

# RULES AND REGULATIONS

## Title 34—LABOR AND INDUSTRY

### DEPARTMENT OF LABOR AND INDUSTRY

#### [34 PA. CODE CH. 50]

#### Restroom Equity

The Department of Labor and Industry (Department), by this order, adopts regulations at Chapter 50 (relating to restroom equity) as set forth in Annex A.

#### A. *Effective Date*

These regulations are effective immediately upon publication in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information, the contact person is Edward L. Leister, Administrator, Buildings Division, Bureau of Occupational and Industrial Safety, 1529 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120, (717) 787-3323.

#### C. *Statutory Authority*

These regulations are adopted under the authority contained in section 4 of the Restroom Equity Act (act) (35 P. S. § 5820.4).

#### D. *Background and Purpose*

The act was adopted to mitigate the delays which women face when they need to use restroom facilities in certain places. These regulations satisfy the act's requirement that the Department adopt, by regulation, standards with respect to all public and private facilities covered by the act.

#### E. *Public Comments*

Notice of proposed rulemaking was published at 23 Pa.B. 6078 (December 25, 1993) and set forth a 30-day public comment period.

#### F. *Summary of Comments and Changes from Proposed Rulemaking*

The Department received comments about the proposed regulations from the Independent Regulatory Review Commission (IRRC). The Department received no other comments.

#### *Section 50.81. Purpose*

The Department has incorporated IRRC's suggestion that the act be referred to by its title and its Purdon's citation.

#### *Section 50.82. Jurisdiction and Effective Dates*

IRRC questioned the statutory basis for the proposed language which would restrict the application of the regulations to facilities that can accommodate more than 300 persons. In accordance with IRRC's recommendation, the Department has deleted this limitation.

IRRC asked the Department to more clearly define its jurisdiction with regard to specialty event centers and community and municipal parks with a seating capacity for 500 or more persons. The Department has revised the final rulemaking to clarify that the regulations apply to specialty event centers whether or not they are located in

public parks. However, if a specialty event center is located in a community or municipal park, it is subject to the regulations only if it has a seating capacity for 500 or more persons. This language directly reflects the statutory language.

IRRC questioned the proposed regulation which limited the requirement for seating capacity to "fixed" seating capacity. The final rulemaking deletes any reference to "fixed" seating capacity; it merely refers to seating capacity.

IRRC questioned the application of the proposed regulations to existing facilities. First, it questioned the statutory basis of the proposed regulations which would apply only if a renovation would cause the capacity of the facility to increase. The Department has revised the final rulemaking to delete this requirement.

Second, it questioned the proposed regulation which would not limit its application to rehabilitations of existing facilities involving more than 50% of the gross floor area or volume of the entire building. The Department has substantially revised its rulemaking to reflect IRRC's concern and to conform exactly to the statutory language.

Third, IRRC noted that the act applies only to the portion of the building which is being renovated and not to the entire building. The Department has revised its final rulemaking to specifically reflect this provision of the act.

#### *Section 50.83. Restroom Requirements*

IRRC requested the Department provide to it information which supports the reasonableness of the ratio which the Department proposes to adopt, that is, at least two water closets for women for each water closet for men. The Department surveyed 11 states and cities and found little uniformity in either the ratio adopted or the facilities to which the ratios are applied. However, Massachusetts and Virginia apply a two-to-one ratio under basically the same circumstances as this regulation. The state of New York and Cedar Rapids, Iowa, apply a one-to-one ratio, but in New York the ratio applies only to new facilities. Florida applies a three-to-two ratio in new construction with an assembly occupancy. Illinois applies different ratios depending upon the type and size of the facility. Wisconsin has adopted no specific ratio. In Tennessee, the ratio is to be determined by the State building commission. New Jersey utilizes the National Standard Plumbing Code (NSPC) which uses a ratio of one to one. Michigan applies the BOCA Code to assembly areas in government units for new construction only; BOCA uses a ratio of two to one. Tucson, Arizona, applies the Uniform Plumbing Code which uses a ratio of three to one. Based on all the information available to it, the Department believes the ratio adopted by the final rulemaking is reasonable.

Also, IRRC suggested that the Department revise the proposed regulation to note specifically that the ratio applies to "temporary or permanent" water closets. The Department has not adopted the exact language proposed by IRRC but has added two sentences to this section to provide that the ratio must be applied separately to temporary water closets and permanent water closets. The Department was concerned that additional temporary facilities would be provided for women to meet the overall

ratio; for example, one permanent and one temporary water closet would be provided for women and one permanent water closet would be provided for men.

*Section 50.84. Enforcement*

IRRC proposed alternate language for this section. The final rulemaking adopts IRRC's suggested language.

*Section 50.86. Variances*

IRRC questioned the Department's authority to grant variances from the requirements of the regulations. The Department believes that it does have authority to grant variances. Section 3 of the act (35 P. S. § 5820.3) provides, in part, that:

"Facilities shall conform with and be approved by the Department in accordance with the provisions of the act of April 27, 1927 (P. L. 465, No. 299), referred to as the Fire and Panic Act."

Section 2214 (d) and (h)(2) of The Administrative Code of 1929 (71 P. S. § 574(d) and (h)(2)) provides that the Industrial Board has authority to grant variances with respect to the Fire and Panic Act. Since the approval process under the Fire and Panic Act includes an opportunity for variances to be granted, the Department believes that variances may also be granted with respect to this act.

Finally, IRRC expressed concern that unscrupulous owners may circumvent the spirit of the act and regulations by eliminating restrooms or not providing restrooms. Unfortunately, the act does not require that any restrooms be required; furthermore, the Department knows of no law which requires a specific number of restrooms to be provided.

*G. Benefits and Costs*

*Affected Persons*

The regulations will affect women because the delays which women face when they need to use restroom facilities in public places covered by the act will be mitigated. Building owners will also be affected because they will be required to construct new buildings and renovate existing buildings in compliance with the regulations.

*Fiscal Impact and Paperwork*

The regulations will increase costs to State and local governments and private entities within this Commonwealth by requiring twice as many toilet facilities for women as for men in new and renovated buildings covered under the act.

Most of the buildings which are subject to the regulations are also subject to the Fire and Panic Act. Building owners are required to submit detailed architectural plans to the Department before any building subject to the Fire and Panic Act is erected or renovated. The plan approval process under the regulations has been integrated with the plan approval process under the Fire and Panic Act. Thus, there will be no additional paperwork required by the regulations.

*H. Sunset Date*

A sunset date is not appropriate because these standards will be necessary as long as buildings or structures covered under the act or regulations are being built or renovated.

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 10, 1993, the Department submitted a copy of the notice of proposed rulemaking published at 23 Pa.B. 6078 (December 25, 1993), to IRRC and to the Chairpersons of the House Committee on Labor Relations and the Senate Committee on Labor and Industry. In accordance with section 5(b.1) of the Regulatory Review Act, the Department provided the Committees with a copy of IRRC's comments.

In preparing these final-form regulations, the Department has considered all comments received from IRRC.

These final-form regulations were deemed approved by the House and Senate Committees on February 8, 1996. IRRC met on February 7, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

*J. Findings*

The Department finds that:

(1) Public notice of the intention to adopt these regulations was given in accordance with sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and that all comments received were considered.

(3) Modifications to the proposed text do not enlarge the original purposes or the scope of the proposed regulations.

(4) These regulations are necessary and appropriate to the administration and enforcement of the act.

*K. Order*

The Department, acting in accordance with the authorizing statutes, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 50, are amended by adding §§ 50.81—50.86 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and shall deposit them with the Legislative Reference Bureau, as required by law.

(d) The regulations, as set forth in Annex A, shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHNNY J. BUTLER,  
*Secretary*

**Fiscal Note:** 12-36. No fiscal impact, (8) recommends adoption. There will be minor administrative costs to the Commonwealth which have been provided for in Fiscal Year 1995-96. Additional costs to provide for a restroom will be incurred when new restrooms are added to an existing building or when an existing building is renovated. The additional cost per restroom is unknown.

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 814 (February 24, 1996).)

## Annex A

## TITLE 34. LABOR AND INDUSTRY

## PART I. DEPARTMENT OF LABOR AND INDUSTRY

## CHAPTER 50. GENERAL REQUIREMENTS—BUILDINGS

## RESTROOM EQUITY

**§ 50.81. Purpose.**

The purpose of this section and §§ 50.82—50.86 is to implement the act of December 17, 1990 (P. L. 742, No. 185) (35 P. S. §§ 5820.1—5820.6), known as the Restroom Equity Act of 1990, the purpose of which is to mitigate the inequitable delays which women face when they need to use restroom facilities in public places.

**§ 50.82. Jurisdiction and effective dates.**

(a) *Application.* Section 50.81, this section and §§ 50.83—50.86 apply to facilities where the public congregates: sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, amusement facilities, ski resorts, public middle schools and high schools and community and municipal parks with a seating capacity of 500 or more persons. If a specialty event center is located in a community or municipal park, it is subject to § 50.81, this section and §§ 50.83—50.86 if it has seating capacity for 500 or more persons.

(b) *Exemptions.* Section 50.81, this section and §§ 50.83—50.86 do not apply to the following:

(1) Hotels. For purposes of § 50.81, this section and §§ 50.83—50.86, "hotel" means an establishment in which there exists the relationship of guests and innkeeper between the occupants and the owner or operator of the establishment. The existence of some other legal relationship between the occupants and the owner or operator shall be immaterial.

(2) Public eating or drinking places defined in the act of May 23, 1945 (P. L. 926, No. 369), known as the Public Eating and Drinking Place Law.

(3) Community and municipal parks with seating capacity for less than 500 persons.

(c) *Effective dates.* The effective dates for § 50.81, this section and §§ 50.83—50.86 are as follows:

(1) *New facilities where the public congregates.* Implementation of § 50.81, this section and §§ 50.83—50.86 will be based upon contracts for design or construction executed on or after April 6, 1996.

(2) *Existing facilities where the public congregates.* Implementation of § 50.81, this section and §§ 50.83—50.86 will be based upon contracts for the design or construction of the renovation executed on or after April 6, 1996.

(d) *Renovating existing facility.* An existing facility where the public congregates will be considered to be renovated if one of the following applies:

(1) Its rehabilitation requires more than 50% of the gross floor area or volume of the entire building to be rebuilt, not including cosmetic work such as painting, wall covering, wall paneling, floor covering and suspended ceiling work.

(2) An addition is made to an existing facility where the public congregates.

(e) The requirements of § 50.81, this section and §§ 50.83—50.86 apply only to the portion of the building which is being renovated.

**§ 50.83. Restroom requirements.**

More water closets shall be provided for women than for men by a minimum ratio of two water closets for women for each water closet for men or for each single use urinal or 20 inches of trough urinal. The ratio shall be applied separately to permanent water closets and temporary water closets. Temporary water closets may not be provided in order to make up the difference between permanent water closets provided for women and permanent water closets provided for men.

**§ 50.84. Enforcement and inspections.**

(a) The Department of Labor and Industry will be responsible for the enforcement of §§ 50.81—50.83, this section and §§ 50.85 and 50.86, except in cities of the first class, second class and second class A, where the cities shall be responsible for enforcement of §§ 50.81—50.83, this section and §§ 50.85 and 50.86. The Department or other enforcement agency will not issue a permit authorizing the use or occupancy of a building until the provisions of §§ 50.81—50.83, this section and §§ 50.85 and 50.86 are met.

(b) For the purpose of enforcing the provisions of §§ 50.81—50.83, this section and §§ 50.85 and 50.86, the Department and the other enforcement agencies will:

(1) During ordinary business hours, have access to, and require the production of books, papers and documents pertinent to an inspection necessary to ascertain the compliance or noncompliance with the act and this chapter.

(2) During ordinary business hours, enter a building or structure governed under §§ 50.81—50.83, this section and §§ 50.85 and 50.86 for the purpose of making an inspection.

**§ 50.85. Approval of plans.**

It is the duty of the owner, or the owner's representative, of every building or structure covered by §§ 50.81—50.84, this section and § 50.86, to submit to the Department or other enforcement agency, for approval, architectural drawings, specifications or other data required by § 49.3 (relating to submission of plans) to show compliance with §§ 50.81—50.84, this section and § 50.86, prior to the beginning of construction, remodeling or alteration of a building or structure.

**§ 50.86. Variances.**

Requests for variances from the requirements of §§ 50.81—50.85 and this section shall be submitted to the Industrial Board of the Department of Labor and Industry in accordance with § 49.15 (relating to appeals to the Board) or the appropriate variance board of enforcement agencies in first class, second class and second class A cities.

[Pa.B. Doc. No. 96-531. Filed for public inspection April 5, 1996, 9:00 a.m.]