

PROPOSED RULEMAKING

DEPARTMENT OF COMMUNITY AFFAIRS

[16 PA. CODE CH. 29]

Industrialized Housing and Components

The Department of Community Affairs (Department) proposes to amend §§ 29.41—29.44, 29.56 and 29.122. These amendments are proposed under the authority of the Industrialized Housing Act (act) (35 P. S. §§ 1651.1—1651.12).

Summary and Purpose

The Department has the responsibility to adopt and publish regulations, including construction standards, for industrialized housing and components covered by the act. These standards are required to be reasonably consistent with recognized and accepted model codes. These regulations, including those setting standards were last amended in August 1991. Although the regulations at §§ 29.41—29.44, 29.56 and 29.122, covering amendments to standards and alternate standards, have not been entirely clear concerning the effect in this Commonwealth of changes in National model code standards, the Department has consistently enforced the most current version of those code standards.

The 1995 CABO One and Two Family Dwelling Code (Code) was generally available and adopted on April 1, 1995. Among the changes contained in that Code was a modification of stair geometry (riser and tread dimensions) from the traditional 8 1/4 inch riser by 9 inch tread to a 7 1/4 inch riser by 10 inch tread. The industrialized building industry has cited concerns that this change would significantly increase costs, cause loss of space utilization and negate design compatibility, especially in entry-level sized homes where space is critical. Research into the issue by the Department found no compelling nor conclusive evidence to support this change. In addition, cost/benefit analyses conducted by the National Association of Home Builders Research Center and others concluded that there was little or no substantive evidence to define the benefits of the new stair geometry, nor the lack of safety in the traditional, but that costs and effects on marketability and affordability of housing would be significant.

Based on the evidence available, the Department has concluded that manufacturers will not be required to build to the new CABO stair geometry requirements, but will be provided with the option to do so if their market needs and the needs of housing consumers require the change. Therefore, the Department proposes to amend § 29.42 (relating to alternate standards) to permit manufacturers to utilize either the previous or new CABO stair geometry standards.

In order to clarify questions concerning those standards and alternate standards that are in effect for industrialized housing under the regulations, and to clarify procedures for amending those standards and alternate standards, the Department also proposes to amend §§ 29.41, 29.43, 29.44, 29.56 and 29.122. These proposed amend-

ments should clarify the policy that has been followed by the Department since 1974.

Benefits and Costs

The proposed amendments continue the regulation of industrialized housing and component construction standards required by the act. No substantial new costs have been added.

Paperwork Requirements

These proposed amendments add no new paperwork to the requirements already imposed by the present regulations.

Public Comment

Persons wishing to comment on the proposed amendments may do so within 30 days following publication in the *Pennsylvania Bulletin*. Written comments should be directed to John F. Boyer, whose address and telephone number are set forth in this Preamble. In addition, a public hearing on these proposed amendments, as required by § 29.97, has been scheduled for 1 p.m., Wednesday, October 2, 1996, in Room 321 Forum Building, Harrisburg, PA.

Contact Person

For further information, contact John F. Boyer, Chief, Manufactured Housing Division, Bureau of Housing and Development, Room 376 Forum Building, Harrisburg, PA 17120, telephone (717) 783-7847.

Sunset Date

These proposed amendments are required by the act. They will be monitored on a regular basis and will be updated as needed.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on August 28, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Urban Affairs and the Senate Committee on Local Government. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of these proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the agency, the General Assembly and the Governor of objections raised.

DAVID E. BLACK,
Acting Secretary

(Editor's Note: Act 58 of 1996 transferred functions of the Department of Community Affairs to the Department of Community and Economic Development. Upon adoption, the proposal in Annex A will appear under the new Department.)

Fiscal Note: 5-60. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 16. COMMUNITY AFFAIRS

PART I. DEPARTMENT OF COMMUNITY AFFAIRS

CHAPTER 29. INDUSTRIALIZED HOUSING AND COMPONENTS

STANDARDS

§ 29.41. Adoption of standards.

(a) The following codes, which relate to the design, materials and method of construction of buildings, are adopted as the standards applicable to industrialized housing and housing components for purposes of this chapter:

* * * * *

(4) The National Electrical Code (NFPA No. 70-1981). [The] Except as provided in § 29.43 (relating to amendment policy) the codes shall be the latest addition including supplements. The effective date of all code changes or supplements shall be in accordance with §§ 29.44 and 29.122(b) (relating to procedure for adoption of amendments; and effective date).

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§ 29.42. Alternate standards.

As an alternative to the primary codes specified in § 29.41 (relating to adoption of standards), a manufacturer may elect to satisfy the requirements of the following alternate standards. Copies of these documents are available through the respective promulgating agencies as defined in § 29.47 (relating to acquisition of adopted codes and amendments):

(1) CABO One and Two Family Dwelling Code (latest edition), except that with regard to stair geometry (rise and run), a manufacturer may elect to utilize the 1992 CABO One and Two Family Dwelling Code, Section R-213.1, Figure No. R-213.1; and HUD Minimum Property Standards for One and Two Family Dwellings (24 CFR 200.926 (relating to minimum property standards for one- and two-family dwellings)).

* * * * *

(3) Electrical Code for One and Two Family Dwellings, NFPA latest edition 70. [The] Except as provided in § 29.43 (relating to amendment of policy), the codes shall be the latest edition including supplements. The effective date of code changes or supplements shall be in accordance with §§ 29.44 and 29.122(b) (relating to procedure for adoption of amendments; and effective date).

§ 29.43. Amendment policy.

(a) [It] Except as provided in subsection (b), it is the policy of the Department to adopt all amendments and additions to the provisions of the codes adopted under §§ 29.41 and 29.42 (relating to adoption of standards; and alternate standards) which relate to the design, materials or method of construction of buildings in accordance with the procedure called for in § 29.44 (relating to procedure for adoption of amendments).

(b) It is further the policy of the Department that it will not adopt an amendment of or addition to the codes adopted under §§ 29.41 and 29.42 which relate to the design, materials or method of construction of buildings

unless the amendment or addition has been adopted by the organizations which publish the code or unless there is clear and convincing evidence that the absence of the amendment or addition would be seriously detrimental to the health, safety or welfare of the citizens of the Commonwealth. If the Department determines not to adopt the latest version including supplements and additions of the National model codes adopted under § 29.41 or § 29.42 or to advance standards not contained in the latest version including supplements and additions, the amendment shall be treated as an amendment to this chapter to which § 29.97 (relating to amendments to this chapter) applies.

§ 29.44. Procedure for adoption of amendments.

(a) [The adoption of an] An amendment of or addition to a provision of a code adopted under §§ 29.41 and 29.42 (relating to adoption of standards; and alternate standards) shall be [treated as an amendment to this chapter to which § 29.97 (relating to amendments to this chapter) applies]. The effective date of an amendment or addition shall be the first day of the month following the month of the adoption of the amendment or addition by the Department [considered adopted by the Department on the first day of the month following the month in which the amendment or additions adopted by the National Model Code writing authority, unless the Department determines that the first day of a later month would better promote the purposes of the act and this chapter. The effective date of the amendment or addition shall be the first day of the month 1 year from the date of adoption by the Department. If the Department determines that there is an imminent threat to life safety which can be relieved by the prompt adoption of an amendment of or addition to a provision of a code adopted under §§ 29.41 and 29.42, the Department may establish an earlier effective date for the amendment or addition.

CERTIFICATION

§ 29.56. Amendments to building system documentation following changes in standards.

Evaluation agencies shall notify those manufacturers with whom they then have implementing contracts under § 29.78(c) (relating to contractual arrangements) of a change in or amendment to a code or standard adopted by the Department under §§ 29.41, 29.42 and 29.44 (relating to adoption of standards; alternate standards; and procedure for adoption of amendments). The manufacturer shall have [a period of 6] 12 months from the [effective] date of adoption by the Department of the change or amendment to amend its building system documentation if necessary to assure compliance with the applicable provisions of the applicable codes and standards as adopted and changed or amended under §§ 29.41, 29.42, 29.43(a) and 29.44 to obtain the approval of the applicable evaluation agency of the amendments to its building system documentation or the determination from the applicable evaluation agency that its building system documentation requires no amendment; and to cease attaching insignia of certification to industrialized housing or housing components which have not been manufactured under the amendments to its building system documents if the amendments are required to assure compliance with the changed or amended codes

and standards. **If the codes and standards are adopted, changed or amended under §§ 29.43(b) and 29.97 (relating to amendment policy; and amendments to this chapter) the manufacturer shall have until _____ (Editor's Note: The blank refers to a date 6 months from the date of adoption of this proposal) to amend its building system documentation, if necessary, to assure compliance with the applicable provisions of the applicable codes and standards as adopted, changed or amended.** If the Department determines that there is an imminent threat to life safety which can be relieved by prompt conformity of the building system documentation to the changed or amended provisions of the applicable codes and standards, the Department may require a shorter period to secure compliance with the change or amendment to the adopted codes and standards. The Department may likewise provide a longer period than 6 months for compliance with the change or amendment to the adopted codes and standards, if the Department finds that compliance within a 6-month period would cause unreasonable hardship on a manufacturer in comparison with the anticipated benefits to the health, safety or welfare of the citizens of this Commonwealth. Section 29.55 (relating to general requirements for approval of amendments to building system documentation) applies to the amendments to building system documentation required by this section.

TRANSITIONAL PROVISIONS

§ 29.122. Effective date.

* * * * *

(b) Six months after [**adoption of an amendment to this chapter**] **the effective date of an amendment to this chapter under §§ 29.43(b) and 29.97 (relating to amendment policy; and amendments to this chapter) or 12 months after the adoption by the Department of an amendment of the standards under §§ 29.43(a) and 29.44 (relating to procedure for adoption of amendments),** no industrialized housing or housing components may be sold, leased or installed for use on a site in this Commonwealth unless the industrialized housing or housing components are certified as complying with the amendment.

[Pa.B. Doc. No. 96-1533. Filed for public inspection September 13, 1996. 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CH. 113]

Notices of Increase in Premium and Midterm Cancellation or Nonrenewal of Policies

The Insurance Department (Department) proposes to amend Subchapter G (relating to increase in premium and midterm cancellation or nonrenewal of commercial property and casualty policies) to read as set forth in Annex A. These amendments are proposed under the authority of section 9 of the act of July 3, 1986 (P. L. 396, No. 86) (40 P. S. § 3409).

Purpose

Chapter 113 (relating to miscellaneous provisions) was initially promulgated to deal with problems posed by

cancellations and nonrenewals of commercial property and casualty insurance policies. The authorizing statute, Act 86, was adopted in 1986 and was recently amended by Act 10 of 1995, which became effective August 12, 1995. Accordingly, the Department now seeks to modify Chapter 113 to be consistent with the revised statutory requirements. Specifically, Chapter 113 is being amended to reduce the 60-day notice of intent to increase premiums for commercial policies to a 30-day notice of premium increase, consistent with the statutory change. Further, Chapter 113 is being revised to eliminate the requirement that insurers provide written notice of estimated premiums to the insured at least 30 days prior to the renewal date, because the statute no longer mandates this requirement. Additional clarifying language has also been included consistent with the statutory changes.

Explanation of Regulatory Requirements

This proposal adds the definition of "agent" and "insurer" and deletes the definition of "insured" in § 113.81 (relating to definitions). Additional definitions are proposed to be included to clarify those affected by the regulations and the role of each entity. The definition of "insured" is proposed to be deleted because the current regulations include a definition of "named insured."

Section 113.82 (relating to notice of premium increase) proposes to incorporate the statutory mandates of Act 10 of 1995. Subsection (a) is proposed to be amended to require insurers to provide advance notice of any premium increase not less than 30 days before the renewal date. Previously, insurers were required to provide a 60-day notice of intent to increase premium. Subsections (b) and (c) are proposed to be revised to mirror more closely the language of Act 10. Act 10 requires that the notice be "provided" to the insured. It does not require that the notice be "written" or "sent" to the insured, as does the current regulation. Finally, subsection (d) proposes to place responsibility for documenting compliance on insurers while allowing insurers flexibility to satisfy the requirements of that subsection.

Section 113.83 (relating to notice of estimated premium increase) is proposed to be deleted in its entirety. Act 10 removed the statutory obligation to provide notice of estimated premium increase.

Section 113.86 (relating to notices of nonrenewal or cancellation and return of unearned premium forwarded by surplus lines agents) is proposed to be revised to delete a reference to return of unearned premium. Section 113.87 (relating to return of unearned premiums) currently addresses the issue of return of unearned premium. Additionally, § 113.86 is proposed to be revised to delete specific reference to surplus lines insurers. The proposed language would allow insurers, both admitted and nonadmitted, to delegate authority to agents for issuance of cancellation and nonrenewal notices.

Affected Parties

Commercial property and casualty insurers transacting business in this Commonwealth and surplus lines insurers who write insurance on commercial property and casualty risks in this Commonwealth will be directly affected by these amendments. Policyholders, as recipients of cancellation and nonrenewal notices, will be indirectly affected.

Fiscal Impact

State Government

The amendments will not have an impact on Department costs associated with monitoring industry compliance.

General Public

It is expected that savings to the insurance industry resulting from these amendments will be passed along to insurance consumers in the form of lower rates.

Political Subdivisions

These amendments will have no impact on costs to political subdivisions.

Private Sector

It is estimated that the industry will realize a \$2.2 million savings per year resulting in the elimination of the estimated premium notice.

Paperwork

These amendments will impose no additional paperwork requirements on the Department and reduce the paperwork requirements imposed on the insurance industry.

Effectiveness/Sunshine Data

The proposed amendments will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final rulemaking. No sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Helfried G. LeBlanc, Deputy Insurance Commissioner for Consumer Services and Enforcement, 1321 Strawberry Square, Harrisburg, PA 17120, (717) 787-6174, within 30 days following publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on August 29, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting these proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the regulations by the Department, the General Assembly and the Governor of objections raised.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-130. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VII. PROPERTY, FIRE AND CASUALTY INSURANCE

CHAPTER 113. MISCELLANEOUS PROVISIONS

Subchapter G. INCREASE IN PREMIUM AND MIDTERM CANCELLATION OR NONRENEWAL OF COMMERCIAL PROPERTY AND CASUALTY POLICIES

§ 113.81. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

* * * * *

Agent—An individual, partnership or corporation, licensed by the Department, who contracts with an insurer to sell insurance on behalf of the insurer. With respect to policies of insurance covering commercial property and casualty risks issued by eligible surplus lines insurers, the term means a surplus lines licensee as defined in section 1602 of The Insurance Company Law of 1921 (40 P. S. § 991.1602).

* * * * *

[Insured—The first insured named on the declaration page of the insurance policy.]

Insurer—An insurer authorized by the Department to transact business in this Commonwealth or designated as an eligible surplus lines insurer as defined in section 1602 of The Insurance Company Law of 1921.

* * * * *

Policy of insurance—A policy, certificate or binder issued or delivered in this Commonwealth by [a licensed] an insurer or [surplus lines] agent covering commercial property or casualty risks. A policy with a policy period or term of less than 12 months or a policy period with no fixed expiration date is considered as written for successive policy periods of 12 months.

§ 113.82. Notice of [intent to increase] premium increase.

(a) [If insurers are going to increase an insured's renewal premium, insurers] Insurers shall [notify] provide the named insured [in writing] advance notice of [the intent 60 days or more] any increase in renewal premium not less than 30 days before the upcoming policy renewal date.

(b) [Insurers are responsible for providing written notice of intent to increase premiums to the insured.] An insurer may authorize its agents to [forward written] provide the notice of [intent to increase] premium increase to the named insured. The insurer [shall be] is responsible for the agent's failure to [forward, 60] provide 30 days or more in advance of policy renewal, a [written] notice of [intent to increase] premium increase.

(c) A [written] notice of [intent to increase] premium increase shall be [forwarded] provided to

the **named insured** [**by the insurer**] when a policy is issued [**to an insured**] by an insurer of a group of affiliated insurers that supersedes a policy issued by an insurer from the same group of affiliated insurers, [**the superseding policy provides types and limits of coverage substantially equivalent to those contained in the policy being superseded**] and the [**insured's**] premium will increase as a result of the superseding policy.

(d) **Insurers are responsible for documenting that advance notice was provided to the named insured. Insurers may satisfy this requirement by doing one of the following:**

(1) **Maintaining a copy of the advance written notice provided to the named insured.**

(2) **Documenting its file to reflect the date and time advance notice was provided to the named insured.**

(3) **Providing documentation from its agent reflecting compliance with either paragraph (1) or (2).**

(4) **Providing other documentation as would reasonably demonstrate compliance. The documentation will be evaluated in the sole discretion of the Department.**

§ 113.83. [**Notice of estimated premium increase**] (Reserved).

[(a) **Insurers shall be responsible for providing written notice of the estimated premium to the insured, at least 30 days prior to the renewal date. An insurer may authorize its agents to forward written notice of the estimated renewal premium to the insured. The insurer shall be responsible for the agents' failure to forward, at least 30 days in advance of policy renewal, notice of the estimated renewal premium.**

(b) **Insurers may advise the insured of factors which contributed to the increase in premium. Insurers shall advise the insured of coverage, limits and amounts upon which the estimate of premium was based.**

(c) **A written notice of estimated premium increase shall be forwarded to the insured by the insurer for a policy issued to a named insured by an insurer of a group of affiliated insurers that supersedes a policy issued by an insurer from the same group of affiliated insurers where the superseding policy provides types and limits of coverage substantially equivalent to those contained in the policy being superseded, and the insurer was required to forward to the insured a notice of intent to increase premium.]**

§ 113.85. **Midterm cancellation for material failure to comply with policy terms, conditions or contractual duties.**

An insurer may cancel in [**mid-term**] **midterm** a policy of insurance covering commercial property and casualty risks for material failure to comply with policy terms, conditions or contractual duties which require the insured to comply with safety standards and loss control recommendations, if the following [**exist**] **apply:**

(1) The [**language of a**] policy specifically provides that material failure [**on the part of the insured**] to comply with safety standards and loss control recommendations may constitute a basis for cancellation.

(2) The insurer has provided the **named insured** with written notice of the [**insured's**] failure to comply with safety standards and loss control recommendations.

(3) The insurer has provided the **named insured** with a reasonable opportunity to cure deficiencies with respect to safety standards and loss control recommendations.

(4) The [**insured has failed to cure**] deficiencies with respect to safety standards and loss control recommendations **have not been cured.**

§ 113.86. Notices of nonrenewal or cancellation [**and return of unearned premium**] forwarded by [**surplus lines**] agents.

(a) [**A surplus lines**] **An insurer shall be deemed in compliance with the requirement that notices of midterm cancellation or nonrenewal [, and unearned premium] be forwarded by the insurance company directly to the named insured if [a surplus lines] an agent, who is authorized by [a surplus lines] an insurer to act on its behalf for purposes of providing notice of midterm cancellation or nonrenewal [and returning unearned premium,] forwards notices of midterm cancellation or nonrenewal to the named insured [and returns unearned premium to the insured]. The [surplus lines] insurer is responsible for the authorized [surplus lines] agent's failure to meet the requirements for providing notice of midterm cancellation or nonrenewal to the named insured [, and the requirements for return of unearned premium to the insured set forth in the act.]**

§ 113.87. **Return of unearned premiums.**

An insurer is responsible for the return of unearned premium to the **named insured** within the time period required by the act. An insurer may authorize its agents to return unearned premium to the **named insured**. The insurer is responsible for the [**agent's**] **agents'** failure to return unearned premium to the **named insured** as required by the act.

[Pa.B. Doc. No. 96-1534. Filed for public inspection September 13, 1996, 9:00 a.m.]