

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 401]

Uniform Construction Code Training and Certification for Code Administrators

Under section 701 of the act of November 10, 1999 (P. L. 491, No. 45) (Act 45), the Department of Labor and Industry (Department) is submitting proposed rulemaking for training and certification of code administrators.

The Department proposes the regulations for the training and certification of code administrators under the Pennsylvania Construction Code Act (act) (35 P. S. §§ 7210.101—7210.1103) as set forth in Annex A. This notice of proposed rulemaking includes the Department's interpretation of the provisions of Act 45 adopting the 1999 *BOCA National Building Code, Fourteenth Edition* or its successor codes as the Uniform Construction Code (UCC).

Statutory Authority

This proposed rulemaking is issued under the authority provided in section 701(a) of the act (35 P. S. § 7210.701(a)), which provides that the Department, in consultation with the advisory board, Building Officials and Code Administrators International, Inc. (BOCA), National Conference of State Building Code Standards (NCSBCS) and other interested parties, adopt by rulemaking a program of required training and certification for all categories of code administrators.

Section 701(e)(1) of the act also provides that the Department determine the time period in which current code administrators shall meet the training and certification requirements of Act 45. The Department will adopt and implement a continuing education program in accordance with section 701(f) of the act. The Department is empowered to establish a procedure providing for the notification and hearing process for decertification for just cause under section 701(h) of the act. Authority to adopt and promulgate fees for educational programs, testing and certification of code administrators is contained in section 701(j) of the act. The Department will set minimum levels of liability insurance applicable to third-party agencies under section 701(k) of the act.

Background

The purpose of the act is to establish a Statewide building code, Uniform Construction Code (UCC). This provides uniform standards for builders, and greater protection for building owners and occupants, and the general public. Municipalities in this Commonwealth will utilize the UCC to assure that this Commonwealth has a uniform, modern construction code that will insure safety, health and sanitary construction, promote state-of-the-art techniques and encourage cost-effectiveness. An important facet of Act 45 is "to assure that officials charged with the administration and enforcement of the technical provisions of [the] act are adequately trained and supervised." See section 102(b)(6) of the act (35 P. S. § 7210.102(b)(6)). These officials will be certified in categories appropriate to the work performed. The Department will regulate these officials as code administrators and mandate continuing education.

The UCC takes effect 90 days after the publication of final-form regulations by the Department adopting the required National standards for buildings and energy conservation, and setting forth the administrative provisions under the code. Under section 701 of the act, the Department is required to adopt a program of training and certification for code administrators. Code administrators are municipal code officials, construction code officials, third-party agencies or the Department. Code administrators are generally responsible for plan review of construction documents, inspection of construction or administration and enforcement of codes and regulations under the act or related acts.

Section 701 of the act took effect on November 10, 1999. Since the passage of the act, the Department has received numerous requests for guidance on training and certification from current code administrators, municipalities and third-party agencies. Municipalities, current code administrators and third-party agencies need ample time to plan and prepare for the effective date of the UCC and to complete certification. Accordingly, the Department determined it was necessary to promulgate these regulations on training and certification before the regulations establishing the UCC.

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

Since the passage of the act, extensive outreach and communication efforts have been undertaken to gain input from the various affected parties including representatives from BOCA, three regional Pennsylvania Chapters of BOCA, Pennsylvania Code Training Consortium (CTC), Pennsylvania Housing Research Center (PHRC), Building Codes Assistance Project (BCAP) and the United States Department of Energy (DOE). Department representatives met almost weekly with interested persons to answer questions and solicit comment. A summary of some of these activities is as follows. The Department attended the CTC's inaugural meeting in October 1999 and has attended its subsequent quarterly meetings. On December 16, 1999, the Department held a general stakeholders' meeting to discuss the act and identify stakeholders. On June 16, 2000, the Department posted a draft of this training and certification regulations on its website (www.dli.state.pa.us) and solicited comments from stakeholders. The Department has received a DOE training grant for building codes and is in the process of contracting with PHRC to implement training programs. The Department received, reviewed and answered numerous emails and faxes from stakeholders, construction code officials, trade associations, and local governments concerning certification and other aspects of the UCC. On July 19, 2000, the Department held a stakeholders' meeting on its draft training and certification regulations. On July 26, 2000, the Department posted some proposed changes to its draft regulations on its internet site. On October 18, 2000, Department representatives met with members of Pennsylvania Building Officials Conference (PennBoc) at their annual conference to discuss training and certification requirements. The rulemaking was also discussed with the Department's Accessibility Advisory Board.

Purpose

As stated in section 102(b) of the act, the purpose of the act is to insure safe, uniform, cost-efficient, modern construction standards throughout this Commonwealth

by adopting a Statewide building code governing the construction, alteration, repair and new occupancy of all structures in this Commonwealth. Officials charged with the administration and enforcement of the technical provisions of the act have to be adequately trained and supervised. This proposed rulemaking provides a certification program, based upon consultation with BOCA, and establishes minimum continuing education requirements for code administrators for the specific work that is to be performed. It also contains procedures for decertification of code administrators for just cause. It also provides the insurance requirements for third-party agencies that may be contracted with to act as a construction code official for local governments and the Department. The regulations also set the time period for current code administrators to meet the training and certification requirements of the act and the registration of current code officials until these requirements are met. The regulations set forth fees for initial certification and registration, certification renewal, third-party agency certification and renewal and photo identification replacement.

Since the passage of the act, interested parties have requested information concerning the training and certification standards, to prepare themselves for enforcement responsibilities under the UCC.

Summary of Proposed Rulemaking

Section 401.1. Definitions.

This section provides definitions for the terms provided in the regulations. The section defines an "accredited academic institution" for continuing education completion.

The section:

- (1) Provides the statutory citation for the act.
- (2) Identifies and provides the addresses for the Automatic Lift Institute (ALI) and the American Society of Mechanical Engineers (ASME).
- (3) Contains the definition of apparatus such as "auto lift," "belt manlift," "conveyor," "elevator" and "passenger ropeway."
- (4) Contains definitions for "code administrator" and "construction code official." A "current code official" is defined as an individual who engaged in the activities of "code administrator" prior to the effective date of this chapter.
- (5) Provides a definition of "Uniform Construction Code" as provided in section 301 of the act (35 P.S. § 7210.301).
- (6) Contains the definition of "Department" as being the Department of Labor and Industry" and "Secretary" as being the Secretary of the Department.

Section 401.2. Fees.

This section establishes fees for certification, registration, renewals, and photo identification card replacements. This section also establishes that the fees are charged for each application and not for each certification category. Fees are nonrefundable. The following fees are listed: \$50 for initial certification and registration; \$50 for certification renewal; \$250 for third-party agency certification and renewal; and \$10 for photo identification replacement.

Section 401.3. Certification required.

This section requires the certification of all persons performing plan review of construction documents, inspection of construction or administration of the UCC. Certification is also required for persons approving plans or

performing inspections relating to accessibility requirements. The Department may refuse certification for just cause if written notification is provided. Certification will be valid for 3 years.

Section 401.4. Application and identification.

This section establishes the requirements for certification and the Department's issuance of photo identification cards for all certified code administrators. Applicants for certification will have to pass a certification examination or have successfully passed an examination within 6 years of the effective date of this chapter, submit an application and pay the required fee. The Department will issue a photo identification card to an applicant who meets the certification requirements. The Department must be notified in writing if the photo identification card is lost or destroyed and a replacement fee will be charged.

Section 401.5. Waivers.

This section details the Department's requirements for the waiver of testing requirements for certain code administrators. The Department may waive the testing requirements if the applicant passed a substantially similar certification examination within 6 years. If an applicant passed a substantially similar examination during a period which exceeds 6 years, the Department may grant a waiver if the applicant submits evidence of continued employment in related fields, current certification from a model code organization, or substantial education in related fields.

Applicants for waiver will be required to submit an application and pay the certification fee.

Section 401.6. Certification categories and testing.

This section provides that the Department will issue certifications for specific categories to applicants who receive a passing grade on all of the examinations for each required category. This section also lists all of the categories and the examinations required for each category. These categories include: 1 and 2 family dwellings building inspector; 1 and 2 family dwellings electrical inspector; 1 and 2 family dwellings mechanical inspector; 1 and 2 family dwellings plumbing inspector; 1 and 2 family dwellings energy inspector; building inspector; fire prevention inspector; electrical inspector; mechanical inspector; plumbing inspector; energy inspector; accessibility specialist; building plans examiner; electrical plans examiner; mechanical plans examiner; plumbing plans examiner; energy plans examiner; building code official; elevator inspector; conveying systems inspector; belt manlift inspector; auto lift inspector; and passenger ropeway inspector.

Section 401.7. Certification category specifications.

This section describes each certification category and lists most of the duties performed by code administrators certified in each category comparable to the testing certification categories.

Section 401.8. Certification renewal.

This section requires certification renewal every 3 years and establishes the requirements for an application for renewal. These requirements include the completion of an application, submission of acceptable proof of completion of continuing education and payment of a renewal fee. An applicant for renewal shall obtain a photo identification card in accordance with § 401.4. The Department will not renew a certificate that remained lapsed for more than 1 year unless the applicant passes the required examinations under § 401.6. Further, this section contains the

requirements for acceptable proof of completion of continuing education which shall contain the name and address of the training provider, the dates attended, the credit hours claimed, the title of the course, and the subject matter of the course. The Department may not renew a certification during a period of decertification.

Section 401.9. Continuing education.

This section requires that an applicant for certification renewal complete 15-credit hours of continuing education for renewal of each certification up to the maximum of 45 credit hours for each individual. This section requires that an applicant must complete at least 1/3 of the continuing education credits in approved courses relating to the applicant certification categories. Additionally, this section lists the acceptable courses of study for continuing education credits: attendance at a seminar or technical presentation; completion of a self-study course; completion of a classroom course offered by an accredited academic institution; instruction at a continuing education seminar or a technical presentation for an approved sponsor; successful completion of an examination for new certification category listed in § 401.6; and attendance at a model code organization code change hearings.

Section 401.10. Department-approved providers.

This section lists the Department approved training providers and allows the approval of additional training providers. The following sponsors are preapproved to provide continuing education credit hours: The National Conference of States on Building Codes and Standards; a Federal, Commonwealth or state agency; an accredited academic institution; a model code organization or its accredited local chapter; a trade association representing design professionals or the construction industry; a National standards writing organization; and an association serving or representing Commonwealth municipalities. The Department will approve additional providers that demonstrate the competency to provide additional continuing education programs, and submit an application and appropriate documentation that it meets the requirements of § 401.9. The Department may revoke approval of any provider that does not comply with § 401.9 or § 401.10 following notice and the opportunity to be heard.

Section 401.11. Certification of third-party agency.

This section requires current certification for a third-party agency to act as construction code officials under a contract with a person, firm or corporation. An applicant for certification as a third-party agency shall submit an application and required fee to the Department. A third-party agency must provide documentation to the Department verifying that its employees who act as construction code officials and perform plan review are currently registered or certified in the specific categories applicable to the work they perform.

Section 401.12. Liability insurance.

This section requires a third-party agency to carry errors and omission insurance in at least the amount of \$1 million for each person and each occurrence to satisfy claims or judgments for damages. A third-party agency shall submit evidence of insurance as a condition for obtaining and renewing certification consisting of a certificate of insurance or a copy of the declarations page setting forth the effective date, expiration date and the required amount of coverage. This section requires that a third-party agency immediately notify the Department of any changes in its errors and omissions liability insurance. Upon notice of loss or cancellation of coverage, the

Department will immediately initiate action to decertify the third-party agency under § 401.14 (relating to decertification or refusal).

Section 401.13. List of code administrators.

This section requires the Department to maintain a list of code administrators indicating their categories of certifications. This list will be made available to municipalities and the public upon request.

Section 401.14. Decertification or refusal.

This section establishes that the Department may initiate an action to decertify a code administrator or refuse to issue certification for just cause. This section also lists the types of corrective action the Department is authorized to take against a code administrator for just cause. Just cause will consist of the following: failure to remedy an error or omission specified in a formal warning or failure to comply with an order issued by the Department under this section; fraud or deceit or making untrue representation in obtaining a certificate; failure to remit the required certification fee; violation of the act or this chapter; incompetence or gross negligence; acting in a manner presenting a danger to the public health or safety; pleading guilty, entering a plea of nolo contendere or being found guilty of a felony or any crime relating to the business of code administrator or receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges; having a certification or any authorization to engage in the business of code administrator revoked or suspended, having other disciplinary action taken or having an application denied by a reciprocal jurisdiction; failing to complete continuing education requirements or engaging in deceit or misrepresentation in the reporting of continuing education requirements; engaging in fraud, deceit or an act of moral turpitude while acting as a code administrator; aiding and abetting a person engaging in code administrator activity is not certified or registered; being a third-party agency that does not comply with § 401.12; and engaging in the activities of a code administrator or advertising as a code administrator without a current and appropriate certification or registration.

This section provides the Department's procedure for decertification, and the notice and hearing provisions for decertification or refusal to grant certification according to 2 Pa.C.S. (relating to administrative law and procedure) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

The Department may, for just cause, administer a formal warning, require the code administrator to take remedial educational courses, decertify the code administrator for up to 3 years and require the surrendering of the certificate, or deny the application for certification. Unless ordered to do so by a court of competent jurisdiction, the Department will not reinstate certification to a person who was decertified unless the full period of decertification has elapsed; the code administrator demonstrates that he is fully rehabilitated and that recertification would not be detrimental to the public health and safety if the code administrator was convicted of a crime related in any way to code enforcement; the person has complied with the conditions imposed by the Department's order of decertification; and the person complies with § 401.4.

Section 401.15. Registration of current code administrators.

A current code administrator engaged in plan review or inspection of one-family or two-family residential property may continue to engage in these activities without meeting the training and certification requirements of this chapter for 3 years from the effective date of this proposed rulemaking. After the expiration of this period, the current code administrator shall meet the training and certification requirement of this proposed rulemaking. A current code administrator engaged in plan review or inspection of other buildings and structures may continue to engage in these activities without meeting the training and certification requirements of this chapter for 5 years from the effective date of this proposed rulemaking. After this period, this current code administrator shall meet the training and certification requirements of this proposed regulation.

A current code administrator shall register with the Department by submitting a completed Department-provided form and furnishing required documentation consisting of an affidavit completed by the employer responsible for oversight of the current code administrator containing a description of the duties, employment and length of employment.

This section also provides for the issuance of photo identification cards to registered current code administrators. This identification card will expire on the date that the current code administrator must meet the training and certification requirements of this chapter. A fee will be charged for the identification.

Section 401.16. Change of address or employer.

This section requires certification and registration holders to notify the Department of any change in mailing address or employer within 30 days.

Affected Persons

Those affected by this proposed rulemaking are current and prospective code administrators including employees of the Department, municipalities, political subdivisions and third party agencies. These employees are required to meet the certification requirements of the act, including the specific category testing in order to perform their duties. Code administrators will have to complete mandatory continuing education hours to renew certifications. Employers will insure that code administrators meet this chapter's requirements. Third party-agencies will have to obtain appropriate insurance coverage. The Department will have to meet the staffing requirements to ensure the certification and renewal of code administrators. The general public is also affected in that the use of trained and certified building code administrators to perform building inspections will increase public safety.

The Department of Transportation agreed that code administrators may obtain photo identification cards at its drivers license centers so that code administrators may comply with §§ 401.4 and 401.15.

Fiscal Impact

The Commonwealth will incur ongoing costs related to the administration of the new certification provisions. These costs will be greater at the onset of the certification program and will decrease over the course of 5 years. These administrative costs are the result of the act requirements.

The Department will be required to augment its existing staff to review, process and evaluate applications for certification of code administrators. The Department, an

employer of code administrators, will be required to train and certify its existing employees. Further, the Department will also incur costs in providing continuing education for its employees.

Local governments will only incur costs if they decide to administer and enforce the UCC. Local governments that conduct building code programs, and third-party agencies which hire code administrators, will incur costs associated with training, certification and continuing education of their employees. To offset these costs, local governments will be able to charge plan review and building permit fees to owners or builders. Third-party agencies will have to pay the costs to obtain appropriate insurance coverage.

Reporting, Recordkeeping and Paperwork Requirements

This proposed rulemaking will require the creation of new forms and reporting requirements. The Department will develop forms for certification, registration and certification renewal. Current code administrators will be required to register and furnish employment information. Prospective code officials will be required to submit proof of completion of testing and an application for certification.

All code administrators will be required to provide documentation of continuing education for certification renewal every 3 years.

Third-party agencies will be required to submit applications containing lists of code administrators and documentation of insurance coverage.

Sunset Date

A sunset date is not appropriate for this proposed rulemaking. The Department is required under section 304 of the act (35 P.S. § 7210.304) to adopt successor BOCA and other model building codes such as the *ICC International One and Two Family Dwelling Code* and the *International Fuel Gas Code*. This requirement provides the Department the opportunity to periodically monitor this proposed rulemaking.

Effective Date

This proposed rulemaking will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Charles J. Sludden, Director of Bureau of Occupational and Industrial Safety, Department of Labor and Industry, Room 1613, Labor & Industry Bldg., 7th and Forster Streets, Harrisburg, PA, 17120 or by e-mail to csludden@dli.state.pa.us within 30 days of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 26, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days

of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed regulations to which an objection is made. 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.

JOHNNY J. BUTLER,
Secretary

Fiscal Note: 12-57. (1) General Fund; (2) Implementing Year 2000-01 is \$0; (3) 1st Succeeding Year 2001-02 is \$300,000; 2nd Succeeding Year 2002-03 is \$300,000; 3rd Succeeding Year 2003-04 is \$200,000; 4th Succeeding Year 2004-05 is \$100,000; 5th Succeeding Year 2005-06 is \$100,000; (4) Fiscal Year 1999-00 \$New Program; Fiscal Year 1998-99 \$New Program; Fiscal Year 1997-98 \$New Program; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XIV. UNIFORM CONSTRUCTION CODE

CHAPTER 401. UNIFORM CONSTRUCTION CODE TRAINING AND CERTIFICATION OF CODE ADMINISTRATORS

Sec.	Definitions.
401.1	Definitions.
401.2	Fees.
401.3	Certification required.
401.4	Application and identification.
401.5	Waivers.
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401.7	Certification category specifications.
401.8	Certification renewal.
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401.10	Department-approved providers.
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401.12	Liability insurance.
401.13	List of code administrators.
401.14	Decertification or refusal to certify.
401.15	Registration of current code administrators.
401.16	Change of address or employer.

§ 401.1 Definitions.

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

Accredited academic institution—A high school, technical or vocational school, private school licensed or registered with the Department of Education, junior college, community college or university.

Act—The Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

ALI—The Automatic Lift Institute, P. O. Box 33116, Indialantic, Florida, 32903-3116.

ASME—The American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5900.

Auto lift—A lifting device specifically designed to raise and stably support an automobile vehicle free of the ground by engaging structural elements of the vehicle such as wheels, body and frame members, axle housings, and wheel suspension components described in and governed by ALI standards adopted by the Department in this chapter under the Uniform Construction Code.

Belt manlift—A conveyance device which consists of a power driven endless belt that moves in one direction only and is provided with steps or platforms and handholds for the transportation of personnel from floor

to floor as described in and governed by ASME standards adopted by the Department in this chapter under the Uniform Construction Code.

Code administrator—A municipal code official or third-party agency certified with the Department under the act or the Department. The term includes an individual certified in a category established under this chapter to perform plan review of construction documents or administer and enforce codes and regulations.

Construction code official—An individual certified by the Department in an appropriate category established under section 701(b) of the act (35 P. S. § 7210.701(b)) to perform plan review of construction documents, inspect construction or administer and enforce codes and regulations.

Conveyor—A horizontal, inclined or vertical device for moving or transporting bulk material, packages or objects in a path predetermined by the design of the device and having points of loading and discharge, fixed or selected, and related equipment and devices described in and governed by ASME standards adopted by the Department in this chapter under the Uniform Construction Code.

Current code administrator—An individual who performed plan review of construction documents, inspections of one-family or two-family residential property or other buildings and structures or administered and enforced a construction code program, and who was employed by or under contract with the Commonwealth or a municipality prior to ____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.). The term includes an individual who performed these duties as an employee, contractor or agent of a person employed by or under contract with the Commonwealth or a municipality of this Commonwealth prior to ____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

Department—The Department of Labor and Industry of the Commonwealth.

Elevator—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.

Passenger ropeway—An aerial tramway, aerial lift, surface lift, tow, conveyor, or other lifting device which carries, pulls or pushes passengers along a level or inclined path by means of a haul rope or other flexible element which is driven by a power unit remaining essentially at a single location.

Secretary—The Secretary of the Department.

Uniform Construction Code—The *International Building Code First Edition 2000*, the *International Residential Code for One- and Two- Family Dwellings 2000*, available from BOCA International, 4051 W. Flossmoore Rd., Country Club Hills, IL 60478-5795 1 (800) 214-4321; and any standards adopted by the Department in this chapter under section 301 of the act (35 P. S. § 7210.301).

§ 401.2. Fees.

- (a) The following fees apply in this part:
 - (1) Initial certification and registration. \$ 50
 - (2) Certification renewal. \$ 50
 - (3) Third-party agency certification and renewal. \$250
 - (4) Photo identification replacement. \$ 10

(b) The Department will charge one fee per application. An applicant may apply for certification for multiple categories on a single application form. All fees are nonrefundable.

§ 401.3. Certification required.

(a) A person may not perform a plan review of construction documents, inspect construction or administer and enforce the Uniform Construction Code without being currently certified by the Department in the category applicable to the work that is to be performed.

(b) A person may not approve plans or perform inspections relating to accessibility requirements without being certified by the Department as an accessibility specialist.

§ 401.4. Application and identification.

(a) An applicant for certification shall submit a Department-provided application, pay the required fee and submit verification of meeting the requirements of this chapter and passing all of the certification examinations for a specific certification category listed in § 401.5 (relating to waivers) by ____ (*Editor's Note:* The blank refers to a date 6 years prior to the effective date of adoption of this proposed rulemaking.).

(b) The Department will issue a photo identification card to an applicant who meets the certification requirements.

(c) A certification holder shall notify the Department in writing if the photo identification card is lost or destroyed. The Department will charge a required fee for issuance of a new photo identification card.

(d) Certification and certification renewal will not be valid until the Department receives the required fee.

(e) The period of certification shall be 3 years from the issuance date.

(f) The Department may refuse to issue certification for just cause in accordance with § 401.14 (relating to decertification or refusal). The Department will provide written notification of the reasons for the refusal to issue certification.

§ 401.5. Waivers.

(a) The Department may grant a request for waiver of the testing requirements of § 401.6 (relating to certification categories and testing) if the applicant meets any of the following criteria:

(1) Passed a test substantially similar to the testing categories listed in § 401.6 within ____ (*Editor's Note:* The blank refers to a date 6 years prior to effective date of adoption of this proposed rulemaking.).

(2) Passed a test substantially similar to the testing categories listed in § 401.6 before ____ (*Editor's Note:* The blank refers to a date 6 years prior to effective date of adoption of this proposed rulemaking.) so long as the applicant submits any of the following to the Department:

(i) Evidence of continued employment in the related field.

(ii) Current certification issued by a model code organization.

(iii) Evidence of substantial education in associated fields.

(b) An applicant for waiver shall complete a Department-provided application form and pay the required application fee. If the Department approves the

waiver, the applicant shall comply with § 401.4 (relating to application and identification).

§ 401.6. Certification categories and testing.

The Department will issue a certification for specific category to an applicant who receives a passing grade in all of the examinations required for that category. The Department will accept the following category examinations administered by the Department, the National Certification Program for Construction Code Inspectors, Assessment Services, Incorporated, the National Association of Elevator Safety Authorities or other Nationally-recognized testing program approved by the Department:

<i>CERTIFICATION CATEGORIES</i>	<i>EXAMINATION NUMBER and NAME</i>
1 & 2 Family dwellings building inspector	1A Building 1 & 2 family dwelling
1 & 2 Family dwellings electrical inspector	2A Electrical 1 & 2 family dwelling
1 & 2 Family dwellings mechanical inspector	4A Mechanical 1 & 2 family dwelling
1 & 2 Family dwellings plumbing inspector	5A Plumbing 1 & 2 family dwelling
1 & 2 Family dwellings energy inspector	E1 Residential energy plan review & inspection
Building inspector	1B Building general
	3B Fire protection general
Fire prevention inspector	F1 Fire prevention inspection general
Electrical inspector	2B Electrical general
Mechanical inspector	4B Mechanical general
Plumbing inspector	5B Plumbing general
Energy inspector	E2 Commercial energy inspection
Accessibility specialist	Building codes accessibility specialist
Building plans examiner	1B Building general
	1C Building plan review
	3B Fire protection general
	3C Fire protection plan review
Electrical plans examiner	2B Electrical general
	2C Electrical plan review
Mechanical plans examiner	4B Mechanical general
	4C Mechanical plan review
Plumbing plans examiner	5B Plumbing general
	5C Plumbing plan review
Energy plans examiner	E3 Commercial energy plan review
Building code official (code administrator)	Department-administered test on State law and application
Elevator inspector	Qualified elevator inspector test or its equivalent
Conveying systems inspector	Department-administered test on ASME B 20.1 standard
Belt manlift inspector	Department-administered test on ASME B 90.1 standard
Auto lift inspector	Department-administered test on ALI ALCTV-98 standard
Passenger ropeway inspector	ANSI B77.1-1999 edition

§ 401.7. Certification category specifications.

An individual certified by the Department in the following categories may perform the duties described in the specific category as a construction code official:

(1) *One and two-family dwellings building inspector:*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous structural conditions and comply with the Uniform Construction Code.

(ii) Duties include inspection of footings and foundations, concrete slabs, wood decay and termite protection, floor and ceiling framing, wall framing, roof framing, masonry walls, sheathing, roof covering, interior and exterior wall coverings, means of egress system and safety glazing.

(2) *One and two-family dwellings electrical inspector:*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous electrical installations and comply with the Uniform Construction Code.

(ii) Duties include determining compliance of electrical service, electrical distribution systems, wiring methods, panel boards, control devices, conductors and electrical fixture installation.

(3) *One and two-family dwellings mechanical inspector:*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous mechanical installations and comply with the Uniform Construction Code.

(ii) Duties include determining compliance of mechanical equipment, gas fuel supply systems, venting of appliances, air ducts, combustion air and comfort cooling.

(4) *One and two-family dwellings plumbing inspector:*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that these structures are free from hazardous plumbing installations and comply with the Uniform Construction Code.

(ii) Duties include determining compliance of water service, building sewer, water distribution, drainage, waste and vents and fixtures.

(5) *One and two-family dwellings energy inspector:*

(i) Inspects one-family and two-family dwellings and jurisdictional accessory structures to ensure that energy installations are made in the manner specified in the Uniform Construction Code.

(ii) Duties include determining compliance of conditioned or unconditioned spaces, R-values for roof/ceiling, floor and wall assemblies and insulation placement, installation of materials for the building envelope and its components, moisture control methods such as caulking, sealing and weather-stripping, duct and dipping insulation and sealing criteria, thermostats for each heating and cooling system, electrical metering, lighting installation and controls and piping insulation, circulation pump controls, heat traps, shower heads and pool cover installations.

(6) *Building inspector:*

(i) Ensures that buildings and structures are constructed in accordance with the Uniform Construction Code.

(ii) Duties include inspection of construction site and building location, footings and foundations, wood and steel framing and connections, masonry construction, pre-cast and cast-in-place concrete, exterior weather boarding, fire-stopping and draft-stopping, building com-

ponents related to life safety and fire protection systems and building components related to size, installation and workmanship.

(7) *Electrical inspector:*

(i) Ensures that electrical installations are made in accordance with the Uniform Construction Code regardless of the size or components used in the installation.

(ii) Duties include determining compliance of raceways (installations, size), cables, panel boards and boxes, conductors, control devices, motors and generators, electrical equipment and special occupancies.

(8) *Mechanical inspector:*

(i) Ensures that mechanical installations are made in the manner specified in the Uniform Construction Code.

(ii) Duties include determining compliance of fuel piping systems, heating, cooling and ventilation, fuel-fired equipment venting, steam and hot water heating systems and piping and energy conservation.

(9) *Plumbing inspector:*

(i) Ensures that plumbing installations are made in accordance with the Uniform Construction Code.

(ii) Duties include determining compliance of underground piping installation, rough-in inspections, drain-waste-venting (DWV) systems, pressure testing, water distribution systems, observation and elimination of cross connections, system pumps, tanks and pressure vessels and fixtures, traps and valves and their connections.

(10) *Energy inspector:*

(i) Ensures that the building envelope, mechanical systems, electrical power and lighting systems and building service systems and equipment comply with the approved construction documents and the Uniform Construction Code.

(ii) Duties include verifying that building envelope and components meet minimum requirements for installation of materials and that building envelope penetrations are caulked, sealed and weather-stripped, determining compliance of moisture control methods, installation of and types of mechanical equipment and efficiencies, heating, ventilation and air conditioning (HVAC) equipment, ducts and piping, insulation and sealing, lighting installation and lighting controls for building interiors and exteriors, permanently wired poly-phase motors and their efficiencies, piping insulation, circulation pump controls, heat traps, point-of-use controls and pool cover installations.

(11) *Accessibility specialist:*

(i) Ensures that buildings and structures are constructed in accordance with the accessibility provisions of the Uniform Construction Code and that construction documents submitted as part of a permit application comply with the accessibility provisions of the Uniform Construction Code.

(ii) Duties include inspection of building sites and all interior building components to verify compliance with the accessibility standards or review of construction documents to verify that the design of building sites and all interior components comply with the accessibility standards.

(12) *Building plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining the degree of compliance necessary for new construction projects, alterations or repairs, proper use group/type of construction classification, determining height and area requirements, minimum means of egress requirements, minimum light and ventilation requirements, minimum design structural loads, adequacy of soils investigations, adequacy of footing and foundation designs, minimum fire-resistance requirements, adequacy of barrier-free designs, minimum energy conservation requirements and adequacy of fire-protection systems.

(13) *Fire prevention inspector:*

(i) Conducts basic fire prevention inspections and has a general knowledge of applicable codes and standards.

(ii) Duties include field inspections, preparation of correspondence and inspection reports, handling complaints, and maintaining files related to inspections that were conducted.

(14) *Electrical plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining proper number of services, proper location of services, adequacy of emergency systems, proper service size, proper over-current protection, special use applications and proper conductor size and application.

(15) *Mechanical plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining compliance of fuel piping systems, fuel-burning appliances, mechanical refrigeration systems, incinerators, energy conservation equipment and controls, boilers and pressure vessels, venting systems, hydronic and steam-piping systems and ventilation air systems.

(16) *Plumbing plans examiner:*

(i) Determines that the construction documents submitted as part of a permit application comply with the Uniform Construction Code.

(ii) Duties include determining that water service, building sewer/storm sewer and other underground piping are properly sized and located, determining that proper drainage fixture units, fixture locations and clearances are used, determining the adequacy of drain-waste-venting (DWV) riser diagrams and water distribution systems and determining the proper number of fixtures and proper materials as proposed.

(17) *Energy plans examiner:*

(i) Ensures that the design criteria specified for a building are correct and in accordance with the Uniform Construction Code and that alterations, additions and change of use or occupancy are in compliance with the Uniform Construction Code.

(ii) Duties include determining compliance of the design conditions specified, conditioned or unconditioned spaces, R values for roof/ceiling, floor and wall assemblies and insulation placement, insulation of materials for the building envelope and its components, moisture control methods such as caulking, sealing and weather-stripping, duct and dipping insulation and sealing criteria, thermostats for each heating and cooling system, electrical

metering, lighting installation and controls, piping insulation, circulation pump controls, heat raps, shower heads and pool cover installations.

(18) *Building code official:*

(i) Manages, supervises and administers building code enforcement activities. The Department, municipality or a third-party agency that operates an enforcement program under the act will employ at least one person certified or registered as a building code official.

(ii) Duties include management of building code enforcement activities, supervision of building inspectors or plans examiners, issuing building permits, occupancy permits, notice of violations and orders to vacate, and initiation of prosecutions.

(19) *Elevator inspector:*

(i) Inspects electric and hydraulic elevators and other lifting devices to ensure that these installations are free from conditions that would present a life safety or fire hazard to persons using the installations.

(ii) Duties include determining compliance with the Uniform Construction Code regarding door closers, interlocks, car safeties, over-speed governors, safety tests, reshackling, ropes, fireman's recall, brakes and other related elevator equipment and the investigation of accidents.

(20) *Conveying systems inspector:*

(i) Inspects conveying systems to insure that installations are free from conditions that would present a life safety or fire hazard to a person using these installations.

(ii) Duties include determining compliance of backstops and brakes, overload protection, gates and switches, counterweights, guards and guarding, headroom, and controls and operation.

(21) *Belt manlift inspector:*

(i) Inspects belt manlifts to insure that installations are free from conditions that would present a life safety or fire hazard to a person using these installations.

(ii) Duties include determining compliance of floor openings, riding clearance, landings, hood on underside of floor openings, protection of entrances and exits, bottom arrangements, top arrangements, emergency exit ladders, superstructure bracing, illumination, weather protection, brakes, belts, pulleys, speed, platforms or steps, handholds, safety stops, start/stop control ropes, factors of safety, instruction and warping signs, operating rules, and conducting tests and inspections.

(22) *Auto lift inspector:*

(i) Inspects auto lifts to insure that installations are free from conditions that would present a life safety or fire hazard to persons using these installations.

(ii) Duties also include determining compliance for quality assurance and documentation, determining construction compliance for the specific requirements for: welding; runways, ramps, chocks and runway stops; adapters; vehicle positioning; non rotating device; air-oil tanks; low oil control; swing arms; balconies; travel limits; load holding device; out-of-level condition; multiple electric powered posts; mobile above ground lifts; surfaces; inspection of damage; electrical safety; stability of wheel engaging mobile lifts; fastening devices; lubrication; accessory equipment; machine guarding/color coding; and other safety considerations.

(23) *Passenger ropeway inspector:*

(i) Inspects passenger ropeways to ensure that the installation is free from conditions that would present a life safety or fire hazard to a person using the installation.

(ii) Duties include investigation of accidents and determining compliances of power units, auxiliary power units, carriers, cabins, cars, location, vertical and horizontal clearances, haul rope sleeves, guides, haul rope condition and splice, structures and foundations, capacity, speed, acceleration/deceleration, loading and unloading areas, required stopping devices, brakes and rollback devices, tension systems, manual and automatic control devices, haul rope grips, operation and maintenance of equipment, electrical components, emergency shut down circuits, bypass circuits, speed regulating devices, and other related ropeway equipment with the Uniform Construction Code.

§ 401.8. Certification renewal.

(a) A certification holder shall renew a certification every 3 years from date of issuance to continue to act as a code administrator.

(b) To renew a certification, an applicant shall submit a completed Department-provided renewal form, acceptable proof of completion of continuing education and the required certification fee.

(c) An applicant for renewal shall obtain identification in accordance with § 401.4 (relating to application and identification).

(d) The Department will not renew a certification that is expired for more than 1 year unless the applicant submits a certification application under § 401.4 and passes the required examinations under § 401.6 (relating to certification categories and testing).

(e) An applicant for certification renewal shall submit proof of completion of each continuing education course. The proof of completion shall be completed by the course provider and contain the following information:

- (1) The name and address of the training provider.
- (2) The dates attended.
- (3) The credit hours claimed.
- (4) The title of the course.
- (5) The subject matter of the course.

(f) The Department will not renew the certification of a person who was decertified in accordance with § 401.14 (relating to decertification or refusal) for the period that the Department ordered the decertification.

§ 401.9. Continuing education.

(a) Prior to certification renewal, an applicant shall complete 15 credit hours of continuing education in courses relating to the professional competency of code administrators. An applicant with multiple certification areas shall complete 15 credit hours of continuing education for each category after the issuance of the certification or most recent renewal of certification. The applicant is not required to complete more than 45 credit hours for renewal. At least 1/3 of the applicant's continuing education requirement shall be in approved courses relating to applicant's certification categories.

(b) The Department will approve credit of 1-hour for each 60 minutes actually spent in attendance at one course. A self-study course will receive credit hours of 1-hour for each 60 minutes of completion time calculated by the sponsor. The Department may modify credit hours for a self-study course to comply with this section.

(c) The Department approves the following as acceptable courses of study for continuing education credits:

- (1) Attendance at a seminar or technical presentation by an approved provider.
- (2) Completion of a self-study course offered by an approved provider.
- (3) Completion of a classroom course offered by an accredited academic institution.
- (4) Instruction at a continuing education seminar or technical presentation for an approved provider.
- (5) Successful completion of an examination for new certification category listed in § 401.6 (relating to certification categories and testing)

(6) Attendance at a model code organization code change hearing.

§ 401.10. Department-approved providers.

(a) The following providers are approved to offer instruction for continuing education credit hours:

- (1) The National Conference of States on Building Codes and Standards.
- (2) A Federal, Commonwealth or state agency.
- (3) An accredited academic institution.
- (4) A model code organization or its accredited local chapter.
- (5) A trade association representing design professionals or the construction industry.
- (6) A National standards writing organization.
- (7) An association serving or representing Commonwealth municipalities.

(b) The Department will approve additional providers who demonstrate the competency to provide approved continuing education programs. An applicant for approval as a provider shall submit a completed Department-provided application and appropriate documentation that it meets the requirements of § 401.9 (relating to continuing education).

(c) The Department may revoke approval of any provider that does not comply with § 401.9 or this section. Actions will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

§ 401.11. Certification of third-party agency.

(a) Current certification as a third-party agency is required to act as a construction code official, perform plan review of construction documents, inspect construction or administer and enforce codes and regulations in accordance with the act under contract with a person, firm, corporation or the Commonwealth.

(b) An applicant for certification as a third-party agency shall submit a completed Department-provided application to the Department and pay the required fee.

(c) An applicant for certification as a third-party agency shall submit documentation that its employees or agents who act as construction code officials and perform plan review of construction documents, inspect construction or administer or enforce codes and regulations under the act are currently registered or certified in the specific categories applicable to the work performed.

(d) An applicant for certification under this section shall submit acceptable documentation of insurance coverage required under § 401.12 (relating to liability insurance).

(e) A third-party agency shall provide written notification to the Department within 60 days of the hiring or change of employment status of an employee or agent who acts as a construction code official and performs plan review of construction documents, inspects construction or administers or enforces codes and regulations under the act.

§ 401.12. Liability insurance.

(a) A third-party agency shall carry errors and omissions liability insurance in at least the amount of \$1 million for each person and each occurrence to satisfy claims or judgments for property damage or personal injury, or both.

(b) As a condition for obtaining and renewing certification, a third-party agency shall submit to the Department satisfactory evidence that it has obtained errors and omissions liability insurance as required by this section. A certification or renewal will not be issued unless the third-party agency provides proof of insurance which shall consist of a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and policy coverage in the amounts required.

(c) A third-party agency shall notify the Department immediately of the cancellation of its errors and omissions liability insurance, the failure or refusal to renew its errors and omissions liability insurance, change of insurance carrier, change of policy dates or changes of coverage amounts. Upon notice of loss or cancellation of insurance coverage, the Department will immediately initiate action to decertify the third party agency under § 401.14 (relating to decertification or refusal to certify).

§ 401.13. List of code administrators.

The Department will maintain a list of code administrators indicating their categories of certifications. The list will be available to municipalities and the public.

§ 401.14. Decertification or refusal to certify.

(a) *Decertification or refusal to certify.* The Department may initiate action against a code administrator or refuse to issue certification for just cause. Just cause includes the following:

- (1) Failure to remedy an error or omission specified in a formal warning or to comply with an order issued by the Department under this section.
- (2) Fraud or deceit or making untrue representations in obtaining a certification.
- (3) Failure to remit the required certification fee.
- (4) Violation of the act or this chapter.
- (5) Incompetence or gross negligence.
- (6) Acting in a manner presenting a danger to the public health and safety.
- (7) Pleading guilty, entering a plea of *nolo contendere*, being found guilty, receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition to a felony or any crime relating to the business of code administrator in the courts of this Commonwealth, a Federal court or a court of any other state, territory or insular possession of the United States.

(8) Having a certification or any authorization to engage in the business of code administrator revoked or suspended or having other disciplinary action taken, or an application for certification or authorization to engage in the business of code administrator refused or denied by the proper authority of another state or Federal district, territory or insular possession of the United States or the Federal government.

(9) Failing to complete continuing education requirements of the act or engaging in deceit or misrepresentation in the reporting of continuing education requirements.

(10) Engaging in fraud, deceit or an act of moral turpitude while acting as code administrator.

(11) Failing to enforce the act or Uniform Construction Code.

(12) Knowingly aiding and abetting a person engaging in code administrator activity who is not currently certified or registered.

(13) Being a third-party agency that does not comply with § 401.12 (relating to liability insurance).

(14) Engaging in the activities of a code administrator or advertising as a code administrator without a current certification required for the work performed, or registration issued by the Department.

(b) *Notice and hearing.* Actions of the Department relating to decertification under this section will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure). Decertification proceedings shall be conducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

(c) *Procedure for decertification.*

(1) The Department will serve the code administrator with an order to show cause under 1 Pa. Code § 35.14 (relating to orders to show cause). The order to show cause shall contain notification that the certification may be subject to action and the grounds for the action. The order to show cause shall contain notification that the code administrator is to respond in writing within 30 days after the date of service of the order. The Department will also serve a copy of the order to show cause upon the supervising official in the municipality where the alleged incidents occurred and upon the code administrator's current employer.

(2) The code administrator may respond in writing to the allegations in the order to show cause in accordance with 1 Pa. Code § 35.37 (relating to answers to orders to show cause). If made, the answer shall be filed with the Department within 30 days after the date of service of the order to show cause.

(3) At the request of the code administrator, the Department will hold a hearing on the matter. The Secretary will designate a presiding officer to conduct the hearing and to issue a proposed report under 1 Pa. Code §§ 35.201—35.207 (relating to proposed reports generally).

(4) The presiding officer shall have the power to conduct hearings under 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers). The presiding officer shall issue a proposed report that shall be served upon counsel of record or to the parties in the hearing. The presiding officer shall promptly transmit the proposed report and the certified record to the Secretary.

(5) A participant desiring to appeal to the Secretary shall, within 30 days after the service of a copy of the proposed report, file exceptions to the proposed report under 1 Pa. Code § 35.211 (relating to procedure to except to proposed report). A response may be filed within 20 days to the exceptions.

(6) The Secretary or a designee will issue a final order under 1 Pa. Code § 35.226 (relating to final orders).

(d) *Types of corrective action.* When the Department is authorized to take action against a code administrator, the Department may:

- (1) Administer a formal warning.
- (2) Require the code administrator to take remedial educational courses.
- (3) Decertify the code administrator for a period set by the Department. The Department will order the code administrator to surrender his certificate after decertification.
- (4) Deny the application for certification.
- (e) *Conditions for reinstatement.* Unless ordered to do so by a court of competent jurisdiction, the Department will not reinstate certification to a person who was decertified until the following conditions are met:
 - (1) The full period of decertification ordered by the Department has elapsed.
 - (2) If the code administrator was convicted of a felony or a crime related in any way to code enforcement, the code administrator shall demonstrate that he is fully rehabilitated and that recertification would not be detrimental to the public health and safety.
 - (3) The person has complied with conditions imposed by the Department's order of decertification.
 - (4) The person complies with § 401.4 (relating to application and identification).
 - (f) Subsection (c) supplements 1 Pa. Code §§ 35.14, 35.37, 35.201—35.207, 35.185—35.190, 35.211, and 35.226.

§ 401.15. Registration of current code administrators.

(a) A current code administrator engaged in plan review or inspection of one-family or two-family residential property may continue to engage in these activities without meeting the training and certification requirements of this chapter until _____ (*Editor's Note:* The blank refers to a date that is 3 years from effective date

of adoption of the proposed rulemaking.). To engage in plan review or inspection of one-family or two-family dwelling units after _____ (*Editor's Note:* The blank refers to a date that is 3 years from effective date of adoption of this proposed rulemaking.), a current code administrator shall meet the certification and training requirements of this chapter

(b) A current code administrator engaged in plan review or inspection of other buildings and structures that are not one-family or two-family residential structures may continue to engage in these activities without meeting the training and certification requirements of this chapter until _____ (*Editor's Note:* The blank refers to a date that is 5 years from effective date of adoption of this proposed rulemaking.) To engage in plan review and inspection of other buildings and structures after _____ (*Editor's Note:* The blank refers to a date that is 5 years from effective date of adoption of this proposed rulemaking.) a current code administrator shall meet the training and certification requirements of this chapter.

(c) A current code administrator shall register with the Department by submitting a completed Department-provided form and furnishing required documentation. Documentation is to consist of an affidavit completed by the employer responsible for oversight of the current code administrator's activities and an affidavit completed by the current code administrator containing a description of the current code administrator's duties, employment and length of employment.

(d) The Department will issue a photo identification card to a current code administrator who meets the requirements of this section, completes a Department-provided form and pays the required fee.

(e) The photo identification card will expire as registration on the date that the current code administrator must meet the training and certification requirements of this chapter.

(f) A current code administrator shall notify the Department in writing if the photo identification card is lost or destroyed. The Department will charge a required fee for issuance of a new photo identification card.

§ 401.16. Change of address or employer.

A certification or registration holder shall notify the Department of any change of mailing address or employer within 30 days.

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