:

(a) This final-omitted rulemaking is authorized by sections 304(a)(1), 35 P.S. § 7210.304(a)(1), and 304(a)(2), 35 P.S. § 7210.304(a)(2), of the PCCA.

(b) Use of the emergency-certified rulemaking procedure provided in section 6(d) of the Regulatory Review Act, 71 P.S. § 745.6(d), is appropriate because this regulation is required to protect the public health, safety and welfare based on the Governor's Certification of Need for Emergency Regulation dated October 18, 2018.

Order

The Department, acting under authorizing statute, orders that:

- (a) The regulations of the Department, 34 Pa. Code, Chapter 403, are amended by amending § 403.21 to read as set forth in Annex A.
- (b) The Department submitted these regulations to the Independent Regulatory Review Commission and the Senate and House Labor and Industry Committees.
- (c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This final-omitted regulation shall become effective immediately upon publication in the *Pennsylvania Bulletin*.



W. Gerard Oleksiak
Secretary

Annex A

TITLE 34. LABOR AND INDUSTRY
PART XIV. UNIFORM CONSTRUCTION CODE
CHAPTER 403. ADMINISTRATION

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§ 403.21. Uniform Construction Code.

- (a) The Department adopts and incorporates by reference the following codes as the Uniform Construction Code:
- (1) The provisions of Chapters 2—10, 12—29, [and] 31—35 **and Section 3006 (relating to elevator lobbies and hoistway opening protection)** of the “International Building Code of 2015,” except:
 - (i) In occupancies in Use Group R-3 and within dwelling units in occupancies in Use Group R-2 the maximum riser height shall be 8 1/4 inches (210 mm) and the minimum tread depth shall be 9 inches (229 mm). A 1-inch (25 mm) nosing shall be provided on stairways with solid risers.
 - (ii) That Section 913.2.2 (relating to circuits supplying fire pumps) is excluded.
 - (iii) That in Section 2609.4 (relating to area limitations and greenhouses), exception three is modified to include “or maintaining plants”.
 - (2) Chapter 11 of the “International Building Code of 2015.”

* * * * *

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CERTIFICATION OF NEED FOR EMERGENCY REGULATION

WHEREAS, the Pennsylvania Construction Code Act (Act), 35 P.S. §§ 7210.101-7210.1103, charges the Department of Labor and Industry (Department) with promulgating the Uniform Construction Code (UCC), which is Pennsylvania's uniform statewide building code; and

WHEREAS, the UCC incorporates model codes issued by the International Code Council (ICC); and

WHEREAS, the Act has created the Uniform Construction Code Review and Advisory Council (RAC) which is charged with reviewing the model codes issued by the ICC, deciding which of these codes should be adopted or modified and issuing a report to the Department outlining the RAC's decisions regarding the ICC codes; and

WHEREAS, the RAC reviewed the 2015 ICC codes; and

WHEREAS, on May 1, 2018, June 12, 2018 and July 23, 2018, the RAC issued reports directing the Department to promulgate regulations adopting the RAC's decisions on the 2015 ICC codes; and

WHEREAS, effective October 1, 2018, the Department promulgated regulations adopting the decisions the RAC made regarding the 2015 ICC codes; and

WHEREAS, the regulations promulgated effective October 1, 2018 do not require fire and smoke protection for elevator lobbies; and

WHEREAS, the failure to require fire and smoke protection for elevator lobbies creates a risk to individuals who occupy newly constructed or altered commercial buildings because without requiring this protection, individuals could suffer serious injuries or death in the event of a fire in the building, as elevator lobby protection provides for a faster and safer response for first responders as well as a protected path of evacuation for building occupants in those buildings required to provide Fire Service Access and Occupant Evacuation elevators; and

WHEREAS, the RAC met on October 17, 2018 and the same day issued a report directing the Department to amend the UCC to include fire and smoke protection provisions found in Section 3006 of the International Building Code of 2015; and

WHEREAS, immediate amendment to the UCC is necessary to protect the public health, safety and welfare of individuals who occupy and use newly constructed or altered commercial buildings; and

NOW THEREFORE, I do hereby certify that the regulatory amendment to 34 Pa. Code, Part XIV, Chapter 403, following hereto as ANNEX A is required to meet the emergency conditions enumerated in the recitals above and to safeguard the public health, safety and welfare as described therein.

FURTHER, I hereby authorize the Secretary of the Department of Labor and Industry to publish this amendment in the Pennsylvania Bulletin as an Emergency Certified Final-Omitted Rulemaking consistent with the provisions of Section 6(d) of the Regulatory Review Act, as amended, 71 P.S. § 745.6(d).



GIVEN under my hand and the Seal of the Governor, at the City of Harrisburg, on this eighteenth day of October in the year of our Lord two thousand eighteen, and of the Commonwealth the two hundred forty-third.

Tom Wolf
TOM WOLF
Governor

October 17, 2018

The Honorable W. Gerald Oleksiak, Secretary
Pennsylvania Department of Labor & Industry
Labor & Industry Building, 17th Floor
651 Boas Street
Harrisburg, PA 17121

Re: Adoption of 2015 IBC section for Uniform Construction Code

Mr. Secretary:

It was brought to the Uniform Code Review and Advisory Council's (UCC RAC) attention that a section of the 2015 International Building Code (IBC) was missed during its review process. This section relates to fire and smoke protection of elevator lobbies. This section was previously contained in chapter 7 of the 2009 IBC, but was moved to chapter 30 in later editions. Chapter 30 contains elevator requirements that fall under the sole jurisdiction of Labor & Industry and historically was never reviewed by the UCC RAC.

Due to serious public safety concerns surrounding the omission of these protections, the UCC RAC raised this issue during its October 17, 2018 meeting. After discussion, the UCC RAC voted to adopt section 3006 of the 2015 IBC. Please update the Uniform Construction Code to reflect this adoption.

Submitted on behalf of the UCC RAC,


Maureen Guttman, AIA

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October 22, 2018

The Honorable George D. Bedwick
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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2018 OCT 22 P 3:44

Re: Certified-Emergency Final-Omitted Regulation 12-109
Department of Labor and Industry
Bureau of Occupational and Industrial Safety
34 Pa. Code Part XIV, Chapter 403

Dear Chairman Bedwick:

Enclosed is a final-omitted rulemaking package consisting of a face sheet, emergency certification, preamble, annex A, regulatory analysis form and report of the Review and Advisory Council. The Department of Labor & Industry is submitting this rulemaking to promulgate regulations under the Pennsylvania Construction Code Act, Act of November 10, 1999, *as amended*, 35 P.S. § 7210.101 – 7210.1103 (PCCA). This final-omitted rulemaking is to amend 34 Pa. Code § 403.21 adopt the revisions specified in the report of Uniform Construction Code Review and Advisory Council (RAC) issued on October 17, 2018, as mandated by Section 304(a)(1) of the PCCA, 35 P.S. § 7210.304(a)(1).

Under Section 304(a)(2) of the PCCA, 35 P.S. § 7210.304(a)(2), this final-omitted rulemaking is exempt from section 205 of the Commonwealth Documents Law, 45 P.S. § 1205, and sections 204(b) and 301(10) of the Commonwealth Attorneys Act, 71 P.S. §§ 732-204(b), 732-301(10), and therefore from review by the Office of General Counsel and the Office of Attorney General. The Face Sheet included with the regulation does not include approval of the Office of General Counsel or the Office of Attorney General.

In addition, on October 18, 2018, Governor Wolf certified that these regulations be published as certified-emergency regulations. Section 6(d) of the Regulatory Review Act, 71 P.S. § 741.6(d), allows an agency to immediately implement a final-omitted regulation when the Governor or Attorney General certifies that certification is necessary to respond to an emergency circumstance. The Governor may certify an emergency regulation if it is “required to meet an emergency which includes conditions which may threaten the public health, safety or welfare.” *Id.*

This rulemaking requires newly constructed and altered buildings comply with the fire and smoke protection provisions found in the International Building Code (IBC) of 2015. The failure to require compliance with the fire and smoke protection provisions found in the IBC of 2015 creates a threat to the public safety because elevator lobby protection provides for a faster and safer response for first responders as well as a protected path of evacuation for building occupants in newly constructed or altered buildings.

Department of Labor & Industry
651 Boas Street, Room 1700 | Harrisburg, PA 17121-0750 | T 717.705.2630 | F 717.787.8826 | www.dli.pa.gov

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Comments, suggestions or questions should be directed to Matthew W. Kegg, Director, Bureau of Occupational and Industrial Safety, Room 1613, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: (717) 783-6304; Fax: (717) 787-8363. The email address is: mkegg@pa.gov.

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Gerard Oleksiak".

W. Gerard Oleksiak
Secretary

cc w/encl: The Honorable W. Gerard Oleksiak, Secretary
The Honorable Sarah Galbally, Secretary of Planning and Policy
Robert V. O'Brien, Executive Deputy Secretary
Jennifer L. Berrier, Deputy Secretary, Safety & Labor-Management Relations
Marc Farrell, Regulatory Specialist, Governor's Office of Policy
Ronald Foster, Assistant Director of Legislative Affairs, Governor's Budget Office
Joanne Manganello, Director of Legislative Affairs
Jennifer Rapach, Executive Policy Manager
Kelly K. Smith, Executive Deputy Chief Counsel
Robert C. Schramm, Deputy Chief Counsel
Matthew W. Kegg, Director, Bureau of Occupational and Industrial Safety

Transmittal Sheet for Final Omitted Regulations 109

X 10/22/18 X [Signature] X Senator Christine Tortagione
Senate Labor + Industry Comm

X 10/22/18 Eric N. Kutty X Senator Kim Ward
majority Chair, Senate Labor + Industry Comm

X 10-22-18 Elana Maynard X Rep. Rob Kauffman
majority Chair For House Labor + Industry Committee

X 10/22/18 Harry M. Sar X Rep. John Galloway
Democratic Chair, House Labor + Industry Committee

X 10/22/18 X [Signature] X Legislative Reference
Leah D. Brown Bureau

X 10/22/18 X Cheryl Yohn X IRRC
Cheryl Yohn

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