

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 403]

Uniform Construction Code

In accordance with section 304 of the Pennsylvania Construction Code Act (act) (35 P.S. §§ 7210.304), the Department of Labor and Industry (Department) amends Chapter 403 (relating to administration) to read as set forth in Annex A.

Statutory Authority

This emergency certified final-omitted rulemaking is issued under the authority provided in section 304(a)(1) and (2) of the act. Section 304(a)(1) provides that, with 9 months of receipt of the report, the Department “shall promulgate final-omitted regulations” adopting the revisions provided in the report issued by the Uniform Construction Code Review and Advisory Council (RAC) to the Secretary of the Department specifying the 2015 code revisions of the International Code Council (ICC) codes the RAC adopts or modifies. The Department must adopt the RAC’s revisions “without change.” Section 304(a)(2) exempts the regulations from section 205 of the Commonwealth Documents Law (45 P.S. § 1205), and Sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)).

These regulations are also being submitted as emergency certified regulations. Section 6(d) of the Regulatory Review Act (RRA) allows an agency to immediately implement a final-omitted regulation when the Governor or Attorney General certifies that promulgation is necessary to respond to an emergency circumstance specified in the RRA. 71 P.S. § 745.6(d). Here, on October 18, 2018, Governor Tom Wolf issued a Certification for Need for Emergency Regulation that this emergency certified final-omitted rulemaking is required to protect the public health, safety and welfare. In addition, this Certification for Need for Emergency Regulation is consistent with the goal of the act “to provide standards for the protection of life, health, property and environment and for the safety and welfare of the consumer, general public and the owners and occupants of buildings and structures.” 35 P.S. § 7210.102(b)(1).

Background

In 1999, the Legislature established the act and directed the Department to promulgate regulations adopting certain building codes as the Uniform Construction Code (UCC). See 35 P.S. §§ 7210.102(a)(3) and 7210.301. Since then, various codes issued by the ICC, including the International Building Code (IBC), have been adopted, in whole or in part, by reference into the UCC. See 34 Pa. Code §§ 403.1 and 403.21 (relating to scope; Uniform Construction Code). Traditionally, the ICC has published fire and smoke protection features for elevator lobbies in Chapter 7 of the IBC. Every 3 years, the ICC publishes revisions to the ICC codes.

In Act 106 of 2008, the General Assembly established the RAC whose members represent industry sectors that participate in the various aspects relating to building construction including building component design, construction, building code enforcement and local government representation. The RAC is charged to review the

periodic changes to the revised ICC codes prior to adoption into the UCC. See 35 P.S. § 7210.107.

Three years ago, for the 2015 review cycle, the RAC decided only to adopt 16 provisions in all the 2015 ICC codes. This was subsequent to the RAC’s 2012 decision to not adopt any portion of the 2012 ICC codes. As a result, the Legislature amended the adoption procedure. Act 36 of 2017 directed the RAC to conduct another complete review of the 2015 ICC codes, disregarding the RAC’s previous action on the 2015 ICC codes. 35 P.S. § 7210.108(a)(1)(i). If the 2015 ICC codes updated the 2012 ICC codes, then the RAC was free to consider those updated provisions. However, the RAC was to review any sections of the 2015 ICC codes that did not update the 2012 ICC sections only if two-thirds of the RAC determined a review to be necessary. 35 P.S. § 7210.108(a)(1)(iii).

For the 2015 code review, the RAC was required to submit a report to the Secretary of the Department outlining the ICC codes that the RAC was adopting or modifying. 35 P.S. § 7210.108(b). On May 1, 2018, the RAC submitted its report to the Secretary, outlining 37 different recommendations. On June 12, 2018, and July 23, 2018, the RAC submitted amended reports. The Department promulgated regulations based on the RAC’s last amended report, and these regulations went into effect on October 1, 2018.

However, these regulations did not include fire and smoke protection features for elevator lobbies because, in 2012, the ICC moved the section providing these protection features from Chapter 7 of the IBC to Chapter 30 of the ICC. The ICC also updated these protection features between 2012 and 2015. Chapter 30 of the IBC governs elevators and the RAC typically does not review Chapter 30 because the Department has exclusive authority to regulate elevators. 35 P.S. § 7210.105(c)(1) and (2). However, provisions concerning fire and smoke protection for elevator lobbies are not covered by the Department’s elevator regulations since elevator is defined as, “Hoisting and lowering devices governed by ASME standards adopted by the Department under the Uniform Construction Code and other lifting devices subject to the requirements of the Uniform Construction Code.” 34 Pa. Code § 401.1 (relating to definitions). The features found in Chapter 30 of the IBC of 2015 regulate elevator lobbies and hoistway openings and do not regulate the lowering devices themselves. As such, the RAC was required to review Section 3006 (relating to elevator lobbies and hoistway opening protection) of the IBC of 2015 and determine whether to adopt or modify the Section.

On October 17, 2018, the RAC held a meeting where it reviewed Section 3006 of the IBC of 2015 and voted to adopt it. On that day, the RAC issued a report directing the Department to adopt Section 3006 of the IBC of 2015 into its regulations. Therefore, the Department is submitting this emergency certified final-omitted regulation to add fire and smoke protection features found in Section 3006 of the IBC of 2015 to the UCC regulations. This regulation is necessary to protect the public health, safety and welfare because the current regulations do not require fire and smoke protection features for elevator lobbies and these features are necessary to prevent serious injury or death in the event of a fire in a commercial building containing elevators.

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

On October 17, 2018, the RAC held a public hearing to consider whether to adopt fire and smoke protection provisions for elevator lobbies.

Purpose

The purpose of this emergency certified final-omitted rulemaking is to amend 34 Pa. Code § 403.21 to adopt the revisions specified in the RAC's October 17, 2018, report, as required by section 304(a)(1) of the act.

Summary of Emergency Certified Final-Omitted Rulemaking

§ 403.21. Uniform Construction Code.

The RAC voted to adopt Section 3006 (relating to elevator lobbies and hoistway opening protection) of the IBC of 2015. As such, the Department is amending paragraph (a)(1) of Section 403.21 to add Section 3006 of the IBC of 2015.

Affected Persons

This emergency certified final-omitted rulemaking will affect all builders and contractors in the construction industry and all building code officials who enforce the regulations.

Fiscal Impact

The Department is not aware of any fiscal impact to the regulated community.

Reporting, Recordkeeping and Paperwork Requirements

There are no additional reporting, recordkeeping or paperwork requirements.

Sunset Date

There is no sunset date for this regulation. The act requires referenced standards to be reviewed every 3 years following publication of the triennial revisions to the ICC codes.

Effective Date

This emergency certified final-omitted regulation will take effect immediately upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person is Matthew W. Kegg, Director, Bureau of Occupational and Industrial Safety, Department of Labor and Industry, 651 Boas Street, Room 1613, Harrisburg, PA 17121, (717) 783-6304, mkegg@pa.gov.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on October 22, 2018, the Department submitted a copy of the final-omitted rulemaking to the Chairpersons of the Senate Committee on Labor and Industry and the House Committee on Labor and Industry and to the Independent Regulatory Review Commission (IRRC). In addition to submitting the final-omitted rulemaking, the Department has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)), the Governor has certified that this

final-omitted regulation is required to meet an emergency condition that threatens the public health, safety and welfare. As such, this final-omitted regulation is effective upon publication in the *Pennsylvania Bulletin*. Pursuant to section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC will review this regulation at its meeting on December 6, 2018.

Findings

The Department finds that:

(a) This emergency certified final-omitted rulemaking is authorized by Section 304(a)(1) and (2) of the act.

(b) Use of the emergency certified final-omitted rulemaking procedure provided in section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)) is appropriate because this regulation is required to protect the public health, safety and welfare based on the Governor's Certification of Need for Emergency Regulation dated October 18, 2018.

Order

The Department, acting under authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code, Chapter 403, are amended by amending § 403.21 to read as set forth in Annex A.

(b) The Department submitted these regulations to the Independent Regulatory Review Commission and the Senate and House Labor and Industry Committees.

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

(d) This final-omitted rulemaking shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

W. GERARD OLEKSIK,
Secretary

Fiscal Note: 12-109. No fiscal impact; (8) recommends adoption.

GOVERNOR'S OFFICE

Certification of Need for Emergency Regulation

Whereas, the Pennsylvania Construction Code Act (Act), 35 P.S. §§ 7210.101—7210.1103, charges the Department of Labor and Industry (Department) with promulgating the Uniform Construction Code (UCC), which is Pennsylvania's uniform statewide building code; and

Whereas, the UCC incorporates model codes issued by the International Code Council (ICC); and

Whereas, the Act has created the Uniform Construction Code Review and Advisory Council (RAC) which is charged with reviewing the model codes issued by the ICC, deciding which of these codes should be adopted or modified and issuing a report to the Department outlining the RAC's decisions regarding the ICC codes; and

Whereas, the RAC reviewed the 2015 ICC codes; and

Whereas, on May 1, 2018, June 12, 2018, and July 23, 2018, the RAC issued reports directing the Department to

promulgate regulations adopting the RAC’s decisions on the 2015 ICC codes; and

Whereas, effective October 1, 2018, the Department promulgated regulations adopting the decisions the RAC made regarding the 2015 ICC codes; and

Whereas, the regulations promulgated effective October 1, 2018 do not require fire and smoke protection for elevator lobbies; and

Whereas, the failure to require fire and smoke protection for elevator lobbies creates a risk to individuals who occupy newly constructed or altered commercial buildings because without requiring this protection, individuals could suffer serious injuries or death in the event of a fire in the building, as elevator lobby protection provides for a faster and safer response for first responders as well as a protected path of evacuation for building occupants in those buildings required to provide Fire Service Access and Occupant Evacuation elevators; and

Whereas, the RAC met on October 17, 2018 and the same day issued a report directing the Department to amend the UCC to include fire and smoke protection provisions found in Section 3006 of the International Building Code of 2015; and

Whereas, immediate amendment to the UCC is necessary to protect the public health, safety and welfare of individuals who occupy and use newly constructed or altered commercial buildings; and

Now Therefore, I do hereby certify that the regulatory amendment to 34 Pa. Code, Part XIV, Chapter 403, following hereto as ANNEX A is required to meet the emergency conditions enumerated in the recitals above and to safeguard the public health, safety and welfare as described therein.

Further, I hereby authorize the Secretary of the Department of Labor and Industry to publish this amendment in the *Pennsylvania Bulletin* as an Emergency Certified Final-Omitted Rulemaking consistent with the provisions of Section 6(d) of the Regulatory Review Act, as amended, 71 P.S. § 745.6(d).

Given under my hand and the Seal of the Governor, at the City of Harrisburg, on this eighteenth day of October in the year of our Lord two thousand eighteen, and of the Commonwealth the two hundred forty-third.

Governor

Annex A
TITLE 34. LABOR AND INDUSTRY
PART XIV. UNIFORM CONSTRUCTION CODE
CHAPTER 403. ADMINISTRATION
STANDARDS

§ 403.21. Uniform Construction Code.

(a) The Department adopts and incorporates by reference the following codes as the Uniform Construction Code:

(1) The provisions of Chapters 2—10, 12—29, 31—35 and Section 3006 (relating to elevator lobbies and hoistway opening protection) of the “International Building Code of 2015,” except:

(i) In occupancies in Use Group R-3 and within dwelling units in occupancies in Use Group R-2 the maximum riser height shall be 8 1/4 inches (210 mm) and the minimum tread depth shall be 9 inches (229 mm). A 1-inch (25 mm) nosing shall be provided on stairways with solid risers.

(ii) That Section 913.2.2 (relating to circuits supplying fire pumps) is excluded.

(iii) That in Section 2609.4 (relating to area limitations and greenhouses), exception three is modified to include “or maintaining plants.”

(2) Chapter 11 of the “International Building Code of 2015.”

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[Pa.B. Doc. No. 18-1700. Filed for public inspection November 2, 2018, 9:00 a.m.]