RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY
DEPARTMENT OF LABOR AND INDUSTRY
[34 PA. CODE CHS. 401 AND 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 Chapters 401 and 403 (relating to Uniform Construction Code (UCC) training and certification of code administrators; and administration) to read as set forth in Annex A.

Statutory Authority

This final-omitted rulemaking is issued under the authority provided in section 304(a)(3) of the act (35 P.S. § 7210.304(a)(3)), which provides that, by December 31 of the year of issuance, the Department shall adopt regulations updating the accessibility provisions of the most recently published edition of the International Code Council (ICC) codes and any other accessibility requirements which shall be specified in the regulations or contained in or referenced by the UCC relating to persons with disabilities.

Background

The act mandates a process for the adoption of updated building codes issued by the ICC. Although most building code provisions are reviewed by the Pennsylvania Uniform Construction Code Review and Advisory Council under the procedure outlined in section 108 of the act (35 P.S. § 7210.108), the act specifically excludes the accessibility provisions of the ICC codes from this review. 35 P.S. § 7210.107(b)(3). Instead, section 304(a)(3) of the act requires the Department to adopt, by December 31 of the year of issuance by the ICC, the ICC’s updated accessibility standards for the construction, repair or alteration of buildings in the Commonwealth. In 2021, the ICC issued codes containing updated accessibility standards. Adoption of the current accessibility standards will ensure that commercial buildings meet current standards for accessible and usable facilities. These regulations will be effective upon publication in the Pennsylvania Bulletin.

The purpose of this final-omitted rulemaking is to adopt recognized international standards for accessible and usable buildings and structures, as directed by the act. The current accessibility regulations implemented the accessibility standards found in the 2021 ICC codes. This final-omitted rulemaking implements current state of the art accessibility standards and conforms to standards issued by the United States Department of Justice under the Americans with Disabilities Act (Pub.L. No. 101-336). Adopting Chapter 11 and Appendix E of the 2021 International Building Code (IBC) for new construction along with the accessibility provisions contained in the 2021 International Existing Building Code (IEBC) to state that they include the accessibility provisions of the ICC codes. The Department has discussed the adoption of accessibility provisions for buildings with the Pennsylvania Builders Association and the Pennsylvania Association of Building Code Officials and both entities have expressed support for adoption of the accessibility provisions contained in the 2021 IBC for new construction and the accessibility provisions contained in the 2021 IEBC for existing buildings.

Purpose

The purpose of this final-omitted rulemaking is to amend §§ 401.1, 403.21, 403.26 and 403.28 to adopt the ICC accessibility updates.

Summary of Proposed Rulemaking

§ 401.1. Definitions

This section changes the definitions for the IBC and the IEBC to state that they include the accessibility provisions of the 2021 IBC and the 2021 IEBC. This was done because the ICC updated the accessibility provisions of the IBC and IEBC.

§ 403.21. Uniform Construction Code

The Department amends subsection (a)(2) to replace the accessibility provisions found in Chapter 11 of the 2018 IBC with the updated accessibility provisions of Chapter 11 of the 2021 IBC. This is being done to implement the latest accessibility standards.

The Department amends subsection (a)(6)(iii) to replace the accessibility provisions found in the 2018 IPC with the updated accessibility provisions found in the 2021 IPC. This is being done to implement the latest accessibility standards.

The Department amends subsection (a)(10)(i) to replace the accessibility provisions found in the 2018 IEBC with the updated accessibility provisions found in the 2021 IEBC. This is being done to implement the latest accessibility standards.

The Department amends subsection (a)(12) to replace the accessibility provisions found in Appendix E of the 2018 IBC with the updated accessibility provisions of Appendix E of the 2021 IBC. This is being done to implement the latest accessibility standards.

§ 403.26. Swimming pools

The Department amends subsection (b) to replace the accessibility provisions found in the 2018 ISPSC with the updated accessibility provisions found in the 2021 ISPSC. This is being done to implement the latest accessibility standards.

§ 403.28. Uncertified buildings

The Department amends subsection (b)(3)(ii) and (iii) to replace the accessibility provisions found in the 2018 IBC with the updated accessibility provisions of the 2021 IBC. This is being done to implement the latest accessibility standards.

Affected Persons

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

On July 15, 2021, the Accessibility Advisory Board (Board) held a public hearing to review and consider the updates to the accessibility provisions of the ICC codes. This is required by section 106(b) of the act (35 P.S. § 106(b)). The Board voted to endorse the accessibility updates found in the ICC codes. The Department has discussed the adoption of accessibility provisions for buildings with the Pennsylvania Builders Association and the Pennsylvania Association of Building Code Officials and both entities have expressed support for adoption of the accessibility provisions contained in the 2021 IBC for new construction and the accessibility provisions contained in the 2021 IEBC for existing buildings.

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To enforce these regulations, the Department and building code officials will need to purchase the 2021 IBC, IEBC, IPC and ISPSC.

Builders and contractors will have to absorb some costs to comply with the updated standards. The Department does not possess specific data on any increase of costs to builders or contractors.

The Department will have to update the following forms: Accessibility Advisory Board Petition and Application for Building Permit. There are no additional reporting, record keeping or paperwork requirements.

There is no sunset date for this final-omitted rulemaking. The act requires accessibility standards to be updated every 3 years following publication of the triennial revisions to the ICC codes.

This final-omitted rulemaking will take effect upon publication in the Pennsylvania Bulletin.

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.

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on November 5, 2021, the Department submitted a copy of this final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Labor and Industry and the Senate Committee on Labor and Industry. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on December 8, 2021, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 9, 2021, and approved the final-omitted rulemaking.

The Department finds that:

(a) Final-omitted rulemaking is allowed when procedures specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202), are impracticable, unnecessary or contrary to the public interest. 45 P.S. § 1204(3).

(b) Following the procedures, outlined in sections 201 and 202 of the Commonwealth Documents Law, is impracticable and unnecessary since the Department is required to adopt the updated ICC accessibility codes without change.

The Department, acting under authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapters 401 and 403, are amended by amending §§ 401.1, 403.21, 403.26 and 403.28 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Department submitted these regulations to IRRC and the House and Senate 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 order shall become effective on the date of publication in the Pennsylvania Bulletin.

JENNIFER BERRIER, Secretary

( Editor's Note: See 51 Pa.B. 8061 (December 25, 2021) for IRRC's approval order.)

Fiscal Note: 12-115. No fiscal impact; (8) recommends adoption.

Title 34. Labor and Industry

Part XIV. Uniform Construction Code

Chapter 401. Uniform Construction Code Training and Certification of Code Administrators

§ 401.1. Definitions.

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

* * * * *

International Accreditation Service, Inc.—The International Accreditation Service, Inc., 5360 Workman Mill Road, Whittier, California 90601.

International Building Code—An International Building Code issued by the ICC. Chapter 11 and Appendix E of the “International Building Code 2021” issued by the ICC. The term includes all errata issued by the ICC.

International Energy Conservation Code—An International Energy Conservation Code issued by the ICC. The term includes all errata issued by the ICC.

International Existing Building Code—An International Existing Building Code for Buildings and Facilities issued by the ICC. The accessibility provisions in the “International Existing Building Code for Buildings 2021” issued by the ICC. The term includes all errata issued by the ICC.

International Fire Code—An International Fire Code issued by the ICC. The term includes all errata issued by the ICC.

Chapter 403. Administration Standards


(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 and 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 Existing Building Code of 2021.”

(3) The “International Mechanical Code of 2015.”

(6) The “International Plumbing Code of 2015” except:

(i) A municipality within a county of the second class may not administer and enforce the “International Plumbing Code” adopted under this chapter.

(ii) A municipality within a county of the second class that has adopted a plumbing code and accompanying rules and regulations under the Local Health Administration Law (16 P.S. §§ 12001—12028), shall retain the authority to promulgate and enforce this plumbing code and to make any changes it deems necessary if the changes meet the Uniform Construction Code’s minimum requirements.

(iii) The accessibility provisions contained in the following sections of the “International Building Code of 2015” are adopted:

(A) Section 403.4 (relating to signage).

(10) The “International Existing Building Code of 2015” except that Section 101.2 (relating to scope) is modified to add an exception for detached residential buildings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures to comply with either the International Existing Building Code of 2015 or the International Residential Code of 2015.

(i) The accessibility provisions contained in the following sections of the “International Existing Building Code of 2021” are adopted:

(A) (Reserved).

(B) Section 306 (relating to accessibility for existing buildings).

(C) Section 1101.2 (relating to creation or extension of nonconformity).

(D) Section 1508 (relating to construction sites).

(E) Appendix “B” (relating to supplementary accessibility requirements for existing buildings and facilities).


(a) A swimming pool, hot tub and spa which is accessory to a one- or two-family dwelling must comply with the “International Residential Code of 2015” which adopts, by reference, the “International Swimming Pool and Spa Code of 2015.”

(b) A swimming pool, hot tub or spa that is not accessory to a one- or two-family dwelling must comply with the Public Bathing Law (35 P.S. §§ 672—680d) and the “International Building Code of 2015” which adopts, by reference, the “International Swimming Pool and Spa Code of 2015.” The accessibility provisions contained in Section 307.1.4 (relating to general design requirements) of the “International Swimming Pool and Spa Code of 2021” are adopted.

§ 403.28. Uncertified buildings.

(a) Under section 902(b)(6) of the act (35 P.S. § 7210.902(b)(6)), an uncertified building that was built before April 27, 1927, is deemed to be legally occupied until the owner proposes to renovate, add an addition, alter or change the occupancy of the building. The renovation, addition, alteration or change in occupancy must comply with the Uniform Construction Code.

(b) Under section 902(b) of the act, uncertified buildings within the Department’s jurisdiction must meet the following requirements which do not apply to uncertified buildings under subsection (a):

(1) Maximum story height, minimum allowable construction type based on floor area, vertical opening and shaft protection requirements, means of egress requirements pertaining to minimum number of exits, maximum travel distances to exits, means of egress illumination, minimum egress widths and heights for exit doors, exit stairs, exit ramps and exit corridors requirements under the “International Building Code of 2015.”

(3) Accessibility requirements are applicable as follows:

(i) If construction of an uncertified building began before September 1, 1965, accessibility requirements will not be imposed by the Department.

(ii) If construction of a building began after August 31, 1965, and before February 18, 1989, and if the building is a State-owned building, a restaurant or a retail commercial establishment, the building must have at least one accessible main entrance, an accessible route from the accessible entrance to any public spaces on the same level as the accessible entrance and, if toilet rooms are provided, the building must have at least one toilet room for each sex or a unisex toilet room complying with the accessibility requirements of the “International Building Code of 2021.”

(iii) If construction of the building began after February 17, 1989, all accessibility requirements of the “International Building Code of 2021” shall be met.

(4) Structural requirements will not be imposed unless the Department determines that the building or a portion
The Commissioner of Professional and Occupational Affairs (Commissioner) amends 49 Pa. Code, Chapter 43b, by adding Subchapter D (relating to procedure) pertaining to activities of and formal proceedings before the licensing boards and commissions under the Bureau of Professional and Occupational Affairs (Bureau), to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The Commissioner has the power to promulgate regulations specifying the procedural rules to be followed in the conduct of hearings in disciplinary matters before a licensing board or licensing commission under 63 Pa.C.S. § 3105(b) (relating to hearing examiners), regarding regulations.

Background and Purpose

Section 502 of 2 Pa.C.S. (relating to representation) of the Administrative Agency Law, permits, but does not require, a party to be represented when appearing before a Commonwealth agency. Sections 31.1—35.251 of 1 Pa. Code (relating to General Rules of Administrative Practice and Procedure) (GRAPP) apply “when agencies hold a hearing, unless the agency adopted alternate procedures.” KC Equities v. Dept of Publ. Welfare, 95 A.3d 918, 932 (Pa. Cmwlth. 2014). Section 31.21 of GRAPP (relating to appearance in person) authorizes individuals to appear on their own behalf. It also provides that a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to an agency. However, for adversarial proceedings, GRAPP requires all parties, except for individuals appearing on their own behalf, to be represented by an attorney unless otherwise permitted by the agency in a specific case. See 1 Pa. Code §§ 31.21—31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

This final-omitted rulemaking expressly adopts GRAPP for the activities and proceedings before the licensing boards and commissions under the Bureau, with a limited exception. The Commissioner, in consultation with the various boards and commissions, is providing for non-attorney representation in formal proceedings involving business organizations, such as partnerships, corporations, limited liability companies, trusts and other associations, as well as agencies and political subdivisions. Like other agencies that have promulgated regulations that supersede GRAPP’s provisions governing representation of parties in administrative proceedings, the Commissioner is adopting this final-omitted rulemaking to provide more flexibility to those entities who wish to avoid the costs of legal representation. Administrative hearings generally involve questions of fact that do not require complex legal analysis and may not require the legal expertise of an attorney. Hearings before boards and commissions are designed to be brief and informal. Requiring attorney representation in all adversarial hearings involving business entities, agencies or political subdivisions undermines the informal, speedy and low-cost nature of administrative proceedings and may disuade parties from defending matters against them. The Commissioner believes that allowing non-attorney representation would provide small businesses with a cost-effective alternative for representation at hearings.

Through this final-omitted rulemaking, the Commissioner is joining other Commonwealth agencies that allow representation by non-attorneys in administrative proceedings. For example, the Department of Agriculture under 7 Pa.Code § 131.12 (relating to appearances) allows a partnership to be represented by any of its members and a corporation or association to be represented by any of its officers for adjudicatory proceedings relating to matters within its jurisdiction. The Pennsylvania Labor Relations Board permits entry of appearances by attorneys or other representatives under 34 Pa.Code § 91.2 (relating to appearances); and the State Health Facility Hearing Board under 37 Pa.Code § 197.9 (relating to appearances) permits a member of a partnership to represent the partnership; a bona fide officer of a corporation, trust or association to represent a corporation, trust or association; and an officer or employee of another agency or political subdivision to represent the agency or political subdivision in an appeal or petition before the hearing board.

Omission of Proposed Rulemaking

Under section 204(1)(iii) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(1)(iii)), the Commissioner is authorized to omit the procedures for a proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if the administrative regulation or change therein relates to agency procedure or practice. Publication of this proposed rulemaking is unnecessary because the regulations are procedural regulations relating to representation by non-attorneys for partnerships, corporations, limited liability companies, trusts, other associations and agencies and political subdivisions in administrative proceedings before the professional and occupational licensing boards and commissions within the Bureau.

Description of Amendments

§ 43b.301. Applicability of general rules of practice and procedure

Section 43b.301(a) (relating to applicability of general rules of practice and procedure) expressly adopts GRAPP, which governs the practice and procedure before the boards and commissions under the Bureau, except where it is inconsistent with this chapter. Subsection (b) clarifies that subsection (a) supplements 1 Pa. Code § 31.1 (relating to scope of part).
§ 43b.302. Representation in formal proceedings

Section 43b.302(a) (relating to representation in formal proceedings) reiterates the GRAPP rule that an individual may appear on their own behalf or may be represented by an attorney in formal proceedings before the boards and commissions under the Bureau. Subsection (a) permits a partnership, corporation, limited liability company, trust, association, agency or political subdivision to be represented by an attorney as provided in subsection (b). The non-attorneys listed in paragraphs (1) through (5) of subsection (b) are the persons by or under whose authority the powers of a business organization/entity are exercised and under whose direction the activities and affairs of the entity are managed. Paragraph (6) provides that an officer or employee of an agency or political subdivision may represent the agency or political subdivision, provided the rules and policies of that agency or subdivision allow such representation. Subsection (c) makes clear that subsections (a) and (b) supersede GRAPP in 1 Pa. Code §§ 31.21 and 31.23.

Fiscal Impact and Paperwork Requirements

There is no fiscal impact and no paperwork requirements are associated with this final-omitted rulemaking.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on November 5, 2021, the Commissioner submitted copies of the final-omitted rulemaking, and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SPC/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—792-506).

Under section 5.1(e) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(e) and (j.2)), on December 8, 2021, the final-omitted rulemaking was deemed approved by the SPC/PLC and the HPLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 9, 2021, and approved the final-omitted rulemaking.

Additional Information

Individuals who need information about this final-omitted rulemaking may contact the Bureau of Professional and Occupational Affairs, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-BPOA@pa.gov.

Findings

The Commissioner finds that:

(1) Public notice of the Commissioner’s intention to promulgate these regulations under the procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) has been omitted under section 204 of the CDL (45 P.S. § 1204) because publication of proposed rulemaking is unnecessary in that the regulations relate only to agency procedure or practice.

(2) The promulgation of the regulations in the manner provided in this order is necessary and appropriate to effectuate non-attorney representation in formal proceedings before the boards and commissions under the Bureau.

Order

The Commissioner, acting under the authority of 63 Pa.C.S. § 3105(b) orders that:

(a) The regulations at 49 Pa.Code Chapter 43b are amended by adding §§ 43b.301 and 43b.302 read as set forth in Annex A.

(b) The Commissioner shall submit this final-omitted rulemaking to the Office of Chief Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall submit this final-omitted rulemaking to IRRC, SPC/PLC and HPLC as required by law.

(d) The Commissioner shall certify this final-omitted rulemaking and deposit it with the Legislative Reference Bureau as required by law.

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

K. KALONJI JOHNSON, Commissioner

(Editor’s Note: See 51 Pa.B. 8061 (December 25, 2021), for IRRC’s approval order.)

Fiscal Note: 16A-065. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART 1. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

Subchapter D. PRACTICE AND PROCEDURE

§ 43b.301. Applicability of general rules of practice and procedure.

(a) Under 1 Pa.Code § 31.1 (relating to scope of part), 1 Pa.Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable to the activities of and formal proceedings before the licensing boards and commissions under the Bureau insofar as it is not inconsistent with this chapter.

(b) Subsection (a) supplements 1 Pa.Code § 31.1.

§ 43b.302. Representation in formal proceedings.

(a) General rule. In formal proceedings before the licensing boards and commissions under the Bureau, an individual may appear on their own behalf or may be represented by an attorney as provided under 1 Pa.Code § 31.22 (relating to appearance by attorney). A partnership, corporation, limited liability company, trust, association, agency or political subdivision may be represented in formal proceedings by an attorney as provided by 1 Pa.Code § 31.22 or may be represented in formal proceedings by a non-attorney as provided in subsection (b).

(b) Non-attorney representation authorized. Non-attorney representation of partnerships, corporations, limited liability companies, trusts, associations, agencies or political subdivisions in formal proceedings before the licensing boards and commissions is permitted as follows:

(1) A general partner of a partnership may represent the partnership.
(2) A bona fide officer or director of a for profit or not-for-profit corporation may represent the corporation.

(3) A manager of a manager-managed limited liability company or a member of a member-managed limited liability company may represent the limited liability company.

(4) A trustee of a trust may represent the trust.

(5) A member or other authorized representative of any other type of association may represent the association.

(6) An officer or employee of an agency or political subdivision may represent the agency or political subdivision, provided the rules and policies of that agency or subdivision allow the representation.

(c) Applicability of the General Rules of Administrative Practice and Procedure. Subsections (a) and (b) supersede 1 Pa. Code §§ 31.21 and 31.23 (relating to appearance in person; and other representation prohibited at hearings) regarding representation of partnerships, corporations, limited liability companies, trusts, associations, agencies or political subdivisions in formal proceedings before the licensing boards and commissions under the Bureau.

[Pa.B. Doc. No. 21-2149. Filed for public inspection December 23, 2021, 9:00 a.m.]