

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 149]

Manufactured Housing Improvement Program

The Department of Community and Economic Development (Department), under section 5 of the Manufactured Housing Improvement Act (act) (35 P.S. § 1658.5), adds Chapter 149 (relating to manufactured housing improvement program). This final-form rulemaking establishes an installation standard for new manufactured homes being installed in this Commonwealth; certifies manufactured home installers; provides training to manufactured home installers and installation inspectors; ensures the construction, installation and completion of new manufactured homes is consistent with the manufacturer's Design Approval Primary Inspection Agency (DAPIA) approved designs; establishes a mechanism to verify that manufactured homes are completed and installed by a Department certified installer and are compliant with the Manufactured Home Construction and Safety Standards and applicable building codes; establishes appropriate fees for education programs, testing and certification of manufactured home installers; and establishes procedures under which the Department will issue warnings, suspensions, revocations or monetary fines for violations of the act or regulations.

Introduction

The Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401—5426) provides for the establishment of practical, uniform and, to the extent possible, performance-based construction standards for manufactured homes. The act was passed in response to the amendments in 2000 which require each state to establish an installation program by December 27, 2005. The act requires the Department to promulgate regulations to establish an installation standard for new manufactured homes being installed in this Commonwealth, certify manufactured home installers and provide training to manufactured home installers and installation inspectors. In response to the proposed rulemaking published at 35 Pa.B. 6902 (December 24, 2005), the Department received comments from the Pennsylvania Association of Building Code Officials, Inc., the Pennsylvania Manufactured Housing Association and the Independent Regulatory Review Commission (IRRC).

The Pennsylvania Association of Building Code Officials, Inc. had concerns regarding the use of the term "building code official;" the need to test and certify inspectors; the lack of a requirement that installers obtain a Uniform Construction Code permit prior to installation of the manufactured home; lack of a requirement that installers forward the Certification of Completion to the inspector; and the possibility that inspectors could be fined.

The Pennsylvania Manufactured Housing Association had concerns regarding the lack of the issuance of a

warning prior to suspension or certification revocation, as well as the lack of clarity regarding the number and amount of any penalty.

IRRC voiced concerns regarding the lack of statutory citations in some parts of the regulation; the definition of "manufacturer's approved design;" the use of the term "should" in § 149.3(d) (relating to installation standard); the vagueness of the words "other information" in § 149.4(a)(2) (relating to installer training and certification); the need for the training provider to consult with the Department on tuition costs; the lack of clarity regarding the entity to provide the application forms for certification; the lack of clarity with respect to the training of building code officials; the lack of clarity regarding those items covered by the Certificate of Compliance; the lack of a requirement that the building code official receive a copy of the Certificate of Compliance; the inconsistency of the mechanism established to set fees; the failure of the Department to address the issuance of warnings; the lack of clarity with respect to receipt of complaints; and the lack of clarity regarding the amount and number of penalties. The Department reviewed and considered each comment in the drafting of this final-form rulemaking.

Analysis

Section 149.1 (relating to definitions) defines the terms used in the final-form rulemaking. The terms "construction code official" and "utility connections" have been deleted as neither was used in the text of the proposed rulemaking.

The Department also removed language from the definition of "manufacturer's approved design" which was substantive in nature, as suggested by IRRC.

The definition of "building code official" remains unchanged. The act clearly defines this term, which cannot be replaced by the term "construction code official," as suggested by the Pennsylvania Association of Building Code Officials, Inc.

Section 149.2 (relating to purpose) describes the purpose of the chapter, which is to establish administrative procedures for the implementation of the act. The Department deleted language from § 149.2(6) which erroneously extended the establishment of fees, testing and certification to those who inspect the installation of manufactured homes.

Section 149.3 sets forth the installation standard. This section requires the manufacturer to provide DAPIA approved designs and installation instructions for all new manufactured homes. It also provides that all new manufactured homes be installed under the manufacturer's DAPIA approved designs for the particular home. This section prohibits a building code official from rejecting a manufacturer's approved design and provides a procedure to be followed if a building code official believes a design was approved by a DAPIA in error or questions the validity of a DAPIA approved design.

Section 149.3(a) was changed to specify that a copy of the manufacturer's approved design must be provided with each home. Reference to the actual entity to which the manufacturer's approved design must be provided was deleted. The Department also changed "should" to "may" in the last sentence of § 149.3(d).

Section 149.4 sets forth the process for installer training and certification. Under this section, the Department

is required to develop or designate acceptable training curricula and approve trainers. This section requires training providers to provide the Department with a list of those successfully completing the training course along with the required fee for each participant. This section provides that the approved training curriculum will be published annually in the *Pennsylvania Bulletin* and can be obtained directly from the Department. This section provides that installer applicants must successfully complete the designated training curriculum and pay the required fee to the Department, to be certified as installers of new manufactured homes. This section establishes that certification will be valid for 1 year from the date of Department issuance and an installer will be required to successfully complete a specified training curriculum at least every 3 years. This section also permits individuals who successfully completed a Department approved training curriculum prior to the effective date of this chapter to be certified initially without taking additional training curriculum.

Section 149.4(a)(ii) was revised to clarify that the Department may request additional information from individuals submitting training applications during the application evaluation process.

Cross references regarding fees were added to § 149.4(a)(iii) and (b)(i) as requested by IRRC. Section 149.4(b)(i) was also revised to add language specifying that the application form for installer certification would be provided by the Department.

Language in § 149.5 (relating to building code official training) that addressed the training requirements for building code officials who inspect new manufactured home installation was deleted and replaced with language which more closely resembles § 149.4(a). Under this section, the Department is required to develop or designate acceptable training curricula and approve trainers. This section requires training providers to provide the Department with a list of individuals successfully completing the training course and provide a certificate of course completion to the course participant. This section also provides that the approved training curriculum will be published annually in the *Pennsylvania Bulletin* and can be obtained directly from the Department. Unlike § 149.4(a), there are no required fees and no requirement that the building code official submit any paperwork to the Department. As in the proposed rulemaking, building code officials must successfully complete a Department approved course or workshop and must do so every 3 years to continue inspecting new manufactured home installations. This section also provides that the Department will accept a copy of a written certificate signed by the training provider as evidence that the building code official has complied with the training requirements established in this section.

Section 149.6 (relating to Certificate of Compliance) sets forth the Certificate of Compliance process. Section 149.6(a) provides that an installer must complete a Certificate of Compliance upon completion of a new manufactured home installation. Section 149.6(a) was revised to clarify what may not be included in the Certificate of Compliance. Section 149.6(b) requires the Certificate of Compliance to be completed by the installer and forwarded to the Department within 5 calendar days of completion of the new manufactured home installation. Section 149.6(b) was revised to require the installer to forward the Certificate of Compliance to the appropriate building code official, if known. Section 149.6(c) prohibits a building code official from issuing a certificate of

occupancy for a new manufacture home, unless the building code official has received a completed copy of the Certificate of Compliance filed with the Department. Section 149.6(d) requires the new manufactured home installer to attach the original completed Certificate of Compliance to the installation instructions that remain with the home or hand deliver to the purchaser the Certificate of Compliance and installation instructions. Section 149.6(e) provides that if the manufacturer or retailer has not agreed in writing to be responsible to the purchaser for the new manufactured home installation before the execution of the sales documents, the manufacturer or retailer must provide the purchaser with a written statement that the home must be installed under § 149.3(b) and (c), and that the Certificate of Compliance must be completed and signed by an installer certified under § 149.4(b). At the same time, the manufacturer or retailer must provide the purchaser with a list of installers known to him or obtained from the Department. Section 149.6(e) also provides that by providing the list, the manufacturer or retailer does not warrant the quality of the installers' work, nor is the purchaser under any obligation to use any particular installer.

Section 149.7 (relating to fees) sets forth the types of fees to be charged by the Department under the act. Section 149.7 was revised to remove any reference to the amount of each fee and to include a provision permitting the Department to set the fee rates by publication of a notice in the *Pennsylvania Bulletin*.

Section 149.8(a) (relating to penalties) provides that the Department may suspend or revoke the certification of any person who violates the provisions of the act or the regulations or from whom the Department receives adverse performance information and sets forth the procedures for these actions. Language was added to § 149.8(a) to set forth the acceptable method of receiving complaints. Language was added to § 149.8(b) to permit the Department to issue written warnings and to set forth the requirements for these warnings. Language originally appearing in § 149.8(b) was moved to § 148.8(c). Section 148.8(c) provides that the Department may impose a civil penalty on anyone who violates the provisions of the act. The language was revised to clarify that the \$1,000 penalty which could be imposed by the Department was the amount per violation and establish that the aggregate amount of penalties on any person may not exceed \$1 million.

Fiscal Impact

Commonwealth. The impact upon the Commonwealth is minimal. The Department will incur costs associated with the creation, printing and processing of applications and certificates of compliance by existing Department staff. Fees generated from the regulations will be sufficient to address any additional clerical or record keeping costs to the Department.

Political subdivisions. There will be no fiscal impact on political subdivisions.

Public. Upon submission of training curricula for evaluation by the Department, training providers must submit a fee to the Department. Also, a training provider must submit a fee per enrollee. A person seeking certification as a manufactured home installer must submit an annual fee and successfully complete a designated training program every 3 years. The fees will be established by publication of a notice in the *Pennsylvania Bulletin*.

Paperwork

This final-form rulemaking requires manufactured home installers to complete an application form for submittal to the Department. Upon completion of each new home installation, a Certificate of Compliance will be submitted to the building code official, the Department and the homeowner.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 22, 2005, the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6902, to IRRC and the Chairpersons of the House Commerce Committee and 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 May 17, 2006, the final-form rulemaking was deemed approved by the House Committee and deemed approved by the Senate Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 18, 2006, and approved the final-form rulemaking.

Effective Date/Sunset Date

The regulations will become effective August 23, 2006. The regulations will be monitored on a regular basis and updated as needed.

Contact Person

For an explanation of this final-form rulemaking, contact Jill Busch, Deputy Chief Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120 (717) 720-7314; or Mark Conte, Chief, Housing Standards Division, Office of Community Development, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7416.

Findings

The Department finds that:

- (1) Public notice of intention to adopt the regulations 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 final-form rulemaking is necessary and appropriate for the implementation of the Manufactured Housing Improvement Act Program.

Order

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

- (a) The regulations of the Department, 12 Pa. Code, are amended by adding §§ 149.1—149.8 to read as set forth in Annex A.
- (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 August 23, 2006.

DENNIS YABLONSKY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2781 (June 3, 2006).)

Fiscal Note: Fiscal Note 4-82 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 149. MANUFACTURED HOUSING IMPROVEMENT PROGRAM

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§ 149.1. Definitions.

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

Act—The Manufactured Housing Improvement Act (35 P. S. §§ 1658.1—1658.6).

Attachment—Wind storm protection accomplished by one of the following:

- (i) Securing the manufactured home to the foundation.
- (ii) An alternative system, which is approved for use by the manufacturer through its DAPIA approved design, to secure the manufactured home to the foundation.
- (iii) Other requirements of the manufacturer necessary to provide an integrated, fully compliant manufactured home.

Building code official—As defined in section 3 of the act (35 P. S. § 1658.3).

Certificate of Compliance—A form developed by the Department which bears the signature of the installer of a new manufactured home and certifies that the new manufactured home was installed in accordance with the manufacturer's approved design and complies with all nonconstruction requirements of the Uniform Construction Code, relating to the installation of a new manufactured home, which are not addressed by the Manufactured Home Construction and Safety Standards.

DAPIA—Design Approval Primary Inspection Agency as defined in the Manufactured Home Procedural and Enforcement Regulations (24 CFR 3282.361 (relating to Design Approval Primary Inspection Agency (DAPIA))).

Department—The Department of Community and Economic Development of the Commonwealth.

HUD—The United States Department of Housing and Urban Development.

Installation—As defined in section 3 of the act.

Installer—As defined in section 3 of the act.

Manufactured Home Construction and Safety Standards—As defined in section 3 of the act.

Manufactured housing or manufactured home—As defined in section 3 of the act.

Manufacturer—A person engaged in manufacturing or assembling manufactured homes, including a person engaged in importing manufactured homes for resale.

Manufacturer's approved design—

(i) As defined in section 3 of the act.

(ii) The term includes drawings, instructions, illustrations, documentation or procedures submitted by a manufacturer and approved by the manufacturer's DAPIA.

Purchaser—The first person purchasing a new manufactured home for purposes other than resale.

Retailer—A person engaged in the sale, leasing or distribution of a new manufactured home directly to a purchaser.

UCC—Uniform Construction Code—The Uniform Construction Code adopted under section 7210.301 of the Pennsylvania Construction Code Act (35 P.S. § 7210.301).

§ 149.2. Purpose.

This chapter interprets and makes specific the provisions of the act. This chapter establishes administrative procedures for the implementation of the act, which comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5404—5426) and the Manufactured Home Construction and Safety Standards. More specifically, this chapter is intended to achieve the following objectives:

(1) Designate appropriate training programs for those persons that install new manufactured homes, to provide them with a thorough understanding of manufactured home construction and to assure that the manufactured homes they install comply with the act, the Manufactured Home Construction and Safety Standards and the UCC, as applicable.

(2) Establish a system to certify those persons who successfully complete the training program as installers of new manufactured homes.

(3) Provide training for those persons who inspect new manufactured home installations under the act, the Manufactured Home Construction and Safety Standards and the UCC.

(4) Provide that new manufactured home construction, installations and completion onsite be performed in a manner consistent with the home manufacturer's DAPIA approved designs.

(5) Establish a mechanism to verify to the Department, building code officials and purchasers that new manufactured homes are completed and installed by an installer of manufactured homes who was certified by the Department and that the homes comply with the Manufactured Home Construction and Safety Standards and applicable building codes.

(6) Establish appropriate fees for the educational programs, testing and certification of installers of manufactured homes.

(7) Establish procedures for the Department to issue warnings, suspensions, revocations or monetary fines against persons who violate the act or this chapter.

§ 149.3. Installation standard.

(a) In accordance with the Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401—5426), a manufacturer of a new manufactured home shall provide a copy of the manufacturer's approved design, which includes instructions for the installation of the new manufactured home, with each home.

(b) In accordance with the Manufactured Housing Construction and Safety Standards Act of 1974, a new manufactured home shall be installed consistent with the manufacturer's approved design. The manufacturer's approved design must be current, complete, easily understood and compatible with the home being installed. The manufacturer's approved design must fully address the support, attachment, assembly and all other aspects of manufactured home construction and installation to assure that the manufactured home performs as a fully integrated structure and complies with all elements of the Manufactured Home Construction and Safety Standards.

(c) A design other than the manufacturer's approved design may not be utilized in the installation of a new manufactured home without authorization of the manufacturer and evaluation and approval by the manufacturer's DAPIA.

(d) A building code official may not reject a manufacturer's approved design for any reason, including, but not limited to, the fact that the material was not reviewed, approved, sealed or certified by an engineer, architect or similar person licensed in this Commonwealth. If a building code official believes a manufacturer's approved design was approved by a DAPIA in error, or questions the validity of a manufacturer's approved design, the building code official may contact the Department, which will investigate the matter.

§ 149.4. Installer training and certification.

(a) *Training.*

(1) The Department will develop or designate acceptable training curricula for individuals seeking certification as an installer. The Department will annually review the training curricula.

(2) Those desiring to provide training should submit an application to the Department. The application must contain the application fee, and the proposed curriculum. During the application evaluation process, the Department may request the submission of additional information from those desiring to provide training.

(3) Upon approval of a training curriculum, a training provider shall coordinate the scheduling of courses with the Department. Upon completion of each course, a training provider shall submit to the Department a list of course participants and the required fee, established in § 149.7 (relating to fees), for each participant. A training provider shall indicate on the list of course participants which participants successfully completed the course.

(4) The Department will publish annually a list of approved curriculum in the *Pennsylvania Bulletin*. Individuals seeking certification as an installer may also contact the Department to obtain a listing of the approved curriculum.

(b) *Certification.*

(1) Individuals seeking certification as an installer shall successfully complete the designated training curriculum; provide evidence of the successful completion of the designated training curriculum at the time of application; and pay the required fee, established in § 149.7, to

the Department. Application shall be made on a form provided by the Department. An individual does not qualify as and may not represent himself to be an installer until the individual has received written certification from the Department.

(2) Certification as an installer is valid for 1 year from the date of issuance by the Department. Installers shall reapply for certification each year.

(3) An installer is required to successfully complete a specified training curriculum at least every 3 years.

(4) A person who has successfully completed a training curriculum approved by the Department as described in subsection (a), prior to June 24, 2006, may apply for certification as an installer in the manner provided in this section without successfully completing an additional training curriculum. However, if the training curriculum was successfully completed more than 2 years before June 24, 2006, the applicant has 12 months to comply with subparagraph (iii).

§ 149.5. Building code official training.

(a) The Department will develop or designate acceptable workshops and training programs for those persons that inspect the installation of new manufactured homes. The Department will annually review the content of the workshops or training programs.

(b) Those desiring to provide training should submit an application to the Department. The application must contain the proposed elements that address Manufactured Housing. During the application evaluation process, the Department may request the submission of additional information from those desiring to provide training.

(c) Upon approval of a workshop or training program, a training provider shall coordinate the scheduling of workshops or training programs. Upon completion of each workshop or training program, a training provider shall submit to the Department a list of workshop or training program participants. A training provider shall indicate on the list of workshop or training program participants which participants successfully completed the workshop or training program. A training provider shall provide each participant who successfully completed the workshop or training program with a written certificate signed by the training provider. The written certificate must specify the title of the workshop or training program and the date of successful completion.

(d) The Department will publish annually a list of approved workshops and training programs in the *Pennsylvania Bulletin*. Building code officials may also contact the Department to obtain a listing of approved workshops and training programs.

(e) Building code officials who inspect the installation of new manufactured homes shall successfully complete a workshop or training program approved by the Department and shall do so every 3 years to continue inspecting the installation of new manufactured homes.

(f) The Department will accept a copy of a written certificate signed by the training provider as evidence that the building code official successfully completed a workshop or training program required under subsection (e).

§ 149.6. Certificate of Compliance.

(a) Upon completion of the installation of a new manufactured home, an installer shall complete a Certificate of Compliance. A Certificate of Compliance may not reference items that are not part of the manufacturer's

approved design or covered by the Manufactured Home Construction and Safety Standards.

(b) Within 5 calendar days of completion of the installation of a new manufactured home, the installer of the new manufactured home shall forward the Certificate of Compliance to the Department and the appropriate building code official, if known.

(c) A building code official may not issue a certificate of occupancy for a new manufactured home until he has received a completed copy of the Certificate of Compliance filed with the Department.

(d) The installer of a new manufactured home shall attach the original completed Certificate of Compliance to the installation instructions that remain with the home or hand deliver the Certificate of Compliance and the installation instructions to the purchaser.

(e) If the manufacturer or retailer has not agreed in writing to be responsible to the purchaser for the installation of the new manufactured home prior to the execution of the sales documents, the manufacturer or retailer shall provide the purchaser with a written statement that the home shall be installed as described in § 149.3(b) and (c) (relating to installation standard), and that the Certificate of Compliance shall be completed and signed by an installer certified under § 149.4(b) (relating to installation training and certification). At that same time, the manufacturer or retailer shall provide the purchaser with a list of installers known to him or obtained from the Department. By providing the list, the manufacturer or retailer does not warrant the quality of the installers' work, nor is the purchaser under any obligation to use any particular installer.

§ 149.7. Fees.

(a) The Department will charge training providers a fee for each:

(1) Curriculum evaluated by the Department payable upon submission of the application.

(2) Person registered to participate in an approved training curriculum.

(b) The Department will charge installers an annual fee for the issuance of an individual installer certification.

(c) The Department will establish the fee rates by publication of a notice in the *Pennsylvania Bulletin*.

§ 149.8. Penalties.

(a) *General.*

(1) The Department may suspend or revoke the certification of any person who violates the provisions of the act or this chapter or for whom the Department receives:

(i) Homeowner complaints.

(ii) Complaints from building code officials regarding performance of duties.

(iii) Evidence of a conviction of moral turpitude or similar crime.

(iv) Information that indicates a repeated failure to properly install manufactured homes.

(v) Evidence of fraud.

(vi) Evidence of loss of licensure or certification issued by another state or HUD.

(vii) Evidence of a violation of the Manufactured Home Procedural and Enforcement Regulations.

(2) Persons who wish to lodge a complaint with the Department may do so by any means of communication. If the complaint is made verbally, it must be followed up in writing. Before the Department suspends or revokes a certification, the Department will provide written notification to the certified person. The Department will specify in the notification the reason for the suspension or revocation and a time and place for a hearing on the matter, to be held within thirty days of notification.

(b) Prior to the issuance of written notification of suspension or revocation to the certified person, the Department may issue written warnings to the certified person. Written warnings will specify the alleged violations and may include a request for a written response to the allegations set forth in the written warnings from the certified person.

(c) Additionally, the Department may impose a civil penalty of up to \$1,000 per violation, not to exceed \$1,000,000 in the aggregate, on any person who violates the provisions of the act or this chapter. The Department may impose the penalty only after affording the accused party the opportunity for a hearing, as provided in 2 Pa.C.S. (relating to administrative law and procedure).

[Pa.B. Doc. No. 06-1158. Filed for public inspection June 23, 2006, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

[L-00050172]

Gas Service; Safety Code

The Pennsylvania Public Utility Commission, on March 16, 2006, adopted a final rulemaking order amending § 59.33(b) (relating to safety) so that future amendments to 49 CFR Parts 191—193 and 199 are automatically adopted by the Commission.

Executive Summary

On February 3, 2005, the Commission adopted a proposed rulemaking order at L-00050172 to amend § 59.33(b) so that future amendments to the Federal pipeline safety laws can be automatically adopted by the Commission. The proposed rulemaking was published at 35 Pa.B. 6775 (December 17, 2005), with a 30-day public comment period. The Commission did not receive comments from the public concerning this rulemaking, nor did the Independent Regulatory Review Commission (IRRC) or the House and Senate Committees file comments. The final rulemaking language does not contain any changes to the proposed rulemaking language. On March 17, 2006, the Commission entered a final rulemaking order adopting the final regulation language.

Section 59.33(b) sets forth the minimum safety standards for all gas transmission and distribution facilities in this Commonwealth and provides that these safety standards are the same as those issued under the Federal pipeline safety laws in 49 U.S.C.A. §§ 60101—60503, and implemented in 49 CFR Parts 191—193 and 199. Under the current language of § 59.33(b), the Commission is required to review, ratify and publish amendments to the Federal pipeline safety regulations prior to the Commission's adoption of laws. The amendment to § 59.33(b)

removes the burdensome review and ratification requirements that unnecessarily delay the Commission's incorporation of amendments to the Federal safety standards. The rulemaking provides that any future amendments to the Federal pipeline safety regulations will result in an amendment to § 59.33(b), effective 60 days after the effective date of the Federal amendment unless the Commission determines that specific amendments should not be adopted. As a result of the rulemaking, the Commission's Gas Safety Division will eliminate several hundred hours from the amount of time it currently spends on regulatory review and approval.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2005, the Commission submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6775 (December 17, 2005), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure 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 May 16, 2006, 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 May 17, 2006.

Public Meeting held
March 16, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick

Final Rulemaking Amending 52 Pa. Code § 59.33(b) (Gas Service: Safety Code); Doc. No. L-00050172

Final Rulemaking Order

By the Commission:

On February 3, 2005, the Commission adopted a proposed rulemaking order amending 52 Pa. Code § 59.33(b) (relating to safety) so that future amendments to the federal pipeline safety laws can be automatically adopted by the Commission. On December 7, 2005, the Commission submitted the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. The proposed rulemaking was published in the *Pennsylvania Bulletin* on December 17, 2005, at 35 Pa.B. 6775, with a 30-day public comment period. The Commission did not receive any comments from the public concerning this rulemaking, nor did IRRC or the Committees file comments. Thus, the final rulemaking language does not contain any changes to the proposed rulemaking language.

Section 59.33(b) sets forth the minimum safety standards for all gas transmission and distribution facilities in Pennsylvania and provides that these safety standards are the same as those issued under the federal pipeline

safety laws, as set forth in 49 U.S.C.A. §§ 60101, et seq., and implemented in 49 CFR Parts 191—193 and 199. Currently, § 59.33(b) requires the Commission to review and ratify all amendments to the federal safety laws prior to the Commission's adoption of such laws. Amendments to the federal safety laws do not become effective until the entry date of a Commission ratification order or, in the case of publication, the date of the order's publication in the *Pennsylvania Bulletin*.

The purpose of this final rulemaking is to modify the current language of § 59.33(b) so that future amendments to the federal safety laws can be automatically adopted by the Commission. The final rulemaking eliminates the language in the current regulation that requires the Commission to review, ratify, and publish amendments to the federal pipeline safety regulations. Additionally, the final rulemaking language provides that any future amendments to the federal pipeline safety laws will result in an amendment to § 59.33(b), effective 60 days after the effective date of the federal amendment unless the Commission publishes a notice in the *Pennsylvania Bulletin* identifying specific amendments that should not be adopted.

Accordingly, under 66 Pa.C.S. §§ 501 and 1501, sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b), section 5 of the Regulatory Review Act (71 P. S. § 745.5) and section 612 of The Administrative Code of 1929 (71 P. S. § 232), we propose to amend our regulations as set forth at 35 Pa.B. 6775; *Therefore,*

It Is Ordered That:

1. This docket adopts the final regulation as set forth at 35 Pa.B. 6775.

2. The Secretary shall submit this order and 35 Pa.B. 6775 to the Office of Attorney General for approval as to form and legality.

3. The Secretary shall submit this order and 35 Pa.B. 6775 to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and 35 Pa.B. 6775 for review by the designated standing committees of both Houses of the General Assembly, and for review by the Independent Regulatory Review Commission.

5. The Secretary shall certify this order and 35 Pa.B. 6775 and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The amendment of § 59.33(b) shall become effective upon publication in the *Pennsylvania Bulletin*.

7. The contact persons for this rulemaking are (technical) Paul J. Metro, Chief, Gas Safety Division, (717) 787-1063 and (legal) Jaime M. McClintock, Assistant Counsel, Law Bureau, (717) 783-2811. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2781 (June 3, 2006).)

Fiscal Note: Fiscal Note 57-238 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 06-1159. Filed for public inspection June 23, 2006, 9:00 a.m.]