

**CHAPTER 49. ADMINISTRATION—BUILDINGS**

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**Authority**

The provisions of this Chapter 49 issued under act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235), unless otherwise noted.

**Source**

The provisions of this Chapter 49 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765, unless otherwise noted.

**Cross References**

This chapter cited in 6 Pa. Code § 21.30 (relating to special program and recertification standards for domiciliary care homes with four or more clients); 7 Pa. Code § 82.17 (relating to safety—fire prevention and egress); 7 Pa. Code § 139.42 (relating to structures); 12 Pa. Code § 145.35 (relating to applicability of Fire and Panic Act); 22 Pa. Code § 31.43 (relating to buildings and equipment); 34 Pa. Code § 11.85 (relating to applicable provisions of other regulations); 34 Pa. Code § 47.125 (relating to stairs); 34 Pa. Code § 50.21 (relating to definitions); 34 Pa. Code § 50.24 (relating to exit doors and exit access doors); 34 Pa. Code § 50.53 (relating to general fire alarm requirements); 34 Pa. Code § 50.92 (relating to historic building); 34 Pa. Code § 60.8 (relating to field inspection); 34 Pa. Code § 60.33 (relating to buildings); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); and 55 Pa. Code § 5320.54 (relating to seclusions and restraints).

**§ 49.1. Definitions.**

The following words and terms, when used in this chapter and Chapters 50—59, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235) referred to as the Fire and Panic Act.

*Addition*—An extension or enlargement of a building.

*Agriculture*—The art of cultivating the soil, producing and harvesting crops and raising livestock.

*Aisle*—The clear width and length of an area which is provided for ingress or egress between rows of seats, or between rows of seats and wall, or between desks, tables, counters, machines, or other equipment or materials, or between such articles or materials and a wall.

*Alteration*—Any change, modification or rearrangement of a building which affects this chapter and Chapters 50—59.

*Apartment*—A room or suite of rooms with sanitation facilities and with or without cooking facilities, and occupied as the home or residence of a single family, individual or group of individuals.

*Approved*—Accepted by the Department. Designs, equipment and devices which have been listed by Underwriters Laboratories or approved by Factory Mutual or other testing laboratory accepted by the Board which meets this chapter and Chapters 50—59 shall be considered approved by the Department.

*Attic*—An uninhabited space between the top of the ceiling framing of the top habitable story and the roof framing and walls constituting a part of the enclosure of the space.

*Automatic closing device*—An approved device attached to a door and frame which automatically causes a door to return to the closed position.

*Automatic fire alarm system*—A system designed to detect products of combustion and provide automatic notification to building occupants. It shall be composed of detection devices, alarms, power source, wiring, control panel and other related components as necessary.

*Automatic fire detection device for the hearing-impaired*—A device designed to detect products of combustion and provide automatic notification to hearing-impaired persons by visual signals or other methods approved by the Department.

*Balcony*—A floor level open to the floor below. A floor level shall be considered a story when it exceeds 1/3 of the area of the floor it is open to. A space enclosed with floor to ceiling partitions shall be considered a story except for toilet facilities and incidental rooms which are not occupied.

*Basement*—A floor level completely below grade or floor level in which more than 2/3 of the perimeter walls are below grade. A wall shall be considered below grade where the dimension from the first floor line to the finished grade is 5 feet or less, and the slope of the finished grade extending 10 feet from the building walls does not exceed 30%.

*Bearing wall*—A wall which supports a vertical load in addition to its own weight.

*Boiler room*—A room which houses one or more boilers.

*Building*—A structure used or intended for supporting or sheltering a use or occupancy. Portions of a structure may be considered separate buildings when the following conditions are met:

- (i) Each portion is separated by 2-hour fire walls.
- (ii) Not less than 50% of the required exits discharge directly to grade.

*Combustible*—Capable of igniting and continuing to burn or glow at or below a temperature of 1200°F.

*Cubic content of a building*—The cubic space as calculated by using the architectural volume of buildings, D101-1980 published by The American Institute of Architects.

*Danger of imminent harm*—The existence of conditions in buildings which are either so inadequately equipped with exit facilities, so structurally unstable, so clearly unsuitable for the use or occupancy to which it is put or was designed, or so inadequately maintained that an immediate and clear probability of death or serious injury exists to those employed, accommodated, housed, or assembled there in the case of fire or panic.

*Duct*—A tube, pipe, conduit or passageway used to convey air, gases or vapors.

*Elevator*—A car, cage or platform raised or lowered vertically in permanent guides or rails, including the necessary operating mechanism, used to transport persons or materials.

*Emergency communications center*—A consolidated communications dispatch center established by counties, or other units of local government, for the reporting of police, fire, medical or other emergency situations.

*Escalator*—A moving continuous inclined stairway or runway used for raising or lowering persons.

*Exit*—That portion of a means of egress which is separated from other spaces of the building or structure by construction or equipment as required to provide a way of travel to the exit discharge.

*Exit access*—The portion of a means of egress which leads to an exit.

*Exit discharge*—The portion of a means of egress between the termination of an exit and a safe area of refuge outside of the building or structure which has direct access to a public street or thoroughfare or an open area with unrestricted access to a public street or thoroughfare.

*Farm building*—A building used for the production or storage, or both, of agricultural products, or used in the storage of farm equipment.

*Fire alarm system*—See “manual fire alarm system.”

*Fire damper*—An automatic self-closing noncombustible barrier designed to prevent the passage of air, gases, smoke or fire through an opening, duct or plenum chamber.

*Fire door assembly*—An assembly of components which includes doors, frames, latches, self-closing devices and other appropriate hardware which has

been given an assembly rating by an approved testing agency. The assembly rating is void when any of the required components are omitted or altered.

*Fire exit hardware*—A device designed to provide quick release of a door. The device shall be listed for panic release and labeled fire doors.

*Fire partition*—An interior partition having a minimum 1-hour fire-resistive rating. Fire partitions are intended to restrict the spread of fire but are not necessarily continuous through stories nor extended through the roof. Openings shall be protected by at least a 3/4-hour C label door assembly.

*Fire-resistive construction*—The type of construction in which the walls, floors, roof and structural members are steel, iron, masonry, concrete or other noncombustible materials meeting all of the requirements of § 50.11(a) (relating to construction tables).

*Fire-resistive rating*—The time in hours that material or construction will withstand fire exposure as determined by a fire test made in conformity with the “Standard Methods of Fire Tests of Building Construction and Materials.” (ASTM E119).

*Fire-retardant treated wood*—

(i) A wood product treated by an approved pressure process to meet the standards of ASTM test designation E-84 Standard Test Method for Surface Burning Characteristics of Building Materials, to have a flamespread classification of 25 or less and to show no evidence of significant progressive combustion when the test is continued for 30 minutes. The flame front shall not progress more than 10 1/2 feet beyond the center line of the burners at any time during the test.

(ii) Fire-retardant wood products shall bear identification showing the fire hazard classification thereof issued by an approved agency having a re-examination service.

(iii) Where fire-retardant treated wood products are to be subjected to sustained high humidity or exposed to weather, they shall be further identified as to indicate that there is no increase in the listed flamespread classification as defined in this section when subjected to ASTM D2898 Standards Methods for Accelerated Weathering of Fire-Retardant Treated Wood for Fire Testing.

(iv) Subsequent to treatment, fire-retardant treated lumber and plywood shall be dried to a moisture content of 19% or less for lumber and 15% or less for plywood.

*Firestopping*—A barrier designed to retard the spread of fire in concealed spaces which contain combustible construction, such as attics, walls, partitions, floor framing and spaces above ceilings.

*Fire wall*—A wall constructed of noncombustible materials having a 2-hour or greater fire-resistive rating and adequate structural stability to restrict the spread of fire. Openings shall be protected by rated label door assemblies

appropriate for the hourly fireresistive rating of the wall. Fire walls shall extend to the underside of the roof sheathing.

*Flame spread rating*—The measurement of flame spread on a surface as determined by tests conducted in conformity with NFPA 255, 1979.

*Floor area*—The surface area included within surrounding walls of a building, except vent shafts, elevator shafts, courts, fire towers and the like.

*General alarm*—An alarm condition that is signaled throughout the building or a fire zone of a structure.

*Heat detector*—A device which detects abnormally high temperature or rate-of-temperature rise.

*High rise building*—A building that has an exterior face which exceeds 75 feet when measured from ground level to five feet above the highest occupiable floor level.

*Historic building*—A building or structure listed as an historic building or structure by the Historic and Museum Commission.

*Horizontal exit*—A passageway through a 2-hour fire wall from one structure or building to another structure or building, or area of refuge within the same building.

*Imminent harm*—See “danger of imminent harm.”

*Initiating device*—A device that is capable of being operated manually or automatically for the purpose of reporting alarms to building occupants.

*Intercommunicating stairway*—A stairway which connects two or more floor levels of a building. It may be open to one floor level. It is not required to discharge directly to grade.

*Interior finish*—The exposed interior surfaces of a building. Paint, wallpaper not more than 1/28 inch thick, and similar wall finishes having no greater fire hazard than wallpaper shall not be considered interior finishes.

*Label*—An identifying mark or symbol attached to equipment or materials listing the approved organization that maintains periodic inspection of production to insure compliance with appropriate standards or performance.

*Large personal care home*—See “personal care home.”

*Listed*—Equipment or materials included in a list published by approved organizations concerned with product evaluation. The listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in specified manner.

*Living unit*—A suite of rooms with sanitation facilities, cooking facilities and common living areas which are used as a home, residence or temporary lodging.

*Manual fire alarm system*—A system that consists of manual pull stations, signaling devices, power source, control panel and other related components which is designed to provide notification to all building occupants.

*Means of egress*—A continuous and unobstructed way of travel from any point in a building or structure to a safe area of refuge outside of the building or structure.

*Mezzanine*—A floor level open to the floor below. A floor level shall be considered a story when it exceeds 1/3 of the area of the floor it is open to. A space enclosed with floor to ceiling partitions shall be considered a story except for toilet facilities and incidental rooms which are not occupied.

*Noncombustible*—Incapable of igniting and continuing to burn or glow at or below a temperature of 1200°F.

*Noncombustible construction*—The type of construction in which all structural members including walls, floors, roofs and their supports are steel, iron, masonry, concrete or other noncombustible materials having a minimum fire-resistive rating as indicated in § 50.11(b).

*Ordinary construction*—The type of construction in which the exterior walls are of masonry, concrete or other noncombustible material meeting § 50.11(c).

*Panic hardware*—A device designed to provide quick release of an exit door. Panic hardware shall not be used on doors which are required to be a part of a fire door assembly such as stair tower doors.

*Penthouse*—A structure built above a roof. The use is limited to the housing of machinery, mechanical equipment and stairways. A penthouse shall not be construed as being a story.

*Personal care home*—A premise that is approved and licensed as a personal care boarding home by the Department of Public Welfare in which food, shelter and personal assistance or supervision are provided for a period exceeding 24 hours for four or more residents who are not relatives of the operator or owner and who require assistance or supervision in such matters as dressing, bathing, diet or medication prescribed for self-administration. Personal care homes shall be separated into small personal care homes (four through eight residents) and large personal care homes (nine or more residents).

*Presignal alarm*—An alarm which only causes selected signalling units to operate in designated areas.

*Protected heavy timber construction*—The type of construction in which the exterior walls, floors, roof and structural members are of masonry, reinforced concrete or other approved noncombustible materials and heavy timber members of minimum nominal sizes specified in § 50.11(c).

*Remodeled*—See “alteration.”

*Resident*—A person, unrelated to the owner or operator, who resides in a facility in return for consideration.

*Revision*—Changes to an open plan approval which does not add square footage or cubic footage to a building.

*Selective coded*—An alarm system in which each initiating device causes the signalling units to operate a specific number of preprogrammed pulses that is indicative of the device that caused the alarm. Each alarm initiating device has its own code.

*Self-closing doors*—Doors which, when opened and released, return to the closed position.

*Shaft*—A vertical opening or passage through one or more floors of a building, or through a floor and the roof.

*Single-station detection device*—A device capable of detecting products of combustion and providing an alarm to occupants which is not interconnected or linked by wiring or wireless communication with other detection devices or a building fire alarm system.

*Small personal care home*—See “personal care home.”

*Smoke barrier*—A partition or wall with self-closing doors, constructed in a manner which will retard the passage of smoke.

*Smoke detector*—A device which detects the visible or invisible particles of combustion.

*Stage*—A partially enclosed portion of building which is designed or used for the presentation of plays, demonstrations or other entertainment wherein scenery, drops or other effects may be installed or used, and where the distance between the top of the proscenium opening and the ceiling of the stage is more than 5 feet.

*Stair tower*—A stairway which is separated from all floors or areas of a building by construction having a fire-resistive rating. Stair towers shall include all vertical and horizontal travel required to lead to grade by an exit discharge.

*Stairway*—One or more flights of stairs and the necessary landings and platforms connecting them to form a continuous and uninterrupted passage from one floor to another.

*Standpipe*—A wet or dry fire line in a general vertical position installed exclusively for fire fighting, extending to each story of a building and having a hose outlet in each story.

*Story*—The portion of a building which is between one floor level and the next higher floor level or roof. If a mezzanine or balcony floor area exceeds 1/3 of the area of the floor it is open to, it shall be considered a story. Floor levels meeting the definition of basement, attic or penthouse shall not be considered stories.

*Supervised*—Electronic monitoring to determine the functional condition of a system.

*Teletypewriter*—A device, also referred to as a telecommunications device for the deaf, or TDD, resembling a typewriter that is used to send and receive telephone signals and which permits telephone communication with deaf persons.

*Veneered wall*—A wall having a non load bearing facing of masonry or other materials securely attached to the backing but not bonded so as to exert a common reaction under load.

*Winders*—See “winding stair.”

*Winding stair*—A stair where the angle between the longitudinal edges or sides of the tread exceeds 10 degrees.

*Wood frame construction*—The type of construction in which the structural parts and materials are of wood or are dependent upon wood frame for support; the term also includes construction having a noncombustible exterior veneer.

*Zone coded*—An alarm system in which each initiating device in a general area is connected as a single zone. When any one of the devices is actuated, signalling units operate a specific number of preprogrammed pulses that is indicative of the general area or zone the alarm was initiated in.

#### Source

The provisions of this § 49.1 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765; amended August 7, 1992, effective August 8, 1992, 22 Pa.B. 4091. Immediately preceding text appears at serial pages (159593) to (159594) and (89017) to (89022).

#### Notes of Decisions

##### *Automatic Sprinklers*

The regulations exempt cities of the first class from complying with Chapters 49—59, which require high rise buildings to have an automatic sprinkler system. A city of the first class has a population of 1 million or more under 53 P. S. § 101 (1993). Because Philadelphia was a city of the first class the city was not bound by the *Pennsylvania Code* provisions. *In re One Meridian Plaza Fire Litig.*, No. 91-2171 Consolidated with Nos. 91-2172, 91-2226, 91-2227, 91-2374, 91-2545, 91-2546, 91-2547, 1994 U. S. Dist. LEXIS 4343 (E. D. Pa. April 6, 1994), summary judgment denied, No. 91-2171, 1994 U. S. Dist. LEXIS 5532, Prod. Liab. Rep. (CCH) para. 13918 (E. D. Pa. April 29, 1994).

##### *Mezzanine*

The second-level room used as an office by the dentist is enclosed with floor to ceiling partitions on three sides and is only open to the lower floor on the fourth side where a stairway leads to the floor below. This second-level structure is not sufficiently open to the floor below to qualify as a “mezzanine” under this regulation. Indeed, to qualify as a “mezzanine,” a second level must be sufficiently open so that occupants of the second level can easily observe or hear fire and panic on the floor below. That is not the case where occupants of the second level can only see the first floor from the top of the stairway and where three floor-to-ceiling partitions hinder the occupants’ ability to hear sound from the lower floor. *Valimont v. Department of Labor and Industry*, 667 A.2d 759 (Pa. Cmwlth. 1995).

#### Cross References

This section cited in 34 Pa. Code § 51.72 (relating to automatic sprinkler systems); 34 Pa. Code § 52.72 (relating to automatic sprinkler systems); and 34 Pa. Code § 58.72 (relating to automatic sprinkler systems); and 34 Pa. Code § 60.1 (relating to definitions).

### § 49.2. Jurisdiction and effective dates.

(a) Chapters 49—59 apply to all classes of buildings as listed in paragraphs (1)—(5) which have four or more persons housed, employed or assembled as



defined in each occupancy group listed in § 50.1 (relating to occupancy groups) and Chapters 49—59 are effective for all buildings which have plans approved on or after May 19, 1984, except that buildings for which design or construction contracts are entered into prior to May 19, 1984, shall be governed by the chapters in effect at the time the contracts were entered into.

(1) *Class I buildings.* Factories, power plants, mercantile buildings, hotels, office buildings, hospitals, asylums, public and private institutions, convalescent and nursing homes, schools, colleges, school and college auditoriums and gymnasiums when used for public assemblages, airports, airport buildings, airplane hangars, dormitories, warehouses, garages, farm buildings, except farm buildings occupied by less than ten employes, which are used for the production or storage, or both, of agricultural products, or used in the storage of farm equipment by the owner or tenant of the building and other buildings specified by the Department not enumerated in Classes II, III, IV and V wherein persons are employed, housed or assembled except farm buildings excluded in Chapters 49—59.

(2) *Class II buildings.* Theatres and motion picture theatres.

(3) *Class III buildings.* Public halls, dance halls, banquet halls, lodge halls, churches, skating rinks, armory halls or other auditoriums in which the public assembles, not used for one or more of the other purposes mentioned in the act.

(4) *Class IV buildings.* Tenement houses, apartment houses, apartment hotels, club houses, lodging houses and rooming houses.

(5) *Class V buildings.* Grandstands, stadiums and amphitheatres and summer theatres.

(b) Chapters 49—59 do not apply to single family residences, buildings or structures which are used for group habitation in which living units or apartments are not mixed vertically, farm buildings occupied by less than ten employes, which are used for the production or storage, or both, of agricultural products, or used in the storage of farm equipment by the owner or tenant of the building, and the buildings with less than four persons housed, employed or assembled throughout the building.

(c) Chapters 49—59 do not apply to buildings within cities of the First Class, Second Class and Second Class A, as provided in section 15 of the act (35 P. S. § 1235), except that §§ 49.21, 50.58 and 55.53 (relating to reimbursement of municipalities for installation of teletypewriters; inspection and maintenance of detection devices in apartments; and automatic fire detection devices for the hearing-impaired), and §§ 55.52, 56.52 and 57.52 (relating to automatic systems; required; and automatic alarms) applicable to Class IV buildings, apply throughout this Commonwealth, as provided in sections 3.1, 3.2 and 3.4 of the act (35 P. S. §§ 1223.1, 1223.2 and 1223.4). In cities of the First Class, Second Class and Second Class A, §§ 50.58, 55.52, 55.53, 56.52 and 57.52 shall be enforced by the city.

(d) Chapters 49—59 do not apply to buildings built prior to April 27, 1927, when the following apply:

- (1) The building does not constitute danger of imminent harm to the occupants.
- (2) The building complies with the exiting requirements of this title.
- (3) The occupancy and use of the building has not changed since April 27, 1927.
- (4) The building has not been altered since April 27, 1927.

(e) Chapters 49—59 do not limit the power and authority of local municipalities to adopt and enforce additional or more stringent regulations.

(f) *Retroactivity.* The only provisions of these chapters that have retroactive applicability for existing buildings are the installation of automatic fire alarm systems in C-2, C-3 and C-4 occupancies. Existing buildings such as hotels, motels, apartments, dormitories and other buildings listed in occupancy divisions C-2, C-3 and C-4 will be required to install automatic fire alarm systems as required by § 55.52, § 56.52 or § 57.52 by May 19, 1989.

(g) Existing hotels, motels, lodging houses, boarding homes and similar facilities shall comply with § 55.53 by February 4, 1993. Existing buildings subject to § 55.52(b) shall comply with that subsection by February 4, 1993. The management of hotels and motels shall comply with § 49.20 (relating to information concerning protection from fire) by October 7, 1992. This subsection supersedes subsection (f) to the extent existing buildings are required to comply with §§ 49.20, 55.52(b) and 55.53.

#### Source

The provisions of this § 49.2 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765; amended August 7, 1992, effective August 8, 1992, 22 Pa.B. 4091. Immediately preceding text appears at serial pages (89022) and (118037).

#### Notes of Decisions

##### *Enforcement*

Although the Department of Labor and Industry Industrial Board did not have jurisdiction over single family residences, the Department could enforce the Fire and Panic Act (35 P. S. §§ 1221—1235), against a tax collector who maintained a public office in the residence. *Gnarra v. Department of Labor and Industry*, 658 A.2d 844 (Pa. Cmwlth. 1995); appeal dismissed 672 A.2d 1318 (Pa. 1996).

##### *Exemptions*

The regulations exempt cities of the first class from complying with Chapters 49—59, which require high rise buildings to have an automatic sprinkler system. A city of the first class has a population of 1 million or more under 53 P. S. § 101 (1993). Because Philadelphia was a city of the first class the city was not bound by the *Pennsylvania Code* provisions. *In re One Meridian Plaza Fire Litig.*, No. 91-2171 Consolidated with Nos. 91-2172, 91-2226, 91-2227, 91-2374, 91-2545, 91-2546, 91-2547, 1994 U. S. Dist. LEXIS 4343 (E. D. Pa. April 6, 1994), summary judgment denied, No. 91-2171, 1994 U. S. Dist. LEXIS 5532, Prod. Liab. Rep. (CCH) para. 13918 (E. D. Pa. April 29, 1994).

**§ 49.3. Submission of plans.**

(a) *Submission and approval.* Before a building to which Chapters 49—59 apply (except for C-3 occupancies covered under Chapter 56) is erected, adapted, remodeled or altered, detailed architectural plans, wall sections and elevations for new construction remodeling or alteration work and line drawings to scale for all portions of the existing buildings showing means of egress shall be submitted to and approved by the Bureau of Occupational and Industrial Safety, Buildings Section, Department of Labor and Industry, as required under section 8 of the act (35 P. S. § 1228). Drawings shall be submitted in triplicate. In cases where emergency lighting systems, fire alarm systems, or fire extinguishing apparatus is required by this chapter, these requirements shall be completely shown on or with the drawings submitted before approval of the building is obtained.

(b) *C-3 occupancies.* C-3 occupancies covered under Chapter 56 shall have the following information on file in the Department:

- (1) Building name and address.
- (2) Owners name and address.
- (3) Number of residents.
- (4) A building sketch will be made by the Department's representative which indicates exits, smoke detectors and room locations for each floor.
- (5) An inspection report indicating that the building complies with Chapter 56 for C-3 occupancies.

(c) *Plan requirements.* Plans shall be reproduced on paper prints a minimum of 15" x 24" , and drawn to a scale of not less than 1/8 inch to the foot unless the size of the building is such that it is impossible to contain the entire building on a 42-inch sheet size, in which case drawings may be accepted at a scale 1/16 inch to the foot. They shall show floor plans of all floors, all outside elevations, and location plans (site plan) of all streets or alleys abutting and distances from adjacent or adjoining buildings. Specifications shall also be furnished when requested. Buildings located in a new development shall have their location distinctly shown by lot number or letter on a plot so that they may readily be found by the Department.

(d) *Accelerated approvals.*

(1) The Department may approve the application and issue plans approval for construction of part of a building, including foundations, before complete plans and specifications for the entire building have been submitted and approved, provided that adequate information and detailed plans or statements have been submitted complying with this chapter. The holder of such plans approval shall proceed with the building operation at his own risk and without assurance that a plans approval for construction of the entire building will thereafter be issued.

(2) The Application for Accelerated Project Approval of Plans shall be prepared by the design professional subsequent to his completion of substan-

tive design and shall contain a written technical and engineering description of the project, together with site plans, grading plans, foundation plans, architectural and structural plans in their condition existing at the time of the application. The application shall also contain the statement that the architect or engineer has been authorized by the owner to make application in this form and that the work performed under the Accelerated Project Approval shall comply with this chapter.

(3) The Department may issue an accelerated project approval of plans for stage construction of alterations or additions to existing buildings which alterations or additions are undertaken for the purpose of upgrading the safety conditions in conformity with this chapter without requiring total compliance at the time and when the applicant has filed with the buildings section a time schedule for compliance with this chapter.

#### **Cross References**

This section cited in 28 Pa. Code § 501.81 (relating to safety from fire); 34 Pa. Code § 50.85 (relating to approval of plans); and 34 Pa. Code § 60.3 (relating to submission of plans).

#### **§ 49.4. Professional registration requirements.**

Buildings shall be designed by an architect or engineer regularly engaged in the profession and registered in this Commonwealth under the Architects Licensure Law (63 P. S. §§ 34.1—34.22), or the Professional Engineers Registration Law (63 P. S. §§ 148—158) except that this shall not prohibit persons from preparing any drawings or other design documents for the remodeling or alteration of a building not involving structural or egress changes or additions thereto, if the author of such plans or other design documents does not receive any compensation as the author thereof.

#### **§ 49.5. Certification of plans.**

Every architect or engineer who shall prepare plans and specifications for any building to which this chapter and Chapters 50—59 apply, shall file with the Bureau of Occupational and Industrial Safety, at the time of submission of the plans, a certificate on a form as prescribed by the Department.

#### **§ 49.6. Appeal of Department action as to final plans.**

(a) A person whose final plans are not approved by the Department may appeal the Department's action to the Board.

(b) The appeals shall be filed with the Secretary of the Industrial Board, Labor and Industry Building, Harrisburg, Pennsylvania 17120.

#### **§ 49.7. Legal effect of approval of plans.**

(a) Final plans approved by the Department which reflect compliance with the act and with this title shall be valid for 2 years after the date of final plans

approval; if construction commences within 2 years of the date of final plans approval, final plans approval shall be valid for 5 years after the date of final plans approval.

(b) After issuance of final plans approval by the Department, the Department may not require changes in a building during or after construction if all of the following apply:

(1) The final plans approval was issued without connivance or fraud.

(2) The building is being or was constructed in accordance with the final plans which were approved by the Department.

(3) The occupancy or use of the building is not being or was not changed.

(c) Nothing in this title shall preclude the Department from requiring changes in a building which has received final plans approval from the Department and which constitutes a danger of imminent harm to the occupants of the building.

(d) Nothing in this title shall preclude the Department from requiring changes in final plans prior to commencement of construction of the building if the final plans do not reflect compliance with the act and this title.

#### § 49.8. Fees for building-plan examinations.

(a) The Department will charge a fee for examination of plans, field inspections and issuance of an Occupancy Permit equal to the cost of making the examination and inspections. A plan approval is not valid until this fee is collected by the Commonwealth.

(b) A basic fee of \$75 will be charged for each new or existing building reviewed.

(c) Final plan review for new buildings or additions includes the basic fee of \$75, plus an additional fee of \$5 per 100 square feet of floor area or fraction thereof.

(d) C-3 occupancies will be charged only a \$75 basic fee.

(e) Final plan review for alterations, renovations or remodeling of existing buildings includes the basic fee of \$75, plus an additional fee of \$5 per \$1,000 of estimated cost of alterations, renovations or remodeling, which require approval under the act or this chapter and Chapters 50—59 as certified by the applicant. An individual or firm submitting plans for alterations, renovations or remodeling of an existing building may be charged a fee based on the formula for calculating fees listed in subsection (c) if the fee is less than the fee prescribed by this subsection.

(f) Payment shall be made by check or money order at the time of submission of plans and shall be made payable to the “Commonwealth of Pennsylvania.” Cash may not be sent.

**Source**

The provisions of this § 49.8 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765; amended January 12, 1990, effective January 13, 1990, 19 Pa.B. 183; corrected February 2, 1990, effective January 13, 1990, 20 Pa.B. 502. Immediately preceding text appears at serial pages (118202) to (118203) and (89027).

**§ 49.9. Field inspection.**

(a) The owner or other responsible person shall notify the local office of the Bureau of Occupational and Industrial Safety listed on the plan approval letter when construction of the project has begun.

(b) Prefinal inspections may be conducted based upon the size and complexity of a project.

(1) If a nonconforming condition is observed at a prefinal inspection, the district office supervisor will notify the owner of the building of these observations in writing.

(2) It shall be the owner's responsibility to correct the conditions or obtain a revised approval for the conditions.

(c) The owner or other responsible person shall arrange for a final inspection by contacting the local office of the Bureau of Occupational and Industrial Safety listed on the plan approval letter.

(d) A Bureau of Occupational and Industrial Safety inspector will make a final inspection of the building and will permit occupancy when all conditions required in this chapter and Chapters 50—59 are complete.

(e) The Department will issue an occupancy permit within 30 days of the final inspection. It shall be the owner's responsibility to maintain and operate the building in accordance with the act, this chapter and Chapters 50—59.

(f) After the issuance of an occupancy permit by the Department, the Department will not require changes in a building unless:

(1) The Occupancy Permit was issued through connivance or fraud.

(2) The occupancy or use of the building has changed.

(3) The building is not maintained and operated in accordance with the act or this chapter and Chapters 50—59.

**Source**

The provisions of this § 49.9 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**§ 49.10. Applicability of general rules.**

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 all proceedings for the enforcement of the act except as provided in this chapter.

**§ 49.11. Service of orders, notices and duty of owner to post address.**

Service of orders, notices and other documents shall be effected in the manner provided by 1 Pa. Code § 33.31 (relating to service by the agency).

**Source**

The provisions of this § 49.11 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**§ 49.12. Notice of violation and order to correct.**

If an inspection of a building covered by the act has been conducted by the Department and violations of the act or this chapter and Chapters 50—59 have been found, the following procedures shall be observed:

(1) The inspector shall leave a preliminary report of findings with the owner or owner's representative at the time of the inspection.

(2) A written notice of violations shall be served upon the owner describing the violations. The Department will identify those violations, which, in the opinion of the Department, constitute a danger of imminent harm to the occupants of the building.

(3) An order requiring correction of the violations within the reasonable period as shall be determined by the Department will be served simultaneously with the notice required in paragraph (2).

(4) The owner may file an appeal with the Board within 60 days of the date of notice of violation and orders to correct requesting variances or extensions of time or both.

(5) In cases involving danger of imminent harm, the procedure outlined at § 49.17 (relating to cases involving danger of imminent harm) applies.

**Source**

The provisions of this § 49.12 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**Cross References**

This section cited in 34 Pa. Code § 49.15 (relating to appeals to the Board); and 34 Pa. Code § 49.17 (relating to cases involving danger of imminent harm).

**§ 49.13. Determination of compliance or noncompliance.**

(a) At the end of the period provided in the order to correct, the Department will inspect the building and determine whether compliance has been effected.

(b) If compliance has been effected, the order will be closed by the Department.

(c) If compliance has not been effected, the Department may issue to the owner an order to show cause why the building or structure should not be vacated or should not be placed out of service under section 12 of the act (35 P. S. § 1232).

(d) In cases involving danger of imminent harm, the procedure outlined in § 49.17 (relating to cases involving danger of imminent harm) applies.

**Source**

The provisions of this § 49.13 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**Cross References**

This section cited in 34 Pa. Code § 49.17 (relating to cases involving danger of imminent harm).

**§ 49.14. Answer to order to show cause.**

(a) An answer to the order to show cause shall be filed with the Secretary of the Board in accordance with 1 Pa. Code § 35.37 (relating to answers to orders to show cause) and may include a request for a variance or an extension of time or both; the answer shall be filed within 30 days of the date of the issuance of the order to show cause.

(b) If a request for a variance or an extension of time or both has already been filed with the Board and is still pending, consideration of the request shall be merged with the answer and considered simultaneously with the answer.

(c) If a request for a variance or an extension of time or both has already been filed and is still pending, and no answer is filed; the request for a variance or an extension of time or both shall be deemed the answer.

**Source**

The provisions of this § 49.14 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**Cross References**

This section cited in 34 Pa. Code § 49.15 (relating to appeals to the Board).

**§ 49.15. Appeals to the Board.**

(a) The appeal periods to the Board are set forth in §§ 49.12 and 49.14 (relating to notice of violation and order to correct; and answer to order to show cause). An appeal may not be filed with the Board after the expiration of these periods, except at the discretion of the Board upon good cause shown.

(b) Appeals shall be filed with the Secretary of the Industrial Board, Room 1408, Labor and Industry Building, Harrisburg, Pennsylvania 17120, and shall be deemed filed the date of the mailing, as indicated by the postmark date or the date of personal delivery.

(c) The scope of appeal shall be as follows:

(1) An appeal to the Board may include a request for either an extension of time within which to comply or a variance or both or other relief which is appropriate.

(2) An appeal to the Board will automatically act as a supersedeas to the enforcement of the Department's order to correct in cases not involving danger of imminent harm.

(d) A request for a hearing before the Board will be as follows:

(1) An appeal to the Board shall be decided by the Board based upon the Department's documents, the appeal and written brief or argument unless the owner requests a hearing before the Board.



- (2) If the owner requests a hearing before the Board, the Board will schedule the case for a hearing and will notify the owner and the Department of the date, time and place of the hearing.
- (e) The Board may consider the following factors, among others, when reviewing and ruling upon a request for an extension of time or a variance or other relief which is appropriate:
- (1) The reasonableness of the Department's rule and regulations as applied in the specific case.
  - (2) The extent to which an extension of time or a variance will subject occupants to the hazards of fire and panic.
  - (3) The availability of professional or technical personnel needed to come into compliance.
  - (4) The availability of materials and equipment needed to come into compliance.
  - (5) The efforts being made to safeguard occupants against the hazards of fire and panic.
  - (6) The efforts being made to come into compliance as quickly as possible.
  - (7) Compensatory fire safety features which will provide an equivalent degree of protection for the occupants.
- (f) The Board after consideration of a request for an extension of time or a variance or other relief which is appropriate may by written decision and order either:
- (1) Deny the request.
  - (2) Grant the request.
  - (3) Grant the request upon certain conditions being satisfied.
  - (4) Grant such other relief which is appropriate.
- (g) Appeal from the final order of the Board may be taken to a court of competent jurisdiction within the time limits and in the manner prescribed by law. In cases not involving danger of imminent harm, a timely appeal to a court of competent jurisdiction shall automatically act as supersedeas to the enforcement of the order of the Board.

#### Source

The provisions of this § 49.15 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

#### Notes of Decisions

##### *Board Precedent*

Where there is no statement of facts or rationale explaining what other factors the Industrial Board might have considered in granting a second level minimum exit variance in a particular case, there is no basis to support petitioners' argument that the Board should be bound by its prior decisions. *Valimont v. Department of Labor and Industry*, 667 A.2d 759 (Pa. Cmwlth. 1995).

##### *Variance*

Petitioners contention that the installation of interconnecting smoke and heat detectors and a sophisticated security system adequately protects occupants of the second level from the hazards of fire and panic is rejected and a variance will not be granted. Although these special systems can warn second

floor occupants when there is fire or panic below, such technology does not provide second level occupants, having been warned, with a direct exit path to the exterior of the building. *Valimont v. Department of Labor and Industry*, No. 847 C. D. 1995, 1995 Pa. Cmwlth. LEXIS 529 (1995).

#### Cross References

This section cited in 34 Pa. Code § 50.86 (relating to variances).

### § 49.16. Enforcement of final order after Board action.

(a) If the Board has denied the request for an extension of time or a variance, the Department may seek to enforce the final order of the Department in accordance with section 12 or 13 of the act or both (35 P. S. § 1232 or § 1233).

(b) If the Board has granted the request for an extension of time, the Department will reinspect the building at the expiration of the extension of time to determine whether compliance has occurred. Following the reinspection the Department will close its order (in case of compliance) or may proceed in accordance with section 12 or 13 of the act or both, in case of noncompliance.

(c) If the Board has granted the request for a variance, the Department will close its order relative to the item on which the variance was granted.

(d) If the Board has granted the request for an extension of time or a variance upon certain conditions being satisfied, the Department will reinspect the building at the appropriate time to determine whether compliance has occurred. Following the inspection, the Department will close its order, in case of compliance, or may proceed in accordance with section 12 or 13 of the act or both, in case of noncompliance.

#### Source

The provisions of this § 49.16 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

### § 49.17. Cases involving danger of imminent harm.

(a) In cases involving danger of imminent harm, at the expiration of the period provided in the order to correct under § 49.12 (relating to notice of violation and order to correct), the Department will reinspect the building to determine whether compliance has occurred. Following this reinspection, the Department will issue a determination as soon as practicable thereafter as to the status of the original order to correct.

(b) If the Department determines that the building no longer involves danger of imminent harm, the Department will proceed under § 49.13 (relating to determination of compliance or noncompliance).

(c) If the Department determines that the building continues to involve danger of imminent harm, the Department will so indicate in its determination and may proceed to initiate an action in law or in equity in a court of competent jurisdiction.

#### Source

The provisions of this § 49.17 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**Cross References**

This section cited in 34 Pa. Code § 49.12 (relating to notice of violation and order to correct); and 34 Pa. Code § 49.13 (relating to determination of compliance or noncompliance).

**§ 49.18. Appeal from orders of the Board.**

(a) Appeal from the final order of the Board may be taken to a court of competent jurisdiction within the time limits and in the manner prescribed by law.

(b) In cases not involving danger of imminent harm, a timely appeal to a court of competent jurisdiction shall automatically act as a supersedeas to the enforcement of the order of the Board.

**Source**

The provisions of this § 49.18 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**§ 49.19. Advisory Board.**

(a) For the purpose of advising the board when determining factual interpretations amending or repealing this chapter, the Secretary will appoint an Advisory Board on Building Construction consisting of 10 members who will be three registered architects, two registered engineers, two representatives of labor, two representatives of building construction and one representative of the Department who will be the chairman.

(b) The architect and engineer members shall be qualified by experience and training to pass upon matters pertaining to building construction and may not be employees of the Commonwealth. Before making appointments of the architect and engineer members, the Secretary will request the Pennsylvania Society of Architects to recommend the names of not less than five architects registered under the statutes of this Commonwealth and the Pennsylvania Society of Professional Engineers to recommend the names of not less than three engineers registered under the statutes of this Commonwealth, and he will give careful consideration to the recommendations in making these appointments. It is not required that the persons nominated by the organizations be members of the organizations. Each organization shall be given 30 days written notice requesting submission of the list of names and after expiration of the time, if the Secretary has not received the requested lists, he will make appointments without regard to same. The Secretary will appoint the labor members directly.

(c) The Advisory Board shall meet at the call of the chairman as necessitated by petitions. Four of the members shall constitute a quorum at a meeting of the Advisory Board.

**Source**

The provisions of this § 49.19 adopted May 18, 1984, effective May 19, 1984, 14 Pa.B. 1765.

**§ 49.20. Information concerning protection from fire.**

The management of hotels and motels shall, upon the request of travel agents and other persons interested in utilizing their facilities, furnish information concerning the measures which have been taken at the hotel or motel for protection from fire. This information shall be provided in writing, free of charge, and shall contain, at a minimum, the following information:

- (1) The occupancy capacity of the facility.
- (2) The numbers of stories in the building.
- (3) The extent to which the building is sprinklered.
- (4) Whether the building has a fire or smoke alarms, the types of alarms and their locations.
- (5) A sample floor plan showing the location of exits, fire extinguishers, detection devices and sprinkler system.
- (6) A copy of written emergency instructions regularly furnished to guests.

**Source**

The provisions of this § 49.20 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4091.

**Cross References**

This section cited in 34 Pa. Code § 49.2 (relating to jurisdiction and effective dates).

**§ 49.21. Reimbursement of municipalities for installation of teletypewriters.**

(a) Under section 3.4 of the act (35 P. S. § 1223.4), a municipality in this Commonwealth which installs a teletypewriter in its police headquarters, or other location designated by the municipality to enable deaf residents of the municipality to communicate requests for assistance in emergencies to the police or other designated emergency response organizations, may be reimbursed by the Department for the purchase and installation costs of the devices, subject to the availability of funds.

(b) To be eligible for reimbursement under this section, a municipality shall install teletypewriters having the following features. The teletypewriter shall:

- (1) Be a Federal Communications Commission (FCC)-approved device.
- (2) Be AC-powered.
- (3) Have a battery-powered backup source capable of powering the unit for up to 3 hours.
- (4) Have a typewriter-style layout.
- (5) Have a minimum 20-character display/minimum 0.25 inch (6mm) character height.
- (6) Have a battery-backed-up memory capable of storing conversations and storing and sending pretyped messages.
- (7) Have a minimum 20-column printer.
- (8) Have automatic answering capability.

- (9) Have direct connection to telephone lines.
  - (10) Have keyboard dialing.
  - (11) Have the capability to communicate and transmit signals in Baudot and ASCII codes.
- (c) The Department will notify municipalities of the availability of funds by publication of a notice in the *Pennsylvania Bulletin*. The notice will specify the amount of funds available, the official with whom applications for reimbursement shall be filed, the deadline for making the application and other information determined to be pertinent by the Department. For the convenience of both the municipalities and the Department, the Department will develop and make available an application form for use by the municipalities.
- (d) Reimbursement to each eligible municipality under this section shall be limited to the cost of purchasing and installing one teletypewriter, unless additional funds remain, or are made available, after reimbursement is made to all eligible municipalities making application for reimbursement. Where an emergency communications center provides dispatch service for municipalities, the emergency communications center may file a single application for reimbursement on behalf of its member municipalities.
- (e) If available funds are insufficient to fully reimburse the municipalities, the Department will prorate the funds as follows:
- (1) The total amount of available funds will be divided by the number of municipalities applying, and determined eligible, for reimbursement to determine a proportional share.
  - (2) If the reimbursable costs of all of the municipalities exceed the proportional share, all municipalities will be reimbursed in an amount equal to the proportional share.
  - (3) If the reimbursable costs of a municipality are less than, or equal to, the proportional share, that municipality will be reimbursed for its full costs and these amounts will be deducted from the total amount of funds available.
  - (4) The amount of available funds remaining after the deductions specified in paragraph (3) will be divided by the number of municipalities remaining to be reimbursed to yield a new proportional share. These municipalities' shares will be allocated based upon the new proportional share, using the steps outlined in paragraphs (2)—(4).
  - (5) The process in paragraphs (1)—(4) is subject to repetition any number of times until the available funds are exhausted or reimbursement is made to the eligible municipalities which apply.

#### Source

The provisions of this § 49.21 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4091.

#### Cross References

This section cited in 34 Pa. Code § 49.2 (relating to jurisdiction and effective dates).

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