

# RULES AND REGULATIONS

## Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

### DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[ 12 PA. CODE CH. 145 ]

#### Industrial Housing and Components

The Department of Community and Economic Development (Department), under the authority of section 5 of the Industrialized Housing Act (act) (35 P.S. § 1651.5), amends Chapter 145 (relating to industrial housing and components) to read as set forth in Annex A. The purpose of this final-form rulemaking is to comply with the amendment to the act that expands the Department's role to include monitoring the production of industrialized buildings and clarify certain areas of the current industrialized housing regulations.

The act established uniform State standards and procedures for the identification, inspection and surveillance of the manufacture, assembly, installation and overall quality process required for certification of industrialized housing and components for use in communities in this Commonwealth. As amended, the act extends these standards and procedures to include industrialized buildings and components. The act authorizes the Department to promulgate rules and regulations, to interpret and make specific provisions of the act.

The purpose of this final-form rulemaking is to satisfy the amendments to the act requiring the Department to promulgate regulations to administer a certification program to oversee the production, installation and inspection of new industrialized buildings. Industrialized buildings that are produced under this certification program will be deemed to comply with the Pennsylvania Construction Code Act (35 P.S. §§ 7210.101—7210.1103). This type of certification program mirrors the current program established for industrialized housing.

The term "industrialized building" is used in this final-form rulemaking to capture every type of modular building being produced offsite for placement in this Commonwealth with the exception of those constructed for residential use. The factories that produce these industrialized buildings are located across the United States. Industrialized buildings are categorized in one of nine use and occupancy classifications in the ICC International Building Code: assembly (for example, theaters, restaurants and churches); business (for example, banks, United States Post Offices, certain show rooms and laboratories); educational (for example, classrooms and certain day care facilities); factory (any type of factory that is not high hazard or storage use, for example, bakeries, food processing, furniture production, millwork and machine shops); high hazard (building that house manufacturing, processing or storing materials that constitute a physical or health hazard); institutional (for example, assisted living facilities, nursing homes, certain child care facilities, correctional facilities and hospitals); mercantile (for example, department, drug and retail stores); storage (storage type buildings that are not classified as high hazard); and utility (buildings or struc-

tures accessory to a main structure, such as certain garages and possibly aircraft hangars).

Any of these industrialized buildings could be a single module possibly used as a kiosk or movable office space or a 90-module school building, medical services center or office complex, several floors high. Either of these two extremes falls under the definition of "industrialized building" if the building is produced remote from the job site.

Additionally, the manufacturers that produce these industrialized buildings are just as varied as the buildings themselves. The few industrialized building factories in this Commonwealth currently export the vast majority of their production to other states and this final-form rulemaking does not apply to production destined for other states. This final-form rulemaking only applies to buildings being produced for use in this Commonwealth. Every state in the mid-Atlantic region and New England, except Delaware, Vermont and West Virginia, already have programs in place for industrialized buildings. This final-form rulemaking utilizes the same internal quality assurance, inspection and insignia processes already in place in these facilities. Therefore, it is not expected that these producers will see any increase in costs beyond the insignia fee.

Currently, while the Pennsylvania Construction Code Act establishes the building code for all commercial buildings to be erected in this Commonwealth, the Uniform Construction Code does not make special provisions for pre-fabricated type buildings that do not allow for inspection by the code official without disassembly. This final-form rulemaking establishes a mechanism for local code officials to verify that the required inspections did occur on these buildings. While the cost impact on local government may not be measurable in terms of increased costs or savings, the ability of the municipality to know that buildings are constructed under a quality control program designed to certify code compliance will prove very valuable.

The proposed rulemaking was published at 44 Pa.B. 5026 (July 26, 2014) with a 30-day public comment period that closed on August 25, 2014. A public hearing was held on August 25, 2014. Public comments were received from eight commentators. The Independent Regulatory Review Commission (IRRC) also provided comments. The Department issued an Advanced Notice of Final Rulemaking (ANFR) and draft final-form rulemaking, which were published at 45 Pa.B. 3342 (June 27, 2015). Seven public comments were received. IRRC's first and third comments regarding the proposed rulemaking encompassed the public comments to the proposed rulemaking and the draft final-form rulemaking. Therefore, responses to all comments are included in the following responses to IRRC's comments.

#### *Comments to Proposed and Draft Final-Form Rulemakings*

IRRC's first comment to the proposed rulemaking stated that the final version of the proposed rulemaking was not presented to the Industrialized Housing Advisory Commission (IHAC) as required under section 5(a) of the act and section 8 of the act (35 P.S. § 1651.8), which require the Department to consult with and obtain advice from IHAC in the drafting and promulgation of rules and regulations adopted under the act. Section 8 of the act provides for the establishment of IHAC to consist of 15

members appointed by the Governor by and with the advice and consent of 2/3 of the members of the Senate. Section 8 of the act further provides that the term for IHAC members, other than those initially appointed, is to be 3 years. IHAC members do not receive compensation for their service as members, but receive reimbursement for necessary expenses incurred in connection with their member duties. The composition of IHAC is not addressed in the act. The only reference to duties charged to IHAC is in section 8 of the act, which provides that the Department shall consult with and obtain advice from IHAC in the drafting and promulgation of rules and regulations adopted under the act. The act does not address how often IHAC is to meet.

Although IHAC was established in section 8 of the act as originally passed in 1972, IHAC has not been formed and program staff has advised the Department of this with each change of administration. The Department formed the Industrialized Housing Advisory Group (Group) for the purpose of consulting with and obtaining advice from the Group in drafting and promulgating rules and regulations. As with previous rulemakings, the Department consulted with the Group regarding this final-form rulemaking to achieve the regulatory goals required under the act. The Group first met on January 31, 2008, and has met a total of nine times (roughly every year). There are currently 15 members of the Group. The members represent the following segments of the industry: two members from the trade associations representing the industrialized housing industry; one builder (installer) of industrialized housing; six producers of industrialized housing; one producer of industrialized buildings; one producer of industrialized buildings and industrialized housing; one engineer with industry experience; two building code officials; and one independent inspection/evaluation agency that participates in the industrialized housing program.

Additionally, the Pennsylvania Housing Research Center at the Pennsylvania State University is represented as a resource for the Group. Department program staff facilitates the Group.

The Group members were originally chosen by Department program staff based on suggestions from trade associations. Currently, when a member resigns membership, the Group will suggest a replacement. The members are not compensated or reimbursed for expenses incurred as a result of their membership and participation.

The Group was consulted multiple times during the drafting of the proposed rulemaking. The Group met on November 4, 2009, September 21, 2010, September 21, 2011, March 1, 2012, and September 6, 2012. Regional meetings were conducted on June 13, 2013, and June 18, 2013.

When it was determined that the act did not provide the necessary authority to support the amendment of Chapter 145 to include the certification of industrialized buildings and components, the act was amended by the act of May 21, 2013 (P.L. 27, No. 8) (Act 8) to authorize the proposed rulemaking. A public hearing was held on August 25, 2014. Additionally, the proposed rulemaking was e-mailed to the members of the Group on September 4, 2014, for their comments, all of which were favorable. On August 26, 2015, the Group met to discuss the rulemaking and gave their unanimous support.

However, as recommended by IRRC, to provide for the opportunity to build consensus on the language of the regulations prior to submittal of the final-form rule-

making, the Department prepared an ANFR and draft final-form rulemaking for additional public comment. Public and industry comments in response to the ANFR and draft final-form rulemaking are addressed in the following responses to the comments to the proposed rulemaking.

IRRC's first comment to the proposed rulemaking included the concern that the regulations do not address existing buildings and components and, therefore, effectively ban existing inventory without an insignia. IRRC stated that:

The regulation needs to be amended to directly address existing inventories to be consistent with the business protections established by 35 P.S. § 1651.4(d). Some of the commentators cite the language of Section 145.31(a) as the specific problem. However, given the above concern regarding consultation with IHAC, we ask the Department to review the entire regulation in consultation with the regulated community and explain how the final-form regulation complies with 35 P.S. § 1651.4(d).

In the draft final-form rulemaking, § 145.3 (relating to scope) was amended to state that Chapter 145 applies to new industrialized housing, buildings and housing or building components. In addition, § 145.31 (relating to requirement of certification) was amended to provide that Chapter 145 does not apply to industrialized housing, buildings, or housing or building components produced prior to the effective date of the final-form rulemaking. These amendments were in the ANFR and draft final-form rulemaking and thus the Department complied with IRRC's request to review the regulation with the regulated community.

This final-form rulemaking complies with the amendments to section 4(j) of the act (35 P.S. § 1651.4(j)) as amended by Act 8 mandating that the Department promulgate regulations to administer a certification program to oversee the production, installation and inspection of industrialized buildings, as opposed to industrialized housing. Thus, this regulation cannot comply with section 4(d) of the act, as section 4(d) of the act deals only with industrialized housing, not industrialized buildings. As previously stated, §§ 145.3 and 145.31 have been revised to make clear that these sections apply to industrialized housing, buildings, or housing or building components produced after November 6, 2018.

The Department received public comments from seven commentators in response to the ANFR and draft final-form rulemaking. These comments addressed the handling of relocatable, fleet type, industrialized buildings that were constructed prior to implementation of the subject certification program.

The Department has been consistent in the position that the act does not provide legislative authority to include existing relocated industrialized buildings in the regulations and that such buildings are currently addressed in the Uniform Construction Code Act.

After much discussion with the Group and other interested parties, the Modular Building Institute (MBI) offered two amendments to the draft final-form rulemaking that would satisfy their demands: add a sentence to the end of the § 145.33 (relating to manufactured homes excluded) to indicate that the definition of "residential permanent foundation" does not apply to industrialized buildings; and add a sentence to § 145.3 that states "[e]xisting industrialized buildings may continue to be

utilized in the commonwealth subject to approval of the local code official and the provisions of the existing building code.”

The Department and the Department of Labor and Industry object to the phrase “and the provisions of the existing building code” of the suggested amendment to § 145.3 because the phrase exceeds legislative authority and could cause confusion regarding which building code should be applied.

On October 22, 2015, the Department advised MBI and two of its key members that it was prepared to move forward with the final-form rulemaking incorporating its amendments, with the objectionable phrase in § 145.3 omitted. MBI advised on December 8, 2015, that they were satisfied.

Accordingly, the two previously-referenced revisions to the draft final-form rulemaking offered by MBI are made in this final-form rulemaking, with the objectionable phrase in § 145.3 omitted.

In its second comment to the proposed rulemaking, IRRC listed responses to certain questions in the Regulatory Analysis Form (RAF) that it stated should be further explained. IRRC stated that questions 19, 20 and 21 of the RAF ask for “specific estimates of the costs and/or savings.”

This final-form rulemaking has very little impact on the regulated community and no impact on local government that is measurable. The regulated community includes manufacturers of industrialized buildings that are located in North America and abroad. The intent of this final-form rulemaking is not to impact these individual producers, but rather to provide them with a clear benchmark that, when met, will indicate to the municipal code inspectors that the building in question complies with the applicable building code.

Additionally, the physical location of a manufacturing facility in this Commonwealth does not trigger any action under this final-form rulemaking. This final-form rulemaking only addresses the actual buildings produced for installation in this Commonwealth. The building code requirements for these buildings are already established by the Pennsylvania Construction Code Act. This final-form rulemaking only legitimizes the quality assurance program that every manufacturer already has in place for other states to which they ship buildings. Likewise, these manufacturers already utilize the third-party evaluation and inspection agencies that are critical to the success of this program. In essence, this final-form rulemaking utilizes processes and procedures already in place at every legitimate industrialized building production facility. The only added cost would be the very minimal cost of the Insignia of Certification (ranging from \$40 to \$90 per insignia) that will stand as evidence of compliance.

In terms of savings to the regulated community, as the 2,562 local municipalities take varied approaches to issuing buildings permits for industrialized buildings, savings may be realized in many of these municipalities based on the establishment of a uniform procedure. However, to attempt to estimate any savings would be impossible. With regard to State government, through the fees generated from Insignia of Certification, this program continues to generate sufficient revenues to cover all expenses.

The form referenced as attached in response to RAF question 22, which was inadvertently omitted upon submission of the proposed rulemaking, was attached to the RAF for the final-form rulemaking.

RAF question 24 asks for information regarding the impact on small businesses. It is important to note that this certification program will apply to producers of industrialized buildings shipping into this Commonwealth from across the United States. Some manufacturers may only produce a single project while others may routinely ship into this Commonwealth. As far as any adverse impact on small businesses, code compliance is already required for these buildings. This program only requires the manufacturers certify the buildings code compliance through an insignia.

RAF question 26 speaks to alternative provisions that may have been considered. Producers of industrialized buildings currently participate with other states that use the same approach. Also, this is the same approach utilized in the industrialized housing program, which is widely accepted and recognized for its efficient procedures.

RAF question 27 asks if special or less stringent requirements were considered for small businesses. As Chapter 145 speaks to building code compliance and the required reporting is minimal, this question is not applicable.

RAF question 28 inquires if data was the basis for this final-form rulemaking. It was not.

IRRC stated that fees were amended but not mentioned in the RAF. The certification program for industrialized buildings currently does not exist and as a result fees had to be established for this new program. Fees were adjusted for out-of-State manufacturers to cover the additional travel costs of the Department when monitoring these manufacturers. The fees imposed on current Pennsylvania-based industrialized housing manufacturers remains unchanged.

Per IRRC’s recommendation, the Department reviewed the RAF responses and provided more detailed and complete responses when possible to assist IRRC in its determination of whether the final-form rulemaking is in the public interest.

In its third comment to the proposed rulemaking, under the *Pennsylvania Code & Bulletin Style Manual*, IRRC recommended moving the definition of “permanent foundation” to the body of the regulations, since it includes substantive provisions addressing how the foundation shall be constructed. IRRC also listed comments from commentators regarding the requirements for permanent foundations.

The omission of a definition of “permanent foundation” in Chapter 145 has proven problematic for the industry and municipal code enforcers in recent years. The definition was provided by the Modular Building Systems Association and agreed upon by the Group and others involved with industrialized housing. Furthermore, this same definition is utilized by many other states. The comments received by IRRC on this issue are inaccurate. The Uniform Construction Code does not define “permanent foundation” and the definition does not require nor favor one installation approach over another. The definition was simply provided for clarity to allow consumers of industrialized housing to more efficiently obtain a mortgage for their home.

Per IRRC’s recommendation, the definition of “permanent foundation” is deleted from § 145.1 (relating to definitions) and added to § 145.33. This section provides exact language that must appear on certain documents. The definition in this final-form rulemaking was further

revised from the draft final-form rulemaking per MBI's suggestions, without changing the definition substantively.

IRRC's fourth comment to asked for additional information regarding the amendment and addition of fees in § 145.94 (relating to fees).

The \$40 insignia fees for industrialized housing and housing components produced in this Commonwealth are not changed. For clarity and simplicity, in amending § 145.94 to include industrialized buildings and building modules or components, the \$40 insignia fees for industrialized housing and housing components produced in this Commonwealth were moved from § 145.94(c) and (d) to § 145.94(e)(1) and (2), respectively. The industrialized building insignia fee is set at \$60 in § 145.94(e)(3). This is consistent with the fees charged by other states.

The industrialized building components insignia fee is set at \$60 in § 145.94(e)(4). This is consistent with the fees charged by other states. The provision allowing a manufacturer to request relief is unique to this Commonwealth and has the support of the industry.

The fees for industrialized housing and buildings produced outside of this Commonwealth are set at \$60 and \$90, respectively, in § 145.94(f). As out-of-State manufacturers require the same monitoring by the Department as those manufacturers in this Commonwealth, the fees are increased to recover the additional travel costs incurred. In the past, due to budgetary travel restrictions, out-of-State manufacturers were subjected to a lesser level of monitoring as compared to manufacturers in this Commonwealth. The Department is attempting to rectify this inequity.

In § 145.94(g), fees to the Department from manufacturers when the Department is authorized to monitor or inspect manufacturing facilities, or provide evaluation or inspection services regarding products for certification, or both, were revised from those previously in § 145.94(e) for simplification and to reflect the Department's actual costs.

It is impossible to estimate the fees to be generated through the industrialized building insignias and monitoring as this segment of the industry has not been monitored in the past. Repeated requests to the National trade association have not been answered. It is the intent of the Department to closely watch these activities to assure that sufficient funds are generated to cover all costs without causing financial hardship to the manufacturers.

#### *Analysis*

Section 145.1 is amended to provide definitions of "industrialized building or industrialized commercial building," "industrialized building component or industrialized commercial building component" and "industrialized building module." The terms "industrialized buildings" and "building components" are incorporated into the definitions of "compliance assurance program," "compliance control program," "insignia of certification," "installation," "manufacturing facility," "Notice of Approval" and "site or building site."

The definitions of "building system" and "building system documentation" are amended for clarity and to be more consistent with programs established in other states. The definition of "module" is deleted and redefined to specifically address industrialized housing or industrialized buildings. The Site Installation Inspection Report Form underwent a title change and will be a part of the

building system documentation or design package which will allow this document to be more easily modified to address changes in the building process.

The proposed definition of "permanent foundation" has been deleted from final-form § 145.1.

Section 145.2 (relating to purpose) is amended to include industrialized buildings and building components.

Section 145.3 is amended to include industrialized buildings and building components. The section was revised from the proposed rulemaking to state that Chapter 145 applies to new industrialized housing, buildings, and housing or building components. In addition, in this final-form rulemaking, this section was revised from the draft final-form rulemaking per the MBI's suggested amendment by adding the provision that existing industrialized buildings may continue to be utilized in this Commonwealth subject to approval of the local code official, without the suggested objectionable phrase as previously discussed.

Section 145.31 is amended to include industrialized buildings and building components in the requirements of certification and to eliminate unnecessary regulation. In the draft final-form rulemaking, this section was revised to provide that Chapter 145 would apply to industrialized housing, buildings, or housing or building components produced after the effective date of the final-form rulemaking. The section was then revised in this final-form rulemaking from the draft final-form rulemaking per the MBI's request by providing that Chapter 145 does not apply to industrialized housing, buildings, or housing or building components produced before November 6, 2018.

Section 145.33 is amended per IRRC's recommendation by adding the definition of "residential permanent foundation" to this section. The definition is further revised from the draft final-form rulemaking per MBI's suggestions, without changing the definition substantively.

Section 145.36 (relating to applicability of locally-enacted codes and ordinances) is amended to clarify how locally enacted codes and ordinances apply to industrialized buildings and building components.

Section 145.41 (relating to adoption of standards) is amended to address the standards to which industrialized buildings and building components would be designed and constructed. This section was also amended to comply with the act of April 25, 2011 (P.L. 1, No. 1) (Act 1) as it applies to code provisions specifically omitted from adoption under Act 1. At this time, those specifically omitted provisions include fire sprinkler systems for one-family and two-family dwellings and the wall bracing requirements provided for in the 2009 International Residential Code.

Section 145.42 (relating to alternate standards) is amended to allow for an alternate energy standard to which industrialized buildings and building components would be designed and constructed.

Section 145.51 (relating to general requirements for certification) is amended to establish the general requirements under which industrialized buildings and building components would be certified.

Section 145.53 (relating to variations) is amended to allow some variation in the building system documentation to which industrialized buildings and building components would be designed and constructed.

Section 145.54 (relating to Building System Approval Report and Summary) is amended to establish control

criteria for building systems documentation for industrialized buildings and building components.

Section 145.57 (relating to approval of compliance assurance program) is amended to establish basic requirements for a compliance control program to be approved by evaluation agencies.

Section 145.58 (relating to basic requirements for a compliance control program) is amended to establish basic requirements for a compliance control program needed for certification of industrialized buildings and building components.

Section 145.60 (relating to insignia of certification) is amended to delete unnecessary text on the insignia of certification and establish a separate insignia for industrialized buildings and building components.

Section 145.61 (relating to insignia of inspection agencies) is amended to address the attachment of the insignia of the inspection agencies for industrialized buildings and building components.

Section 145.62 (relating to data plates) is amended to establish and clarify basic requirements for data plates for industrialized housing and buildings.

Section 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification) is amended to establish criteria for requesting, controlling and attaching insignias of certification for industrialized buildings and building components.

Section 145.64 (relating to modification after certification) is amended to limit modifications to certified industrialized buildings and building components.

Section 145.66 (relating to emergency suspension) is amended to prohibit the certification of industrialized buildings and components while a manufacturer is under an emergency suspension.

Section 145.67 (relating to revocation of certification) is amended to give the Department and the appropriate third-party agency the authority to revoke the certification of industrialized buildings and building components and to establish criteria to provide the manufacturer of industrialized buildings and building components the authority to attach insignias of certification.

Section 145.69 (relating to suspension of certificate of approval of out-of-State manufacturer for lack of activity) is amended to allow for the suspension of an out-of-State manufacturer of industrialized buildings and building components for lack of activity.

Section 145.70 (relating to Departmental evaluation and inspection) is amended to preserve the ability of the Department to perform as an evaluation or inspection agency, or both, in the event that these services may be required.

Section 145.71 (relating to responsibilities of evaluation agencies) is amended to provide responsibilities for evaluation agencies to provide the same oversight in reviewing and approving building system documentation and compliance assurance programs for each manufacturer of industrialized buildings or components.

Section 145.72 (relating to responsibilities of inspection agencies) is amended to provide responsibilities for inspection agencies to provide oversight in monitoring the manufacturers of industrialized buildings or components in the same manner as housing manufacturers are monitored.

Section 145.72a (relating to frequency of inspections) is amended to provide the minimum inspection frequency for inspection agencies providing inspection services to industrialized building manufacturers. This section is also amended by changing the former requirement for manufacturer's certification that required 100% inspection of the first ten homes produced. The amended process will depend on the professional judgment of the third-party agencies in determining the level of inspection needed to certify a manufacturer. The Department retains final approval of the third-party agencies' proposal regarding the minimum frequency needed to adequately certify the facility.

Section 145.73 (relating to criteria for approval of evaluation and inspection agencies) is amended to provide criteria for the approval of evaluation and inspection agencies for industrialized buildings or building components.

Section 145.74a (relating to prohibition on consulting services) is amended to prohibit third-party agencies from performing consulting engineering services for an industrialized building or building component manufacturer while the third party has an implementing contract with that manufacturer.

Section 145.76 (relating to reapprovals of third-party agencies) is amended to provide a reapproval process for industrialized building third-party evaluation and inspection agencies.

Section 145.78 (relating to contractual arrangements) is amended to require implementing contracts between manufacturers of industrialized buildings and approved third-party evaluation and inspection agencies.

Section 145.79 (relating to suspension and revocation of third-party agencies) is amended to allow the Department to take appropriate action in the event that problems occur as a result of suspension or revocation of approval of a particular third-party evaluation or inspection agency.

Sections 145.81—145.83 (relating to local enforcement agencies) are amended to outline the responsibilities of the local enforcement agencies regarding their permitting and inspection process of certified industrialized buildings.

Section 145.91 (relating to reports to the Department) is amended to extend the Department's authority to require reporting from inspection and evaluation agencies and manufacturers of industrialized buildings as well as extending the requirement of the Site Installation Inspection Report to these buildings.

Section 145.92 (relating to reports by the Department) is amended to reduce the frequency of certain reports issued by the Department and to include the Notice of Approval in the list of reports the Department will provide.

Section 145.93 (relating to factory inspections; right of entry) is amended to extend the authorized inspections by the Department to include industrialized buildings, records of such buildings, transport facilities, building sites, and the like.

Section 145.94 is amended to establish a fee structure for industrialized building and building component insignias as well as an approval and reapproval fee for industrialized buildings evaluation and inspection agencies. Additionally, to defray the additional costs incurred to the Department for out-of-State travel, this section is amended to increase the insignia fee for manufacturing

facilities outside of this Commonwealth. This increase in insignia fees for facilities outside of this Commonwealth (\$20 residential and \$30 commercial) is patterned after current programs in New Jersey, Minnesota and Rhode Island. Other fees charged by the Department for engineering and administrative services are increased to reflect the actual costs to the Department. This section is further amended to allow the Department to accept fees electronically.

Section 145.97 (relating to amendments to this chapter) is amended to reflect the current practice of notifying interested parties of proposed amendments to Chapter 145.

Section 145.99 (relating to remedies) is amended to provide remedies to the Department for industrialized buildings or components which have not been manufactured consistent with the act or this chapter.

Sections 145.101—145.105 (relating to interstate acceptability) are amended to establish the procedures needed for the Department to enter into reciprocal agreements with other states to facilitate interstate acceptability of industrialized buildings and building components.

*Tolling Letter Analysis*

On August 30, 2016, at the suggestion of IRRC, the Department tolled the review period for this final-form rulemaking and resubmitted the regulations to IRRC, the House Commerce Committee and the Senate Community, Economic and Recreational Development Committee with the following changes:

- Section 145.1 was revised to include the definition of “residential permanent foundation” which stated “[t]he structure or assembly provided at the installation site to support and stabilize industrialized housing as described at § 145.33(c).”

- Section 145.3 was revised to clarify that the effective date of this final-form rulemaking is 1 year from publication in the *Pennsylvania Bulletin* and industrialized buildings manufactured before 1 year after the effective date of this final-form rulemaking may continue to be utilized in this Commonwealth subject to approval of the local code official. The clarification was accomplished by:

- o Deleting the sentence that stated “[t]his chapter applies to new industrialized housing, buildings, and housing or building components manufactured in manufacturing facilities located within or outside this Commonwealth.”

- o Adding a sentence to state that “[i]ndustrialized buildings manufactured before \_\_\_\_\_ (*Editor’s Note:* The blank refers to the date 1 year after the effective date of adoption of this final-form rulemaking.) may continue to be utilized in the Commonwealth subject to approval of the local code official.”

- Section 145.31(c) was revised to clarify that the effective date of this final-form rulemaking is 1 year from publication in the *Pennsylvania Bulletin* and Chapter 145 does not apply to industrialized buildings or building components produced before 1 year after the effective date of this final-form rulemaking. The clarification was accomplished by adding subsection (c), which stated “[t]his chapter shall not apply to industrialized buildings or building components produced before \_\_\_\_\_. (*Editor’s Note:* The blank refers to the date 1 year after the effective date of adoption of this final-form rulemaking.)”

- Section 145.33(c) was added to address substantive provisions regarding residential permanent foundations.

The first sentence of § 145.33(c) stated “[a] residential permanent foundation must be constructed in accordance with the prescriptive provisions of the adopted building code or, when required, designed by a licensed professional engineer.”

- Section 145.33(c)(4)(i) includes “construction,” which was inadvertently left out of the citation in the proposed definition of “permanent foundation.”

- “MIS” was not included in § 145.33(c)(4)(ii), as the acronym is not used in the industry and not referenced elsewhere in the regulations.

*Fiscal Impact*

*Commonwealth*

Through the fees generated from approvals of third-party agencies and insignias applied to industrialized buildings and building components, the Department expects this program to generate sufficient revenues to cover all expenses. Using Maryland as an example, the 1,538 industrialized building insignias assigned in 2008 would result in revenues of over \$92,000. While it is impossible to accurately project insignia usage in this Commonwealth, it is a reasonable expectation that insignia usage in this Commonwealth would match or exceed that of Maryland. Until production levels increase to 2006 levels for industrialized housing, additional staffing is not required to carry out this expansion to the program.

*Political subdivisions*

There is no fiscal impact upon political subdivisions.

*Public*

This final-form rulemaking will not have fiscal impact on the public at large, as multimillion dollar projects involving industrialized housing, buildings, and housing and building components generate only a handful of \$60 and \$90 insignia fees. However, with regard to the fiscal impact on the regulated community as part of the public, the insignia fee is \$60 for industrialized buildings and building components produced in this Commonwealth. This is consistent with the fees charged by other states. The insignia fees for industrialized housing and housing components, and industrialized buildings and building components produced outside of this Commonwealth, are \$60 and \$90, respectively. As out-of-State manufacturers require the same monitoring by the Department as those manufacturers in this Commonwealth, the fees are higher for out-of-State manufacturers to recover the additional travel costs incurred. In the past, due to budgetary travel restrictions, out-of-State manufacturers were subjected to a lesser level of monitoring as compared to manufacturers in this Commonwealth. The Department is attempting to rectify this inequity.

*Paperwork*

Manufacturers of new industrialized buildings and building components are required to complete a Manufacturer’s Application for Insignia of Certification for Industrialized Buildings or Building Components Form and a Pennsylvania Industrialized Building Insignia of Certification Monthly Inventory Control Report Form for insignias applied. These forms will be made available by the Department on the Department’s web site prior to November 6, 2017. These manufacturers currently do this for most of the states that receive their products. Therefore, the impact is very minimal.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 2, 2014, the Department submit-

ted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 5026, to IRRC and the Chairperson of the House Commerce Committee and the Chairperson of the Senate Community, Economic and Recreational Development Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on September 14, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 15, 2016, and approved the final-form rulemaking.

#### *Effective and Sunset Dates*

This final-form rulemaking will become effective November 6, 2017. Chapter 145 will be monitored on an annual basis and updated as needed.

#### *Contact Person*

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

#### *Findings*

The Department finds that:

(1) Public notice of intention to adopt the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202).

(2) This final-form rulemaking is necessary and appropriate for the Industrialized Housing and Components Program.

#### *Order*

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

(1) The regulations of the Department, 12 Pa. Code Chapter 145, are amended by amending §§ 145.1—145.3, 145.31, 145.33, 145.36, 145.41, 145.42, 145.51, 145.53, 145.54, 145.57, 145.58, 145.60—145.64, 145.66, 145.67, 145.69, 145.70—145.72, 145.72a, 145.73, 145.74a, 145.76, 145.78, 145.79, 145.81—145.83, 145.91—145.94, 145.97, 145.99 and 145.101—145.105 to read as set forth in Annex A.

*(Editor's Note:* The amendment to § 145.33 was not included in the proposed rulemaking published at 44 Pa.B. 5026.)

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

(3) This order shall take effect November 6, 2017.

DENNIS M. DAVIN,  
*Secretary*

*(Editor's Note:* See 46 Pa.B. 6195 (October 1, 2016) for IRRC's approval order.)

**Fiscal Note:** Fiscal Note 4-95 remains valid for the final adoption of the subject regulations.

### **Annex A**

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

### **PART V. COMMUNITY AFFAIRS AND DEVELOPMENT**

#### **Subpart C. COMMUNITY DEVELOPMENT AND HOUSING**

### **CHAPTER 145. INDUSTRIAL HOUSING AND COMPONENTS**

#### **GENERAL PROVISIONS**

##### **§ 145.1. Definitions.**

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

*ANSI*—The American National Standards Institute.

*ASHRAE*—American Society of Heating, Refrigeration and Air Conditioning Engineers.

*Act*—The Industrialized Housing Act (35 P.S. §§ 1651.1—1651.12).

*Approved*—Approved by the Department, or agent of the Department, under this chapter.

*Building system*—The method of constructing a type of industrialized home, building, or housing or building component described by plans, specifications and other documentation which together establish a set of limits meeting the building standards in §§ 145.41 and 145.42 (relating to adoption of standards; and alternate standards), as well as the compliance control program requirements of § 145.58 (relating to basic requirements for a compliance control program), including installation details.

*Building system documentation*—The plans, specifications, procedures and other documentation, approved by an evaluation agency under § 145.52 (relating to approval of building system documentation), which together describe industrialized home, building, or housing or building components, including any variation, installation detail and instruction consistent with this chapter.

*Certification or certified*—Conforming to the requirements of this chapter.

*Compliance assurance program*—The system of policies and procedures implemented by the manufacturer and the inspection agency to assure that industrialized housing, buildings, or housing or building components are manufactured, transported and installed at the site in accordance with the approved building system documentation.

*Compliance control program*—The system of policies and procedures utilized by the manufacturer to assure that industrialized housing, buildings, or housing or building components, as the case may be, are manufactured, transported and installed at the site in accordance with the approved building system documentation.

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

*Designated employee*—An officer or supervisory employee of a third-party agency who has been so designated by the third-party agency in its application to the Department for approval or in another written communication to the Department.

*Dwelling unit or unit*—Rooms arranged for the use of an individual for residential occupancy.

*Evaluation agency*—A private or public agency which is approved by the Department under § 145.73 (relating to criteria for approval of evaluation and inspection agencies) to perform the functions assigned by this chapter to an evaluation agency. If the Department performs the functions of the evaluation agency in accordance with § 145.70 (relating to Departmental evaluation and inspection), the Department will be the evaluation agency for the purpose of this title.

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

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

*ICC*—International Code Council.

*Industrialized building or industrialized commercial building*—A structure designed for commercial occupancy classified within nonresidential use groups in accordance with the standards in § 145.41. The structure is wholly or in substantial part made, constructed, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on the building site so that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage or destruction.

*Industrialized building component or industrialized commercial building component*—A closed wall subsystem or subassembly designed for use as a structure or a part of a structure which is classified within the nonresidential use groups in accordance with the standards in § 145.41. The closed wall subsystem or subassembly is fabricated in a manufacturing facility to be separately transported to the building site and cannot be inspected at the site without disassembly. Components may be installed with or without a permanent foundation.

*Industrialized building module*—

(i) A closed wall structure or substantial part of a closed wall structure incorporating or designed to be assembled to form one or more rooms used as habitable, occupiable or mechanical/equipment space which is classified within nonresidential use groups in accordance with the standards in § 145.41. The structure is fabricated in a manufacturing facility to be separately transported to the building site and cannot be inspected at the site without disassembly.

(ii) The term includes industrialized building components that are subsystems or assemblies, or other systems of closed construction designed for use in or as a part of an industrialized building.

*Industrialized housing*—

(i) A structure designed primarily for residential occupancy or classified within Residential Group R in accordance with the standards adopted under § 145.41 and which is wholly or in substantial part made, constructed, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on the building site so that concealed parts or processes of

manufacture cannot be inspected at the site without disassembly, damage or destruction.

(ii) The term does not include a structure or building classified as an institutional building or manufactured home, as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401—5426).

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

*Insignia of certification*—The label conforming to the requirements of this chapter which, when attached to industrialized housing, housing components, industrialized building or building components under this chapter, evidences that the industrialized housing, buildings, or industrialized housing or building components have been certified.

*Inspection agency*—An agency, private or public, which is approved by the Department under § 145.73 to perform the functions assigned by this chapter to an inspection agency. If the Department performs the functions of the inspection agency under § 145.70, the Department will be the inspection agency for the purposes of this title.

*Installation*—The assembly of industrialized housing or buildings onsite and the process of affixing industrialized housing, housing components, industrialized buildings or components to land, a foundation, footings, utilities or an existing building, and may include the process of affixing housing or building components to or within the structure for which they are designed.

*Insulation*—An approved material which has a relatively high resistance to heat flow and is used principally to retard the flow of heat.

*Local enforcement agency*—The agency of local government with authority to make inspections and to enforce the laws, ordinances and regulations enacted by the Commonwealth and by local governments that establish standards and requirements applicable to the construction, installation, alteration or repair of buildings.

*Local government*—A county, city, borough, incorporated town, township or similar general purpose unit of government which may be created by the General Assembly with authority to establish standards and requirements applicable to construction, installation, alteration and repair of buildings.

*Manufacture*—The process of making, fabricating, constructing, forming or assembling a product from raw, unfinished or semifinished materials.

*Manufactured home*—

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

(ii) The term includes any structure which meets the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with



the standards established under the National Manufactured Home Construction and Safety Standards Act of 1974.

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

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

*Mobile home*—A structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet in length and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including the plumbing, heating, air conditioning and electrical system combined therein manufactured in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974.

*NCSCBS*—National Conference of States on Building Codes and Standards.

*NFPA*—The National Fire Protection Association.

*Notice of Approval*—A notice issued by the Department to each manufacturer of industrialized housing, housing components, industrialized buildings or building components that indicates the approval of the manufacturer's building systems documentation, compliance assurance program, and the authority to receive and attach insignias of certification to industrialized housing, housing components, industrialized building or building components as applicable.

*Person*—An individual or organized group of any character, including partnerships; corporations; other forms of associations; and Federal, State and local instrumentalities, political subdivisions or officers, including the Department when indicated by the context.

*Residential occupancy*—Occupancy of a structure or building, or part thereof, classified as a one-family or two-family dwelling, townhouse or within Residential Group R in accordance with the standards adopted under § 145.41, by families, households or individuals for purposes of shelter and sleeping, without regard to the availability of cooking or dining facilities.

*Residential permanent foundation*—The structure or assembly provided at the installation site to support and stabilize industrialized housing as described in § 145.33(c) (relating to manufactured homes excluded).

*Site or building site*—The entire tract, subdivision or parcel of land on which industrialized housing, housing components, industrialized building or industrialized building components are installed.

*Site Installation Inspection Checklist*—A part of the manufacturers building system documentation or design package that identifies the various aspects of construction that shall be completed onsite, for inspection by the local code official, that when properly completed will result in a conforming home or building.

*Thermal resistance ("R" Value)*—The accumulative resistance to heat flow through materials or arrangement of materials expressed in Fahrenheit degrees per BTU/(hours) (square foot). For wood frame construction, the effect of normal framing members may be neglected in the determination of R values.

*Third-party agency*—An evaluation agency or inspection agency approved by the Department.

*Unheated space*—A space such as a garage or crawl space which is not provided with a heat source sufficient to maintain a minimum temperature of 50°F (10°C).

#### § 145.2. Purpose.

This chapter interprets and makes specific the provisions of the act, as provided in section 5 of the act (35 P.S. § 1651.5). This chapter establishes administrative procedures for the implementation of the act which will facilitate the use of industrialized housing, buildings, and housing or building components in this Commonwealth consistent with safeguarding the health, safety and welfare of citizens of this Commonwealth and will carry out the purposes set forth in the legislative findings in section 2 of the act (35 P.S. § 1651.2). More specifically, this chapter is intended primarily to achieve the following objectives:

(1) Establish uniform standards affecting health, safety and welfare for the design, use of materials and methods of construction for industrialized housing, buildings, and housing or building components intended for sale, lease or installation for use in this Commonwealth.

(2) Establish uniform procedures to assure that industrialized housing, buildings, and housing or building components intended for sale, lease or installation for use in this Commonwealth will be manufactured, transported and installed in compliance with the uniform standards adopted by this chapter. In particular, this chapter establishes procedures under which the essential structural, electrical, mechanical and plumbing elements of industrialized housing, buildings, and housing or building components are subjected to compliance assurance procedures, including inspections, in the manufacturing facilities during the manufacturing process, thereby eliminating the need for subsequent inspections at the building site of those elements which are enclosed within the walls which might otherwise be subjected to disassembly, damage or destruction in the course of onsite inspections.

(3) Establish procedures which will facilitate the movement of industrialized housing, buildings, and housing or building components between this Commonwealth and the other states for the mutual benefit of the manufacturers and citizens of this Commonwealth.

(4) Preserve for local governments within this Commonwealth responsibilities and functions specifically reserved to local governments by the act and otherwise not inconsistent with the achievement of the purposes of the act.

#### § 145.3. Scope.

Except to the extent otherwise stated in the act and the provisions of this chapter and in other applicable laws of the Commonwealth which are not inconsistent with or superseded by the act and this chapter, this chapter governs the design, manufacture, storage, transportation and installation of industrialized housing, buildings, and housing or building components which are sold, leased or installed, or are intended for sale, lease or installation, for use on a site in this Commonwealth. Industrialized buildings manufactured before November 6, 2018, may continue to be utilized in this Commonwealth subject to approval of the local code official.

**SCOPE**

**§ 145.31. Requirement of certification.**

(a) No person may sell, lease or install for use on a site in this Commonwealth industrialized housing, buildings, or housing or building components unless the industrialized housing, building, or housing or building component is certified and bears insignia of certification issued by the Department. The insignia of certification issued by the Department shall be attached to the industrialized housing, building, or housing or building component under this chapter, and they shall be subject to subsequent removal in accordance with this chapter.

(b) Industrialized housing, buildings, and housing or building components of the manufacturer which have never been occupied and which serve for model or demonstration purposes for the manufacturer do not have to bear insignia of certification under this chapter until the time that the industrialized housing, building, or housing or building components are first offered for sale or lease.

(c) This chapter does not apply to industrialized buildings or building components produced before November 6, 2018.

**§ 145.33. Manufactured homes excluded.**

(a) Manufactured homes which are subject to sections 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5403 and 5424) and the regulations issued thereunder by the United States Department of Housing and Urban Development are not subject to this chapter.

(b) The following language must appear in the installation documentation provided with the industrialized home and the data plate:

The manufacturer certifies that the structure (insert serial number) is not a manufactured home subject to the provisions of the National Manufactured Housing Construction and Safety Standards Act and is

- (1) designed only for erection or installation on a site built permanent foundation
- (2) not designed to be moved once so erected or installed
- (3) designed and manufactured to comply with (insert applicable standards)
- (4) to the manufacturer's knowledge not intended to be used other than on a site-built permanent foundation.

(c) A residential permanent foundation shall be constructed in accordance with the prescriptive provisions of the adopted building code or, when required, designed by a licensed professional engineer. A residential permanent foundation must have attachment points to anchor and stabilize the home to transfer all code required loads to the underlying soil or rock. In either case, a residential permanent foundation must:

- (1) Be designed for vertical stability as follows:
  - (i) Footings properly sized to prevent overloading of the soil.
  - (ii) Minimum depth of footings below undisturbed ground surface must be 12 inches or as required by the local code, whichever is greater.
  - (iii) Shallow foundation footings must be constructed of cast-in-place concrete.
  - (iv) Masonry walls and piers must be mortared.

- (2) Be designed for lateral stability as follows:
  - (i) Anchorage capacity to prevent uplift, sliding and overturning or other movement of the structure.
  - (ii) May not utilize tension-only steel straps.
  - (iii) May not utilize screw-in soil anchors.
- (3) Be constructed of durable materials, that is, concrete, mortared masonry or treated wood. This includes precast foundation systems.
- (d) A residential permanent foundation does not include alternative systems or components labeled only for use under one or more of the following standards:
  - (1) 24 CFR Part 3280 (relating to manufactured home construction and safety standards).
  - (2) 24 CFR Part 3286 (relating to manufactured home installation program).
  - (3) NFPA 225 Model Manufactured Home Installation Standard.
  - (4) ANSI A225.1 NFPA 501A Manufactured Home Installations.
  - (5) International Residential Code, Appendix E.
- (e) Industrialized buildings are excluded from this section.

**§ 145.36. Applicability of locally-enacted codes and ordinances.**

(a) Industrialized housing, housing components, industrialized buildings or building components bearing insignias of certification issued under this chapter will be deemed to comply with the requirements of building and related codes and ordinances enacted by local governments of the Commonwealth which codes and ordinances conform with the following:

- (1) Are applicable to residential or commercial construction, plumbing, heating, electrical and other related codes pertaining to the construction and equipment contained within.
- (2) Would otherwise be applicable to the industrialized housing, housing components, industrialized buildings or building components certified under this chapter as described in their building system documentation.
- (b) (Reserved).

(c) If the building site is within a fire district designated by an ordinance of the local government, the requirements of the codes and standards adopted under §§ 145.41, 145.42 and 145.44 (relating to adoption of standards; alternate standards; and adoption and effective dates—code amendments) for the fire district is applicable to the industrialized housing, housing components, industrialized buildings or building components. If the fire district designated by the ordinance of the local government is different from a fire district described in the applicable codes and standards adopted under §§ 145.41, 145.42 and 145.44 the requirements for that fire district described in the applicable codes and standards which in the judgment of the evaluation agency bears the closest similarity to the description of the applicable fire district under the locally enacted ordinance is applicable.

(d) Industrialized housing and buildings in which industrialized housing or building components have been installed shall comply with codes and ordinances of the local governments with jurisdiction over the building site which apply to the design, installation and maintenance

of waterline connections from the exterior walls of housing to their main source of supply, sewer drainage connections from the exterior walls of housing to main sewers or septic systems, and electrical line connections or other energy supply connections from the exterior walls of housing to their main source of power, notwithstanding the appropriate insignia of certification as provided for in § 145.60 (relating to insignia of certification).

(e) Nothing in the act or this chapter shall be construed as amending, repealing or superseding a local zoning ordinance, subdivision regulation, designation of fire districts or related land development code, regulation or ordinance enacted by a local government of the Commonwealth.

(f) A dispute between a person and a local enforcement agency with respect to the application of this section shall be referred to and decided by the Department under § 145.96 (relating to interpretation of this chapter).

### STANDARDS

#### § 145.41. Adoption of standards.

(a) The following codes, which relate to the design, materials and method of construction of buildings, are adopted as the standards applicable to the industrialized housing, housing components, industrialized buildings or building components for purposes of this chapter:

- (1) The ICC International Building Code.
- (2) The ICC International Mechanical Code.
- (3) The ICC International Plumbing Code.
- (4) The International Energy Conservation Code.
- (5) The National Electric Code (NFPA No. 70).
- (6) The ICC International Residential Code (for one and two family dwellings and town homes) except:
  - (i) Section R313.2, regarding automatic fire sprinkler systems in one-family and two-family dwellings, of the 2009 International Residential Code. Successor triennial revisions are excluded.
  - (ii) Sections R602.10SR602.12.1.6, regarding wall bracing requirements, are excluded and replaced by §§ R602.10RR602.11.3 of the 2006 International Residential Code.

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

(c) Insulation technique and installation applicable to the floor or foundation wall is not always practical at the manufacturing facility. Builders or contractors of industrialized houses or buildings may supply and install the required floor or foundation wall insulation. If the floor or foundation wall insulation is not installed at the manufacturing facility, the manufacturer shall indicate on the Site Installation Inspection Checklist referenced in § 145.91(e) (relating to reports to the Department) that the insulation shall be installed onsite.

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

conflict between the provisions of a code adopted under this chapter and this chapter, this chapter will prevail.

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

#### § 145.42. Alternate standards.

(a) As an alternative to the primary codes specified in § 145.41 (relating to adoption of standards), a manufacturer may elect to satisfy the requirements of the following alternate standards. Copies of these documents are available through the respective promulgating agencies as defined in § 145.47 (relating to acquisition of adopted codes and amendments):

(1) As an alternate to the ICC International Residential Code, Chapter 11, regarding energy efficiency, the manufacturer may use the applicable edition of one of the following:

(i) The prescriptive methods for residential buildings in the International Energy Conservation Code compliance guide containing state maps, prescriptive energy packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (REScheck™).

(ii) Pennsylvania's Alternative Residential Energy Provisions developed by the Pennsylvania Housing Research Center at the Pennsylvania State University.

(2) As an alternate to the ICC International Residential Code, Chapter 3, regarding building planning, in regard to stairway construction, the manufacturer may use the following standard:

(i) The maximum riser height must be 8 1/4 inches. There may be no more than 3/8-inch variation in riser height within a flight of stairs. The riser height is to be measured vertically between leading edges of the adjacent treads.

(ii) The minimum tread depth must be 9 inches measured from tread nosing to tread nosing. There may be no more than 3/8-inch variation in tread depth within a flight of stairs.

(iii) Treads may have a uniform projection of not more than 1 1/2 inches when solid risers are used.

(iv) Stairways may not be less than 3 feet in clear width and clear head room of 6 feet 8 inches must be maintained for the entire run of the stairway.

(v) Handrails may project from each side of a stairway a distance of 3 1/2 inches into the required width of the stairway.

(3) As an alternate to the ICC International Building Code, Chapter 13, regarding energy efficiency, the manufacturer may use the applicable edition of prescriptive methods for buildings or structures in the current version of the International Energy Conservation Code compliance guide containing state maps, prescriptive packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (COMcheck™).

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

**CERTIFICATION**

**§ 145.51. General requirements for certification.**

Industrialized housing, housing components, industrialized buildings or building components shall be certified if the building system documentation and the compliance assurance program relating to its design, materials, manufacture, transportation and installation have been approved by an evaluation agency under contractual arrangement with the Department as provided in § 145.78(b) (relating to contractual arrangements), and if the industrialized housing, housing components, industrialized buildings or building components have been manufactured under approved building system documentation, inspected and approved by an inspection agency. Certification shall be evidenced by insignia of certification which conform to the requirements of this chapter and which shall be issued for each module of industrialized housing, industrialized building and for each housing or building component or set of components that, upon installation, are incorporated in a dwelling unit or building as applicable.

**§ 145.53. Variations.**

Building system documentation approved under § 145.52 (relating to approval of building system documentation) may contain variations or a range of variations for one or more elements of the industrialized housing, housing components, industrialized buildings or building components described in the building system documentation, provided that the approved building system documentation conforms to all of the applicable requirements of the applicable codes and standards under each variation or set of variations within the range of variations. Any material deviation from variations contained within the approved building system documentation shall be approved by the evaluation agency, consistent with this chapter, prior to the start of construction.

**§ 145.54. Building System Approval Report and Summary.**

At the time that an evaluation agency approves a set of building system documentation under § 145.52 (relating to approval of building system documentation) and the related compliance assurance program under § 145.57 (relating to approval of compliance assurance program), it shall prepare a Building System Approval Report (BSAR) and a Building System Approval Summary. The BSAR must contain a list of the identification numbers of each sheet constituting the approved building system documentation, the Compliance Control Manual of the manufacturer, an Index of Code Compliance in the form specified by the Department for industrialized housing or buildings, a statement of the fire districts, if any, in which the industrialized housing or buildings can be installed, and the additional information relating to the building system documentation and the compliance assurance program as the evaluation agency deems necessary or as the Department may require. The Building System Approval Summary shall be prepared on a form furnished by the Department. The evaluation agency shall furnish to the Department and to the manufacturer one copy each of the BSAR and the Building System Approval Summary, clearly stating the date it is effective. The BSAR shall be revised monthly as needed.

**§ 145.57. Approval of compliance assurance program.**

An evaluation agency shall approve a compliance assurance program for purposes of this chapter if the evaluation agency determines that the manufacturer's compli-

ance control program, described in the compliance control manual, meets the requirements of this chapter and the compliance control program will be monitored by an approved inspection agency. The evaluation agency shall review the manufacturer's building system documentation, the manufacturer's compliance control manual and the manufacturer's proposed implementing contract with an inspection agency, shall inspect each of the manufacturer's manufacturing facilities where the industrialized housing, housing components, industrialized buildings or building components are to be manufactured for installation on sites in this Commonwealth, and shall review the other data and information as the evaluation agency may deem necessary.

**§ 145.58. Basic requirements for a compliance control program.**

(a) An evaluation agency shall approve a compliance control program if it determines that the implementation of the compliance control program will assure that the industrialized housing, housing components, industrialized buildings or building components, when installed at the site, will conform to the approved building system documentation, the manufacturer possesses the facilities, personnel and organization to implement its compliance control program properly, and the requirements of this section are met. It is the policy of the Department to recognize that the level of sophistication of a compliance control program of a manufacturer will depend on many factors, including the level of sophistication and technological characteristics of the building system and the manufacturing process. It is further the policy of the Department that the maximum respect shall be accorded to a manufacturer's customary business practice consistent with achievement of the purposes of the act and this chapter. It is further the policy of the Department that the approval of a compliance control program under this chapter does not relieve the manufacturer and the inspection agency of responsibility for assuring that industrialized housing, housing components, industrialized buildings or building components manufactured for sale, lease or installation for use on sites in this Commonwealth conform in every material respect to the approved building system documentation.

(b) To facilitate review and approval, the manufacturer's compliance control program shall present an overview of its policies and procedures on the following:

- (1) The placement, storage and handling of construction materials.
- (2) The manufacturing process within the manufacturing facilities, including the jigs and fixtures necessary for production.
- (3) The storage and transportation of industrialized housing, housing components, industrialized buildings or building components to the site, including detailed lifting calculations.
- (4) The installation of industrialized housing, housing components, industrialized buildings or building components at the site, including the Site Installation Inspection Checklist, referenced in § 145.91(e) (relating to reports to the Department), identifying specific functions and techniques that are of critical importance.

(c) For approval, except as modified under subsection (e), the compliance control program must include requirements on the following items:

- (1) Specific assignments of responsibility to designated divisions or employees of the manufacturer for every

significant phase in the production, transportation and installation of the industrialized housing, housing components, industrialized buildings or building components.

(2) Procedures under which employees of the manufacturer inspect and approve each significant process in every significant phase of the manufacture, transportation and installation of the industrialized housing, housing components, industrialized buildings or building components.

(3) Procedures for marking identified deficiencies—such as serialized colored tags that can be attached to the deficiency—and for assuring their correction or the disposal of the deficient item.

(4) Procedures to assure that the fabrication or shop drawings for the industrialized housing, housing components, industrialized buildings or building components conform to the approved building system documentation or to the drawings approved by the third-party agency with whom the manufacturer has an implementing contract.

(5) Procedures to maintain, file and control fabrication or shop drawings and documents constituting the building system.

(6) Procedures to maintain complete and reliable records of the manufacture, transportation and installation of the industrialized housing, housing components, industrialized buildings or building components, each unit of which shall be assigned a manufacturer's serial number to facilitate identification.

(7) Procedures employed by the manufacturer to request, store and attach the insignia of certification issued to it by the Department under § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification).

(8) Procedures for controlling the storage and transportation of industrialized housing, housing components, industrialized buildings or building components from the manufacturing facilities to the site, identifying specific functions and techniques that are of critical importance.

(9) Procedures for controlling the installation of industrialized housing, housing components, industrialized buildings or industrialized building components at the site.

(10) A brief identification and description of physical testing to be performed at a point during a phase of manufacture, transportation and installation, the frequency of its performance, and the identification and qualifications of the persons performing the testing.

(d) The list of topics set forth in subsection (c) is not exclusive and is not intended to preclude additional items and greater details prior to approving a compliance control program.

(e) If a manufacturer transfers title to and effective control over its industrialized housing, housing components, industrialized buildings or building components to other, unrelated persons at a point prior to its installation at the site, the manufacturer shall be responsible for furnishing to the persons responsible for transportation and installation adequate information, manuals, checklists, Notices of Approval, and the like, relating to the transportation and installation of the industrialized housing, housing components, industrialized buildings or building components, including the relevant portions from its compliance control program referred to in subsections (c)(8)—(10), but the manufacturer may not be responsible for implementation after the transfer of title and effective control.

(f) An evaluation agency's approval of a compliance control program shall be evidenced by the stamp of approval of the evaluation agency affixed to the title page of the compliance control manual and signed and dated by a designated employee of the evaluation agency.

#### § 145.60. Insignia of certification.

(a) Certified industrialized housing must bear an insignia of certification for each module. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification). The manufacturer shall permanently attach the insignia of certification for each module adjacent to the data plate located in a visible location in a cabinet under the kitchen sink, or if this cabinet is not available, the location must be clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e) (relating to reports to the Department). Insignias may not be attached to doors or other easily removable features of the home. Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

#### INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED HOUSING

##### Serial No.

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

(b) Each certified housing component or components comprising a single unit or added to a single dwelling unit must bear an insignia of certification for housing components. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification to the housing component in a visible location identified in the building system documentation and must be clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e). Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

#### INSIGNIA OF CERTIFICATION FOR HOUSING COMPONENTS

##### Serial No.

This insignia certifies that this housing component has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(c) Certified industrialized buildings must bear insignia of certification for each module. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification for each module in a visible location adjacent to the electrical panel box. If this area is unavailable, the location must be clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e). The insignia

nia may not be attached to a door or other easily removable feature of the building. Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

**INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED BUILDINGS**

**Serial No.**

This insignia certifies that this industrialized building module has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(d) Certified industrialized building components, comprising a single building or unit, must bear insignia of certification for building components. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification for each module in a visible location identified in the building system documentation and clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e). Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

**INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED BUILDING COMPONENTS**

**Serial No.**

This insignia certifies that this industrialized building component has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

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

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

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

(b) The inspection agency shall attach its label, seal or other insignia, or other identification for certified housing or building components, or group of components, that are transported separately to the building site.

(c) The label, seal or other insignia of the inspection agency must identify the name of the inspection agency and have a serial number. In other respects, the inspection agency may design its label, seal or other insignia as it wishes, provided that the label, seal or other insignia does not contain statements which the Department determines are inconsistent with the act or this chapter. The label, seal or other insignia may be covered up during the process of assembly and installation at the building site so that it is not permanently visible.

**§ 145.62. Data plates.**

(a) A dwelling unit of certified industrialized housing must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently at-

tached by the manufacturer in a visible location as specified in § 145.60(a) (relating to insignia of certification). The data plate must contain the following information:

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

(b) Certified housing components shall be provided with a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location identified in the Site Installation Inspection Checklist referenced in § 145.91(e) (relating to reports to the Department). If attachment in the factory is not possible, the data plate may be tethered to the certified housing components for attachment at the site. The manufacturer shall provide instructions for attachment along with the data plate. The insignia of certification of the Department may not be attached to the data plate. The data plate must contain the following information relating to the housing components:

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

(c) Additional information may be included on the data plate for dwelling units of certified industrialized housing and housing structures containing certified housing com-

ponents if there is no conflict with the requirements of the act or this chapter. If less than the minimum data required in this section is deemed necessary, prior approval shall be obtained from the Department.

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

(e) Certified industrialized buildings must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location as specified in § 145.60(c). The data plate must contain the following information:

- (1) Name of manufacturer.
- (2) Address of principal office of manufacturer.
- (3) Address of manufacturing facility where the industrialized building or its principal elements were produced.
- (4) Manufacturer's model name.
- (5) Manufacturer's serial number and date of manufacture.
- (6) Inspection and evaluation agencies' serial numbers.
- (7) Department insignia of certification numbers.
- (8) Occupancy classification as provided for in § 145.41 (relating to adoption of standards).
- (9) Construction classification.
- (10) Snow loads—maximum.
- (11) Wind loads—maximum.
- (12) Floor loads—maximum.
- (13) Thermal transmittance values.
- (14) Other special environmental factors.
- (15) Tests required and actually conducted.
- (16) Applicable codes, including name of code, edition or year of publication.

(f) Certified industrialized building components must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location identified in the Site Installation Inspection Checklist referenced in § 145.91(e). If attachment in the factory is not possible, the data plate may be tethered to the certified building component for attachment at the site. The manufacturer shall provide instructions for attachment along with the data plate. The insignia of certification of the Department may not be attached to the data plate. The data plate must contain the following information:

- (1) Name of manufacturer.
- (2) Address of principal office of manufacturer.
- (3) Address of manufacturing facility where the industrialized housing or its principal elements were produced.
- (4) Manufacturer's model name.
- (5) Manufacturer's serial number for dwelling unit and date of manufacture.
- (6) Inspection and evaluation agencies' serial numbers.
- (7) Department insignia of certification numbers.
- (8) Occupancy classification as provided for in § 145.41.
- (9) Construction classification.

- (10) Snow loads—maximum.
- (11) Wind loads—maximum.
- (12) Floor loads—maximum.
- (13) Thermal transmittance values.
- (14) Other special environmental factors.
- (15) Tests required and actually conducted.
- (16) Applicable codes, including name of code, edition or year of publication.

**§ 145.63. Procedures for requesting, controlling and attaching insignia of certification.**

(a) A manufacturer with an approved building system documentation and related approved compliance assurance program may request the Department to issue to it insignia of certification in a quantity not less than five and not more than the quantity needed for the manufacturer's reasonably estimated production during a 1-month period. The manufacturer's request shall be made on a Request for Insignia of Certification Form furnished by the Department and shall be accompanied by a check, money order or electronic payment in an amount calculated in accordance with the fee schedule in § 145.94 (relating to fees). If the manufacturer's request is complete and the fee payment is correct and the manufacturer and its third-party agency have fulfilled all of their obligations under this chapter, the Department will promptly issue to the manufacturer the requested number of insignia of certification. Each individual insignia of certification will bear a separate insignia serial number written thereon by the Department. The insignia of certification issued to the manufacturer will be accompanied by an Insignia of Certification Inventory Control List on a form furnished by the Department. The Department will send a copy of the Insignia of Certification Inventory Control List to the appropriate inspection agency.

(b) The manufacturer shall entrust the custody of the insignia of certification received from the Department only to employees designated in the compliance control program as responsible for the custody and control of the insignia of certification. The manufacturer shall attach the insignia only in the circumstances prescribed in the compliance control program and only with the prior specific authorization from the inspection agency. The manufacturer shall attach the insignia of certification in the manner specified by the Department intended to assure that the insignia cannot be removed without destroying the insignia. The manufacturer shall promptly record the attachment of each insignia of certification on the Insignia of Certification Inventory Control List. A copy of the Insignia of Certification Inventory Control List, with all columns filled out by the manufacturer, shall be sent by the manufacturer to the Department and to the inspection agency promptly following the use of all the insignias listed on the list. The manufacturer shall report to the Department and to the inspection agency the status of all insignias issued to them on a monthly basis, utilizing a method approved by the Department.

(c) The manufacturer shall return to the Department unused insignia of certification that have been issued to it within 10 days following the suspension of approval under § 145.66(a) (relating to emergency suspension) of previously approved building system documentation or compliance assurance programs of the manufacturer, or following the suspension under § 145.66(b) of the manufacturer's right to receive or attach insignia of certification, or following recall under § 145.69 (relating to suspension of certificate of approval of out-of-State manu-

facturer for lack of activity) or following the manufacturer's discontinuance of the manufacture of industrialized housing, buildings, or housing or building components for sale, lease or installation for use in this Commonwealth, or following the bankruptcy or dissolution of the manufacturer or the discontinuance of the manufacturer's business for whatever reason, or following the manufacturer's determination that the insignia of certification is no longer needed. The Department will cause the manufacturer to be refunded a portion of the fee already paid for the insignia equal to the product of the number of insignia of certification returned by the manufacturer and the fee per insignia paid by the manufacturer, less \$50 to be retained by the Department for handling expenses. Insignia returned to the Department under § 145.69 will not be subject to the charge for handling expenses.

(d) A manufacturer may not use, transfer, sell or otherwise dispose of insignia of certification issued to it by the Department in any manner not specifically authorized of this chapter.

**§ 145.64. Modification after certification.**

(a) Certified industrialized housing, buildings, and certified housing or building components bearing the insignia of certification may not be modified after the insignia of certification has been attached, unless the modification is approved in advance by the evaluation agency on the basis that the industrialized housing, building, or housing or building component, as so modified, will still conform to the approved building system documentation. Approvals of modifications which are consistent with the approved building system documentation may be by oral authorization by an officer or employee of the evaluation agency, but in this event each approval shall be subsequently evidenced by a letter from the evaluation agency to the manufacturer within 10 days after the oral authorization. Proposed modifications which are inconsistent with the approved building system documentation shall be treated as proposed amendments to the building system documentation subject to the approval of the evaluation agency under § 145.55 (relating to general requirements for approval of amendments to building system documentation).

(b) Modifications of certified industrialized housing, buildings, or certified housing or building components are not prohibited under the act or this chapter if the modifications are made after the issuance of a certificate of occupancy by the local enforcement agency. The modifications referred to in this subsection are subject to other applicable laws, codes and ordinances of the Commonwealth and of the local government of the jurisdiction in which the industrialized housing or building structure is located.

(c) Nothing in this section shall prevent a manufacturer, on its own motion or at the order of the inspection agency or of the Department, from repairing damage to or remedying a defect found in an industrialized housing component.

**§ 145.66. Emergency suspension.**

(a) The Department may suspend and an evaluation agency with an implementing contract with a manufacturer may suspend the approval of the manufacturer's building system documentation or the manufacturer's building system documentation or the related compliance assurance program following a determination by the agency causing the suspension that the issuance of the approval was not made in accordance with sound technical judgment or that the approval was based on fraudu-

lent or materially incorrect information or was not made in conformity with the requirements of the act or this chapter in a material respect or that the manufacturer does not have a currently valid and effective implementing contract with an approved evaluation and inspection agency with the result that there is created an imminent and substantial risk to the public health, safety and welfare of the citizens of this Commonwealth.

(b) Notice of emergency suspension under this section must be in writing and shall be delivered by the agency causing the suspension by hand to an officer of the manufacturer or by certified mail to the principal office of the manufacturer. The notice of emergency suspension must set forth the reasons for the suspension. If the suspension is caused by a third-party agency, the third-party agency shall immediately inform the Department by telephone of the suspension and shall promptly send to the Department a copy of the notice of suspension. Copies of the notice of emergency suspension shall be delivered by hand or sent by certified mail by the Department to every other third-party agency with an implementing contract with the manufacturer. The suspension shall be effective on the date the manufacturer receives the notice of suspension. The period of suspension shall be specified in the notice of suspension but may not exceed 45 days. The suspension shall be lifted at the conclusion of the period unless the suspension has been converted to a revocation following a hearing.

(c) Within 30 days following an emergency suspension, the Department will establish a time and place for a hearing to consider whether the suspension shall be lifted or converted to a revocation or what other order, if any, should be issued. The Department will send a written notice of the hearing by hand or by certified mail to the manufacturer and to third-party agencies with implementing contracts. Notice of the hearing may be sent to other interested persons. The hearing will be treated as an appeal, the manufacturer will be considered the appealing person and the provisions on appeals set forth in § 145.112 (relating to procedures for formal appeal proceedings) will be applicable. Without limiting the authority of the Department, the Department is specifically authorized to attach reasonable conditions to an order lifting a suspension including requiring that changes be made in the building system documentation or in the compliance assurance program so that they will conform with the requirements of this title.

(d) No industrialized housing, housing components, industrialized building or building components may be certified and insignia of certification attached thereto while an emergency suspension under this section pertaining to the manufacturer shall remain in effect, unless otherwise permitted by order of the Department.

**§ 145.67. Revocation of certification.**

(a) The Department or the appropriate third-party agency may send by certified mail a notice of intent to revoke:

(1) The approval of the manufacturer's building system documentation or the related compliance assurance program following a determination by the agency that the issuance of the approval was not made in accordance with sound technical judgment or was based on fraudulent or materially incorrect information or was not made in conformance with the requirements of the act or this title with the result that there could be a risk to the public health, safety and welfare of the citizens of this Commonwealth.



(2) The authority of the manufacturer to receive and to attach insignia of certification to industrialized housing, housing components, industrialized building or building components following a determination by the agency that the manufacturer is possibly failing in any material respect to conform with its approved building system documentation or to meet its responsibilities under the approved compliance assurance program or that the manufacturer is in violation in any material respect of the act or this title.

(b) Notice of intent to revoke must be in writing and shall be delivered by hand to an officer of the manufacturer or by certified mail to the principal office of the manufacturer. The notice must set forth the reasons for the intent to revoke. If the notice of intent is issued by a third-party agency, the third-party agency shall immediately inform the Department by telephone of the notice and shall promptly send to the Department a copy of the notice. Not less than 15 days but not more than 30 days shall be given to a manufacturer to correct the violations in the notice of intent to revoke.

(c) If the manufacturer fails to correct the violations within the time allowed, the Department will schedule a hearing to consider revocation of:

(1) The certification of industrialized housing, housing components, industrialized building or building components.

(2) The authority of the manufacturer to receive or attach an insignia of certification.

(3) Both.

(d) Written notice of the hearing, including the time and place of the hearing and a brief statement of the grounds on which the revocation is considered, will be delivered by hand to an officer of the manufacturer or by certified mail to the principal office of the manufacturer. Copies of the notice will be delivered to every other third-party agency with an implementing contract with the manufacturer. Notice of the hearing may be sent to other interested persons. The hearing will be treated as an appeal, the manufacturer considered the appealing person and the provisions on appeal in § 145.112 (relating to procedures for formal appeal proceedings) is applicable.

(e) Notwithstanding a decision by the Department not to cause a revocation following the hearing required under subsection (c), a third-party agency with an implementing contract with the affected manufacturer shall have an unconditional right to terminate its contract with the manufacturer.

**§ 145.69. Suspension of certificate of approval of out-of-State manufacturer for lack of activity.**

A manufacturer certified to ship industrialized housing, housing components, industrialized buildings or building components into this Commonwealth and whose plant is located in another state will have its certificate suspended if it fails to manufacture units for installation on a site in this Commonwealth for 2 consecutive years. Written notice of this suspension will be provided to the manufacturer. If the manufacturer desires to ship a unit into this Commonwealth within 1 year of its suspension, approval may be reinstated through a letter submitted by an approved third-party agency to the Department which provides that the manufacturer meet the requirements of the laws and this title, including the submission to the Department of its current approved building system documentation and compliance assurance program if the

previous submissions to the Department have been revised. The Department will review the third-party evaluation and then conduct an inspection of the plant. If a manufacturer has not made shipments into this Commonwealth for 1 year from the date of the suspension of its certificate, the certificate will lapse. To be reapproved, the manufacturer shall comply with this title in the same manner as would another manufacturer applying for initial approval.

**THIRD-PARTY AGENCIES**

**§ 145.70. Departmental evaluation and inspection.**

A manufacturer producing industrialized housing, housing components, industrialized buildings or building components for installation in this Commonwealth has the option of electing the Department to evaluate or inspect, or both, its products for certification. The Department will provide the services requested subject to the availability of staff. The following are applicable:

(1) The manufacturer shall enter into an implementing contract with the Department which must include a specific time period for the contract, a mutual termination clause with a minimum of 45 days of notice to terminate period, the services to be provided, and the fees to be charged to the manufacturer for services in accordance with § 145.94(e) (relating to fees).

(2) Evaluation services by the Department will include:

(i) Investigation, evaluation, testing, and, if justified, approval of each set of building system documentation, and each amendment thereto submitted to it by a manufacturer for compliance with all of the applicable requirements of the codes and standards adopted under §§ 145.41—145.43 (relating to adoption of standards; alternate standards; and amendment policy).

(ii) Investigation, evaluation, and, if justified, approval of the compliance assurance program and each amendment thereto—relating to the manufacture, transportation and installation of industrialized housing, industrialized housing components, industrialized buildings or industrialized building components described in each set of building system documentation approved under this section—submitted by the manufacturer for compliance with the requirements of this title.

(iii) Preparation and periodic revisions as necessary of the Building System Approval Report for each set of approved building system documentation and related compliance program.

(3) Inspection services by the Department will include:

(i) Monitoring the manufacturer's compliance control program for the manufacture, transportation and installation of industrialized housing, housing components, industrialized buildings or building components of each manufacturer having an implementing contract.

(ii) Verification that the industrialized housing, housing components, industrialized buildings or building components have been manufactured under approved building documentation and an approved compliance assurance program and authorization to the manufacturer for the attachment of insignia of certification to the industrialized housing, housing components, industrialized buildings or building components.

(4) Procedure for requesting, controlling and attaching insignia of certification shall be the same as detailed in § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification). Manufacturers shall purchase their insignia of certification at fees

indicated in § 145.94(e) and (f), and the cost of the insignia is not included in their evaluation or inspection, services, or both, provided by the Department under § 145.94(g).

(5) The specification document defining the requirements for submission of drawings, specifications, calculations and related material for Departmental approval will be provided upon request of the manufacturer.

**§ 145.71. Responsibilities of evaluation agencies.**

Each evaluation agency shall discharge under this chapter the following responsibilities:

(1) Investigation, evaluation, testing and, if justified, approval of each set of building system documentation, and each amendment thereto, submitted to it by a manufacturer with which it has an implementing contract for compliance with the applicable requirements of the codes and standards adopted under §§ 145.41, 145.42 and 145.44 (relating to adoption of standards; alternate standards; and adoption and effective dates—code amendments).

(2) Investigation, evaluation and, if justified, approval of the compliance assurance program, and each amendment thereto, relating to the manufacture, transportation and installation of the industrialized housing, housing components, buildings or building components described in each set of building system documentation approved under subsection (a), submitted to it by a manufacturer with which it has an implementing contract for compliance with the requirements of this chapter.

(3) Preparation and periodic revision as necessary of the Building System Approval Report for each set of approved building system documentation and related compliance assurance program.

(4) Preparation of reports to the Department as are required under this chapter or as may be required by the Department in carrying out its responsibilities under the act and this chapter.

(5) Performance of its obligations under its contract with the Department.

**§ 145.72. Responsibilities of inspection agencies.**

Each inspection agency shall discharge under this chapter the following responsibilities:

(1) Monitoring the manufacturer's compliance control program for the manufacture, transportation and installation of industrialized housing, housing components, buildings or building components of each manufacturer with which it has an implementing contract.

(2) Verification that industrialized housing, housing components, buildings or building components have been manufactured under approved building system documentation and an approved compliance assurance program and authorization to the manufacturer of the attachment of insignia of certification to the industrialized housing, housing components, buildings or building components.

(3) Preparation of reports to the Department as are required under this chapter or as may be required by the Department in carrying out its responsibilities under the act and this chapter.

(4) Performance of its obligations under its contract with the Department.

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

(a) In carrying out its monitoring responsibilities under § 145.72 (relating to responsibilities of inspection agen-

cies), an inspection agency shall observe the minimum frequency of inspection requirements in this subsection. During the inspection agency's initial work at the factory or after revocation under § 145.67 (relating to revocation of certification), the inspection agency shall monitor the manufacturer's approved compliance control program by inspecting industrialized housing, buildings, or housing or building components until it can be certified that the manufacturer is producing conforming industrialized housing, buildings, or housing or building components on an ongoing basis. Due to the varied nature and complexities of these products prior to beginning this certification process, the third-party agency shall submit to the Department its recommendation as to the minimum inspection frequency required to certify, and the frequency of inspections for routine inspection surveillance to assure the manufacturer is producing conforming housing or building components on an ongoing basis. The Department will review and determine if the third-party agency's proposal is adequate to grant the manufacturer authority to receive and attach insignias of certification. At any time during the certification process, the inspection agency may modify the proposal and submit the revised proposal to the Department for further review.

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

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

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

**§ 145.73. Criteria for approval of evaluation and inspection agencies.**

(a) The Department will accept a written application from the designated employee of an agency who wishes to become an evaluation agency or an inspection agency for industrialized housing or industrialized buildings, or both. If the Department determines, on the basis of the inquiry as the Department deems necessary and appropriate, that the agency possesses the capacity of discharging reliably, objectively and without bias the responsibilities assigned by this chapter to an evaluation agency or to an inspection agency, as the case may be, the Depart-

ment will approve the application. In making the determination, the Department will consider that:

(1) There is a sufficient breadth of interest or activities so that the loss or award of a specific contract to an agency determining compliance of a product with this chapter would not be a substantial factor in the financial well-being of the agency performing the required functions.

(2) Employment security of personnel is free of influence or control by any manufacturer, supplier or vendor.

(3) The agency is not engaged in the promotion of products that they shall determine to be in compliance with this chapter.

(b) The Department will evaluate information on the following factors that relate to the ability of the applying agency to discharge the responsibilities that would be assigned to it as an approved evaluation agency or an approved inspection agency, as the case may be:

(1) The legal character and good standing of the applying agency.

(2) The financial strength of the applying agency.

(3) The current qualifications of the management and technical personnel of the applying agency. A list of the required qualifications will be published in the *Pennsylvania Bulletin* annually.

(4) The range of salaries and other compensation of the technical personnel, including inspectors of the applying agency, excluding principals, principal officers and directors of the applying agency.

(5) The policies and procedures of the applying agency for the hiring, training and supervision of technical personnel, including education and training following changes in the codes and standards applicable under this chapter.

(6) The extent, if any, to which the applying agency will engage independent consultants and the functions the independent consultants will perform; in general, the Department will not approve an applying agency who utilizes as key technical or supervisory personnel anyone who is an independent consultant. Also, the Department will not permit the use, by an inspection agency, of part-time inspectors unless the inspection agency's present volume of business in designated geographic areas does not justify full-time personnel or unless there are other compelling justifications.

(7) The prior experience and level of performance of the applying agency in performing similar or related functions.

(8) The capability, if any, of the applying agency to perform testing, including the nature of the testing and the facilities and personnel to perform it, and the identity, facilities, experience and key personnel of an independent testing agency with which arrangements have been made for testing services and the nature of the testing services.

(9) The extent, if any, to which the applying agency is affiliated with or influenced or controlled by a producer, manufacturer, supplier or vendor of products, supplies or equipment used in industrialized housing or industrialized buildings.

(10) The procedures to be used by the applying agency in discharging the responsibilities under this chapter of an evaluation agency or inspection agency, as the case may be. An applying agency seeking approval as an inspection agency shall furnish the complete procedures

for monitoring the manufacturer's compliance control program it would use for each type of construction for which it seeks approval, and state its policy with respect to the frequency at which it will conduct inspections of each phase of the manufacture, transportation and installation of industrialized housing, housing components, industrialized buildings or building components.

(c) The Department may consider information with respect to other factors that it may deem relevant to its determination of approval or disapproval. In approving an evaluation or inspection agency, the Department may limit the scope of the agency's approved activities to particular types of industrialized housing, buildings, or housing or building components, geographic area or the number of manufacturers the Department determines an agency can effectively evaluate or inspect, or both.

**§ 145.74a. Prohibition on consulting services.**

A third-party agency may not perform consulting engineering services relating to industrialized housing, housing components, industrialized buildings or building components for a manufacturer for as long as the third-party agency has an implementing contract with the manufacturer or related manufacturer under § 145.78(c) (relating to contractual arrangements).

**§ 145.76. Reapprovals of third-party agencies.**

(a) An evaluation agency or inspection agency approved by the Department under § 145.75 (relating to procedures for obtaining approvals of evaluation and inspection agencies) may apply to the Department for reapproval. The application for reapproval may be filed with the Department within 60 days prior to the scheduled expiration of the current approval from the Department. The applying third-party agency seeking reapproval shall completely and accurately furnish pertinent information necessary to make current the information previously submitted to the Department as part of its original application for approval and subsequent applications for reapproval. The applying third-party agency shall provide additional information that the Department may request. The application for reapproval shall utilize forms that the Department may require. The application for reapproval will become a permanent record of the Department. The application will be accompanied by the fee established under § 145.94 (relating to fees). The Department may conduct additional investigations of the applying third-party agency that it deems necessary.

(b) Within 30 days following the receipt by the Department of an application for reapproval, the Department will make its determination whether the applying third-party agency continues to meet the requirements of this chapter for an industrialized housing evaluation agency or industrialized building evaluation agency, or both, or an industrialized housing inspection agency or industrialized building inspection agency, or both. In the event of a disapproval, the Department will provide the applying third-party agency with a brief written explanation of the reasons for the disapproval. In the event of a reapproval, the Department will provide the applying third-party agency with a brief written letter of reapproval. A reapproval will expire on the date of the next anniversary of the date of the scheduled expiration of the current approval from the Department.

(c) The Department may, on its own motion or at the request of an evaluation agency or inspection agency, grant a temporary reapproval of an evaluation agency or inspection agency for a period not to exceed 60 days. The applying third-party agency seeking reapproval shall be

subject to procedures that satisfy the Department of its ability to perform its functions. The procedures shall require annual interviews of third-party agency personnel at their headquarters or by teleconference to assess the desired performance.

**§ 145.78. Contractual arrangements.**

(a) No evaluation agency or inspection agency may discharge a responsibility under this chapter unless under valid contracts with the Department and with manufacturers contemplated by this section.

(b) As soon as practical but not later than 30 days after the Department approves an evaluation agency or an inspection agency under § 145.75 (relating to procedures for obtaining approvals of evaluation and inspection agencies), the Department and the third-party agency shall enter into a contract which will set forth the rights and obligations of the Department and the third-party agency. The contracts must contain representations by the third-party agencies with respect to their fees to be paid by manufacturers for the discharge of their responsibilities under this chapter; the establishment of the fees may not be subject to negotiation with the Department. In all other respects, except for the limitations scope and the special conditions contained therein, contracts with evaluation agencies must be uniform for evaluation agencies and contracts with inspection agencies must be uniform for inspection agencies. Each contract must also contain a provision under which the Department may require an evaluation agency or an inspection agency to enter into and implement an implementing contract under subsection (c), whether on a temporary or permanent basis, with a manufacturer that is unable to comply with this chapter because third-party agencies are unwilling voluntarily to enter into an implementing contract with the manufacturer or because the manufacturer is otherwise without a currently valid implementing contract with an evaluation agency or an inspection agency because the approval of the third-party agency was suspended or revoked under the provisions of this chapter. Each contract must also contain provisions which are required by law for contracts of which the Department is a party, including, without limitation, provisions for equal employment opportunity.

(c) A manufacturer seeking certification of industrialized housing, housing components, industrialized buildings or building components that it manufactures shall enter into implementing contracts with an evaluation agency and an inspection agency with contracts with the Department under subsection (b). Each third-party agency shall send a copy of each implementing contract to the Department.

(d) A manufacturer of industrialized housing, housing components, industrialized buildings or building components approved under this title shall have a current implementing contract with an approved evaluation agency and an approved inspection agency or have alternate arrangement for evaluation or inspection, or both, of its products with the Department under § 145.70 (relating to Departmental evaluation and inspection).

(e) A manufacturer of industrialized housing, housing components, industrialized buildings or building components operating under an implementing contract with an approved evaluation agency and an approved inspection agency, who wishes to enter into an implementing contract with a different evaluation or inspection agency, shall provide justification and receive approval from the Department prior to entering into the new contract,

except as provided for in § 145.79(e) (relating to suspension and revocation of third-party agencies).

**§ 145.79. Suspension and revocation of third-party agencies.**

(a) The Department may suspend or revoke its approval of an evaluation agency or inspection agency if the Department determines that the approval or a reapproval was based on fraudulent or materially inaccurate information, or that the approval or reapproval was issued in violation of this chapter, or that a change of facts or circumstances make it unlikely that the third-party agency can continue to discharge its responsibilities under this chapter in a satisfactory manner, or that the third-party agency had failed to discharge its responsibilities under this chapter in a satisfactory manner or had violated this chapter or its contract with the Department in any material respect. During the period of suspension or revocation, the affected third-party agency may not be authorized to discharge its responsibilities under this chapter or under its contract with the Department, unless otherwise specified in the notice of suspension referred to in subsection (b) or by order of the Department.

(b) A written notice of a suspension under subsection (a) will be delivered by the Department by hand to an officer of the affected third-party agency or by registered mail to the principal office of the affected third-party agency. The written notice will include a brief statement of the reasons for the suspension. Copies of the notice of suspension will be delivered by the Department to manufacturers with implementing contracts with the affected third-party agency either by hand to officers of the manufacturers or by registered mail to the principal offices of the manufacturers. The suspension will be effective on the date the affected third-party agency receives the notice of suspension or on a later date that may be designated in the notice of suspension. The period of suspension will be specified in the notice of suspension, but it may not continue beyond a date 15 days after the date the hearing provided for in subsection (c) is held.

(c) Promptly following a suspension under subsection (a), the Department will establish a time and place for a hearing to consider whether the suspension should be lifted or converted to a revocation or what other order, if any, should be issued. The Department will send a written notice of the hearing by hand or by registered mail to the affected third-party agency and to manufacturers with implementing contracts with the affected third-party agency. Notice of the hearing may be sent to other interested persons. The hearing will be treated as an appeal, the affected third-party agency will be considered the appealing person and § 145.112 (relating to procedures for formal appeal proceedings) is applicable.

(d) The Department may revoke its approval of an evaluation agency or inspection agency without previously suspending its approval. The Department will send a written notice to the affected third-party agency of its intention to consider revocation of its approval, stating the grounds therefor and establishing a time and a place for a hearing on the question. The notice will be sent by hand or by registered mail to the affected third-party agency and to manufacturers with implementing contracts with the affected third-party agency. The notice may be sent to other interested persons. The hearing will be treated as an appeal, the affected third-party agency will be considered the appealing person, and § 145.112 is applicable.

(e) Upon the suspension or revocation of approval of an evaluation agency or inspection agency under this section,

a manufacturer with an implementing contract with the affected third-party agency shall have an unconditional right to terminate its contract with the third-party agency and to enter into an implementing contract with another third-party agency.

(f) If the Department determines that there is a substantial threat to the health, safety or welfare of the occupants of industrialized housing or housing structures containing housing components or industrialized buildings or structures containing industrialized building components, because they were manufactured in accordance with building system documentation and related compliance assurance program approved by an evaluation agency whose approval has been suspended or revoked by the Department under this section or were certified by an inspection agency whose approval has been suspended or revoked by the Department under this section, the Department may require the manufacturer to take the actions with respect to the industrialized housing or housing components, industrialized buildings or building components as may be necessary to eliminate substantially the threat to the health, safety or welfare of the occupants.

(g) Upon the suspension or revocation of an evaluation agency or inspection agency under this section, the Department will, upon the request of a manufacturer with an implementing contract with the suspended or revoked third-party agency, consult with the manufacturer to establish a temporary arrangement by which the manufacturer can continue to manufacture, sell, lease and install industrialized housing, housing components, industrialized buildings or building components in conformity with the act and this chapter until the suspension or revocation is lifted or an implementing contract entered into with another third-party agency. For these purposes, the Department may in its sole discretion discharge some or all of the responsibilities of a third-party agency. The Department may also approve another temporary arrangement which the Department determines would best promote the purposes of the act and this chapter under the circumstances.

#### LOCAL ENFORCEMENT AGENCIES

##### § 145.81. Responsibilities of local enforcement agencies.

(a) Local enforcement agencies, building code and construction code officials can make an important contribution to the effective administration of the act and this chapter. In addition to discharging the responsibility under local law for the enforcement of applicable locally-enacted codes and ordinances governing site preparation work and water, sewer, electrical and other energy supply connections as described more particularly in § 145.36 (relating to applicability of locally-enacted codes and ordinances), and in view of the responsibilities of local enforcement agencies under State and local law and of the responsibilities of local governments to cooperate with agencies of the Commonwealth to protect the health, safety and welfare of the citizens of this Commonwealth, local enforcement agencies shall assist the Department in enforcing the act and this chapter for industrialized housing, housing components, industrialized buildings or building components at the time of installation in the jurisdiction of their local government in the following respects:

(1) Site inspections of industrialized housing, housing components, industrialized buildings or building components, upon arrival at the site, for apparent damage

occurring during transportation from the manufacturing facilities to the site and other apparent nonconformity with the approved building system documentation.

(2) Site inspections of the installation of the industrialized housing, housing components, industrialized buildings or building components consistent with those elements of installation addressed in the Site Installation Inspection Checklist required under § 145.91(e) (relating to reports to the Department) and the installation instructions in the Building System Approval Report.

(3) Notifications to the Department and the manufacturer of damage and nonconforming elements found in the industrialized housing, housing components, industrialized buildings or building components as a result of the site inspections, as well as additional site inspections of efforts made to remedy or repair the damage and nonconforming elements shall be channeled through the Department.

(4) Notification to the Department of violations of the act and this chapter by the manufacturer, inspection agency or other person, including instances in which industrialized housing, housing components, industrialized buildings or building components are installed or are intended for installation without bearing the required insignia of certification.

(5) Cooperation with the Department in efforts to take action to remedy the violations and prevent future occurrences.

(b) Site inspections of industrialized housing and housing components which a local enforcement agency performs under this chapter shall include, and be limited to, any type of visual exterior inspection and monitoring of tests performed by other persons during installation in accordance with the installation requirements in the Building System Approval Report. Destructive disassembly of the industrialized housing, housing components, industrialized buildings or building components may not be performed, and nondestructive disassembly may not be performed in the course of an inspection except to the extent of opening access panels and cover plates.

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

(a) A person seeking a building permit from a local enforcement agency for industrialized housing or a housing structure in which will be installed housing components, industrialized buildings or structures containing industrialized building components shall furnish installation documentation required under § 145.58(b)(4) (relating to basic requirements for a compliance control program) and a current Notice of Approval under § 145.92(a)(5) (relating to reports by the Department) and a statement signed by the person seeking the building permit or, if a corporation, by an officer or authorized representative of the corporation, that the work to be performed under the building permit will include the installation of certified industrialized housing, housing components, industrialized buildings or building components bearing the appropriate insignia of certification issued by the Department under the act and this chapter.

(b) The local enforcement agency may not withhold the issuance of a building permit for certified industrialized housing or a housing structure in which will be installed certified housing components, industrialized buildings or structures containing industrialized building components if the applicant submits the documents required by this section, and the application for a building permit complies

with applicable locally-enacted codes and ordinances with regard to set-up and site details, and land use.

**§ 145.83. Issuance of certificates of occupancy.**

The local enforcement agency may not withhold the issuance of a certificate of occupancy or other similar permit for certified industrialized housing or a housing structure in which has been installed certified housing components, industrialized buildings or structures containing building components if the properly completed Site Installation Inspection Checklist required under § 145.91 (relating to reports to the Department) is submitted and the structure was constructed and installed on the site under a validly issued building permit and in other respects complies with applicable locally-enacted codes and ordinances not pre-empted by the act and this chapter.

**ADMINISTRATIVE PROVISIONS**

**§ 145.91. Reports to the Department.**

(a) The Department is authorized to require that evaluation agencies, inspection agencies and manufacturers with approved building system documentation shall prepare and submit to the Department regular periodic reports regarding their activities relating to industrialized housing and housing components falling within the scope of the act and this chapter. These reports shall be promptly filed with the Department on forms and at times the Department may specify.

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

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

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

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

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

(e) A person installing industrialized housing, housing components, industrialized buildings or building components for use on a site in a jurisdiction in this Commonwealth shall complete and return to the manufacturer and provide a copy to the local building code official a Site Installation Inspection Checklist on a form furnished by the manufacturer. The manufacturer is responsible for furnishing to the person performing the installation a

copy of the Site Installation Inspection Checklist Form and instructions as to its intended use.

**§ 145.92. Reports by the Department.**

(a) The Department will send reports to third-party agencies and manufacturers with approved building system documentation which will include all of the following:

(1) Decisions of the Department under § 145.46 (relating to applicability and interpretation of code provisions) since the last report regarding the availability or interpretation of a provision of a code adopted under §§ 145.41, 145.42 and 145.44 (relating to adoption of standards; alternate standards; and adoption and effective dates—code amendments).

(2) Decisions of the Department of general applicability under § 145.96 (relating to interpretation of this chapter) since the last report interpreting this chapter.

(3) Decisions of the Department of general applicability under § 145.112 (relating to procedures for formal appeal proceedings) since the last report rendered at the conclusion of a formal appeal proceeding.

(4) A current list of the names and addresses of currently approved third-party agencies.

(5) A Notice of Approval to each manufacturer that is approved as provided for in § 145.72a (relating to frequency of inspections).

(b) Each report may contain additional information relating to the administration of this chapter.

(c) Nothing in this section shall be construed as relieving the Department of another reporting requirement as may be specifically required in other provisions of this chapter.

**§ 145.93. Factory inspections; right of entry.**

(a) *Authorized inspections by Department.*

(1) The Department is authorized to inspect:

(i) A manufacturing facility of a manufacturer with approved building system documentation or to whom insignia of certification has been issued under § 145.103 (relating to issuance of insignia of certification).

(ii) The transportation facilities utilized for the transport of certified industrialized housing, housing components, industrialized buildings or industrialized building components.

(iii) The building sites on which certified industrialized housing, housing components, industrialized buildings or industrialized building components have been or are intended to be installed.

(iv) The books and records—wherever maintained—of a manufacturer with approved building system documentation or to whom insignia of certification has been issued under § 145.103 which relate to the manufacture, sale, lease or installation of industrialized housing, housing components, industrialized buildings or industrialized building components for use on a site in this Commonwealth.

(v) The facilities and the books and records of a third-party agency which relate to the discharge of its responsibilities under this chapter.

(2) A manufacturer with approved building system documentation or to whom insignia of certification has been issued under § 145.103 and every approved evaluation agency and approved inspection agency shall grant to authorized representatives of the Department the right of

entry on its property at reasonable times during normal business hours for the purpose of conducting the inspections and examinations as authorized under this section.

(3) Persons selling, acquiring or leasing the industrialized housing, housing components, industrialized buildings or building components, and persons engaged in its transportation to and installation at the building site, shall grant to authorized representatives of the Department the same right of entry on their property as the manufacturer is required to grant under this chapter.

(b) *Yearly inspections.* A factory or manufacturing facility with approved building system documentation will be inspected at least once each year by the Department. The inspections are to verify the effectiveness of the sponsor's quality program and compliance with approved building systems documentation.

(c) *Inspection upon complaints or suspected violations.* A manufacturer with approved building system documentation shall grant to authorized representatives of an evaluation and inspection agency with which it has an implementing contract the right of entry on its property at least twice per year during normal business hours and at other times upon complaint or a reasonable belief that violations of this chapter may exist, for the purpose of conducting inspections and examination as the evaluation or inspection agency deems necessary to discharge its responsibilities under this chapter and under its contract with the manufacturer. Persons selling, acquiring or leasing the industrialized housing, housing components, industrialized buildings or building components, and persons engaged in its transportation to and installation on the building site, shall grant to an evaluation and inspection agency with an implementing contract with the manufacturer the same right of entry on their property as the manufacturer is required to grant under this chapter.

(d) *Inspection restrictions.* Upon entry onto a manufacturer's property or other property for the purpose of conducting an inspection under this section, the Department's employee or representative will state the scope of the intended inspection and that the inspection will be conducted under the act.

#### § 145.94. Fees.

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

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

(c) A person submitting an application to the Department under § 145.75(a) for approval as an industrialized buildings evaluation agency or inspection agency shall pay a fee of \$1,000. If the person seeks approval as both an evaluation agency and an inspection agency, the combined fee is \$2,000.

(d) A third-party agency submitting an application to the Department under § 145.76 for reapproval as an industrialized buildings evaluation agency or inspection

agency shall pay a fee of \$500. If the person seeks reapproval as both an industrialized buildings evaluation agency and an inspection agency, the combined fee is \$1,000.

(e) For manufacturing facilities in this Commonwealth, the insignia of certification fee is:

(1) \$40 per insignia for each module of an industrialized housing.

(2) \$40 per insignia for each industrialized housing component. The fee payable under this paragraph for industrialized housing components installed in or on a single dwelling unit may not exceed \$40.

(3) \$60 per insignia for each transportable section of an industrialized building.

(4) \$60 per insignia for each industrialized building module or component. A manufacturer may request special consideration from the Department in the event the manufacturer believes that insignia placement on individual modules or components is unreasonable due to the unique scope of a particular project.

(f) For manufacturing facilities outside of this Commonwealth, the insignia of certification fee is:

(1) \$60 per insignia for each module of an industrialized housing unit.

(2) \$60 per insignia for each industrialized housing component. The fee payable under this paragraph for industrialized housing components installed in or on a single unit may not exceed \$60.

(3) \$90 per insignia for each transportable section of an industrialized building.

(4) \$90 per insignia for each industrialized building module or component. A manufacturer may request special consideration from the Department in the event the manufacturer believes that insignia placement on individual modules or components is unreasonable due to the unique scope of a particular project.

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

(1) Engineering services—\$75 per hour.

(2) Administrative services—\$40 per hour.

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

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

(i) Fees paid to the Department under this chapter are nonrefundable except as otherwise specifically set forth in this chapter. Fees shall be paid electronically (as determined by the Department), by check or money order.

#### § 145.97. Amendments to this chapter.

The Department may propose amendments to this chapter. The Department will publish each proposed amendment in the *Pennsylvania Bulletin* and provide notice of the amendment to third-party agencies and to manufacturers with approved building system documentation. The Department will hold public hearings on proposed amendments to this chapter. A proposed amendment shall become effective upon compliance with the

applicable requirements of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1102, 1201—1208 and 1602) and 45 Pa.C.S. Part II (relating to publication and effectiveness of Commonwealth documents).

**§ 145.99. Remedies.**

The Department may seek an order from a court of applicable jurisdiction in this Commonwealth for the enforcement of the act or this chapter, including without limitation an order for injunctive relief to enjoin the sale, lease, delivery or installation of industrialized housing, housing components, buildings or building components which have not been manufactured, transported or installed in conformity with the requirements of the act or this chapter, or for the refusal of a party to comply with the act or this chapter.

**INTERSTATE ACCEPTABILITY**

**§ 145.101. General authority.**

The Department is authorized under section 6 of the act (35 P.S. § 1651.6) to issue insignia of certification to approved manufacturers under this program for their industrialized housing, housing components, industrialized buildings or building components which have been certified by any competent authority within a state of the United States following a finding by the Department that the certifications have been granted on the basis of standards substantially equivalent to this chapter. Sections 145.102 and 145.103 (relating to determinations of acceptability of certifications of a competent state authority; and issuance of insignia of certification) set forth more detailed criteria to support a finding by the Department that the standards are substantially equivalent to this chapter and establish additional procedures necessary to safeguard the health, safety and welfare of the citizens of this Commonwealth from noncomplying industrialized housing, housing components, industrialized buildings or building components certified by a competent state authority.

**§ 145.102. Determinations of acceptability of certifications of a competent state authority.**

(a) The Department may, on the basis of its review of the applicable statutes, regulations and administrative practices and experience and the other information as it may consider necessary for an informed finding, find that the standards of a competent authority of a state of the United States under which industrialized housing, housing components, industrialized buildings or building components are certified are substantially equivalent to the provisions of this chapter. The finding by the Department will be based on the following subsidiary findings:

(1) An agency, authority or division of the government of a state of the United States has established and is actively administering under valid legislative authority a program for the certification of industrialized housing, housing components, industrialized buildings or building components or type of industrialized housing, housing components, industrialized buildings or building components similar in its purposes to the program authorized by the act.

(2) The codes and standards utilized by the competent authority of the other state governing the design, materials and method of construction are substantially equivalent to the codes and standards adopted by the Department under §§ 145.41, 145.42 and 145.44 (relating to adoption of standards; alternate standards; and adoption and effective dates—code amendments). The determination of substantial equivalency will be based on a finding

that the degree of protection to the health, safety and welfare of the citizens of this Commonwealth would not be materially less under other codes and standards than under the codes and standards adopted by the Department under §§ 145.41, 145.42 and 145.44. It is not intended that findings of substantial equivalency be limited to codes adopted by other jurisdictions which are identical or substantially identical with the codes adopted under §§ 145.41, 145.42 and 145.44. In addition, a finding of substantial equivalency may be limited to designated types of buildings or methods of construction for buildings.

(3) The competent state authority will not certify industrialized housing, housing components, industrialized buildings or building components unless there has been a finding that the manufacturer is administering an acceptable compliance control program or, if third-party agencies are utilized, there is an acceptable compliance assurance program.

(4) The evaluation of the building system documentation of manufacturers for conformity with the adopted codes and standards and of the related compliance control program or compliance assurance program, as the case may be, is performed by personnel possessing satisfactory qualifications to assure determinations that are reliable, objective and without bias.

(5) The procedures adopted by the competent state authority are satisfactory to assure effective enforcement of the regulations and standards adopted by that jurisdiction.

(b) If the Department makes a finding of substantial equivalency under subsection (a), it will further determine whether there are procedures adopted by the competent state authority with respect to which the finding of substantial equivalency is made under which the Department would be promptly notified in the event of the suspension or revocation of approval of any manufacturer or third-party agency or of any other approval issued by the competent state authority relating to the enforcement of its applicable regulations. If there are no procedures for prompt notification to the Department, the Department may seek agreement from the competent state authority for the establishment of notification procedures.

(c) Promptly after the Department makes a finding of substantial equivalency under subsection (a) with respect to the standards adopted by a competent state authority under which industrialized housing, housing components, industrialized buildings or building components are certified by the authority, and further determines that the competent state authority has adopted the notification procedures prescribed in subsection (b), the Department will notify third-party agencies and manufacturers with approved building system documentation that, on compliance with the requirements of § 145.103 (relating to issuance of insignia of certification), the Department will issue to a manufacturer insignia of certification for attachment to industrialized housing, housing components, industrialized buildings or building components certified by the competent state authority with respect to which the findings have been made.

**§ 145.103. Issuance of insignia of certification.**

(a) A manufacturer, regardless of whether its building system documentation and related compliance assurance program have been approved under this chapter, may request that the Department issue to it insignia of certification for attachment to industrialized housing, housing components, industrialized buildings or building



components which have been or will be certified by a competent state authority with respect to which the Department has made the requisite findings required under § 145.102 (relating to determinations of acceptability of certifications of a competent state authority). In addition to meeting all of the requirements of § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification), the manufacturer's request must contain the following additional information:

(1) A list of the building system documentation which was approved by the competent state authority for the industrialized housing, housing components, industrialized buildings or building components to which the insignia of certification are to be attached.

(2) Evidence that building system documentation and related compliance assurance program or compliance control program, as the case may be, was approved under the policies and procedures of the competent state authority as conforming to the standards with respect to which the Department's determination of substantial equivalency was made.

(3) The name and address of an inspection agency, approved by the Department, which will participate in the compliance assurance program and authorize the attachment of the insignia of certification to the industrialized housing, housing components, industrialized buildings or building components to be sold, leased or installed for use on a site in this Commonwealth.

(b) If the competent state authority uses its own personnel for monitoring a manufacturer's compliance control program and inspecting industrialized housing or housing components, the manufacturer seeking the issuance of insignia of certification under subsection (a) may eliminate the requirement of subsection (a)(3) for utilizing an inspection agency to monitor its compliance control program and authorize the attachment of insignia of certification, provided that the Department and the competent state authority have entered into an agreement under which the competent state authority will institute procedures, acceptable to the Department, for authorizing the attachment of the insignia of certification for industrialized housing, housing components, industrialized buildings or building components intended for sale, lease or installation for use on sites in this Commonwealth. The Department will enter into an agreement only if it determines that the procedures for controlling the use of the insignia of certification contain adequate safeguards and that the competent state authority has the satisfactory organization and personnel to discharge its obligations under the agreement and will not charge the approval or reapproval fees as outlined in § 145.94(a) and (b) (relating to fees).

#### § 145.104. Reciprocal agreements.

(a) The Department is authorized to enter into agreements with the United States Department of Housing and Urban Development or with a competent authority within a state of the United States which has established under valid legislative authority a program for the certification of industrialized housing, housing components, industrialized buildings or building components under which each party to an agreement will recognize the certification issued under the laws, regulations and administrative procedures of the other party. An agreement must establish procedures additional to those set forth in this chapter and shall in respects be consistent with the act.

(b) The reciprocal agreement may also establish that acceptability of the competent state authority insignia of

certification for industrialized housing units, components, industrialized buildings or building components shall be recognized by the Department instead of the provisions in §§ 145.102 and 145.103 (relating to determinations of acceptability of certifications of a competent state authority; and issuance of insignia of certification).

(c) The inspection and evaluation agency fees outlined in § 145.94(a) and (b) (relating to fees) will not be charged to a competent state authority entering into a reciprocal agreement, as outlined in this chapter, using its own personnel for monitoring a manufacturer's compliance control program and inspecting industrialized housing, housing components, industrialized buildings or building components.

#### § 145.105. Suspension and revocation.

(a) The Department, on the basis of its review of the applicable statutes, regulations and administrative practices and experience and other information that it may consider necessary for an informed finding, determine that its finding that the standards of a competent state authority, previously found by the Department to be substantially equivalent to this chapter, is no longer justified under the criteria in § 145.102(a) (relating to determinations of acceptability of certifications of a competent state authority) or the procedures for notification in § 145.102(b) are no longer effective. The Department will promptly notify third-party agencies and manufacturers with approved building system documentation or possessing insignia of certification issued to them under § 145.103 (relating to issuance of insignia of certification) of its finding. If requested by the Department, manufacturers possessing insignia of certification issued under § 145.103 shall promptly return the insignia to the Department and, upon receipt by the Department of the returned insignia, the fee paid by the manufacturer for the insignia will be refunded in full. No additional insignia of certification will be issued by the Department under § 145.103 with respect to industrialized housing or housing components certified by the competent state authority with respect to which the finding by the Department was made. In addition, the Department will be authorized to remove, or cause the removal of, insignia of certification theretofore attached to industrialized housing, housing components, industrialized buildings or building components certified by the competent state authority, if the Department determines that there is a substantial threat to the health, safety or welfare of the occupants of the industrialized housing or housing structures containing the housing components, industrialized buildings or structures containing building components unless brought into compliance with this chapter.

(b) The suspension or revocation of the certification of a manufacturer or third-party agency or of an industrialized housing, housing components, industrialized buildings or building components by a competent state authority shall automatically suspend the right of a manufacturer affected in a material respect by the suspension or revocation to utilize an insignia of certification issued to it under § 145.103. The manufacturer may thereafter request the Department to determine in writing those circumstances in which it may continue to use the insignia of certification.

(c) Nothing in this section shall be construed to limit or restrict the rights of suspension and revocation of the Department under this chapter.

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