

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

#### [7 PA. CODE CH. 21]

#### Lifetime Licensure of Dogs

The Department of Agriculture (Department), under the Dog Law (3 P. S. §§ 459-101—459-1205), adopts amendments to §§ 21.1 and 21.51 (relating to definitions; and lifetime dog license issuance). This final-omitted rulemaking is made under a suggestion from the Independent Regulatory Review Commission (IRRC) to toll the regulations delivered on September 1, 2004, to IRRC, the House and Senate Agriculture and Rural Affairs Committees (Committees) and the Office of Attorney General to add clarifying language to § 21.51(e)(6). Subsection (e)(6) has been modified to contain language that is consistent with the language and approach taken by the Department in § 21.51(c) and (e)(1) and (5). The language also provides flexibility if the State Board of Veterinary Medicine (Board), through its regulations, authorizes a person other than a licensed veterinarian to implant microchips. The modified language is contained in the first sentence of § 21.51(e)(6). Although it still references a veterinarian, it now contains language that would allow any other person authorized by the Veterinary Medicine Practice Act (63 P. S. §§ 485.1—485.35) and the regulations promulgated thereunder to implant a microchip. This change is consistent with and within the scope of the recommendation suggested by IRRC. In addition, the Department modified language contained in sentences three and four of § 21.51(e)(6). The modified language is the same as set forth in the first sentence of § 21.51(e)(6) and serves to further clarify the intent of this subsection.

#### *Authority*

The Department has the power and authority to amend and adopt these regulations. This authority includes:

(1) The general duty to implement the policy set forth in section 101 of the act (3 P. S. § 459-101), which states this is an act “. . . relating to dogs, regulating the keeping of dogs; providing for the licensing of dogs . . . providing for the abandonment of animals” and “providing for . . . liability of the owner of keeper of dogs for such damages.” The Department has a duty to assure the proper and humane licensure of dogs, to allow for the proper identification of dogs and a means by which a person may obtain reimbursement for certain dog-caused damages.

(2) The specific authority conferred by section 201 of the act (3 P. S. § 459-201) which bestows upon the Department the power to promulgate regulations regarding the lifetime licensure of dogs.

#### *Need for the Amended Regulation and Reason for Submission as Final-Omitted*

Public notice of intention to amend the lifetime licensure regulations under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(2)), known as the Commonwealth Documents Law (CDL), has been omitted as authorized under section 204(1) of the CDL (45 P. S. § 1204(1)), because the Department finds these procedures under the circumstances unnecessary because the amendments pertain to topics where comments from the public are not appropriate, necessary or beneficial.

The current lifetime licensure regulations of the Department are in direct conflict with the statutory provisions of the Veterinary Medicine Practice Act and therefore, must be amended. The Department is submitting the amended lifetime licensure regulations as a final-omitted rulemaking because the regulatory amendments are pursuant to a statutory amendment to the Veterinary Medicine Practice Act, which makes provisions of the current lifetime licensure regulations illegal. Therefore, this final-omitted rulemaking pertains to topics where comments from the public are not appropriate, necessary or beneficial.

The current lifetime licensure regulations in § 21.51 were published at 33 Pa.B. 1329 (March 15, 2003). The regulations were previously amended to effectuate amendments to the act, which became effective December 11, 1996. The amendments included changes to the licenses, tags and kennels provisions in sections 200—219 of the act (3 P. S. §§ 459-200—459-219), which contain the lifetime license provisions in section 201(b) of the act. The amendments to the act expanded the type of permanent identification means that could be utilized in conjunction with a lifetime license to include a microchip. The current lifetime licensure regulations allow the use of a microchip or a tattoo as a permanent means of identification, set forth who may apply a tattoo or implant of a microchip and delineate the procedure for obtaining a lifetime license. The regulations state that a tattoo “. . . shall be applied by a licensed veterinarian” (§ 21.51(d)(5)) and allow a microchip to be implanted by a licensed veterinarian or licensed kennel owner (§ 21.51(e)(1)). This language is now in direct opposition to provisions of the Veterinary Medicine Practice Act.

The Veterinary Medicine Practice Act was amended on December 9, 2002, and became effective 60 days later. The pertinent amendment to the Veterinary Medicine Practice Act involved changing the definition of the “practice of veterinary medicine” to specifically include implanting “. . . electronic identification, as determined by the board, upon any animal . . .” See section 3(10)(viii) of the Veterinary Medicine Practice Act (63 P. S. § 485.3(10)(viii)). The Department, upon learning of the amendment, requested that the Board inform the Department as to whether a microchip constituted electronic identification, “as determined by the board.” In addition, the Department sought clarification as to whether a tattoo fell under the definition of the “practice of veterinary medicine.” The Board responded that a microchip was electronic identification and the practice of implantation of a microchip was the “practice of veterinary medicine” and that application of a tattoo did not fall under the definition of the “practice of veterinary medicine.”

Given this information the current lifetime licensure regulations of the Department are in direct conflict with the statutory provisions of the Veterinary Medicine Practice Act and therefore, must be amended. This final-omitted rulemaking revises § 21.1 to include a citation for the Veterinary Medicine Practice Act and makes changes to § 21.51 that remove the mandate that only a licensed veterinarian may tattoo a dog and impose the restriction that a microchip must be implanted in a dog in a manner that is consistent with the provisions of the Veterinary Medicine Practice Act and its attendant regulations.

In the interest of continuing to carry out the policy of the act, which is to assure the health, safety and humane treatment of dogs, and to assure the regulations are consistent with the act and the Veterinary Medicine Practice Act, the Department has amended §§ 21.1 and 21.51, to effectuate the changes.

#### *Comments*

Although these regulations are being submitted as a final-omitted rulemaking, the Department under section 902 of the act (3 P. S. § 459-902), held a public hearing on May 24, 2004. Notice of the public hearing was published at 34 Pa.B. 2576 (May 15, 2004). In addition, members of the Dog Law Advisory Board, the Executive Directors of the Committees and other known interested parties, such as those who regularly attend public meetings of the Dog Law Advisory Board, were notified by regular mail. An official record of the public is available for public inspection.

The Department received four written comments regarding the final-omitted rulemaking and three persons presented testimony at the public hearing. All of the comments and testimony were in support of the changes. The only minor change made, based on a discussion with Counsel to the Board, was to include a reference to the regulations promulgated under the Veterinary Medicine Practice Act.

#### *Fiscal Impact*

##### *Commonwealth*

The final-omitted rulemaking will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The changes will not increase or decrease the regulatory workload. The changes do not increase the scope of the regulations or the duties of the Department.

##### *Political Subdivisions*

The final-omitted rulemaking will impose no additional costs and have no fiscal impact upon political subdivisions. The changes merely set forth the requirement that microchips be inserted into a dog in a manner consistent with the provisions of the Veterinary Medicine Practice Act and remove the previous restriction requiring a veterinarian to administer a tattoo. The Department will be able to provide licensing agents with any additional information or training material necessary to clarify the provisions of the Veterinary Medicine Practice Act.

##### *Private Sector*

The final-omitted rulemaking may impose an increased cost with regard to implantation of a microchip, however the Veterinary Medicine Practice Act does provide an exemption, which allows the owner of a dog to implant a microchip in his own dog. The change removing the requirement that a veterinarian apply a tattoo will actually reduce the cost of applying a tattoo and allow more persons to profit. Furthermore, purchasing a lifetime license is voluntary and the regulations endeavor to streamline and provide as much flexibility to the process as is possible.

##### *General Public*

The final-omitted rulemaking will impose no additional costs and have no fiscal impact on the general public. The final-omitted rulemaking may impose an increased cost with regard to implantation of a microchip, however the Veterinary Medicine Practice Act does provide an exemption, which allows the owner of a dog to implant a microchip in his own dog. The change removing the requirement that a veterinarian apply a tattoo will

actually reduce the cost of applying a tattoo as a permanent means of identification. Once again, purchasing a lifetime license is voluntary and the regulations endeavor to streamline and provide as much flexibility to the process as is possible.

#### *Paperwork Requirements*

The final-omitted rulemaking will not result in any appreciable increase in paperwork.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Rick Burd (717) 787-4833.

#### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 1, 2004, the Department submitted a copy of this rulemaking with proposed rulemaking omitted to IRRC and to the Chairpersons of the Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval as provided in Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5a(j.1) of the Regulatory Review Act, the final-omitted rulemaking was deemed approved by the Committees on October 6, 2004, and was approved by IRRC on October 7, 2004.

#### *Findings*

The Department finds that:

(1) Public notice of intention to amend the lifetime licensure regulations by this order under the procedures specified by sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(1) of the CDL because the final-omitted rulemaking pertains to topics where comments from the public are not appropriate, necessary or beneficial. The current lifetime licensure regulations of the Department are in direct conflict with the statutory provisions of the Veterinary Medicine Practice Act pertaining to the practice of veterinarian medicine and therefore, must be amended.

(2) The final-omitted rulemaking, in the manner provided in this order, is necessary and appropriate for the proper administration of its authorizing statute and to assure there is no conflict with another Commonwealth statute pertaining to the practice of veterinarian medicine.

(3) The modifications that were made to these regulations are intended to bring them into compliance with the provisions of the Veterinary Medicine Practice Act and its attendant regulations and do not increase the scope of the regulations.

#### *Order*

The Department, acting under authority of the authorizing statute, orders the following:

(1) The regulations of the Department, 7 Pa. Code Chapter 21, are amended by amending §§ 21.1 and 21.51 to read as set forth in Annex A.

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

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

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,  
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 5859 (October 23, 2004).)

**Fiscal Note:** 2-146. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART II. DOG LAW ENFORCEMENT BUREAU**

**CHAPTER 21. GENERAL PROVISIONS; KENNELS;  
LICENSURE; DOG-CAUSED DAMAGES**

**GENERAL PROVISIONS**

**§ 21.1. Definitions.**

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

*Account*—The Dog Law Restricted Account under section 1001 of the act (3 P. S. § 459-1001).

*Act*—The Dog Law (3 P. S. §§ 459-101—459-1205).

*Agent*—A district justice or other person within the county authorized by the county treasurer or the Department to process and issue dog license certificates and tags, as set forth under section 200(a) of the act (3 P. S. § 459-200(a)).

*Attending veterinarian*—A person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education or has a Certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, and who is either a licensed doctor of veterinary medicine in accordance with the Veterinary Medicine Practice Act (63 P. S. §§ 485.1—485.33) or the holder of a valid temporary permit to practice veterinary medicine issued under authority of that act, and who has received training or experience in the care and management of dogs, and who is familiar with the relevant aspects of the kennel or kennel procedures with respect to which that person renders an opinion.

*Department*—The Department of Agriculture of the Commonwealth.

*Domestic fowl*—Chickens, turkeys, ducks, geese and guinea fowl.

*Employee of the Department*—An employee of the Department who is assigned responsibility in regard to enforcement of the act, including a State dog warden.

*Housing facility*—Any land, premises, shed, barn, building, trailer or other structure or area housing or intended to house dogs.

*Licensed veterinarian*—A licensed doctor of veterinary medicine as defined in section 901-A of the act (3 P. S. § 459-901-A).

*Microchip*—A passive transducer encapsulated in a biocompatible material activated by a 125-kilohertz scanner, or any similar device approved by the Department.

*Primary conveyance*—The main method of transportation used to convey dogs from origin to destination, such as a motor vehicle.

*Primary enclosure*—A structure used to immediately restrict a dog to a limited amount of space, such as a room, pen, run, cage, crate or compartment.

*Rest board*—A waterproof or water resistant platform that dogs may use to recline on, positioned off the floor of the kennel.

*Sanitize*—To make physically clean and to remove and destroy, to a practical minimum, agents injurious to the health of a dog.

*Secretary*—The Secretary of the Department or a person to whom authority has been delegated by the Secretary.

*Veterinary Medicine Practice Act*—63 P. S. §§ 485.1—485.35.

**LICENSURE**

**§ 21.51. Lifetime dog license issuance.**

(a) *Eligibility.* The owner of a dog 3 months of age or older may apply to the county treasurer or agent, on a form prescribed by the Department for a lifetime license.

(b) *Lifetime license requirement.* A lifetime license shall consist of the following:

(1) A lifetime license number issued by the county treasurer or agent and a tag bearing that lifetime license number.

(2) A tattoo or microchip permanently identifying the dog.

(c) *Permanent identification requirement.* A person applying for a lifetime license shall choose either a tattoo or the implantation of a microchip as the means of permanent identification for the dog. The person applying for a lifetime license is responsible for having the dog tattooed or a microchip implanted to permanently identify the dog. Application of a tattoo or implantation of a microchip must be done in a manner consistent with the Veterinary Medicine Practice Act and 49 Pa. Code Chapter 31 (relating to State Board of Veterinary Medicine).

(d) *Tattoo as permanent identification.* If the applicant chooses to have the dog tattooed as a means of permanent identification, the following rules and procedures apply:

(1) Prior to having the dog tattooed, the dog owner shall obtain and complete a lifetime license application from the county treasurer or agent of his respective county. The dog owner shall obtain and complete the lifetime license application in person or by mail and shall return the completed lifetime license application to the county treasurer or agent. The dog owner shall include the appropriate fees, set forth on the lifetime license application and in sections 200(b) and 201(b) of the act (3 P. S. §§ 459-200(b) and 459-201(b)), with the completed lifetime license application.

(2) Upon receipt of a completed lifetime license application the county treasurer or agent shall follow the procedures in subsection (g). If the lifetime license application is determined to be complete, the county treasurer or agent shall issue a lifetime license number as set forth in subsection (g) and issue a verification of permanent identification form, prescribed by the Department.

(3) Upon receiving the lifetime license number and verification of permanent identification form issued by the county treasurer or agent, the dog owner shall have the dog tattooed in accordance with this chapter.

(4) The tattoo number applied to the dog must be the same number as the lifetime license number issued by the county treasurer or agent.

(5) The tattoo must be applied on the right hind leg on the inner part of the upper thigh of the dog. The dog owner may have the letters "PA" tattooed on the dog immediately preceding the tattoo number.

(6) The dog owner and the person applying the tattoo shall complete, date and sign the verification of permanent identification form for the dog receiving the tattoo and return it to the county treasurer or agent that issued the lifetime license number and tag. The verification of permanent identification form must set forth the exact number tattooed on the dog, identify the dog by breed and delineate the dog's age, sex, color and markings and whether the dog has been spayed or neutered. In addition, it must contain the name, address and phone number of the dog's owner and the name, address and phone number of the person applying the tattoo.

(7) The dog owner shall have 30 days from receipt of a lifetime license number and verification of permanent identification form to have the dog tattooed and return the verification of permanent identification form to the county treasurer or agent that issued the lifetime license number.

(8) Upon receiving the completed verification of permanent identification form, the county treasurer or agent shall issue the lifetime license and tag to the dog owner.

(9) A dog owner who fails to have the dog tattooed and return the completed verification of permanent identification form to the issuing county treasurer or agent within 30 days after receiving a lifetime license number and verification of permanent identification form shall be in violation of the licensure provisions of the act and this chapter and subject to the penalties prescribed therein. In addition, the lifetime license number and tag shall be void. The issuing county treasurer or agent shall return the lifetime license fee to the dog owner and record and report the noncompliance to the Department as set forth in § 21.52 (relating to recordkeeping for lifetime dog licenses). The issuing county treasurer and, if applicable, the agent shall retain the applicable issuance fees, set forth in section 200(b) of the act.

(e) *Microchip as permanent identification.* If the applicant chooses to have a microchip implanted in the dog as a means of permanent identification, the following rules and procedures apply:

(1) The dog owner shall have a microchip implanted in the dog in a manner consistent with the Veterinary Medicine Practice Act and 49 Pa. Code Chapter 31 (relating to State Board Veterinary Medicine). The microchip implanted shall be of a type consistent with the definition of "microchip" in § 21.1 (relating to definitions) and shall be implanted in accordance with the manufacturer's specifications.

(2) The dog owner shall obtain and complete both a lifetime license application and a verification of permanent identification form prescribed by the Department.

(3) The dog owner shall obtain a lifetime license application from the county treasurer or agent of his respective county. The dog owner may obtain the lifetime license application in person or by mail.

(4) The lifetime license application may be obtained and completed either prior to or after implantation of a microchip in the dog. The application and a verification of permanent identification form must be completed and

signed prior to the issuance of a lifetime license and tag. The final packet submitted by the dog owner to the county treasurer or agent must contain the properly completed lifetime license application and verification of permanent identification form and the appropriate fees, set forth on the lifetime license application and in sections 200(b) and 201(b) of the act.

(5) If the dog owner obtains a lifetime license application prior to having a microchip implanted in the dog, the dog owner may request and the county treasurer or agent shall issue a verification of permanent identification form along with the lifetime license application. If the dog owner has not yet applied for a lifetime license prior to implantation of the microchip, the licensed veterinarian implanting the microchip shall supply the verification of permanent identification form. A licensed veterinarian shall obtain the verification form from the Department. When the dog owner, consistent with the provisions of the Veterinary Medicine Practice Act and 49 Pa. Code Chapter 31, personally implants the microchip in his own dog the dog owner may obtain the verification of permanent identification form from the county treasurer or agent and shall fill out the required information.

(6) The dog owner and when the dog owner does not implant the microchip himself but, instead has a licensed veterinarian or person authorized to implant a microchip consistent with the Veterinary Medicine Practice Act and 49 Pa. Code Chapter 31 implant the microchip, the licensed veterinarian shall complete, date and sign the verification of permanent identification form for the dog in which the microchip is implanted. The completed verification of permanent identification form must set forth the identifying number of the microchip implanted, identify the dog by breed and delineate the dog's age, sex, color and markings and whether the dog has been spayed or neutered. In addition, it shall contain the name, address and phone number of the dog's owner and when a licensed veterinarian or person authorized to implant a microchip consistent with the Veterinary Medicine Practice Act and 49 Pa. Code Chapter 31 has implanted the microchip, the name, business address and phone number of the licensed veterinarian. If a licensed veterinarian or person authorized to implant a microchip consistent with the Veterinary Medicine Practice Act and 49 Pa. Code Chapter 31 implants the microchip, the licensed veterinarian shall set forth his veterinary practice license number on the verification of permanent identification form.

(7) The dog owner shall complete the lifetime license application and take or mail the completed lifetime license application and verification of permanent identification form to the county treasurer or agent of his respective county.

(8) Upon receiving a properly completed lifetime license application and verification of permanent identification form, as well as the appropriate fees, as set forth on the lifetime license application and in sections 200(b) and 201(b) of the act, the county treasurer or agent shall issue a lifetime license number and tag as set forth in subsection (g).

(9) A dog owner who fails to have the dog microchipped and return the completed verification of permanent identification form to the issuing county treasurer or agent within 30 days after receiving a lifetime license number and verification of permanent identification form shall be in violation of the licensure provisions of the act and this chapter and subject to the penalties prescribed therein. In addition, the lifetime license number and tag shall be void. The issuing county treasurer or agent shall return

the lifetime license fee to the dog owner and record and report the noncompliance to the Department as set forth in § 21.52. The issuing county treasurer and, if applicable, the agent shall retain the applicable issuance fees, set forth in section 200(b) of the act.

(f) *Dog previously microchipped.* If a person has already had a microchip implanted in his dog and seeks to obtain a lifetime license for the dog, the applicant is not required to have a new microchip implanted in the dog as a means of permanent identification. Instead the applicant shall:

(1) Obtain and complete both a lifetime license application and a verification of permanent identification form prescribed by the Department. The lifetime license application may be obtained and completed either prior or subsequent to having the dog scanned for a microchip as set forth in this subsection. The verification of permanent identification form must be filled out at the same time the dog is scanned.

(2) Have a licensed veterinarian or kennel owner scan the dog to assure the microchip has been properly implanted and to obtain the identifying number of the microchip.

(3) The dog owner and the licensed veterinarian or kennel owner shall complete, date and sign the verification of permanent identification form for the dog in which the microchip was scanned. The verification of permanent identification form must set forth the identifying number of the microchip scanned, identify the dog by breed and delineate the dog's age, sex, color and markings and whether the dog has been spayed or neutered. In addition, it must contain the name, address and phone number of the dog's owner and the name, business address and phone number of the person scanning the microchip number. If a veterinarian is involved, the veterinarian shall set forth his veterinary practice license number on the verification of permanent identification form.

(4) The dog owner or licensed veterinarian may obtain a verification of permanent identification form.

(i) The dog owner may obtain a verification of permanent identification form, along with a lifetime license application, from the county treasurer or agent in his respective county of residence prior to scanning of the dog for an existing microchip. If the dog owner takes his dog to a licensed veterinarian for implantation of the microchip and has not yet applied for a lifetime license, the licensed veterinarian shall supply the verification of permanent identification form.

(ii) A licensed veterinarian shall obtain verification of permanent identification forms from the Department.

(5) The dog owner shall deliver to the county treasurer or agent, in person or by mail, the properly completed lifetime license application and verification of permanent identification form and the appropriate fees, as set forth on the lifetime license application and in sections 200(b) and 201(b) of the act.

(6) Upon receiving a properly completed lifetime license application and verification of permanent identification form, as well as the appropriate fees, as set forth on the lifetime license application and in sections 200(b) and 201(b) of the act, the county treasurer or agent shall issue a lifetime license number and tag as set forth in subsection (g).

(g) *County treasurer or agent procedure for issuance of lifetime license.*

(1) *General.*

(i) *One lifetime license per lifetime license application.* A lifetime license application must be completed for each dog for which a lifetime license is requested. The county treasurer or agent shall issue only one lifetime license and tag for each properly completed lifetime license application. The county treasurer or agent shall collect the applicable fees, as set forth on the lifetime license application and in sections 200(b) and 201(b) of the act, for the lifetime license before issuing the lifetime license and tag.

(ii) *Assignment of lifetime license number.* The lifetime license must list a number. The county treasurer or agent shall assign a lifetime license number for each dog for which a properly completed lifetime license application has been submitted and approved. The county treasurer or agent shall issue the lifetime license number on the lifetime license certificate and tag. The number shall be at least six digits with the first two digits designating the county. For example, Adams County number must begin with 01; York County, with 67. The county number must be followed by at least four digits assigned by the county treasurer or his agent. For example, the lifetime license number assigned by York County for the first dog licensed would be 670001.

(2) *Tattoo procedure.* If the dog owner intends to tattoo the dog as the means of permanent identification the dog owner shall complete a lifetime license application and pay the applicable fees, as set forth on the lifetime license application and in sections 200(b) and 201(b) of the act, prior to the county treasurer or agent issuing a lifetime license and tag. The county treasurer or agent, upon receipt of a properly completed lifetime license application and the applicable fees, shall complete the lifetime license from information on the lifetime license application. The county treasurer or agent shall assign a lifetime license number as set forth in paragraph (1)(ii) and issue a verification of permanent identification form, prescribed by the Department, to the dog owner. The dog owner shall have 30 days from receipt of a lifetime license number and verification of permanent identification form to have the dog tattooed and return a completed verification of permanent identification form to the issuing county treasurer or agent. If the dog owner fails to return the verification of permanent identification form within the 30-day time period, the issuing county treasurer or agent shall void the lifetime license, refund the lifetime license fee, record and designate the lifetime license number as void and report the noncompliance to the Department as set forth in § 21.52. The issuing county treasurer and, if applicable, the agent shall retain the applicable issuance fees, set forth in section 200(b) of the act. The lifetime license number may not be reissued to future applicants other than the original applicant.

(3) *Microchip procedure.* If the dog owner intends to use a microchip as the means of permanent identification, the dog owner may have a microchip implanted in the dog prior to completing an application for a lifetime license. The dog owner shall complete a lifetime license application and verification of permanent identification form and pay the applicable fees, set forth on the lifetime license application and in sections 200(b) and 201(b) of the act, prior to the county treasurer or agent issuing the lifetime license and tag. The county treasurer or agent shall, upon request of the dog owner, issue a lifetime license application and a verification of permanent identification form. Upon receiving a completed lifetime license application, verification of permanent identification form and the

applicable fees, the county treasurer or agent shall complete the lifetime license from information on the lifetime license application and verification of permanent identification form, assign a lifetime license number as set forth in paragraph (1)(ii) and issue the lifetime license and tag. The county treasurer or agent may not issue a lifetime license and tag until the dog owner has properly completed both the lifetime license application and the verification of permanent identification form. The county treasurer or agent shall record both the lifetime license number issued and the microchip number set forth on the verification of permanent identification form. The dog owner shall have 30 days from receipt of a verification of permanent identification form to have a microchip implanted in the dog or have a currently microchipped dog scanned and return a completed verification of permanent identification form to the issuing county treasurer or agent. If the dog owner fails to return the verification of permanent identification form within the 30 day time period, the issuing county treasurer or agent shall void the lifetime license, refund the lifetime license fee, record and designate the lifetime license number as void and report the noncompliance to the Department as set forth in § 21.52. The issuing county treasurer and, if applicable, the agent shall retain the applicable issuance fees, set forth in section 200(b) of the act. The lifetime license number may not be reissued to future applicants other than the original applicant.

[Pa.B. Doc. No. 04-1993. Filed for public inspection November 5, 2004, 9:00 a.m.]

## Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

### DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145]

#### Industrialized Housing and Components

The Department of Community and Economic Development (Department), under the authority of section 5 of the Industrialized Housing Act (act) (35 P. S. § 1651.15), amends Chapter 145 (relating to industrialized housing and components).

The purpose of the final-form rulemaking is to further clarify and strengthen the Department's and third parties' roles in monitoring the installation of industrialized housing; adopt the "ICC International Building Code"; update definitions to bring them into conformance with current terminology and with proposed changes to the placement of insignia of certification; place the determination regarding the frequency of inspection reports on the inspection agency; require manufacturers to ensure that instructions for installation are given to those installing industrialized housing; and increase the fees charged by the Department to offset increases in the cost of administering and enforcing the industrialized housing program.

#### *Introduction*

The act authorizes the Department to establish uniform State standards and procedures for the identification, inspection of, manufacture and assembly, and certification of industrialized housing and those components forming

integral parts of housing structures for use in communities in this Commonwealth. The purpose of this final-form rulemaking is to ensure that industrialized housing and housing components intended for sale, lease or installation for use in this Commonwealth will be manufactured, transported and installed onsite in compliance with the uniform standards in this final-form rulemaking.

The Department received comments from the Modular Building Systems Association (Association) and the Independent Regulatory Review Commission (IRRC). The Association voiced concerns that amendments to § 145.53 (relating to variations) could be interpreted to require a third party to review and approve plans for every model that goes on line. This was not the Department's intent and the language has been revised to clarify that only material deviation from variations contained within the approved building system documentation have to be approved prior to the start of construction.

IRRC voiced several concerns. The first involved an exception added to § 145.36 (relating to applicability of locally-enacted codes and ordinances) which would have permitted the final-form rulemaking to apply to local codes, ordinances or regulations where local codes, ordinances or regulations would preclude the siting of industrialized housing in a manner that does not show a reasonable relationship to legitimate public health, safety or welfare considerations. Because this exception was added for the sole purpose of alerting consumers and local governments that these preclusions are unconstitutional, the Department has removed this exception, even though the Department is confident that it has the statutory authority to create such an exception based upon the decision rendered in *Geiger v. Zoning Hearing Board of the Township of North Whitehall*, 507 A.2d 361 (1986).

The second concern was the same as that voiced by the Association. The third involved a perceived failure on the part of the Department to set criteria to be used to judge "in a manner and frequency necessary" in § 145.72a (relating to frequency of inspections), as well as the lack of a specified time frame for production of onsite inspection documentation. In response to these concerns, the Department has added language referencing the criteria in § 145.72a(e), as well as language indicating that the onsite inspection documentation shall be provided within 30 days of the Department's request for the information.

The final concern involves the deletion of the word "shall" and the insertion of the words "may be required to" in § 145.94(e) (relating to fees) and the necessity of the unchanged language in § 145.94(f). In response, the Department has changed the language back to its original state so that the payment is now mandatory, but has decided that the language in § 145.94(f) should remain.

Additionally, the Department received some informal comments from the Department of Labor and Industry (L & I). L & I's first concern involved a possible conflict between the stair geometry provided for in sections 301(a)(6) and 304(a)(2) of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301(a)(6) and 7210.304(a)(2)) and that which is permitted under this final-form rulemaking, even though the current amendment to this final-form rulemaking did not change the stair geometry requirement for industrialized housing. This issue has been resolved because the Pennsylvania Construction Code Act has been amended by the act of February 19, 2004 (P. L. 141, No. 13) to provide for the same stair geometry as specified in the industrialized housing regulations. L & I's next concern involved the inclusion of the "ICC International Building Code" in § 145.41(a)(1) (re-

lating to adoption of standards) as the ICC does not apply to residential construction. "Industrialized housing" is defined as a structure primarily for residential occupancy and classified within Use Group R. "Use Group R" is defined in the ICC as including boarding houses, hotels and motels. The "ICC International Building Code" sets the requirements for these structures. L & I requested that the Department incorporate the "International Residential Code for One and Two Family Dwellings" into this final-form rulemaking. The "International Residential Code for One and Two Family Dwellings" is already incorporated in § 145.42 (relating to alternate standards).

L & I's last concern was that this final-form rulemaking should include reference to the "Uniform Construction Code" in the definition of "building system documentation" in § 145.1 (relating to definitions) and in § 145.36. The act and this final-form rulemaking do not preclude the activities provided for in the "Uniform Construction Code" such as permitting and inspection, alterations, repairs or additions to the industrialized housing unit after delivery to the site and connection to required utilities. However, blanket citation of the "Uniform Construction Code" could be a cause of confusion. Activities not addressed in these regulations are subject to the "Uniform Construction Code." For the previous reasons, none of L & I's concerns resulted in changes to this final-form rulemaking as proposed.

#### *Analysis*

Section 145.1 is amended to include within the definition of "building system documentation" the installation component; to delete the term "mobile home" and replace it with the updated term "manufactured home"; to add the term "module" which permits the further delineation of the broader term "industrialized housing"; and to include a definition for the acronym "ICC."

The proposal to amend § 145.36 has been withdrawn. The language originally proposed attempted to prevent local authorities from prohibiting the installation of industrialized housing unless the local authorities show a legitimate threat to the public health, safety or welfare.

Section 145.41 is amended to recognize the adoption of the "ICC International Building Code" and to further control the identification of materials used in the construction of industrialized housing.

Section 145.42 is amended to recognize the adoption of the "ICC International Residential Code."

Section 145.47 (relating to acquisition of adopted codes and amendments) is amended to add the address from which copies of the ICC codes can be obtained.

Section 145.53 is amended to include a requirement that any material deviation from variations contained within the approved building system documentation must be approved by the evaluation agency, consistent with this chapter, prior to the start of construction.

Section 145.60 (relating to insignia of certification) is amended to require insignia of certification on each module of industrialized housing, rather than requiring only one insignia of certification for the entire industrialized housing structure. Under the existing regulations, one fee is paid regardless of the size of the structure. The final-form rulemaking evenly distributes the cost based upon the number of modules used in the industrialized housing structure. The larger the structure, the larger the fee.

Section 145.61 (relating to insignia of inspection agencies) is amended to require inspection agency to attach insignia of certification on each module of industrialized housing.

Section 145.62 (relating to data plates) is amended to reflect the existence of multiple insignia of certification numbers to be affixed to the data plate in an industrialized housing structure.

Section 145.72a(d) is amended to replace the minimum required number of inspections to be made by inspection agencies with a subjective determination, based on factors established in § 145.72a(e), to be made by the inspection agencies and to include a requirement that documentation of onsite inspections be on file in each manufacturing facility and be provided to the department within 30 days of the Department's request for such documentation.

Section 145.82 (relating to issuance of building permits) is amended to require, among other things, that the application for a building permit be consistent with the approved building system documentation.

Section 145.91 (relating to reports to the Department) is amended to require the preparation and submission of a site installation inspection report, which form will now be required to be furnished by the manufacturer as part of their approved compliance control program, for all installations of industrialized housing or housing components for use on a site in this Commonwealth. This report is currently required only when installation occurs on a site in this Commonwealth without a local enforcement agency.

Section 145.94 is amended to: increase the fees charged by the Department for the industrialized housing program; delete proposed language which would have given the Department the discretion not to charge fees where the Department is authorized to monitor, inspect or evaluate industrialized housing; and delete the "\$15 per housing component produced" fee for inspection and follow-up services.

#### *Fiscal Impact*

*Commonwealth.* Increased fees generated from this final-form rulemaking will allow the Department to continue to effectively administer and enforce the industrialized housing program. Funds are currently insufficient to run the program.

*Political Subdivisions.* None.

*Public.* Evaluation and inspection agencies will be required to pay higher application and reapproval fees. Manufacturers will be required to pay higher fees for insignia of certification for each module of industrialized housing and housing components. However, the current fees are low in comparison to other states and have not been increased since 1979.

#### *Paperwork*

The final-form rulemaking will require persons installing industrialized housing to prepare and submit a site installation inspection report in all cases, not just in jurisdictions without local enforcement.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 9, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5075 (October 12, 2002), to IRRC and the Chairpersons of the House Commerce and Eco-

conomic Development Committee and the of the Senate Community and Economic Development Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 25, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 26, 2004, and approved the final-form rulemaking.

#### *Effective Date/Sunset Date*

The final-form rulemaking will take effect upon publication in the *Pennsylvania Bulletin*. The final-form rulemaking will be monitored on a regular basis and updated as needed.

#### *Contact Person*

For an explanation of the final-form rulemaking, contact Jill Busch, Deputy Chief Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, Harrisburg, PA 17120-0225, (717) 720-7314.

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate.

#### *Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 12 Pa. Code Chapter 145, are amended by amending §§ 145.1, 145.41, 145.42, 145.47, 145.53, 145.60—145.62, 145.72a, 145.82, 145.91 and 145.94 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS YABLONSKY,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 5019 (September 11, 2004).)*

**Fiscal Note:** Fiscal Note 4-72 remains valid for the final adoption of the subject regulations.

## Annex A

### TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

#### PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

#### Subpart C. COMMUNITY DEVELOPMENT AND HOUSING

#### CHAPTER 145. INDUSTRIAL HOUSING AND COMPONENTS

#### GENERAL PROVISIONS

#### § 145.1. Definitions.

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

\* \* \* \* \*

*Building system documentation*—The plans, specifications and other documentations which together describe industrialized housing or a housing component including variations and installation detail, consistent with § 145.41 or § 145.42 (relating to adoption of standards; and alternate standards).

\* \* \* \* \*

*Housing component*—A manufactured subsystem or subassembly, designed for use as an integral component part of a structure designed primarily for residential occupancy, which contains concealed parts or processes of manufacture that cannot be inspected at the site without disassembly, damage or destruction and which is identified in § 145.35 (relating to applicability of Fire and Panic Act) as being subject to this chapter.

*Housing structure*—A structure designed primarily for residential occupancy.

*ICC*—International Code Council.

\* \* \* \* \*

*Manufactured home*—

(i) A structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or when erected onsite, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

(ii) The term includes any structure which meets the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401—5426).

(iii) The term does not include any self-propelled recreational vehicle.

*Manufacturing facility*—A place, other than the building site, at which machinery, equipment and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming or assembling industrialized housing or housing components.

*Module*—Each section of an industrialized housing structure which is fabricated in the manufacturing facility to be separately transported to the building site.



\* \* \* \* \*

STANDARDS

§ 145.41. 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 the industrialized housing and housing components for purposes of this chapter:

(1) The ICC International Building Code, with the following exceptions:

- (i) The specific article on energy conservation.
(ii) A manufacturer may elect to utilize the 1993 BOCA National Building Code, section 1014.6, exception # 8, with regard to stair geometry (rise & run).
(2) The ICC International Mechanical Code.
(3) The ICC International Plumbing Code.
(4) The National Electrical Code (NFPA No. 70).

(b) Except as provided in § 145.43 (relating to amendment policy), the codes shall be the latest edition including supplements. The effective date of all code changes or supplements shall be in accordance with §§ 145.44 and 145.122(b) (relating to adoption and effective dates—code amendments; and effective date).

(c) Insulation requirements shall have the following minimum thermal resistance ("R" values) through building sections—the total "R" value of a building section may be calculated by simply adding the individual "R" values of a building components—with the exception that the stated "R" value of one assembly, such as roof/ceiling, or wall or floor, may be increased and the "R" value for other components decreased if the overall heat loss for the building envelope does not exceed the total heat loss which would result from conformance to the following individual requirements or the standards:

- (1) Ceilings adjacent to unheated areas: R=30.
(2) Exterior walls and partition walls between heated and unheated areas: R=16.
(3) Foundation walls applicable to heated basements and crawl spaces: R=10.
(4) Partition walls between apartments and other heated areas: R=11.
(5) Floors over areas open to the outside and crawl spaces if foundation walls are not insulated in accordance with paragraph (3): R=19.
(6) Floors over unheated basements: R=11.
(7) Entrance doors: R=4.
(8) Supply ducts in unheated areas: R=5.
(9) Return ducts in unheated areas: R=3.5.
(10) Edge insulation for concrete slabs: R=8.
(11) Windows must be double glazed or single glazed plus storm windows.
(12) Vapor barriers, weather stripping and still sealer must be used where applicable.
(13) Ventilation must be provided for the air spaces between insulated ceilings and roofs.

(d) Insulation technique and installation applicable to the floor or foundation wall is not always practical at the manufacturing facility. Industrialized-modular-housing dealers, builders or contractors may supply and install

the required floor or foundation wall insulation. If the dealer, builder or contractor supplies and installs the required floor or foundation wall insulation, an assignment of responsibility shall be used. The assignment of responsibility shall be signed by the authorized respective dealer, builder or contractor prior to the industrialized-modular-housing unit leaving the manufacturing plant. A manufacturer is required to retain the copies of the assignment of responsibility sheets in his files for inspection by the Department. Periodic inspections will be made on units with dealer, builder or contractor-installed floor or foundation wall insulation. Assignment of responsibility shall be on forms provided by the Department which will conform to the following:

ASSIGNMENT OF RESPONSIBILITY

To: \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

I HEREBY ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE FLOOR AND/OR FOUNDATION WALL INSULATION REQUIREMENTS AS MANDATED BY AMENDMENT TO THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT RULES AND REGULATIONS UNDER THE PENNSYLVANIA INDUSTRIALIZED HOUSING ACT OF MAY 11, 1972.

THIS ASSIGNMENT OF RESPONSIBILITY SHALL APPLY TO THE FOLLOWING HOME(S):

DEALER NAME: \_\_\_\_\_
CUSTOMER NAME: \_\_\_\_\_
MODEL: \_\_\_\_\_
SERIAL NO.: \_\_\_\_\_
\_\_\_\_\_ Date: \_\_\_\_\_

AUTHORIZED SIGNATURE
DEALER, BUILDER, CONTRACTOR

(TO BE COMPLETED AND RETURNED TO THE ABOVE ADDRESS WITH SIGNED CONFIRMATION.)

(e) The provisions of the codes in subsection (a) that relate specifically to the interpretation, administration and enforcement of the codes and to matters which are not within the authority conferred on the Department by the act and this chapter are not adopted under this chapter and are not applicable in the administration and enforcement of this chapter. If there is an inconsistency or conflict between the provisions of a code adopted under this chapter and this chapter, this chapter will prevail.

(f) Only listed and labeled materials listed for use as documented shall be used in all construction.

§ 145.42. Alternate standards.

(a) As an alternative to the primary codes specified in § 145.41 (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 § 145.47 (relating to acquisition of adopted codes and amendments):

- (1) ICC International Residential Code except that with regard to stair geometry (rise and run), a manufact-

urer 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)).

(2) Insulation requirements and minimum requirements of § 145.41(c)(1)–(13).

(3) Electrical Code for One and Two Family Dwellings, NFPA No. 70.

(b) Except as provided in § 145.43 (relating to amendment policy), the codes must be the latest edition including supplements. The effective date of code changes or supplements must be in accordance with §§ 145.44 and 145.122(b) (relating to adoption and effective dates—code amendments; and effective date).

**§ 145.47. Acquisition of adopted codes and amendments.**

(a) Copies of the ICC International Building Code, ICC International Residential Code, ICC International Mechanical Code and ICC International Plumbing Code adopted under §§ 145.41 and 145.42 (relating to adoption of standards; and alternate standards) may be obtained from:

International Code Council  
5203 Leesburg Pike  
Suite 708  
Falls Church, Virginia 22041-3401.

(b) Copies of the National Electrical Code, adopted under §§ 145.41 and 145.42 (relating to adoption of standards; and alternate standards), including supplements, may be obtained from:

National Fire Protection Association  
Battery March Park  
Quincy, Massachusetts 02269

(c) Copies of the 1993 BOCA National codes adopted in part under § 145.41, may be obtained from:

Building Officials and Code  
Administrators International, Inc.  
4051 West Flossmoor Road  
Country Club Hills, Illinois 60477

(d) Copies of other alternate standards adopted under § 145.42, including supplements, may be obtained from:

Standard	Address
CABO One and Two Family Dwelling Code (1992 edition)	Building Officials and Code Administrators International, Inc. 4051 West Flossmoor Road Country Club Hills, Illinois 60477

(e) The Department will provide, on request, a copy of currently applicable amendments of and additions to codes which are adopted under this chapter and are not published by NFPA, BOCA, ASHRAE or NCSBCS, as the case may be. The Department may charge a reproduction and handling fee not to exceed \$25, plus applicable postage, for each set of amendments and additions.

**CERTIFICATION**

**§ 145.53. Variations.**

Building system documentation approved under § 145.52 (relating to approval of building system documentation) may contain variations or a range of variations for one or more elements of the industrialized housing or housing components described in the building system documentation, provided that the approved build-

ing system documentation conforms to all of the applicable requirements of the applicable codes and standards under each variation or set of variations within the range of variations. Any material deviation from variations contained within the approved building system documentation must be approved by the evaluation agency, consistent with this chapter, prior to the start of construction.

**§ 145.60. Insignia of certification.**

(a) Certified industrialized housing constituting a single dwelling unit must bear insignia of certification for each module. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification). The manufacturer shall permanently attach the insignia of certification for each module to the data plate located in a visible location in the utility room or utility area or other area identified in the building system documentation and in the Building System Approval Report as provided in § 145.62(a) (relating to data plates). Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

**INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED HOUSING**

**Serial No.**

This insignia certifies that this dwelling unit of industrialized housing has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act, Title 35 of the Purdon's Pennsylvania Statutes Annotated, §§ 1651.1 to 1651.12, and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(b) Each certified housing component must bear an insignia of certification. The insignia of certification must be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification to the housing component in a visible location identified in the building system documentation and in the Building System Approval Report. Each insignia of certification must bear an insignia serial number furnished by the Department and shall contain the following language:

**INSIGNIA OF CERTIFICATION FOR HOUSING COMPONENTS**

**Serial No.**

This insignia certifies that this housing component has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act, Title 35 of the Purdon's Pennsylvania Statutes Annotated, §§ 1651.1 to 1651.12, and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania. If the size, shape or other physical characteristic of the housing component make impractical the use of such insignia of certification, the Department may specify such alternative forms of insignia as may be appropriate.

(c) Insignia of certification issued by the Department will be of a size and design and of materials and will provide for the methods of attachment as determined by the Department.

**§ 145.61. Insignia of inspection agencies.**

(a) The inspection agency shall attach its label, seal or other insignia to the data plate for each industrialized housing module.

(b) The inspection agency shall attach its label, seal or other insignia or other identification to each housing component which is transported to the building site for installation in a housing structure and to each separate element, if any, of the housing component which is transported to the building site for assembly and installation.

(c) The label, seal or other insignia of the inspection agency must identify the name and address of the inspection agency and have a serial number. In other respects, the inspection agency may design its label, seal or other insignia as it wishes, provided that the label, seal or other insignia does not contain statements which the Department determines are inconsistent with the act or this chapter. Each label, seal or other insignia must be attached in a clearly visible location to the housing component or element of the industrialized housing or housing component, as applicable, by the time of its arrival at the building site, but the label, seal or other insignia may be covered up during the process of assembly and installation at the building site so that it is not permanently visible.

**§ 145.62. Data plates.**

(a) A dwelling unit of certified industrialized housing must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location in the utility room or utility area, if feasible, and otherwise in other areas identified in the building system documentation. The data plate must contain sufficient space to permit the attachment of insignia of certification as provided in § 145.60(a) (relating to insignia of certification) and of the label, seal or other insignia of the inspection agency as provided in § 145.61(a) (relating to insignia of inspection agencies). The data plate must contain, but not be limited to, the following information:

- (1) Name of manufacturer.
- (2) Address of principal office of manufacturer.
- (3) Address of manufacturing facility where the industrialized housing or its principal elements were produced.
- (4) Manufacturer's model name.
- (5) Manufacturer's serial number for dwelling unit and date of manufacture.
- (6) Inspection and evaluation agencies' serial numbers.
- (7) Department insignia of certification numbers.
- (8) Serial or other identifying numbers of each module of industrialized housing.
- (9) Minimum Btu output of furnace needed to maintain average 70°F interior temperature at outside design temperature of \_\_\_\_\_ F.
- (10) Annual degree days for which the house has been designed.
- (11) Snow loads—maximum.
- (12) Wind loads—maximum.
- (13) Floor loads—maximum, sleeping/nonsleeping.
- (14) Other special environmental factors.
- (15) Tests required and actually conducted.

(b) A housing structure containing certified housing components shall contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location in the utility room or utility area, if feasible, and otherwise in other areas identified in the plans for the housing structure. The insignia of certification of the Department may not be attached to the data plate. The data plate must contain, but not be limited to, the following information relating to the housing components:

- (1) Name of manufacturer.
- (2) Address of principal office of manufacturer.
- (3) Address of manufacturing facility where housing components were produced.
- (4) Manufacturer's model name.
- (5) Manufacturer's serial number for housing components.
- (6) Inspection and evaluation agencies' serial numbers.
- (7) Serial number of Department's insignia of certification attached to each housing component.
- (8) Snow loads—maximum.
- (9) Wind loads—maximum.
- (10) Other special environmental factors, if applicable.
- (11) Applicable codes, including name of code, edition, year of publication and applicable supplement, if any.
- (12) Date data plate attached to dwelling unit.
- (13) Tests required and actually conducted.

(c) Additional information may be included on the data plate for dwelling units of certified industrialized housing and housing structures containing certified housing components if there is no conflict with the requirements of the act or this chapter. If less than the minimum data required in this section is deemed necessary, prior approval shall be obtained from the Department.

(d) To insure that proper installation equipment is utilized for the lifting of industrialized housing units or housing components, a manufacturer shall indicate on the data plate the total shipping weight in tons per component.

**THIRD-PARTY AGENCIES**

**§ 145.72a. Frequency of inspections.**

(a) In carrying out its monitoring responsibilities under § 145.72(1) and (2) (relating to responsibilities of inspection agencies), an inspection agency shall observe the following minimum frequency of inspection requirements for factory inspections when the inspection agency label is being attached to every dwelling unit produced in the factory:

- (1) The inspection agency shall inspect each major subsystem of each unit produced by the factory during its start-up period or during the inspection agency's initial work at the factory.
- (2) At any time after a minimum of ten complete units have been inspected as required by paragraph (1), the inspection agency may reduce the frequency of inspection, but not to less than a 20% frequency of inspection level. A "20% frequency of inspection" means that the inspection agency will inspect either one complete dwelling unit (including four major subsystems) out of every five dwelling units produced or one-fifth of major subsystems

approximately evenly distributed among a larger sampling of dwelling units, that is 20 major subsystems in 25 dwelling units of production.

(b) In carrying out its monitoring responsibilities under §§ 145.72(1), an inspection agency shall inspect every major subsystem of every dwelling unit produced which is to bear the insignia of certification when the inspection agency label is not being attached to every dwelling unit produced in the factory.

(c) An inspection agency's monitoring responsibilities under § 145.72(1) and (2) shall include the periodic inspection of the storage and transportation methods and facilities employed by or on behalf of the manufacturer for as long as the manufacturer retains title to or effective control over the dwelling units to insure that the units are not altered from the manner in which they were approved.

(d) In carrying out its monitoring responsibilities under § 145.72(1) and (2) an inspection agency shall inspect industrialized housing at the site after installation is complete in a manner and frequency, consistent with factors set forth in subsection (e), necessary to confirm that the manufacturer's approved compliance control program is effective in assuring installation consistent with the manufacturer's approved building system documentation. Documentation of the onsite inspections must be on file in each manufacturing facility and be provided to the Department within 30 days of the Department's request for the documentation.

(e) The minimum frequency of inspection requirements of this section are not intended to substitute for the professional judgment of an inspection agency in determining whether a greater frequency of inspections is necessary to discharge its responsibilities properly. Factors that should be considered in establishing an appropriate frequency of inspection level for any manufacturer are the production volume of the factory, the design complexity of the dwelling units, the qualifications of the manufacturer's compliance control personnel and the experience record of the manufacturer.

#### LOCAL ENFORCEMENT AGENCIES

##### § 145.82. Issuance of building permits.

(a) A person seeking a building permit from a local enforcement agency for industrialized housing or a housing structure in which will be installed housing components shall furnish a statement signed by the person seeking the building permit or, if a corporation, by an officer or authorized representative of the corporation, that the work to be performed under the building permit will include the installation of certified industrialized housing or certified housing components, bearing the insignia of certification issued by the Department under the act and this chapter.

(b) The local enforcement agency may not withhold the issuance of a building permit for certified industrialized housing or a housing structure in which will be installed certified housing components if the applicant submits the documents required by this section, and the application for a building permit complies with applicable locally-enacted codes and ordinances with regard to set-up and site details, consistent with the approved building system documentation.

#### ADMINISTRATIVE PROVISIONS

##### § 145.91. Reports to the Department.

(a) The Department is authorized to require that evaluation agencies, inspection agencies and manufacturers

with approved building system documentation shall prepare and submit to the Department regular periodic reports regarding their activities relating to industrialized housing and housing components falling within the scope of the act and this chapter. These reports shall be promptly filed with the Department on forms and at times the Department may specify.

(b) The Department is authorized to require that evaluation agencies, inspection agencies and manufacturers with approved building system documentation shall promptly furnish to the Department the special reports and other information as the Department may require which relate in any way to the administration and enforcement of the act and this chapter.

(c) Evaluation agencies and inspection agencies are required to notify the Department of the following:

(1) A change of facts which would render inaccurate in material respect their application for approval submitted to the Department under § 145.75 (relating to procedures for obtaining approvals of evaluation and inspection agencies), as updated by the latest application for reapproval submitted to the Department under § 145.76 (relating to reapprovals of third-party agencies), as provided more particularly in § 145.75(e).

(2) A fact or circumstance of which the third-party agency has actual knowledge which could lead a reasonable person to believe that a manufacturer, third-party agency or other person in violating the act or this chapter, the notification to be promptly given to the Department.

(d) Manufacturers with approved building system documentation are required promptly to notify the Department of any fact or circumstance of which the manufacturer has actual knowledge which could lead a reasonable person to believe that a third-party agency or other person is violating a provision of the act or of this chapter.

(e) A person installing industrialized housing or housing components for use on a site in a jurisdiction in this Commonwealth shall prepare and mail to the inspection agency a Site Installation Inspection Report on a form furnished by the manufacturer as part of their approved compliance control program. The manufacturer is responsible for furnishing to the person performing the installation a copy of the Site Installation Inspection Report form and instructions as to its intended use.

##### § 145.94. Fees.

(a) A person submitting an application to the Department under § 145.75(a) (relating to procedures for obtaining approvals of evaluation and inspection agencies) for approval as an evaluation agency or inspection agency shall pay a fee of \$1,000. If the person seeks approval as both an evaluation agency and an inspection agency, the combined fee shall be \$2,000.

(b) A third-party agency submitting an application to the Department under § 145.76 (relating to reapprovals of third-party agencies), for reapproval as an evaluation agency or inspection agency shall pay a fee of \$500. If the person seeks reapproval as both an evaluation agency and an inspection agency, the combined fee shall be \$1,000.

(c) Each manufacturer requesting the Department under § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification) to issue insignia of certification shall pay a fee of \$40 for the insignia of certification for each module of industrialized housing.

(d) Each manufacturer requesting the Department under § 145.63 to issue insignia of certification for housing components shall pay a fee of \$40 for each housing component which will bear insignia of certification. The fee payable under this subsection for housing components to be installed in a single-dwelling unit may not exceed \$100.

(e) When the Department is authorized to monitor or inspect under § 145.93 (relating to factory inspections; right of entry) or otherwise, or provide evaluation or inspection services, or both, under § 145.70 (relating to Departmental evaluation and inspection), the manufacturer shall pay to the Department the following fees:

(1) Engineering services—\$400 per day or \$60 per hour.

(2) Administrative services—\$175 per day or \$25 per hour.

(3) Travel and per diem expenses—current Commonwealth travel and per diem expenses.

(f) The Department may establish reasonable handling and other administrative fees as indicated elsewhere in this chapter, subject to the stated limitations in amount.

(g) Fees paid to the Department under this chapter are nonrefundable except as otherwise specifically set forth in this chapter. Fees must be paid by check or money order.

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of determining the types of vehicles to be included in the list, the Department adopted the same criteria as contained in 49 CFR 392.10 (relating to railroad grade crossings; stopping required). Prior to publication, the Bureau circulated the proposal internally within the Department and with the State Police, Bureau of Patrol, and the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety.

*Publication for Public Comment*

The proposed rulemaking was published at 34 Pa.B. 843 (February 14, 2004) and the public was invited to submit comments. The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees. No comments or objections to the rulemaking were received from the public, IRRC or the Committees.

*Persons and Entities Affected*

The final-form rulemaking affects Commonwealth law enforcement, the motoring public, operators of buses and commercial motor vehicles that, in accordance with 49 CFR 392.10, are required to stop at railroad grade crossings.

*Fiscal Impact*

Deleting this chapter will not impose any increased costs on private persons, State or local governments. This final-form rulemaking action will not occasion the development of any additional reports or other paperwork.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 843, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 8, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC effective September 8, 2004, and confirmed at IRRC's meeting on September 9, 2004.

*Effective Date*

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

*Sunset Date*

The Department is not establishing a sunset date for these regulations, since these regulations are being rescinded as no longer needed to administer provisions required under 75 Pa.C.S. (relating to the Vehicle Code).

*Contact Person*

The contact person for technical questions about the final-form rulemaking is Arthur H. Breneman, P. E., Chief, Traffic Engineering and Operations Division, Bureau of Highway Safety and Traffic Engineering, Com-

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [67 PA. CODE CH. 103]

#### Vehicles Required to Stop at Railroad Grade Crossings

The Department of Transportation (Department), Bureau of Highway Safety and Traffic Engineering (Bureau), under 75 Pa.C.S. §§ 6103, 6105, 6121 and 6122, deletes Chapter 103.

*Purpose of this Chapter*

Chapter 103 described the type of motor vehicles required to stop at a crossing where a railroad track crosses a highway at grade. The final-form rulemaking was mandated by 75 Pa.C.S. § 3342(d) (relating to vehicles required to stop at railroad crossings).

*Purpose of this Final-Form Rulemaking*

The purpose of this final-form rulemaking is to delete Chapter 103. Chapter 103 is no longer needed because 75 Pa.C.S. § 3342(d) was amended by the act of December 21 1998 (P. L. 1126, No. 151) and no longer requires the Department to adopt regulations describing the vehicles which must comply with the stopping requirements at railroad grade crossings. Section 3342(d) of 75 Pa.C.S. now mandates that the Department publish, as a notice in the *Pennsylvania Bulletin*, a list of the vehicles that must stop at railroad grade crossings.

On February 17, 2001, the Department, acting through the Bureau and in compliance with 75 Pa.C.S. § 3342(d), published a notice at 31 Pa.B. 1007 (February 17, 2001) designating the vehicles which must comply with the stopping requirements in 75 Pa.C.S. § 3342. In the course

monwealth Keystone Building, 6th Floor, 400 North Street Harrisburg, PA 17120, (717) 787-3620.

*Order*

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 103, are amended by rescinding §§ 103.1 and 103.2 to read as set forth at 34 Pa.B. 843.

(b) The Secretary of the Department shall submit this order and 34 Pa.B. 843 to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and 34 Pa.B.

843 and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 5322 (September 25, 2004).)*

**Fiscal Note:** Fiscal Note 18-387 remains valid for the final adoption of the subject regulations.

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